



**CITY COUNCIL
AGENDA REPORT**

MEETING DATE: 08/18/2020
AGENDA HEADING: Consent Calendar

AGENDA TITLE:

Consideration and possible action to approve Amendment No. 2 extending the Lease Agreement with Portuguese Bend Cooperative Nursery School for use of the beach school property.

RECOMMENDED COUNCIL ACTION:

- (1) Approve Amendment No. 2 to the Lease Agreement thereby extending the term for use of the beach school property for an additional three years (September 1, 2020 to June 30, 2023) by the Portuguese Bend Cooperative Nursery School.

FISCAL IMPACT: N/A

Amount Budgeted:	N/A
Additional Appropriation:	N/A
Account Number(s):	N/A

ORIGINATED BY: Daniel Trautner, Deputy Director of Recreation and Parks *DT*

REVIEWED BY: Cory Linder, Director of Recreation and Parks *CL*

APPROVED BY: Ara Mhuranian, AICP, City Manager *AM*

ATTACHED SUPPORTING DOCUMENTS:

- A. Amendment No. 2 to the Portuguese Bend Cooperative Nursery School 7 Lease Agreement (page A-1)
- B. Amendment No. 1 to the Portuguese Bend Cooperative Nursery School Lease Agreement (page B-1)
- C. 2016-2017 Lease Agreement between the City and the Portuguese Bend Cooperative Nursery School (page C-1)

BACKGROUND AND DISCUSSION:

The Portuguese Bend Cooperative Nursery School has been in operation since 1953 when Mrs. Frank Vanderlip offered her beach cottage at Abalone Cove as a site for an informal school for her children and the children of a few neighbors. In 1975, after the County of Los Angeles purchased the property, the City of Rancho Palos Verdes leased the area from the County, and the school was allowed to continue its operations. In

1988, the City acquired the property from the County, and the school remained at this location.

The school utilizes a portion of the beach sand area enclosed by fencing near the county lifeguard tower, the adjacent roofed patio area, and the flagstone area. It includes a small building that houses restroom facilities, a kitchen, and craft areas ("Facilities"). The school is administered by a non-profit unincorporated association established in the 1950s to provide preschool education.

Approximately 30 children attend the school from September through June on Tuesdays, Wednesdays, and Thursdays during standard school hours of 8:30 a.m. to 12 p.m. The school is primarily operated and maintained by parents, with one paid director and one paid teacher. When the school is not in session, the outdoor playground is available to the public. During the summer, some holidays and weekends, county lifeguards also utilize the facilities.

In 2016, the school requested an extension of its prior year-to-year License Agreement, which expired on June 30, 2016. The City Attorney recommended using a Lease Agreement (Attachment C) to replace the previous License Agreement. The lease permitted the school to use the facilities for one additional school year from September 1, 2016, to June 30, 2017, for the standard school hours. The school could request additional use of the facilities for school-related activities, which is subject to the prior approval of the City's Director of Recreation and Parks. Either party could terminate the lease upon 90 days' prior written notice, or the City can terminate at any time if necessary for public safety. The lease was reviewed and approved by Staff, the City Attorney, and the school. The City Council approved the Portuguese Bend Cooperative Nursery School 2016-17 Lease Agreement on October 5, 2016.

The school requested an extension of the prior one-year lease, which expired on June 30, 2017. City Staff and the City Attorney recommended Amendment No. 1 to the Lease Agreement (Attachment B) extending the lease for an additional three-year term that terminated on June 30, 2020 which was approved by the City Council.

The school is now requesting Amendment No. 2 to extend the prior three-year lease, which expired on June 30, 2020. City Staff and the City Attorney are recommending Amendment No. 2 to the Lease Agreement (Attachment A) extending the lease for an additional three-year term that will terminate on June 30, 2023.

The second amendment has been reviewed and approved by Staff, the City Attorney, and the school. Due to the COVID-19 pandemic, the Amendment No. 2 has been modified to include the following language:

"Tenant's use of the Premises shall be performed in conformance with the State of California and the Los Angeles County Departments of Health orders and standards related to social distancing, the use of face coverings, cleaning, disinfecting, and other sanitation steps necessary to limit the spread of the novel corona virus known as COVID-19, as those standards may be adjusted from time-to-time."

The City will receive rent from the school for the use of the facilities at a rate of \$15 per hour, pursuant to the Department of Recreation and Parks fee schedule that was approved by the City Council. From time-to-time, the school has made minor improvements to the facility, with the City's permission. The school receives credit for maintenance services and improvements performed by its volunteers. The City must preapprove any work and the City will review and approve the work upon completion. The school will receive a credit against rent for volunteer hours (at a rate of \$23 per hour plus out-of-pocket expenses) for City-approved maintenance work and improvements. However, the special credits may not exceed 50% of the total rent due to the City. For example, if the school uses the facility for 400 hours at \$15/hour, then \$6,000 in rent is due. Therefore, the school can receive a maximum credit of \$3,000 for City-approved volunteer time and out-of-pocket expenses. The City will receive a minimum of \$3,000 in annual rent.

The school is required to deliver to the City a monthly report summarizing the actual hours used by the school and a detailed summary of special credits. Since the amount of the rent will be relatively small and subject to special credits, the lease provides for the rent to be paid annually but in arrears.

ALTERNATIVES:

In addition to the Staff recommendation, the following alternative actions are available for the City Council's consideration:

1. Amend the Lease Agreement with the school for a different term.
2. Do not amend the Lease Agreement with the school thereby terminating the agreement and future operations of the school.
3. Take other action, as deemed appropriate.

AMENDMENT NO. 2
TO LEASE AGREEMENT

THIS AMENDMENT TO THE LEASE AGREEMENT (“Amendment No. 2”) by and between the **CITY OF RANCHO PALOS VERDES** (“Landlord”) and **PORTUGUESE BEND NURSERY SCHOOL**, a California non-profit corporation (“Tenant”) is effective as of August 18, 2020.

RECITALS

- A. Landlord and Tenant previously entered into that Lease Agreement dated September 1, 2016, for the Tenant’s limited right to use that certain real property commonly known as “Abalone Cove Beach” identified as 5970 Palos Verdes Drive South in the Rancho Palos Verdes, Los Angeles County, State of California (“Agreement”).
- B. Landlord and Tenant entered into an amendment to the Original Lease on September 6, 2017, in order to increase the Term of the Agreement until June 30, 2020 (“Amendment No. 1”).
- C. Landlord and Tenant now desire to amend the Agreement to further extend the Term of the Agreement until June 30, 2023.

TERMS

- 1. **Contract Changes.** The Agreement is amended as provided herein.
 - A. Section 3.1, Term, is hereby amended to state as follows:

“Term. The term of this Lease (“Term”) shall commence on September 1, 2016 (“Commencement Date”) and terminate on June 30, 2023 (“Termination Date”), unless sooner terminated pursuant to the terms of this Lease.”
 - B. Section 6(p) is hereby added to the agreement as follows:

“Tenant’s use of the Premises shall be performed in conformance with the State of California and the Los Angeles County Departments of Health orders and standards related to social distancing, the use of face coverings, cleaning, disinfecting, and other sanitation steps necessary to limit the spread of the novel corona virus known as COVID-19, as those standards may be adjusted from time-to-time.”
- 2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 2, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 2, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No. 2 to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** Landlord and Tenant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Tenant represents and warrants to Landlord that, as of the date of this Amendment No. 2, Landlord is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

Landlord represents and warrants to Tenant that, as of the date of this Amendment No. 2, Tenant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Amendment No. 2 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

LANDLORD:

CITY OF RANCHO PALOS VERDES, a
municipal corporation

John Cruikshank, Mayor

ATTEST:

Emily Colborn, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

William W. Wynder, City Attorney

TENANT:

PORTUGUESE BEND NURSERY
SCHOOL, a California non-profit
corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

Address: _____

Two corporate officer signatures required when Tenant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. TENANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐

INDIVIDUAL

☐

CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

NUMBER OF PAGES

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐

INDIVIDUAL

☐

CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

NUMBER OF PAGES

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER _____

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement (this "**Amendment**") is made and entered into on this 5th day of September, 2017 ("**Amendment Date**") by and between the CITY OF RANCHO PALOS VERDES, a California municipal corporation ("**Landlord**") and PORTUGUESE BEND NURSERY SCHOOL, a California non-profit corporation ("**Tenant**").

RECITALS

- A. Landlord and Tenant previously entered into that Lease Agreement dated September 1, 2016, for the Tenant's limited right to use that certain real property commonly known as "Abalone Cove Beach" identified as 5970 Palos Verdes Drive South in the Rancho Palos Verdes, Los Angeles County, State of California ("**Original Lease**").
- B. The parties desire to amend the Original Lease as set forth below.

NOW, THEREFORE, for valuable consideration the sufficiency of which is hereby acknowledged the parties agree as follows:

1. **EFFECTIVE DATE.** This Amendment shall be effective as of the Amendment Date.
2. **TERM AMENDMENT.** Section 3.1 is amended to extend the Termination Date to June 30, 2020.
3. **FULL FORCE AND EFFECT.** Except as modified by this Amendment, the Original Lease shall remain in full force and effect. This Amendment terminates and supersedes all prior understandings, discussions or agreements on the subject matter in this Amendment.
4. **REPRESENTATIONS.** The person executing this Amendment on behalf of Tenant is duly authorized to execute and deliver this Amendment on behalf of Tenant in accordance with a duly adopted resolution of the Board of Directors, and this Amendment is binding on Tenant in accordance with its terms. Tenant represents and warrants to Landlord that entering this Amendment does not violate any provisions of any other agreement to which Tenant is bound.
5. **COUNTERPART EXECUTION.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease Agreement as of the Amendment Date.

LANDLORD:

CITY OF RANCHO PALOS VERDES,
a municipal corporation

By: 

Brian Campbell, Mayor

ATTEST: 

Emily Colborn, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: 

David Aleshire,
City Attorney

TENANT:

**PORTUGUESE BEND NURSERY
SCHOOL,** a California non-profit
corporation

By: 

Sandy Holderman, Director

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made as of September 1, 2016 ("**Effective Date**") by and between the City of Rancho Palos Verdes, a municipal corporation ("**Landlord**") and the Portuguese Bend Nursery School, a California non-profit association ("**Tenant**").

RECITALS:

- A. Landlord owns and controls that certain real property commonly known as Abalone Cove Beach and commonly identified as 5970 Palos Verdes Dr S, Rancho Palos Verdes, CA 90275 ("**Beach**").
- B. Tenant operates a non-profit parent participation nursery school.
- C. Landlord and Tenant have previously entered into that certain License Agreement dated by Landlord on September 16, 2015 for the limited use of the certain areas and facilities on the Beach ("**License Agreement**") which terminated on June 30, 2016 and is of no current force or effect.
- D. The parties desire to enter into an agreement for Tenant's use of the Beach area as set forth herein.

NOW, THEREFORE, the parties agree as follows.

AGREEMENT

- 1. **LEASE.** Upon the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord the exclusive right to use the Premises (as defined in Section 2) from 9 a.m. to 12 noon on Tuesdays, Wednesdays, and Thursdays only ("**Regular Hours**"). In addition to Regular Hours, Tenant may use the Premises from time to time for school related events upon written request to and written approval by, the Director of Recreation and Parks, or his/her designee ("**RP Director**") on behalf of Landlord ("**Additional Hours**").
- 2. **PREMISES.**
 - 2.1. **Premises.** As used herein, the term "**Premises**" shall mean that portion of the Beach just east of the lifeguard station, commonly described as the playground area, consisting of two (2) small sheds, a fenced area, and storage, restroom and kitchen facilities within the adjacent permanent structure as depicted on Exhibit A attached hereto and incorporated herein by reference.
 - 2.2. **Right to Temporarily Relocate.** Upon notice from Landlord that certain improvements are required on or near the Premises ("**Improvements**"), Tenant shall temporarily relocate within ten (10) days of Landlord's notice until the Improvements are completed. Upon completion of the Improvements, Landlord shall notify Tenant which may commence to use the Premises.
- 3. **TERM; EARLY TERMINATION; SUSPENSION.**
 - 3.1. **Term.** The term of this Lease ("**Term**") shall commence on September 1, 2016 ("**Commencement Date**") and terminate on June 30, 2017 ("**Termination Date**"), unless sooner terminated pursuant to the terms of this Lease.

- 3.2. **Early Termination.** Either party may terminate this Lease with or without cause upon ninety (90) days advance written notice to the other party. Upon Tenant's Default (as defined in Section 8.1) or if Landlord determines that the continued operation of Tenant at the Premises poses a health or safety risk to the Participants (as defined in Section 5.2), Landlord may immediately terminate this Lease upon written notice to Tenant.
- 3.3. **Right to Immediately Suspend Lease.** In the event that an authorized representative of Landlord finds that the activities being held on the Premises endanger the health and/or safety of persons on or near the Premises, or in the event that Landlord determines that there is a potential emergency or any other risk to the Participants, Landlord may notify Tenant to cease the activities or cease its use of the Premises, at Landlord's discretion, and Tenant shall immediately comply.
- 3.4. **Holding Over.** Any holding over after the expiration of the Term, with or without the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancellable upon thirty (30) days written notice.

4. RENT.

- 4.1. **Annual Rental.** For use of the Premises for both Regular Hours and Additional Hours during the Term, Tenant shall pay to Landlord the sum equal to Fifteen Dollars (\$15) per hour ("**Hourly Rate**") for actual use of the Premises ("**Annual Rent**"). Tenant is obligated to provide the Monthly Reports as specified in Section 4.3. The Annual Rent shall be calculated in accordance with Section 4.3. The Annual Rent shall be paid by Tenant within five (5) days of its receipt of the Approved Final Report. All rental to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand.
- 4.2. **Volunteer Credits.**
- (a) **Volunteer Hours.** Tenant may apply as a credit at the rate of Twenty-Three Dollars (\$23) per hour ("**Volunteer Credits**") against the Annual Rent for (a) service hours provided by volunteers for (i) Landlord approved work on the Premises, (ii) regular maintenance service, and (b) out-of-pocket expenses incurred by Tenant for such improvements approved by Landlord. To qualify for Volunteer Credits, Tenant shall provide to Landlord (i) reasonable evidence of the service hours, and (ii) documentation for out-of-pocket costs. All service work must be performed to Landlord's reasonable satisfaction. All volunteer hours and expense reimbursements must be submitted in writing and approved by the RP Director, before being credited on the Monthly Report. Notwithstanding the foregoing, the total amount of Volunteer Credits may not exceed fifty percent (50%) of the total Annual Rent due for the Term. Example: Tenant uses the facility for 200 hours x \$15 hour = \$3,000. The maximum amount of the Volunteer Credits may not exceed \$1,500 for the Term.
- (b) **Inclement Weather.** In the event that Tenant cannot use the Premises during Regular Hours due to inclement weather, Tenant shall not be obligated to pay the Hourly Rate for such time period ("**Rained-Out Credits**"). However, to qualify for such exemption, Tenant must report the Rained-Out Days on the Monthly Report as required in Section 4.3 specifying the specific days and hours.

- 4.3. Reports.** By the fifth (5th) day of the following month during the Term, Tenant shall provide a detailed summary in a form mutually agreeable to Tenant and Landlord executed by Tenant verifying the following information for both the preceding month and year-to-date: (i) total Regular Hours, (ii) hours for Special Events, (iii) any credit for Rained-Out Credits; and (iv) Volunteer Credits ("**Monthly Report**"). Tenant shall promptly provide any supporting documentation requested from time to time by Landlord. Landlord shall review the Monthly Report and provide any comments within a reasonable time. At the end of the Term, the final Monthly Report shall include the calculation of the Annual Rent after reduction for Rained-Out Credits and Volunteer Credits and be submitted to the RP Director who shall act on behalf of Landlord ("**Final Report**"). If the Final Report is not approved by Landlord, Landlord shall promptly notify Tenant in writing specifying the information in dispute. If Tenant and Landlord do not agree as to the information and calculation on the Final Report, the parties shall meet to resolve any amounts in dispute. Landlord shall notify Tenant in writing of its approval of the Final Report ("**Approved Final Report**"). Upon receipt of the Approved Final Report Tenant shall promptly pay the Annual Rent specified therein in accordance with Section 4.1.
- 4.4. Additional Rental.** All monetary obligations of Tenant under this Lease shall be additional rental and deemed "**Rent**" for purposes of this Lease.
- 4.5. Personal Property & Real Property Taxes.** Tenant shall pay any and all personal property taxes assessed against Tenant. To the extent that any *ad valorem* tax is imposed, or sought to be imposed, on the Premises (either in the form of a possessory interest tax or otherwise) as a result of Tenant's use of the Premises, Tenant shall pay same to Landlord. Any such amounts shall be paid to Landlord within ten (10) days after receipt of a copy of the tax bill from Landlord. Upon termination of this Lease, Tenant shall immediately pay to Landlord any final amount of Tenant's share of such taxes and assessments as determined by Landlord.

5. USE: DEFINITION OF PARTICIPANT.

- 5.1. Use.** Tenant shall only use the Premises for the operation of its parent participation daycare nursery school for Participants (as defined below) and no other purpose.
- 5.2. Definition of Participant.** As used in this Lease, the term "**Participant**" shall include, but is not limited to, any person, whether adult or child, who participates for any period of time in one or more of Tenant's activities consistent with Section 6.1 or is otherwise on the Premises in affiliation with Tenant for any reason. "**Participant**" includes a participant's parent or legal guardian if that participant is a minor.
- 5.3. Prohibited Uses.** Tenant shall not sell or permit to be kept, used, displayed or sold in or about the Premises (a) pornographic or sexually explicit books, magazines, literature, films or other printed material, sexual paraphernalia, or other material which would be considered lewd, obscene or licentious; (b) any article which may be prohibited by standard forms of fire insurance policies; (c) any controlled substances, narcotics, or the paraphernalia related to the same; or (d) alcoholic beverages. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other parties or injure or annoy them or use or allow or permit the Premises to be used for any improper, immoral, unlawful, or objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in or about the Premises, or commit or suffer to be committed any waste upon the Premises.

6. TENANT'S OBLIGATIONS. At Tenant's sole cost and expense, Tenant shall comply with all of the following covenants:

- A. Comply with and abide by all applicable rules and regulations adopted by Landlord.
- B. Comply with all applicable city, county, state and federal laws, and in the course thereof obtain and keep in effect all permits and Leases that are required to conduct the authorized activities on the Premises.
- C. Maintain the Premises occupied in a clean and sanitary condition at all times, and report to Maintenance Superintendent (310-544-5221) all vandalism and/or damage to the Premises by man-made or natural causes.
- D. Operate without interfering with the public use of the Premises.
- E. Promptly remove any person including any officer, employee, agent, volunteer or Participant who fails to conduct the authorized activities on the Premises in the manner described in this Lease.
- F. Not utilize or allow any of its officials, officers, employees, agents and volunteers to utilize any vehicle exceeding 6,000 pounds gross vehicle weight within any area other than the upper parking lot, so that such vehicles are precluded from the entire Abalone Cove Beach, including the lower parking area that is located adjacent to the Abalone Cove Beach.
- G. Not allow more than seven (7) vehicles belonging to Tenant or its officials, officers, employees, agents, volunteers or Participants to be parked in the "on beach" parking lot.
- H. Require that all vehicles used for the purpose of delivering or retrieving Participants shall be parked off the road in the cleared space provided at the ingress/egress gate.
- I. Keep the road and its access clear at all times for Landlord and emergency vehicles.
- J. Promptly repair or cause to be repaired any and all damaged property arising out of the conduct of Tenant's activities on the Premises.
- K. Upon termination of this Lease for any reason, restore the Premises to the condition that existed prior to the Commencement Date, other than as a result of ordinary wear and tear and damage or destruction from forces beyond the control of Tenant.
- L. Provide all security devices reasonably necessary for the protection of the fixtures and personal property used in the conduct of the authorized activities of Tenant from theft, burglary or vandalism, provided written approval for the installation thereof is first obtained from the RP Director.
- M. Not display advertising signs on or near the Premises other than signage displaying the name of Tenant.
- N. Employ an independent lifeguard any time Tenant activities are in or near the water or any time Tenant's Participants who are minors have reasonable access to the water.
- O. Permit the RP Director or other authorized representatives of Landlord to enter the Premises at any time.

7. ALTERATIONS AND IMPROVEMENTS. Tenant accepts the Premises in the state and condition as of the Commencement Date and waives any and all demands upon Landlord for alteration or improvement thereof. Tenant shall make no alterations or improvements to the

Premises without the written prior approval of the RP Director acting on behalf of Landlord. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligation incurred by Tenant or on behalf of Tenant. Tenant shall pay or cause to be paid any and all such claims or demands before any action is brought to enforce same against the Premises. Notwithstanding anything to the contrary in this Lease, any and all alterations, additions, or betterments to the Premises by Tenant shall become the property of Landlord upon termination of this Lease and Landlord shall have no obligation to reimburse or compensate Tenant for such improvements.

8. DEFAULT.

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

- (a) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice by Landlord to Tenant; or
- (b) A failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of fifteen (15) days after written notice by Landlord to Tenant; provided, however, that if the nature of the default involves such that more than fifteen (15) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within such fifteen (15) day period and thereafter diligently prosecutes said cure to completion.

Any notice required to be given by Landlord under this Section 8 shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure.

8.2. Remedies. In the event of any Default by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such Default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional rental hereunder. In the event of any such Default by Tenant, Landlord shall have the right (i) to continue this Lease in full force and effect and enforce all of its rights and remedies hereunder, including the right to recover the rental as it becomes due under this Lease, or (ii) Landlord shall have the right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

- (a) The worth at the time of award of the unpaid rental which had been earned at the time of termination;
- (b) The worth at the time of award of the amount by which the unpaid rental 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;
- (c) The worth at the time of award of the amount by which the unpaid rental 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; and

- (d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

The "**worth at the time of award**" of the amounts referred to in subparagraphs (i) and (ii) above shall be computed by allowing interest at three percent (3%) over the prime rate then being charged by Bank of America, N.A. but in no event greater than the maximum rate permitted by law. The worth at the time of award of the amount referred to in subparagraph (iii) above shall be 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%), but in no event greater than ten percent (10%). -

As used herein "**rental**" or "**rent**" shall be the fair market rental set forth in Section 1.8, including the other sums payable hereunder which are designated "**renf**", "**rental**" or "**additional rental**" and any other sums payable hereunder on a regular basis.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder, nor shall anything herein contained affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this Lease for personal injuries or property damage, and Tenant hereby agrees to indemnify and hold Landlord harmless from any such injuries and damages, including all attorney's fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery thereof, and in enforcing the terms and provisions of this indemnification against Tenant. .

Notwithstanding any of the foregoing, the Default of this Lease by Tenant shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so, including the prosecution of any unlawful detainer action against Tenant.

- 8.3. **No Waiver.** The waiver by Landlord of any term, covenant or condition shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition in this Lease. Acceptance of late payment of Rent by Landlord shall not be deemed a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease.
- 8.4. **Landlord's Default.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than fifteen (15) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty fifteen (15) days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within a fifteen (15) day period and thereafter diligently prosecutes the same to completion. Tenant shall have the right to terminate this Lease as a result of Landlord's default but not to any damages.

- 9: **INDEMNITY.** Tenant shall defend, indemnify and hold harmless Landlord and its officials, officers, employees, and agents free and harmless from all tort liability, including liability for claims, suits, actions, expenses or costs of any kind, whether actual, alleged or threatened, of any kind or nature) including actual attorneys' fees, experts' fees, or court costs incurred by Landlord, to the extent arising out of or in any way connected with, in whole or in part, the negligent or other wrongful or reckless acts, omissions or willful misconduct of Tenant or any of Tenant's officials, officers, employees, agents, volunteers and Participants in the use of the Premises, except for such loss or damage arising from the sole negligence or willful misconduct of Landlord.
10. **TENANT'S INSURANCE.** During the Term, Tenant shall at all times obtain, maintain, and keep in full force and effect, a policy or policies of general liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury, death, loss or property damage in relation to this Lease. The general liability insurance shall contain endorsements naming Landlord and its officers, officials, agents and employees as additional insureds.
- a. Tenant shall at all times during the term of this Lease obtain, maintain, and keep in full force and effect, a policy or policies of Automobile Liability Insurance as required by law.
 - b. Tenant shall at all times during the term of this Lease obtain, maintain, and keep in full force and effect Workers' Compensation insurance as required by the law.
 - c. All insurance policies shall be issued by an insurer admitted to do business in the State of California and rated in A.M. Best's Insurance Guide with a rating of A.VII or better.
 - d. All insurance policies shall provide that insurance coverage shall not be cancelled by the insurance carrier without thirty (30) days prior written notice to Landlord or ten (10) days if cancellation is due to nonpayment of premium. Tenant agrees that it will not cancel or reduce said insurance coverage.
 - e. Tenant agrees that if it does not keep the required insurance in full force and effect throughout the full term of this Lease, Landlord may immediately terminate this Lease.
 - f. Tenant shall file with Landlord prior to commencement of this Lease either certified copies of said policies or certificates of insurance executed by the company or companies issuing the policies, certifying that the policies are in force in the required amounts. At all times during the term of this Lease, Tenant shall maintain on file with Landlord Clerk the certified copies of the policies or the certificates of insurance showing that the aforesaid policies are in effect in the required amounts.
 - g. The insurance provided by Tenant shall be primary to any coverage available to Landlord. The insurance policies (other than Workers' Compensation) shall include provisions for waiver of subrogation.
11. **ASSIGNMENT AND SUBLETTING.** Tenant may not assign this Lease or sublease all or any portion of the Premises in any way without the prior written consent of Landlord which may be withheld in Landlord's sole discretion. Any attempted assignment or sublease without Landlord's prior written consent shall be null and void, and Tenant shall hold harmless, defend and indemnify Landlord and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from any unauthorized assignment or sublease.
12. **INDEPENDENT CONTRACTOR; NO PARTNERSHIP.** Tenant is and shall at all times remain, as to Landlord, a wholly independent contractor. Neither Landlord nor any of its agents shall have control over the conduct of Tenant or any of Tenant's employees, except as herein set forth. Tenant shall have no power to incur any debt, obligation, or liability on behalf of Landlord

or otherwise act on behalf of Landlord as an agent. Tenant shall not, at any time or in any manner, represent that it or any of its officials, officers, agents, employees, volunteers or Participants are in any manner agents or employees of Landlord. Tenant shall fully comply with all Workers' Compensation laws regarding Tenant and its employees. Tenant further agrees to indemnify and hold Landlord harmless from any failure of Tenant to comply with applicable Workers' Compensation laws. Furthermore, the relationship of the parties is that of Landlord and Tenant. Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's activities, programs, services, or charitable purposes or activities.

13. **NOTICE.** Except as otherwise required by law, any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person or (b) by certified mail, postage prepaid, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned.

Landlord: City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275
Attn: Daniel Trautner, Deputy Director, Recreation and
Parks Department

With copy to: City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275
Attn: City Attorney

Tenant: Portuguese Bend Nursery School
3420 Palos Verdes Drive West
Rancho Palos Verdes, CA 90275
Attn: Sandy Holderman, Director

With copy to: Portuguese Bend Nursery School
308 Lois Lane
San Pedro, CA 90732
Attn: Caitlin Blaney, President

Either party may change the address set forth herein by written notice sent as provided hereinabove. Any notice or demand given by certified mail, return receipt requested, shall be effective two (2) days after the mailing.

14. **NONDISCRIMINATION.** Tenant herein covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

15. **MISCELLANEOUS.**

- 15.1. Entry and Inspection.** Tenant shall permit Landlord and its agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same for compliance with applicable municipal or other laws, rule, and regulations, for the purpose of assuring that Tenant is complying with the terms and conditions of this Lease, for the purpose of confirming maintenance of the Premises as required by this Lease, and/or to evaluate the completion of work requested and undertaken by Tenant (including compliance with correction notices, if any), or for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs or any signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises.
- 15.2. Estoppel Certificate.** Upon written request of Landlord, Tenant agrees, within ten (10) days to deliver such estoppel certificate in the form reasonable required by Landlord.
- 15.3. Applicable Law.** California law shall apply to this Lease and Los Angeles County shall be the proper venue for any litigation.
- 15.4. Successors & Assigns.** All covenants shall, subject to the provisions as to assignment, apply to and bind the heirs, successors; executors, administrators and assigns of the parties.
- 15.5. Integrated Agreement.** This Lease represents the entire and integrated Lease between Landlord and Tenant and supersedes all prior negotiations, representations or leases, either written or oral, including but not limited to, the License Agreement.
- 15.6. Amendment.** This Lease may be modified or amended, or provisions only by a subsequent written document executed by both parties.
- 15.7. Interpretation.** This Lease shall be interpreted as if drafted by both parties.
- 15.8. Severability.** If any term or portion of this Lease is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Lease shall continue in full force and effect.
- 15.9. Authority.** Tenant represents that each individual executing this Lease on behalf of Tenant is duly authorized to execute and deliver this Lease on behalf of Tenant, in accordance with a duly adopted resolution of the Board of Directors, and that this Lease is binding upon Tenant in accordance with its terms. Tenant represents and warrants to Landlord that the entering into this Lease does not violate any provisions of any other agreement to which Tenant is bound.
- 15.10. Attorney's Fees.** In the event that any action or proceeding is brought by either party to enforce any term or provision of this Lease, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.
- 15.11. Waiver.** No delay or omission in the exercise of any right or remedy by a non-defaulting party shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and

shall not be a waiver of any other default concerning the same or any other provision of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Effective Date.

TENANT:


PORTUGUESE BEND NURSERY SCHOOL,
a California non-profit association

By
Sandy Holde

LANDLORD:

RANCHO PALOS VERDES,
a municipal corporation

ATTEST


Teresa Takaoka, Acting City Clerk

Dated: 11/10, 2016

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: 
David Aleshire, City Attorney

EXHIBIT A
DEPICTION OF PREMISES

