

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM

Between

LOS ALTOS SCHOOL DISTRICT

And

**THE LOS ALTOS PARENT PRESCHOOL
(COVINGTON ELEMENTARY SCHOOL)**

This JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM ("Agreement") is made on September 24, 2018 ("Effective Date"), by and between the LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and THE LOS ALTOS PARENT PRESCHOOL, a California nonprofit corporation ("Preschool"), herein each referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Preschool requires space for operation of a state-licensed preschool program for children, of the Los Altos community, consistent with the program specifications provided in Exhibit "A" attached hereto and made a part of this Agreement ("Program"); and

WHEREAS, District is the owner of certain real property more commonly known as Covington Elementary School, located at 201 Covington Road, Los Altos, California ("Property"); and

WHEREAS, in or around January 2011, the Parties entered into a Joint Use Agreement and Lease under which Preschool has occupied a certain portion of the Property as more specifically described in Exhibit "B" attached hereto and made a part of this Agreement ("Premises") for operation of its Program since June 2011; and

WHEREAS, Preschool desires to continue to use, and District agrees to allow, Preschool to continue to use the Premises for operation of its Program pursuant to the terms and conditions set forth herein; and

WHEREAS, pursuant to section 17527, et seq., of the California Education Code, District is authorized via a joint use agreement to rent or lease "vacant classrooms or other space in operating school buildings available . . . 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 ..."; and

WHEREAS, pursuant to section 17529 of the Education Code, District, through its Board of Education, has determined that this Agreement and Preschool's occupancy and use of the Premises for operation of its Program will not: (1) interfere with the educational programs or activities of the District or any school or class conducted on the Property or in any building thereon, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the Property.

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**JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)**

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

AGREEMENT

Section 1. Title to Property.

The Parties acknowledge that title to the Property, including, without limitation, the Premises, is held by District.

Section 2. Use of Property.

District agrees to allow use of the Premises by Preschool for the operation of Preschool's Program, pursuant to the terms, covenants, and conditions set forth herein. Preschool shall have use of the Premises as described and depicted in Exhibit "C" to administer and operate the Program, subject to modification by the Parties.

Section 3. Custodial Services, Maintenance, and Repairs.

- A. At all times during the Term of this Agreement, Preschool agrees, at its sole cost and expense, to provide custodial/janitorial services and maintain the Premises in good order and a safe, clean, and sanitary condition consistent with the condition of the Premises existing at the time of Preschool's first possession, excepting normal wear and tear, in conformance with all laws, rules, and regulations applicable to the use of the Premises by Preschool or District. Except as expressly provided in this Agreement, Preschool shall, at its cost, maintain and repair the Premises including, without limitation windows, skylights, and doors (including locks and hardware), walls, plaster and partitions, floors, interior and exterior painting, fixtures, ceilings and all other surfaces visible to public or Preschool, and the electrical, plumbing, lighting, heating, ventilating and air conditioning systems and fixtures in a condition similar to that which existed at the time Preschool first took possession of the Premises. The term, "maintain and repair," shall be defined as routine, regular or necessary maintenance. If plumbing, heating, ventilating and electrical systems can be accessed without the removal of walls or floors, repairs and maintenance shall be the Preschool's responsibility. For example, Preschool will be responsible for toilet replacements and clogged toilets, while the District will be responsible for main sewer lines that are clogged, damaged or broken due to no fault of Preschool. Preschool shall have sole and complete responsibility for the cost of maintenance, repair and replacement of the air conditioning systems. District shall have no responsibility for the air conditioning systems. If District provides custodial/janitorial services, maintenance and/or repairs as a result of any default by Preschool that is not cured within thirty (30) days after notice from District, Preschool shall pay District for those services within thirty (30) days of receipt of an invoice from District.
- B. At its sole cost and expense, Preschool shall be solely responsible for any alterations, repairs, or improvements to the Premises (including structural elements) required by local, state, or federal laws, codes, regulations, licenses, or approvals with respect to preschool facilities or operation of Preschool's Program, including, without limitation, handicapped accessibility and fire safety.

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

Any alterations, repairs, or improvements to the Premises shall be approved by District in writing prior to being performed.

- C. Except as expressly provided in this Agreement, 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 Preschool, then District will repair the damage in such a manner as to bring it back to a condition which is similar to the condition existing as of the Effective Date of this Agreement; however, District may terminate this Agreement if such repair cost exceeds One Hundred Thousand dollars (\$100,000) per incident or One Hundred Thousand dollars (\$100,000) in the aggregate. District agrees to pro-rate Preschool's rent during the "repair" period only if the resulting structural damage prohibits Preschool from carrying out its normal daily activities. If District elects not to perform a repair estimated to cost in excess of One Hundred Thousand dollars (\$100,000), then Preschool may elect to remain in possession of the Premises and pay full Rent or Preschool may elect to terminate this Agreement. 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 the Preschool. Preschool shall promptly report to District any damage or disrepair known to Preschool and/or caused or discovered by Preschool during Preschool's use of the Property or Premises.
- D. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. Preschool hereby expressly waives the provisions of California Civil Code sections 1932(1), 1941, and 1942, including all rights to make repairs at the expense of District.

Section 4. Utilities and Security.

- A. Preschool shall be responsible for and pay for all utilities and service to and for the Premises, which may include water, gas, electricity, sewage, telephone and other data and communication lines and service, as well as custodial/janitorial service, security service, the removal of garbage and rubbish from the Premises. To the extent District pays for any such utilities or service, Preschool shall reimburse District within thirty (30) days of receipt of an invoice from District.
- B. Preschool shall be responsible for security of the Premises at all times. Security shall include locking all windows, doors and gates of the Premises when not in use. District is in no manner responsible for damage to or theft of Preschool's property.

Section 5. Term.

The term of this Agreement shall commence retroactively from July 1, 2016, and shall remain in effect for three (1) years, if not sooner terminated pursuant to the terms of this Agreement, ending on June 30, 2019 ("Term"). Preschool agrees to yield and peaceably

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

deliver possession of the Premises to District on the date of expiration of Term of the Agreement or earlier termination of this Agreement, whatsoever the reason for such termination.

Section 6. Renewal.

Provided that the Preschool is not then in default beyond any applicable notice and cure period, Preschool may, subject to written consent by District and the District making the findings required by Education Code section 17529, extend this Agreement for one (1) additional five (5) year term ("Renewed Term") on the same terms and conditions as set forth in this Agreement. To request renewal, Preschool shall deliver written notice to the District at least ninety (90) days before the expiration of the Term. The District's Board of Education making the findings required by law and determining that the District does not need the Premises for its own programs shall be conditions precedent to the Renewed Term.

Section 7. Security Deposit.

The Parties understand and agree that District is currently in possession of a security deposit in the amount of two-thousand-forty-five-dollars-and-no-cents (\$2,045.00) which was provided by Preschool to District for the Premises in accordance with that certain Joint Use Agreement and Lease, dated January 28, 2011, between the Parties ("Former JUA"). The Parties agree that said security deposit shall roll-over as of the June 30, 2016, expiration date of the Former JUA, and serve as the security deposit for this Agreement ("Security Deposit") and remain in the District's possession. The Security Deposit shall secure the timely, full and faithful performance by Preschool of each term, covenant, and condition of this Agreement. If, at any time, Preschool 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 Agreement, District may, but shall not be obligated to and without waiving or releasing Preschool from any obligation under this Agreement, use, apply or retain the whole or any part of the Security Deposit: (i) to the extent of any sum due to District; (ii) to make any required payment on Preschool's behalf; or (iii) to compensate District for any loss, damage, attorneys' fees or costs, or expense sustained by District due to Preschool's default. In such event, Preschool shall, within five (5) 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 of the Security Deposit, and may deposit the Security Deposit with District's other funds. Should Preschool comply with all the terms, covenants, and conditions of this Agreement and at the end of the Term of this Agreement leave the Premises in the condition required by this Agreement, then the Security Deposit, less any sums owing to District, shall be returned to Preschool within thirty (30) days after the termination of this Agreement and surrender of the Premises by Preschool to District in the condition required by this Agreement.

Section 8. Rent.

For and in consideration of the use of the Premises and the Property for the Term of this Agreement, Preschool agrees to pay District the sum of two-thousand-three-hundred-one-dollars-and-no-cents (\$2,301.00) per month for annual rent of twenty-seven-thousand-six-hundred-twelve-dollars-and-no-cents (\$27,612.00) ("Rent"), subject to annual adjustment commencing on the second year of the Term (i.e., for July 1, 2017 – June 30, 2018, the adjusted monthly Rent is two-thousand-three-hundred-eighty-eight-dollars-and-no-cents (\$2,388.00) per month, and for July 1, 2018 – June 30, 2019, the adjusted monthly Rent is two-thousand-four-hundred-sixty-four-dollars-and-no-cents (\$2,464.00) per month, etc., as

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

calculated pursuant to Subsection A "Annual Adjustment", below), which the Parties agree constitutes fair market rent for the Premises. Payment of Rent shall be due on or before the first day of each month until the expiration or termination of this Agreement, without deduction, setoff, prior notice, or demand.

A. Annual Adjustment. The annual amount of Rent shall be adjusted annually to reflect the percentage increase in the Consumers Price Index for All Urban Consumers (CPI-U) (1982-84=100), as compiled by Bureau of Labor statistics of the U.S. Department of Labor for the San Francisco-Oakland-San Jose metropolitan area, using either the seasonally adjusted CPI-U for the preceding calendar year or the percentage change of the April to April monthly indices, whichever is greater. The minimum annual increase in Rent shall be no less than three percent (3%) and the maximum annual increase shall be no greater than six percent (6%).

B. Notification. District shall notify Preschool of the adjusted annual Rent, to be calculated as provided by this Section, by June 1 of each year. Increases in annual Rent shall not require an amendment to this Agreement.

C. Interest. Preschool acknowledges that late payment by Preschool 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 is, and will be, extremely difficult to ascertain. Accordingly, the Parties agree that Rent shall be delinquent and shall bear interest if not paid promptly on the date it becomes due as specified in this section at the rate of ten percent (10%) per annum or the maximum amount allowed by law from the date it became due until it is paid by Preschool to District. 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 Preschool. Acceptance of such late charge by District shall in no event constitute a waiver of Preschool's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder. Lack of payment of Rent for more than 30 days after the date it is due shall be deemed to be a default under the terms of this Agreement, in which event, District may exercise its rights under Section 11, including immediate termination upon giving notice to Preschool. This Section shall survive the expiration or earlier termination of this Agreement.

D. Place of Payment. All Rent that becomes due and payable under this Agreement shall be paid to District at District's office, located at 201 Covington Road, Los Altos, California, or any other place or places that District may designate by written notice to Preschool.

Section 9. Condition of Premises.

The Premises are leased to Preschool 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 into and taking possession of the Premises pursuant to this Agreement, Preschool accepts the Premises as being in good and sanitary order, condition, and repair and accepts the Premises in the condition existing as of the commencement date of this Agreement. Preschool acknowledges that neither District nor its agents have made any representation or warranty as to the suitability of the Premises/Property to conduct Preschool's business. Any statement, agreements, warranties, or representations not

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

expressly contained herein shall in no way bind District, and Preschool expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

Section 10. Improvements or Alterations.

The Parties understand and agree that Preschool has installed certain play equipment on the Premises pursuant to the Former JUA, and the Parties agree that Preschool may continue to provide its own play equipment, including, but not limited to the play equipment listed on Exhibit "C", attached hereto and incorporated herein by reference, provided, however, Preschool shall obtain District's prior written approval and all other required approvals, permits, and licenses before installing any play equipment. Preschool shall not construct, install, or cause to be constructed, or installed on the Premises or the Property any improvements or alterations of any kind without the prior written approval of District. If approved by District, improvements or alterations shall not commence until after District has received notice from Preschool stating the date of installation of the improvement so that District can post and record an appropriate notice of non-responsibility. For any improvement made by Preschool, Preschool shall, at its own expense, obtain all necessary environmental and governmental approvals and permits, including, without limitation, any necessary approvals from the Division of the State Architect ("DSA"), and any local authority including any site, 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. Preschool shall be solely responsible for compliance with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining to the construction or installation of any improvements on the Premises that are performed by Preschool or on Preschool's behalf, including, without limitation, prevailing wage requirements. All contractors and subcontractors of Preschool, if any, shall be duly licensed and registered in the State of California.

Section 11. Termination.

A. Termination for Convenience.

1. District shall have the right to terminate this Agreement, without liability on the part of District except as otherwise provided herein, by giving Preschool written notification at least ninety (90) days prior to the effective date of the termination.
2. Preschool shall have the right to terminate this Agreement, without liability on the part of Preschool except as otherwise provided herein, by giving District written notification at least ninety (90) days prior to the effective date of the termination.
3. Neither Party shall be required to have or provide just cause or any cause for termination for convenience.

B. Termination for Cause. Either Party may terminate this Agreement immediately after the expiration of any applicable cure period for cause. Cause shall include, without limitation the following and the Parties shall have the cure periods provided below:

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

1. Material violation of this Agreement by either Party if such violation shall continue for thirty (30) days after written notice is given by either Party to the other Party of such violation; or

2. If, in the reasonable judgment of District, Preschool's acts or omissions: (i) represent an immediate threat to the health, welfare or safety of District's students, staff, or the public; or (ii) violate applicable laws, codes, rules, regulations, or ordinances; (iii) interfere with the educational programs or activities of the District or any District school or class conducted on District's Property or in any building; or (iv) subject or expose District or District's Board of Education to liability to others for personal injury or property damage, then District shall have the right, in its sole discretion, to terminate this Agreement immediately, unless, at District's sole option, Preschool cures such default within forty-eight (48) hours of notice of termination, or longer in District's sole discretion.

3. If Preschool is adjudged bankrupt, Preschool makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Preschool's insolvency, District shall have the right to immediately terminate the Agreement.

C. No Limitation of Rights. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Any termination under this Section shall not release Preschool from the payment of any sum then due to District or from any claim for damages against Preschool.

D. Restoration of Premises. Upon expiration or earlier termination of this Agreement, Preschool shall be responsible for restoring Premises, and other portions of the Property that were affected by Preschool's occupancy of the Premises, to its condition that existed on the date of Preschool's first occupancy with no damage thereto, subject to reasonable wear and tear and all repairs and improvements authorized herein, and free and clear of all liens, claims, encumbrances, and clouds on District's title. Nothing contained herein this Agreement shall constitute an agreement by District to subject its fee interest in the Property, including the Premises, to any lien.

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

Title to Preschool's equipment and property, including play equipment provided by Preschool as set forth in Section 10 ("Preschool's Equipment"), on the Premises shall be held solely by Preschool. All of Preschool's Equipment shall remain the personal property of Preschool and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination hereof, Preschool shall remove Preschool's Equipment, at its sole expense. Preschool shall repair any damage to the Premises, caused by said removal and restore the Premises to good condition, less ordinary wear and tear.

In the event that Preschool fails to timely remove Preschool's Equipment, District, upon fifteen (15) days' written notice, may, without liability on the part of District to Preschool or any person or entity claiming under Preschool, either (1) accept ownership of Preschool's Equipment with no cost to the District, or (2) remove and/or dispose of Preschool's

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM (LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

Equipment at Preschool's sole cost. In the event that the District chooses to accept ownership of Preschool's Equipment, Preschool shall execute any necessary documents to effectuate the change in ownership of Preschool's Equipment to District. In the event that the District removes and/or disposes of Preschool's Equipment, Preschool shall pay all costs for the removal and/or disposal of Preschool's Equipment within thirty (30) days of receipt of an invoice.

Section 13. Destruction.

A. If the Premises or the Property is damaged or destroyed so as, in District's judgment, to hinder Preschool's normal operations, Rent shall abate in proportion to the loss of use from the date such damage or destruction occurs until Preschool is able to commence normal operations.

B. District and Preschool waive any statutory rights to terminate this Agreement on account of damage or destruction, provided either Party may terminate for convenience in accordance with the terms of this Agreement.

Section 14. Program Staffing and Background Verification.

Preschool represents that it is qualified and duly authorized to administer and operate its Program, and at District request, Preschool shall provide copies of relevant license(s), permit(s), accreditation(s), and/or certification(s) to District. Preschool 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 Preschool's use of the Premises, including without limitation, use permits, and compliance with the California Environmental Quality Act ("CEQA").

Preschool shall be solely responsible for the administration and operation of its Program, including the hiring of all employees. Preschool shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its employees, staff, agents, volunteers, consultants, and/or subcontractors who may provide services in conjunction with Preschool's operation of its Program and activities on the Premises and Property. Prior to commencement of its Program, Preschool shall complete the Fingerprinting/Criminal background verification certificate attached hereto as Exhibit "D," and shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1 or as otherwise may be required by the California Department of Social Services. Preschool shall provide to District written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements prior to each individual's commencement of employment or participation in any Preschool activity. Preschool shall not allow any person for whom the District has not received satisfactory written verification of compliance to enter the Property for any purpose related to or arising out of this Agreement at any time that District pupils may be present or otherwise have contact with District pupils.

Section 15. Prohibited Uses & Restrictions.

A. The following uses and types of activities are prohibited on the Property and Premises: (1) Any use or activity which involves the possession, serving, consumption, use, and/or sale of alcoholic beverages, illegal drugs, narcotics, intoxicants, marijuana or synthetic marijuana, tobacco products, including, without

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

limitation, vaporized or e-cigarettes, and/or other restricted substances; (2) Any use or activity which involves gambling and/or the conducting of games of chance; (3) Any use or activity which is inconsistent with the use of the Premises for the Program expressly stated herein, the use of the Premises for school purposes, or which otherwise interferes with school or District activities or the regular conduct of schoolwork; (4) Any use or activity which is discriminatory against any group or individual protected under local, state, or federal antidiscrimination laws or District policy; (5) Any use or activity that includes fighting, quarrelling, abusive language, or noise which may be offensive to other uses, activities, or the neighborhood; (6) Any use or activity for the commission of any crime or any act prohibited by law or District policy, nor shall the Property or Premises be used for any unlawful purpose; (7) Any use or activity which is inimical or contrary to public morals, good manners, taste and/or welfare or which is morally objectionable as unsuitable for a public educational facility; (8) Any use or activity which would, in the sole discretion of District, unduly disrupt the residents in the surrounding neighborhood; (9) Any use or activity which would, in the sole discretion of District, injure or damage the Property, Premises, school facilities, grounds, equipment, or other school or District property; (10) Any use or activity which may cause an increase in the existing rate of insurance upon the Property or Premises or cause the cancellation of any insurance policy covering the Property or Premises; (11) No animals of any kind are allowed on the Property or Premises except as provided in California Civil Code sections 54, 54.1, and 54.2; (12) Firearms, including pellet guns, BB guns, or sling shots, and other weapons or explosive devices are prohibited on any District property, including school facilities and grounds; and (13) Preschool shall not commit or suffer to be committed, any waste upon the Property or Premises, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage systems of the Property or Premises.

B. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property or Premises except in trash containers designated for that purpose. Additionally, Preschool shall comply with all environmental and hazardous materials laws, and shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Property or Premises. 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, PCBs, 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 "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., 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. As used herein, the term "hazardous materials law" means any statute, law, ordinance, or regulation of any governmental body or agency, including, without limitation, 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.

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

C. If parking on the Property, Preschool and its participants, employees, agents, volunteers, licensees, and invitees must park in designated parking locations (if available) and drive on designated roadways. Under no circumstances shall Preschool or its participants, employees, agents, volunteers, licensees, and invitees drive or park on lawns, fields, pedestrian pathways, corridors, tracks, landscaping, courtyards, sidewalks, or any other areas not intended for vehicles. Parking in designated fire lanes is prohibited. Preschool shall be solely responsible for any and all property damage or other losses resulting from unauthorized use or parking of vehicles in prohibited areas on the Property by Preschool or its participants, employees, agents, volunteers, licensees, or invitees. District shall have no responsibility for the safety of the vehicles or their contents parked at the Property, and Preschool assumes the entire risk of lost and theft with respect to property placed at the Property by Preschool or on its behalf.

Section 16. Hold Harmless/Indemnification.

To the fullest extent permitted by California law, Preschool 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, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by Preschool, its agents, contractors, employees, representatives, officers, servants, Preschools, concessionaires, or volunteers in conjunction with the performance of this Agreement, unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against District, Preschool, upon notice from District, shall defend the same at Preschool's expense by counsel approved in writing by District. This Section shall survive the expiration or earlier termination of this Agreement.

Section 17. Insurance. Preschool, at its own expense, shall procure and maintain at all times during the Term of this Agreement the following insurance policies:

A. Commercial General Liability Insurance. Preschool shall, during the Term of this Agreement, maintain in force, a combined, single-limit liability commercial general insurance policy in the amount of not less than two million dollars (\$2,000,000) with District, its Board, employees and agents, at Preschool's expense, named as additional insureds under such policy. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Preschool agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement, upon each policy renewal and upon request of District during the Term of this Agreement.

B. Auto Insurance. Preschool shall, during the Term of this Agreement, maintain in force, a comprehensive auto liability policy naming District, its Board, employees and agents, at Preschool's expense, as additional insureds under such policy. The policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Preschool agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement, upon renewal of each policy and upon request of District during the Term of this Agreement.

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

C. Workers' Compensation Insurance. During the Term of this Agreement, Preschool shall comply with all provisions of law applicable to Preschool with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Preschool's occupancy of the Premises, Preschool 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.

D. Preschool's Equipment Insurance. Preschool acknowledges that the insurance to be maintained by District on the Premises will not insure any of Preschool's Equipment, property or any improvements made by Preschool. Accordingly, Preschool shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Preschool 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 Preschool's property.

E. Other. Each insurance policy required by this Agreement shall: (i) not be cancelled, limited in scope of coverage or non-renewed until after thirty (30) days' written notice has been given to District; (ii) contain a clause waiving all rights of subrogation against District, its Board, members of the Board, and elective or appointive officers or employees, when acting within the scope of their employment or appointment; and (iii) include a separate endorsement naming District and its Board as additional insureds. The Parties agree that any insurance maintained by District will apply in excess of, and not contribute with insurance provided by the policies required by this Agreement.

Section 18. 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 deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

LOS ALTOS SCHOOL DISTRICT
201 Covington Road
Los Altos, CA 94024
Attn: Asst. Supt. of Business Services

LOS ALTOS PARENT PRESCHOOL
201 Covington Road
Los Altos, CA 94024
Attn: _____

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.

Section 19. Cooperation with Other Occupants of the Property.

It is understood and recognized by Preschool that the Property, of which the Premises is a part, will be used by other parties, including District, and Preschool shall cooperate with the

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

other parties in reaching amicable arrangements regarding matters of concern, such as use of common areas, security measures, etc.

Section 20. Sublease and Assignment.

Except as otherwise expressly permitted below, Preschool shall not assign its rights, duties or privileges under this Agreement, nor shall Preschool sublease or attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of District. Any such attempt without District written consent shall be void.

Section 21. Non-Discrimination.

Preschool and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, national origin or physical handicap. Preschool shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, age, national origin or physical handicap. Preschool covenants to meet all requirements of District pertaining to non-discrimination in employment. If Preschool is found in violation of the non-discrimination provision 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 Agreement 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 Agreement.

Section 22. Inspection.

District's employees and agents shall have the right at all reasonable times upon reasonable prior written notice to Preschool to inspect the Premises to determine if the provisions of this Agreement are being complied with, and/or to exhibit the Premises to prospective lessees, occupants, purchasers, inspectors, or mortgagees.

Section 23. Taxes and Assessments.

The right to possession of the Premises may subject Preschool to property taxation pursuant to California revenue and Taxation Code section 107, *et seq.* It is understood and agreed that all taxes, charges, costs, expenses, levies, late charges, assessments, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foresee, of any kind or nature whatsoever (including but not limited to the possessory interest tax), which prior to or during the Term of this Agreement, are assessed, levied, or imposed upon Preschool, or against the Premises or upon fixtures, equipment, or other property installed or constructed thereon which may be assessed resulting from Preschool's use of the Premises under this Agreement, together with all interest and penalties that may accrue thereon (collectively, "Taxes and Assessments"), shall be the full responsibility of Preschool. Preschool shall pay the Taxes and Assessments prior to delinquency, and within five (5) days after the due date of any such Taxes and Assessments, Preschool shall provide to District written proof to the satisfaction of District that such payments have been timely made. In the event of Preschool's failure to pay any Taxes and Assessments, such amounts, along with all reasonable damages, costs, attorneys' fees and costs, and expenses which District may incur by reason of any default of Preschool or failure on Preschool's part to comply with the terms of this Agreement, shall be deemed additional rent, and District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of Rent. This Section shall survive the expiration or earlier termination of this Agreement.

Section 24. Reservation of Rights.

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

The Premises are accepted as is and where is by Preschool subject to any and all existing easements and encumbrances. 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. 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 Premises. Notwithstanding the foregoing, no rights reserved by District in this clause shall be so exercised as to interfere unreasonably with the use and operation of the Premises by Preschool as permitted under this Agreement.

Section 25. 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).

Section 26. Tuberculosis Risk Assessment/Testing and Immunizations.

Preschool agrees to have its employees and employees of its subcontractors submit to a Pre-K and K-12 Tuberculosis Risk Assessment Questionnaire and Certificate of Completion Form from the California Department of Public Health. A licensed health care provider, including registered nurses, must administer the assessment within 60 days of hire. If tuberculosis risk factors are identified, a TB test is required. Preschool shall also comply with the licensing requirements of California Health & Safety Code Section 1596.7995, effective September 1, 2016, by requiring that all Preschool's employees and employees of its subcontractors be immunized against measles, pertussis and influenza, unless the individual presents a valid medical exemption. Preschool shall maintain written documentation that all employees have satisfied this requirement and shall make such records available, upon request of the District. Preschool further agrees to comply with all applicable federal, state, and local regulations and laws regulating child immunization requirements and Preschool's admittance of children in child care or preschool programs, including California Health & Safety Code section 120325 et seq.

Section 27. Independent 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.

Section 28. 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.

Section 29. 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 Santa Clara County, California.

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

Section 30. Attorneys' Fees.

In the event of any dispute under this Agreement, 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 Agreement, all costs of suit, including reasonable attorneys' fees.

Section 31. 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 32. 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.

Section 33. Counterparts.

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

Section 34. 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.

Section 35. 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.

Section 36. Incorporation of Recitals and Exhibits.

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date above first written.

LOS ALTOS SCHOOL DISTRICT

LOS ALTOS PARENT PRESCHOOL

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

EXHIBIT "A"
PROGRAM SPECIFICATIONS

The Program for which Preschool is permitted to use the Premises is limited to the following activities only, which shall conform to the following specifications. Any additional activities shall only be permitted with the prior express written approval and consent of the District.

1. Permitted Activities:

- a. Operation of a state licensed preschool program for children between 8:30 a.m. and 4:00 p.m. on Monday through Friday throughout the calendar year. A maximum number of 22 students may be enrolled in Preschool's Program on the Premises, but in no event shall the number of enrolled students plus staff exceed the maximum occupancy set by the fire marshal for the indoor facilities on the Premises, nor shall enrollment exceed the maximum capacity permitted under Preschool's license for its Program issued by California Department of Social Services.
 - b. At a minimum, provision of opportunities for District's preschool-age special education students to participate in Preschool's activities during outdoor play times when District and Preschool share use of the playground area and other participation as agreed by the parties to the extent safe, feasible, and consistent with each student's individualized education program ("IEP").
 - c. Occasional evening and/or after school hour events related to the preschool program with District's prior written consent.
 - d. Administrative functions directly related to the operation of the preschool program.
 - e. Occasional parent meetings.
2. Preschool agrees that it will operate and manage the Premises and services offered in a competent, safe, sanitary and efficient manner at least comparable to other well-managed operations of a similar type. Preschool's Program shall be properly registered and licensed with and by the State of California, and any other governmental agency required by law, and Preschool's use the Premises to offer its Program shall comply with the terms of the Agreement, all District Policies, rules and regulations, and any regulation, order, law, statute, or ordinance of a governmental agency having jurisdiction over Preschool's use of the Premises.
3. Preschool shall at all times retain active, qualified, competent, experienced, and properly licensed and credentialed personnel to supervise Preschool's operation and to represent and act for Preschool. Preschool shall require its personnel to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Preschool shall not allow any person(s) in or about the Premises or Property to use offensive language and/or act in a boisterous or otherwise improper manner. Preschool shall maintain a close check over Preschool's personnel to ensure the maintenance of a high standard of service to the public. Preschool shall replace any

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

employee whose conduct is detrimental to the best interests of the public. Such employee shall be replaced pursuant to the following standards:

- a. If, in the reasonable judgment of District, Preschool's employee(s) represent an immediate threat to the health, welfare or safety of the District's students, staff, or the public, Preschool shall replace the employee(s) immediately and shall not employ said employee(s) on the Premises and/or Property which is the subject of the Agreement.
 - b. If Preschool's employee(s) engage in conduct or behavior which otherwise is detrimental to the best interest of the public, District may provide Preschool with a written statement of complaint describing the conduct or behavior complained of and the corrective action required to resolve the complaint. If, in the reasonable judgment of District, the complaint has not been satisfactorily resolved within 30 days of receipt by Preschool, the employee shall be replaced immediately and shall not be employed on any of the Premises and/or Property which are the subject of the Agreement.
4. Preschool shall develop and observe security measures to protect children enrolled in the Program or otherwise on the Premises, including but not limited to emergency contact information, sign-in/sign-out procedures, and a visitor sign-in log. Preschool shall have a current Emergency/Disaster Response Plan consistent with applicable law and District policy and regulations to be updated annually by June 30th and provide District a copy of said plan.

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

EXHIBIT "B"
DESCRIPTION OF THE PREMISES

The "Premises" is described as follows:

A portion of the school site commonly known as Covington Elementary School, located at 205 Covington Road, Los Altos, California 94024, said portion consisting of one (1) relocatable classroom, approximately nine hundred sixty (960) square feet, and an adjacent outdoor area. Preschool shall have priority use of the outdoor area between 8:30 a.m. and 4:00 p.m. on Monday through Friday throughout the calendar year except on days when Preschool's Program is not in session.

Preschool shall have exclusive use of the portions of the Property depicted in red below, and non-exclusive use of the portions of the Property depicted in yellow below:



JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

EXHIBIT "C"
PLAYGROUND EQUIPMENT

Climbing play structure
Tire swing
Log cabin
Play boat
Trike path
Sand pit area
Water play

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)

EXHIBIT "D"
CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION

I, _____, certify to the District governing board that I am an officer and duly authorized representative of Los Altos Parent Preschool ("Preschool") and I am familiar with the facts herein certified, and I am authorized and qualified to execute this certificate on behalf of Preschool. I certify that Preschool has taken the following action with respect to the Joint Use Agreement:

____(check here) Preschool has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Preschool's employees, agents, and representatives and all of its consultants', contractors' or subcontractors' employees who may have contact with District pupils during the Term of the Agreement, and the California Department of Justice has determined that none of those employees, agents or representatives has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Preschool's employees, agents, and representatives and of all of its consultants', contractors', and subcontractors' employees who may come in contact with District pupils during the Term of the Agreement is attached hereto.

Preschool's responsibility for criminal background clearance extends to all of its employees, agents, representatives, consultants, contractors, subcontractors, and employees of each coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of Preschool. Preschool shall not allow any person for whom the District has not received satisfactory written verification of compliance to enter the Property for any purpose related to or arising out of this Agreement at any time that District pupils may be present.

Los Altos Parent Preschool, a California non-profit corporation

Date: _____

Signature: _____

Print Name: _____

Title: _____

JOINT-USE AGREEMENT FOR OPERATION OF PRESCHOOL PROGRAM
(LOS ALTOS PARENT PRESCHOOL – COVINGTON ELEMENTARY)