

AMENDED LEASE AGREEMENT

THIS AMENDED LEASE made this _____ day of _____, 2010, by and between **Dover Daycare Learning Center, Inc. d/b/a Dover Children's Center** of 43 Back River Road, Dover, New Hampshire 03820 (hereinafter referred to as "TENANT"), and The City of Dover, New Hampshire, of 288 Central Ave., Dover, County of Strafford and State of New Hampshire (hereinafter referred to as "LANDLORD").

W I T N E S S E T H:

IN CONSIDERATION of the mutual promises contained herein, and FOR OTHER GOOD AND VALUABLE CONSIDERATION contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Premises

(A) Location of Premises. That the LANDLORD does hereby demise and lease to the TENANT the space within the City's McConnell Center located at 30 St. Thomas Street, Dover, NH, which space is intended to contain **3666 square feet** and more particularly identified on the McConnell Center Plans dated February 6th, 2006 as rooms **161, 162, and 163.**

(B) Parking. In conjunction with the use of the Premises, TENANT shall have the right to use **fifteen (15)** parking spaces for its employees in the adjacent City Parking lot to the rear of the Public Library during Tenant's normal operations between the hours of **6 AM and 6PM** Monday through Friday. No spaces will be reserved, but may be used on a first come first served basis in cooperation with other users, visitors and tenants of the McConnell Center. No signage will be erected designating spaces to the TENANT. The parking spaces may be subject to relocation within the entire parking lot at the sole discretion of the City of Dover.

In addition, the clients of the TENANT shall have the right to use visitor spaces and pick up and drop off short term parking spaces adjacent to the McConnell Center on St. Thomas Street. Ten (10) drop off spaces shall be designated along St. Thomas Street and available between the hours of 6 AM and 9 AM and between the hours of 4 PM and 6 PM Monday through Friday.

(C) Indoor Exercise Area. TENANT shall have the ability to schedule space (minimum of 850 square feet) within the McConnell Center for gross motor skills activities if weather does not permit the use of the outdoor playground. Said space shall be available for a minimum of two (2) hours per day , one (1) hour in the morning and one (1) hour in the afternoon. Scheduling arrangements shall be made by written request to the LANDLORD.

(D) Food Service Preparation. LANDLORD shall provide space with commercial cooking facilities within the McConnell Center for the TENANT to prepare food on a large scale with scheduled time for the TENANT to prepare food. Food service for the TENANT is currently provided by the Green Bean Café and the LANDLORD agrees to continue using best efforts to maintain a food service provider in the McConnell Center in order to meet the needs of the TENANT.

2. Term. This lease amends and replaces the lease entered into by the parties on or about December 27, 2006. The term of this Lease shall be for Twenty-five (25) years beginning on September 1, 2007.

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3. Cost.

(A) Tenant Cost. The payments due to the LANDLORD by the TENANT are comprised of various cost components stated in the chart below. Fixed rent shall remain constant during the term of the lease. Other cost components shall change at least annually and periodically if needed. Monthly fixed rent and all other cost obligations shall be paid by the TENANT on or before the first day of each month to the City of Dover, c/o Finance Director, 288 Central Avenue, Dover NH 03820. The charges are based upon space allocation of **3666** square feet and calculated using the following cost components:

Component	FY '11 Total Rent Assessment		
	Rate	Annual	Monthly
Fixed Rent	\$6.50	\$23,829	\$1,985.75
Capital Reserve	\$0.	\$0.00	\$0.00
Utilities (*)	\$7.67	\$28,118.22	\$2,343.19
Other as agreed	0	0	0
Total Rent Assessment	\$14.17	\$51,947.22	\$4,328.94

(*) Utility costs are variable based upon actual costs as outlined in section (B).

(B). Total Rent Assessment including Operation, Maintenance and Utilities expenses

The TENANT shall pay the Total Rent Assessment including expenses for operations, maintenance, utilities (electricity, water, gas, heat), custodial, snow removal and associated supplies. Operations and Maintenance costs of this lease for Fiscal year 2011 ending June 30th is **\$7.67/sq. ft.** Thereafter these costs shall be revised annually on July 1st of each year. These costs shall be prorated per square foot based upon the previous years actual cost of operating and maintaining the building. The total square footage of leased space is **54,081 square feet.** The annual revision of operation and maintenance costs shall occur on July 1st

(C) Subsidy.

The TENANT and LANDLORD agree on a subsidy to be supplied by the LANDLORD to assist the TENANT to pay the Total Rent over a five (5) year period. The subsidy shall decline annually over a five (5) year period with the subsidy at zero in Fiscal Year 2015. Failure of the TENANT to achieve the revenue and expense goals detailed in the Five Year plan submitted to the LANDLORD during negotiations shall not operate as a defense for the TENANT in the event the TENANT fails to pay the total rent. The chart below details the declining subsidy:

Fiscal Year 2011	\$28,118.22
Fiscal Year 2012	\$24,985
Fiscal Year 2013	\$17,485

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Fiscal Year 2014	\$ 9,182
Fiscal year 2015	\$0

(D) No Cost Services for McConnell Center Clients. The TENANT shall provide drop off day care services at no charge to clients of agencies located in the McConnell Center when clients of these agencies are accessing educational and social services in the McConnell Center if the TENANT has the capacity for providing these services at the time the services are requested, and provided the clients register in accordance with state, federal and center policies and procedures.

4. Condition of Premises.

The LANDLORD leases the Space “as is”. TENANT shall be solely responsible for all associated costs for desired original and future build out of the Premises. Plans for build out shall be reviewed and approved by the LANDLORD. TENANT shall be solely responsible for insuring all improvements and contents of the Premises, and shall name LANDLORD as an additional insured.

LANDLORD shall, at its own expense, maintain and keep the building in good structural order and repair including, but not limited to, all partitions, doors, windows, fixtures and equipment. In addition, LANDLORD shall, at its own expense, make normal repairs and maintain performance of the Premises, as needed, including, without limitation, the replacement of broken glass, interior repainting, the repair of floors, and the keeping of windows and doors watertight. LANDLORD shall also, at its expense, maintain in good operating condition all plumbing, electrical, heating, sprinkling, air conditioning and other utility systems. All items herein mentioned shall be maintained in as good order and repair as they are at the date of the commencement of the term of this lease, reasonable wear and damage by accident, fire or other insured against casualty excepted. TENANT and LANDLORD will perform a walk through to evaluate condition of the Premises prior to occupancy.

LANDLORD agrees to maintain the Premises in condition fit for their intended use and to make all necessary repairs of which LANDLORD is aware, including adequate heat and water, and a sound physical structure. Furthermore, LANDLORD shall maintain the grounds and remove the rubbish, and maintain and keep reasonably free from snow and ice the parking areas, sidewalks and entrances/exits to building.

4. Access to Premises.

The LANDLORD shall have the right to enter upon the premises at all reasonable times to inspect same and to expel the TENANT if the TENANT shall fail to comply with or breach in any way this Lease. The LANDLORD shall provide the TENANT with reasonable notice of any inspections of or visits to the premises.

5. Unavoidable Casualty and Eminent Domain.

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In the event of an unavoidable casualty including fire not arising as a result of the negligence or intentional conduct of the TENANT whereby the premises or any portion of them are destroyed or damaged so as to be unfit for use or occupancy, the LANDLORD specifically reserves the option of terminating this Lease. However, that in the event of total destruction or damage which is equivalent of total destruction, this Lease shall automatically terminate.

6. Use.

The TENANT shall only use the Premises in compliance with the City's McConnell Center Reuse Steering Committee Report dated December 2004, and all applicable amendments thereto, all applicable City ordinances, rules and regulations. Additionally, the Premised shall be used for non-profit purposes only. No residential use shall be permitted.

7. Subletting and Assignment.

TENANT shall neither sublet nor assign the Space or the associated parking spaces under any circumstances without prior written consent by the LANDLORD.

8. Personal Property.

In the event that at the end of the term or upon any earlier termination of this Lease, including, but not limited to, termination for failure of the TENANT to perform as required hereunder, there remains personal property of the TENANT in the Premises, the LANDLORD is authorized to dispose of said property after giving written notice of its intent to do so to the TENANT at the last known address of the TENANT.

10. Default/Early Termination.

(A) **General.** In the event the TENANT fails to perform its obligations under this Lease, this Lease is defaulted and the LANDLORD is entitled to immediate occupation and possession of the Premises and the associated parking spaces. If the TENANT shall default in the observance or performance of any conditions or covenants on TENANT's part to be observed or performed, under or by virtue of any provisions of this lease, the LANDLORD, without being under any obligation to do so and without thereby waiving such default, may remedy such default at the expense of the TENANT. If the LANDLORD makes any expenditure or incurs any obligations for payment in connection therewith including, but not limited to, attorney's fees, such sums paid or obligations incurred shall be paid to the LANDLORD as additional rent. In the event that there is damage to the Premises due to the TENANT's actions or inactions, or the TENANT fails to make any Operations, Maintenance or utility payments when due, the Lease may be immediately terminated at the option of the Landlord.

(B) **Additional Consideration.** The TENANT and LANDLORD have examined the ability of the TENANT to pay the cost obligations of this lease in light of the current business operations of the TENANT. In the past, the TENANT has not been able to pay the full amount of it's obligations to the LANDLORD as contained in the Lease entered into on December 27, 2006. As additional consideration for this lease, The TENANT has supplied a

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Business Plan for the next five (5) years, a copy of which is attached to this agreement and incorporated by reference. The TENANT has promised to use best efforts to expand business operations, to increase revenues and to maintain other expenses at reasonable levels. The LANDLORD agrees to provide a temporary financial subsidy on a declining basis over five (5) years to the TENANT to assist the TENANT to pay the cost obligations contained in this amended lease. However, the failure of the TENANT to expand business operations, to increase revenues, or to maintain other expenses at reasonable levels shall not operate as a waiver of the TENANT's obligation to pay the Total Rent Assessment during the subsidy period or thereafter.

(C) Additional Rights and Remedies of the Landlord. Failure of the TENANT to pay the Total Rent Assessment obligations of this lease shall entitle the LANDLORD, at the discretion of the LANDLORD, to reduce the size of the leased premises by taking back the use and control of Room 161 for the exclusive use of the LANDLORD. This remedy shall be exercised upon thirty (30) days written notice to the TENANT. The TENANT waives any objection to a reduction in the size of the leased premises and agrees this procedure was reached by mutual agreement. This additional remedy shall not be the exclusive remedy of the LANDLORD. If Landlord exercises such remedy, Tenant's rental costs shall be reduced in proportion to the square footage reduction resulting from the loss of Room 161 space.

11. Indemnification.

TENANT agrees to pay, and to protect, defend, indemnify and save harmless LANDLORD from and against any and all liabilities, losses, damages, costs, expenses, including all reasonable attorney's fees and expenses, causes of action, suits, claims, demands or judgments of any nature whatsoever arising from:

- (i) any injury to, or the death of, any person or any damage to property or to the Space;
- (ii) any act or omission of TENANT or its agents, officers or employees;
- (iii) violation by TENANT of any agreement or condition of this Lease; or
- (iv) violation by TENANT of any law, ordinance or regulation affecting the Space or any part thereof or the ownership, occupancy or thereof.

12. Insurance.

Casualty and property insurance shall continue to be maintained on the subject property by the LANDLORD. TENANT shall procure and maintain in force, at its expense, during the term of this lease agreement, and any extensions of such term, liability and property damage insurance for the Tenant's leased space to be considered primary coverage. LANDLORD has no obligation for any loss to personal property. Proof of insurance shall be supplied to the LANDLORD at the time of occupancy. The City of Dover shall be listed as 'Additional Insured' on the policy and proof of insurance certificate.

13. Liens and Encumbrances.

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TENANT will not create or allow any lien, encumbrance or charge on the TENANT Premises or on the McConnell Center or on the rents or income there from which may be superior to the LANDLORD's rights hereunder.

14. **Parties Bound.**

This Lease and its addendums is binding upon the heirs, executors, administrators and assigns of the parties hereto and constitutes the entire agreement between the parties.

15. **Notice.**

All notices by either party to be given with respect to this Lease shall be in writing and shall be given by first class mail to the addresses stated above.

16. **Modification of Lease.**

This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the both parties.

17. **Section Headings.**

The section headings throughout this instrument are for convenience and reference only, and the words contained herein shall in no way be held to explain, modify or amplify, or aid in the interpretation, construction or meaning of the provisions of the Lease Agreement.

18. **Severability.**

Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not effect the validity, legality or enforceability of such provision in any other instance or the validity, legality or enforceability of any other provision of this Agreement.

19. **Laws Governing.**

The parties agree that the laws of the State of New Hampshire will govern all disputes under this Lease and determine all rights hereunder.

20. **Security Deposit.**

Upon execution of this Lease, TENANT deposits with LANDLORD _____, as security for the performance by TENANT of the terms of this Lease to be returned to TENANT, with interest, following the full and faithful performance by TENANT of this Lease. In the event of damage to the Premise caused by TENANT or TENANT 's agents or visitors, LANDLORD may use funds from the deposit to repair, but is not limited to this fund and TENANT remains liable.

21. **Merger.**

This Lease contains all terms and conditions agreed upon by the parties hereto and not other agreements or representations, oral or otherwise, regarding the subject matter of this Lease shall

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be deemed to exist, provided, however, that any subsequent modifications or agreements affecting this Lease shall be in writing and signed by the parties hereto.

22. **Amendment.**

This Lease amends and supercedes in its entirety the lease entered into by the Parties on December 27, 2006.

IN WITNESS WHEREOF, the parties have hereunto executed this Lease agreement this _____ day of _____, 2010

**DOVER DAYCARE LEARNING CENTER,
INC.**
Duly Authorized

Witness

Date

The City of Dover,
By J. Michael Joyal,
Duly Authorized

Witness

Date