

13-39

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 13-39 by accepting the attached Substitute Attachment "A" Lease to replace the previously provided Attachment "A" to Bill No. 13-39.

Introduced by:

Approved as to Form and Legality:

City Attorney

Requested by: Councilman Lloyd Hinkley

Reason for Request: To remove second penalty for late payment and reduce interest rate for both payments.

LEASE

This Lease is made by and between **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, (the "*Lessor*") and **TANYA A. PORTER AND DAMIAN A. PORTER, wife and husband**, each in their individual capacities (referred to as: collectively, the "*Porters*" jointly; and severally, the "*Lessee*"):

For good and valuable consideration the parties hereby agree as follows:

1. Lease. *Lessor* does by these presents lease and demise to *Lessee* and *Lessee* hereby leases from *Lessor* the following-described premises subject to and upon the terms and conditions set forth herein:

Lot 2, Block 1, Centrum Block Addition, Lincoln, Lancaster County, Nebraska, containing approximately 3,850 square feet, located in the southwest corner of 1100 N Street, Lincoln, Nebraska. (See attached Exhibit A)

together with all improvements, fixtures, appurtenances, rights, privileges, and easements thereunto pertaining (the "*premises*"). No personal property is included in this Lease.

2. Acceptance; Use. *Lessee* agrees to take the *premises* in their present condition as is where is. *Lessee* agrees to use the *premises* only for a licensed day care facility and in doing so agrees to comply with all laws, rules, and regulations relating thereto. If *Lessee* desires to alter its use from a licensed day care facility *Lessee* shall obtain *Lessor's* written consent, which shall not be unreasonably withheld.

3. Term. This Lease shall be for a term commencing on April 1, 2013, and terminating at midnight on March 31, 2018, unless earlier terminated by *Lessor* per the terms and conditions herein. *Lessee* shall have the option to renew this Lease for an additional lease term of five (5) years at a lease rate mutually agreed upon by both parties.

4. Authority to Lease. *Lessor* warrants to *Lessee* that it has full right and lawful authority to enter into this Lease, that *Lessor* is lawfully seized of the entire *premises* hereby demised, and has good title thereto, free and clear of all tenancies but subject to easements, covenants, liens, and encumbrances of record. *Lessor* further warrants that if *Lessee* shall discharge the obligations herein set forth to be performed by *Lessee*, *Lessee* shall have and enjoy during the term hereof the quiet and undisturbed possession of the demised *premises*, together with all appurtenances appertaining or appendant thereto.

5. Security Deposit. *Lessor* shall waive the need for a security deposit since *Lessee* is taking the space "as is" and is doing all the improvements and clean up of the space at *Lessee's* expense. *Lessee* will be given a credit for the improvements up to the cost of the first five (5) months rent or \$15,881. *Lessee* must provide documentation of the improvements in order to obtain the credit.

6. Alterations. *Lessee* shall not make any structural improvements, additions, or alterations to the *premises* without the prior written consent of *Lessor*. *Lessee* shall, at *Lessee's* expense, have the right to make cosmetic improvements that are permitted by law without *Lessor's* written consent. Any such approved improvements, alterations and additions shall be completed in good and workmanlike manner with first class materials. Upon termination of this Lease any improvements, additions, or alterations made to the *premises* shall remain a part of the *premises* and be surrendered to *Lessor*; provided, however, that *Lessee* may remove *Lessee's* trade fixtures provided such removal does not damage any portion of the *premises*.

7. Assignment/Subletting. Lessee may not assign or sublease any part of this Lease or the premises without the written consent of Lessor, which may be withheld with or without cause; and in the case of any such assignment Lessee shall remain fully liable for all of Lessee's obligations under this Lease. Lessor may assign its interests hereunder in the event of a sale of the premises, and in such event shall give notice of such assignment to Lessee and shall thereafter be relieved of further obligations hereunder.

8. Casualty Damages to or Destruction of Premises. In the event of damage to or destruction of more than fifty percent (50%) of the usable space in the leased premises by fire, windstorm, hail, or any other cause covered under any fire and extended insurance coverage on the premises, the Lessor may, at its option, on written notice to the Lessee within thirty (30) days following the date of such loss, declare this Lease to be terminated, in which event the Lessee, upon receipt by Lessor of the insurance proceeds, shall be relieved of all further obligations and payments under this Lease which accrue subsequent to the date of such loss; but if not terminated, the Lessor shall be responsible for repairing and restoring such loss to the extent of the benefits that are actually received by the Lessor under any fire and extended insurance coverage and Lessee shall be responsible for continuing rent and all other payments and obligations hereunder. If such loss does not exceed fifty percent (50%) of the usable space in the leased premises, the Lessor shall be responsible for repairing the damage caused by such loss to the extent of all payments and insurance benefits that are actually received by Lessor under any fire and extended insurance coverage and Lessee shall be responsible for continuing rent and all other payments and obligations hereunder.

9. Rent; Other Payments and Responsibilities.

A. Base Rent. Lessee agrees to pay Lessor, as rent for said premises for the term of this Lease prior to the 15th of each month base rent as set forth on Exhibit B (attached and incorporated into this Lease by reference); and in addition thereto, Lessee shall pay repairs, maintenance, replacements, and other costs and expenses as hereinafter provided. In the event that the term commences on a day other than the first day of the month the rent for that partial month shall be prorated.

B. Late Payment Fee. In the event the rent is not paid in full by the 15th day of the month, Lessee shall pay Lessor late payment fee of \$100.00, and the delinquent amounts of all payments due shall draw interest at twelve percent (12%) per annum.

C. Liability Insurance. Lessee shall maintain General Liability Insurance at Lessee's own expense during the life of this Lease, naming and protecting Lessee and Lessor, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omission, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Lease whether such operations by Lessee and Lessee's employees, or those directly or indirectly employed by Lessee. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions – \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
2. Bodily Injury/Property Damage – \$1,000,000 each Occurrence, \$2,000,000 Aggregate; and
3. Personal Injury Damage – \$1,000,000 each Occurrence; and
4. Contractual Liability – \$1,000,000 each Occurrence; and
5. Medical Expenses (any one person) – \$10,000; and
6. Fire Damage (any one fire) – \$100,000.

Lessee shall hold harmless from any loss or damage which may arise or be sustained by Lessor by reason of claims, demands, actions, or proceedings by any person or

persons resulting from the use and/or occupancy of the *premises* by *Lessee*. *Lessor* shall be named as an additional insured on such insurance, and *Lessee* shall provide *Lessor* a certificate of such insurance to *Lessor* prior to the commencement of each calendar year, with the first certificate to be provided upon execution of this Lease. The insurance shall have an endorsement thereon agreeing to give *Lessor* thirty (30) days advance notice in the event of the cancellation of all or any portion thereof.

D. Additional Insurance. *Lessee* shall be responsible for all other insurance it may desire, including but not limited to insurance for its personal property and business interruption insurance, and *Lessee* acknowledges that *Lessor* is not providing any insurance coverage or insurance protection to *Lessee*. All property of every kind and nature belonging to *Lessee* which may be in or about the *premises* or in the garages during the term of this Lease shall be at the sole risk and responsibility of *Lessee*.

E. Right to Terminate Lease. *Lessee* shall have the exclusive right to terminate this Lease annually should the *premises* no longer be suitable for their use. *Lessee* shall give *Lessor* notice of any lease termination ninety (90) days prior to the lease termination, which shall be on or before January 1 with a termination date of March 31 each year.

F. Utilities. During the term *Lessee* shall pay, in addition to rent, all gas, electricity, telephone, internet, security system, cleaning and general operating charges with respect to the *premises*, incurred by the *Lessee* and/or *Lessor* with respect to the use and occupancy of the *premises* during the term of this Lease. The water and sewer bill is sent to the *Lessor*. *Lessee* shall pay \$100.00 per month along with the rent to cover this utility. The \$100.00 a month fee for utilities is for the first year of this Lease. The utility fee will increase by three percent (3%) on April 1 of each lease year as indicated in Exhibit A. *Lessor* shall be responsible for garbage.

G. Repairs; Care of premises. Except for items covered by an event per paragraph 8 or items stated herein to be the responsibility of *Lessor*, during the term of this Lease *Lessee* shall be responsible for the first \$1,000.00 of annual repairs, replacement and maintenance at the *premises* for the following: all internal items (including without limitation walls, ceiling, glass, cabinets, fixtures, electrical, internet, cables, plumbing, and the like), all external items other than those listed as *Lessor's* responsibility (which includes as *Lessee's* responsibilities, without limitation, fencing, outdoor lighted signs), all items needing repair, replacement of maintenance due to the act or omission of *Lessee* or any of its agents, employees, customers, invitees, or the like.

Lessor (and not *Lessee*) shall ensure all plumbing, electrical and HVAC systems are in good working order prior to lease commencement. After lease commencement, *Lessor* shall be solely responsible to pay for repairs, replacements, and maintenance over \$1,000.00 of annual repairs to the items listed above in paragraph F and those items not caused by any act or omission of *Lessee* or any of its agents, employees, customers, invitees, and the like, and to the extent these items are not covered by an event per paragraph 8: *Lessor* shall be responsible for all the external portions of building (including exterior glass, brick, aluminum, and roof), HVAC system, plumbing system.

Without in any way limiting the generality of the foregoing, *Lessee* acknowledges that the plumbing systems can be damaged by improper disposal of items into the system, such as without limitation feminine protection materials, diapers, wipes, paper towels, toys, crayons, or any items other than standard toilet paper, and *Lessee* further acknowledges that any damages caused by such improper disposal shall be the sole responsibility of *Lessee* for repair, replacement, and maintenance.

Lessee covenants that it will use all due care and diligence in guarding the *premises* from damage by fire and other causes, that it will not do or permit anything on or about the *premises* which will significantly increase the rate of insurance presently established for the improvements thereon; and further covenants that it will in all respects comply with laws, ordinances, and governmental regulations.

Lessee covenants and agrees that it will carry workers' compensation and employer's liability insurance in a good and responsible insurance company upon all employees of the *Lessee* during the continuance of this Lease employed upon the *premises* or in connection with *Lessee's* business thereon, and further covenants and agrees, in the event of making repairs upon or alterations to the *premises*, to carry workers' compensation insurance and employer's liability insurance covering the workmen employed by the *Lessee*, or to require any contractor hired by *Lessee* to do such work to carry said workers' compensation insurance and employer's liability insurance; and *Lessee* agrees to furnish *Lessor* upon request with a certificate or certificates from the company or companies carrying such insurance showing issuance and the duration of the same.

H. Real Estate Taxes. The *premises* are currently tax exempt. If the *premises* should accrue real estate taxes, *Lessee* shall also pay to *Lessor* during the term all of the real estate taxes and all general and special assessments with respect to the *premises*. *Lessee* shall make monthly payments of the estimated real estate taxes/assessments to *Lessor* on the 15th day of each month in an amount of 1/12th of the anticipated total amount due to be paid by *Lessee* based upon the most currently available taxes/assessments figures. This amount shall be adjusted during the calendar year as tax rates and valuations are published upon written notification provided to *Lessee*, and any shortfall in the total amount due (calculated based upon the actual amount of applicable year's taxes/assessments) shall be paid by *Lessee* to *Lessor* within thirty (30) days of the request of *Lessor*.

10. Default. Any of the following acts and omissions shall constitute a default by *Lessee* and a breach of this Lease:

A. The failure of *Lessee* to pay the rent for a period of ten (10) days after receipt by *Lessee* of written notice of such failure; or

B. The failure of *Lessee* to perform any other agreement or obligation to be performed on the part of *Lessee*, other than paying rent, for a period of thirty (30) days after receipt by *Lessee* of written notice of such failure; provided, however, that with respect to any non-financial failure which cannot reasonably be cured within thirty (30) days, an event of default shall not be considered to have occurred if *Lessee* commences to cure such failure within such thirty (30) day period and continues to proceed diligently with a cure of such failure and achieves a cure within a reasonable period of time.

In the event of a default by *Lessee*, *Lessor* may pursue any and all legal and equitable remedies that may be available to it including without limitation, at its election, either for rent due and damages sustained or re-enter and recover possession of the *premises*, and *Lessee* hereby waives any notice of such election and any demand for possession of the *premises*.

In the event that *Lessor* elects to re-enter and recover possession of the *premises* then at the election of *Lessor* it may either terminate this Lease or relet the *premises* or any portion thereof on such terms and conditions as *Lessor* may deem advisable. Upon reletting the *premises* rent received by *Lessor* shall be applied, in the following order:

- (a) To the costs of such reletting, including brokerage fees and attorneys fees for such re entry and recovery of possession of the *premises*.
- (b) To any sums due, other than rent, from *Lessee* to *Lessor* hereunder.
- (c) To rent due and unpaid hereunder.
- (d) To future rent and other charges to become due and payable hereunder. If such rent received by *Lessor* shall be insufficient to satisfy the current obligations of *Lessee* hereunder, the deficiency shall be computed and billed to *Lessee* monthly and shall be paid by *Lessee* within five (5) days of the billing.

Notwithstanding any election by *Lessor* hereunder, *Lessor* may, at any time subsequent to the default of *Lessee*, terminate this Lease by giving thirty (30) days advance written notice of such termination to *Lessee*.

11. Notices. All notices required to be given hereunder shall be in writing, and shall either be hand delivered or mailed by certified mail, postage prepaid to the parties as follows (the notice shall be deemed to be effective upon hand delivery or two (2) days after depositing the certified mail in the U. S. Mail, as the case may be):

City of Lincoln
Attn: Scott Vrbka
850 Q Street
Lincoln, NE 68508

Tanya A. and Damian A. Porter
3020 West Peach Street
Lincoln, NE 68522

12. Access. *Lessor* shall have access to the *premises* from time to time upon reasonable notice to *Lessee* to make inspections and/or exhibit the *premises* for sale or lease. Further, commencing six (6) months prior to the end of the term *Lessor* shall be permitted to place signage at the *premises* for sale or for lease and to continue to exhibit the *premises* upon reasonable notice to *Lessee*.

13. Parking. *Lessor* shall contract with *Lessee* for six (6) parking stalls in the attached garage for *Lessee* and *Lessee's* employees. The cost of these stalls will be agreed upon under separate cover.

14. Loading Stalls. *Lessor* shall designate the four (4) parallel stalls in front of the premises and four (4) angled stalls as "Loading Zone" stalls for the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M. for parent drop off and pick-up.

15. License Contingency. In the event *Lessee* notifies *Lessor* in writing on or before March 15, 2013, that *Lessee* was unable to obtain the necessary licenses to operate a day care at the *premises*, then and in such event this Lease shall be null and void. *Lessee* agrees to make diligent efforts to timely obtain said licenses.

16. City Approval Contingency. This Lease is contingent upon the approval of the Lincoln City Council. *Lessor* agrees to make diligent efforts to timely obtain this approval. If approval is not given by the City Council, this Lease shall be null and void.

17. Existing Lease Termination Contingency. This Lease is contingent upon *Lessee* terminating their existing lease at 1432 N Street with Waverly Development Company on or before March 31, 2013.

18. Miscellaneous. At the expiration of this Lease, peaceful possession shall be returned to *Lessor* by the *Lessee*. Holding over in possession of the leased *premises* after the expiration of this Lease or of any renewal or extension thereof shall not constitute renewal of this Lease but

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

On _____, 20____, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came **Chris Beutler**, known to me to be the **Mayor of City of Lincoln, Nebraska, a municipal corporation**, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that its corporate seal was thereto affixed by its authority.

Witness my hand and notarial seal the day and year last above written.

(S E A L)

Notary Public

EXHIBIT B (Base Rent)

For April 1, 2013 - March 31, 2014 (12 months): \$9.90/SF, total rent of \$38,115.00 minus credit for improvements up to \$15,881. (See paragraph 5.) Lessee shall also pay \$100.00 per month along with the rent to cover the utilities. (See paragraph 9F.)

For April 1, 2014 - March 31, 2015 (12 months): \$10.20/SF, total rent of \$39,270. Lessee shall also pay \$103.00 per month along with the rent to cover the utilities. (See paragraph 9F.)

For April 1, 2015 - March 31, 2016 (12 months): \$10.51/SF, total rent of \$40,463.50. Lessee shall also pay \$106.09 per month along with the rent to cover the utilities. (See paragraph 9F.)

For April 1, 2016 - March 31, 2017 (12 months): \$10.83/SF, total rent of \$41,695.50. Lessee shall also pay \$109.27 per month along with the rent to cover the utilities. (See paragraph 9F.)

For April 1, 2017 - March 31, 2018 (12 months): \$11.15/SF, total rent of \$42,927.50. Lessee shall also pay \$112.55 per month along with the rent to cover the utilities. (See paragraph 9F.)

EXHIBIT A

