

## REAL PROPERTY LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this **1st** day of **July 2018**, by and between MT. DIABLO UNIFIED SCHOOL DISTRICT OF CONTRA COSTA COUNTY, a public corporation, hereinafter referred to as LESSOR, and **DIANE ADAIR DAY CARE CENTERS, INC.**, hereinafter referred to as LESSEE.

LESSOR is owner of that certain real property known as **BANCROFT ELEMENTARY SCHOOL, located at 2200 Parish Drive, Walnut Creek**, County of Contra Costa, State of California; and

LESSOR and LESSEE agree as follows:

1. **PURPOSE OF LEASE AGREEMENT.** It is understood that the purpose of this LEASE AGREEMENT is for LESSOR to provide LESSEE the use of land space in the size (**3,934 square feet**), to the extent and in the location designated by LESSOR in **Exhibit A**, which is incorporated as part of this LEASE AGREEMENT. The LESSEE will use the land space to, install and operate a relocatable building or buildings for the purpose of operating a **child care center in compliance with all appropriate California licensing requirements.**
2. **TERM.** The term of this LEASE AGREEMENT shall be for twelve (12) months, beginning on the first day of **July 1, 2018** and ending on **June 30, 2019.**
3. **RENEWAL.** The LEASE AGREEMENT will be automatically renewed on a yearly basis for a period of three (3) years, commencing on **July 1, 2019**, unless terminated by either party. If either party chooses not to renew the LEASE AGREEMENT, that party shall provide sixty (60) days written notice to the other party in advance of the renewal date.
4. **CANCELLATION OF LEASE AGREEMENT.** LESSOR shall have the right to cancel or terminate this LEASE AGREEMENT before expiration of its term if LESSOR determines, in its discretion, that the Premises so leased under this LEASE AGREEMENT to LESSEE is needed and necessary for use by LESSOR for any type of expansion or modification of the school program or if complaints about the operation of the **child care center** are received by District from the principal, employees, patrons and/or others. To exercise this right, LESSOR shall notify LESSEE, by written notice, of its intent to cancel or terminate this LEASE AGREEMENT pursuant to this section. The notice shall state the date LESSEE is required to vacate and surrender the Premises which must be at least sixty (60) days after the date the written notice is presented to LESSEE ("Termination Date"). LESSOR shall prorate as of the "Termination Date" any advance utility payments (see Paragraph 11) paid by LESSEE that is not yet due before the "Termination Date". LESSEE agrees to vacate and surrender the leased Premises and Real Property on or before the "Termination Date" pursuant to this provision.
5. **RENT.** In consideration for the lease of this property, LESSEE shall pay LESSOR rent of One Dollar (\$1.00) per year payable on July 1 of each year.
6. **PERMITTED USE.** LESSEE shall use the premises only for a **child care center**. This use shall be made possible by LESSEE'S installation of a relocatable building. LESSEE agrees to maintain the facility in a manner that meets all State and local regulations relating to the

construction, operation and licensing of **child care centers**.

7. **COMPLIANCE WITH LAW.** LESSEE shall comply with all laws, statutes, ordinances and requirements of any City, County, State, and Federal authorities, now or later in force, pertaining to the use of the Premises **and the operation of a licensed child care center.**

8. **ALTERATIONS.** LESSOR and LESSEE have agreed to the placement of the relocatable building in consideration of traffic flow, accessibility for emergency equipment to adjacent structures as well as restoration or repair of damages caused by the installation effort. LESSEE shall not make any alterations of the premises without first obtaining the written consent of the LESSOR. All plans and drawings must be approved, in advance, by the office of the Director of Maintenance, Operations and Facilities. Any additions to or alterations of the premises, except moveable equipment, furniture and fixtures, including the relocatable building, shall become at once a part of the premises. Notwithstanding the foregoing, LESSEE shall have the right to remove any relocatable building or buildings it has installed, as set forth in Paragraph 8. Any alterations approved by LESSOR shall be made at no expense to LESSOR.

LESSEE agrees that said relocatable building and all trade fixtures, equipment and appliances will be installed and removed without any damage to the premises. In the event any damage, as determined by the LESSOR, is caused by LESSEE or its agents or employees in the installation or removal of said building, trade fixtures, equipment and appliances, LESSEE agrees to immediately repair the said damage at its sole cost and expense.

LESSEE shall comply with all state and local requirements including but not limited to; The California Department of State Architect (DSA), the California Environmental Quality Act (CEQA) and any zoning ordinances of the **City of Walnut Creek**, if applicable, to the alterations made by LESSEE. LESSEE agrees to take reasonable steps to meet and confer with neighbors and other concerned citizens regarding the placement and construction of any alterations.

9. **MAINTENANCE OF PREMISES.** LESSEE shall maintain the premises at all times in good condition and repair at no expense to LESSOR and upon termination of this LEASE AGREEMENT, shall surrender them to LESSOR in as good order and condition as the same were at the commencement of the terms of this LEASE AGREEMENT, except for the effect of grading, foundation work and other site modification which LESSOR accepts as permanent improvements to its property and except for reasonable wear and tear, damage from the elements, fire or acts of nature. Upon termination of this LEASE AGREEMENT, by its term or agreement, LESSEE shall have the right to remove any relocatable building or buildings, which LESSEE has installed at its sole cost and expense. Upon such removal, LESSEE shall restore the premises to as good or better condition than existed prior to such removal. In the event LESSEE fails to remove the relocatable building or buildings within sixty (60) days of termination, without additional written extension granted by the LESSOR, the LESSOR shall have the right to remove said structures, and LESSEE shall be held responsible and liable for said cost and expense.

10. **CUSTODIAL SERVICES.** LESSEE shall be responsible for custodial services for the relocatable building.

11. **UTILITIES EXPENSE AND TAXES.** All necessary modifications to the utilities shall be at no expense to LESSOR. LESSEE currently pays **\$157.00** to LESSOR per month for all **water, sewer and trash collection services** supplied to the premises. Costs will be reviewed annually at the beginning of each school year and adjusted at LESSOR'S discretion. LESSEE shall pay for all **gas and electric connections and services**. LESSEE shall pay for all possessory interest taxes attributable to the lease of this property. Failure to pay for the aforementioned costs for a thirty (30) day period can result in the immediate termination of the agreement. This section has priority over the termination provisions set forth in paragraph 4.
12. **TELECOMMUNICATIONS/SECURITY.** LESSEE shall be responsible for the cost of installation and monthly bills for any telephone, data and security services
13. **FINGERPRINTING.** LESSEE shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1 for employees, contractors, sub-contractors or volunteers of LESSEE. Verification of compliance with the applicable fingerprinting requirements shall be provided in writing to LESSOR prior to each individual's commencement of employment or participation in any activity of LESSEE and prior to permitting contact with pupils participating in any activity of LESSEE.
14. **INDEMNIFICATION.** LESSEE agrees to indemnify, reimburse, hold harmless, and defend LESSOR, its officers, employees from and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of, the operation, condition, use or occupancy of the Premises and all areas appurtenant thereto. This LEASE AGREEMENT is made on the express condition that LESSOR shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the LESSEE, its agents, officers, employees, licensees, clients and invitees. This indemnification shall also apply, specifically and without limitation, to claims or action by any private party or governmental agency arising out of or relating to the California Environmental Quality Act (CEQA). LESSEE shall also hold LESSOR harmless from any liability, costs, or expense arising from LESSEE'S use or storage in the Premises of any hazardous or toxic substance which are prohibited on school property. These indemnity obligations shall include reasonable attorneys' fees, investigation costs, and other reasonable costs incurred by LESSOR from the first notice of any claim or demand that is to be made or may be made. LESSOR shall promptly give notice to LESSEE of any claim or demand. The provisions of this section shall survive the termination of this LEASE AGREEMENT for any event occurring prior to the termination.
15. **LIABILITIES WITH REGARD TO ADJACENT PLAYGROUNDS.** Adjoining playgrounds consist of the surrounding adjacent outside playgrounds located at **Bancroft Elementary School**, including those covered by asphalt, grass and/or tanbark and equipment permanently installed thereon.
  - a. Due to multiple entities publishing, changing and making different recommendations for configuration and construction of playground equipment, LESSORS represent only that playground equipment met any Consumer Product Safety Commission Guidelines in effect

at the time of construction of playground equipment.

- b. LESSEE is responsible for supervising children using said playground equipment and to make certain the use thereof is safe and proper for the age and abilities of the using children. The LESSEE is further responsible for making a reasonable effort to inspect and note any defects to the playground and to immediately call these defects to the attention of the LESSOR.
- c. LESSOR is responsible for the care and maintenance of said equipment, including the cost thereof, as well as the conformance of the equipment to any Consumer Product Safety Commission Guidelines in effect at the time of its construction.

16. **LIABILITY INSURANCE.** LESSEE shall, at LESSEE'S expense, obtain and keep in force during the term of this LEASE AGREEMENT, a policy of combined single limit bodily injury and property damage insurance, including coverage for owned and non-owned automobiles, in the amount of not less than \$2,000,000 (Two Million Dollars) per occurrence, insuring LESSEE and LESSOR, its employees, officers, directors and agents against any liability arising out of ownership, use, occupancy, operation, or maintenance of the premises. LESSEE shall provide this \$2,000,000 (Two Million Dollars) coverage regardless of any deductible or self-insured retention so that the LESSOR is protected for the entire \$2,000,000 (Two Million Dollars). LESSEE shall provide LESSOR as evidence of this required insurance, a certificate in a form satisfactory to LESSOR on or before renewal date or not more than 30 days thereafter. By endorsement to this policy(s), the LESSOR shall be named as an additional insured. The policies shall also contain an endorsement providing that such insurance may not be materially changed, amended, or cancelled with respect to LESSOR except after thirty (30) days prior written notice from the insurance company to LESSOR. The insurance policy shall contain an endorsement which expressly waives any right of subrogation by the insurance company against the LESSOR.
17. **WORKERS' COMPENSATION INSURANCE.** During the term of this LEASE AGREEMENT, LESSEE shall comply with all provisions of law applicable to LESSEE with respect to obtaining and maintaining workers' compensation insurance. LESSEE shall provide District, prior to the commencement date, a certificate of insurance evidencing the existence of the policy required hereunder.
18. **ACCESS.** LESSEE shall permit LESSOR and its agents to enter into and upon the premises at all reasonable times for the purpose of inspecting the same or for the purpose of making repairs, alterations, or additions to any other portion of said premises.
19. **USE OF PREMISES.** In consideration of the LESSOR granting the LESSEE permission to use the LESSOR's property and to place a building on said property, the LESSEE agrees that the LESSOR shall have the use of this building during the regular school day, upon reasonable request and subject to uses by LESSEE.
20. **EVENTS OF DEFAULT.** The following events shall constitute events of default under this LEASE AGREEMENT:
- a. A default by LESSEE of in the payment when due of any rent or other sum payable under this LEASE AGREEMENT and the continuation of this default for ten (10) or more days after notice of a default from LESSOR provided that if LESSEE has failed two or more times in the term of this LEASE AGREEMENT to pay any rent or other sum when due and notice of this

default has been given to LESSOR in each instance.

- b. A default by LESSEE in the performance of any of the terms, covenants, agreements, or conditions in this LEASE AGREEMENT, other than a default by LESSEE in the payment when due of any rent or other sum payable under this LEASE AGREEMENT, and the continuation of the default beyond thirty (30) days after notice by LESSOR or, if the default is curable and would require more than thirty days to remedy, beyond the time reasonably necessary for cure.
- c. The bankruptcy or insolvency of LESSEE, a transfer by LESSEE in fraud of creditors, an assignment by LESSEE for the benefit of creditors, or the commencement of proceedings of any kind buyer gets LESSEE under the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act, unless LESSEE is discharged from voluntary proceedings within ninety (90) days.
- d. The appointment of a receiver for a substantial part of LESSEE's assets.
- e. The abandonment of the Premises and the levy upon this LEASE AGREEMENT or any estate of LESSEE under this LEASE AGREEMENT by attachment or execution and the failure to have the attachment or execution vacated within thirty (30) days.

21. **ASSIGNMENTS**. LESSEE shall not assign or sublet the premises in whole or in part, without the prior written consent of LESSOR.

22. **NO PARTNERSHIP**. LESSEE and LESSOR are not partners and nothing herein contained shall be construed to create a partnership or joint venture in any sense, or to constitute LESSEE the agent of LESSOR for any purposes.

23. **NOTICE**. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or by prepaid, first-class mail as follows:

LESSOR: Chief Business Officer  
Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519

LESSEE: Dianne Adair Day Care Centers, Inc.  
Todd Porter, Executive Director  
1862 Bailey Rd.  
Concord, CA 94521

IN WITNESS WHEREOF, the parties hereto have executed this LEASE AGREEMENT on this **1st** day of **July 2018** at Concord, California.

LESSEE:	Dianne Adair Day Care Centers, Inc.	LESSOR:	Mt. Diablo Unified School District
BY:	<u>Todd Porter</u>	BY:	_____
TITLE:	<u>Executive Director</u>	TITLE:	_____
DATE:	<u>October 1, 2018</u>	DATE:	_____