

**JOINT-USE LEASE AGREEMENT BETWEEN  
SAN JOSÉ UNIFIED SCHOOL DISTRICT AND SOUTH VALLEY FAMILY YMCA  
FOR USE OF CLASSROOM SPACE FOR CHILD CARE PURPOSES AT MULTIPLE  
ELEMENTARY SCHOOLS**

THIS JOINT USE AGREEMENT AND LEASE ("Agreement") is made this 4th day of June, 2019, by and between the **SAN JOSÉ UNIFIED SCHOOL DISTRICT**, a California public school district of California ("District") and **SOUTH VALLEY FAMILY YMCA**, a California non-profit organization ("Tenant"). District and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS**

**WHEREAS**, Tenant requires space to provide before and after school day care services to District students ("Program" or "Activities"), as further defined herein; and

**WHEREAS**, District has space as further depicted in **Exhibit "A"** attached hereto and made a part of this Agreement ("Premises"), located at **Allen at Steinbeck School** 820 Steinbeck Drive, San José, CA 95123, **Booksin Elementary School** 1590 Dry Creek Road, San José, CA 95125, **Hacienda Elementary School** 1290 Kimberly Drive, San José, CA 95118, **Reed Elementary School** 1524 Jacob Avenue, San José, CA 95118, **Schallenberger Elementary School** 1280 Koch Lane, San José, CA 95125, **Simonds Elementary School** 6515 Grapevine Way, San José, CA 95120 ("School Site(s)"); and

**WHEREAS**, District desires to allow Tenant to use the Premises on the designated School Site while providing services for Tenant's Program and as further detailed herein and in **Exhibit "B"** attached hereto and made a part of this Agreement; and

**WHEREAS**, District, pursuant to section 17527(a) of the Education Code of California, is authorized to "enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours of the school is in session"; and

**WHEREAS**, District intends to utilize a portion of the School Site(s) as an operating school building during the term of this Agreement; and

**WHEREAS**, District, pursuant to section 17529 of the Education Code of California, has determined by approving this Agreement, that leasing the Premises to Tenant will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;

**WHEREAS**, Tenant agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Tenant's leasehold interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

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

## AGREEMENT

1. **USE OF PROPERTY.** District agrees to allow use of the Premises at the School Site(s) by Tenant to perform Tenant's Activities, as more fully described in **Exhibit "B."** Tenant shall have use of the Premises at all times to perform Tenant's Activities only, subject to modification by the Parties, and only to the extent Tenant pays Rent for the portion of the Premises Tenant allowed use.
  
2. **SHARED SCHOOL SITE(S) AND RECREATIONAL FACILITIES.** Tenant acknowledges and understands that the Premises are located in an operating public school. As such, the School Site(s) and the playgrounds, common areas, recreational facilities and other outdoor play areas (collectively "Shared Space") will be used by other parties, including District, and Tenant shall cooperate with the other parties and District in reaching amicable arrangements concerning the use, maintenance and security of the Shared Space.
  
3. **PARKING.** Tenant shall have non-exclusive use of the parking lot located on the School Site(s). Tenant shall abide by District's policies concerning the use of the parking lot, including District policy relating to the drop-off and pick-up of children participating in Tenant's Program. Tenant's use of the parking lot shall be on a first come, first serve basis. Tenant may instruct its visitors, invitees and guests to park in the parking lot located on the School Site(s) or on available street parking. Tenant shall not abandon any inoperative vehicles or equipment on any portion of the School Site(s). Except as a result of District's negligence or willful misconduct, District shall not be liable for any personal injury suffered by Tenant or Tenant's visitors, invitees and guests for any damage to or destruction or loss of any of Tenant's personal property located or stored in the parking lots, street parking, or the School Site(s). Tenant accepts parking "as is" and Tenant acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.
  
4. **CONDITION OF PREMISES.**
  - 4.1. The Premises are leased to Tenant on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Tenant accepts the Premises in "AS IS" condition.
  
  - 4.2. Tenant acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for Tenant or Tenant's Program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District or Tenant, and District and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
  
5. **TITLE TO SCHOOL SITE(S) / CLASSROOM BUILDINGS.** The Parties acknowledge that title to the School Site(s) is held by District.
  
6. **TERM.**
  - 6.1. The term of this Agreement shall be for three (3) years. The commencement date shall be July 1, 2019, ("Commencement Date"), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2022 ("Term").
  
  - 6.2. Notwithstanding anything to the contrary in this Lease, District shall have the right to re-locate Tenant to other buildings on the campus based on District's need to accommodate multiple tenants and occupants ("Relocation"). The need for such Relocation shall be determined at the District's sole discretion with adequate notice to Tenant to allow Tenant to make

accommodations including informing Tenant's "clients and customers" of Tenant's Relocation. Such Relocation shall be reasonably equivalent facilities and Rent shall be adjusted according to square footage if Relocation results in less square footage. If Relocation results in greater square footage, any increase in Rent shall be by mutual written agreement. District shall facilitate, at its own expense, the moving of Tenant's furniture, equipment and other room contents ("Moving") however, Tenant will be responsible for packing and unpacking of contents into and from boxes provided by District ("Packing"). Moving and Packing costs may be negotiated based on extenuating circumstances by mutual written agreement.

### 6.3. RENEWAL OF AGREEMENT.

6.3.1. If the Parties intend to renew this Agreement when the Term ends, the Parties may do so only by executing a separate writing that complies with all of the following provisions:

6.3.1.1. It specifically authorizes further tenancy by Tenant and specifies the terms of that tenancy, and

6.3.1.2. It is approved by each Party's governing body prior to the end of the Term.

6.4. On the last day of the Term hereof, or on sooner termination of this Agreement, Tenant shall surrender the Premises to District and any existing improvements in good order, condition and repair, free and clear of all liens, claims and encumbrances. The condition of the Premises when surrendered shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises. Tenant shall remove from the Premises all of Tenant's personal property, trade fixtures, and any improvements made by Tenant which Tenant and District agreed would be removed by Tenant. All property not removed shall be deemed abandoned by Tenant. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Tenant shall indemnify District against loss or liability resulting from delay by Tenant in surrendering the Premises including, without limitation, any claims made by any succeeding Tenant or loss to District due to lost opportunities to timely obtain succeeding tenants.

6.4.1. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Tenant's occupancy shall be a tenancy on a month-to-month basis for rent equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period.

### 7. RENT AND BUILDING SERVICES.

7.1. For and in consideration of the use of the Premises for the Term of this Agreement Tenant agrees to pay District the following sums per month ("Rent"):

**Per the premises indicated in Exhibit A for a total of \$34,587.56 a month.**

Monthly rental amounts per site are as follows Allen at Steinbeck \$5,990.40, Booksin \$5,990.40, Hacienda \$3,989.09, Reed \$5,990.40, Schallenberger \$4,649.09, Simonds \$3,989.09, and Terrell \$3,989.09.

Rent shall include costs for "utilities." For purposes of this Agreement, "utilities" includes water, irrigation, gas, electricity, fire alarm monitoring, trash pick-up, and sewage fees

- 7.2. Custodial Services: The District will provide custodial services to the standard of care equal to other classrooms on the site per each school day. A school day is defined as a day that school is in session, thus not including, school holidays, October Break, December/January Break, February Break, April Break, furlough days, etc. Custodial service will be provided during summer vacation. See Exhibit "C" Calendar. Landlord will notify the Tenant of when furlough days are scheduled to occur as decided by the Board of Education.
- 7.3. Tenant shall be solely responsible for all telephone or technology communication services/systems required by Tenant.
- 7.4. Rent for the first month shall be due upon commencement of this Agreement. Thereafter, Rent shall be due on the first of each month until the expiration or termination of this Agreement.
- 7.5. Rent for the Premises shall increase by three percent (3%) on the anniversary of the Commencement date of each subsequent year. The increase shall be based upon the preceding year's Rent.
- 7.6. Tenant shall promptly pay to District the monthly Rent on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand.
- 7.7. Tenant acknowledges that late payment by Tenant to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from Tenant by 4:00 p.m. within ten (10) days after Rent is due, Tenant shall pay to District, as additional rent, a late charge equal to five percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Tenant shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Tenant. Acceptance of any late charge by District shall in no event constitute a waiver of Tenant's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

## 8. **SECURITY DEPOSIT.**

- 8.1. Tenant shall deposit with District a sum equal to the first month's payment of Rent. The deposit shall be held by the District, without interest, as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Agreement. District shall hold the deposit as a debtor, not a trustee, and may commingle the deposit with other funds.
- 8.2. Use and Return of Deposit. If Tenant fails to perform any of terms, covenants, and conditions of this Agreement, the District, in its sole discretion, may apply the entire deposit, or so much thereof as necessary, to compensate the District for all loss or damage sustained by District due to Tenant's breach of this Agreement. Tenant shall, within five (5) business days of receipt of written notice from District, remit to District sufficient cash to restore the deposit to the original sum deposited. If Tenant complies with all of the terms, covenants, and conditions of this Agreement and promptly paid all Rent due, the deposit shall be returned to Tenant within ten (10) days of the end of the Term and Tenant's return of the Premises to the District, except Two Hundred Dollars (\$200.00) of the deposit shall be retained by District as a nonrefundable cleaning deposit.

9. **TAXES; ASSESSMENTS.** Tenant shall pay any assessment on the Premises, including any improvements which Tenant constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or Tenant's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon Tenant's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises' address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
  
10. **MAINTENANCE AND REPAIRS.**
  - 10.1. District shall maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery, including pest abatement. Tenant acknowledges and accepts that the Premises are leased in "AS IS" condition. District shall keep and maintain the structural elements of the buildings, as defined herein, on the Premises in the condition existing at the time Tenant takes possession of the Premises excepting normal wear, tear and damage by casualty. If the Premises are in a state of disrepair due to the willful or negligent actions of Tenant, Tenant shall pay District for the repairs on a time and materials basis plus fifteen percent (15%) overhead costs.
  
  - 10.2. District makes no representations or warranties for the structure of the building as it exists. District agrees that if the structural elements of the building become damaged to a lesser condition than currently exists, and if such structural damage is due to no fault or negligence of Tenant, then District will repair the damage in such a manner as to bring it back to a condition which is similar to the condition which exists at the time Tenant takes possession of the Premises; however, District may terminate this Agreement if such repair cost exceeds One Hundred Fifty Thousand dollars (\$150,000) per incident. District agrees to pro-rate Rent during the "repair" period, if the resulting structural damage prohibits Tenant from carrying out its normal daily activities. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand dollars (\$150,000), Tenant may elect to remain in possession of the Premises and pay the stipulated rent, unless changed through mutual agreement of the Parties, or Tenant may elect to terminate this Agreement.
  
  - 10.3. As used in this Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of Tenant.
  
  - 10.4. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this Section. Tenant hereby expressly waives the provisions of sections 1932, 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 the Civil Code of California.
  
  - 10.5. The cost of rekeying, if necessary, shall be the responsibility of Tenant. District reserves the right to key-control and issuance of duplicate keys in order to maintain the integrity of District policy.
  
  - 10.6. If Tenant intends to have any improvements, alterations, work, or other services performed on the Premises that are not part of the maintenance or repair services indicated herein, Tenant shall request that work via the Capital Improvement Project Process, available upon request.

10.6.1. The type of work that would be subject to this provision includes, for example, painting that is requested that is neither repainting nor painting to bring the facility to its original condition, new room dividers, installing or removing casework, whiteboards, or other fixtures, and similar Tenant-requested improvements.

10.6.2. The District shall prepare and provide to Tenant an estimate for that work. If Tenant accepts that estimate, the District shall perform that work as indicated in the estimate and Tenant shall pay for that work as indicated in the estimate, which shall be due and owing with the next month's Rent, unless otherwise agreed to in writing by the Parties.

**11. TITLE TO AND REMOVAL OF TENANT'S IMPROVEMENTS / PREMISES; EQUIPMENT REQUIREMENTS.**

11.1. Tenant shall not construct or cause to be constructed on the Premises any improvements ("Tenant's Improvements") without express prior written consent from District. Tenant's Improvements must be deemed by Tenant as necessary to the operation of its Program.

11.2. Tenant shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any Site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.

11.3. Any modifications to the Premises must be approved in writing in advance by District. Tenant's contractor must be approved in advance by District. All contractors and subcontractors of Tenant, if any, shall be duly licensed in the State of California. Tenant shall be solely responsible for maintaining the Premises and Tenant's Improvements installed thereon during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

11.4. Under all circumstances, Tenant must seek and receive approval from the Division of the State Architect for any Tenant Improvements.

11.5. Tenant shall not install any ovens, stoves, hot plates, toasters, or similar items (not including microwave ovens) without the prior written consent of the District. Title to removable furniture, equipment and/or other personal property placed by Tenant onto the Premises, but not affixed thereto, shall be held solely by Tenant. These items shall remain the personal property of Tenant and shall not be treated as real property or become a part of the School Site(s), unless District accepts or Tenant abandons any of this personal property at the end of the Term.

11.6. Tenant shall at all times indemnify and hold District harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney's fees. Tenant shall provide District with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics' lien or stop payment notice. District has the right to enter upon the Premises for the purpose of posting Notices of Non-responsibility. In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Tenant shall either:

11.6.1. Record a valid Release of Lien, or

11.6.2. Deposit sufficient cash with District to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent

judgment holder that may arise as a matter of public record from litigation with regard to lien-holder claim, or

11.6.3. Procure and record necessary bonds in accordance that frees the demised Premises from the claim of the lien from any action brought to foreclose the lien.

11.6.4. If Tenant fails to accomplish one of the three optional actions within fifteen (15) days after the filing of any lien or stop payment notice, the Agreement shall be in default and shall be subject to immediate termination.

11.7. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Tenant shall remove Tenant's Improvements, at its sole expense. Tenant shall repair any damage to the School Site(s) and/or the Premises, caused by removal of Tenant's Improvements and restore the School Site(s) and the Premises to good condition, less ordinary wear and tear. In the event that Tenant fails to timely remove Tenant's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of Tenant's Improvements with no cost to District, or (2) remove Tenant's Improvements at Tenant's sole expense. If the District chooses to accept ownership of Tenant's Improvements, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Improvements. If District removes Tenant's Improvements, Tenant shall pay all invoices for the removal of Tenant's Improvements within thirty (30) days of receipt of an invoice.

12. **FINGERPRINTING AND CRIMINAL BACKGROUND VERIFICATION.** Tenant shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Saf. Code, § 1500 et seq.). Tenant shall provide in writing verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to Tenant taking possession of the Premises and prior to conducting its Program on the Premises.

13. **USE OF THE PREMISES.**

13.1. Tenant shall use the Premises solely for the purpose of the Program and during the times set forth in **Exhibit "B."**

13.2. The Premises shall be used and occupied only for child care and District approved preschool purposes and other normal activities related to Tenant's Program.

13.3. Tenant shall not use the Premises for any use other than that specified in this Section without the prior written consent of District. Tenant shall submit a request in writing for District's consent at least thirty (30) days prior to Tenant's use of the Premises for any use other than that specified in **Exhibit "B"**, i.e. fairs, carnivals, etc. 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. The execution of this Agreement shall be subject to the Tenant obtaining any and all permits or approvals which may be required in order for Tenant to operate the Program on the Premises. Tenant shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto.

- 13.4. Tenant shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of Tenant to comply with any applicable law, regulation, rule or ordinance.
- 13.5. Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
- 13.6. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Tenant shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times.
- 13.7. Tenant shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. Tenant agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.
- 13.8. If required, Tenant and all subtenants shall obtain a use permit from the City in which the School Site(s) is located for Tenant's use throughout the term of this Agreement. Tenant shall require all subtenants, licensees, and invitees to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. During the Term, Tenant shall comply with the District's policy regarding Campus Security and Disruptions.
- 13.9. Tenant represents that it is qualified to administer and 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, agents, consultants and/or subcontractors who may provide services in conjunction with Tenant's Activities on the Premises.
- 13.10. Tenant's use of the Premises shall be exclusively limited to its Program. Tenant must remove any equipment at the end of Agreement Term. District is in no manner responsible for damage or theft of Tenant's equipment. Tenant must maintain and repair any damage to the Premises to at least as good a condition as the Premises existed as of the Commencement Date of this Agreement.
14. **INSPECTION OF PREMISES.** District agrees to provide Tenant with a set of keys for the Premises. Tenant shall permit District and/or its agents to enter the Premises at any reasonable time for the purpose of inspecting the Premises and/or exhibiting the Premises to prospective lessees, occupants, purchasers or mortgagees.
15. **SAFETY OF PREMISES.** The School Site, including the Premises, may be monitored by a safety system or protocol implemented, maintained and operated by District ("District's Safety Measures"). However, Tenant specifically acknowledges, understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either Tenant or the Premises. Tenant further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to Tenant or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Premises, regardless of whether District was able to, actually did, or failed to provide notice to Tenant of a safety incident or situation occurring on the Premises which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Tenant, the



Premises, the School Site, or District's Safety Measures. Unless expressly agreed to by District and Tenant, Tenant shall be responsible, at its sole cost, for supplying, providing, establishing, maintaining, and operating its own safety measures, protocols, personnel, or systems to encourage and ensure the security of Tenant, its agents, officers, employees, licensees and invitees, and the Premises ("Tenant's Safety Measures"); provided, however, that Tenant must obtain prior written approval from District prior to employing Tenant's Safety Measures and provided that all of Tenant's Safety Measures are compatible with District's safety system or protocol.

## 16. **TERMINATION.**

### 16.1. **TERMINATION FOR CONVENIENCE**

- 16.1.1. District may terminate this Agreement by written notification ninety (90) days prior to the effective date of the termination.
- 16.1.2. Tenant may terminate this Agreement by written notification ninety (90) days prior to the effective date of the termination. Tenant acknowledges that this ninety (90) day notice period is acceptable so that District can attempt to find another tenant.
- 16.1.3. Neither Party shall be required to provide just cause for termination in the written notification.

### 16.2. **TERMINATION FOR CAUSE.** Either Party may terminate this Agreement immediately for cause. Cause shall include, without limitation:

- 16.2.1. Material violation of this Agreement by Tenant or District; or
- 16.2.2. Any act by Tenant exposing District to liability to others for personal injury or property damage; or
- 16.2.3. Tenant is adjudged a bankrupt, Tenant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Tenant's insolvency.
- 16.2.4. If District terminates for cause, Tenant's rights in the Premises shall terminate upon Tenant's receipt of notice of termination from District. Upon receipt of District's notice of termination, Tenant shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject Tenant or any of Tenant's subtenants, assignees or other person or persons claiming any right under or through Tenant or eject some and not others or eject none. This Agreement 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.

### 16.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or Tenant.

### 16.4. Upon termination of this Agreement, Tenant shall be responsible to restore the Premises to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted.

17. **INDEMNIFICATION.** To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Premises, all improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District, Tenant shall defend the same at Tenant's sole expense. This Agreement is made on the express condition that, except for loss or injury caused by indemnified parties' negligence or willful misconduct, District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the Tenant, its agents, officers, employees, licensees and invitees. Tenant shall keep the Premises and the School Site(s) clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises and the School Site(s).

18. **INSURANCE.**

- 18.1. 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.
- 18.2. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's property or improvements made by Tenant.
- 18.3. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Agreement 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 hired, owned or non-owned. 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) for bodily injury or death and property damage as a result of any one occurrence and Two Million dollars (\$2,000,000) general aggregate policy limit. In addition, Tenant shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the 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:
- 18.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
  - 18.3.2. State the coverage is primary and any coverage by District is in excess thereto;
  - 18.3.3. Contain a cross liability endorsement; and
  - 18.3.4. Include a separate endorsement naming District as an additional insured.

At least thirty (30) 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.

- 18.4. During the term of this Agreement, District 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 School Site(s) as of the Commencement Date. In the event of loss or damage to the School Site(s), the buildings, the Premises or any contents, each Party, and all persons claiming under the Party, 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.

18.4.1. No use shall be made or permitted to be made of the Premises, nor acts done, that will increase the existing rate of insurance upon the building or buildings of the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall Tenant sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. Tenant shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and casualty insurance, covering the Premises' buildings, or appurtenances. Fire and casualty insurance premium increases to District resulting from Tenant's equipment and/or activities shall be charged to Tenant.

18.5. During the term of this Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Tenant's occupancy of the Property, Tenant shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District

19. **SIGNS.** Tenant may, at Tenant's sole cost, have the right and entitlement to place a sign on the Premises to advertise Tenant's Program, provided Tenant obtains the prior written approval and consent of District. District's approval and consent shall not be unreasonably withheld. Any signs shall be at Tenant's cost and in compliance with the 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 Agreement Tenant shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, Tenant shall remove any signs which it has placed on the Premises and School Site(s), and shall repair any damage caused by the installation or removal of Tenant's signs.
20. **SURRENDER OF AGREEMENT NOT MERGER.** The voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or sub tenancies, or operate as an assignment to District of any or all subleases or sub tenancies.
21. **NOTICE.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

**DISTRICT: San Jose Unified School District  
855 Lenzen Avenue  
San Jose, CA 95126  
ATTN: Director, Facilities and Construction**

**TENANT: South Valley Family YMCA  
80 Saratoga Avenue  
Santa Clara, CA 95051  
Attn: Lovedeep Griswold-Sahota Senior Program Director**

Any notice personally given or sent by facsimile transmission 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 three (3) days after deposit in the United States mail.

22. **SUBCONTRACT, ASSIGNMENT AND SUBLEASE.** Tenant shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.
23. **JOINT AND SEVERAL LIABILITY.** If Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Tenant hereunder.
24. **INDEPENDENT CONTRACTOR STATUS.** This Agreement 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.
25. **ENTIRE AGREEMENT OF PARTIES.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
26. **CALIFORNIA LAW.** This Agreement 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 Agreement shall be maintained in county in which the District's administrative offices are located.
27. **COMPLIANCE WITH ALL LAWS.**
  - 27.1. Tenant shall at Tenant's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the School Site(s), and shall faithfully observe in Tenant's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations ("Environmental Laws").
  - 27.2. The judgment of a court of competent jurisdiction, or Tenant's admission in an action or a proceeding against Tenant, whether District be a party to it or not, that Tenant has violated any law or regulation or ordinance in Tenant's use of the Premises shall be considered conclusive evidence of that fact as between District and Tenant. If Tenant fails to comply with any law, regulation or ordinance, District reserves the right to take necessary remedial measures at Tenant's expense, for which Tenant agrees to reimburse District on demand.
  - 27.3. Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Tenant shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which 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 Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- 27.4. Notice. Tenant will promptly notify District in writing if Tenant has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the School Site(s) in violation of Environmental Laws. Tenant shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. Tenant shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Tenant to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Tenant shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 27.5. Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Tenant (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether Tenant is complying with Tenant's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Tenant may agree.
- 27.6. Indemnification. Tenant shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District and District Parties from and against any and all Claims arising from any breach of Tenant's covenants under this Section.
28. **ATTORNEYS' FEES.** If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.
29. **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.
30. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
31. **COUNTERPARTS.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

32. **CAPTIONS.** The captions contained in this Agreement 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 hereto.
33. **SEVERABILITY.** Should any provision of this Agreement 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.
34. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
35. **AUTHORIZATION TO SIGN AGREEMENT.** If Tenant is a corporation, each individual executing this Agreement on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Agreement. If Tenant is a partnership or trust, each individual executing this Agreement on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Tenant in accordance with the terms of such entity's partnership agreement or trust agreement, respectively, and that this Agreement is binding upon Tenant in accordance with its terms, and Tenant shall, concurrently with its execution of the Agreement, deliver to District upon its request such certificates or written assurances from the partnership or trust as District may request authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

ACCEPTED AND AGREED on the date indicated below:

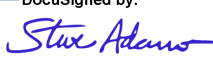
Dated: 7/18/2019

Dated: 7/18/2019

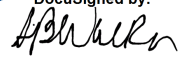
**SAN JOSÉ UNIFIED SCHOOL DISTRICT**

**YMCA**

By:

DocuSigned by:  
  
BED453E56F68421...

By:

DocuSigned by:  
  
C602F1AFC66742A...

Name: Steve Adamo

Name: Sandy Walker

Title: Director, Facilities and Operations

Title: CEO and President

**Exhibit A – Description of the Site and Premises**

**Exhibit B – Description of Tenant's Program**

**Exhibit C – 19/20 Calendar**



EXHIBIT "A"  
DESCRIPTION OF PREMISES AND SITE

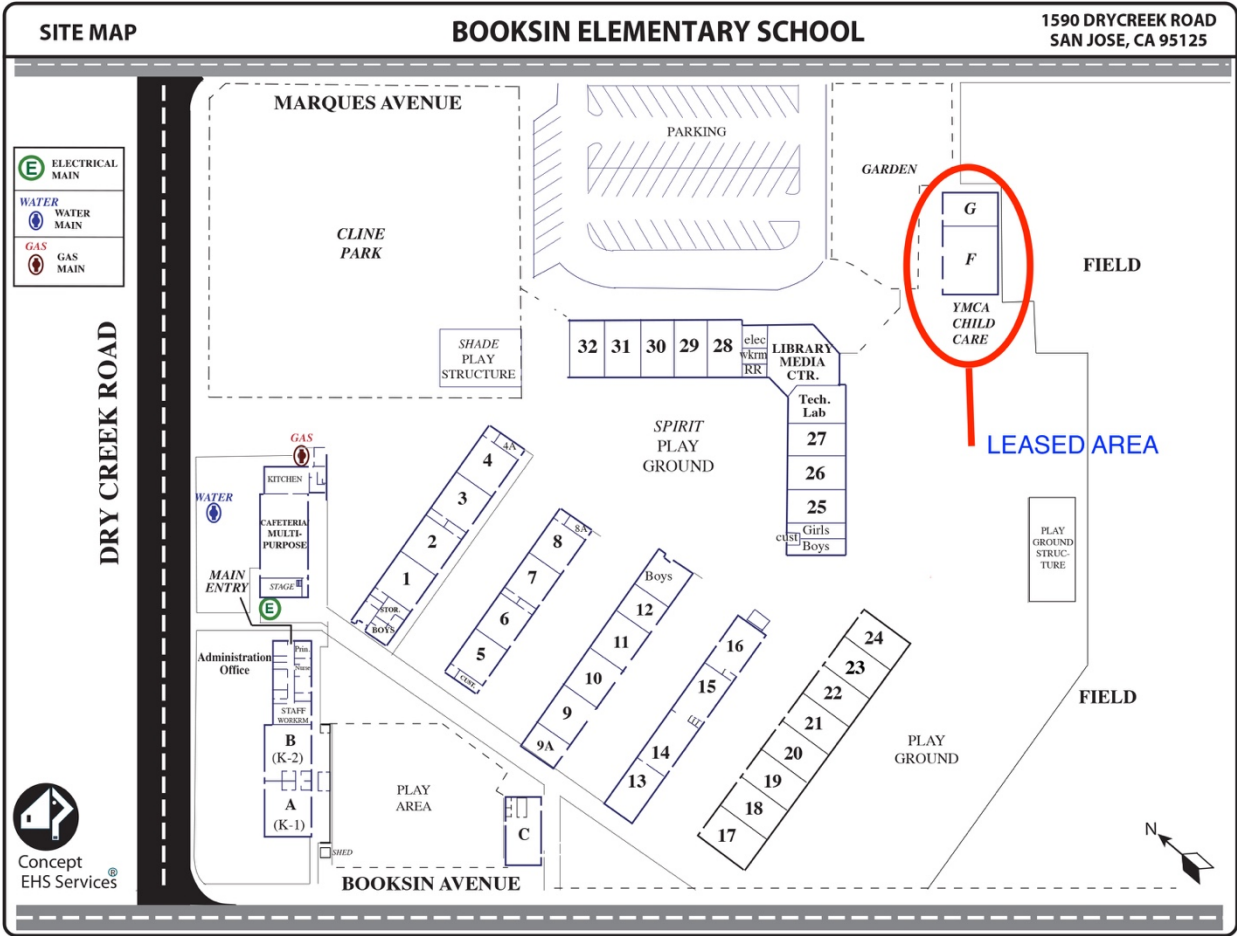
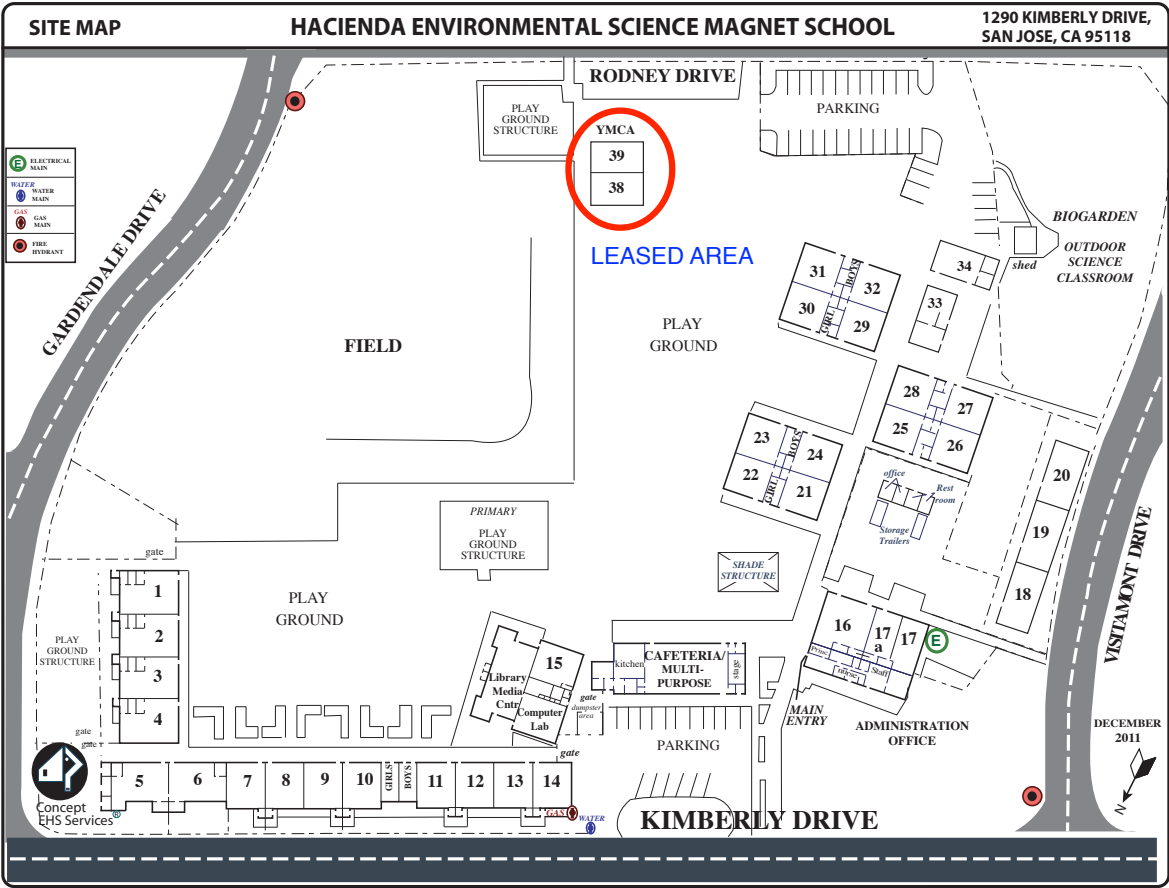


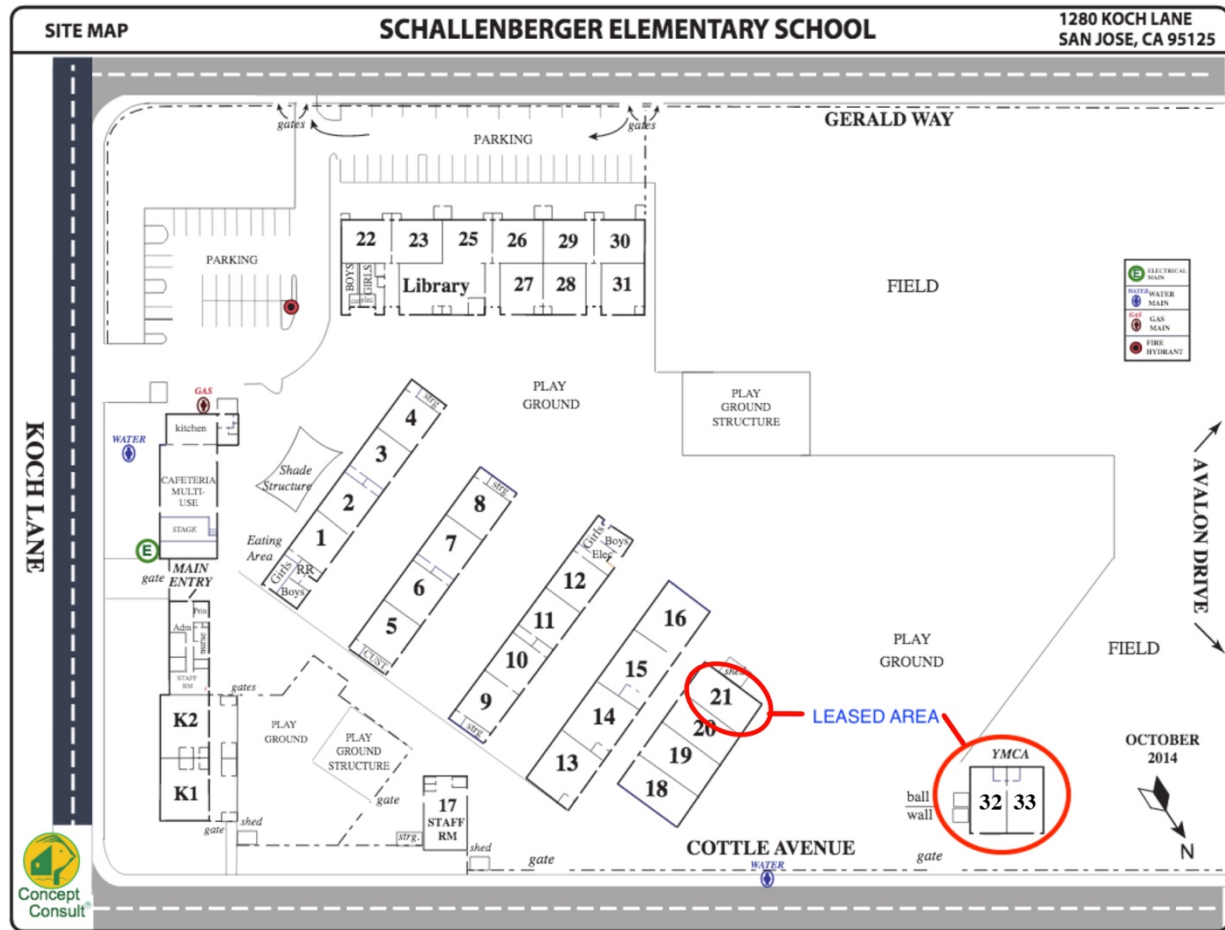


EXHIBIT "A"  
DESCRIPTION OF PREMISES AND SITE





**EXHIBIT "A"**  
**DESCRIPTION OF PREMISES AND SITE**

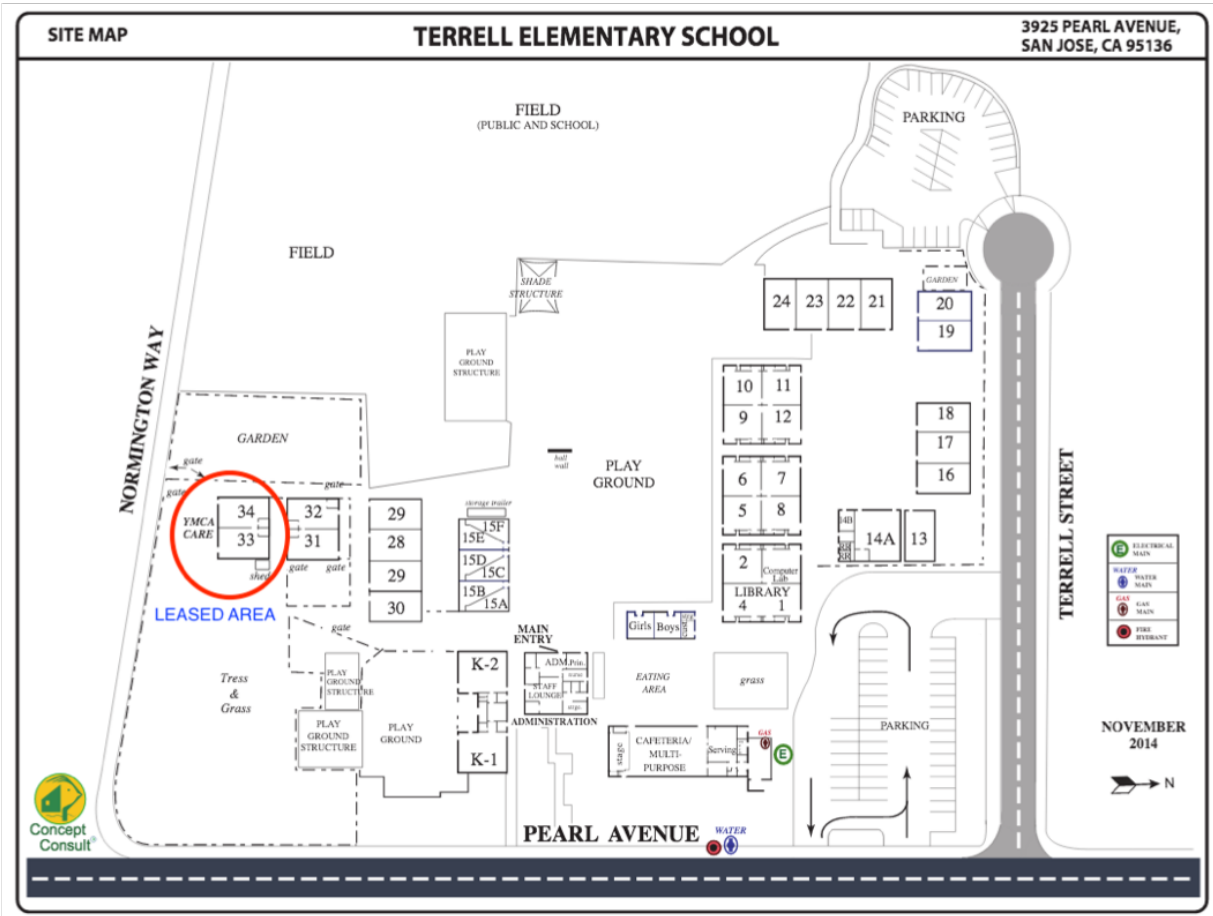


Room 21 is only used after school 2 - 6PM and during breaks during the school year 7:30AM – 6PM

**EXHIBIT "A"**  
**DESCRIPTION OF PREMISES AND SITE**



EXHIBIT "A"  
DESCRIPTION OF PREMISES AND SITE



## **EXHIBIT "B"**

### **DESCRIPTION OF TENANT'S PROGRAM**

At the Y, we believe that every child should have the opportunity to discover who they are and what they can achieve. The Y's early learning and before and after school programs provide a safe and enriching experience for your child to discover and grow their unique interests while developing their self-esteem and confidence. Our focus on safety, health, social growth, and academic achievement means your child will have fun, grow, and thrive in our program.

#### **Our Staff**

Our Y staff are carefully selected and extensive background checks are conducted including criminal record checks and reference checks. Staff meet or exceed all education requirements for their positions. All staff receive on-going training in topics relevant to creating quality after school experiences for children and families. Our Y staff facilitate well-rounded curriculum that provides opportunities for your child to learn, grow, and thrive. At the Y, your child's future is bright.

#### **Our School and Community Partnerships**

The Y supports your child's academic success through regularly scheduled meetings with school administrators and teachers to ensure our curriculum and activities support your child's school's learning priorities. Aligned with the CA Department of Education State and Common Core Standards, our curriculum intentionally aligns with school day instruction and expands on your child's learning in a safe, adult-supervised environment.

### **Before and After School Programs**

Y Before and After School Programs support children in reaching their full potential by providing academic support and hands-on enrichment experiences in a safe and structured environment for children grades Kindergarten through Middle School. Located directly on your child's school campus, we partner with the school by working directly with teachers to support student learning. Our staff design engaging enrichment activities to help support your child's learning in all areas.

### **Summer Day Camps**

Each traditional day camp is age-specific and offer youth greater challenges with every year. Activities revolve around weekly themes and include outdoor games, sports, swimming, craft projects, songs, skits and special events. Trips to local parks and highlight trips round out each week to provide campers with experiences they'll never forget!

## EXHIBIT "C" CALENDAR

## 2019-2020 Instructional Calendar

## July 2019

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## August 2019

Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

## September 2019

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

## October 2019

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## November 2019

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

## December 2019

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## January 2020

Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

## February 2020

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

## March 2020

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## April 2020

Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

## May 2020

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## June 2020

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

## 2019-2020 Dates and Events

14 August	First day of instruction
2 September	Labor Day
30 September to 4 October	Fall recess
28 October to 8 November	Elementary conferencing and minimum days from November 4 to 8
11 November	Veterans Day
27 November	District-wide minimum day
28-29 November	Thanksgiving
18-20 December	Secondary final exams
23 December to 6 January	New Year recess
20 January	MLK, Jr. Day
17-21 February	Winter recess
2-13 March	Elementary conferencing and minimum days on March 12 and 13
13-17 April	Spring recess
25 May	Memorial Day
2-4 June	Secondary final exams
2-4 June	High school graduations
4 June	District-wide minimum day and last day of instruction

- = First or last day of instruction
- = Non-instructional day
- = Elementary conferencing or secondary final exams
- = Minimum day (see above)



San José  
Unified  
School District