

**FIRST AMENDMENT
To
JOINT-USE AGREEMENT AND LEASE
Between
LOS ALTOS SCHOOL DISTRICT
And
KCE CHAMPIONS LLC (fka KU CHAMPIONS LLC; dba CHAMPIONS)
(Covington Elementary School)**

This FIRST AMENDMENT TO JOINT-USE AGREEMENT AND LEASE ("Amendment") is made September 24, 2018 ("Effective Date"), by and between LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and KCE CHAMPIONS LLC (fka KU CHAMPIONS LLC; dba CHAMPIONS), a Delaware limited liability company registered to do business in California ("Tenant"), herein each referred to as a "Party" and collectively as "Parties".

RECITALS

WHEREAS, District and Tenant entered into a Joint-Use Agreement and Lease, dated July 1, 2013, ("Agreement") (attached hereto as Exhibit "1") for the operation of a child care program for school age children and directly related activities by Tenant ("Program") on a certain portion ("Premises") of District's Covington Elementary School site, located at 205 Covington Road, Los Altos, CA ("Property");

WHEREAS, in or around 2016, Tenant changed its name from "KU Champions LLC" to "KCE Champions LLC";

WHEREAS, District and Tenant desire to extend the term of the Agreement, and to amend the Agreement as set forth herein;

WHEREAS, pursuant to Education Code section 17527 et seq., 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 Education Code section 17529, District has, through its Board of Education, determined that this Amendment and Tenant's occupancy and use of the Premises for operation of its Program as set forth herein will not: (1) interfere with the educational programs or activities of the District or any school or class conducted at 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.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

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AMENDMENT

A. Restatement of Agreement and Incorporation by Reference.

Except as otherwise specified herein, all definitions, terms, and conditions of the Agreement are hereby continued in full, and shall be incorporated by reference in this Amendment as though fully set forth herein. Furthermore, the amendments made herein shall in no event constitute an excuse or waiver of Tenant's obligations to surrender the Premises in the condition specified in the original Agreement, Tenant's obligations under Section 15 (Hold Harmless/Indemnification) and Section 16 (Insurance) as they pertain to Tenant's occupancy and use of the Property (including the Premises), or the District's rights and remedies related thereto. All provisions that survive the expiration or earlier termination of the Agreement shall remain equally in full force and effect as applied to Tenant's occupancy and use of the Property (including the Premises).

B. Amendment.

Pursuant to Section 21 of the Agreement, the Parties amend and modify the Agreement, as of the Effective Date of this Amendment (except where otherwise stated), as follows:

- 1. Tenant.** All references to "Tenant" shall mean and refer to KCE CHAMPIONS LLC (fka KU CHAMPIONS LLC; dba CHAMPIONS), a Delaware limited liability company registered to do business in California. This amendment shall retroactively be effective as of the date Tenant changed said name.
- 2. Section 6 – Renewal.** Pursuant to Section 6 (Renewal) of the Agreement, the Parties hereby renew the Term of the Agreement for one (1) additional one (1) year term, commencing retroactively from July 1, 2018, and ending June 30, 2019 ("Renewed Term"). Tenant agrees to yield and peaceably deliver possession of the Premises to District on the date of expiration of the Renewed Term of the Agreement or earlier termination of this Agreement, whatsoever the reason for such termination. Other than in Sections 5 and 6 of the Agreement, all references to "Term" as used in the Agreement shall be read to include the Renewed Term.
- 3. Section 7 – Rent.** Tenant shall continue to pay Rent in accordance with the terms of Section 7 of the Agreement, including, but not limited to, the annual adjustment to the amount of Rent thereunder. The first Rent payment for the Renewed Term shall be due on or before July 1, 2018, and subsequent Rent payments shall be due on or before the first day of July each and every year of the Renewed Term of the Agreement. The adjusted annual Rent for July 1, 2018 – June 30, 2019, shall be \$30,293.00, which the Parties agree constitutes fair market rent of the Premises.
- 4. Section 14 – Alcoholic Beverages/Illegal Drugs/Noise/Animals.**
Section 14 of the Agreement is amended and replaced with the following:

Section 14. 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 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) Tenant 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, Tenant 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.

C. If parking on the Property, Tenant and its participants, employees, agents, volunteers, licensees, and invitees must park in designated parking locations and drive on designated roadways. Under no circumstances shall Tenant 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. Tenant 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 Tenant 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 Tenant assumes the entire risk of lost and theft with respect to property placed at the Property by Tenant or on its behalf.

- 5. Section 18 – Notice.** The Parties shall continue to provide notice in accordance with the existing terms of Section 18, except that notice to Tenant shall be addressed as follows:

KCE Champions LLC (fka KU Champions LLC; dba Champions)
650 NE Holladay Street, Suite 1400
Portland, Oregon 97232

C. Addition of Terms.

Pursuant to Section 21 of the Agreement, the Parties further amend and modify the Agreement, as of the Effective Date of this Amendment, by adding the following terms after Section 35 of the Agreement:

- 1. Tuberculosis Risk Assessment/Testing and Immunizations.** The following term is added as Section 36 of the Agreement:

Section 36. Tuberculosis Risk Assessment/Testing and Immunizations. Tenant 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. Tenant shall also comply with the licensing requirements of California Health & Safety Code Section 1596.7995, effective September 1, 2016, by requiring that all Tenant's employees and employees of its subcontractors be immunized against measles, pertussis and

influenza, unless the individual presents a valid medical exemption. Tenant shall maintain written documentation that all employees have satisfied this requirement and shall make such records available, upon request of the District. Tenant further agrees to comply with all applicable federal, state, and local regulations and laws regulating child immunization requirements and Tenant’s admittance of children in child care or preschool programs, including California Health & Safety Code section 120325 et seq.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date indicated below.

LOS ALTOS SCHOOL DISTRICT	KCE CHAMPIONS LLC (fka KU CHAMPIONS LLC; dba CHAMPIONS)
Date: _____	Date: _____
By: _____	By: _____
Title: _____	Title: _____

EXHIBIT "1"

Joint-Use Agreement and Lease, dated July 1, 2013

First Amendment to Joint-Use Agreement and Lease – KCE Champions, LLC
(Covington Elementary School)

JOINT-USE AGREEMENT AND LEASE
Between
LOS ALTOS SCHOOL DISTRICT
And
KU CHAMPIONS LLC
(COVINGTON ELEMENTARY SCHOOL)

THIS AMENDED JOINT-USE AGREEMENT AND LEASE ("Agreement") is made July 1, 2013, by and between the LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and KU Champions LLC. ("Tenant"), herein referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Tenant requires space for operation of a child care program for children of the Los Altos community, including children who reside outside of the District but are eligible to enroll in the District, consistent with the program specifications provided in Exhibit "A" attached hereto and made a part of this Agreement ("Program"); and

WHEREAS, District has available space on its property at Covington Elementary School, 205 Covington Road, Los Altos, California, as depicted in Exhibit "B" attached hereto and made a part of this Agreement ("Property"); and

WHEREAS, Since 2003, Tenant has occupied and District desires to allow Tenant to continue to use a certain portion of the Property as more specifically described in Exhibit "C" attached hereto and made a part of this Agreement ("Premises") for operation of its Program; and

WHEREAS, pursuant to section 17527, et seq., of the California Education Code, District is authorized to enter into a lease of the Premises via a joint use agreement "to make 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, District, pursuant to section 17529 of the Education Code, has determined that leasing the Premises to Tenant for its Program will not: (1) interfere with the educational programs or activities of any school or class conducted on the Property, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the Property;

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

AGREEMENT

Section 1. Title to Property.

The Parties acknowledge that title to the Property is held by District.

Section 2. Use of Property.

District agrees to allow use of the Premises by Tenant for the operation of Tenant's Program. Tenant shall have non-exclusive use of the portions of the Property shown on Exhibit "B" and exclusive use of the Premises at all times to administer and operate the Program, subject to modification by the Parties.

Section 3. Custodial Services, Maintenance, and Repairs.

Tenant shall provide custodial services, maintenance and repairs to the Premises. Tenant shall maintain the Premises in a safe condition in conformance with all laws, rules, and regulations applicable to the use of the Premises by Tenant or District. If District provides custodial services, maintenance and/or repairs as a result of any default by Tenant that is not cured within thirty (30) days after notice from District, Tenant shall pay District for those services within thirty (30) days of receipt of an invoice from District. District shall have no maintenance or repair obligations with respect to the Premises, and Tenant 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.

Tenant shall be responsible for and pay for all utilities and service to and for the Premises, which may include water, gas, electricity, telephone and other data and communication lines and service, security service, sewage fees, janitorial, trash-pick up, as well as the removal of garbage and rubbish from the Premises. Tenant shall be responsible for security of the Premises at all times. Security shall mean locking all windows and doors.

Section 5. Term.

The term of this Agreement shall commence on July 1, 2013, and shall remain in effect for five (5) years, if not sooner terminated pursuant to the terms of this Agreement, ending on June 30, 2018 ("Term"). Tenant agrees to yield and peaceably 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 Tenant is not then in default beyond any applicable notice and cure period, Tenant shall have the right, subject to written consent by District and the District making the findings required by Education Code section 17529, to 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, Tenant shall deliver written notice to the District at least ninety (90) days before the expiration of the Term.

Section 7. Rent.

For and in consideration of the use of the Premises and the Property for the Term of this Agreement, Tenant agrees to pay District annual payments of Twenty-Five-Thousand-Eight-Hundred-Seventy-Nine-dollars-and-no-cents (\$25,879.00) ("Rent"), which the Parties agree constitutes fair market rent for the Premises. Tenant's obligation to pay the District Rent shall commence on July 1, 2013. The first payment shall be due when Tenant executes this Agreement and thereafter due on or before the first day of July each and every year of the Term of this Agreement.

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

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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 Tenant 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. Each annual rental payment 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 from the date it became due until it is paid by Tenant to District.

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 Tenant.

Section 8. Condition of Premises.

The Premises and leased portions of the Property 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 into and taking possession of the Premises pursuant to this Agreement, Tenant accepts the Premises/Property as being in good and sanitary order, condition, and repair and accepts the Premises/Property in the condition existing as of the commencement date of this Agreement. Tenant acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises/Property to the conduct of Tenant's business. Any statement, agreements, warranties, or representations not expressly contained herein shall in no way bind District, and Tenant expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

Section 9. Improvements or Alterations.

Tenant shall not construct or cause to be constructed on the Premises or the Property any improvements or alterations of any kind without the prior written approval of District. Tenant 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. 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 improvements installed thereon during the term of this Agreement, including any extensions, and while otherwise occupying the Premises, and for compliance with all applicable laws, ordinances, rules and regulations.

Section 10. 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 Tenant written notification at least ninety (90) days' prior to the effective date of the termination.
2. Tenant shall have the right to terminate this Agreement, without liability on the part of Tenant 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 provide just cause for termination for convenience in the written notification.

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:

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, Tenant'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; or (iii) subject or expose District 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, Tenant cures such default within forty-eight (48) hours of notice of termination, or longer in District's sole discretion; or
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.

C. Restoration of Premises. Upon expiration or earlier termination of this Agreement, Tenant shall be responsible for restoring Premises, and other portions of the Property that were affected by Tenant's occupancy of the Premises, to its condition that existed on the date of Tenant's first occupancy with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on District's title.

Section 11. Title to and Removal of Tenant's Equipment.

Title to Tenant's equipment, fixtures and/or improvements ("Tenant's Equipment") on the Premises shall be held solely by Tenant. All of Tenant's Equipment shall remain the personal property of Tenant and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Agreement, or within thirty (30) days after any

earlier termination hereof, Tenant shall remove Tenant's Equipment, at its sole expense. Tenant shall repair any damage to the Premises, caused by said removal and restore the Premises to good condition, less ordinary wear and tear.

In the event that Tenant fails to timely remove Tenant's Equipment, District, upon fifteen (15) days written notice, may, without liability on the part of District to Tenant or any person or entity claiming under Tenant, either (1) accept ownership of Tenant's Equipment with no cost to the District, or (2) remove and/or dispose of Tenant's Equipment at Tenant's sole cost. In the event that the District chooses to accept ownership of Tenant's Equipment, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Equipment to District. In the event that the District removes and/or disposes of Tenant's Equipment, Tenant shall pay all costs for the removal and/or disposal of Tenant's Equipment within thirty (30) days of receipt of an invoice.

Section 12. Destruction.

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

B. District and Tenant waive any statutory rights to terminate this Agreement on account of damage or destruction.

Section 13. Program Staffing and Background Verification.

Tenant represents that it is duly authorized to administer and operate its Program, and at District request, Tenant shall provide copies of relevant license(s), permit(s), accreditation(s), and/or certification(s) to District. Tenant shall be solely responsible for obtaining all necessary permits, licenses, and approvals from any and all applicable State, local or other regulatory agencies related to the operation of its Program or otherwise connected to Tenant's use of the Premises, including without limitation, use permits and compliance with the California Environmental Quality Act ("CEQA").

Tenant shall be solely responsible for the administration and operation of its Program, including the hiring of all employees. Prior to commencement of its Program, Tenant 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. Tenant 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 Tenant activity. Tenant 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 14. Alcoholic Beverages/Illegal Drugs/Noise/Animals/Harmful Substances.

Any uses which involve the serving and/or sale of alcoholic beverages or illegal drugs and/or the conducting of games of chance are prohibited on the Premises and the Property. Tenant shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises and the Property at all times. Tenant shall not use or permit the use of the

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Premises, the Property, or any part thereof for any purpose which is inimical or contrary to public morals and/or welfare or morally objectionable as unsuitable for a public educational facility. Tenant agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Program, Premises or use of the Premises and/or Property. No animals are allowed on the Premises or Property. Tenant shall not commit or suffer to be committed, any waste upon the Premises or Property, or allow any sale by auction upon the Premises or Property, or allow the Premises or Property to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Premises or Property. 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.

Section 15. Hold Harmless/Indemnification.

A. Indemnification of District. To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its Board and members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, 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 Tenant, its agents, contractors, employees, representatives, officers, servants, tenants, 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, Tenant, upon notice from District, shall defend the same at Tenant's expense by counsel approved in writing by District.

B. Indemnification of Tenant. To the fullest extent permitted by California law, District shall defend, indemnify, and hold harmless Tenant from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or about the Property other than within the Premises, occupied by Tenant during the term of this Agreement, occasioned wholly by the sole act or omission of District.

Section 16. Insurance.

A. Commercial General Liability Insurance. Tenant 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 one million dollars (\$1,000,000) with District, its Board, employees and agents, at Tenant'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. Tenant 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. Tenant shall, during the Term of this Agreement, maintain in force, a comprehensive auto liability policy naming District, its Board, employees and agents, at Tenant's expense, as additional insureds under such policy. The policy

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shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant 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.

C. Workers' Compensation Insurance. 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 Premises, 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.

D. Tenant's Equipment Insurance. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's Equipment, property or any improvements made by Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Tenant and personal property in, about, or on the Premises. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of Tenant's property.

E. 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; and (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. 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 17. Cooperation with Other Occupants of the Property.

It is understood and recognized by Tenant that the Property, of which the Premises is a part, will be used by other parties, including District, and Tenant shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, and security measures, etc.

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

KU Champions LLC
c/o Greenstreet Real Estate Partners, L.P.
Attn: Asset Manager
2601 S. Bayshore Drive, 9th Floor
Coconut Grove, FL 33133
Facsimile: 305.858.2334

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 five (5) days after deposit in the United States mail.

Section 19. Sublease and Assignment.

Except as otherwise expressly permitted below, Tenant shall not assign its rights, duties or privileges under this Agreement, nor shall Tenant 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, which consent shall not be unreasonably withheld, conditioned or delayed. Any such attempt without District written consent shall be void.

Section 20. 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 21. 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 22. 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.

Section 23. 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 24. 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 25. 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 26. 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 27. 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.

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Section 28. 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 29. Incorporation of Recitals and Exhibits.

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

Section 30. Non-Discrimination.

Tenant and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, national origin or physical handicap. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, age, national origin or physical handicap. Tenant covenants to meet all requirements of DISTRICT pertaining to non-discrimination in employment. If Tenant is found in violation of the non-discrimination 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 31. Inspection.

District's employees and agents shall have the right at all reasonable times upon reasonable prior written notice to Tenant to inspect the Premises to determine if the provisions of this Agreement are being complied with.

Section 32. Taxes and Assessments.

It is understood and agreed that all taxes and assessments (including but not limited to the possessory interest tax) which become due and payable upon the Facilities or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall pay the taxes and assessments prior to delinquency.

Section 33. Authority.

Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and this Agreement is valid and a legal agreement binding on such Party and is enforceable in accordance with its terms.

Section 34. Reservation of Rights.

The Premises are accepted as is and where is by Tenant 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 Tenant as permitted under this Agreement.

Section 35. Construction Related Accessibility Standards.

Pursuant to Civil Code section 1938, District states that the Premises and Property leased hereunder have not undergone inspection by a Certified Access Specialist (CAsp).

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

ACCEPTED AND AGREED:

LOS ALTOS SCHOOL DISTRICT

By: _____

Print Name: RANDY KENYON

Print Title: ASST Supt, BUSINESS

KU CHAMPIONS LLC

By: _____

Print Name: Jeff Slater

Print Title: VP, Portfolio Management
and New Business Operations

REVIEWED BY LEGAL DEPARTMENT
DATE: 7/29/2013
SIGNATURE: [Signature]

EXHIBIT "A"
CHILD CARE PROGRAM SPECIFICATIONS

The Program provided by Tenant shall conform to the following specifications:

- a. Tenant shall accept K-6 applicants for before and after school child care services to be provided on the Premises on the basis of a priority placement:
 - i. Children of employees of the Los Altos School District who attend Covington Elementary School shall have the first priority.
 - ii. Any other children attending Covington Elementary School shall have the next priority. If space is limited, acceptance priority shall be in the following priority order: continuing participants; siblings of continuing participants; Kindergarten students; children requiring full-time care. Pre-school age children (ages 3-5 years) not currently enrolled in Kindergarten shall have last priority (see paragraph e.).
- b. Children with disabilities shall be accepted within the established placement priorities, provided their needs can be safely met with reasonable modification of the Program.
- c. Tenant shall provide before and after school child care services to both AM and PM Kindergarten students, unless otherwise approved by the District Superintendent.
- d. Tenant shall make available before and after school child care services for school ages K-6 from at least 8:00 a.m. until at least 6:00 p.m., Monday through Friday, throughout the school year, including staff development, conference, and local vacation days. Child care services need not be provided from December 25TH through January 1ST inclusive, on legal holidays the District is required by Education Code Section 37220 to be closed, or during the District summer break. Tenant may offer a child care program during the District summer break consistent with the District's conditions for approval of such additional usage, including payment of additional rent as may be required by District.
- e. Tenant may use the Premises to offer a preschool or other program not in conflict with the terms of the Agreement, or of any regulation, order, law, statute, or ordinance of a governmental agency having jurisdiction over Tenant's use of the Premises, and authorized in writing by District, when the Premises is not needed for the before and after school child care program specified in this Agreement.
 - i) Tenant must secure a business use permit from the City of Los Altos, if required, and comply with any and all legal requirements for providing such additional use of the Premises.
 - ii) District will assess a surcharge to cover the additional impact of the preschool Program on the Premises and Property of which it is a part in an amount to be separately agreed by District and Tenant.
- f. To the extent allowed by law, Tenant shall report the following information to the District's Assistant Superintendent three (3) times per year during the Term:
 - i) Names and ages of children attending any program on the Premises;

ii) Names and addresses of parent(s) or guardian;

iii) Names and ages of siblings; and

iv) Any related information requested by the District.

Tenant shall report this information by the last day of August, by the last day of December, and by the last day of May of each school year during the Term.

g. Whenever fewer than five (5) students are actively enrolled in any part of the child care services Program provided by Tenant pursuant to subsections (a) through (d) above, Tenant may request a modification of the obligations of subsections (a) through (d) by submitting a written request to the District's Assistant Superintendent, Business Services. District reserves the right to require Tenant to comply fully with the obligations of subsections (a) through (d) when the interests of the students, parents, community, or District so requires. In its discretion as a condition of granting any modification request, District may require Tenant to continue the provision of child care services for an additional two (2) months or through the end of the semester in which the modification request is made, whichever is later, to give the parents of the remaining students in the program sufficient time to find alternate child care.

h. Tenant 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. Tenant shall comply with all legal obligations, as well as all City, State, and Federal laws and regulations, in operating the Program. Tenant shall be responsible for all aspects of the operation of the program, including the enrollment of participants, the recruitment, employment, and training of employees, the payment of employment, income, sales, and property taxes as required, and the collection of participation fees. Tenant shall develop and observe security measures to protect the children enrolled in the child care program, including but not limited to emergency contact information, sign-in/sign-out procedures, and a visitor sign-in log.

i. Tenant shall at all times retain active, qualified, competent, and experienced personnel to supervise Tenant's operation and to represent and act for Tenant. Tenant shall require its personnel to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Tenant 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. Tenant shall maintain a close check over Tenant's personnel to ensure the maintenance of a high standard of service to the public. Tenant shall replace any employee whose conduct is detrimental to the best interests of the public. Such employee shall be replaced pursuant to the following standards:

i) If, in the reasonable judgment of District, Tenant's employee(s) represent an immediate threat to the health, welfare or safety of the District's students, staff, or the public, Tenant 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.

ii) If Tenant's employee(s) engage in conduct or behavior which otherwise is detrimental to the best interest of the public, District may provide Tenant 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

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days of receipt by Tenant, 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.

EXHIBIT "B"
SITE MAP OF THE PROPERTY

Covington Elementary School
205 Covington Road
Los Altos, California 94024

Tenant shall have non-exclusive use of the portions of the Property depicted in yellow below, which consists of the playground located north-west of the Premises and a portion of the adjacent playing field.

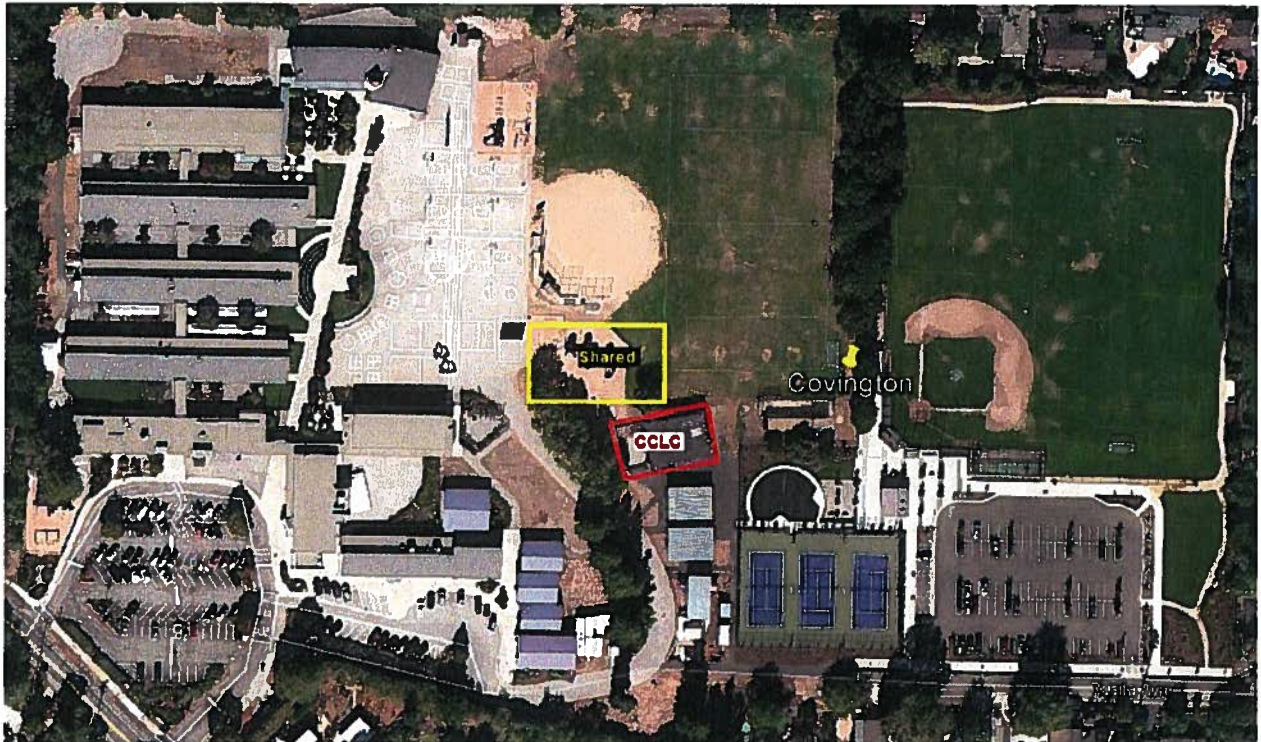


EXHIBIT "C"
DESCRIPTION OF PREMISES

The "Premises" leased to Tenant is described as follows:

A portion of the school site commonly known as Covington Elementary School located at 205 Covington Road, Los Altos, California, said portion being a plot of land approximately 70 feet by 50 feet which is approximately 280 feet north of and 180 feet west of the centerline of Rosita Avenue at its westerly terminus, including the fenced in black top area adjacent to the childcare facility.

The Premises is depicted in red below.

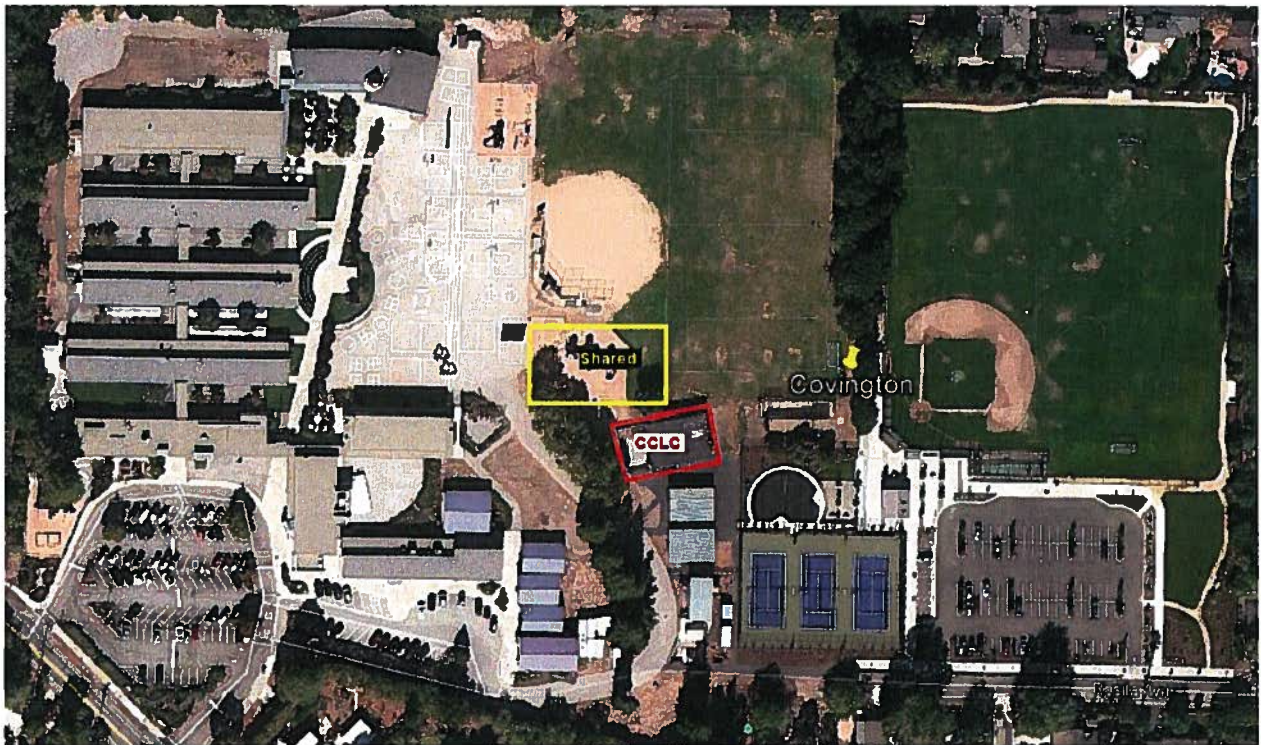


EXHIBIT "D"
CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION

I certify to the District governing board that I am the Tenant and I am familiar with the facts herein certified, and I am authorized and qualified to execute this certificate on behalf of Tenant. I certify that Tenant has taken at least one of the following actions with respect to the Joint Use Agreement and Lease:

Tenant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Tenant'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 Tenant'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; and/or

The Premises is at an unoccupied school site and no employee, agent, representative and/or employee of any contractor, subcontractor or supplier of any tier shall come in contact with any District pupils.

Tenant'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 Tenant. Tenant 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.

TENANT: KU Champions LLC Date: July 29, 2013

Signature: 

Print Name: Jeff Slater

REVIEWED BY LEGAL DEPARTMENT
DATE: 7/29/2013
SIGNATURE: 