

LEASE AGREEMENT

BY AND BETWEEN

SOQUEL UNION ELEMENTARY SCHOOL DISTRICT,

a **Local Educational Agency (LEA)**

AS LANDLORD

and

THE CITY OF CAPITOLA,

a municipal corporation

AS TENANT

TABLE OF CONTENTS

	<u>PAGE</u>
1. DEMISE	2
2. PREMISES.....	2
2.1 <u>Premises</u>	2
2.2 <u>Possession</u>	2
3. TERM	2
4. BASE RENT.....	2
4.1 <u>Abatement</u>	2
4.2 <u>In-Kind Donation by Landlord</u>	2
5. USE; COMPLIANCE WITH LAWS.....	3
5.1 <u>Use</u>	3
5.2 <u>Compliance with Laws</u>	3
6. UTILITIES.....	3
7. PERSONAL PROPERTY AND POSSESSORY INTEREST TAXES	3
7.1 <u>Personal Property Taxes</u>	3
7.2 <u>Possessory Interest Taxes</u>	3
7.3 <u>Payment</u>	3
8. ALTERATIONS.....	3
8.1 <u>Landlord Consent</u>	3
8.2 <u>Alterations</u>	4
8.3 <u>Liens</u>	4
9. MAINTENANCE AND REPAIR OF PREMISES.....	4
9.1 <u>Maintenance and Repair by Tenant</u>	4
9.2 <u>Maintenance and Repair by Landlord</u>	4
10. ENVIRONMENTAL PROTECTION PROVISIONS	4
10.1 <u>Hazardous Materials</u>	4
10.2 <u>Reportable Uses Required Consent</u>	5
11. ASSIGNMENT AND SUBLETTING	5
12. INDEMNIFICATION AND WAIVER OF CLAIMS	5
12.1 <u>Tenant Indemnification</u>	5
12.2 <u>Waiver of Claims</u>	5

TABLE OF CONTENTS
(CONTINUED)

	<u>PAGE</u>
12.3 <u>Survival/No Impairment</u>	6
13. INSURANCE	6
13.1 <u>Tenant’s Insurance</u>	6
13.2 <u>Requirements For All Policies</u>	6
13.3 <u>Certificates of Insurance</u>	6
13.4 <u>Landlord’s Insurance</u>	6
14. DAMAGE OR DESTRUCTION	6
15. CONDEMNATION	7
16. DEFAULT	7
16.1 <u>Events of Default</u>	7
16.2 <u>Remedies</u>	8
16.3 <u>No Waiver</u>	8
16.4 <u>Waiver of Redemption, Reinstatement, or Restoration</u>	8
16.5 <u>Remedies Cumulative</u>	8
16.6 <u>Landlord’s Right to Perform Tenant’s Obligations</u>	9
16.7 <u>Severability</u>	9
17. LIMITATION OF LIABILITY	9
18. SURRENDER OF PREMISES	9
19. HOLDING OVER	9
20. NOTICE	9
21. MISCELLANEOUS	9
21.1 <u>Governing Law</u>	10
21.2 <u>Severability</u>	10
21.3 <u>Attorneys’ Fees</u>	10
21.4 <u>Force Majeure</u>	10
21.5 <u>Signs</u>	10
21.6 <u>Brokers</u>	10
21.7 <u>Access by Landlord</u>	10
21.8 <u>Article and Section Titles</u>	10
21.9 <u>Authority</u>	10

TABLE OF CONTENTS
(CONTINUED)

	<u>PAGE</u>
21.10 <u>Quiet Possession</u>	11
21.11 <u>Asbestos Notification for Commercial Property Constructed Before 1979</u>	11
21.12 <u>Lead Warning Statement</u>	11
21.13 <u>OFAC Certification</u>	11
21.14 <u>Certified Access Specialist Disclosure/Inspection by Certified Access Specialist</u>	11
21.15 <u>Time of the Essence</u>	11
21.16 <u>Entire Agreement</u>	11
21.17 <u>Counterparts</u>	11

INDEX OF EXHIBITS

A PREMISES

LEASE AGREEMENT

BASIC LEASE INFORMATION

<i>Lease Date:</i>	Dated as of June __, 2024 for reference purposes only	
<i>Landlord:</i>	Soquel Union Elementary School District	
<i>Landlord's Address:</i>	Soquel Union Elementary School District 620 Monterey Avenue Capitola, CA 95010 Attn: Superintendent	
<i>Tenant:</i>	City of Capitola	
<i>Tenant's Address:</i>	Capitola City Hall 420 Capitola Avenue Capitola, CA 95010 Attn: City Manager	
<i>Premises:</i>	Two (2) classrooms within the Building described below, including two (2) bathrooms, a fenced front yard and a fenced back yard, a janitorial/fire riser closet and an electrical panel, as outlined in red on <u>Exhibit A</u> attached hereto and incorporated herein by reference.	
<i>Building:</i>	Opal Cliffs School, 4510 Jade Street, Capitola, CA 95010	
<i>Length of Term:</i>	Eighteen (18) months	
<i>Commencement Date:</i>	July 1, 2024	
<i>Expiration Date:</i>	December 31, 2025	
<i>Base Rent:</i>	<i>Months</i>	
	1 - 18	\$1/month (“ Base Rent ”)
<i>Taxes and Utilities:</i>	Tenant shall pay all costs for Utilities (defined in <u>Article 6</u>) to the Premises. Tenant shall pay all Personal Property Taxes (defined in <u>Article 7</u>) and possessory interest taxes, if any, levied on or against the Premises or its personal property.	
<i>Permitted Use:</i>	Public recreation uses and uses ancillary to public recreation uses, including classes, offices, workshops, gatherings, community meetings, and other uses permitted by law.	
<i>Brokers:</i>	None	

LEASE AGREEMENT

This Lease Agreement is made and entered into by and between the City of Capitola, a municipal corporation (“**Tenant**”), and Soquel Union Elementary School District, a California _____ (“**Landlord**”). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the “**Lease**”.

1. **DEMISE.** In consideration for the Base Rent and Utilities payment payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Landlord does hereby lease to Tenant and Tenant does hereby hire and take from Landlord, the Premises described below, upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. **PREMISES.**

2.1 **Premises.** The Premises demised by this Lease are as specified in the Basic Lease Information. The Premises have the address and contain the classrooms and other spaces specified in the Basic Lease Information.

2.2 **Possession.** Tenant accepts the Premises in “AS IS” “WITH ALL FAULTS” condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations, provided that Tenant shall be permitted by Landlord to make the Bathroom Alterations, as described in Section 8.1.

3. **TERM.** The term of this Lease (“**Term**”) shall be for the period specified in the Basic Lease Information commencing on the Commencement Date. This Lease shall terminate at midnight on December 31, 2025 (“**Expiration Date**”), unless sooner terminated or extended as hereinafter provided. Notwithstanding the foregoing, this Lease may be terminated by Landlord upon delivery to Tenant of written notice stating that the Lease shall terminate prior to the Expiration Date but in no event less than ninety (90) days from the date of the notice.

4. **BASE RENT.** During the Term, Tenant shall pay the Base Rent described in the Basic Lease Information.

~~4.1 — **Abatement.** Notwithstanding the foregoing, all Base Rent for the entire Term of this Lease shall be abated by Landlord for a total abated sum during the Term of Forty Five Thousand and 00/100 (\$45,000.00) (“**Total Abated Rent**”).~~

~~4.2 — **In Kind Donation by Landlord.** In consideration of Landlord’s agreement to fully abate the Base Rent due from Tenant to Landlord under this Lease during the entire Term hereof, the Total Abated Rent shall be treated by Tenant as an in-kind donation by Landlord to Tenant’s fundraising campaign for the Treasure Cove Playground.~~

5. USE; COMPLIANCE WITH LAWS.

5.1 Use. The Premises shall be used for the Permitted Use (as specified in the Basic Lease Information). Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, Buildings or with respect to the suitability or fitness of either for the conduct Tenant's business or for any other purpose.

5.2 Compliance with Laws. Tenant shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "ADA"]) (collectively, "Laws") pertaining to Tenant's use and occupancy of the Premises and the conduct of its business. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant in the Building. Tenant shall not permit any objectionable odor to escape or be emitted from the Premises and shall ensure that the Premises remain free from infestation from rodents or insects.

6. **UTILITIES.** Tenant shall pay Landlord a fixed monthly amount of \$ 500 for all charges for water, sewer, storm water, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the Premises, together with all related installation or connection charges or deposits (collectively, "Utilities"). If during any month of the Term, Landlord reasonably determines that the cost of Tenant's monthly consumption of Utilities materially exceeds the fixed charge described above, then Landlord shall invoice Tenant for an additional charge, the amount to of which shall be reasonably determined by Landlord, which charge shall be due from Tenant to Landlord within thirty (30) days of Tenant's receipt of the applicable invoice.

7. PERSONAL PROPERTY AND POSSESSORY INTEREST TAXES.

7.1 Personal Property Taxes. Tenant shall pay all taxes levied or imposed against the Premises or Tenant's personal property or trade fixtures placed by Tenant in or about the Premises during the Term ("**Personal Property Taxes**").

7.2 Possessory Interest Taxes. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

7.3 Payment. Tenant shall pay the Personal Property Taxes and possessory interest taxes, if any, accordance with the instructions of the taxing entity.

8. ALTERATIONS.

8.1 Landlord Consent. Except as otherwise described below, Tenant shall not make any alterations, improvements, or additions ("**Alteration**") in or about the Premises or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord hereby agrees that,

without further advance approval of Landlord, Tenant shall be permitted, at its sole cost, to install internet to the Premises and to undertake alterations to the two (2) bathrooms in order to cause the bathrooms to be suitable for use by adults (“**Bathroom Alterations**”). The Bathroom Alterations shall include installing new adult size toilets, raising the bathroom sinks, potentially modifying the grab bars within the bathroom and such other items as may be required by applicable Laws.

8.2 Alterations. Any Alterations, including the Bathroom Alterations, to the Premises shall be at Tenant’s sole cost and expense, and made in compliance with all applicable Laws.

8.3 Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use in the Premises. Tenant shall not permit any mechanic liens, stop **payment** notices, or any other liens against the Premises, Building, Alterations, Bathroom Alterations or any of Tenant’s interests under this Lease for any labor or materials furnished to Tenant in connection with work performed on or about the Premises by or at the direction of Tenant.

9. MAINTENANCE AND REPAIR OF PREMISES.

9.1 Maintenance and Repair by Tenant.

(a) Tenant Maintenance. Tenant shall, at its sole cost and expense, maintain the interior of the Premises in good repair and in a neat and clean condition, including making all necessary repairs and replacements.

(b) Tenant Repair. Tenant shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the Building caused by Tenant or Tenant’s agents, employees, invitees, licensees, visitors or contractors.

9.2 Maintenance and Repair by Landlord. Landlord shall maintain in good repair the structural elements of the Building, including structural elements of exterior walls and foundations, provided such repairs are not necessitated by the actions of Tenant, Tenant’s invitees or anyone in the employ or control of Tenant. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932, and Sections 1941 and 1942 of the California Civil Code or any similar or successor Laws now or hereby in effect. Tenant shall promptly give Landlord written notice of the need for repair of the items for which Landlord is responsible. If Tenant or Tenant’s invitees or anyone in the employed or control of Tenant caused any damages necessitating such repair, then Tenant shall pay to Landlord the reasonable cost thereof upon demand. Except as otherwise expressly set forth in this Lease, Tenant waives any right to terminate this Lease by reason of any failure of Landlord to make repairs to the Premises or Building.

10. ENVIRONMENTAL PROTECTION PROVISIONS.

10.1 Hazardous Materials. “**Hazardous Materials**” shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including

wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the United States Government, including, but not limited to, substances defined as “hazardous substances,” “hazardous materials,” “toxic substances” or “hazardous wastes” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Premises are located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. “**Hazardous Materials Laws**” shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer’s instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

10.2 Reportable Uses Required Consent. Except with respect to typical cleaning products or other usual household solvents, Tenant hereby agrees that Tenant and Tenant’s officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Premises (collectively, “**Tenant Parties**”) shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or Building or transported to or from the Premises or Building without the express prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

11. **ASSIGNMENT AND SUBLETTING.** Tenant shall not voluntarily or by operation of law, (a) mortgage, pledge, hypothecate or encumber this Lease or any interest therein, or (b) assign or transfer this Lease or any interest herein, sublease the Premises or any part thereof or any right or privilege appurtenant thereto, or allow any other person (the employees and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, ~~which consent shall not be unreasonably withheld, conditioned or delayed.~~

12. **INDEMNIFICATION AND WAIVER OF CLAIMS.**

12.1 Tenant Indemnification. Tenant shall indemnify, defend and hold Landlord and Landlord Related Parties (defined in Section 12.2) harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys’ fees, costs and disbursements) (collectively referred to as “**Losses**”), arising from (a) the use of, or any activity done or permitted in or about the Premises (b) any activity done or permitted by Tenant or Tenant’s agents, contractors, invitees or licensees in or about the Building, and (c) any act, neglect, fault, willful misconduct of Tenant or Tenant’s agents, except to the extent such claims arise out of or relate to the active negligence or willful misconduct of Landlord. If any action or proceeding is brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant’s expense by counsel reasonably satisfactory to Landlord.

12.2 Waiver of Claims. Except in the event of its own active negligence or willful misconduct, Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord and its agents, representatives, officers, consultants, employees, Board of Trustees,

members of the Board of Trustees (“**Landlord Related Party**”) for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises or Building from any cause.

12.3 Survival/No Impairment. The obligations of Tenant under this Article 12 shall survive any termination of this Lease.

13. INSURANCE.

13.1 Tenant’s Insurance.

(a) Liability Insurance. Tenant shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence for bodily injury and property damage combined, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and product liability if a product is sold from the Premises. Each policy of liability insurance required by this Section shall: (i) provide that it is primary to and not contributing with, any policy of insurance carried by Landlord covering the same loss; (ii) name Landlord and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds in an Additional Insured Endorsement.

(b) Worker’s Compensation Insurance. Tenant shall, at Tenant’s expense, maintain in full force and effect during the Term of this Lease, worker’s compensation insurance with not less than the minimum limits required by law.

13.2 Requirements For All Policies. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Property is located. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal thereof and shall provide Landlord with at least thirty (30) days prior written notice of any cancellation or modification.

13.3 Certificates of Insurance. If requested by Landlord, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Article 13 is in force, accompanied by an endorsement(s) showing the required additional insureds that are reasonably satisfactory to Landlord.

13.4 Landlord’s Insurance. During the Term, Landlord shall keep in effect property insurance covering the Building and Premises in amounts not less than the full insurance replacement value thereof with customary limits and deductibles, together with such other types of insurance coverage typically maintained by commercial Landlords in the Santa Cruz County area.

14. DAMAGE OR DESTRUCTION. If at any time during the Term there is damage to the Premises which will require longer than three (3) months to repair, Landlord may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to Tenant within thirty (30) days after the date of occurrence of such damage.

15. CONDEMNATION. If the whole or if any material part of the Premises or Building is taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (“**Taking**”), and (a) such Taking renders the Premises or Building unsuitable, in Landlord’s reasonable opinion, for the purposes for which they were constructed; or (b) the Premises or Building cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Landlord may, at its option, terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking and any repairs by Landlord would be untenable (in Tenant’s reasonable opinion) for the conduct of Tenant’s business operations, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If only a part of the Premises is subject to a Taking and this Lease is not terminated, Landlord, with reasonable diligence, will restore the remaining portion of the Premises as nearly as practicable to the condition immediately prior to the Taking. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall have no claim against Landlord for the value of any expired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant’s relocation expenses, the value of Tenant’s fixture, equipment and personal property (specifically excluding components of the Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord, including, without limitation, fixtures and Alterations), or Tenant’s loss of business goodwill, provide that such award does not reduce any award otherwise allocable or payable to Landlord.

16. DEFAULT.

16.1 Events of Default. The occurrence of any of the following shall constitute a “**Default**” by Tenant:

(a) Tenant fails to make a payment of any sum or Utilities costs when due under this Lease, if payment in full is not received by Landlord within fifteen (15) days after written notice that it is past due.

(b) Tenant abandons the Premises as defined in Section 1951.3 of the California Civil Code.

(c) Tenant violates the restrictions on Transfer set forth in Article 11.

(d) Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors’ rights; all or substantially all of Tenant’s assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant

consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets.

(e) Tenant fails to perform or comply with any provision of this Lease other than those described in (a) through (d) above, and does not fully cure such failure within thirty (30) days after notice to Tenant or, if such failure cannot be cured within such thirty (30) day period, Tenant fails within such thirty (30)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible.

16.2 Remedies. Upon the occurrence of any Default under this Lease, Landlord shall have the right to terminate this Lease and Tenant's right to possession of the Premises. Tenant hereby specifically waives notice and demand for payment of any obligation under the Lease, and waives any and all other notices or demand requirements imposed by applicable Law. Upon such termination, Landlord may recover from Tenant an award of damages equal to the sum of the following:

(a) The actual, out-of-pocket, third party damages reasonably incurred by Landlord proximately caused by Tenant's failure to perform any of its obligations under this Lease, to the extent such damages are not recouped by Landlord from any proceeds of insurance or other recoveries;

(b) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, to the extent such damages are not recouped by Landlord from any proceeds of insurance or other recoveries; and

(c) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

16.3 No Waiver. The subsequent acceptance of any payment hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such sum. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

16.4 Waiver of Redemption, Reinstatement, or Restoration. Tenant hereby waives any and all rights conferred by Section 3275 of the Civil Code of California and by Sections 1174(c) and 1179 of the Code of Civil Procedure of California and any and all other laws and rules of law from time to time in effect during the Lease Term or thereafter providing that Tenant shall have any right to redeem, reinstate or restore this Lease following its termination as a result of Tenant's breach.

16.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable Law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

16.6 Landlord's Right to Perform Tenant's Obligations. If Tenant is in Default of any of its non-monetary obligations under this Lease, in addition to the other rights and remedies of Landlord provided herein, then Landlord may at Landlord's option, but without any obligation to do so and without further notice to Tenant, perform any such term, provision, covenant or condition or make any such payment and Landlord by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Tenant. If Landlord performs any of Tenant's obligations hereunder in accordance with this Section 16.6, the full amount of the costs and expense incurred or the payments so made or the amount of the loss so sustained shall be immediately be owed by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, the full amount thereof.

16.7 Severability. This Article 16 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

17. LIMITATION OF LIABILITY. Notwithstanding anything to the contrary contained in this Lease, the liability of Landlord (and of any successor landlord) shall be governed by applicable state and federal laws. Neither Landlord nor any Landlord Related Party shall be personally liable for any judgment or deficiency, and in no event shall Landlord or any Landlord Related Party be liable to Tenant for any lost profit, damage to or loss of business or a form of special, indirect or consequential damage.

18. SURRENDER OF PREMISES. At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's property from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted.

19. HOLDING OVER. If Tenant fails to surrender all or any part of the Premises at the termination of this Lease, occupancy of the Premises after termination shall be that of a tenancy at sufferance. Tenant's occupancy shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a per month basis with reduction for partial months during the holdover) equal to \$5,000 per month for the period immediately preceding the holdover. No holding over by Tenant shall operate to extend the Term. Any holding over by Tenant with the written consent of Landlord shall thereafter constitute a lease from month to month.

20. NOTICE. All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in the Basic Lease Information ("Notice Address"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

21. MISCELLANEOUS.

21.1 Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state.

21.2 Severability. If any section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

21.3 Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

21.4 Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances, extreme weather and other causes beyond the reasonable control of the performing party ("**Force Majeure**").

21.5 Signs. Tenant may install signage on the Building or on, in or about the Premises to identify use of the Premises for the Permitted Use. Tenant shall maintain any such signs installed on the Premises.

21.6 Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker. Each party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party.

21.7 Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the term of this Lease, for any reasonable purpose upon prior written notice to Tenant.

21.8 Article and Section Titles. The Article and Section titles use herein are not to be consider a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

21.9 Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant does hereby covenant and warrant that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in California, (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this Lease and to perform all Tenant's

obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so.

21.10 Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

21.11 Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of its age, the Building may contain asbestos-containing materials ("ACMs").

21.12 Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("LBP"). Landlord has no specific knowledge of the presence of lead-based paint in the Premises.

21.13 OFAC Certification. Tenant represents, warrants and covenants that Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

21.14 Certified Access Specialist Disclosure/Inspection by Certified Access Specialist. Landlord discloses that Landlord has not caused the Premises to undergo inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

21.15 Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

21.16 Entire Agreement. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

21.17 Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

City of Capitola,
a municipal corporation

By: _____
Jamie Goldstein
City Manager

Date: _____

LANDLORD:

Soquel Union Elementary Schol District,
a California _____

By: _____
Scott Turnbull
Superintendent

Date: _____

APPROVED AS TO FORM

By: _____
Samantha Zulter
City Attorney

Date: _____

EXHIBIT A
PREMISES

