

## SUB-USE AGREEMENT

THIS SUB-USE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2019 ("Effective Date"), by and between the EAST BAY GERMAN INTERNATIONAL SCHOOL, a California Nonprofit Public Benefit corporation ("Sub-Licensors"), and the City of EMERYVILLE ("Sub-Licensee"). Sub-Licensors and Sub-Licensee are sometimes hereinafter referred to collectively as the "Parties" or each individually as a "Party."

WHEREAS, pursuant to Education Code section 38131, EMERY UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California ("Licensor") may grant the use of school facilities as a civic center for uses including educational and recreational uses; and

WHEREAS pursuant to Education Code section 38133, the management, direction, and control of school facilities are vested in the Licensor's governing Board ("Board"), who may provide for the use of school facilities as a civic center where uses are consistent with school purposes and do not interfere with the regular conduct of schoolwork; and

WHEREAS, Licensor is the owner of real property located at 1070 41st Street, Emeryville, California 94608, in the County of Alameda ("Site"), formerly known as the Anna Yates School; and

WHEREAS, pursuant to that certain Use Agreement between Licensor and Sub-Licensors dated October 25, 2017 ("Main Agreement"), Licensor has granted to Sub-Licensors rights to use the Site as identified more specifically in the Main Agreement; and

WHEREAS, Sub-Licensee desires to temporarily operate its childcare program ("Program") at a portion of the Site while Sub-Licensee's permanent location is undergoing renovation; and

WHEREAS, Sub-Licensors wishes to provide Sub-Licensee with temporary rights to use certain classrooms and shared use of certain other facilities on the Site as described in Exhibit A hereto (the "Premises") to temporarily operate the Program on the Premises, as more particularly set forth herein; and

WHEREAS, Sub-Licensee will need a right of entry onto the Site to carry out the Program.

NOW, THEREFORE, SUB-LICENSOR AND SUB-LICENSEE HEREBY MUTUALLY AGREE AS FOLLOWS:

### ARTICLE I

#### License

1.1 Grant of License. In consideration of the License Fee and other terms of this Agreement, Sub-Licensors agrees to grant Sub-Licensee (including its employees, agents, volunteers, invitees and Program participants ("Students")) a license to use the Premises for the sole purpose of carrying out the Program during the Term ("License"). The rights granted to and

the obligations imposed on the Sub-Licensee herein shall extend to the Sub-Licensee's officers, agents, employees, volunteers, and independent contractors. Sub-Licensee shall not remove or discard any furniture or equipment from the Premises without advance written permission from Licensor and Sub-Licensor. Sub-Licensee acknowledges and agrees that Sub-Licensor reserves the right to license, rent or lease any portion of the Site (excluding the 6 classrooms included in the Premises) to a third-party, provided that such license, rental or lease does not unreasonably interfere with Sub-Licensee's use of the Premises or Site pursuant to the License granted herein.

1.2 Physical Extent of Right to Enter. The License granted hereunder with respect to carrying out the Program shall extend only to the Premises. The License includes (i) Sub-Licensee's (and its employees', agents', volunteers', invitees' and Students') non-exclusive right of pedestrian ingress to and egress from the Premises through the blue gate on the Western end of the Site on 41<sup>st</sup> Street, (ii) Sub-Licensee's employees', agents', volunteers', invitees' and Students' non-exclusive use of the restroom facilities designated by the Sub-Licensor, and (iii) Sub-Licensee's employees', agents', volunteers', invitees' and Students' non-exclusive access to playgrounds and fields at the Site subject to specific time and space restrictions established by Sub-Licensor consistent with any such restrictions established by Licensor, Sub-Licensor's own use of such areas for its programs and activities, any rights granted by Licensor or Sub-Licensor to another group or outside organization, and the requirement that Sub-Licensee and its employees properly supervise any and all access by Students. Neither Licensor nor Sub-Licensor shall have any liability for damages related to motor vehicles parked on city streets. Sub-Licensee shall comply with all applicable laws with respect to its access and use of the Premises and the Site.

The License granted herein shall be limited to Sub-Licensee's rights set forth in this Section 1.2, including the right to use the Premises and for ingress and egress thereto and therefrom. Except as otherwise expressly authorized by this Agreement, Sub-Licensee shall have no right to access or use any portions of the Site not expressly included in the Premises (the "Remainder Portion"). Sub-Licensee acknowledges that entry to the Remainder Portion is not authorized by this License, and that if Sub-Licensee, its students, employees, agents, representatives, or invitees, enter the Remainder Portion, they do so at their own risk. Neither Licensor nor Sub-Licensor shall be liable for any damages to person or property resulting from said parties' unauthorized access to or use of the Remainder Portion and Sub-Licensee shall hold harmless and indemnify Sub-Licensor from and against all claims, actions, damages, costs, and liabilities arising in connection with such unauthorized access or use.

1.3 Permitted Use/Sub-Licensee's Responsibilities. Sub-Licensee shall use the Premises solely for the purpose of operating the Program ("Approved Use"), and Sub-Licensee shall be responsible for all costs and services relating to said operation of its Program, including for providing all equipment and furnishings for the Program. Sub-Licensee shall comply with all applicable laws with respect to its access and use of the Premises and shall be solely responsible for obtaining and maintaining all licenses and approvals required for its operation of the Program, including all licenses and approvals from the Department of Social Services Community Care License Division.

1.4 License Fee. Commencing upon the Commencement Date, Sub-Licensee agrees to pay, and Sub-Licensor agrees to accept as a license fee for the use of the Premises, the total sum

of fifteen thousand Dollars (\$15,000) ("License Fee") for the Term. The License Fee shall be payable in a single lump sum payment no later August 15, 2019. In the event that Sub-Licensors revoke the License without cause, Sub-Licensors shall refund the amount of the License Fee on a pro-rated basis for the number of days remaining on the Term from the date of revocation.

1.5 Security Deposit. Upon execution of this Agreement by Sub-Licensee, Sub-Licensee shall deposit with Sub-Licensors a security deposit in the amount of Five Thousand Dollars (\$5,000) ("Security Deposit"). The Security Deposit shall be submitted by Sub-Licensors to Licensors to be held by Licensors, without liability for interest thereon, as security for the full and faithful performance by Sub-Licensee of each and every term, covenant and condition of this Agreement to be observed and performed by Sub-Licensee. If Sub-Licensee fails to perform any of the terms of this Agreement, including any breach of section 2.15 related to delay in vacating the Premises, Licensors and Sub-Licensors may, without prejudice to any other remedy, appropriate and apply the Security Deposit to compensate Licensors and Sub-Licensors toward the payment of any required charges due from Sub-Licensee under this Agreement, or toward any loss, damage or expense sustained by Licensors or Sub-Licensors resulting from such default or delay. In such event during the Term of the License, Sub-Licensee shall immediately restore the Security Deposit to the original sum set forth above. In the event Sub-Licensee fully and faithfully complies with all of the terms, covenants and conditions of this Agreement, the Security Deposit shall be returned to Sub-Licensee within forty (40) days of the last day of the Term of this Agreement, and, in any event, in accordance with applicable law.

1.6 Term, Termination and Revocation of the License.

(a) The term of this Agreement and the License shall commence on September 1, 2019 ("Commencement Date"), and shall continue in effect until November 30, 2019, subject to its earlier termination as provided herein ("Term"). The License granted under this Agreement shall be deemed automatically revoked upon the expiration or earlier termination of this Agreement. In case construction at Sub-Licensee's permanent location is anticipated to be ongoing as of November 20, 2019, Sub-Licensee may request a one-time extension of the Term through December 15, 2019, which request shall be made no later than November 15, 2019. In no event shall Sub-Licensee occupy the Premises beyond December 15, 2019. The License Fee is payable in full regardless of whether Sub-Licensee occupies the Premises on or after the Commencement Date and regardless of whether Sub-Licensee extends the Term pursuant to the foregoing.

(b) This Agreement may be terminated by either Party at any time for cause. "Cause" shall consist of a breach of any material provision of this Agreement, and the failure of the breaching Party to cure the breach within thirty (30) days of being notified of the breach (unless a different cure period is specifically required by the terms of this Agreement). Such a termination shall become effective immediately upon the expiration of the thirty (30) day cure period, unless such cure is completed to the reasonable satisfaction of the non-breaching Party. If Sub-Licensors terminate this Agreement for cause due to a termination of the Main Agreement for cause by Licensors that is based on any act or omission of Sub-Licensee, then Sub-Licensors may bring an action to recover from Sub-Licensee any amount necessary to compensate Sub-Licensors for any liability of Sub-Licensors towards Licensors under the Main Agreement resulting therefrom.

(c) No later than the effective date of the expiration or earlier termination of this Agreement, the License shall terminate, and Sub-Licensee shall cease to access and use the Premises and the affected portions of the Site, and Sub-Licensee's agents, officers, employees, volunteers, and independent contractors shall immediately vacate the Site. Sub-Licensees shall leave the Premises in a clean condition, ordinary wear and tear excepted. Sub-Licensee shall be responsible for the cost of any damage caused to the Premises and/or the affected portions of the Site as set forth herein. In the event Sub-Licensee fails to vacate the Premises in accordance with the foregoing, Sub-Licensee shall be required to pay Sub-Licensors a late fee of \$500 per day.

(d) The remedies given to Sub-Licensee and Sub-Licensors in this Article or elsewhere in this Agreement shall not be exclusive but shall be in addition to all remedies now or hereafter available at law or in equity.

1.7 Liens and Claims. Sub-Licensee shall promptly pay in full all costs associated with Sub-Licensee's use of the Premises, and any equipment, furnishings, furniture, trade fixtures or other items for the Premises or Program that Sub-Licensee shall cause to be delivered to the Premises and shall timely pay in full all persons who perform labor for the Sub-Licensee's use of the Premises and/or for the Program. If any mechanics' or materialmen's liens or any other liens or claims for any work done or items furnished at Sub-Licensee's request are filed against the Premises, the Program, or the Site, Sub-Licensee shall promptly remove the liens and claims at Sub-Licensee's own expense. If Sub-Licensee fails to remove the liens or claims and any judgment is entered thereon or thereunder, Sub-Licensee shall pay that judgment. Should Sub-Licensee fail, neglect, or refuse to remove any such liens or claims or to pay any judgment, Licensors and Sub-Licensors shall have the right to pay any amount required to release any such liens or claims, or to defend any actions brought on the liens or claims and to pay any judgment entered on the liens or claims, and Sub-Licensee shall be liable to Licensors and Sub-Licensors for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefor. Licensors and Sub-Licensors may record, post, and maintain upon the facilities a notice of non-responsibility. Sub-Licensee shall not encumber by any security instrument, all or a part of Sub-Licensee's interest under this License or Agreement without the prior written consent of Licensors and Sub-Licensors, and upon such terms and conditions as Licensors and Sub-Licensors may require.

1.8 Sub-License or Assignment. Sub-Licensee must not further sub-license or assign all or any portion of the Premises.

## ARTICLE II

### Restrictions and Conditions

2.1 The Program. Sub-Licensee shall be solely responsible for the cost and operation of the Program.

2.2 AS IS Condition. Except as set forth in this Agreement, Sub-Licensors makes no representations of any kind as to the conditions of, on or under the Premises or Site. Sub-Licensee has inspected the Premises and the Site and takes the Premises and the Site in their "as

is" condition. Sub-Licensors has no responsibility to make any modifications to the Premises or Site that may be required to prepare the Premises or Site for Sub-Licensee to carry out the Program. Furthermore, Sub-Licensors makes no representations or warranties regarding the fitness or suitability of the Premises or Site for Sub-Licensee's intended use of same.

### 2.3 Sub-Licensee Conduct.

(a) Sub-Licensee shall act in a professional manner and shall not do or permit anything to be done on the facilities which would obstruct or interfere with the rights of anyone on the Site, or that would injure them.

(b) Sub-Licensee shall not obstruct access to or passage across the Site, including on weekends, when the Site yard is made open and available by Licensors or Sub-Licensors for public use.

(c) Sub-Licensee shall not use or permit the Site, the Premises, or any portion thereof to be improved, used or occupied in any manner or for any purpose that is in any way in violation of any applicable law, ordinance, policy, or regulation of any Federal, State, County, or Local Government agency, body or entity, including the Emery Unified School District. This includes no smoking or alcohol consumption in or on Site. Sub-Licensee shall also not permit anything to be done in or about the Premises or the Site which will increase the existing rate of insurance upon the Premises or the Site, or cause the cancellation of any insurance policy covering the Premises or the Site, and Sub-Licensee shall be responsible for paying any increase in insurance caused thereby.

(d) Sub-Licensee, its agents, employees, invitees, volunteers and independent contractors shall observe and comply fully and faithfully with all reasonable and nondiscriminatory rules and regulations (including all Board policies) (collectively, "Rules") adopted by Licensors for the care, protection, cleanliness and operation and use of the Premises and the Site, including any modification or addition to such Rules adopted by Licensors, provided Sub-Licensee has been given written notice thereof by Licensors or Sub-Licensors.

2.4 Alterations and Furnishings. No structures, improvements, alterations or facilities (collectively, "Alterations") shall be constructed, erected, altered, or made at the Premises or the Site without prior written authorization by the Sub-Licensors. Title to equipment, furniture, furnishings, trade fixtures and other items placed by Sub-Licensee upon the Premises, shall remain the property of Sub-Licensee and shall be removed from the Premises by Sub-Licensee at the end of the Term or earlier termination, if applicable.

### 2.5 Compliance With Laws.

(a) Sub-Licensee shall, at Sub-Licensee's own cost and expense, comply with all applicable statutes, ordinances, regulation, and requirements of all governmental entities, including federal, state, county or municipal, and whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Site or any portion thereof (including the Premises) for the purposes of carrying out the Program, Sub-Licensee shall

procure and maintain at its sole cost any such license, permit or other governmental authorization prior to the commencement of the Program and throughout the term of this Agreement. Sub-Licensee shall indemnify, and hold Licensor and Sub-Licensor, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Sub-Licensee's failure to comply with and perform the requirements of this Section, except to the extent that any such liability is caused by the gross negligence of Licensor or Sub-Licensor or any person or entity under their respective explicit direction or control. Upon request, Sub-Licensee shall provide copies of all licenses which Licensor or Sub-Licensor may require to verify that Sub-Licensee is in compliance with the requirements of this Section.

(b) Sub-Licensee represents and warrants that it or its duly authorized agents has the expertise and professional qualifications to operate the Program in full compliance with all applicable laws. Sub-Licensee further represents and warrants to Licensor and Sub-Licensor that every individual charged with operating the Program is duly licensed or certified by the State of California, to the extent such licensing or certification is required by law to operate the Program. Upon request, Sub-Licensee shall provide copies of all licenses which Licensor or Sub-Licensor may require to verify that Sub-Licensee or its duly authorized agents is in compliance with the requirements of this Section.

2.6 Assessments, Fees, Charges, and Utilities. Sub-Licensee shall be responsible for 40% of all utility services provided to the Premises during the Term, including, but not limited to, gas, electricity, heat, telephone, internet, water, sewage, security, scavenger, and similar services used or consumed on the Premises. Sub-Licensee shall also be responsible to schedule and pay for any and all cleaning and custodial services for the Premises, as desired by Sub-Licensee. Neither Licensor nor Sub-Licensor shall be liable in damages or otherwise for any interruption in the supply of any utility.

## 2.7 Maintenance and Repairs.

(a) Licensor Obligations. Sub-Licensor shall exercise any rights under the Main Agreement to cause Licensor to keep the Premises in good repair and maintain them in a condition suitable for Sub-Licensee. During Sub-Licensee's use of the Premises, Sub-Licensee shall otherwise maintain the Premises and Site in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of Licensor and Sub-Licensor and in compliance with all applicable laws, and shall keep the Premises and the surrounding areas free and clear of rubbish and litter. Sub-Licensee shall pay for any repairs to the Premises and the Site (more than ordinary wear and tear) arising from Sub-Licensee's fault or the fault of any person or entity under its explicit direction or control within thirty (30) days of receipt from Licensor or Sub-Licensor of any invoice for the costs of the repairs.

(b) Major Systems. In the event of the failure of any major structural, electrical, heating or mechanical system at the Site that renders any of the classrooms included in the Premises and occupied by Sub-Licensee pursuant to this Agreement, and playground and restrooms used by the Sub-Licensee, no longer usable for Sub-Licensee's purposes, Sub-Licensor will exercise its rights under the Main Agreement and hold Licensor responsible for the cost of repair necessary to render the classrooms again capable of being used by the Sub-Licensee. All other maintenance and repair of the Premises, and any work required to render the Premises

suitable for Sub-Licensee's Program, is Sub-Licensee's obligation. Notwithstanding the foregoing, Sub-Licensee acknowledges that the playground and restrooms are not used by Sub-Licensee for preschool-aged children and that Sub-Licensee has no obligation to modify the playground, restrooms, or any other portion of the Premises to render them suitable for such use.

(c) Materials and Equipment. During the times when Sub-Licensee is authorized to use the Premises pursuant to this Agreement, Sub-Licensee may, subject to Sub-Licensor's reasonable discretion, cause materials and equipment related to the Program to be situated in or on the Premises. Such materials and equipment shall be maintained by Sub-Licensee at its sole cost.

2.8 Payments by Licensor or Sub-Licensor. Should Sub-Licensee fail to pay any assessments, fees or other charges required to be paid by Sub-Licensee, Licensor or Sub-Licensor may, without notice to or demand on Sub-Licensee, pay, discharge, or adjust that assessment, bill, or other charge for the benefit of Sub-Licensee. In that event, Sub-Licensee shall promptly, on written demand of Licensor or Sub-Licensor, reimburse Licensor or Sub-Licensor for the full amount properly paid by Licensor or Sub-Licensor in paying, discharging, or adjusting that tax, assessment, bill or other charge, including but not limited to the cost of any late fees, penalties or other charges assessed and paid for by Licensor or Sub-Licensor resulting from Sub-Licensee's untimely or incomplete payment.

## 2.9 Insurance.

(a) Sub-Licensee's Required Coverage. Before the commencement of this Agreement and during the Term of this Agreement, Sub-Licensee shall obtain and maintain, at its expense, the following insurance policies covering the Premises and the Site:

(1) Commercial general liability insurance for bodily injury, personal injury and property damage and including products and completed operation and non-owned and hired automobile coverage, with liability limits of not less than \$1,000,000 combined single limit. Bodily injury shall not be less than \$1,000,000, combined single limit of \$1,000,000 per person and per accident. The policy shall provide coverage for broad form property damage not less than \$1,000,000 per loss. If the policy contains a General Aggregate, then the liability limit must be not less than \$2,000,000.

(2) Automobile liability insurance for bodily injury, personal injury and property damage for vehicles owned, non-owned, or hired, with policy limits or not less than \$1,000,000 combined single limit.

## (b) Insurance Provisions.

(1) The policies described in Subsection (a) above shall: (i) name Licensor and Sub-Licensor as an additional insured and be provided on an occurrence basis; (ii) state that such policy is primary, excess, and non-contributing with any other insurance carried by Licensor or Sub-Licensor; (iii) state that the naming of an additional insured shall not negate any right the additional insured would have had as claimant under the policy if not so named;

and (iv) state that not less than 30 days written notice shall be given to Licensors and Sub-Licensors before the cancellation or reduction of coverage or amount of such policy.

(2) A certificate issued by the carrier of the policies described in Subsection (a) above shall be delivered to Licensors and Sub-Licensors prior to Sub-Licensee's, its employees, volunteers and/or its independent contractors first entry onto the Site. Each such certificate shall set forth the limits, coverage, and other provisions required under this Section. A renewal certificate for each of the policies described above shall be delivered to Licensors and Sub-Licensors not less than thirty (30) days before the expiration of the term of such policy. Coverage shall be subject to Licensors' approval and shall carry a rating of A:X or higher, unless otherwise agreed to in advance by Licensors, and insurance company shall be admitted and licensed in California to transact insurance coverage and issue policies.

(3) The policy described in Subsection (a) above may be made part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required in this Section and does not reduce the coverage, impair Licensors' or Sub-Licensors' rights under this Agreement, or negate or decrease Sub-Licensee's obligations under this Agreement.

(4) Sub-Licensee agrees that if Sub-Licensee does not take out and maintain such insurance as required by this Section, then Licensors and Sub-Licensors may (but shall not be required to) procure said insurance on Sub-Licensee's behalf and charge Sub-Licensee the premiums, together with a 10% handling charge, payable upon demand.

(c) Worker's Compensation Insurance and Employer's Liability Insurance. Before the commencement of the Program, Sub-Licensee shall provide a certificate(s) of insurance and endorsements on forms acceptable to Licensors with full worker's compensation insurance coverage for no less than the statutory limits, and employer's liability insurance coverage with limits not less than \$1,000,000 for all persons whom it employs or may employ in carrying out the Program under this Agreement. This insurance shall be in strict accordance with the requirements of the most current and applicable State Worker's Compensation Insurance Laws. Such coverage shall remain in effect throughout the Term of this Agreement.

2.10 No Property Interest Created. The License and this Agreement does not create any interest for Sub-Licensee in the Premises or the Site or any property owned or maintained by Licensors or Sub-Licensors, and is not coupled with any property interest or other interest. The License is personal to Sub-Licensee.

2.11 Safety. Sub-Licensee shall be solely and completely responsible for conditions of the Premises when in use by Sub-Licensee, including safety of all persons and property. Sub-Licensee, its agents, employees, invitees, volunteers and independent contractors shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety. All materials, equipment, and supplies provided for the Premises and/or Program shall fully conform to all applicable State, local and Federal safety laws, rules, regulations, and orders.

#### 2.12 Indemnification Provisions

2.12.1 Indemnity. Except to the extent caused by the gross negligence or willful misconduct of Licensors, Sub-Licensors or any person or entity under its explicit direction or

control, Sub-Licensee shall indemnify and hold Licensor, Sub-Licensor, their officers, agents, employees, and members of its governing body, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Sub-Licensee's, Sub-Licensee's agents, employees, or invitees ("Sub-Licensee Parties") occupation and use of the Premises and Site, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including any of Sub-Licensee's employees, guests, invitees, or agents, from any cause whatsoever as a direct result of operating the Program or Sub-Licensee Parties' use and/or occupancy of the Premises or Site while that person is in, on, or about the Premises or Site or in any way connected with the Premises or Site or with any of Sub-Licensee Parties' personal property on the Premises or Site;

(b) The death or injury of any person, including any of Sub-Licensee Parties' employees or agents, or by reason of the damage to or destruction of any property, including property owned by Sub-Licensee Parties or any person who is an employee or agent of Sub-Licensee Parties, caused or allegedly caused by either (1) any condition of the Premises or Site created by Sub-Licensee Parties or their employees or agents, or (2) any act or omission on the Premises or Site by Sub-Licensee Parties or any person in, on or about the Premises or Site with the permission and consent of Sub-Licensee Parties;

(c) The damage to or destruction of any property, including property owned by Sub-Licensee Parties or by any person who is an employee or agent of Sub-Licensee Parties, from any cause whatsoever as a direct result of operating the Program or Sub-Licensee Parties use and/or occupancy of the Premises or Site while that property is in, on or about the Premises or Site or in any way connected with the Premises or Site or with any of Sub-Licensee Parties' personal property on the Premises or Site;

(d) Any work performed on the Premises or Site or materials furnished to the Premises or Site at the instance or request of Sub-Licensee Parties or any person or entity acting for or on behalf of Sub-Licensee Parties; and

(e) Sub-Licensee Parties' failure to perform any provision of this License or to comply with any requirement of applicable law or any requirement imposed on Sub-Licensee Parties or the Premises by any duly authorized agency or political subdivision.

2.13 Entry by Licensor and Sub-Licensor. Licensor and Sub-Licensor reserve and shall at any and all reasonable times have the right to enter the Site and the Premises to inspect same, to determine whether Sub-Licensee is complying with this Agreement, to supply any service to be provided by Licensor or Sub-Licensor to Sub-Licensee hereunder, to use the Site and the Premises as desired by Licensor or Sub-Licensor, and to alter, improve, maintain or repair the Site and the Premises, in each case consistent with the terms of this Agreement. Without limiting the foregoing, Sub-Licensor specifically reserves the right to use any portion of the Site other than the six classrooms included in the Premises. Sub-Licensee waives any claim for damages for injury, inconvenience or interference with Sub-Licensee's business, or any loss of occupancy or quiet enjoyment, caused by such entry, except to the extent caused by the gross negligence, recklessness or willful misconduct of Licensor or Sub-Licensor or any person or entity under its explicit direction or

control, and except for injury or other damage negligently caused by Sub-Licensor or any person or entity under its explicit direction or control.

2.14 Limitation of Liability. Except as otherwise provided herein, Sub-Licensor's individual officers, agents, employees, volunteers, and individual members of their respective governing bodies (collectively, "Persons") shall not be personally liable in any manner or to any extent under or in connection with this Agreement. Notwithstanding anything stated herein to the contrary, Sub-Licensor shall not be liable for any special, consequential, indirect, or incidental damages, including but not limited to lost profits in connection with this Agreement.

2.15 Surrender of Premises. On the last day of the Term hereof, or on sooner termination of this Agreement, Sub-Licensee shall surrender to Sub-Licensor the Premises and any then-existing improvements in good order, condition, and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances. Said condition shall be similar to that existing as of the Effective Date of this Agreement excepting normal wear and tear and any alterations or improvements approved by Sub-Licensor subsequent to the Effective Date. Sub-Licensee shall remove from the Premises all of Sub-Licensee's personal property, trade fixtures, and any improvements made by Sub-Licensee which Sub-Licensee and Sub-Licensor agreed would be removed by Sub-Licensee. All property not so removed shall be deemed abandoned by Sub-Licensee. If the Premises are not so surrendered at the termination of this Agreement, Sub-Licensee shall indemnify Licensor and Sub-Licensor against loss or liability resulting from delay by Sub-Licensee in so surrendering the Premises.

### **ARTICLE III**

#### **General Terms and Provisions**

3.1 Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter dealt with in this Agreement and all understandings, oral or written, with respect to the subject matter of this Agreement are hereby superseded.

3.2 Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by both Sub-Licensor and Sub-Licensee.

3.3 Waiver. The failure by either Party to enforce any term or provision of this Agreement shall not constitute a waiver of that term or provision, or any other term or provision. No waiver by either Party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

3.4 Severability. If any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of

the Parties; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.

3.5 Force Majeure. Neither Party shall be liable for its failure to fulfill any term or condition of this Agreement if such fulfillment has been delayed, hindered or prevented by any event of force majeure. For the purposes of this Agreement, the term "force majeure" shall be defined to mean strikes, lockouts, labor or industrial disputes, acts of nature, enemy or hostile government action, general emergency condition, civil commotion, fire, natural disaster, extreme weather conditions or other casualty or any other cause beyond the reasonable control of the Party.

3.6 Governing Law and Venue. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda.

3.7 Property Taxes. Notwithstanding anything contained herein to the contrary, in the event that Sub-Licensee's possession and use of the Premises under this Agreement is determined to create a "possessory interest" in said Premises in Sub-Licensee and Sub-Licensee may be subject to the assessment of property taxes based upon such a possessory interest, then Sub-Licensee shall be solely responsible for the timely payment of any and all such property taxes levied on such interest, including any penalties and interest in connection therewith.

3.8 Independent Contractor. Sub-Licensee is an independent contractor, not an officer, employee or agent of Sub-Licensors.

3.9 Notices. Any notice required or desired to be given pursuant to this Agreement shall be in writing, duly addressed to the Parties below. By written notice in conformance herewith, either Party may change the address to which notices to said Party must be delivered. Any notice deposited with the United States Postal Service shall be deemed to have been duly given upon confirmed receipt, if sent by certified or registered mail, postage prepaid, addressed as set forth below or as changed as set forth herein. Notice sent by any other manner shall be effective only upon actual receipt thereof:

Sub-Licensors:

East Bay German International School  
Attention: Chair of the Board  
1070 41st St, Emeryville, CA 94608

Sub-Licensee:

City of Emeryville  
Attention: Community Services Director  
4727 San Pablo Avenue

Emeryville, CA 94608

With a copy to:  
City of Emeryville  
Attention: City Attorney  
1333 Park Avenue  
Emeryville, CA 94608

3.10 Signature In Counterparts. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute the same instrument. A copy, original, e-mail or facsimile with all signatures appended together shall be deemed a fully executed Agreement.

3.11 Non-Discrimination. Sub-Licensee expressly agrees that it will not discriminate in the employment of persons or in its administration or operation of the Program on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

3.12 Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SUB-LICENSOR:

SUB-LICENSEE:

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

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

Name: Rufus Pichler

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

Its: Chair of the Board

Its: \_\_\_\_\_

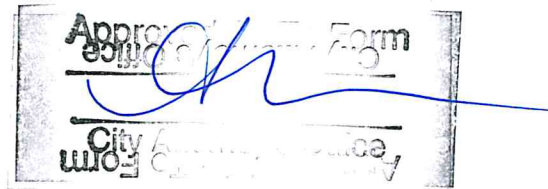


Exhibit "A"

DEPICTION OF PREMISES

[TO BE INSERTED FOLLOWING THIS PAGE]

Exclusive use of:

- 6 modular classrooms (downstairs)
- 1 teacher lounge/office, which will be a modular classroom (upstairs)

Non-exclusive use, subject to Section 1.2:

- The kitchen; provided that Sub-Licensee acknowledges agrees that Sub-Licensors is not currently using the kitchen and that any use by Sub-Licensee of the kitchen is subject to the following conditions: (i) use and access to the kitchen would be on an "as is" basis, (ii) use of the kitchen may require Department of Health licenses and Fire Marshall clearances for which Sub-Licensee would be solely responsible, (iii) Sub-Licensee is solely responsible for cleaning, maintenance, and repair of the kitchen and for any work or upgrades that may be required to render the kitchen suitable for Sub-Licensee's intended use.
- The main school yard and the play structure located on the main school yard (access to Sub-Licensors's preschool yard is not included)
- Ingress and egress to the Site and access to restrooms as set forth in Section 1.2

