

## **PARKING LEASE**

THIS PARKING LEASE, dated as of this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date"), is agreed to between the City of Hollywood ("Owner"), a municipal corporation of the State of Florida, and Discovery Kids Learning, Inc. d/b/a Discovery Kids Early Learning Experience ("Tenant"), a Florida corporation.

### **RECITALS**

In consideration of the monies and covenants herein specified and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, Owner and Tenant agree as follows:

#### **ARTICLE I; LEASE OF CERTAIN PARKING SPACES; TERM OF LEASE**

##### **Lease of Parking Spaces.**

For the three-year period commencing on October 7, 2014, Owner hereby leases to Tenant, for the exclusive use and benefit of Tenant, its employees and licensees during the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, 3 parking spaces (the "Parking Spaces") at 2717 Van Buren Street, Hollywood, Florida. Owner shall designate the Parking Spaces at the commencement of this Lease and may, from time to time during the term of this Lease, change the Parking Spaces; provided that the Parking Spaces will, at all times, be located in the parking lot located at 2717 Van Buren Street. Owner shall have the right to terminate this Lease for convenience by giving Tenant a minimum of thirty (30) days' written notice of termination. This Lease may be renewed for an additional two-year period under the same terms and conditions upon mutual agreement of the parties.

#### **ARTICLE II; RENT**

##### **Amount of Rent.**

Tenant shall pay to Owner monthly rent for its use of the parking spaces the sum of twenty five dollars (\$25.00) per space, per month, plus any applicable sales tax.

##### **Payment of Rent.**

Rent shall be paid monthly on the first day of each month.

##### **Audit and Contest Rights.**

In connection with the determination of the property taxes paid or to be paid by Tenant hereunder, Tenant shall have the right in good faith and at its sole cost and expense (either in its own name or in the name of Owner, or both, as Tenant may determine appropriate) to contest the validity or amount of the property taxes. Owner shall provide to Tenant copies of all invoices, receipts, and other materials related to the property taxes within ten (10) days following Tenant's written request therefor.

### ARTICLE III; INSURANCE

#### Liability Insurance.

At all times during the term of this Lease, Tenant, at its sole cost and expense, shall carry insurance against liability with respect to the premises and the operations related thereto, in an amount of not less than one million and 00/100 dollars (\$1,000,000.00) per occurrence, combined single limit, and designating Tenant as a named insured and Owner as additional insured.

#### Property Insurance.

At all times during the term of this Lease, Tenant, at its sole cost and expense, shall carry or cause to be carried "All Risk" (or its equivalent) property damage insurance protecting Owner and Tenant as their interests may appear against loss to the premises.

#### General Provisions Applicable to All Policies.

(a) Insurance Companies. All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of Florida that have a rating in the latest edition of "Best's Key Rating Guide" of "A + X" or better unless such policies are not available, in which case A + VII companies are acceptable, or another comparable rating reasonably acceptable to Owner and Tenant, considering market conditions.

(b) Required Forms. All references to forms and coverages in this Article shall be those used by the Insurance Services Organization (ISO) or equivalent forms reasonably satisfactory to Owner and Tenant in all material respects.

(c) Required Certificates. Certificates of insurance evidencing the issuance of all insurance required by this Article, describing the coverage and providing for thirty (30) days' prior notice to Owner by the insurance company of cancellation or non-renewal, shall be delivered to Owner simultaneously with the execution of this Lease, and in the case of any policies replacing or renewing any policies expiring during the term of this Lease, not later than thirty (30) days before the expiration dates of any expiring policies. The certificates of insurance shall bear the original signature of an officer of the insurance company. Certificates of Insurance evidencing material changes in the coverage required by this Article shall be delivered to Owner.

(d) Compliance with Policy Requirements. Neither Tenant nor Owner shall violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Lease.

(e) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article and each certificate issued by or on behalf of the insurer shall contain a clause designating Owner as an additional insured.

(f) Duration of Policies. Tenant shall procure policies for all insurance required by any provision of this Lease for uninterrupted periods and shall procure renewals thereof from time to time before the expiration thereof.

Liability Insurance Requirements.

The required liability insurance shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury.

Property Insurance Requirements.

The required property insurance shall consist at least of property damage insurance under an "All Risk" policy or its equivalent covering the premises with replacement cost valuation and including the following coverages or clauses:

coverage for physical loss or damage to the premises;

a replacement cost valuation sufficient to replace the structure as reasonably determined by Owner and Tenant;

debris removal coverage;

provision for a deductible determined by Owner and Tenant, but not (for other than flood or windstorm) more than \$25,000 per loss;

flood coverage (to the extent available at commercially reasonable rates, limits and deductibles);

windstorm coverage (to the extent available at commercially reasonable rates, limits and deductibles);

a clause designating Owner as an additional insured; and

contain no exclusions other than the industry standard exclusions for comparable facilities.

Annual Aggregates.

If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Additional Interests; Waiver of Subrogation.

All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Owner. Tenant shall cause its insurance carriers to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against Owner.

#### ARTICLE IV; DAMAGE, DESTRUCTION AND RESTORATION

##### Notice to Tenant.

If the Parking Spaces are damaged or destroyed in whole or in any material part by casualty, Owner shall notify Tenant of same as soon as reasonably possible after Owner's discovery of same.

##### Obligation to Restore Parking Spaces.

If all or any portion of the Parking Spaces are damaged or destroyed by casualty, Owner shall not be required to restore the Parking Spaces to the condition thereof as they existed immediately before such casualty, regardless of whether the net insurance proceeds shall be sufficient therefor.

##### Effect of Casualty on This Lease.

If Owner elects not to restore damaged or destroyed Parking Spaces, this Lease shall terminate immediately upon Owner's written notice to Tenant of such election. Until such notice is provided, rent will be abated proportionately to the number of Parking Spaces that are not reasonably available for use by Tenant, its employees and licensees (and for which substitute parking spaces have not been provided) as a result of such damage or destruction.

#### ARTICLE V; ASSIGNMENT, TRANSFER AND SUBLETTING

Tenant shall not have the right to assign or transfer all or any part of tenant's interest in this Lease, sublease or license one or more of the Parking Spaces, or otherwise transfer any or all of the other rights of Tenant hereunder, to any person or persons.

#### ARTICLE VI; NO PERSONAL LIABILITY

None of the City's elected and appointed officials, officers, employees and agents will have any liability (personal or otherwise) hereunder. Nothing contained in this Section or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Owner's liability as set forth in §768.28, Fla.Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

## ARTICLE VII; INDEMNIFICATION

### Indemnification of Owner.

Tenant shall indemnify and hold Owner harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims against Owner arising from (a) the use or occupancy or manner of use or occupancy of the Parking Spaces by Tenant or any person claiming through or under Tenant, or (b) any acts, omissions or negligence of Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant, or any person claiming through or under such person.

### Contractual Liability.

The obligation of Tenant under this Article VII will not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of an insurance carrier to perform an obligation on its part under any insurance policy; provided, however, that if Owner actually receives any proceeds of Tenant's insurance with respect to an obligation of Tenant under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Tenant with respect to such obligation.

### Defense of Claim, Etc.

If any claim, action or proceeding is made or brought against Owner by reason of any event to which reference is made in this Article, then, upon demand by Owner, Tenant shall either, in its discretion, resist, defend or satisfy such claim, action or proceeding in Owner's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, Owner may at its own expense engage its own attorneys to defend Owner, or to assist such Owner in Owner's defense of such claim, action or proceeding, as the case may be, at the sole cost and expense of Owner.

### Notification and Payment.

Owner shall promptly notify Tenant of the imposition of, incurrence by or assertion against Owner of any cost or expense as to which Tenant has agreed to indemnify Owner pursuant to the provisions of this Article. Tenant shall pay Owner, as additional rent hereunder, all amounts due under this Article within sixty (60) days after receipt of the notice from Owner.

### Governs Agreement.

The provisions of this Article shall apply to every provision of this Lease. The absence of explicit reference to this Article in any particular provision of this Lease shall not be construed to diminish the application of this Article to such provision.

Survival.

The provisions of this Article shall survive the expiration or earlier termination of the term of this Lease.

ARTICLE VIII; NOTICES, CONSENTS AND APPROVALS

Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other (or any Recognized Mortgagee), or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Garage, each such notice, demand, request, consent, approval or other communication (referred to in this section as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by certified or registered U.S. Mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or a recognized national courier service, addressed as follows or to such other address as a party may provide in writing to the other party:

if to Owner:

Director of Parking & Intergovernmental Affairs  
City of Hollywood  
2600 Hollywood Boulevard, Annex  
Hollywood, Florida 33020

with a copy to:

City Attorney  
City of Hollywood  
2600 Hollywood Boulevard #407  
Hollywood, Florida 33020

if to Tenant:

Discovery Kids Early Learning Experience  
2710 Van Buren Street  
Hollywood, FL 33020

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such Notice may be given, in the manner provided in this section, on either party's behalf by its attorneys designated by such party by notice hereunder.

(b) Effectiveness. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) References. All references in this Lease to the "date" of Notice shall mean the effective date, as provided in the preceding subsection (b).

## ARTICLE IX; MISCELLANEOUS

### Captions.

The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

### Entire Agreement, etc.

(a) Entire Agreement. This Lease contains all of the promises, agreements, conditions, inducements and understandings between Owner and Tenant concerning the subject matter of the Lease and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments hereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Owner and Tenant. No waiver of any default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

### Invalidity of Certain Provisions.

If any provision of this Lease or the application thereof to any person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Lease, and the application of such provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### Remedies Cumulative.

Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Lease).

#### Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Lease, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

#### Lease Negotiated by Both Parties.

The parties recognize and acknowledge that they both participated, with the assistance of respective counsel in negotiation and preparation of this Lease and neither party shall have any negative inference or presumption raised against it for having drafted the Lease.

#### Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Owner and Tenant and, except as otherwise provided herein, their respective permitted successors and permitted assigns.

#### Nonliability of Officials and Employees.

No member, officer, director, stockholder, partner, holder or other ownership interest, elected or appointed official or employee of Owner or Tenant shall be personally liable to Tenant, or Owner, as the case may be, or any successor in interest, in the event of any default or breach by a party or for any amount or obligation which may become due to the other party or successor under the terms of this Lease; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

#### No Partnership.

The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for any purpose whatsoever. Accordingly, notwithstanding any provisions contained herein, nothing in this Lease will be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration or earlier termination of this Lease.



Time of Essence.

Time is of the essence under this Lease.

No Third Party Beneficiaries.

Nothing in this Lease shall confer upon any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Lease; provided, however, that Tenant's employees and licensees will be third party beneficiaries hereunder to the extent such employees and licensees are granted rights hereunder.

EXECUTION

IN WITNESS WHEREOF, Owner and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

CITY OF HOLLYWOOD

ATTEST:

By: \_\_\_\_\_

Patricia A. Cerny, MMC  
City Clerk

By: \_\_\_\_\_

Lorie Mertens-Black, Director  
Parking & Intergovernmental Affairs

Approved as to form and legality  
for the use and reliance of the  
City of Hollywood, Florida, only.

By: \_\_\_\_\_

Jeffrey P. Sheffel  
City Attorney

DISCOVERY KIDS LEARNING INC.

By: \_\_\_\_\_

Print or Type Name: \_\_\_\_\_

Title: \_\_\_\_\_