

RESOLUTION NO. 86-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF PACIFICA AND
PACIFICA NURSERY SCHOOL INC.**

WHEREAS, City is the owner of the property located at 548 Carmel Avenue, Pacifica, California, depicted on Exhibit A attached hereto; and

WHEREAS, the Pacifica Nursery School, Inc., have leased the premises located on this property since 1964, operating as a non-profit preschool; and

WHEREAS, the Pacifica Preschool Nursery School, Inc., wish to lease the premises from the City for five years with one option to extend the lease for an additional one five-year term, if both parties agree to such extension; and

WHEREAS, The City desires to implement a Lease Agreement with the Pacifica Nursery School, Inc., for use of the premises;

**NOW, THEREFORE, THE PACIFICA CITY COUNCIL HEREBY RESOLVES AS
FOLLOWS:**

1. The City Council hereby approves the Tenant Lease with the Pacifica Nursery School, Inc, in substantially in the form attached hereto as Exhibit B.
2. The City Manager is hereby authorized to execute the Tenant Lease in the form attached hereto as Exhibit B, with minor revisions that may be approved by the City Manager and the City Attorney, and to take all steps necessary and execute any other necessary documents to effectuate the terms of the Tenant Lease.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on December 13, 2021 by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstycck, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a.


Sue Beckmeyer, Mayor

ATTEST:


Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

LEASE AGREEMENT
BY AND BETWEEN
CITY OF PACIFICA
AND
PACIFICA NURSERY SCHOOL, INC.

This LEASE AGREEMENT, is made and entered into this 13th day of December, 2021 (“Agreement”), by and between the CITY OF PACIFICA, a municipal corporation, hereinafter referred to as “City”, and the PACIFICA NURSERY SCHOOL, INC., a California non-profit corporation, hereinafter referred to as “Tenant”. City and Tenant are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. City is the owner of real property known as the Pomo Park, located at 548 Carmel Avenue, Pacifica, County of San Mateo, California, APN#: 016-133-010, hereinafter referred to as “the Property.”
- B. Tenant has leased a portion of the Property since 1988 and desires to continue to lease from City a portion of the Property consisting of an existing Quonset Hut and playground area, hereinafter referred to as “the Premises,” more particularly described and depicted in Exhibit “A”, attached hereto and incorporated herein by reference.
- C. City and Tenant desire to share the cost and expense of removing and replacing the playground equipment on the Premises.
- D. City desires to lease the Premises to Tenant pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the performance of these promises, City and Tenant hereby mutually agree and promise as follows:

AGREEMENT

1. PREMISES

City leases to Tenant and Tenant leases from City the Premises for the duration of the Lease Term (defined below), including any extensions thereof, pursuant to the terms of this Agreement. Tenant shall have the exclusive use of and access to the Quonset Hut 24 hours a day and seven days a week during the term of this Agreement. Tenant shall have the exclusive use of the playground area on the Premises only during school hours during the term of this Agreement. The City and the public shall have use of the playground area as part of Pomo Park during non-school hours. For purposes of this Agreement, the term “school hours” shall mean Monday through Friday, from 7:45 a.m. until 1:45 p.m., except on any federal or State holiday.

Exhibit B

2. TERM

A. The lease term shall commence on January 1, 2022 (“Commencement Date”) and expire on December 31, 2026 (the “Lease Term”), unless earlier terminated in accordance with the terms of this Agreement.

B. Tenant shall have the option to extend the Lease Term as to the Premises or any portion thereof for one five (5) year additional term (“Option Term”) on the same terms and conditions as the Lease. To exercise the Option Term, Tenant shall provide City with written notice at any time on or prior to the expiration or earlier termination of the Lease Term or during any Holdover Period (as later defined).

3. RENT AND REPORTING

A. Tenant shall pay to City a monthly rental amount of Two Hundred Eighteen and 00/100 Dollars (\$218.00) (“Monthly Rent”), due and payable in advance on or before the first day of each month. The Monthly Rent rate shall increase two percent (2%) annually on January 1, 2023, and every year thereafter. Monthly rent for the Premises during any partial calendar month during the Lease Term shall be pro-rated based on the actual number of days the Premises is occupied by Tenant in said month.

B. Commencing upon February 1, 2022 Tenant shall submit semi-annual (six months) written financial reports by February 1 and August 1 of each calendar year to the City’s Finance Director in a format designated by the Finance Director. These reports shall include, at a minimum, a balance sheet and income statement, and costs and status reports of building maintenance expenditures incurred by Tenant and such other information as may be required by the Finance Director. City has the right to inspect, review and audit Tenant’s books and financial documents during City business hours.

C. Tenant shall provide annual written proof by December 31 of each calendar year to City of Tenant’s (1) good standing status with the California Secretary of State, and (2) nonprofit status pursuant to Internal Revenue Code 26 U.S.C. Section 501(c)(3).

D. All payments due under this Agreement shall be made without demand, deduction or offset and shall be paid in cash, check or money order to the City of Pacifica, Attention: Finance Director, 170 Santa Maria Avenue, Pacifica, CA 94044.

4. HOLDOVER

In the event that Tenant continues to occupy the Premises after the expiration or earlier termination of the Lease Term, Tenant’s tenancy shall be on a month-to-month term (“Holdover Period”) on the same terms and conditions as the Lease, including, but not limited to, the Monthly Rent for the Premises in effect as of the expiration or earlier termination of the Lease. Notwithstanding anything to the contrary in the Lease, either Party shall have the right to terminate the Lease during the Holdover Period by providing not less than thirty (30) days prior written notice to the other Party.

5. UTILITIES

Tenant shall be solely responsible for contracting for, and shall promptly pay any and all shall pay when due any and all water, heat, gas, electricity, telephone and other utilities and services (“collectively, “**Services**”) provided to or for the Premises, including taxes thereon. Tenant shall establish its own accounts for all utility Services, including garbage collection services, to the extent such Services can be separately metered and billed. In the case of any Services that are not separately metered and billed directly to Tenant, but are metered jointly with other premises, Tenant shall pay City upon demand a pro rata share, as determined by City, of all charges. City shall bill Tenant its pro rate share of any Services that are not separately metered within one hundred twenty (120) days of the date that City receives such bills from the Service provider (e.g., utility company).

6. LATE FEE

Tenant hereby acknowledges that the late payment by Tenant to City of rent and other sums due hereunder will cause City to incur costs not contemplated in this Agreement. Such costs include, but are not limited to, processing and accounting charges and loss of interest income. In the event Tenant fails to pay to City any payment owing to City within five (5) days of the due date pursuant to this Agreement, a penalty of 10% of the late amount plus interest of 1% per month or fraction thereof shall accrue and shall immediately become due and payable. If Tenant submits a check which is dishonored by a banking institution, tenant shall be obligated to pay a fee of \$25.00 in addition to the late fee prescribed by this paragraph.

7. USE OF PREMISES

Tenant shall use the Premises exclusively for the purpose of operating a nursery school for pre-school age children and for parent education and general school related activities. Tenant shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or a nuisance, or causes damage to the Premises or neighboring properties.

8. CONDITION OF PREMISES AT TIME OF OCCUPANCY

Tenant accepts the condition of Premises at the time of occupancy as satisfactorily meeting its occupancy requirements. By entry hereunder, Tenant accepts the leased Premises as being in good and sanitary order, condition and repair. Tenant is fully acquainted with the nature and condition of the Premises and the condition of existing improvements. Tenant acknowledges that the Property is known to contain asbestos.

A. City makes no representations or warranties as to the repair or condition of the Premises. Tenant accepts the leased Premises in its existing condition as is.

B. It shall be Tenant’s responsibility to assure that the Premises is in proper and safe condition for the proposed use.

9. LEGAL COMPLIANCE

Exhibit B

A. Tenant shall, at its sole cost and expense, maintain the Premises in compliance with the applicable requirements of all municipal, county, state, federal, and regulatory laws, statutes, codes, ordinances, and regulations for public and government buildings then in effect, including, but not limited to, applicable Health, Safety, Fire and Building codes, notice of completion, certificate of occupancy, California Title 24, and the Americans with Disabilities Act (collectively, "Laws"). The commencement or pendency of any county, state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the City, be deemed a breach hereof.

B. City represents and warrants to Tenant that City has not received any notice of violations of Laws from any relevant government authority with respect to the Premises; and City has no knowledge of any pending or threatened claims of any violations of Laws from any third party with respect to the Premises. Tenant represents and warrants to City that Tenant has not received any notice of violations of Laws from any relevant government authority with respect to the Premises; and Tenant has no knowledge of any pending or threatened claims of any violations of Laws from any third party with respect to the Premises.

C. City certifies to Tenant that as of the Commencement Date, an inspection of the Premises has not been performed by a Certified Access Specialist in conjunction with the Lease. Tenant is obligated for the compliance of the Premises with the Laws for the duration of the Lease Term including any extensions thereof. In the event that an access inspection is performed by either City or Tenant at any time during the Lease Term including any extensions thereof, the Party causing the access inspection to be performed shall provide the other Party with a copy of the inspection report and Tenant shall, at its sole cost and expense, promptly complete all required and recommended repairs and modifications to the Premises identified in the inspection report.

D. City does not guarantee that any particular use of property is permissible under applicable law. Tenant shall assume the burden, risk and expense of confirming that his/her use of the Premises is permitted by existing ordinances and/or the securing of necessary government approvals, variances, use permits, or re-zonings. In no event shall the discretionary exercise by City of its police powers constitute a default or breach under this Agreement.

E. Tenant shall submit to City evidence that any necessary permits and/or licenses have been obtained within thirty (30) days of taking possession of the leased Premises.

F. Tenant and its officers, employees, agents and assigns shall be bound by and comply with all applicable federal, state and local laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations, rights and performance under the terms of this Agreement.

10. ASSIGNMENT AND SUBLETTING

A. Tenant shall not assign or transfer this lease or sublet all or any portion of the Premises without prior written consent of the City. Any such assignment, transfer or sublease without consent shall be void and, at the option of the City in its sole and absolute discretion, City may terminate this Agreement.

Exhibit B

B. City's consent to any such transfer, assignment or sublease, shall not constitute a waiver of the restrictions set forth in this section, but the same shall apply to each successive transfer assignment or subletting hereunder.

C. In the event City gives consent and approval to any transfer, assignment, or sublease, then before such assignment or subletting becomes effective for any purpose, the sublessees or assignees must, in writing, assume all the obligations of this Agreement, and agree to be bound by all terms of the Agreement without in any way limiting, releasing, or discharging the original Tenant from any liability under any provisions of this Agreement on account of such assignment or sublease.

11. MAINTENANCE AND REPAIRS

A. Throughout the term of this Agreement, Tenant (or Tenant's subtenants) shall, at Tenants (or any subtenants') sole cost and expense, maintain the Premises and all improvements including, but not limited to, the roof of the Quonset Hut, all mechanical, electrical, lighting, plumbing, water, and sewage systems of the Premises, all heating, ventilation and air conditioning systems of the Premises, and all life-safety systems of the Premises, in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of federal, state or local governmental agencies having or claiming jurisdiction and all insurance companies insuring any and all part of the Premises. Tenant shall, at Tenant's sole cost and expense, engage licensed and bonded contractors to perform Tenant's maintenance obligations in this Agreement, which services shall be performed in a good and workmanlike manner

B. City shall not be required or obligated to make any changes, alterations, additions, improvements or repairs in, on or about the Premises, or any part thereof, during the term of this Agreement.

C. City shall maintain the park area outside of the playground area delineated in Exhibit "A" including, but not limited to, the landscaping and parking lots.

D. Tenant shall maintain the Premises in a clean, neat, sanitary and orderly condition.

E. At the expiration or earlier termination of this Agreement, Premises shall be surrendered to City in good, clean condition and repair, reasonable wear and tear excepted.

12. CUSTODIAL

A. Tenant shall, at Tenant's sole cost and expense, engage licensed and bonded contractors to perform Tenant's custodial obligations in this Agreement, which services shall be performed in a good and workmanlike manner and shall maintain the Premises in a clean, orderly, and sanitary condition at all times during the term of this Agreement.

B. If Tenant does not maintain Premises in clean, orderly, and sanitary condition, City may, but shall not be obligated to, have the Premises cleaned and charge all costs associated with such cleaning to the Tenant.

Exhibit B

C. City shall not be responsible for any loss, inconvenience, annoyance, or damage to Tenant because of such cleaning.

13. ENTRY AND INSPECTION

Tenant shall permit City or City's agents to enter upon the Premises upon reasonable notice, for the purpose of inspecting the same, and shall permit City at any time within sixty (60) days prior to the expiration of this Agreement, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter. City shall have the right to enter the Premises as necessary in the sole discretion of City in connection with this Agreement, or in case of emergency. Except in case of emergency, City shall give Tenant telephone notice at least two hours in advance of exercising City's right to enter. In case of emergency, no notice is required.

14. INDEMNIFICATION

Tenant agrees to indemnify, defend and hold harmless City, its officers, agents, employees and representatives from any and all claims, lawsuits or actions of every name, kind and description, for injuries to or death of any person, or damage to property of any kind whatsoever arising out of the intentional, willful, negligent or other acts or omissions of Tenant, Tenant's Officers, agents, employees, or sublessees.

In the event of concurrent negligence of Tenant, its officers and/or employees, and City, its officers, and/or employees, then the liability for any and all claims for injuries or damages to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

The duty of the parties to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

15. INSURANCE

A. Tenant agrees to provide insurance set forth in accordance with the requirements herein. If Tenant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Tenant agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the Lease.

B. Without in anyway affecting the indemnity herein provided and in addition thereto, Tenant shall secure and maintain throughout the Lease Term the following types of insurance with limits as shown:

i. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Tenant and all risks to such persons under the Lease.

Exhibit B

If Tenant has no employees, it may certify or warrant to City that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by City’s Director of Risk Management.

If Tenant is a non-profit corporation, organized under California or Federal law, volunteers for Tenant are required to be covered by Workers’ Compensation insurance.

ii. Commercial/General Liability Insurance – Tenant shall carry General Liability Insurance covering all operations performed by or on behalf of Tenant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

iii. Commercial Property Insurance providing all risk coverage for the Premises, Building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

iv. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Tenant is transporting one or more non-employee passengers in relation to the Lease, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Tenant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

v. Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Exhibit B

C. If Tenant performs any construction of the Premises on behalf of City, Tenant shall also procure and maintain coverages as follows:

i. For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars in General Liability and Auto Liability coverage.

ii. For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

iii. For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (10,000,000) in General Liability and Auto Liability coverage.

iv. Tenant agrees to require all parties, subcontractors, or others, including, but not limited to, architects, it hires or contracts with in relation to the Lease to provide insurance covering the contracted operations with the requirements in this Section 15, (including, but not limited to, waiver of subrogation rights) and naming City as an additional insured. Tenant agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

v. Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

D. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the Lease. The additional insured endorsements shall not limit the scope of coverage for City to vicarious liability but shall allow coverage for City to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

E. Waiver of Subrogation Rights – Tenant shall require the carriers of required coverages to waive all rights of subrogation against City, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Tenant and Tenant's employees or agents from waiving the right of subrogation prior to a loss or claim. Tenant hereby waives all rights of subrogation against City.

F. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by City.

G. Severability of Interests – Tenant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Tenant and City or between City and any other insured or additional insured under the policy.

Exhibit B

H. Proof of Coverage – Tenant shall furnish Certificates of Insurance to City evidencing the insurance coverage at the time the Lease is executed, additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to City, and Tenant shall maintain such insurance from the time the Lease is executed until the expiration or earlier termination of the Lease. Within fifteen (15) days of the Commencement Date, Tenant shall furnish a copy of the declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

I. Acceptability of Insurance Carrier – Unless otherwise approved by City’s Director of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.

J. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by City’s Director of Risk Management.

K. Failure to Procure Coverage – All insurance required must be maintained in force at all times by Tenant. In the event that any policy of insurance required under the Lease does not comply with the requirements, is not procured, or is canceled and not replaced, City has the right but not the obligation or duty to cancel the Lease or obtain insurance if it deems necessary and any premiums paid by City will be promptly reimbursed by Tenant or City payments to Tenant will be reduced to pay for City purchased insurance.

L. Insurance Review – Insurance requirements are subject to periodic review by City. City’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever City’s Director of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of City. In addition, if City’s Director of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, City’s Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against City, inflation, or any other item reasonably related to City’s risk.

M. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to the Lease. Tenant agrees to execute any such amendment within thirty (30) days of receipt.

N. Any failure, actual or alleged, on the part of City to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of City.

Exhibit B

O. City shall have no liability for any premiums charged for such coverage(s). The inclusion of City as additional named insured is not intended to and shall not make a partner or joint venturer with Tenant in Tenant's operations.

P. Tenant agrees to require all parties, subcontractors, or others it hires or contracts with in relation to the Lease to provide insurance covering the contracted operation with the requirements in this Section 15, (including, but not limited to, waiver of subrogation rights) and naming City as an additional insured.

16. WASTE/PUBLIC NUISANCE

A. Tenant shall not commit or suffer to be committed any waste upon the leased Premises or any public or private nuisance. Private nuisance includes, but is not limited to, lack of control over any person or persons who are on the leased Premises because of Tenant or Tenant's business.

B. Tenant shall refrain from dumping, disposal, or reduction of any trash, papers, refuse or garbage of any kind in or about the Premises and park or parking areas except in designated trash areas.

17. TOXIC WASTE

A. Tenant shall not keep or allow others to keep, or sell, or use any gasoline, distillate or other petroleum products or any other material that is explosive, inflammable, noxious, toxic, caustic or of a radiological nature which may endanger any part of the Premises or its occupants, or that could endanger any part of the premises or occupants, or that could cause any unusual fire, explosion, contamination, or other hazard.

B. Tenant shall not use or store on the Premises and shall not allow others to use or store on the Premises any other item or substance that is prohibited by the standard form of fire insurance.

C. Tenant shall maintain a locked storage facility for all paints and dispose of used paint(s) and/or paint cans in a manner prescribed by San Mateo County.

18. ABANDONMENT OF PREMISES

If the Tenant abandons the premises during the Lease Term, or is removed by process of law, any personal property of the Tenant left on the premises may be considered by the City to be abandoned. The term "abandonment" shall have the meaning as set forth in California Civil Code Section 1951.3 or successor legislation.

19. SIGNS

Tenant shall not place any sign upon the Premises without City's prior written consent, and shall not construct any projecting sign or awning without the prior written consent of City. All signage must comply with local ordinances.

20. DAMAGE TO PERSONAL PROPERTY

City shall not be responsible for loss or damage of personal property of Tenant used or stored on the leased Premises.

21. MECHANICS' AND OTHER LIENS

A. Tenant shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic's, material-people's, contractor's or subcontractor's liens arising from or any claim for damage growing out of the work of any construction, repair restoration, replacement, or improvement, or any other claim or demand howsoever the same may arise, but Tenant shall pay or cause to be paid all of such liens, claims or demands before any action is brought to enforce the same against the Premises; and Tenant agrees to indemnify and hold City and Premises free and harmless from all liability for any and all such liens, claims and demands together with reasonable attorney's fees and all costs and expenses in connection therewith.

B. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of City expressed, or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material person for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises, or any part thereof. City shall have the right to post and keep posted on the Premises such notices of non-responsibility as City may deem necessary for the protection of City.

C. If Tenant shall in good faith contest the validity of any liens, claims, or demands, then Tenant shall, at its expense, defend itself and City against the same and shall pay and satisfy any adverse judgement that may be rendered thereon before the enforcement thereof against City or the Premises, upon the condition that if City shall require, Tenant shall furnish to City a surety bond satisfactory to City in an amount equal to such contested lien, claim, or demand indemnifying City against liability for the same, and holding the Premises free from the effect of such lien or claim or if City shall request, Tenant shall procure and record a bond freeing the Premises from the effect of such lien or claims or action thereon.

22. CONDEMNATION

If any part of the Premises shall be taken or condemned for public use, and a part thereof remains which is susceptible of occupation hereunder, this Agreement shall, as to the part taken, terminate as of the date the condemnor acquires possession, and thereafter Tenant shall be required to pay such proportion of the rent for the remaining term as the value of the Premises remaining bears to the total value of the Premises at the date of condemnation; provided, however, that Tenant may at his/her option, terminate this Agreement as of the date the condemnor acquired possession. In the event that the demised Premises are condemned in whole, or that such portion is condemned that the remainder is not susceptible for use hereunder this Agreement shall terminate upon the date upon which the condemnor acquires possession. All sums which may be payable on account of any condemnation shall belong to the City, and Tenant shall not be entitled to any part thereof, provided, however, that Tenant shall be entitled to retain any amount awarded to him/her for trade fixtures or moving expenses.

23. ALTERATIONS AND IMPROVEMENTS

Exhibit B

A. Tenant shall not make or suffer to be made any alterations additions or improvements to or of the Premises or any part thereof without the written consent of City being first obtained, and any alterations, additions or improvements to or of the Premises, including, but not limited to, playground structures, wall covering, paneling and built-in cabinet work, but excepting moveable furniture and equipment, shall on the expiration or termination of this Agreement become a part of the Premises and belong to the City, and shall be surrendered with the Premises.

B. In the event City consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole expense, and any contractor or person selected by Tenant to make the same must first be approved by City.

C. Any alterations, improvements, upgrades, repairs, renovations or remodeling, must comply with all municipal, county, state and Federal codes that are in force at the time of the alteration or improvement.

D. The City Manager may, at his or her sole discretion, waive any building permit fees for alterations or improvements made by Tenant.

24. PLAYGROUND IMPROVEMENTS

A. City and Tenant agree that the improvements installed on the playground area of the Premises require removal and replacement. City agrees to prepare, or cause to be prepared, plans and specifications for the removal of the existing playground improvements and the installation of new playground improvements and the removal of the tree around which a portion of the existing playground improvements are constructed. City will retain licensed and bonded contractors to perform the work in accordance with all applicable county, city, state and federal laws and regulations, including public bidding and prevailing wage requirements. City agrees to consult with and consider the input of Tenant with respect to the design and type of playground improvements to be installed. City agrees to coordinate with Tenant with respect to the timing of the demolition, removal, reconstruction, and construction work to minimize the impact on the operation of Tenant's nursery school.

B. All cost and expense in connection with the plans, specifications, demolition, construction, and installation of the new playground improvements will be paid by the City, provided, however, that Tenant shall pay to City Twenty Thousand Dollars (\$20,000) of the cost of the improvements. Tenant shall pay said amount in annual installments ("Annual Installment Payment") of Two Thousand Dollars (\$2,000) due on each July 1 during the term of this Lease, commencing on July 1, 2022. The Annual Installment Payment shall increase thereafter each year on July 1st by an index of two percent (2%) until the total amount of \$20,000 is paid to the City, unless the term of the Agreement is not extended or the Agreement is terminated as discussed in subsection C.

C. If Tenant does not exercise its option to extend the term of this Agreement pursuant to Section 2(B) or if this Agreement is terminated pursuant to Section 28, then the Tenant shall immediately pay to the City all remaining amounts owed for the new playground improvements at the end of the term or at the time of termination.

Exhibit B

D. At any time during the term of this Lease, Tenant may make a lump-sum payment to pay-off the \$20,000 amount owed to the City and any additional amounts owed due to already incurred index increases.

25. DESTRUCTION OF PREMISES

A. In the event of a partial destruction of the Premises during the term hereof, from any cause, City may, at its sole discretion, elect to repair the same, provided that such repairs can be made within sixty (60) calendar days. If the City makes such an election, Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the number of days which the making of such repairs shall interfere with the business of Tenant on the Premises. If City determines that such repairs cannot be made within said sixty (60) calendar days, City, at its option, may make the same within a reasonable time, and this Agreement shall continue in effect with the rent proportionately abated. In the event that City elects not to make such repairs, this Agreement may be terminated at the option of either party upon thirty calendar days written notice to the other party.

B. In the event that the building in which the demised Premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, City may elect to terminate this Agreement whether the demised Premises be injured or not. A total destruction of the building in which the Premises may be situated shall terminate this Agreement.

26. EVENTS OF DEFAULT

A. Default by Tenant

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Tenant:

1. The abandonment of the Premises by Tenant.
2. The failure by Tenant to make any payment of rental or utilities, or any other payment, such as late charges or additional rental, required to be made by Tenant hereunder, as and when due.
3. The failure by Tenant to observe or perform any of the terms, covenants or conditions of this Agreement to be observed or performed by Tenant, other than described in Subsections (1), and (2) hereinabove, where such failure shall continue for a period of thirty (30) days after written notice thereof by City to Tenant; provided, however, that if the nature of Tenant's default and breach is such that more than thirty (30) days are required for its cure, then Tenant shall not be deemed to be in default and breach if Tenant commences such cure within said thirty (30) day period after the notice and thereafter diligently prosecutes such cure to completion within ninety (90) days.
4. Tenant's loss of non-profit status as defined by Internal Revenue Code 26 U.S.C. Section 501(c)(3).

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5. Tenant ceases to be an active status non-profit California corporation in good standing.

6. Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; or the dispossession of Tenant from the Premises (other than by the City) by process of law or otherwise.

7. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Agreement, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant of

- (i) A petition to have Tenant declared bankrupt, or
- (ii) A petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

B. Remedies of City on Tenant Default

Upon the event of Tenant default, City shall have the following remedies, in addition to all other rights and remedies provided by law to which City may resort cumulatively, or in the alternative.

1. City shall be entitled to keep this Agreement in full force and effect (whether or not Tenant shall have abandoned the Premises) and to enforce all of its rights and remedies under this Agreement, including the right to recover rent and other sums as they become due, plus default interest at the maximum rate allowed by law from the due date of each installment or rent or other sum until paid.

2. In the event of any breach of this Agreement by Tenant, the City, besides other right and remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises. Such property may be moved and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant. Should City elect to re-enter or should it take possession pursuant to legal proceedings or any notice provided by law, it may either terminate this Agreement or may from time to time, without terminating this Agreement relet said Premises or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) and at such rental or rentals and upon such other terms and conditions as City in its sole discretion may deem advisable with the right to alter or repair the Premises upon such reletting. In such event, Tenant shall be immediately liable to pay to City, in addition to any other amounts due hereunder:

- (i) the cost and expense of such reletting and such alterations or repairs, and any amount by which the rent reserved herein for the period of such reletting, but not beyond the term hereof, exceeds the amount agreed to be paid as rent for such period; or

Exhibit B

- (ii) at the option of the City, rents received by City from such reletting shall be applied first to the repayment of indebtedness other than rent due hereunder, second to costs and expenses of reletting and alterations or repairs, and third to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable. Tenant shall be credited only with rent actually received by City. Tenant shall, in such event, pay any deficiency between the amount due from Tenant to City and the amount credited.

3. No such re-entry or taking possession by City shall be construed as an election to terminate this Agreement unless written notice of such intention is given, or unless termination be decreed by a court of competent jurisdiction.

4. City may elect to terminate this Agreement on account of the breach by giving Tenant thirty days written notice of termination. Should City at any time terminate this Agreement for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, and including the worth at the time of such termination or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of the rental loss for the balance of the term which the Tenant proves could be reasonably avoided.

5. City shall have all other remedies available in law or equity.

C. California Law Notice Requirements

The notice requirements set forth in this Section modify and supersede the notice requirements of the unlawful detainer statutes of California.

27. GENERAL PROVISIONS

A. Any provision of this Agreement which shall prove to be invalid, void, illegal, or unenforceable shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

B. This Agreement and the obligation of Tenant hereunder shall not be affected or impaired because City is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of City.

C. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement; and no prior agreements or understanding pertaining to any such matters shall be in effect for any purpose. This Agreement supercedes any prior lease or agreement. No provision of this Agreement may be amended or added to except by an Agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be in effect or be binding on any party until fully executed by both parties hereto.

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D. In the event of any sale or transfer of the Premises or the Property, City shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after the consummation of such sale or transfer; and the purchaser or transferee, at such sale or transfer or any subsequent sale or transfer of the Premises shall be deemed, without any further Agreement between the parties or their successors in interest or between the parties and any such purchaser or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of City under this Agreement.

E. No use shall be made or permitted of the Premises, or any part thereof, nor any acts done, which will violate, make imperative, or increase the existing rate of any insurance policy at any time held by or in any way for the benefit of City pursuant to any provision of this Agreement.

F. Animals other than guide dogs for the blind shall not be allowed on the Premises unless written permission is granted by City.

G. Smoking is prohibited on the Premises.

H. Tenant shall not, in any activity conducted on the leased Premises, or in any other manner, discriminate against any person on the grounds of race, color, religion, age, sex, sexual orientation, or national origin. Failure to comply with this provision shall be deemed a breach of this Agreement.

I. Campers, boats, mobile homes, recreational vehicles, inoperable vehicles or unlicensed or unregistered vehicles may not be parked on the Property for more than three (3) consecutive days.

J. The possession or consumption of alcohol is prohibited.

28. TERMINATION

A. Upon the expiration or termination of this Agreement, Tenant shall, at Tenant's sole expense, remove any moveable equipment, furnishings or personal property owned by the Tenant, and Tenant shall, forthwith and with all due diligence, at its sole expense repair any damage to the Premises caused by such removal. If the items are not removed within ten (10) calendar days of the expiration or termination of the Agreement, they shall be deemed abandoned, and shall become property of the City. The City may remove them at Tenant's expense and dispose of them at City's sole discretion.

B. City shall have the right to terminate this Agreement upon ninety (90) calendar days written notice to Tenant if City, at City's sole discretion, elects to sell or transfer any or all of the Property.

C. City shall have the right to terminate this Agreement upon ninety (90) calendar days written notice to Tenant if City, at City's sole discretion, elects to use the Premises for other governmental purposes.

Exhibit B

D. The parties may terminate this Agreement as set forth in this Agreement.

E. If there is a legal challenge to the Agreement by a non-signatory, either party may terminate the Agreement upon thirty calendar days' written notice to the other party.

29. ATTORNEY'S FEES AND VENUE

In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment or otherwise. In case of dispute, venue shall reside in the court of appropriate jurisdiction in San Mateo County, California. This Agreement shall be interpreted in accordance with California law.

30. WAIVER

The waiver by City or Tenant of any breach of any covenant or condition contained herein shall not be deemed to be a waiver of such covenant or condition of any subsequent acceptance or payment of rent hereunder by either party shall not be deemed to be a waiver of any preceding breach by either party of any covenant or condition of this Agreement.

31. NOTICES

Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Tenant at the Premises, or City at the address shown below, or at such other places as may be designated by the parties from time to time. Notice shall be deemed received forty-eight hours after it is mailed.

IF TO CITY:

City Manager
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Copy to the Director of Parks, Beaches and Recreation

IF TO TENANT:

President
Pacifica Nursery School, Inc.
548 Carmel Avenue
Pacifica, CA 94044

32. TAXES

Tenant shall, at its sole cost and expense, pay or cause to be paid, prior to delinquency, any and all taxes and assessments, or other charges of any description levied or assessed on or against the Premises leased by Tenant and which become payable during the term of this Agreement. Tenant understands and agrees that this Agreement may create a possessory interest; such possessory interest may be subject to property taxation if created, and that Tenant may be subject to the

Exhibit B

payment of property taxes levied on such interest. In the event property leased by Tenant is taxed, it is agreed that Tenant shall pay such tax.

33. ADMINISTRATION OF LEASE AGREEMENT

The City Manager is designated as the City representative to administer this Agreement. The City Manager is authorized to execute and deliver any and all notices, consents, waivers, and approvals as may be required or desirable under this Agreement. Amendments to this Agreement shall be in writing and require the approval of the City Council.

34. TIME

Time is hereby expressly declared to be of the essence of this Agreement.

35. AUTHORIZATION

The person or persons signing on behalf of Tenant warrant and represent that he, she or they are authorized to sign the Agreement on behalf of Tenant and to bind Tenant to the terms of this Agreement.

36. HEIRS, ASSIGNS, SUCCESSORS

This Agreement is binding upon the heirs, successors in interest and assigns of the parties

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

City of Pacifica

Pacifica Nursery School, Inc.

By: _____
Kevin Woodhouse
City Manager

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Sarah Coffey
City Clerk

Approved as to form:

By: _____
Michelle Marchetta Kenyon
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION AND SITE MAP OF PREMISES
548 Carmel Avenue, Pacifica, CA 94044 #APN# 016-133-010

