

GROUND LEASE

EMPLOYMENT AND HUMAN SERVICES
3103 WILLOW PASS ROAD
BAY POINT, CALIFORNIA

This ground lease (“Ground Lease”) is dated _____ and is between Ambrose Recreation and Park District, a special district existing under the laws of the State of California (“**Lessor**”) and the County of Contra Costa, a political subdivision of the State of California (“**County**”).

Recitals

- A. Lessor is the owner of the real property located at 3103 Willow Pass Road in Bay Point, California (the “**Premises**”). The Premises consists of approximately .32 acres of land.
- B. Lessor and County are parties to that certain ground lease dated August 15, 2000 (the “**Original Lease**”), under which the County leases the Premises. Under the terms of the Original Lease, the County placed a County-owned modular building (the “**Building**”) on the Premises and operates a pre-kindergarten, childcare program thereon.
- C. Lessor and County desire to replace the Original Lease with this Ground Lease. Upon the commencement of this Ground Lease, the Original Lease will terminate and be of no further force or effect. County will continue to use the Premises for a pre-kindergarten, child-care program.

The parties therefore agree as follows:

Agreement

- 1. Lease of Premises. In consideration of the rents and subject to the terms herein set forth, Lessor hereby leases to County and County hereby leases from Lessor, the Premises.
- 2. Term. The “**Term**” of this lease is comprised of an Initial Term and, at County’s election, a Renewal Term, each as defined below.
 - a. Initial Term. The “**Initial Term**” is ten (10) years, commencing on August 1, 2021 (the “**Commencement Date**”) and ending July 31, 2031.
 - b. Renewal Term. County has one (1) option to renew this Ground lease for a term of ten (10) years (the “**Renewal Term**”) upon all the terms and conditions set forth herein.
 - i. County will provide Lessor with written notice of its election to renew this Ground Lease thirty (30) days prior to the end of the Initial Term.

- ii. However, if County fails to provide such notice, its right to renew this Ground Lease will not expire until fifteen (15) working days after County’s receipt of Lessor’s written demand that County exercise or forfeit the option to renew.
 - iii. Upon the commencement of the Renewal Term, all references to the Term of this Ground Lease will be deemed to mean the Term as extended pursuant to this Section.
3. Rent. County shall pay rent (“**Rent**”) to Lessor annually in advance beginning on the Commencement Date. Rent for any fraction of a year will be prorated and computed on a monthly basis with each month’s rent equal to one-twelfth (1/12) of the annual rent for that year. Rent is payable on or before December 1 each year during the Initial Term and, if applicable, the Renewal Term, in the amounts set forth below:

c. Initial Term.

<u>Year</u>	<u>Annual Rent</u>
August 1, 2021 – July 31, 2022	\$2,000
August 1, 2022 – July 31, 2023	\$2,060
August 1, 2023 – July 31, 2024	\$2,122
August 1, 2024 – July 31, 2025	\$2,186
August 1, 2025 – July 31, 2026	\$2,252
August 1, 2026 – July 31, 2027	\$2,320
August 1, 2027 – July 31, 2028	\$2,390
August 1, 2028 – July 31, 2029	\$2,462
August 1, 2029 – July 31, 2030	\$2,536
August 1, 2030 – July 31, 2031	\$2,692

d. Renewal Term.

<u>Year</u>	<u>Annual Rent</u>
August 1, 2031 – July 31, 2032	\$2,773
August 1, 2032 – July 31, 2033	\$2,857
August 1, 2033 – July 31, 2034	\$2,943
August 1, 2034 – July 31, 2035	\$3,032
August 1, 2035 – July 31, 2036	\$3,123
August 1, 2036 – July 31, 2037	\$3,217
August 1, 2037 – July 31, 2038	\$3,314
August 1, 2038 – July 31, 2039	\$3,414
August 1, 2039 – July 31, 2040	\$3,517
August 1, 2040 – July 31, 2041	\$3,623

4. Use. County may use the Premises for the purpose of operating a pre-kindergarten, child-care program (“Program”) and conducting various functions of County and any other purpose permitted by law.
5. Obligation to Pay Utilities. Lessor shall pay annual sewer service charges. County will reimburse Lessor for water usage as measured by the water meter. County shall pay for all gas, electric, and refuse collection services provided to the Premises.
6. Maintenance and Repairs.
 - a. Parking; Exterior Lighting; Landscaping. County shall maintain the Building, parking lot, exterior lighting system, landscaping and sprinkler system in good order, condition and repair.
 - b. Services by Lessor. If County determines that the Premises are in need of maintenance, construction, remodeling or similar service that is beyond Lessor’s responsibilities under this Ground Lease, at County’s request, Lessor shall perform such service at County’s expense. In performing the service, Lessor shall consult with County and use either licensed insured contractors or employees of Lessor. Lessor shall obtain County’s prior written approval of the scope, terms, and cost of any contracts; however, such County approval may not be unreasonably withheld or delayed or otherwise be inconsistent with Lessor’s procurement requirements or State law.
7. Quiet Enjoyment. Provided County is in compliance with the material terms of this Ground Lease, Lessor shall warrant and defend County in the quiet enjoyment and possession of the Premises during the Term.
8. Subordination, Non-Disturbance and Attornment. If at any time Lessor has a loan that is secured by a lien of a mortgage or deed of trust encumbering the Building, Lessor shall cause the lender(s) holding such lien to execute and deliver to County a Subordination, Non-Disturbance and Attornment Agreement that is in substantial conformity with Exhibit B hereto.
9. Assignment and Sublease. County has the right, with Lessor’s prior written approval, which shall not be unreasonably withheld, delayed or conditioned, to assign this Ground Lease or to sublease the Premises or any part thereof at any time during the Term. Upon the assignment of this Ground Lease by County, and assignee’s acceptance of all of the terms and conditions herein, the County will have no further obligation under this Ground Lease.
10. Alterations; Fixtures and Signs. County may (i) make any lawful and proper minor alterations to the Premises and (ii) attach fixtures and non-commercial signs (“**County Fixtures**”) in or upon the Premises. Any County Fixtures will remain the property of County and may be removed from the Premises by County at any time during the Term. County is responsible for the cost of all alterations and County Fixtures. All alterations

and County Fixtures are subject to Lessor's prior written approval and must comply with existing code requirements.

11. Insurance.
 - a. Liability Insurance. Throughout the Term, County shall maintain in full force and effect, at its sole expense, a general self-insurance program covering bodily injury (including death), personal injury, and property damage, including loss of use. County shall provide Lessor with a letter of self-insurance affirming the existence of the aforementioned self-insurance program.
 - b. Self-Insurance Exclusion. County's self-insurance does not provide coverage for (i) areas to be maintained by Lessor under this lease, or (ii) negligence, willful misconduct, or other intentional act, error or omission of Lessor, its officers, agents, or employees.
12. Surrender of Premises. Upon expiration or termination of this Ground Lease, County shall surrender possession of the Premises to Lessor.
13. Removal/Sale of the Building. County shall retain ownership of the Building throughout the Term and, except as provided herein, following the expiration or termination of this Ground Lease. Upon the expiration or sooner termination of this Ground Lease, County may elect to (i) remove the Building at its cost and expense, or (ii) offer to sell the Building to Lessor for its fair market value. The fair market value of the Building is to be determined by appraisal. Ownership of the Building may not be transferred without the prior approval of the United States Department of Health and Human Services. If County elects to sell, and Lessor agrees to purchase, the Building, all conveyance costs are to be borne by Lessor. If County elects to remove, or Lessor declines to purchase, the Building, the County shall cause it to be removed from the Premises within six (6) months after the termination or expiration of this lease. County shall return the Premises to the condition it was in at the time the Original Lease commenced.
14. Personal Property. County shall retain ownership of its personal property at all times during the Term. Personal property includes, but is not limited to, playground equipment, outdoor storage sheds, and the contents of the Building. The County may remove any or all of its personal property from the Premises at any time.
15. Waste, Nuisance. County may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Premises or of adjacent properties.
16. Inspection. Lessor, or its proper representative or contractor, may enter the Premises by prior appointment between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted, to determine that (i) the Premises is being reasonably cared for, (ii) no waste is being made and that all actions affecting the Premises are done in the manner best calculated to preserve the Premises, and (iii) County is in compliance with the terms and

conditions of this Ground Lease. In an emergency, Lessor, or its designated representative or contractor, may enter the Premises without prior notice to County.

17. Perilous Conditions. If the County's Director of Public Works becomes aware of a perilous condition on the Premises that, in his or her opinion, substantially and significantly threatens the health and safety of County employees and/or invitees (a "**Perilous Condition**"), the Director of Public Works, or his or her designee, will immediately notify Lessor of the Perilous Condition and Lessor shall use best efforts to immediately eliminate the Perilous Condition.

Lessor shall immediately address any condition reasonably constituting an emergency, whether Lessor learns of the condition through County or otherwise.

If Lessor fails to address a Perilous Condition within twenty-four (24) hours after County's notice or to immediately address an emergency situation, County may attempt to resolve the Perilous Condition or emergency situation. Except as otherwise provided herein, Lessor shall reimburse County for any costs incurred by County in addressing the Perilous Condition or emergency situation promptly upon receipt of County's invoice, which shall include documentation supporting all costs listed in the invoice. County is responsible for the cost of eliminating any Perilous Condition that is caused or created by County, its employees, agents, contractors, Program Participants or other invitees.

18. Destruction. If damage occurs that causes a partial destruction of the Building during the Term from any cause and repairs, if repairs cannot be made in sixty (60) days, County will have the option to terminate the lease. This lease will terminate in the event of the total destruction of the Building.
19. Hazardous Material. Lessor warrants to County that Lessor does not have any knowledge of the presence of Hazardous Material (as defined below) or contamination of the Premises in violation of environmental laws. Lessor shall defend, save, protect and hold County harmless from any loss arising out of the presence of any Hazardous Material on the Premises that was not brought to the Premises by or at the request of County, its agents, contractors, invitees or employees. Lessor acknowledges and agrees that County has no obligation to clean up or remediate, or contribute to the cost of clean up or remediation, of any Hazardous Material unless such Hazardous Material is released, discharged or spilled on or about the Premises by County or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this lease.

"Hazardous Material" means any substance, material or waste, including lead based paint, asbestos and petroleum (including crude oil or any fraction thereof), that is or becomes designated as a hazardous substance, hazardous waste, hazardous material, toxic substance, or toxic material under any federal, state or local law, regulation, or ordinance.

20. Indemnification.

- a. County. County shall defend, indemnify and hold Lessor harmless from County's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors, or omissions of County, its officers, agents or employees in using the Premises pursuant to this Ground lease, or the County's performance under this Ground Lease, except to the extent caused or contributed to by the negligent acts, errors, or omissions of Lessor, its officers, agents, or employees.
- b. Lessor. Lessor shall defend, indemnify and hold County harmless from Lessor's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors or omissions of Lessor, its officers, agents, employees, with respect to the Premises, or Lessor's performance under this Ground Lease, or by the structural, mechanical or other failure of buildings owned or maintained by Lessor, except to the extent caused or contributed to by the negligent acts, errors, or omissions of County, its officers, agents, or employees.

21. Default.

The occurrence of any of the following events is a default under this lease:

- a. County.
 - i. County's failure to pay Rent within ten (10) business days after receipt of a written notice of failure (a "**Notice**") from Lessor to County; provided, however, that County will have additional time if its failure to pay Rent is due to circumstances beyond its reasonable control, including, without limitation, failure of the County's Board of Supervisors to adopt a budget. In no event may such additional time exceed seventy-five (75) days from receipt of a Notice.
 - ii. County's failure to comply with any other material term or provision of this Ground Lease if such failure is not remedied within thirty (30) days after receipt of a Notice from Lessor to County specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such 30 day period, then a default will not be deemed to occur until the occurrence of County's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety (90) days, provided County commences curing such default within 30 days and thereafter diligently proceeds to cure such default.
- b. Lessor. Lessor's failure to perform any obligation under this Ground Lease if such failure is not remedied within 30 days after receipt of a Notice from County to Lessor specifying the nature of the breach in reasonably sufficient detail; provided,

however, if such breach cannot reasonably be remedied within such 30 day period, then a default will not be deemed to occur until the occurrence of Lessor's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of 90 days, provided Lessor commences curing such breach within 30 days and thereafter diligently proceeds to cure such breach.

22. Remedies.

- a. Lessor. Upon the occurrence of a default by County, Lessor may, after giving County written notice of the default, and in accordance with due process of law, reenter and repossess the Premises and remove all persons and property from the Premises.
- b. County. Upon the occurrence of a default by Lessor, County may (i) terminate this lease by giving written notice to Lessor and quit the Premises without further cost or obligation to County or (ii) proceed to repair or correct the failure and, at County's option, either deduct the cost thereof from Rent due to Lessor, or invoice Lessor for the cost of repair, which invoice Lessor shall pay promptly upon receipt.

23. Notices. Any notice required or permitted under this lease shall be in writing and sent by overnight delivery service or registered or certified mail, postage prepaid and directed as follows:

To Lessor: The Ambrose Recreation and Park District
3105 Willow Pass Road
Bay Point, Ca 94565
Attn: General Manager

To County: Contra Costa County
Public Works Department
Attn: Principal Real Property Agent
40 Muir Drive
Martinez, CA 94553

Either party may at any time designate in writing a substitute address for that set forth above and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all notices will be deemed effective (i) the next business day, if sent by overnight courier, or (ii) three days after being deposited in the United States Postal system.

24. Successors and Assigns. This lease binds and inures to the benefit of the heirs, successors, and assigns of the parties hereto.

25. Holding Over. Any holding over after the Term of this lease is a tenancy from month to month and is subject to the terms of this lease.

26. Time is of the Essence. In fulfilling all terms and conditions of this lease, time is of the essence.
27. Governing Law. The laws of the State of California govern all matters arising out of this lease. The parties agree to venue in the Superior Court of Contra Costa County, California
28. Severability. In the event that any provision herein contained is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this lease will not in any way be affected or impaired.

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29. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this lease. All previous conversations, negotiations, and understandings are of no further force or effect. This lease is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. This lease may be modified only by a writing signed by both parties.

The parties are executing this lease on the date set forth in the introductory paragraph.

COUNTY OF CONTRA COSTA, a
political subdivision of the State of
California

AMBROSE RECREATION AND PARK
DISTRICT

By: _____
Brian M. Balbas
Director of Public Works

By: _____
Doug Long
General Manager

RECOMMENDED FOR APPROVAL:

By: _____
Jessica L. Dillingham
Principal Real Property Agent

By: _____
Stacey Sinclair
Senior Real Property Agent

APPROVED AS TO FORM
MARY ANN MCNETT MASON, COUNTY COUNSEL

By: _____
Kathleen M. Andrus
Deputy County Counsel

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