

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

San Carlos School District
1200 Industrial Road, Unit 9
San Carlos, CA 94070
Attention: Robert Porter

This document is recorded for the benefit of the San Carlos School District, and recording is fee exempt under Section 6103 of the Government Code.

SITE LEASE

Brittan Acres Elementary School Child Care Classroom
August 2015 – February 2016

by and between

Rodan Builders
859 Cowan Road
Burlingame, CA 94010
(650) 576-1720

and

SAN CARLOS SCHOOL DISTRICT
1200 Industrial Road, Unit 9
San Carlos, CA 94070

Dated as of August 24, 2015

SITE LEASE

THIS SITE LEASE (this “Lease”) dated as of August 24, 2015 (“Effective Date”), is made and entered into by and between the San Carlos School District (the “District”), a school district duly organized and validly existing under the laws of the State of California, as lessor, and Rodan Builders. (“Corporation”) a California company duly organized and existing under the laws of the State of California, as lessee.

RECITALS

WHEREAS, the District currently owns a parcel of land located at 2000 Belle Ave, San Carlos, CA as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Site”), which Site is adequate to accommodate LEAP School Portables

WHEREAS, the District desires to provide the LEAP School Portables as more particularly described in Exhibit “A” to the Facilities Lease (defined below) and incorporated herein by this reference (the “Project”);

WHEREAS, the Governing Board of the District (the “Board”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to the Corporation and by immediately entering into the Facilities Lease (defined below) under which the District will sublease the Site and lease the Project from the Corporation;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to the Corporation and to have the Corporation construct the Project on the Site and to lease to the District the Site and the Project, and has duly authorized the execution and delivery of this Lease;

WHEREAS, the Corporation is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease; and

WHEREAS, District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease dated August 24, 2015 by and between the District and the Corporation (the “Facilities Lease”) shall have the same meaning in this Lease.

ARTICLE II

DEMISING CLAUSES

Section 2.1. Lease of the Site. The District hereby leases to the Corporation, and the Corporation hereby leases from the District the Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Corporation within three (3) days of execution of this Lease.

Section 2.2. Rental. In consideration for the lease of the Site by the District to the Corporation and for other good and valuable consideration, the Corporation shall pay One Dollar (\$1.00) to the District.

Section 2.3. No Merger. The leasing of the Site by the Corporation to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Corporation shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

ARTICLE III

QUIET ENJOYMENT

Section 3.1. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default, as defined in the Facilities Lease dated June 26, 2015 occurs under the Facilities Lease, the Corporation, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Corporation from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Corporation, to the extent that it may lawfully do so, join in any legal action in which the Corporation asserts its right to such possession and enjoyment.

ARTICLE IV

SPECIAL COVENANTS AND PROVISIONS

Section 4.1. Waste. The Corporation agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

Section 4.2. Further Assurances and Corrective Instruments. The District and the Corporation agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

Section 4.3. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, provided the District follow all safety precautions required by the Corporation.

Section 4.4. Representations of the District. The District represents, covenants and warrants to the Corporation as follows:

(a) Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

(b) Authorization. The District has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) No Violations. Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

(d) CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("CEQA")) in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

(e) No Litigation. There is no action, suit, proceeding, inquiry or investigation pending before or by any court or federal, state, municipal or other governmental authority or, to the knowledge of the District after reasonable investigation, threatened against or affecting the

District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Facilities Lease or upon the financial condition, assets, properties or operations of the District, and the District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummations of the transactions contemplated by this Facilities Lease and the Site Lease or the financial conditions, assets, properties or operations of the District.

(f) Regarding Condemnation Proceedings. The District hereby covenants and agrees, to the extent it may lawfully do so, that as long as the Facilities Lease and Site Lease remain in effect, the District will not exercise the power of condemnation or eminent domain with respect to the Project. The District further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the District should fail or refuse to abide by such covenant and condemns or takes the Project by eminent domain, then District agrees that the appraised value of the Project shall not be less than the aggregate total of all Lease Payments provided for under this Facilities Lease, less any Lease Payment previously made; provided however, that if the taking occurs prior to the completion of the Project, Regent shall be entitled to the value of construction completed, less the value of any Tenant Improvement Payments or Lease Payments made by District.

(g) Use and Zoning. Site is properly zoned for its intended purpose and the use or activities contemplated by this Lease will not conflict with local, state or federal law.

(h) Taxes. All taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

(i) Hazardous Materials. District is not currently aware of any contamination to the Site by Hazardous Materials. If District becomes aware of any act or circumstance, which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Corporation.

Section 4.5. Representations of the Corporation. The Corporation represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Corporation is a California company duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) Authorization. The Corporation has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) No Violations. Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Corporation, or upon the Site, except Permitted Encumbrances.

ARTICLE V

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 5.1. Assignment and Subleasing. This Lease may be assigned and the Site subleased, as a whole or in part, by the Corporation only upon the prior written consent of the District to such sublease, which shall not be unreasonably withheld.

Section 5.2. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease without the prior written consent of the Corporation to such sublease, which shall not be unreasonably withheld.

Section 5.3. Liens. Corporation agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project. Pursuant to Section 66 of the Construction provisions dated June 26, 2015, Corporation further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District and all of the free and harmless from any and all such liens, mortgages, including without limitation, and claims of liens and suits or other proceedings pertaining thereto.

ARTICLE VI

IMPROVEMENTS

Section 6.1. Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

ARTICLE VII

TERM AND TERMINATION

Section 7.1. Term. The term of this Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Corporation, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3(a) or 4.3(c) of the Facilities Lease.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the Corporation:

Rodan Builders
859 Cowan Road
Burlingame, CA 94010
WITH A COPY TO-
San Mateo County Counsel

If to District:

San Carlos School District
1200 Industrial Road, Unit 9
San Carlos, CA 94070
Attention: Robert Porter, Chief Operating Officer

-WITH A COPY TO-
San Mateo County Counsel
400 County Center, 6th Floor
Redwood City, CA 94063

The Corporation and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 8.2. Binding Effect. This Facilities Lease shall insure to the benefit of and shall be binding upon the Corporation and the District and their respective successors and assigns.

Section 8.3. Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.4. Amendments, Changes and Modifications. This Lease may not be effectively amended, changed, modified, altered or terminated without the written agreement of both parties hereto.

Section 8.5. Obligations Absolute. The Corporation agrees that the obligations of the Corporation are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

Section 8.6. Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 8.7. Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, County of San Mateo.

Section 8.8. Dispute Resolution. (a) The parties agree that all claims, disputes or controversies between the parties arising out of or relating to this Facilities Lease, or breach thereof, ("Claim") shall initially be submitted to non-binding mediation before a mediator mutually agreed upon by the parties. In the event the parties are unable to agree upon the identity of the mediator within fifteen days from the date either party submits a written request to mediate a Claim, the mediator shall be selected and the mediation administered under the Construction Mediation Rules of the American Arbitration Association. The costs and fees of the mediator shall be paid equally by the parties. The parties shall negotiate in good faith in an effort to reach an agreement with respect to the Claim. Neither party shall commence or pursue arbitration or litigation until the completion of mediation proceedings.

(b) In the event that a Claim remains unresolved after mediation, the Claim may be submitted to non-binding arbitration. If the parties agree to arbitrate, the arbitrator shall be selected through the San Mateo County Bar Association or the American Arbitration Association and shall be mutually agreed upon by both parties. If the parties do not opt for non-binding arbitration or non-binding arbitration is unsuccessful, either party may file an action in San Mateo County Superior Court.

Section 8.9. Corporation and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Corporation or the District is required, or the Corporation or the District is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by the Corporation Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 8.10. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 8.11. Prior Agreements. This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 8.12. Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorney's fees.

Section 8.13. Further Assurances. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Lease.

Section 8.14. Effect of Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and Parties acknowledge and agree that they are each bound by the same.

Section 8.15. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Lease.

Section 8.16. Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Lease for purposes of construing the provisions thereof. The language in all parts of this Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Site Lease to be executed by their respective officers thereunto duly authorized, as of the Effective Date.

SAN CARLOS SCHOOL DISTRICT

By: _____
Robert Porter, Chief Operating Officer

Its: Member

RODAN BUILDERS

By: _____
Dan Oliver

Its: Chief Financial Officer

EXHIBIT "A"

DESCRIPTION OF SITE

A map of the Site Lease, dated June 26, 2015

The following page is the Site Legal Description and map of the Brittan Acres Elementary School and a map of the Site Lease, dated August 24, 2015.

