

## LEASE AGREEMENT

THIS LEASE is entered into this 1st day of February, 2022 by and between the City of Tumwater, Washington, a Municipal Corporation (hereinafter "City") and Sequoia's Early Learning Center, LLC, a Washington corporation, whose address is 215 N 2<sup>nd</sup> Ave SW, Tumwater, WA 98512 (hereinafter "Tenant").

City is the owner in fee simple of a parcel of land located in the City legally described on the attached Exhibit A (the "Premises"). Tenant desires to lease space within the Premises as described below for the purpose of infant and child care.

In consideration of their mutual covenants, the parties agree as follows:

1. Leased Premises. City leases to Tenant and Tenant leases from City, upon the terms and conditions set forth in this Lease, a portion of the Premises as legally described in attached Exhibit A and identified on the floor plan attached as Exhibit B.

2. Term.

a. This Lease shall be for a Term of five (5) years and shall commence on the date of February 1, 2022 (the "Commencement Date") and shall end at 12:00 a.m. (midnight) on the fifth (5th) anniversary of the Commencement Date unless sooner terminated as provided elsewhere in this Lease.

b. This Lease may be renewed for two (2) additional five (5) year terms (the "Extended Terms") upon giving written notice to the City no more than six (6) months before and no later than three (3) months before the end of the current five (5) year term. The City may refuse to renew (i) in the event of breach of the Lease during the preceding term, or (ii) any other reason determined by the City in its reasonable discretion. Any such refusal shall be in writing and shall be sent to Tenant at least thirty (30) days prior to expiration of the then current five (5) year term.

3. Rent.

a. On the tenth day of each month, Tenant shall pay to City as rent Four Thousand Eight Hundred and 00/100 Dollars (\$4,800.00) ("Rent") per month. Rent for any fractional month at the beginning or at the end of the Term or Extended Term, if any, shall be prorated. Rent shall be payable to the City at 555 Israel Rd. SW, Tumwater, Washington 98501; Attention: Finance Director. Tenant shall pay the City a late payment charge equal to five percent (5%) of the amount due for any payment not

paid when due. Any amounts not paid when due shall also bear interest until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law.

b. The Rent shall be increased using the annual CIP-U from Seattle/Tacoma/Bremerton on the second and fourth year only throughout the Term of this Lease and Extended Terms (if any), except that the increase shall not exceed five percent (5%) in any one year. Each increase shall become effective January 1st of each calendar year.

c. Within fifteen (15) days of the Commencement Date, Tenant shall submit to the City a Security Deposit in an amount of Four Thousand Eight Hundred and no/100 Dollars (\$4,800.00), which shall be refunded at the termination of this Lease if Tenant is not in default of the Lease. In the event Tenant fails to pay Rent or other charges when due, cure periods considered, the City shall deduct such amount from the Security Deposit, and Tenant agrees to immediately refund to the City any such deduction from the Security Deposit. The Security Deposit shall be held by the City without liability for interest.

d. The Tenant shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement; including, but not limited to, Leasehold Excise Tax, currently at a rate of 12.84%.

e. The monthly rental rate shall include water and electric utilities. Tenant shall timely pay for all other costs, expenses, fees, services, and charges of all kinds for janitorial services and telephone, and for all other utilities used on the Premises so that the same shall not become a lien against the lease Premises. The Tenant is responsible for hiring its own janitorial service. If charges for any or all of such utility services are not capable of separate metering and are charged for the Building as a whole, Tenant agrees to pay, upon demand, Tenant's proportionate share of such charges.

#### 4. Permitted Use of Premises.

a. Tenant covenants that at all times during the Lease term and such other time as Tenant occupies the Premises, Tenant shall use the Premises for the Permitted Uses and for no other purposes without the prior written consent of the City.

b. Tenant shall use that portion of the Premises leased herein for infant and child care (the "Permitted Uses"). No other uses, activities or operations

shall be conducted by the Tenant from the leased Premises without the prior written consent of the City.

c. Tenant shall, at its expense, comply with all applicable present and future federal, state, and local laws, ordinances, rules and regulations in connection with its use of the Premises. Tenant shall obtain all required governmental approvals, authorizations, licenses and permits at Tenant's expense. Tenant specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from City, and further agrees that City does not waive this section by giving notice of demand for compliance in any instance.

d. Tenant shall faithfully observe and comply with all recorded covenants, conditions and restrictions affecting the Premises and all rules and regulations that City may from time to time make to facilitate the reasonable operation of the Premises and the Building of which the Premises are apart or the Property on which it is located or to comply with the requirements of any governmental entity or insurance company (the "Rules"). City reserves the right to modify the Rules from time to time. The Rules and any modifications shall be binding upon Tenant upon delivery of a copy of the Rules to Tenant.

e. The Tenant shall operate and conduct "Sequoia's Early Learning Center" in a business-like manner, and will not permit any acts or conduct on the part of the Tenant employees that would be detrimental to the City's image and operation of the Old Town Center. The Tenant also recognizes that, although it is operating their business as an independent operator for profit, the City's Department of Parks and Recreation is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. The Tenant and its employees will devote their best efforts toward rendering courteous service to the public as though the Tenant and its employees were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility.

## 5. Common Areas.

a. City shall make available such areas and facilities for the common use of all tenants of the Building (including but not limited to kitchen and kitchen storage area, parking areas, driveways, delivery passages, access and egress road, walkways, and landscaped and planted areas) as City shall reasonably deem appropriate (the "Common Areas").

b. Tenant and its employees, agents and invitees shall have the non-exclusive right (in common with other tenants of the Building and City) to use the Common Areas, subject to any Rules. City's Rules may include the designation of

specific areas in which cars owned by Tenant, its employees and agents must be parked. City may at any time temporarily close any Common Area due to construction, maintenance, repair or changes to any part of the Building or the real property upon which the Building is located, with prior notice to Tenant.

c. Tenant shall be entitled to use approximately five (5) parking stalls. Old Town Center parking is very limited, both parties acknowledge the need to communicate and work together as parking needs arise.

6. Improvements. Tenant shall not make or permit any alteration, addition or improvement to the Premises without the prior written consent of City, which consent shall not be unreasonably withheld. Any alteration, addition or improvement consented to by City shall be made in a good workmanlike manner at Tenant's sole cost and expense and shall comply with all applicable laws, codes, ordinances, rules and regulations. All alterations, additions or improvements (including but not limited to wall and window covering, paneling and built-in cabinet work, but excluding movable furniture and trade fixtures) shall at once become a part of the Premises belonging to the City and shall be surrendered with the Premises at the expiration of this Lease, unless City demands their removal. Upon expiration or sooner termination of the Lease Term, Tenant shall, at Tenant's sole cost and expense, with all due diligence, remove any alteration, additions or improvements made by Tenant and designated by City to be removed. Tenant shall, at its sole cost and expense, repair any damage to the Premises caused by such removal. If Tenant fails to remove any such alterations, additions or improvements, City may do the same at Tenant's expense.

Tenant shall be permitted to install electronic door locks and access devices to interior classroom doors. Tenant shall ensure City has reasonable access to the Premises at all times.

7. Maintenance.

a. Tenant shall, throughout the Term of this Lease without cost or expense to the City, keep and maintain the leased Premises and all improvements, fixtures, and equipment which may now or hereafter exist thereon, in a neat, clean, safe and sanitary condition and shall at all times preserve the Premises in good and safe repair. Upon the expiration or sooner termination of the Lease, Tenant shall forthwith return the same in as good a condition as existed at the commencement of occupancy (ordinary wear and tear excepted).

b. If, after thirty (30) days' notice from the City, Tenant fails to maintain or repair any part of the leased Premises or any improvement, fixtures or equipment thereon, the City may, but shall not be obligated to, enter upon the leased

Premises and perform such maintenance or repair, and Tenant agrees to pay the costs thereof to City upon receipt of a written demand. Any unpaid sums under this paragraph shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law.

c. Routine equipment repair/replacement/maintenance/supply costs related to common use equipment (stove/oven/fans, refrigerators, freezers, dishwasher, washer and dryer) will be shared equally between "Sequoia's Early Learning Center" and the City, except costs to repair damage caused by misuse of common use equipment will be the responsibility of the entity/program under whose operations the equipment was damaged or broken.

8. Indemnity.

a. City shall not, at any time, be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's maintenance, repair, use, operation, or condition of the Premises or Tenant's improvements, fixtures or equipment and Tenant expressly assumes all such risk.

b. Tenant shall, at its sole cost and expense, indemnify and hold harmless City and its officers, boards, commissions, employees, volunteers, agents, attorneys, and contractors from and against any and all liability, damages, and claims and lawsuits, (including, without limitation, all fees and expenses of attorneys, expert witnesses and consultants), which may be asserted by reason of any act or omission of Tenant, its employees, volunteers, agents, or contractors or which may be in any way connected with this Lease or the use of the Premises except for claims arising from the sole negligence of City and its officers, boards, commissions, employees, volunteers, agents, attorneys and contractors. The Tenant's obligations under this section shall include:

i. The duty to promptly accept tender of defense and provide defense to the City at the Tenant's own expense;

ii. Indemnification of claims made by the Tenant's own employees or agents; and

iii. Waiver of the Tenant's immunity under the industrial insurance provision of Title 51 RCW but only to the extent necessary to indemnify the City, which waiver has been mutually negotiated by the parties.

c. In the event it is necessary for the City to incur attorney's fees,

legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Tenant.

d. In the event it is determined that RCW 4.24.115 applies to this Lease, the Tenant agrees to defend, hold harmless, and indemnify the City to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of the City to the full extent of Tenant's negligence. Tenant agrees to defend, indemnify, and hold harmless the City for claims by Tenant's employees and agrees to waiver of its immunity under Title 51 RCW which waiver has been mutually negotiated by the parties.

e. Defense of City:

i. In the event any action or proceeding shall be brought against the City resulting from Tenant's operations hereunder, Tenant shall, at Tenant's sole cost and expense, resist and defend the same provided, however, that Tenant shall not admit liability in any such matter on behalf of the City without the written consent of City.

ii. Nothing herein shall be deemed to prevent City from cooperating with Tenant and participating in the defense of any litigation with City's own counsel. Tenant shall pay all expenses incurred by City in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the City's attorney, and the actual expenses of City's agents, employees, volunteers, consultants and expert witnesses, and disbursements and liabilities assumed by City in connection with such suits, actions or proceedings.

9. Insurance:

a. During the term of this Lease, Tenant shall maintain in full force and effect and at its sole cost and expense:

i. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on the Tenant's Commercial General Liability Insurance policy using ISO Additional Insured Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage. Commercial General Liability coverage shall be written with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate. The Tenant's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-

insurance, or insurance pool coverage maintained by the City shall be excess of the Tenant's insurance and shall not contribute with it.

ii. Property insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions and shall be written on an all risk basis.

iii. Worker's compensation insurance and such other insurance as may be required by law.

b. Evidence of Insurance: Certificates of insurance for each insurance policy required by this Lease, along with written evidence of payment of required premiums, shall be filed and maintained with City prior to commencement of the term of this Lease and thereafter.

c. Cancellation of Policies of Insurance: All insurance policies maintained pursuant to this Lease shall contain the following or substantially similar endorsement:

“At least sixty (60) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail.”

d. Deductibles: All insurance policies may be written with commercially reasonable deductibles.

e. License: All insurance policies shall be with insurers licensed to do business in the State of Washington and with a rating of A-IV unless waived by the City.

10. Surrender of Premises.

a. At the expiration or earlier termination of this Lease, Tenant shall promptly surrender possession of the Premises to City within 24 hours, and shall deliver to City all keys that it may have to any and all parts of the Premises.

b. At the expiration or sooner termination of this Lease, Tenant shall return the Premises to City in the same condition in which received or, if altered by City or by Tenant with City's consent, then the Premises may be returned in such altered condition, broom clean, reasonable wear and tear excepted. Tenant shall remove all personal property, trade fixtures, appliances and equipment (“Fixtures”). Where such removal will require structural changes or damage to the Premises, City

will have the option to have same removed at Tenant's expense and under City's supervision. Tenant shall also remove any and all alterations which City designates to be removed pursuant to this Lease and shall restore the Premises to the condition they were in prior to the installation or construction of said alterations. If Tenant has failed to fully pay all amounts due under this Lease, City may, at City's option, designate any or all fixtures paid for by Tenant and installed on the Premises as City's payment in full or in part of any such unpaid amounts, and Tenant shall provide City with a Bill of Sale correctly evidencing the transfer of ownership. If Tenant fails to remove any fixture, at City's option, Tenant shall agree to designate and permit City to remove the same at Tenant's expense. Tenant's obligation to perform this covenant shall survive the expiration or termination of the Lease.

11. Default and Re-Entry.

a. If any rents or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Tenant shall violate or default on any of the covenants and agreements herein contained, then City may cancel this Lease upon giving the notice required by law and re-enter said Premises using such force as may be required. Notwithstanding such re-entry by City, the liability of Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Tenant covenants and agrees to make good to City any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. Tenant shall pay such deficiency each month as the amount thereof is ascertained by City. In the event it becomes reasonably necessary to make any changes, alterations, or additions to the Premises or any part thereof for the purpose of reletting said Premises or any party thereof, Tenant shall also be responsible for such cost.

b. Notwithstanding the default provisions above, City agrees not to exercise any of the remedies for default specified herein unless and until: (i) if the default consists of a violation to pay money, City has given Tenant written notice of the default and Tenant has failed to cure the default within ten (10) days of receipt of such notice; or (ii) if the default consists of a violation of a covenant other than a covenant to pay money, City has given Tenant at least thirty (30) days' notice of such default and Tenant has failed to cure the default within such thirty (30) day period, provided no such notice must be given if the default was deliberate or immediate action is needed to protect persons or property from immanent harm, and provided further if the default is one that is capable of being cured, but cannot with due diligence be cured within thirty days, such thirty day period shall be deemed extended, to a maximum of ninety (90) days from the date of the original default, if Tenant advises the City of its intention to cure within thirty days of the original default notice and prosecutes the curing of the default with all due diligence.



12. Assurance of Performance. In the event a default in the performance of any obligation under this Lease which remains uncured for more than ten (10) days after demand, the City may request and the Tenant shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for Cities of real property in the County of Thurston, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to City, a surety bond, or a letter of credit. Tenant's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and City may in its discretion terminate this Lease.

13. Holding Over. If the Tenant holds over after the expiration or earlier termination of the Term, or Extended Term, hereof without the express written consent of the City, Tenant shall become a tenant at sufferance only at a rental rate equal to one hundred fifty percent (150%) of the rent in effect upon the date of such expiration (prorated on a daily basis), and otherwise subject to the terms, covenants, and conditions herein specified so far as applicable. Acceptance by City of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect City's right of re-entry or any rights of City hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by City, Tenant shall indemnify and hold City harmless from all loss or liability including, without limitation, any claim made by any succeeding Tenant founded on or resulting from such failure to surrender and together with interest, attorney's fees, and costs.

14. Non-Waiver. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

15. Signs. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Tenant on any part of the outside of the Premises without the prior written consent of City. If Tenant violates this provision, City may remove the sign without any liability and may charge the expense incurred by such removal to the Tenant provided, however, City shall give Tenant written notice of Tenant's violation of this provision and Tenant shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Tenant shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

16. Inspection and "For Rent" Signs. The City reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Lease,

provided that City shall not interfere unduly with Tenant's operations. The right of inspection reserved to City hereunder shall impose no obligation on City to make inspections to ascertain the condition of the Premises, and shall impose no liability upon City for failure to make such inspections. The City shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for thirty (30) days prior to the expiration or sooner termination of this Lease.

17. Liens. It is understood and agreed that this Lease is executed and delivered upon the express condition that the Tenant will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the interest of the City in the Premises, and the City hereby denies to the Tenant any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of the City in the Premises to any lien, claim, or demand whatsoever. Nothing in this paragraph shall prevent Tenant from contracting for labor, materials or other services that have the potential to ripen into a lien on the Tenant's leasehold estate under RCW § 60.04.051; Provided, however, Tenant shall immediately take all actions necessary to remove any such levy, lien, or encumbrance.

18. Notices.

a. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to City, to:                      Parks and Recreation Director  
   555 Israel Road S.W.  
   Tumwater, WA 98501

With a copy to:                      City Attorney  
   555 Israel Road S.W.  
   Tumwater, WA 98501

If to Tenant, to:                      Sequoia Hartman  
   Sequoia's Early Learning Center, LLC  
   215 North 2<sup>nd</sup> Ave SW  
   Tumwater, WA 98512

b. Contact for Emergencies: Emergency twenty-four (24) hour contact number(s) must be provided.

Tenant Contact for Emergencies: (206) 482-8298 - Sequoia Hartman

19. Subleasing or Assignment. Tenant may not assign this Lease or sublet the Premises, in whole or in part, without the prior written consent of City.

20. Successors and Assigns. Subject to Section 19, this Lease shall be binding upon and inure to the benefit of the parties, and their respective permitted successors and assigns.

21. Non-Waiver. Failure of City to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but City shall have the right to specifically enforce such rights at any time and take such action as might be lawful or authorized, either in law or equity. Damages are not an adequate remedy for breach. The receipt of any sum paid by Tenant to City after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing by the City.

22. Anti-Discrimination. In all services or activities and all hiring or employment made possible by or resulting from this Lease, there shall be no discrimination against any employee or applicant for employment because of age (except minimum age and retirement provisions), race, color, creed, national origin, citizenship or immigration status, families with children status, sex, marital status, sexual orientation, genetic information, religion, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or other basis prohibited by state or federal law unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: Employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Tenant shall not violate any of the terms of RCW 49.60, Title VII of the Civil Rights Act of 1964, Tumwater Municipal Code Chapter 3.46, or any other applicable federal, state, or local law or regulations regarding non-discrimination. Any violation of this provision shall be considered a violation of a material provision of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part of the Lease by the City, and may result in ineligibility for further City agreements. The Tenant will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority.

23. Quiet Enjoyment, Title and Authority.

- a. City represents to Tenant that:
  - i. City has authority to execute this Lease;

ii. City has title to the Premises free and clear of any encumbrances, liens or mortgages, except those encumbrances, liens and mortgages and matters of record, and these and any other matters disclosed and/or otherwise apparent to Tenant;

iii. There is legal ingress and egress to the Premises from a right-of-way; and

iv. Execution and performance of this Lease will not violate any laws or agreements binding on City;

b. City covenants and agrees with Tenant that upon Tenant paying the Rent and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peacefully and quietly enjoy the Premises.

24. Condemnation. In the event the Premises are taken in whole or in part by any entity by eminent domain, this Lease shall terminate as of the date title to the Premises vests in the condemning authority. Tenant shall not be entitled to any portion of the award paid and the City shall receive the full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. However, Tenant shall have the right to claim and recover from the condemning authority, other than the City, such other compensation as may be separately awarded or recoverable by Tenant. If this lease terminates due to condemnation, Tenant shall promptly remove all of its Equipment from the Premises.

25. Alteration, Damage or Destruction. If the Premises or any portion thereof is altered, destroyed or damaged so as to materially hinder effective use of the Equipment through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) days written notice to City. In such event, Tenant shall promptly remove the Equipment from the Premises and shall restore the Premises to the same condition as existed prior to this Lease. This Lease (and Tenant's obligation to pay rent) shall terminate upon Tenant's fulfillment of the obligations set forth in the preceding sentence and its other obligations hereunder, at which termination Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. City shall have no obligation to repair any damage to any portion of the Premises.

26. Attorney's Fees / Collection Charges. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, such sum as the court may adjudge to be reasonable attorney's fees. In addition to all other charges, Tenant shall pay a charge of \$200.00 to the City of

Tumwater for preparation of a demand for delinquent rent or a notice of default.

27. Hazardous Materials and Environmental Compliance.

a. Definition. "Hazardous Materials" as used herein shall mean:

i. Any toxic substances or waste, sewage, petroleum products, radioactive substances, medical, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

ii. Any dangerous waste or hazardous waste as defined in:

a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

b. Resource Conservation and Recovery Act as now existing or hereafter amended (42 USC Sec. 6902 et seq.); or

iii. Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act of 1980 as now existing or hereafter amended (42 USC Sec. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

iv. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

b. Use Prohibited. Tenant shall not without first obtaining City's prior written approval, use, generate, release, handle, spill, store, treat, deposit, transport, or dispose of any Hazardous Materials in, on, or about the Premises, or transport any Hazardous Material to or from the Premises. In the event, and only in the event, City approves any of the foregoing, Tenant agrees that such activity shall occur safely and in compliance with all applicable federal, state, and local laws, ordinances and regulations.

c. Environmental Compliance.

i. Tenant shall, at Tenant's own expense, comply with all

federal, state and local laws, ordinances and regulations now or hereafter affecting the Premises, Tenant's business, or any activity or condition on or about the Premises, including, without limitation, all laws, ordinances and regulations related to Hazardous Materials and all other environmental laws, ordinances and regulations, and any other laws relating to the improvements on the Premises, soil and groundwater, storm water discharges, or the air in and around the Premises, as well as such rules as may be formulated by City ("the Laws"). Tenant warrants that its business and all activities to be conducted or performed in, on, or about the Premises shall comply with all the Laws. Tenant agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations that may be necessary at any time during the lease to comply with the Laws.

ii. Tenant shall not cause or permit to occur any violation of the Laws on, under, or about the Premises, or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions.

iii. Tenant shall promptly provide all information regarding any activity of Tenant related to Hazardous Materials on or about the Premises that is requested by City. If Tenant fails to fulfill any duty imposed under this paragraph within a reasonable time, City may do so; and in such case, Tenant shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the applicability of the Laws to the Premises and Tenant's use thereof, and for compliance therewith, and Tenant shall execute all documents promptly upon City's request. No such action by City and no attempt made by City to mitigate damages shall constitute a waiver of any of Tenant's obligations under this paragraph.

iv. Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities ("the Authorities") under the Laws.

v. Should any Authority demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease at or from the Premises that is not the result of the acts of omissions of City, or which arises at any time from Tenant's use of occupancy of the Premises, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Tenant shall carry out all such cleanup plans. Any such plans and cleanup are subject to City's prior written approval.

d. Indemnification.

i. Tenant shall be fully and completely liable to City for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any Authority with respect to Tenant's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Premises, common area, or buildings. Tenant shall indemnify, defend and save City harmless from any and all costs, fees, penalties, and charges assessed against or imposed upon City (as well as City's attorney's fees and costs) by any Authority as a result of Tenant's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials, or from Tenant's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws.

ii. Tenant shall indemnify and hold City harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees, for bodily injury or death, property damage, loss, or costs caused by or arising from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Tenant or any of its agents, representatives or employees in, on, or about the Premises occurring during the term of this Lease.

iii. City shall indemnify and hold Tenant harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees, arising from third party actions brought against Tenant that are caused by or arise from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by City or any of its agents, representatives or employees in, on, or about the Premises.

e. Reporting Requirements. Tenant shall comply with the Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide City a full copy of any such filing or report as submitted within fifteen (15) days of such submission.

f. Right to Check on Tenant's Environmental Compliance. City expressly reserves the right, and Tenant shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as City, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

g. Remedies. Upon Tenant's default under this Section 27 Hazardous Materials and Environmental Compliance, City shall be entitled to the

following rights and remedies in addition to any other rights and remedies that may be available to the City:

i. At City's option, to terminate this Lease immediately, notwithstanding the notice and cure provisions of paragraph 12 above, and/or,

ii. At City's option, to perform such response, remediation and/or cleanup as is required to bring the Premises and any other areas of the City property affected by Tenant's default into compliance with the Laws and to recover from Tenant all of the City's costs in connection therewith; and/or

iii. To recover from Tenant any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other adjacent areas of City property, loss of business and sales by City and other City tenants, diminution of value of the Premises and/or other adjacent areas owned by City, the loss of or restriction of useful space in the Premises and/or other adjacent areas owned by City, any and all damages and claims asserted by third parties, and City's attorney's fees and costs.

h. Remediation on Termination of Lease. Upon the expiration or earlier termination of this Lease, Tenant shall remove, remediate or clean up any Hazardous Materials on or emanating from the Premises, provided that the presence of such Hazardous Materials arises from Tenant's use or occupancy of the Premises or Tenant's acts or omissions exacerbate the cost of remediation and Tenant shall undertake whatever other action may be necessary to bring the Premises into full compliance with the Laws ("Termination Cleanup"). The process of such Termination Cleanup is subject to City's prior written approval. If Tenant fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, City may elect to perform such Termination Cleanup after providing Tenant with written notice of the City's intent to commence Termination Cleanup, and after providing Tenant a reasonable opportunity, which shall be not less than ninety (90) days after such notice (unless City is given notice by a government agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time, in which case City shall give Tenant notice of such shorter time), to commence or resume the Termination Cleanup process. If City performs such Termination Cleanup after said notice and Tenant's failure to perform same, Tenant shall pay all of City's costs.

i. Survival. Tenant's obligations and liabilities under this Section shall survive the expiration of this Lease.



28. Miscellaneous.

a. City and Tenant respectively represent that their signatory is duly authorized and has full right, power, and authority to execute this Lease.

b. With the exception of applicable and future laws, ordinances, rules, and regulations this Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. Except as previously set forth, there are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

c. This Agreement has been and shall be construed as having been made and delivered with the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

d. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

e. Time is of the essence of this Lease, and in the event of the failure of Tenant to pay any charges at the time in the manner specified, or to keep any of the covenants or agreements herein set forth, the Tenant shall be in default.

f. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. In the event that a court of competent jurisdiction determines void or invalid any term of any other Lease, where such term is substantially equivalent to a term of this Lease, the City may, at its sole option and within 30 days of notice thereof by Tenant: (i) determine that such judicial determination shall not affect the terms of this Lease, which shall continue in full force and effect; (ii) determine that a term of this Lease is invalid, but severable, and that such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect; or (iii) terminate this Lease.

g. No provision in this Lease precludes the City from pursuing any other remedies for the Tenant's failure to perform its obligations. This Agreement may be enforced at both law and equity. Damages are not an adequate remedy for

breach.

*\*\* This section left intentionally blank \*\**

This Lease was executed as of the date first set forth above.

CITY OF TUMWATER  
555 Israel Road SW  
Tumwater, WA 98501

Sequoia's Early Learning Center, LLC  
215 North 2<sup>nd</sup> Avenue SW  
Tumwater, WA 98512

By: \_\_\_\_\_  
Debbie Sullivan, Mayor

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

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

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

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

ATTEST:

\_\_\_\_\_  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
\_\_\_\_\_ is the person who appeared before me, and said person  
acknowledged that she signed this instrument, on oath stated that she was  
authorized to execute the instrument and acknowledged it as the \_\_\_\_\_  
\_\_\_\_\_ of Sequoia's Early Learning Center, LLC to be the free and voluntary  
act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
My appointment expires: \_\_\_\_\_