

**THIRD AMENDMENT TO
JOINT USE LEASE AGREEMENT BETWEEN MOUNTAIN VIEW WHISMAN
SCHOOL AND ACTION DAY NURSERIES & PRIMARY PLUS, INC.
FOR USE OF SPACE FOR INFANT CARE AND TRANSITIONAL KINDERGARTEN
PROGRAMS
AT 333 EUNICE AVENUE, MOUNTAIN VIEW, CA**

THIS THIRD AMENDMENT to Joint Use Lease Agreement (“Third Amendment”) is made as of May 4, 2023 (“Effective Date”), by and between **Mountain View Whisman School District**, a California public school district (“District”) and **Action Day Nurseries & Primary Plus, Inc.**, a California corporation, dba Action Day Primary Plus (“Lessee”). District and Lessee may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, District and Lessee entered into that certain Joint Use Lease Agreement dated June 2, 2016 (“Agreement”) for Lessee’ use of a portion of the former Cooper school site (“School Site”) located at 333 Eunice Avenue, Mountain View, California as more fully described in Exhibit “A” to the Agreement (“Premises”); and

WHEREAS, on May 31, 2018, the Parties entered into a First Amendment that amended the Term and Rent provisions of the Agreement. Collectively the Agreement and First Amendment shall be referred to as the “Agreement”; and on May 9, 2020, the Parties entered into a Second Amendment that amended the Term and Rent provisions of the Agreement. Copies of the Agreement, the First Amendment and Second Amendments are attached hereto as Exhibit B and shall be referred to collectively as the “Agreement”; and

WHEREAS, Lessee intends to install 7 portables on the School Site which shall thereafter be part of the defined Premises. Following installation of the portables, the “Premises” which are subject to the Agreement will collectively mean and include approximately 9,547 square feet of building area, 6,720 square feet of land area where the 7 portables will be located together with use of additional space at the site as shown on the attached Exhibit A; and

WHEREAS, the Parties now mutually intend to further amend the Agreement as set forth herein this Third Amendment;

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Lessee agree as follows:

AGREEMENT

1. Defined Terms. All capitalized terms not defined herein will have the definition meaning given those terms in the Agreement.
2. Term. Section 2 of the Agreement entitled “Term” is hereby deleted in its entirety and replaced with the following:

2.1. **Term.** The term of this Agreement shall be extended by an additional five years, effective July 1, 2023, and shall end on June 30, 2028 (“Term”).

2.2. **Renewal of Term.** The Term may automatically renew for an additional five years, upon the same terms and conditions described herein provided that:

2.2.1. Lessee is in full compliance with all provisions, covenants, conditions, and requirements of the Agreement; and

2.2.2. The conditions of Lessee’s use pursuant to Education Code section 17527 are satisfied; and

2.2.3. The renewal term is approved by each Party’s governing board prior to the expiration of the preceding term and set forth in writing signed by the Parties.

3. **Notice of Termination.** Landlord shall have the right to give notice of termination of the Lease if the Premises is needed for public school purposes. If the Landlord elects early termination, the Landlord will give the Tenant a minimum of thirty-six (36) months’ advance written notice prior to the termination date (“Notice of Termination”).

3. **Rent.** Section 3.1 of the Agreement entitled “Rent” is hereby deleted in its entirety and replace with the following:

3.1 For and in consideration of the use of the Premises for the Term, Lessee agrees to pay District Land Lease Rent and Building Rent in the amounts set forth below (“Rent”). Land Lease Rent and Building Rent are subject to the same terms and conditions unless specifically noted otherwise.

Year	Square Foot Amount	Square Foot Land Lease	Yearly Rent with \$15 Discount
2022-2023	6,720	\$69.43	\$365,743
2022-2024	6,720	\$71.51	\$379,740
2022-2025	6,720	\$73.65	\$394,156
2022-2026	6,720	\$75.86	\$409,005
2022-2027	6,720	\$78.14	\$424,299
2022-2028	6,720	\$80.48	\$440,052

Land Lease Rent:

Building Rent:

Lessee agrees to pay District Seventy Six Dollars and Zero Cents (\$78.03) per square foot for an annual Rent of Seven Hundred and Twenty Five Thousand, Six Hundred Seven Dollars and Twenty Three Cents (\$ 744,943.76) for the approximately 9,547 square feet of building area it has use of pursuant to the Agreement (“Rent”).

The Rent shall automatically be adjusted annually on July 1st at a rate of three percent (3%) unless Lessee provides Lessor written notice on or before June 1st that the Rent be adjusted by the following calculation:

The annual adjustment shall be calculated by multiplying the current monthly installment of Rent by a fraction, the numerator of which is the current year's Index and the denominator of which is the previous year's Index. However, at a minimum, the adjusted Rent for the upcoming yearly period shall increase by at least 1% but in no instance shall the Rent be less than the prior year's Rent nor increased by greater than 3%. The index for computing the adjustment shall be the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI), San Francisco-Oakland-Hayward, CA, All Urban Consumers, not seasonally adjusted as published for April (or the nearest preceding month if not published for April), henceforth called the "Index."

Collectively the Land Lease Rent and Building Rent may be referred to as "Rent."

The Rent for any fractional month at the beginning or at the end of this Agreement shall be prorated. Rent shall increase on the anniversary of the Commencement Date by an amount equal to three percent (3%) of the Rent then in effect for the previous year, as reflected in the above table.

Lessee's obligation for the portion of the Rent representing the "land lease" amount will commence and be payable three months after the portables are ready to house students to allow time for licensing and any fractional month will be prorated. The Lessee will receive a \$15 discount on the land lease rent for 10 years starting when students occupy the premises.

4. Maintenance. The Parties hereby acknowledge and agree that commencing on April 6, 2023, Lessee shall be responsible for any "major maintenance" of the Premises as that term is described in Section 13.2 of the Agreement. Accordingly, all references in the Agreement relating to a Party's or District's obligation to perform major maintenance shall mean and refer to solely to the Lessee and District shall have no further obligation with respect to this work. Additionally, the Lessee will be responsible for maintaining the Premises in good working order and in a safe, clean and sanitary condition, including the surrounding grounds.
5. Utilities. Any reference to utilities in the Agreement shall specifically exclude any obligation of District to provide electricity to the Premises. In the event electricity is provided pursuant to an account held by the District, Lessee shall be responsible for paying District the portion of bill which represents electricity used on the Premises by Lessee.
6. Premises. The Parties hereby acknowledge and agree that the Lessee shall have use of additional space at the Site as described in the attached Exhibit "A". Accordingly, Exhibit "A" of the Agreement which depicts the Premises is hereby replaced with the attached Exhibit "A." Collectively, the Premises include approximately 9,547 square feet of building area, 6,720 square feet of land area where the 7 portables will be located together with use of additional space at the site as shown on the attached Exhibit A.

7. Improvements. The Parties hereby acknowledge that as of the date of this Third Amendment, Lessee contemplates that it will make certain improvements to the Premises. The Parties agree that the approval of such improvements shall be made pursuant to Section 14 of the Agreement.

8. Miscellaneous. This Third Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this Third Amendment, all other terms and provisions of the Agreement are and remain in full force and effect. This Third Amendment shall be governed by and construed in accordance with the laws of the State of California.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2023	Dated: _____, 2023
Mountain View Whisman School District a California public school district	Action Day Nurseries & Primary Plus, Inc. , a California corporation, dba Action Day Primary Plus
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT "A" DESCRIPTION OF PREMISES AND SCHOOL SITE

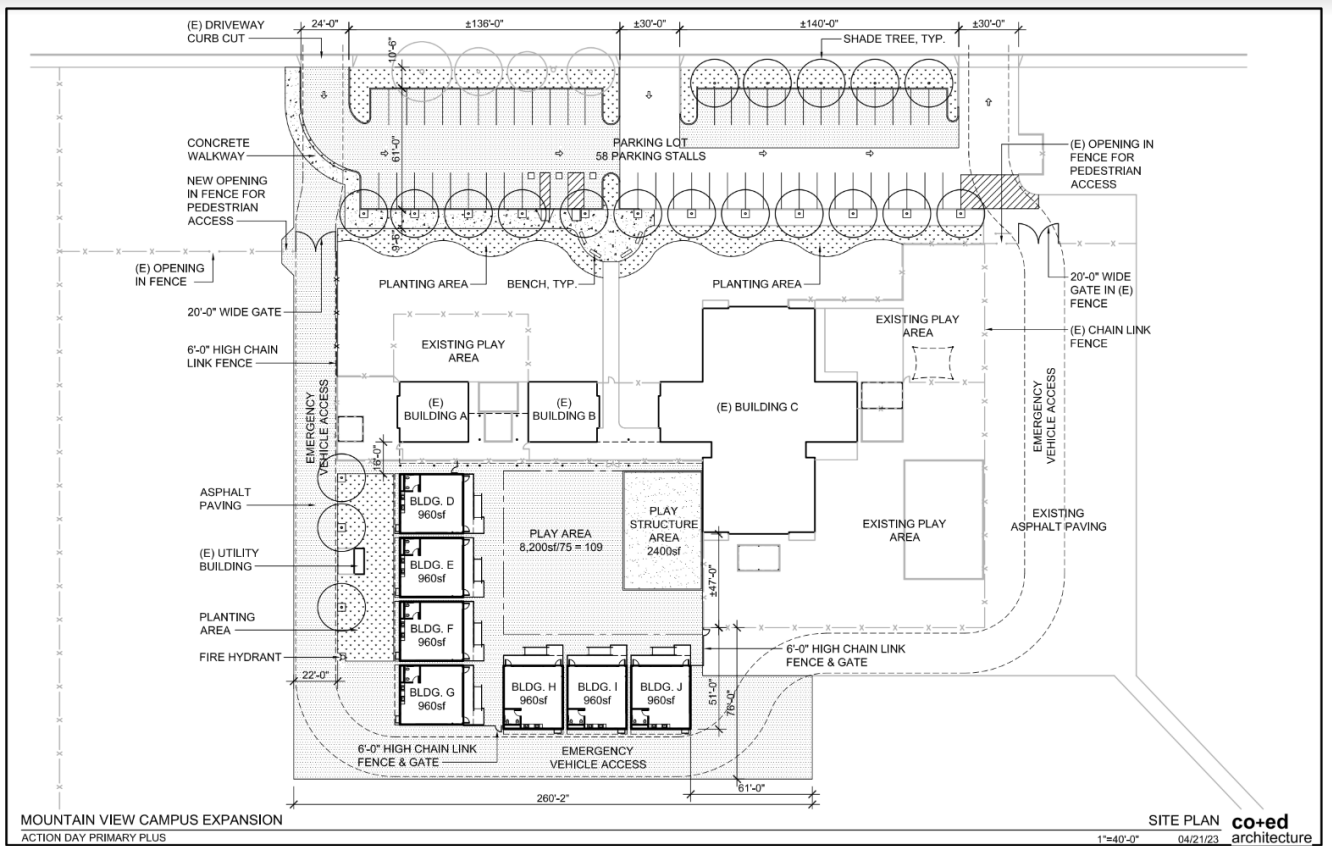


EXHIBIT "B"
First and Second Amendments

**FIRST AMENDMENT TO ACTION DAY NURSERIES & PRIMARY PLUS, INC.
JOINT USE LEASE AGREEMENT OF COOPER SCHOOL SITE**

THIS FIRST AMENDMENT TO THE Action Day/Primary Plus LEASE AGREEMENT (hereinafter referred to as the "FIRST Amendment") is made this 31st day of May 2018, by and between the Mountain View Whisman School District (hereinafter called "Lessor") and Action Day Nurseries & Primary Plus, Inc., (hereinafter called "Lessee") collectively referred to as the "Parties."

RECITALS

WHEREAS, Lessor and Lessee entered into a Joint Lease Use Agreement executed on June 2, 2016 (hereinafter referred to as the "Agreement") for the use of 333 Eunice Avenue, in Mountain View, California, commonly known as the Cooper Site;

WHEREAS, Lessor and Lessee have faithfully performed their respective obligations in accordance with the Agreement;

WHEREAS, Lessor and Lessee now wish to amend the Agreement to reflect changes to the provisions relating to Premises, Term, and Rent.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreement of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Action Day/Primary Plus agree as follows:

1. Section 2 of the Agreement, entitled "TERM," shall be amended as follows:

2.1 The term of the agreement shall be extended by an additional two years, effective July 1, 2019, and the term of this lease shall end June 30, 2021.

2. Section 3 of the Agreement, entitled "RENT," shall be amended as follows:

3.1: For and in consideration of the use of the Premises for the Term, Lessee agrees to pay District rent in the amounts described herein.

The increase in the annual lease amount will be determined as to match other long-term leases in the District, by a price per square foot amount of leases.

The current 2018-2019 lease amount of \$568,111 equates to \$59.11 per square foot.

The lease payment for the 2019-2020 year will be \$681,732 at approximately \$71.41 per square foot, with monthly payments of \$56,811.


The lease payment for the 2020-2021 year will be \$702,180 at approximately \$73.79 per square foot, with monthly payments of \$58,515.

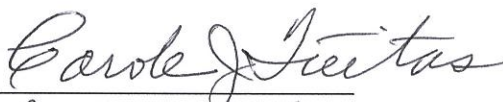
3. In the event of inconsistencies between the Agreement and this FIRST Amendment, the terms and conditions of this FIRST Amendment shall be controlling. Unless specifically modified or changed by the terms of this FIRST Amendment, all terms and conditions of the Agreement shall remain in effect and shall apply fully as described and set forth therein, respectively.

IN WITNESS WHEREOF, the parties hereto have executed this FIRST Amendment by causing their duly authorized representatives to sign below as of the day and year first above written.

Mountain View Whisman
School District

Action Day Nurseries & Primary Plus, Inc.

By: 
Name: Robert Clark, Ed.D.
Title: Chief Business Officer
Date: 2 June 2018

By: 
Name: CAROLE J FREITAS
Title: President
Date: 6-11-18

**SECOND AMENDMENT TO ACTION DAY NURSERIES & PRIMARY PLUS, INC.
JOINT USE LEASE AGREEMENT OF COOPER SCHOOL SITE**

THIS SECOND AMENDMENT TO THE Action Day/Primary Plus LEASE AGREEMENT (hereinafter referred to as the "SECOND Amendment") is made this 29 day of May 2020, by and between the Mountain View Whisman School District (hereinafter called "Lessor") and Action Day Nurseries & Primary Plus, Inc., (hereinafter called "Lessee") collectively referred to as the "Parties."

RECITALS

WHEREAS, Lessor and Lessee entered into a Joint Lease Use Agreement executed on June 2, 2016 (hereinafter referred to as the "Agreement") for the use of 333 Eunice Avenue, in Mountain View, California, commonly known as the Cooper Site;

WHEREAS, Lessor and Lessee have faithfully performed their respective obligations in accordance with the Agreement;

WHEREAS, Lessor and Lessee now wish to amend the Agreement to reflect changes to the provisions relating to Premises, Term, and Rent.

NOW THEREFORE, in consideration of the mutual agreement of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Action Day/Primary Plus agree as follows:

AGREEMENT

1. Section 2 of the Agreement, entitled "TERM," shall be amended as follows:

2.1 The term of the agreement shall be extended by an additional two years, effective July 1, 2021, and the term of this lease shall end June 30, 2023.

2. Section 3 of the Agreement, entitled "RENT," shall be amended as follows:

3.1 For and in consideration of the use of the Premises for the Term, Lessee agrees to pay District Seventy Three Dollars and Seventy Nine Cents (\$73.79) per square foot for an annual Rent of Seven Hundred Four Thousand, Four Hundred Seventy Three Dollars and Thirteen Cents (\$704,473.13) ("Rent").

The Rent shall automatically be adjusted annually on July 1st at a rate of three percent (3%) unless Lessee provides Lessor written notice on or before June 1st that the Rent be adjusted by the following calculation:

The annual adjustment shall be calculated by multiplying the current monthly installment of Rent by a fraction, the numerator of which is the current year's Index and the denominator of which is the previous year's Index. However, at a minimum, the adjusted Rent for the upcoming yearly period shall increase by at least 1% but in no instance shall the Rent be less than the prior year's Rent nor

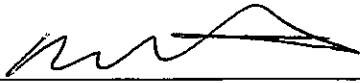
increased by greater than 3%. The index for computing the adjustment shall be the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI), San Francisco-Oakland-Hayward, CA, All Urban Consumers, not seasonally adjusted as published for April (or the nearest preceding month if not published for April), henceforth called the "Index."

3. In the event of inconsistencies between the Agreement and this SECOND Amendment, the terms and conditions of this SECOND Amendment shall be controlling. Unless specifically modified or changed by the terms of this SECOND Amendment, all terms and conditions of the Agreement shall remain in effect and shall apply fully as described and set forth therein, respectively.

IN WITNESS WHEREOF, the parties hereto have executed this SECOND Amendment by causing their duly authorized representatives to sign below as of the day and year first above written.

Mountain View Whisman
School District


Action Day Nurseries & Primary Plus, Inc.

By: 

Name: Rebecca Westover, Ed.D.

Title: Chief Business Officer

Date: 6-12-20

By: 

Name: Cathy Jelic

Title: President

Date: 05/27/2020