



**Agenda Item No. 13c.**

**Staff Report**

**Date:** June 3, 2015  
**To:** Mayor Brekhus and Ross Town Council  
**From:** Mike Armstrong, Recreation Manager  
**Subject:** Approval of St. John's Lease

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**Recommendation**

Council approval of Recreation Department Preschool lease at St. John's Episcopal Church.

**Background and discussion**

The Recreation Department received approval from the State of California Community Care Licensing Division of the Department of Social Services to expand the Ross Recreation Preschool from twenty four to forty students. Council directed staff to negotiate a new lease with St. John's Church to provide additional space to accommodate the expansion. St. John's submitted a proposal for council review, which was approved in closed session. Final lease has been prepared for approval from Council.

**Fiscal, resource and timeline impacts**

Monthly rent will increase from \$2609.43 to \$6,554 per month. This increase provides for additional classroom space and expanded bathroom and hallway access. Current outdoor play area and side yard are also included. Rent will be adjusted in summer months to \$4,425 as the additional classroom space is not utilized by Ross Recreation during the summer months.

Additional space included in lease agreement is expected to increase revenue that is projected to cover rent increase.

**Alternative actions**

None

**Environmental review (if applicable)**

None

**Attachments**

- Lease

## LEASE

### Ross Recreation Pre-School

#### St. John's Church, 14 Lagunitas Avenue, Ross, California

This Lease ("**Lease**") is entered into by and between The Rector, Wardens and Vestrymen of St. John's Parish, Ross, California ("**Landlord**"), and the Town of Ross ("**Tenant**") as of July \_\_, 2015.

Tenant currently occupies a portion of the building owned by Landlord located at 14 Lagunitas Drive, Ross California pursuant to a lease between Landlord and Tenant dated June 19, 2007 (the "**Existing Lease**"). The Existing Lease is hereby terminated effective as of September 1, 2015 and replaced and superseded by this Lease.

**1. LEASE OF PREMISES.** In consideration of the Rent and the provisions of this Lease, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term described below. Tenant shall have the non-exclusive right in common with Landlord, other tenants, subtenants, and invitees of the Building to use of the Common Areas. Tenant shall also have non-exclusive right in common with Landlord, its visitors and invitees to use the parking spaces at the rear of the Building Monday through Friday for student pick-up and drop-off only.

**2. DEFINITIONS.** As used in this Lease, the following terms shall have the following meanings:

**(a) Base Rent:** Except as provided in Section 2(b), \$6,554 per month increased by 3% annually as of each anniversary of the Commencement Date.

**(b) Base Rent Excluding the Garden Room:** For the period June 16 through August 15 of each year, and after timely exercise of Tenant's option to terminate the Lease as to the Garden Room, \$4,425 per month, increased by 3% annually as of each anniversary of the Commencement Date.

**(c) Building:** The building and other improvements, and all landscaped areas, walkways, driveways and parking areas on the real property located at 14 Lagunitas Avenue, Ross, California.

**(d) Commencement Date:** September 1, 2015.

**(e) Common Areas:** The portion of the Building designated as Common Area on Exhibit A attached hereto, which includes a reception area, partial kitchen, corridors and restrooms.

**(f) Expiration Date:** August 31, 2018, subject to the Term Extension Option.

**(g) Landlord's Mailing Address:** St. John's Episcopal Church, 14 Lagunitas Avenue, Ross, California 94957 Attn: The Reverend Chris Rankin-Williams.

**(h) Operating Costs:** The term “Operating Costs” is defined in Section 5(b).

**(i) Parish Hall:** The room in the Building identified as the “**Parish Hall**” on Exhibit A.

**(j) Parish Hall Hourly Rental Rate:** \$38.24 per hour, increased by 3% annually as of each anniversary of the Commencement Date.

**(k) Premises:** The rooms in the Building identified as Pre-School Area A and Pre-School Area B (Pre-School Area B is also referred to herein as “**The Garden Room**”) and the “**Play Area**” immediately adjacent to Pre-School Area A shown on Exhibit A, and approximately 100 square feet of storage area in the Building attic, the precise location to be designated by Landlord.

**(l) Security Deposit:** Six Thousand Nine Hundred Fifty-Three Dollars (\$6,953), to be delivered upon Tenant’s execution of this Lease.

**(m) Tenant’s Proportionate Share:** 12.07%

**(n) Tenant’s Proportionate Share Excluding the Garden Room:** 7.81%

**(o) Tenant’s Permitted Use:** Tenant shall use the Premises primarily for the operation of a pre-school with not more than 40 students (or not more than 24 students if Tenant terminates the Lease as to the Garden Room), and, as an ancillary use, for other community programs operated by the Ross Recreation Department, such as educational and recreational programs.

**(p) Term:** Three (3) years, subject to the Term Extension Option.

**(q) Term Extension Option:** One option to extend for five (5) years upon not more than twelve (12) months and not less than nine (9) months prior written notice to Landlord.

### **3. TERM; SPECIAL PROVISIONS REGARDING THE GARDEN ROOM; OPTION TO EXTEND.**

**(a) Initial Term:** The initial Term of this Lease shall be for three (3) years, commencing on the Commencement Date and ending on the Expiration Date, unless sooner terminated or unless extended pursuant to the terms hereof.

**(b) The Garden Room:** The Garden Room will be excluded from the Premises from the period June 16 through August 15 of each year to permit Landlord to use that area for its summer program, and Landlord will have the exclusive right to use the Garden Room during such period. In addition, Tenant shall have a one-time option to terminate this Lease as to the Garden Room effective as of August 31, 2016, exercisable by written notice to Landlord delivered not later than May 31, 2016. If Tenant timely exercises its option, then, effective as of September 1, 2016, the Garden Room shall be excluded from the Premises, the Base Rent will be the Base Rent Excluding the Garden Room and Tenant’s Proportionate Share will be Tenant’s Proportionate Share Excluding the Garden Room. If Tenant does not exercise its option to terminate this Lease as to the Garden Room by May 31, 2016, then Tenant’s lease obligations hereunder shall continue to include the Garden Room.

**(c) Term Extension Option:** Tenant shall have an option to extend the Term of this Lease (“**Term Extension Option**”) as to the Premises then occupied by Tenant for a period of five (5) years, exercisable by written notice to Landlord given not more than twelve (12) months nor less than nine (9) months prior to the Expiration Date. The Term Extension Option shall be conditioned upon the absence of any default under this Lease on the part of Tenant, both as of the date of exercise of the Term Extension Option and as of the commencement of the extended Term.

**4. LIMITED USE AND OCCUPANCY; TENANT’S ACCEPTANCE OF THE PREMISES.** Tenant has the right to use and occupy the Premises only during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. Tenant acknowledges that Landlord uses the Premises on weekend days, including, without limitation, for Sunday School each Sunday. Each Friday, Tenant shall ready the Premises for Landlord’s weekend use by removing all of Tenant’s furniture, equipment, decorations, wall hangings and supplies. Each Monday morning, Tenant shall be responsible for making the Premises ready for Tenant’s use during the week. Tenant has accepted the Premises in its “as is” condition as of the date of this Lease. No promise of Landlord to alter, remodel, repair or improve the Premises or the Building and no representation, express or implied, respecting any matter or thing relating to the Premises or the Building or this Lease (including, without limitation, the condition of the Premises or the Building or its suitability for Tenant’s intended use) has been made to Tenant by Landlord or its agents or representatives, other than as may be expressly contained herein.

**5. RENT.**

**(a) Payment of Rent:** Landlord and Tenant agree that Tenant’s obligation to pay Base Rent and Additional Rent, as defined below, shall start on the Commencement Date, as defined above. Tenant shall pay Base Rent in advance on the first (1<sup>st</sup>) day of each calendar month of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated based on a thirty (30) day month. Tenant shall pay Landlord the first monthly installment of Base Rent and Tenant’s Proportionate Share of Operating Costs concurrently with the execution of this Lease.

**(b) Operating Costs:** Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant’s Proportionate Share of Operating Costs in accordance with the provisions of this Section 5(b). The Term “**Operating Costs**” shall include all utilities serving the Building (water, sewer, gas and electricity), telephone and telecommunications service, janitorial service and trash removal. Tenant’s Proportionate Share of Operating Costs shall be payable by Tenant to Landlord as follows:

(i) Landlord will estimate the amount of Operating Costs for each calendar year (or portion thereof) and Tenant’s Proportionate Share thereof, and then make an adjustment in the following calendar year based on the actual Operating Costs incurred for that year. Payments of such Additional Rent shall be made in monthly installments, concurrently with the payment of Base Rent and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Operating Costs. Based on Landlord’s estimated total Operating Costs for 2015, Tenant’s Proportionate Share of Operating Costs for 2015 is estimated to be \$5,462 on an annualized basis, \$455 per month. Such amount is an estimate only; the

parties acknowledge that Tenant shall be obligated to pay Tenant's Proportionate Share of actual Operating Costs incurred, which may be more or less than such estimate.

(ii) Landlord will endeavor to deliver on or before January 31 of each year (or as soon thereafter as is practical), a statement setting forth Tenant's Proportionate Share of the Operating Costs for the preceding year and the estimate for the current year; provided, however, that Landlord's failure to deliver the statement by January 31 shall not be deemed a waiver of Landlord's right to require payment for Tenant's Proportionate Share of Operating Costs. Tenant shall pay its monthly installment of Tenant's Proportionate Share of Operating Costs at the prior year's amount until Landlord has delivered its estimate of the current's year's amount. If Tenant's Proportionate Share of the actual Operating Costs for the previous year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within ten (10) days after receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Operating Costs for such year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of Additional Rent an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. The obligations of Tenant and Landlord to make payments for deficient or excess Additional Rent, as applicable, required under this Section 5(c)(ii) shall survive the Expiration Date.

(iii) Tenant's Proportionate Share of Operating Costs in any partial year during the Term shall be prorated based on the number of days of such year included in the Term.

**(b) Definition of Rent:** All costs and expenses which Tenant assumes or agrees to pay to Landlord under the Lease other than Base Rent shall be deemed "**Additional Rent**" (which, together with the Base Rent, is also referred to in this Lease as the "**Rent**"). The Rent shall be paid to Landlord at Landlord's mailing address, mailed to the attention of Church Administrator, or at such other place as Landlord may from time to time designate in writing, without any prior demand therefor and without deduction or offset, in lawful money of the United States of America.

**(c) Taxes Payable by Tenant:** In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to:

(i) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or the cost or value of any Tenant Improvements made in or to the Premises by or for Tenant regardless of whether title to such improvements is held by Tenant or Landlord; and/or

(ii) the gross or net Rent payable under this Lease, including, without limitation, (i) any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (ii) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (iii) this transaction or any

document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

**4. License to Rent Parish Hall.** Tenant may rent the Parish Hall on an hourly basis from time to time for pre-school use only, upon advance written request to Landlord. Landlord shall not be obligated to rent the Parish Hall to Tenant if the Parish Hall is otherwise being used or reserved for use by Landlord or Landlord's invitees. Tenant shall not use the Parish Hall unless Landlord has notified Tenant of its consent to Tenant's request. Tenant may not reserve any such areas for use more than 10 days in advance. Tenant shall pay to Landlord an hourly fee for the use of such additional areas at Parish Hall Hourly Rental Rate. Tenant shall make such payment to Landlord within thirty (30) days after billing. At the end of any rental of the Parish Hall by Tenant, Tenant shall remove any equipment, supplies or other personal property of Tenant from the Parish Hall restore the furniture arrangement in the Parish Hall to the condition prior to Tenant's use. Tenant's use of the Parish Hall and other Building areas shall be subject to all terms and conditions of this Lease.

**5. INTEREST AND LATE CHARGES.** If Tenant fails to pay any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, if less. Tenant acknowledges that the late payment of any Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including, without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any payment of Rent is not received by Landlord within ten (10) business days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of the delinquent amount. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest and/or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

**6. SECURITY DEPOSIT.** Tenant hereby grants to Landlord a security interest in the Security Deposit in the amount stated in Section 2(1) to secure the performance of Tenant's obligation herein. Landlord may apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this Security Deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. Tenant waives the provisions of California Civil Code section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or

unforeseeable loss or damage caused by Tenant's default, or the act or omission of Tenant or Tenant's officers, agents, employees, independent contractors, or invitees. Landlord may commingle the Security Deposit with other funds. In the event of bankruptcy or other insolvency proceedings filed by or against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the effective date of such proceedings. Interest shall not accrue on the Security Deposit. If Landlord so uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefor, restore the Security Deposit to the full amount originally deposited. Tenant's failure to do so shall constitute an event of default hereunder, and Landlord shall have the right to exercise any remedy provided for in Section 25 hereof. Within fifteen (15) days after the Term (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant, or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord shall deliver the Security Deposit to the purchaser of Landlord's interest, free and clear of the security interest granted herein, and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

**7. TENANT'S USE OF THE PREMISES.** Tenant shall use the Premises solely for Tenant's Permitted Use. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or the certificate of occupancy issued for the Building, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Without limiting the foregoing, no Hazardous Materials shall be handled by Tenant at or about the Premises or the Building without Landlord's prior written consent, which consent may be granted, denied, or conditioned upon compliance with Landlord's requirements, all in Landlord's absolute discretion. Notwithstanding the foregoing, normal quantities and use of those Hazardous Materials customarily used in the course of Tenant's business and operations, such as cleaning supplies ("Permitted Hazardous Materials"), may be used and stored at the Premises without Landlord's prior written consent, provided that Tenant's activities at or about the Premises and the Building and the handling by Tenant of all Hazardous Materials shall comply at all times with all applicable law and regulations. For purposes of this Lease "Hazardous Materials" means any substance that now or in the future defined as a hazardous waste, hazardous substance, pollutant or contaminant under any local, state or federal law or regulation.

**8. SERVICES AND UTILITIES.** Landlord shall provide the following services to the Premises and the Common Areas: (i) during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday: Heating, ventilation and air-conditioning as necessary for normal comfort for normal use; (ii) electricity, (iii) telephone and telecommunications services; (iv) water from regular Building outlets to the Common Area plumbing fixtures; (v) Landlord shall provide janitorial service to the Common Areas and the Premises and window washing with reasonable frequency; (vi) trash removal. Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble,

by inability to secure electricity, gas, water, or other fuel at the Building after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use or possession of the Premises nor, except as expressly set forth below, relieve Tenant of its obligation to pay Rent. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Section, except to the extent arising out of or resulting from the gross negligence or willful misconduct of Landlord. Notwithstanding anything in this Lease to the contrary, to the extent that Tenant is unable to use the Premises for the purpose specified in Section 7 for a continuous period of more than forty-eight (48) hours as a result of the failure to furnish or delay in furnishing any service described in this paragraph, or for any diminution in the quality or quantity thereof, Tenant shall be entitled to an abatement of the Rent for the period during which Tenant is prevented from using the Premises.

## **9. CONSTRUCTION, REPAIRS AND MAINTENANCE.**

**(a) Landlord's Obligations:** Landlord shall be responsible for maintenance and repair of the Premises and the Building, including Building systems (excluding those installed by Tenant, if any) as well as the roof, walls and all structural components of the Building, and any and all landscaped areas, walkways, driveways, parking lots and fences (other than any fence installed by Tenant). Tenant shall pay the cost of repairs for any damage occasioned by Tenant's use of the Premises, the Building or the Common Areas or any act or omission of Tenant or Tenant's representatives or invitees.

**(b) Tenant's Obligations:** Tenant shall maintain all of its furniture, fixtures and equipment in good order and condition, including, without limitation, the play equipment in the play area and the fence installed by Tenant.

**(c) Compliance with Law:** Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances and rules of any public authority relating to their respective maintenance and repair obligations as set forth herein.

**(d) Waiver by Tenant:** Tenant expressly waives the benefits of any statute now or hereafter in effect (including, without limitation, the provisions of subsection 1 of Section 1932, Section 1941 and Section 1942 of the California Civil Code and any similar law, statute or ordinance now or hereafter in effect) which would otherwise afford Tenant the right to make repairs at Landlord's expense or to deduct the costs from rent due or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

**(e) Landlord Not Liable:** Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of Building or the Premises, except to the extent arising out of or resulting from the gross



negligence or willful misconduct of Landlord. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant business in the Premises.

**(f) Notice of Condition:** Tenant shall give Landlord prompt notice of any obvious damage to or defective condition in any part or appurtenances of the Building's mechanical, electric, plumbing, HVAC or other systems serving, located in or passing through the Premises.

#### **10. ALTERATIONS AND ADDITIONS.**

**(a) Tenant's Work:** Landlord shall permit, but shall not require, Tenant to make the following alterations and improvements (collectively, the "**Tenant's Work**"): (i) after expiration without exercise of Tenant's option to terminate the Lease of the Garden Room, remodel the existing Women's handicap restroom to include additional entry door from the Garden Room, wall hung sinks, tank type toilet, paper dispensers, wall hung mirror, hot and cold running water, all as required to meet all applicable codes; and (ii) install new playground equipment and perimeter fencing to the Play Area. Tenant's Work shall be subject to the prior review and approval of plans and specifications by Landlord and Landlord's consultants, including without limitation, a structural engineer. Tenant's plans and specifications shall be prepared by a licensed architect/engineer. The Tenant Work shall be performed only by a licensed contractor(s) approved by Landlord in writing. Notwithstanding the foregoing, Tenant's Work pursuant to Section 10(a)(i) may not be ongoing or started but not complete during the period June 16 through August 15. In addition, prior to the commencement of any work, Tenant shall require its contractor and any subcontractors to obtain and maintain the following insurance, and shall deliver evidence of such insurance to Landlord: Workers Compensation Insurance as required by law, employers liability insurance in the amount of \$1,000,000; commercial general liability insurance insuring against bodily injury, property damage and personal injury; \$1,000,000 each occurrence, \$1,000,000 general aggregate, \$1,000,000 completed operations aggregate; business auto liability coverage applying to "any auto" \$1,000,000 per occurrence. Coverage is to be provided on an "occurrence" rather than a "claims made" basis. Coverage shall otherwise be in compliance with the insurance requirements set forth in Section 19(a).

**(b)** Tenant shall not be permitted to make any other alterations, improvements or additions to the Premises or the Building without the prior written consent of Landlord, which may be given or withheld by Landlord in Landlord's sole and absolute discretion. All work with respect to any addition, alteration or improvement shall be done in accordance with all applicable laws, codes and regulations, in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion. Tenant shall reimburse Landlord for all costs that are reasonably necessary for Landlord to evaluate such work, including but not limited to the fees of any consultants retained by Landlord for such review. Further, unless otherwise required by Landlord, Tenant shall pay Landlord all amounts due under this Section within ten (10) business days of receipt of invoices from Landlord of the amounts actually incurred by Landlord.

**(c)** Tenant shall pay the costs of any work done on the Premises pursuant to this Section and shall keep the Premises and the Building free and clear of liens of any kind arising due to work performed for or materials supplied to Tenant. Tenant shall discharge any such lien of record immediately upon its filing. Neither this Lease, nor any request or consent of Landlord to the

labor, materials or obligations, is consent to such a lien. Landlord may cause such liens to be released by any means it deems proper, including payment, at Tenant's expense and without affecting Landlord's rights. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notice which Landlord deems necessary for the proper protection of Landlord's interest in the Premises and the Building and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

(d) Unless their removal is required by Landlord as provided in Section 11, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 11(b).

#### **11. TENANT IMPROVEMENTS; TENANT'S PROPERTY.**

(a) All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant, including without limitation the Tenant's Work, shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 11(b). Notwithstanding the foregoing, by notice given to Tenant at any time prior to the expiration of the Term, Landlord may require the Tenant, at Tenant's expense, to restore the women's handicap restroom to its condition prior to the work done by Tenant pursuant to Section 10(a)(i), to remove the fence installed by Tenant pursuant to Section 10(a)(ii), and to remove any and all fixtures, equipment, improvements and appurtenances that were installed or attached by Tenant at and no later than the end of the Term.

(b) All movable partitions, business and trade fixtures, furniture, supplies, communications equipment, office equipment and playground equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other Sections of movable personal property owned by Tenant and located in the Premises (collectively "**Tenant's Property**") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises and the Building resulting from such removal.

**12. CERTAIN RIGHTS RESERVED BY LANDLORD.** Landlord reserves the following rights, exercisable without liability to Tenant for (i) damage or injury to property, person or business, (ii) causing an actual or constructive eviction from the Premises, or (iii) disturbing Tenant's use or possession of the Premises:

(a) To have pass keys to the Premises and all doors within the Premises, excluding Tenant's vaults and safe. At any time during the Term, upon reasonable prior notice to Tenant and with a representative of Tenant present, to inspect the Premises and to show the Premises to any prospective purchaser or mortgagee of the Building, or to any assignee of any mortgagee on the Building, or to others having an interest in the Building or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and

(b) To enter the Premises, upon at least 24 hours prior written notice and with a representative of Tenant present, for the purpose of making inspection, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of building operating systems), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority, and in a manner that does not unreasonably interfere with Tenant's use and occupancy of the Premises. Landlord agrees to use commercially reasonable efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

(c) To change the name or street address of the Building from time to time and to install and maintain all signs on the exterior of the Building.

**13. ASSIGNMENT AND SUBLETTING.**

(a) Tenant shall not assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any of the foregoing acts without such consent shall, at the option of Landlord, be void and further shall, at the option of Landlord, terminate this Lease. The Lease shall not, nor shall any interest of Tenant herein, be assigned by operation of law without the written consent of Landlord.

(b) No subletting or assignment shall release Tenant or Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provisions hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any other terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or subletting or amendments or modifications to the Lease with assignees of Tenant, without notifying Tenant or any successor

of Tenant, and without obtaining its or their consent thereto and any such actions shall not relieve Tenant of liability under this Lease.

(c) If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand pay Landlord any attorneys' fees reasonably incurred by Landlord in connection with such act or request.

**14. HOLDING OVER.** If after expiration of the Term and (any Extension Term), Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a tenant from month-to-month only, upon all the provisions of this Lease (except as to term and Base Rent), but the Base Rent payable by Tenant shall be increased to one hundred twenty-five percent (125%) of the Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination. If Tenant holds over after the date of termination, Tenant shall be a tenant as sufferance only, and shall be liable for Landlord's loss, costs and damage from such holding over, including, without limitation, those from Landlord's delay in delivering possession to other parties. These provisions are in addition to other rights of Landlord hereunder and as provided by law.

#### **15. SURRENDER OF PREMISES.**

(a) Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord free of occupancy, including subtenants, with all Tenant's Property removed, completion of any removal or restoration required pursuant to Section 11(b) and in good and clean condition except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's Property, shall be repaired by Tenant at Tenant's expense.

(b) If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises, Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

#### **16. DAMAGE OR DESTRUCTION**

(a) If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements or other casualty, Landlord shall, subject to the provisions of this Section, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days and if such repairs are fully covered by insurance. If Landlord determines that repairs can be completed within ninety (90) days and are fully covered by insurance, this Lease shall remain in full force and effect, except that, provided such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents,

employees, contractors, licensees or invitees, the Base Rent and Tenant's Proportionate Share of Operating Expenses shall be abated to the extent Tenant cannot use the Premises for Tenant's permitted use, commencing with the date of damage and continuing until such time as Tenant may reasonably use the Premises for Tenant's permitted use.

**(b)** If, in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days or are not fully covered by insurance, Landlord may elect to repair such damages and shall so notify Tenant, in which event, this Lease shall continue in full force and effect, but the Base Rent shall be abated as provided in Section 16(a). If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

**(c)** If any other portion of the Building is totally destroyed or damaged to the extent that in Landlord's opinion repair thereof cannot be completed within ninety (90) days or is not fully covered by insurance, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event, this Lease shall continue in full force and effect, but the Base Rent shall be abated as provided in Section 16(a). If Landlord does not elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

**(d)** If the Premises are to be repaired under this Section, Landlord shall repair at its cost the Building and the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of the playground fence installed by Tenant and Tenant's Property (including, without limitation, Tenant's playground equipment). Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises or the Building as a result of any damage from fire or other casualty..

**(e)** This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises and/or the Building by fire or other casualty, and any present or future law which purports to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement shall have no application. In particular, Tenant waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, or any successor or similar statute or rule or regulation and agrees that the provisions of this Lease shall govern the rights of the parties in connection with any damages or destruction of the Premises.

**17. EMINENT DOMAIN.** If the whole of the Premises and/or the Building is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Premises and/or the Building is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30<sup>th</sup>) day after either such notice. The Rent shall be prorated to the date of termination based on a thirty (30) day month. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be

proportionately adjusted. In the event of any taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any award, judgment or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property.

**18. INDEMNIFICATION.** Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Building or the Premises from any cause whatsoever (including, but not limited to, any personal injuries resulting from a slip and fall in, upon or about the Premises or the Building) and agrees that Landlord, its officers, agents, employees, representatives and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises or the Building (including, but not limited to, a slip and fall), any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in, on or about the Premises or the Building or any breach of the terms of this Lease either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the active negligence or willful misconduct of Landlord. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as reasonable appraisers', accountants' and attorneys' fees. The provisions of this Section shall survive the expiration or sooner termination of this Lease.

Without limiting the foregoing, the Landlord Parties shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or from other sources, except to the extent arising out of or resulting from the gross negligence or willful misconduct of Landlord Parties. The Landlord Parties shall not be liable for any damages arising from any act or omission of any other tenant or invitee of the Building.

**19. TENANT'S INSURANCE.**

(a) All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord, shall have a Best's Rating of at least A- VII, and be approved to do business in the State of California. Except with respect to workers'

compensation insurance, each policy shall name the Landlord as an additional insured. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the Commencement Date, and thereafter within thirty (30) days after any demand by Landlord therefor. Such certificate or other evidence of insurance shall include copies of all endorsements adding Landlord as an additional insured as required by this agreement. Landlord may at any time and from time to time inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after thirty (30) days written notice to Landlord. Tenant shall furnish Landlord with evidence of renewal of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with, payable on demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage as required by this Lease.

**(b)** Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect the following policies of casualty insurance:

(i) Tuition Reimbursement/Business Interruption/Extra Expense insurance covering at least twelve (12) months of operation, and including a 90 day Extended Period of Indemnity, written on an All Risk basis;

(ii) Commercial General Liability insurance, providing for claims arising from the operations of Tenant, as provided under the Insurance Services Office form CG00 01 or equivalent, on an occurrence form, and shall provide limits of at least the following:

Coverage Limits:	
Each Occurrence Limit:	\$ 1,000,000
Personal and Advertising Injury:	\$ 1,000,000
General Aggregate (Bodily Injury & Property Damage):	\$ 2,000,000
Products and Completed Operations Aggregate:	\$ 2,000,000
Fire Damage Legal Liability (any one fire):	\$ 100,000

(iii) Coverage must provide for claims for bodily injury, death, personal injury or property damage (including abuse and molestation coverage) occurring on, in, or about the Demised Premises, the building or adjoining streets, sidewalks, property and passageways. In addition to the policies listed herein, at least \$4,000,000 of occurrence based excess and/or umbrella liability insurance shall be obtained. This policy(ies) specifically shall include, without limitation, contractual liability to cover Tenant's obligations hereunder to indemnify Landlord as an "insured contract." The commercial general liability and commercial automobile liability policies are to be scheduled on the umbrella/excess liability policy(ies) as underlying policies. Umbrella/excess liability shall include without limitation, sexual abuse and molestation coverage.

(iv) Commercial Automobile Liability Insurance in an amount of not less than \$1,000,000 per occurrence for Owned, Hired and Non-Owned automobiles used in connection with Tenant's activities conducted on or about the Premises;

(v) Student Accident Insurance in an amount of not less than \$10,000 per occurrence;

(vi) Workers' Compensation insurance in compliance with California law and employers' liability with a minimum limit of \$1,000,000. Such policies shall contain a Waiver of Subrogation endorsement in favor of Landlord.

(vii) Property Insurance with coverage at least as broad as that provided by Insurance Services Office Forms CP 10 30 "Causes of Loss—Special Form," or equivalent form, providing for risks of direct physical loss or damage to Tenant's moveable furniture, equipment, trade fixtures installed by Tenant and personal property in the Premises (excluding earthquake and flood), on a replacement cost valuation equal to 100% of the full replacement cost of the Tenant's property.

(c) Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Section. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, then Tenant agrees that all insurance policy limits as set forth in this Section shall be adjusted for increases in the cost of living. Policy deductible amounts or self-insured retention shall be subject to Landlord's approval.

**20. WAIVER OF SUBROGATION.** Landlord and Tenant each waive all of its rights, and the rights of its insurers, of recovery against the other for any damages to its property caused by an occurrence insured against by each party, or that would be insured against by the Insurance Services Office (ISO) "Special Causes of Loss Form, but for any deductible amount under any such policy, or any election to be a self-insurer of such property.

**21.** Tenant hereby waives all rights of recovery against Landlord and its officers, employees, agents and representatives, on account of loss by or damage to Tenant or its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease and such policies shall consent to such waiver.

**22. SUBORDINATION AND ATTORNMENT.** Upon written request of Landlord, or any mortgagee or deed of trust beneficiary of Landlord, Tenant shall, in writing in the lender's standard form, subordinate its rights under this Lease to the lien of any mortgage or deed of trust, or to the interest of any leases in which Landlord is lessee, and to all advances made or hereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender or lessor of Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Term. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the



granting or recording of such security interest. In the event of any foreclosure sale, transfer in lieu of foreclosure or termination of the lease in which Landlord is lessee, Tenant shall attorn to the purchaser, transferee or lessor as the case may be, and recognize that party as Landlord under this Lease, provided such party acquires and accepts the Premises subject to this Lease, and further provided that the transferee expressly assumes the then future obligations of this Lease. Further, Landlord shall be required to provide said transferee with the material terms of this Lease to which transferee will be bound and required to fulfill the obligations of "Landlord".

**23. TENANT ESTOPPEL CERTIFICATES.** Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and Additional Rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

**24. TRANSFER OF LANDLORD'S INTEREST.** In the event of any sale or transfer by Landlord of the Premises or the Building, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises and/or the Building or Lease occurring after the consummation of such sale or transfer. If Tenant has paid any security deposit or prepaid Rent, Landlord may transfer the security deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

**25. DEFAULT.**

**(a) Tenant's Default:** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(i.) If Tenant abandons or vacates the Premises.

(ii.) If Tenant fails to pay when due any Rent or any other charges required to be paid by Tenant under this Lease

(iii.) If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for ten (10) days after written notice thereof from Landlord to Tenant, or, if such default cannot be cured within such 10-day period, such longer period as is reasonably required not to exceed thirty (30) days, so long as Tenant commences cure within such 10-day period and diligently proceeds to completion; or

(iv.) If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or if in any proceeding or action in which Tenant is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or

(v.) If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days.

**(b) Remedies:** In the event of Tenant's default hereunder, Landlord may terminate this Lease by notice to Tenant, or continue this Lease in full force and effect, and/or perform Tenant's obligations on Tenant's behalf and at Tenant's expense.

(i) If and when this Lease is so terminated, all rights of Tenant and those claiming under it will terminate and Tenant will immediately surrender the Premises to Landlord. In such event, Landlord may immediately recover from Tenant:

1. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
2. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
3. The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(ii) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, plus any other amounts in addition to or in lieu thereof that may be permitted by law.

As used in Subsections (i)(1) and (2) above, the "worth at the time of award" is computed by allowing interest at the Prime Rate, plus four percent (4%) per annum (or at the maximum rate permitted by law, whichever is less). As used in Subsection (i) (3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Until Tenant confirms in writing that this Lease is terminated, Landlord's failure to relet the Premises shall not constitute a failure to mitigate damages.

**(c) Continuing Liability; Waiver of Redemption Rights:** No repossession, re-entering or reletting of the Premises or any part thereof by Landlord shall relieve Tenant of its liabilities and

obligations under this Lease. Tenant hereby irrevocably waives any right otherwise available at law or in equity to redeem or reinstate this Lease.

**(d) Remedies Cumulative:** All rights and remedies of Landlord under this Lease will be non-exclusive of and in addition to any other remedies available to Landlord at law or in equity. The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

**(e) Landlord's Default:** If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the Premises, the Building, and no other real, personal or mixed property of Landlord (or of any of Landlord's affiliates or of the partners which comprise Landlord, if any), wherever situated, shall be subject to levy to satisfy such judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's expense. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease except as otherwise specifically provided herein. Notwithstanding anything to the contrary herein, in no event shall Landlord be liable to Tenant for any form of special or consequential damages, including, without limitation, lost profits.

**(f) Waiver of Jury Trial:** LANDLORD AND TENANT HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LANDLORD AND TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD AND TENANT ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Landlord's Initials: \_\_\_\_\_ Tenant's Initials: \_\_\_\_\_

**26. BROKERAGE FEES.** Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant.

**27. NOTICES.** Any notice or document shall be considered received when personally delivered by mail, messenger, overnight courier or otherwise to, or whether actually received or not, on the third day after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set forth in this Lease, or to Tenant at the Premises, or at such other address as they may specify from time to time by written notice delivered in accordance with this Paragraph, except that if such day is not a business day, the notice or document will be considered delivered on the next business day. All payments required to be made by Tenant to Landlord are to be paid, without prior demand except as may be specified and without any setoff, deduction or counterclaim whatsoever, in legal tender of the United States of America at the address set forth on the invoice or, if no invoice is submitted or no address is set forth, at the address for the Landlord set forth on this Lease or at any other address as Landlord may specify from time to time by written notice in accordance with this Paragraph.

**28. QUIET ENJOYMENT.** Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease or other agreement to which this Lease may be subordinate.

**29. OBSERVANCE OF LAW.** Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement shall be conclusive of that fact as between Landlord and Tenant.

**30. FORCE MAJEURE.** Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section shall excuse or delay Tenant's obligation to pay Rent or other charges under the Lease, except as otherwise provided in this Lease.

**31. CURING TENANT'S DEFAULTS.** If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) after any applicable notice and cure period, without waiving such default, perform the same for the account and at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefor.

**32. NO SIGNAGE.** Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises or the Building, including without limitation, the inside or outside of windows or doors. Landlord shall have the right to remove any signs or other matter installed in violation of this provision without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as Additional Rent hereunder, payable within ten (10) days of written demand by Landlord.

**33. MISCELLANEOUS.**

**(a) Accord and Satisfaction; Allocation of Payments:** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.

**(b) Attorneys' Fees:** If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

**(c) Captions, Sections and Section Numbers:** The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Section and Section numbers refer to Sections and Sections in this Lease.

**(d) Choice of Law:** This Lease shall be construed and enforced in accordance with the laws of the State of California.

**(e) Consent:** Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim, against Landlord for money damages by reason of any refusal, withholding by Landlord of any consent or approval, and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any right of such consent or approval.

**(f) Authority:** Each individual signing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, and that

this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its governing body authorizing such execution.

**(g) Counterparts:** This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.

**(h) Execution of Lease; No Option:** The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.

**(i) Further Assurances:** The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease. Notwithstanding the foregoing to the contrary, in no event shall Tenant be required to submit Tenant's financial statement(s).

**(j) Prior Agreements; Amendments:** This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

**(k) Recording:** Tenant shall not record this Lease or any memorandum of this Lease.

**(l) Severability:** A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

**(m) Successors and Assigns:** This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns to the parties.

**(n) Time of the Essence:** Time is of the essence of this Lease.

**(o) Waiver:** No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default. The receipt and acceptance by Landlord 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 Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord or 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.

The parties hereto have executed this Lease as of the date set forth on page 1.

**LANDLORD:**

The Rector, Wardens and Vestrymen of St.  
John's Parish, Ross, California

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:  
PO Box 217,  
Ross CA 94957  
Attention: The Rector  
Tel: (415) 456 1102

**TENANT:**

Town of Ross

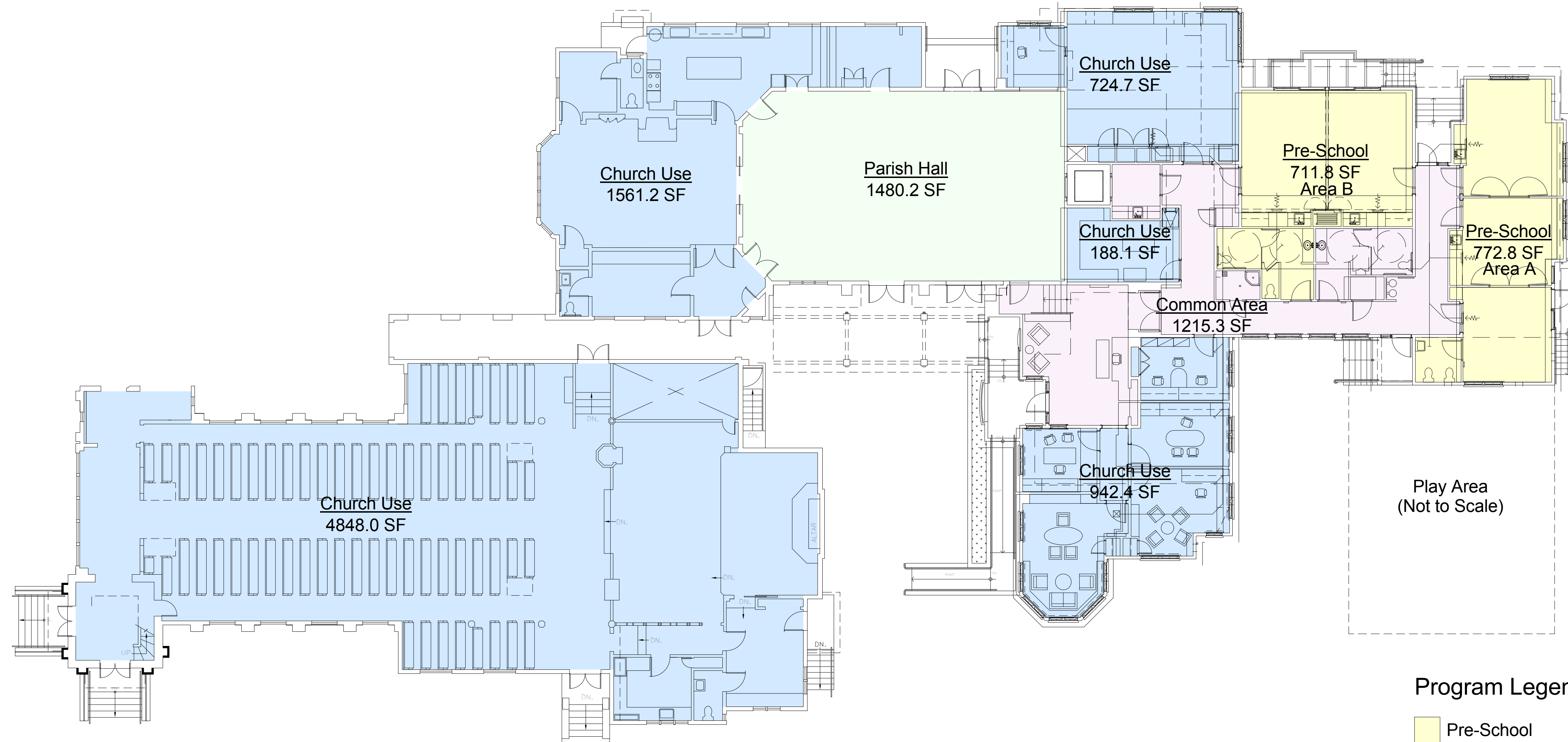
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:  
PO Box 117  
Ross, CA 94957  
Attention: Ross Town Manager  
Tel: (415) 453-1453

St. Johns/Ross Recreational Exhibit A



Program Legend

- Pre-School
- Common Area
- Parish Hall
- Church Use

Pre-School Area Schedule			
Name	Area	Percentage of Total	Comments
Pre-School	711.8 SF	5.719659	
Pre-School	772.8 SF	6.210039	Total = 11.93%
<b>1484.6 SF</b>			

Common Area Schedule			
Name	Area	Percentage of Total	Comments
Common Area	1215.3 SF	9.76551	Total = 9.77%
<b>1215.3 SF</b>			

Parish Hall Area Schedule			
Name	Area	Percentage of Total	Comments
Parish Hall	1480.2 SF	11.894231	Total = 11.89%
<b>1480.2 SF</b>			

Church Use Area Schedule			
Name	Area	Percentage of Total	Comments
Church Use	4848.0 SF	38.957108	
Church Use	1561.2 SF	12.545428	
Church Use	724.7 SF	5.823606	
Church Use	188.1 SF	1.511513	
Church Use	942.4 SF	7.57297	Total = 66.41%
<b>8264.4 SF</b>			