

LEASE AGREEMENT
(Red Hill School)

This Lease Agreement (“Lease”) is made on the 1st day of July 2008 (“Effective Date”), by and between the Ross Valley School District (“Lessor”), a public school district organized under the laws of the State of California and whose address is 110 Shaw Drive, San Anselmo, CA 94960, and the San Anselmo Montessori School (“Lessee”), P.O. Box 707, San Anselmo, CA 94979-0707. Lessee and Lessor shall be referred to herein as the “Parties.”

RECITALS

WHEREAS, Lessor is the owner of certain real property known as the former Red Hill School, located at 101 Shaw Drive, San Anselmo, CA 94960 (“Red Hill School”); and

WHEREAS, portions of Red Hill School have been deemed to be no longer needed for Lessor’s educational programs; and

WHEREAS, pursuant to Education Code sections 17458 and 8208, Lessor is authorized to offer to lease surplus property to certain entities specifically for the delivery of child care and development services; and

WHEREAS, Lessor desires to lease to, and Lessee, as a qualifying contracting agency under Education Code section 8208(c), desires to lease a portion of Red Hill School for the delivery of childcare and development services, as defined in Education Code section 8208, subdivision (j).

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

AGREEMENT

1. Premises. Lessor leases to Lessee and Lessee leases from Lessor that portion of the Red Hill School site described as follows: Rooms 2 (classroom), 3 (administration), 5 (bathroom) and 15 (classroom) in Building 1 (“Premises”). The Premises are depicted in the Shaded portions of **Exhibit “A,”** attached hereto and incorporated by reference as if fully set forth herein. The total square footage leased is 2,657 square feet. In addition, Lessee shall have the right to exclusive use of the playground, and non-exclusive use of the parking and open space areas on said site during the time the regular daily program is in session.

2. Term.

2.1 The term shall be five (5) years, commencing on July 1, 2008, and shall expire June 30, 2013 (“Term”).

2.2 Upon expiration or termination of the Term of this Lease, the parties may

renegotiate an extension of this Lease for a second five-year term ("Extended Term"). Such extension must be mutually agreed to by the parties.

2.3 Upon expiration of the Term or the Extended Term, the District may offer the Premises for lease or sale through a public bidding process, unless the Board elects to exercise its right to offer the Premises to qualified entities for the delivery of child care and development service pursuant to Education Code sections 17458 and 8208.

3. Acceptance. At the commencement of the Term Lessee shall accept the buildings and improvements and any equipment in their existing condition and state of repair, and Lessee agrees that no statements, representations, or warranties expressed or implied, have been made by or on behalf of Lessor in respect thereto except as contained in the provisions of this Lease, and Lessor shall in no event be liable for any latent defects.

4. Rent.

4.1 Lessee shall pay the Lessor as minimum monthly Rent the sum of \$1.85 per square foot for a total of Four Thousand Nine Hundred Fifteen Dollars and Forty-Five Cents (\$4,915.45) per month in advance on the first day of each month, commencing on the effective date, and continuing during the Term. Prior to occupancy, Lessee shall deposit first and last monthly Rent, together with one month's Rent as a damage deposit.

4.2 The minimum monthly Rent provided for in paragraph 4.1 may be adjusted no more than four percent (4%) over the previous year's Rent at the commencement of the next year of the Term. At the end of year 2 of the Term, the Parties shall meet and confer regarding the then existing fair market value of the Premises. If the District concludes at that time that the fair market value of the Premises exceeds the Rent by ten percent (10%) or more, the District may increase the Rent by more than four percent (4%), but by no more than fair market value.

4.3 A late payment penalty of one and a half percent (1.5%) shall be charged for each day the Rent is late commencing on the sixth day after due date, payable with the following month's Rent.

4.4 The Lessee shall pay any and all personal property taxes including any non-use fees that may be assessed against District by the State of California, possessory interest fees or other assessments and charges required as a result of Lessee's use of the described facilities.

5. Use of Premises.

5.1 Lessee shall use the Premises exclusively for day care, childcare and development services and educational purposes.

5.2 Lessee shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of insurance covering the Premises. If the rate of any insurance carried by Lessor is increased as a result of Lessee's use, Lessee shall pay a sum equal to the difference

between the original premium and the increased premium not later than ten (10) days after Lessor has notified Lessee in writing of the increased premium.

5.3 Lessee shall comply with all laws concerning the Premises or Lessee's use of the Premises, including without limitation, the obligation, at Lessee's cost, to alter, maintain or restore the Premises in compliance and conformity with all laws relating to the condition, use or occupancy of the Premises during the term. Lessee shall obtain all necessary permits and authorization from the City, County, or State required for the use of the Premises.

5.4 Lessee shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties.

6. Maintenance/Alterations.

6.1 Lessor's obligation. Lessor shall maintain the following:

6.1.1 The structural parts to the building and other improvements that are part of the Premises. Said structural parts include only the foundation, bearing and exterior walls (excluding glass and doors), sub flooring and roof.

6.1.2 The unexposed electrical, plumbing and sewage systems.

6.1.3 Heating systems servicing the Premises.

6.1.4 In the event maintenance costs for the entire site exceed three thousand and five hundred and no dollars and cents (\$3,500.00) per year for each year of this Lease, Lessor shall pay the excess maintenance costs for that year. If Lessee fails to pay the excess maintenance costs incurred by Lessor, Lessor shall have the option to terminate this Lease upon thirty (30) days prior written notice without liability for such maintenance or for any other claim.

6.2 Lessee's obligation.

6.2.1 Maintenance Costs. Except as provided in paragraph 7.1 Lessee, at its sole cost, shall maintain all other portions of the Premises, including, but not limited to, all Lessee's personal property, windows, interior and exterior painting of the Premises and routine custodial service. It shall also be the responsibility of Lessee to maintain the area immediately adjacent to the Premises, as depicted on "Exhibit B" attached hereto, in a clean and neat condition. If the Lessee fails to do, so the Lessor shall perform the work and Lessee shall pay the Lessor for all costs incurred.

6.2.2 Security and Alarm Operations and Costs. The security and fire alarm system must be in operation when Lessee is not occupying the Premises. The cost for maintenance, operation and maintaining of security and fire alarm system shall be prorated based on square footage occupied by the Lessee. This prorated cost for maintenance and operation of the security and fire alarm system shall be the responsibility of the Lessee.

6.2.3 **Protection of Flooring.** Annually, on the anniversary of the Effective Date, Lessee shall provide Lessor with a mitigation and maintenance plan to prevent any harmful effects due to the existence of asbestos beneath the floors. The proposed mitigation and maintenance plan may include stripping and waxing the floors twice annually. All such mitigation and maintenance plans shall be subject to prior approval of Lessor. If Lessee fails to implement the approved mitigation plan, the Lessor may complete, or cause to be completed, such mitigation. Lessee shall pay the full cost incurred by Lessor in completing the required mitigation within thirty (30) days of receipt of the invoice.

6.3 **Lessee's Responsibility for Damage.** Lessee shall be liable for any damage to the Premises resulting from the acts or omissions of Lessee or its authorized representatives, or in any way connected to Lessee's use of Premises.

6.4 **Alterations.** Lessee shall be permitted to construct at its sole cost and expense a playground structure on the playground of Red Hill School. Construction shall not commence until Lessee has obtained prior written approval from Lessor. Upon the expiration or termination of the term of this Lease, Lessee shall remove the play structure at Lessee's cost and expense within thirty (30) days after said expiration or termination. Upon removal of the playground structure, Lessee shall restore the affected portion of the playground to its condition immediately prior to the construction of the play structure.

6.5 **Costs of Construction.** Lessee shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Lease. Lessee shall keep the Premises and land of which the Premises are a part of free and clear of all mechanics' liens resulting from construction done by or for Lessee.

7. **Utilities.** Except when Lessor provides otherwise, Lessee shall make all arrangements for and pay for all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, telephone service, trash collection and for all connection charges.

8. **Indemnity and Insurance.**

8.1 Lessor shall not be liable to Lessee for any damage to Lessee or Lessee's property from any cause. Lessee waives all claims against Lessor for damage to person or property arising for any reason except that Lessor shall be liable to Lessee for damage resulting from the acts or omissions of Lessor or its authorized representatives.

8.2 Lessee shall defend, indemnify and hold Lessor harmless from all claims and damages to any person or property arising out of or in connection with Lessee's use of the Premises or occurring in, on, or about the Premises except, that Lessor shall be liable to Lessee for damage resulting from the acts or omissions of Lessor or its authorized representatives. Lessor shall hold Lessee harmless from all damages arising out of any such damage.

8.3 Lessee at its cost shall maintain in force during the term of this Lease, a comprehensive single-limit public liability insurance policy, fully covering bodily injury, death,

and property damage, in an amount of not less than two million dollars (\$2,000,000) with the District, its employees and agents named as additional insureds under such policies. Lessee's policy shall have primary insurance endorsement as respects the Lessor's interest, to be reviewed and approved annually by Lessor.

8.4 Lessor shall receive fifteen (15) days notice prior to termination of coverage. A certificate of such insurance shall be presented to Lessor prior to occupancy.

8.5 Lessee, at its cost, shall maintain on all its personal property, Lessee's improvements and alterations, in, on or about the Premises, a policy of standard fire and extended coverage insurance with vandalism and malicious mischief endorsements, to the extent of at least eighty percent (80%) of their replacement value. The proceeds from any such policy shall be used by Lessee for the replacement of personal property or the restoration of Lessee's improvements or alterations.

8.6 Lessor shall maintain standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, at replacement value of the Premises. Lessee shall pay to Lessor in addition to Rent, its pro-rated cost of such coverage.

8.7 The parties release each other, and their respective authorized representatives, from any claims for damages to any person or to the Premises and to the fixtures, personal property, Lessee's improvements, and alterations of either Lessee or Lessor in or on the Premises that are caused by or result from risk insured against under any insurance policies carried by the parties and in force at the time of such damage.

8.8 As a condition of this Lease, Lessor shall be inserted as an added insured on all of Lessee's insurance policies. Satisfactory proof thereof shall be submitted to Lessor prior to occupancy.

8.9 Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease.

9. Destruction.

9.1 If during the term, the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Lessor may either terminate this Lease or restore the premise within a reasonable time and this Lease shall continue in full force and effect. If the Premises are rendered partially or totally inaccessible or unusable for a period of more than thirty (30) days and the Lessor's insurance fails to provide suitable alternative facilities, the parties shall renegotiate the provisions of this Lease or Lessee can choose to terminate Lease.

10. Condemnation. If the Premises are totally taken by condemnation, this Lease shall terminate on the date of taking. The Lease shall also terminate if there is a partial taking that renders the use of the Premises impractical by Lessee.

11. Default.

11.1 The occurrence of any of the following shall constitute a default by Lessee:

11.1.1 Failure to pay Rent when due, if failure continues for five (5) business days after notice has been given to Lessee;

11.1.2 Abandonment and vacation of the Premises; or

11.1.3 Failure to perform any non-Rent covenant of this Lease if not cured within thirty (30) days after notice has been given to Lessee.

11.2 Notice given under this paragraph shall be in writing and specify the alleged default and the applicable Lease provisions and shall demand that Lessee perform the provisions of this Lease or pay the Rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice.

11.3 Lessor can continue this Lease in full force and effect, and the Lease will continue in effect as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect Rent when due. During the term Lessee is in default, Lessor can enter the Premises and relet them, or any part of them to third parties for Lessee's account. Lessee shall be liable immediately to Lessor for all costs Lessor incurs in reletting the Premises, including, without limitations, broker's commission, expenses of remodeling the Premises required for the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Lessee shall pay the Lessor the Rent due under this Lease on the dates the Rent is due, less the Rent Lessor received from any reletting. No act by Lessor allowed in this paragraph shall terminate this Lease unless Lessor notifies Lessee that Lessor elects to terminate the Lease.

11.4 No act by Lessor other than giving notice to Lessee shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this Lease shall not constitute a termination of Lessor's right to possession.

11.5 Lessor at any time after Lessee commits a default, can cure the default at Lessee's cost. If the Lessor at any time, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the Lessor shall be due immediately from Lessee to Lessor at the time the sum is paid; and if paid at a later date shall bear interest at the rate of ten percent per annum from the date the sum is paid by Lessor until Lessor is reimbursed by Lessee. The sum, together with the interest on it, shall be additional Rent.

11.6 Lessor and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes: 1) to determine whether the Premises are in good condition and whether Lessee is complying with its obligation under this Lease: 2) to do any necessary maintenance of custodial work required by this Lease.

12. Notices and Demands. All notices including change of address to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein as such party's principal office or that at such other address as either party from time to time 100designate in writing.

To Lessee: Ross Valley School District
110 Shaw Drive.
San Anselmo, CA 94960
Atn: Kathleen Clow

With copy to: Miller Brown & Dannis
71 Stevenson Street
San Francisco, CA 94105
Attn: Clarissa Canady

To Lessee: San Anselmo Montessori School
100 Shaw Drive
San Anselmo, CA 94960
Attn.: Michele King

With copy to: Hopkins & Carley
P.O. Box 1469
San Jose, CA 95109
Attn: Richard Noack

13. Waiver

13.1 No delay or omission in the exercise of any right or remedy of Lessor on any default by Lessee shall impair such a right or remedy or be construed as a waiver.

13.2 The receipt and acceptance by Lessor of delinquent Rent shall not constitute a waiver of any other default (it shall constitute only a waiver of timely payment for the particular Rent payment involved). No act or conduct of Lessor, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Lessor before the expiration of the term. Only a notice from the Lessor to Lessee shall constitute acceptance of this surrender of the Premises and accomplish a termination of the Lease.

13.3 Lessor's consent to or approval on any act by Lessee requiring Lessor's consent or approval shall not be deemed to render unnecessary Lessor's consent to or approval of any subsequent act by Lessee.

13.4 Any waiver by Lessor of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

14. Attorneys' Fees.

14.1 If either party becomes a party to any litigation concerning this Lease, the Premises, or the building or other improvements in which the Premises are located, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys fees and court cost incurred by it in the litigation.

14.2 If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

15. Surrender of Premises – Holding Over.

15.1 Surrender of Premises. On expiration of the ten (10) days after termination of the term, Lessee shall surrender to Lessor the Premises and all Lessee's improvements and alterations in good condition (except for ordinary wear and tear), except for alterations that Lessee has the right to remove or is obligated to remove. Lessee shall remove all its personal property within the above stated time.

15.2 Lessor can elect to retain or dispose of in any manner any alteration of Lessee's personal property that Lessee does not remove from the Premises upon expiration or termination of the term as allowed or required by this Lease by giving at least ten days notice to Lessee. Title to any such alterations or Lessee's personal property that Lessor elects to retain or dispose of on expiration of the ten day period shall vest in Lessor. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention of or disposition of any such alterations of Lessor's retention of or disposition of any such alterations of Lessor's personal property. Lessee shall be liable to the Lessor for the Lessor's costs for storing, removing, and disposing of any alterations or Lessee's personal property and shall pay Lessor in addition monthly Rent equal to three (3) times the monthly Rent payable for the last month of the term thereof; and payment of such amounts shall not create any right of Lessee to remain as tenant beyond the term hereof or for any period thereafter.

15.3 If Lessee fails to surrender the Premises to Lessor on expiration of ten (10) days after termination of the term, Lessee shall hold Lessor harmless for all damages resulting in Lessee's failure to surrender the Premises.

15.4 Holding Over. If Lessee, with Lessor's written consent, remains in possession of the Premises after expiration or termination of the Term, or after the date in any notice given by Lessor to Lessee terminating this Lease, such possession by Lessee shall be deemed to be month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. During such month-to-month tenancy, Lessee shall pay all Rent required by this Lease. All provisions of this Lease except those pertaining to term shall apply to the month-to-month tenancy.

16. Miscellaneous Provisions

16.1 Successors. This Lease shall be binding on and ensure to the benefit of the parties and their successors provided, however, Lessee shall not voluntarily assign or encumber interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use any or all or any part of the Premises, without first obtaining Lessor's consent. Any assignment, encumbrance or sublease without Lessor's consent, shall be voidable and, at Lessor's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

16.2 California Law. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

16.3 Adult Supervision. Lessee shall provide adequate adult supervision over the conduct of all activities on the Premises.

16.4 Termination of Lease. This Lease shall be terminable: 1) by the Lessor upon the giving of three (3) months written notice in the event of sale of premise; 2) by the Lessor upon the giving of ninety (90) days written notice if Lessor hereafter determines that it has a need to reemploy the Premises for the purpose of classroom instruction, and/or to renovate or reconstruct the existing building for such purpose; 3) by Lessor, upon the giving of thirty (30) days written notice, should problems arise of such severity that Lessor in reasonable exercise of its discretion, determines that continued use of the Premises by Lessee is not in the best interest of the school district or community; 4) by the Lessor on thirty (30) days written notice in the event that Lessee ceases to employ the Premises exclusively for the permitted purposes; and 5) by the Lessor at any time, after violation or nonperformance by the Lessee of any of the terms and provisions hereof, incurred after thirty (30) days written notice.

16.6 Board Approval. Lessor and Lessee acknowledge that this Agreement is subject to approval by the Lessor's Board. Notwithstanding anything in this Lease to the contrary, neither the Lessor nor the Lessee shall have any obligation hereunder until the Board's approval of this Lease.

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IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the day and year first set forth above.

San Anselmo Montessori School

Date

President, Ross Valley School
District Board of Trustees

Date

Attest

Secretary

Date