

LEASE AGREEMENT

THIS LEASE AGREEMENT, (hereinafter “Lease”), is entered into the date stated below by The Sioux City Community School District in the Counties of Woodbury and Plymouth, State of Iowa (the “District”) whose address for the purpose of this Lease is 627 Fourth Street, Sioux City, Iowa 51101, and Brenda Barto, doing business as B.B.’s Preschool & Childcare, an Iowa non-profit entity, (“B.B.’s Preschool & Childcare”) whose address for the purpose of this Lease is 3919 Jefferson Street, Sioux City, Iowa 51108.

RECITALS

A. **THE DISTRICT.** The District, (hereinafter “Landlord”), owns and maintains an elementary school building located at 3919 Jefferson Street, Sioux City, Iowa commonly known as “Leeds Elementary School” (also referred to as “school building” herein).

B. **BRENDA BARTO d/b/a B.B.’s PRESCHOOL & CHILDCARE.** B.B.’s Preschool & Childcare (hereinafter “Tenant”) is in the business of providing preschool and childcare to children and desires to lease from the District use of one classroom in Leeds Elementary School, which the District desires to do according to the following terms and conditions.

AGREEMENT

1. **LEASE AND TERM.** Landlord, in consideration of the rents, agreements and conditions herein contained, leases to Tenant and Tenant leases from Landlord, according to the terms and provisions of this Lease, the non-exclusive use of one classroom at Leeds Elementary School during the hours of 7:15 a.m. through 5:30 p.m. (not provided as a portion of the free preschool initiative), Monday through Friday, for a term of less than one year, commencing on August 18, 2021, and ending at 5:00 p.m. on May 31, 2022, upon the condition that Tenant pays rent therefor, and otherwise performs as provided in this Lease. Upon the termination of this Lease, Tenant shall surrender the premises to Landlord in good and clean condition, except for ordinary wear and tear or damage without fault or liability of Tenant. Notwithstanding any provision to the contrary in this Lease, Tenant agrees that Tenant shall not have students in the school building when there is no school or it is not a teacher work day.

2. **RENTAL.** Tenant agrees to pay to Landlord as rental for said term, on the 1st day of each month, as follows (not provided as a portion of the free preschool initiative): \$650.00 per month per classroom.

3. **USE OF CLASSROOM SPACE.** Tenant covenants and agrees during the term of this Lease to use the classroom space for the purpose of providing preschool and childcare for children, subject to and in coordination with Landlord’s use of the classroom for educational purposes. Tenant shall make every effort to fill the classroom with preschool students. If the Tenant does not have at least ten (10) students by September 15, Landlord, at its option, may terminate the Lease without further notice or action. During its use of the classroom space, Tenant shall at all times have in place practices and procedures to promote and insure the health and safety of its customers

and invitees, including the employment and presence of qualified personnel. Tenant shall make no structural changes or alterations without the prior written consent of Landlord. Tenant will provide its own telephone service. Tenant will be provided access to the copy machine available in the school building. A fee of 10 cents per copy shall be paid for any copies in excess of 20 per week.

4. **ASSIGNMENT AND SUBLETTING.** Tenant will not, voluntarily or by operation of law, assign, sell, convey, sublet or otherwise transfer all or any part of Tenant's right or interest in this Lease, or allow any other person or entity to occupy or use all or any part of the premises (collectively called "Transfer") without first obtaining the written consent of Landlord which may be withheld or conditioned by Landlord in its sole discretion. Any Transfer without the prior written consent of Landlord shall be void. Notwithstanding any provisions contained in this Lease, Tenant shall not assign this Lease or sublet the premises, or any part thereof, to a for-profit entity or an organization which is not tax exempt under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. For purposes of construing this clause, a transfer of a controlling interest in Tenant shall be considered a Transfer.

5. **CARE AND MAINTENANCE.**

(a) Tenant accepts the condition of the classroom as is, except as herein provided.

(b) Landlord shall not be obligated to repair or replace such items where doing so would require Landlord to expend funds or resources exceeding such amounts allowed by its applicable budget.

(c) Tenant shall maintain the classroom in a reasonably safe, serviceable, clean and presentable and good condition. Tenant shall provide custodial services for the classroom during the term of this Lease. Tenant shall not alter, modify or damage the structure of the classroom. The addition of any fixtures, including, but not limited to, indoor playground equipment, shall be approved in writing by Landlord's designee prior to addition to the classroom.

(d) Tenant shall cooperate with Landlord regarding the scheduling of any necessary maintenance. This section in no way implies that Landlord will perform maintenance at the request of Tenant.

6. **INSURANCE.**

(a) **Property Insurance.** Landlord and Tenant agree to insure their respective real and personal property for the full insurable value.

(b) **Liability Insurance.** Tenant shall obtain and maintain comprehensive commercial general liability insurance. Such policy of insurance shall insure against loss or liability for damages for personal injury, death or property damage arising or resulting from premises operations, independent contractors, personal injury, property damage, products and completed operations, and liability assumed under contract. This policy shall have the following limits for comprehensive

general liability coverage: \$1,000,000 per incident and \$3,000,000 in the aggregate. Coverage shall be provided on a blanket basis for contractual liability. Tenant represents and warrants that she does not transport children in her individually-owned vehicle(s) and does not take field trips which require transportation. Therefore, Tenant shall not be obligated to obtain and maintain additional automobile liability coverage under this Lease.

(c) Workers' Compensation Insurance. Tenant shall obtain and maintain workers' compensation insurance including employers' liability insurance with minimum liability limits as required by applicable law.

(d) Umbrella Excess Liability Insurance. Tenant shall obtain and maintain umbrella excess liability insurance with a minimum limit of \$3,000,000.

(e) Miscellaneous. All insurance provided for under this section shall be effected by policies issued by insurance companies of sound and adequate financial responsibility qualified to do business in Iowa. Tenant shall deliver certificates of insurance with respect to the policies of insurance so procured, including existing additional and renewal policies, to Landlord, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies to Landlord not less than 10 days prior to the respective dates of expiration. All policies shall have an endorsement that the policy shall not be cancelled or materially changed without at least 30 days' prior written notice to Landlord, and an endorsement to the effect that no act or omission of Landlord or Tenant shall affect the obligation of the insurer to pay the full amount of any loss sustained. All of the policies shall name Landlord and Tenant as insureds and shall cover Landlord and its respective directors, officers, agents and employees, although any losses under the policies shall be payable to the parties, as their respective interests may appear. All policies shall have an endorsement waiving and releasing all rights of subrogation of the insurer against Landlord, its respective officers, agents and employees.

(f) Tenant will not do or omit doing of any act which would invalidate any insurance, or increase the insurance rates in force on the premises.

(g) Landlord and Tenant shall each provide a copy of this Lease to their respective insurers.

(h) Governmental Immunity. (i) Notwithstanding anything to the contrary herein, Landlord and Tenant expressly agree and state that the purchase of the policy of insurance by the insured does not waive any of the defenses of governmental immunity available to Landlord under Iowa Code Chapter 670 as it now exists and as it may be amended from time to time. To the extent there may be a conflict between this Lease and Landlord's governmental immunity contained in Iowa Code Chapter 670, such Chapter shall control and this Lease shall be deemed inapplicable for such purposes.

(ii) Landlord and Tenant further agree that this policy of insurance should

cover only those claims not subject to the defense of governmental immunity pursuant to Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

(iii) The General Liability policy (and Auto Liability policy, if any) shall be endorsed to provide protection for the above-described immunities under Iowa Code Chapter 670.

(iv) Such insurance policy shall also include the policy does not apply to any claim against an insured for which the insured:

1. Is immune from liability due to the provisions of any statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure; or

2. Is not immune from liability as described in (1) above but is immune from further liability above any specific statutory limits cap on the maximum liability of the insured. However, this item (2) does not apply to the extent (if any) this policy provides coverage up to the maximum statutory liability limits cap.

This endorsement shall not apply if, for any reason, the immunity or maximum liability cap granted by statute or rule of civil procedure is deemed void.

(v) The immunities and statutory limits caps referred to in the foregoing paragraphs are those found in Iowa Code Chapter 670, or any succeeding statutory compilation.

(vi) Such insurance policy shall also include that

1. the insurance carrier expressly agrees and states that the purchase of this policy and the including of Landlord as an Additional Insured does not waive any of the defenses of governmental immunity available to Landlord under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time;

2. the insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy;

3. Landlord shall be responsible for asserting the defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in the policy shall prevent the carrier from asserting the defense of governmental immunity on behalf of the jurisdiction;

4. the insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to Landlord under this policy for reasons of governmental immunity asserted by Landlord; and

5. the insurance carrier and Landlord agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

7. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees).

8. **INDEMNITY.** Except for the negligence of Landlord, Tenant will protect, defend and indemnify Landlord from and against all loss, costs, damage, and expenses occasioned by, or arising out of, any accident or other occurrence, causing or inflicting injury or damage to any person or property, happening or done in, upon or about the classroom and/or on the school building grounds or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant. Tenant shall obtain an appropriate written liability waiver from all participants in its program.

9. **RECORD KEEPING AND ACCESS.** Tenant shall keep all records available for inspection as required by Landlord, including but not limited to, financial records, insurance records, certification records, records of participants in its programs, and copies of all signed liability waivers. All such records shall be available for inspection by Landlord upon reasonable notice to Tenant. Tenant shall obtain a written consent from a parent of every child in its care, that allows release of any information regarding the child to Landlord.

10. **WARRANTIES AND GUARANTIES.** Tenant warrants and guarantees that it will at all times during the term of this Lease be in compliance with all Licensing, Registration, Personnel, and Inspection requirements of the State of Iowa. Tenant shall be solely responsible for ensuring its compliance with the requirement of any governmental agency. Landlord shall at no time be responsible for, or be required to, expend funds to ensure compliance with the demands of any state agency, other than those they would ordinarily be expected to comply with in the usual operation of the school building.

Tenant warrants and represents that it will not discriminate, in employment or provisions of services, on the basis of race, creed, color, religion, national origin, sex, age, physical or mental disability, gender identity, sexual orientation or veteran status and shall comply with all applicable state and federal anti-discrimination laws and regulations.

11. **MECHANICS' LIENS.** Neither Tenant nor anyone claiming by, through, or under Tenant, shall have the right to file or place any mechanic's liens or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of Tenant, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of Landlord, Tenant covenants and agrees to give actual

notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

12. TERMINATION, NOTICE OF DEFAULT, AND REMEDIES.

(a) During the term of this Lease, either party may terminate this Lease without cause by giving the other written notice at least thirty (30) days prior to the stated date of termination.

(b) Landlord may terminate this Lease by giving Tenant written notice at least thirty (30) days prior to the stated date of termination if conditions then exist which would require Landlord, in order to meet its obligations under this Lease to expend funds or resources exceeding such amounts allowed by its applicable budget.

(c) Landlord may immediately terminate this Lease, during any lease term thereof, upon written notice to Tenant, in the event that any State, Federal, City and/or County statute, regulation, or ordinance makes the performance of this contract contrary to law, or in the event that the Department of Human Services takes any action regarding the licensing/registration of the childcare facility. In the event that any such termination is necessary, Tenant shall be entitled to abate its rental hereunder for any period of time remaining unused on the then current rental term.

(d) If, due to no fault of Tenant, the classroom cannot be used by Tenant as contemplated herein for a period of ten (10) consecutive days (excluding Saturdays and Sundays), Tenant may then immediately terminate this Lease by giving written notice to Landlord.

(e) Tenant shall be in default if it fails to pay rent when due; fails to observe or perform any duties, obligations, agreements or conditions imposed on Tenant pursuant to terms of this Lease; abandons the Lease by failing to engage in its usual and customary business activities at the classroom for more than thirty (30) consecutive days (excluding Saturdays and Sundays); or institutes voluntary bankruptcy proceedings in which the Court orders relief against Tenant as a debtor. In the event of any such default Landlord shall give Tenant a written notice specifying the default and giving Tenant twenty (20) days in which to correct the default. Landlord shall not be required to give Tenant any more than two notices for the same default within any 365 day period. If Tenant fails to remedy a default in a timely manner following a notice of default, or in any event if two notices for the same default have been given within any 365 day period, Landlord may proceed with all available remedies at law or in equity, including but not limited to terminating the Lease without further notice or action, and denying access to Tenant to the classroom. Landlord shall be further entitled to prove a claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses of Landlord in regaining possession of the classroom, including attorney's fees and court costs.

(f) Landlord shall be in default if it fails to observe or perform any duties, obligations, agreements or conditions imposed on it pursuant to terms of this Lease. In the event of any such default Tenant shall give Landlord a written notice specifying the default and giving Landlord twenty (20) days in which to correct the default. Tenant shall not be required to give Landlord any more than two notices for the same default within any 365 day period. If Landlord fails to remedy a default

in a timely manner following a notice of default, or in any event if two notices for the same default have been given within any 365 day period, Tenant may proceed with all available remedies at law or in equity, including but not limited to terminating the Lease without further notice or action.

13. **RIGHTS CUMULATIVE.** The various rights, powers, options, elections and remedies of either party, provided in this Lease, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

14. **NOTICES AND DEMANDS.** Notices as provided for in this Lease shall be given to the respective parties hereto as follows unless either party notifies the other, in writing, of a different address or recipient:

(a) If to Landlord, to: Sioux City Community School District
627 Fourth Street
Sioux City, Iowa 51101
Attn: Board Secretary
Facsimile: (712) 279-6879

(b) If to Tenant, to: Brenda Barto d/b/a B.B.'s Preschool & Childcare
3919 Jefferson Street
Sioux City, Iowa 51108
Facsimile: No fax available.

Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this Lease by personal delivery, by a recognized overnight carrier or by mail, registered or certified, postage prepaid with return receipt requested or by facsimile with receipt confirmed by return facsimile.

15. **PROVISIONS TO BIND AND BENEFIT SUCCESSORS, ASSIGNS, ETC.** Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties; except that if any part of this Lease is held in joint tenancy, the successor in interest shall be the surviving joint tenant.

16. **CHANGES TO BE IN WRITING.** Except as otherwise proved herein, none of the covenants, provisions, terms or conditions of this Lease shall be modified, waived or abandoned, except by a written instrument duly signed by the parties. This Lease contains the whole agreement of the parties.

17. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context. In entering into this Lease, and in rendering services, Tenant will be

considered solely a Tenant, and nothing contained in this Lease contemplates that it will be Landlord's employee or agent.

18. **CERTIFICATION.** Tenant certifies that it is not acting, 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 National and Blocked Person" or any 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; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

19. **NO SMOKING/TOBACCO PRODUCTS.** In accordance with Landlord's policies and the Iowa Smokefree Air Act, there will be no smoking or use of tobacco products in the premises or on the school grounds including school parking lots. Persons who do not comply will be asked to leave the property by a school official or School Police Liaison Officer.

20. **ESTABLISHMENT CLAUSE VIOLATION.** Notwithstanding any provisions contained in this Lease to the contrary, Landlord shall have the right to terminate this Lease in the event that this Lease is later found to be in violation of The Establishment Clause of the First Amendment of the United States Constitution.

21. **TAX EXEMPTION.**

(a) Tenant is exempt from real estate taxes under the laws of Iowa and under Federal law, and the parties intend to maintain that exemption. However, in the event that such exemption is wholly or partially lost, Tenant shall pay, in addition to other amounts provided in this Lease as they accrue in any fiscal year, all taxes, assessments and other public charges or charges in lieu of taxes levied upon or assessed against Tenant for the facility or the property on which it is located, arising by reason of Tenant's occupancy, use, or possession of the facility, or the business carried on therein, which are hereinafter collectively referred to as "taxes." Landlord shall have no obligation for payment of taxes that are referred to above.

(b) Tenant warrants and represents that it is a tax exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall maintain its tax exempt status during the term of this Lease. Tenant shall submit to Landlord a copy of its determination letter issued by the Internal Revenue Service.

22. **ABANDONMENT OF LEASED PREMISES.** Notwithstanding any provisions contained in this Lease to the contrary, in the event Tenant abandons the leased premises, or vacates the leased premises, or does not use and occupy the leased premises for comprehensive early childhood programs and all activities associated with the programs, then Landlord shall have

the right and the option to use and occupy the leased premises for school purposes and/or classroom purposes.

23. **PERSONAL PROPERTY.** Any personal property items and materials, e.g. furniture, playground equipment, classroom materials, curriculum and assessment materials, computers, etc., purchased with Preschool Initiative funds shall at all times remain the property of the Landlord. If the classroom or program is no longer a part of the Initiative Program, the personal property items and materials shall be returned to the Landlord by the Tenant.

24. **BOARD APPROVAL.** This Lease is contingent upon the Board action by the Landlord’s Board of Directors. If the Landlord’s Board of Directors does not take action to approve this Lease, then it shall be null and void and any payments made by Tenant shall be returned to Tenant. This Lease is also subject to all applicable laws relating to the disposition of property by school districts, including, but not limited to Iowa Code Sections 297.22 and 297.25.

Dated as of the ____ day of _____, 2021.

Landlord

Tenant

The Sioux City Community School District
in the Counties of Woodbury and Plymouth,
State of Iowa

Brenda Barto d/b/a B.B.’s Preschool
& Childcare

By: _____
Perla Alarcon-Flory , Board President

By: _____
Cynthia A. Lloyd, Board Secretary