

LAS LOMITAS ELEMENTARY SCHOOL DISTRICT

FIRST AMENDMENT TO LEASE AGREEMENT

Ladera School

360 La Cuesta Drive

Portola Valley, California

FIRST AMENDMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (hereinafter referred to as "**Amendment**") is made on this 14 day of May, 2013, by and between **Las Lomas Elementary School District**, a subdivision of the State of California, (hereinafter referred to as "**Landlord**"); and **Woodland School**, a California corporation, (hereinafter referred to as "**Tenant**").

RECITALS:

- A. Landlord owns the real property located at 360 La Cuesta Drive, Portola Valley, CA, County of San Mateo, California, which is described on Exhibit A-1 to the Lease (the "**Ladera School Site**").
- B. Landlord and Tenant entered into that certain Lease Agreement dated June 19, 2012 (the "**Lease**"), pursuant to which Landlord leased to Tenant a portion of the Ladera School Site as more particularly depicted on Exhibit A-2 to the Lease and as legally described in Exhibit 1 hereto and incorporated herein (the "**Property**") for the purpose of operating a preschool through eighth grade school, including day care, after school community and athletic activities.
- C. Pursuant to Section 1A of the Lease, Tenant holds an irrevocable and exclusive license to use during School Hours, maintain and repair the "Blacktop" and the "Playing Fields" (collectively, the "**Play Areas**") shown outside the dashed lines on Exhibit A-2.
- D. Tenant desires to make and Landlord desires to approve certain improvements to the Ladera School Site, including a new school gymnasium, new classrooms and a new administrative building on the Property (the "**Tenant Improvements**") and a drop-off lane, parking stalls and new fire truck access/ pedestrian path on the perimeter of the Playing Fields (the "**New Access and Parking**") as depicted on Tenant's proposed site plan ("**Tenant's Plans**") attached hereto as Exhibit 2.
- E. Tenant is in the process of obtaining a loan to finance the Tenant Improvements and New Access and Parking, and in connection therewith, Tenant's lender requires that the Lease be amended to include additional mortgagee protections in accordance with Section 35D of the Lease.
- F. Simultaneously herewith, Landlord and Tenant have entered into (i) that certain Ladera Site Use Permit to facilitate Tenant's construction of the Tenant Improvements and New Access and Parking and permit installation of temporary portable classrooms on the Blacktop during such construction; and (ii) that certain Access and Parking Easement and Agreement granting Tenant the right to use, maintain and repair the New Access and Parking.
- G. Landlord and Tenant mutually agree to amend the Lease on the terms and conditions set forth in this Amendment to: (i) shift and clarify the maintenance obligations of the Play Areas and require certain changes to the District's regulations, application and agreement governing public use of the Play Areas; (ii) memorialize Landlord's approval of the Tenant Improvements and the New Access and Parking; and (iii) include additional mortgage protections in accordance with Section 35D of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows (capitalized terms used and not otherwise defined herein shall have the meanings given in the Lease):

1. **Maintenance Obligations.** Section 10.D of the Lease ("Maintenance, Repairs, Property Leased "As-Is") is hereby replace and superseded with the following:

D. Except as otherwise set forth in this Section, Tenant, at its cost, shall maintain the Play Areas in a good condition consistent with the condition of the Play Areas at the time of the Effective Date. Landlord shall have no maintenance or repair obligations with respect to the Play Areas except that the District shall be obligated to repair any damage caused by User Groups that directly contract with Landlord for use of the Play Areas. Furthermore, Landlord shall revise its form Facility Use Agreement and Application for Use of School District Facilities with respect to Las Lomitas to (i) require User Groups to indemnify and hold harmless Tenant with respect any loss, damage liability, cost or expense that may arise out of or be caused in anyway by such use or occupancy of the Play Areas and (ii) to name Tenant as additional insured on any policy User Groups are required to furnish to the District pursuant to Administrative Regulation 1330 ("AR 1330"). Further, Landlord shall revise AR 1330 to include language authorizing the District (i) to ban User Groups from future use of the Play Areas should User Groups fail to comply with the rules set forth in AR 1330; (ii) to ban User Groups from future use of the Play Areas at the request of Tenant accompanied by documentation that such User Groups violated the rules set forth in AR 1330. Tenant hereby expressly waives the provisions of Subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of Landlord as provided in Section 1942 of said Civil Code.

2. **Landlord Approval of Tenant Plans.** Pursuant to Section 11C of the Lease, Landlord hereby approves Tenant's Plans for construction of the Tenant Improvements on the Property and construction of the New Access and Parking on the Play Areas, as depicted on Exhibit 2.

A. Upon completion, the Tenant Improvements shall become part of the Property pursuant to Section 11D(4) of the Lease and shall be subject to the Lease provisions applicable to the Property. All insurance policies covering the Property set forth in Section 8 of the Lease shall be updated to reflect coverage of the Tenant Improvements.

B. Upon completion, the New Access and Parking shall become part of the Play Areas as defined in Section 1A of the Lease and subject to the Lease provisions applicable to the Play Areas except as otherwise set forth in this Amendment and in the Grant Access and Parking Easement and Agreement.

3. **Additional Mortgage Provisions.** Section 35.5 is added to the Lease as follows:

35.5 **Deed Of Trust On Tenant's Interest**

A. Tenant's Right To Leasehold Deed Of Trust. Landlord consents and agrees to Tenant's assignment and deed of trust and pledge of the Lease in accordance with a leasehold deed of trust (the "Deed of Trust") executed by Tenant for the benefit of a lender of the loan (the "Lender" or "Beneficiary") or other evidence of indebtedness

relating to a loan agreement among Tenant and any other party or assignee thereto, and any refunding of such loan or evidence of indebtedness (collectively the "Loan").

B. **Notice to Lender.** All notices required by this Lease to be sent to the Beneficiary shall be sent to addresses that Tenant shall identify to Landlord in writing at the time of funding of the Loan.

C. **Assignment Not Breach.** The execution of the Deed of Trust and any entry or foreclosure and sale by the Beneficiary will not constitute a breach of any provision in the Lease, including the covenant against assignment (Section 21). A lessee of the leasehold estate through foreclosure or deed in lieu thereof or through bankruptcy, sale, or other process related to enforcement of the Deed of Trust and any person or entity acquiring such leasehold estate directly or indirectly through such lessee, has the right to freely sell, sublet, and assign the leasehold, subject to the approval of Landlord by its Board of Trustees, which approval shall not be unreasonably withheld and as long as the lessee or assignee agrees in writing to comply with all Lease terms and the provisions of this Section 35.5 are satisfied.

D. **Mortgagee Protection Provisions.** During the term of the Loan, the provisions of this Section shall apply.

(1) **Notice Of Default.** Landlord, upon delivering Tenant with any notice of default under the provisions of Article 12 of this Lease, shall also send a copy of such notice to Beneficiary, at the address provided for in Section 35.5(B).

(2) **Remedy Of Payment Defaults By Beneficiary.** In the event Tenant is in default in the payment of any Monthly Rent or other money owed to Landlord under this Lease, the Beneficiary shall have the right, but not the obligation, to remedy such default within thirty calendar (30) days after the period in which Tenant has the right to cure, and Landlord agrees to accept such performance as if the same had been made by Tenant. To take advantage of such cure right, the Beneficiary must notify Landlord, in writing, before the end of the period in which Tenant has the right to cure, of its intent to remedy the default.

(3) **Stay Of Default.** For the purposes of this Section, no Event of Default shall be deemed to exist under the Lease with respect to the performance of work required to be performed, or of acts to be done (excluding payment of Monthly Rent and other amounts which is governed by (D)(2) above), or of conditions to be remedied, if the Beneficiary commences, in good faith, within the time this Lease requires Tenant to act, to perform the work or do the act or remedy the condition, and continues to prosecute the work to completion with diligence and continuity, subject to the time limitations set forth in Section 14 of the Lease.

(4) **Defaults Other Than Payment Defaults.** Anything in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default other than an Event of Default due to a default in the payment of money as provided in paragraph (D)(2) above, Landlord shall take no action to effect a termination of the Lease without first giving to Beneficiary written notice stating (a) its intent to terminate the Lease; (b) the Event of Default that has occurred; and (c) a reasonable time thereafter within which

either to obtain possession of the Property (including possession by a receiver), or to institute, prosecute, and complete foreclosure proceedings or otherwise acquire Tenant's interest under the Lease with diligence; provided, however, the following conditions are duly and timely fulfilled: (i) the Beneficiary shall, within 30 days after Tenant's failure to timely cure such default specified in the written notice of default delivered to Tenant and Beneficiary pursuant to Sections 14(A)(2) and 35.5(D)(1), give written notice to Landlord of its intention to institute foreclosure proceedings and at the time of giving such notice of intention, the Beneficiary shall pay to Landlord any and all Monthly Rent payments then due and owing; (ii) the Beneficiary, after giving notice of intention to foreclose and paying such outstanding Monthly Rent, shall commence as soon as reasonably possible a foreclosure action and shall prosecute that action through foreclosure sale in good faith and with due diligence; (iii) the Beneficiary shall timely pay any rent or other payment coming due after receiving the Landlord's written notice of intention to terminate the Lease; and (iv) the Beneficiary shall not be obligated to continue the foreclosure proceedings after the defaults giving rise to the notice of intention to terminate the Lease are cured.

(5) Assumption By Assignee. Subject to the approval of Landlord's Board of Trustees, which shall not be unreasonably withheld, a party that is the successful bidder at a foreclosure sale under the Deed of Trust shall be entitled to become the lessee of the Property and acquire any and all interest in the Lease pursuant to such foreclosure sale, provided that such party shall deliver to Landlord an assumption agreement (an "Assumption Agreement"), under which such party assumes the Lease by covenanting to observe and perform all of the terms and covenants of the Lease on Tenant's part to be kept, observed, and performed. Any party assuming the Lease may, subject to the approval of Landlord's Board of Trustees, which shall not be unreasonably withheld, assign this Lease or its interest in the Lease if the new assignee executes and delivers to Landlord an Assumption Agreement. The assigning party shall, upon the new assignee executing and delivering an Assumption Agreement, be released from any and all liabilities and obligations as lessee under the Lease that accrued after the assignment, but the assigning party shall not be released from any liability or obligations that accrued before the assignment's effective date.

(6) Right To New Lease Upon Termination Of The Lease. In the event the Lease terminates for any reason before the expiration of the Term, Landlord shall serve upon the Beneficiary written notice that the Lease has been terminated together with a statement of any and all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, under the Lease then known to Landlord. The Beneficiary shall then have the option to enter into a new lease with Landlord upon the same terms as this Lease, including the limitation on assignment pursuant to Section 21.

(7) Notice To Beneficiary. Any notice or other communication that Landlord shall desire or is required to give to or serve upon the Beneficiary shall be in writing and shall be served by certified mail, return receipt requested, addressed to the Beneficiary at its address in Section 35.5(B) or at such other address designated by Tenant or by the Beneficiary by notice in writing given to Landlord. Landlord will

provide copies of each notice given under this Section to those parties Tenant designates in writing to Landlord.

(8) Lease Modification Or Cancellation. No agreement between Landlord and Tenant amending, modifying, canceling, or surrendering the Lease shall be effective without the prior written consent of the Beneficiary, if any, which such consent shall not be unreasonably withheld, conditioned or delayed.

(9) Landlord's Estoppel Certificate. If the Beneficiary sends written notice to Landlord requesting an estoppel certificate, then within 15 days after receiving the request, Landlord shall deliver to the Beneficiary an estoppel certificate in accordance with Section 35(B), which in addition to the statements set forth in Section 35.5(B) states that there are no set-offs or defenses to the enforcement of the Lease by Tenant.

(10) Insurance. Each and every property insurance policy the Lease requires be maintained with respect to the Buildings, regardless of whether obtained and maintained by Landlord or Tenant, shall contain a standard mortgagee clause naming the Beneficiary. The Beneficiary shall have the right to participate in any settlement and/or adjustment of loss with the insurer under any such one or more insurance policies for claims in excess of \$25,000.

4. General

A. The captions and section headings used in this Amendment are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Lease.

B. All capitalized terms used herein shall have the meaning set forth in the Lease.

C. Time is of the essence for the performance of each term, covenant and condition of this Amendment.

D. In case any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Amendment, but this Amendment shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

E. This Amendment shall be construed and enforced in accordance with the laws of the State of California.

F. If Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Tenant hereunder.

G. The Lease shall remain in full force and effect. In the event of any conflict between the Lease and this Amendment, this Amendment shall control.

H. This Amendment does not confer upon any person or entity other than the parties hereto any right or interest, including without limitation any right to enforce any provisions of the Lease or this Amendment

I. This Amendment may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one instrument.

All other terms and conditions in the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment, through their respective officers or representatives, duly authorized, as of the day and year shown below.

LAS LOMITAS SCHOOL DISTRICT,

a subdivision of the State of California

By: 

Name: Lisa CESARIO

Title: Supt.

Date: 5-14-13

Approved as to Form: 
Legal Counsel to Landlord

WOODLAND SCHOOL,

a California 501 (c) 3 corporation

By: 

Name: John Ora

Title: Head of School

Date: 5/14/13

EXHIBIT 1

[LEGAL DESCRIPTION OF PROPERTY]

Exhibit B

(Legal description of Leased Property)

Beginning at the most Easterly corner of Lot 169 as said lot is depicted upon that certain map entitled "Tract No. 631 Ladera, Unit No. 2", a copy of which map was filed in the Office of the Recorder of San Mateo County on September 8, 1950 in Book 32 of Maps at Pages 14 and 15; thence running from said point of beginning along the Northeasterly line of said Tract No. 631, North $70^{\circ} 09' 11''$ West 233.78 feet and North $57^{\circ} 48' 50''$ West 272.00 feet; thence leaving the Northeasterly line of said tract North $17^{\circ} 01' 40''$ East 282.00 feet; thence South $72^{\circ} 57' 01''$ East 135.00 feet; thence South $17^{\circ} 01' 40''$ West 64.00 feet; thence North $72^{\circ} 58' 20''$ East 116.00 feet; thence North $17^{\circ} 01' 40''$ East 12.00 feet; thence South $72^{\circ} 58' 20''$ East 318.25 feet; thence North $60^{\circ} 40' 05''$ East 87.67 feet to a point on the westerly right of way line of La Cuesta Drive. Thence 237.25 feet along a curve of said right of way line with a radius of 222.00 feet, central angle of $61^{\circ} 13' 50''$ to a point of tangency. Thence South $39^{\circ} 00' 00''$ West 135.18 feet; Thence 16.58 feet along a curve of said right of way line with a radius of 228.00 feet, central angle of $04^{\circ} 10' 00''$ to the intersection of the right of way line and the Northeasterly corner of Lot 171 of Tract No. 631; thence leaving said right of way line, and continuing along the Northeasterly line of said tract South $78^{\circ} 52' 00''$ West 112.18 feet to the Northeasterly corner of Lot 169 and the Point of Beginning, containing approximately 4.57 +/- acres.

EXHIBIT 2

[SITE PLAN WITH BOUNDARY OVERLAY]