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## Nebraska Judicial Branch

## Case Summary

In the District Court of Sarpy County  
 The Case ID is CI 15 0001715  
 Bright From The St v. Peachtree Properti  
 The Honorable William B Zastera, presiding.  
 Classification: Miscellaneous Civil  
 Filed on 11/12/2015  
 This case is Open as of 11/12/2015

## Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Bright From The Start, LLC 9840 So. 168th Avenue Omaha NE 68136	JP S King 11404 West Dodge Road Suite 5 Omaha NE 68154 402-492-9200
Defendant ACTIVE Peachtree Properties, LLC P.O. Box 27976 Ralston NE 68127	John D Stalnaker 1111 N 102nd Court #330 Omaha NE 68114 402-393-5421
Third Party Defendant/Respondent ACTIVE Megan Enger 4524 S. 47th Street Lincoln NE 68156	JP S King 11404 West Dodge Road Suite 5 Omaha NE 68154 402-492-9200
Third Party Defendant/Respondent ACTIVE Jillian Beller 7025 S. 41st Street Bellevue NE 68147	Wanda L Howey-Fox P.O. Box 18 Yankton SD 57078 605-665-1001
Third Party Plaintiff/Petitioner ACTIVE Peachtree Properties, LLC	John D Stalnaker 1111 N 102nd Court #330 Omaha NE 68114 402-393-5421

## Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	11/12/2015	\$35.00
Plaintiff	Filing Fee - State	11/12/2015	\$5.00
Plaintiff	Automation Fee	11/12/2015	\$8.00
Plaintiff	NSC Education Fee	11/12/2015	\$1.00
Plaintiff	Dispute Resolution Fee	11/12/2015	\$0.75
Plaintiff	Indigent Defense Fee	11/12/2015	\$3.00
Plaintiff	Uniform Data Analysis Fee	11/12/2015	\$1.00

Incurring By	Account	Date	Amount
Plaintiff	J.R.F.	11/12/2015	\$6.00
Plaintiff	Filing Fee-JRF	11/12/2015	\$2.00
Plaintiff	Legal Aid/Services Fund	11/12/2015	\$5.25
Plaintiff	Complete Record	11/12/2015	\$15.00
Plaintiff	Service Fees	03/03/2016	\$22.00

### Financial Activity

No trust money is held by the court  
No fee money is held by the court

### Payments Made to the Court

Receipt	Type	Date	For	Amount
412059	Electronic Trans	11/13/2015	Bright From The Start,	\$82.00
			Petition	\$35.00
			Filing Fee - State	\$5.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$ .75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$2.00
			Legal Aid/Services Fun	\$5.25
			Complete Record	\$15.00

### Register of Actions

04/27/2016 Answer to Counterclaim  
This action initiated by party Bright From The Start, LLC  
Answer to counterclaim of defendant/counterclaim plaintiff  
Image ID N16118RMUD59

03/29/2016 Summons Issued on Jillian Beller  
The document number is 00138374  
Summons-Inverse  
EMAILED: j.stalnaker@sbbpc.com  
Image ID D00138374D59

03/29/2016 Summons Issued on Megan Enger  
The document number is 00138373  
Summons-Inverse

EMAILED: j.stalnaker@sbbpc.com  
Image ID D00138373D59

03/28/2016 Cross Petition/Counter Claim  
This action initiated by party Peachtree Properties, LLC  
\*\*Image on Answer\*\*

03/28/2016 Praecipe-Summons/Alias  
This action initiated by party Peachtree Properties, LLC  
Issue summons upon Megan Enger 4524 S. 47th Street Lincoln Ne and Jillian  
Beller 7025 S. 41st St Bellevue NE by Certified Mail  
Image ID N16088DRCD59

03/28/2016 Answer  
This action initiated by party Peachtree Properties, LLC  
Answer, Affirmative Defenses and Counterclaim

Image ID N16088DR8D59

03/03/2016 Return Summons/Alias Summons  
The document number is 00137268  
Served 02/26/2016  
Personal Service  
Image ID N16063ZZ6D59

02/23/2016 Summons Issued on Peachtree Properties, LLC  
The document number is 00137268  
Image ID D00137268D59

02/23/2016 Praecipe-Summons/Alias  
This action initiated by party Bright From The Start, LLC  
Issue summons upon Peachtree Properties LLC % Registered Agent - William  
Torczon @ 5120 So. 50th St Omaha by Dougals County Constable

Image ID N16054XF6D59

11/13/2015 Demand for Jury Trial  
THIS IS NOT A PLEADING

11/12/2015 Complaint-Praecipe  
This action initiated by party Bright From The Start, LLC  
Image ID N1531643GD59

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

BRIGHT FROM THE START CHILD  
DEVELOPMENT CENTER, LLC, a Nebraska  
Limited Liability Company,

Plaintiff,

vs.

PEACHTREE PROPERTIES, LLC, a  
Nebraska Limited Liability Company,

Defendant.

Case No. CI \_\_\_\_\_

**COMPLAINT**

COMES NOW Plaintiff, Bright from the Start, LLC, and for its complaint against the above-named Defendant, states and shows as follows:

1. Bright from the Start Child Development Center, LLC (hereinafter "Plaintiff") is a Nebraska limited liability company which owns and operates daycare facility for young children in Omaha, Sarpy County, Nebraska.

2. Defendant Peachtree Properties, LLC (hereinafter "Defendant"), is a Nebraska limited liability company with its principal place of business in Omaha, Sarpy County, Nebraska.

3. On or about April 26, 2008, Plaintiff entered into a lease of real property (the "Lease") with the Defendant. A true and correct copy of the Lease is attached hereto, marked Exhibit "A" and made a part hereof by this reference.

4. The property leased by the Plaintiff under this Lease is located at 9840 South 168<sup>th</sup> Avenue, Omaha, Sarpy County, Nebraska (the "Premises"). Shortly thereafter, the Plaintiff took possession of the leased premises.

5. The Lease required the Defendant to fulfill various obligations to the Plaintiff including but not limited to maintaining the foundations on the Premises and, if necessary, make modifications or replacement thereof.

6. The Lease further provided a "Purchase Option" in paragraph 28(d) whereby the Plaintiff was allowed to purchase the Premises under certain terms. Specifically, the Lease provided the Plaintiff the option to purchase the Premises or before November 1, 2015, at the fair market value of the Premises. The fair market value of the premises was to be determined by an appraisal by a qualified appraiser obtained by the Plaintiff. If the Defendant did not agree with

the determination of value by the Plaintiff's appraiser, the Defendant could obtain an appraisal of the Premises and the Defendant's appraisal would then govern the purchase price.

#### FIRST CAUSE OF ACTION

7. Plaintiff incorporates paragraphs 1 through 6 as if fully set forth herein.

8. At or around 2011, the Plaintiff began having significant drainage problems on the Premises. These problems continued thereafter. Plaintiff advised the Defendant of these problems and requested the Defendant to take action to fulfill its obligations under the Lease to modify or repair the foundation so that it would eliminate this drainage problem.

9. Defendant has failed, refused and neglected to modify or repair the foundation to eliminate the drainage problem.

10. Defendant has also failed to comply with other obligations under the Lease or promises made by the Defendant relating to the Lease and the Premises.

11. As a result of the Defendant's failure to comply with its obligations under the Lease as set forth in paragraphs 8, 9 and 10 herein, as well as the Defendant's promises relating to the Lease and the Premises, the Defendants have sustained damages.

#### SECOND CAUSE OF ACTION

12. Plaintiff incorporates paragraphs 1 through 11 as if fully set forth herein.

13. On two occasions prior to November 1, 2015, the Plaintiff provided Defendant with written notice of its intent to exercise the Purchase Option set forth in paragraph 28(d) of the Lease.

14. On both occasions, Defendant failed, neglected and refused to allow the Plaintiff to purchase the Premises under the Lease.

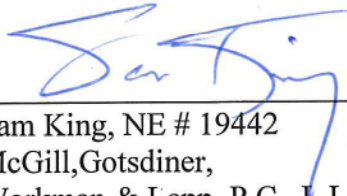
15. As a result of the Defendants breach of the Lease as set forth in paragraphs 9 and 10, the Defendant requests the Court to order the Defendant to specifically perform the Lease by allowing the Plaintiff to purchase the Premises pursuant to the terms of the Lease.

WHEREFORE, the Plaintiff Bright from the Start, Inc. hereby requests the Court to enter a judgment in its favor and against the Defendant Peachtree Properties, LLC, and awarding money damages to the Plaintiff on its first cause of action, and further awarding equitable relief to the Plaintiff on its second cause of action by requiring the Defendant to allow the Plaintiff to purchase the Premises pursuant to the terms of the Lease, and to render such other relief as the Court deems just and equitable.

DATE: November 10<sup>th</sup>, 2015

BRIGHT FROM THE START, INC.,  
a Nebraska corporation, Plaintiff,

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

  
Sam King, NE # 19442  
McGill, Gotsdiner,  
Workman & Lepp, P.C., L.L.O.  
11404 West Dodge Road, Suite 500  
Omaha, NE 68154-2584  
402-492-9200  
402-492-9222 (Facsimile)  
SamKing@mgwl.com  
ATTORNEYS FOR PLAINTIFF

# **BUSINESS PROPERTY LEASE**

(NNN)

THIS LEASE is entered into this 26 day of April, 2008 between **Peachtree Properties, LLC**, ("hereinafter referred to as "Landlord") and Bought from THE (hereinafter referred to as "Tenant").  
START

1. **PREMISES:** Landlord leased to Tenant the real property located at **9840 So. 168th Avenue, Omaha, Sarpy County, Nebraska** (the "Premises"), as depicted in Exhibit A and containing approximately **seven thousand, two hundred (7,200)** square feet of area, on the following terms and conditions.

2. **TERM:** This Lease shall be for a term of **ten (10)** beginning on the 1 day of NOV, 2008, and ending on the 1 day of NOV, 2018, unless terminated earlier as provided in this Lease.

If for any reason the Premises is delivered to Tenant on any date before or after the term commencement date, rental for the period between the date of possession and the term commencement date shall be adjusted on a pro rata basis. Such earlier or later taking of possession shall not change the termination date of this Lease. This Lease shall not be void or voidable in the event of a late delivery by Landlord, nor shall Landlord be liable to Tenant for any resulting loss or damage.

3. **USE OF PREMISES:** The Premises are leased to Tenant for the purpose of a **day care** and for no other purpose. Tenant agrees to use the Premises in such a manner as to not interfere with the rights of other tenants in the Real Estate, to comply with all applicable governmental laws, ordinances and regulations in connection with its use of the Premises, including without limitation all environmental laws, to keep the Premises in a clean and sanitary condition and to use all reasonable precautions to prevent waste, damage or injury to the Premises.

## **4. RENT:**

(a) **Base Rent.** The total Base Rent under this Lease is one **hundred eighty-three thousand, six hundred dollars and no cents (\$183,600.00)**.

Tenant agrees to pay rent to Landlord at **Peachtree Properties LLC, P. O. Box 27976, Ralston, Nebraska 68127** or at any other place Landlord may designate in writing, in lawful money of the United States, in monthly installments in advance on the first day of each month without offset or demand by Landlord as follows:

For the period of Year 1, \$15,300.00 per month  
For the period of Year 2, \$15,759.00 per month  
For the period of Year 3, \$16,231.77 per month  
For the period of Year 4, \$16,718.72 per month  
For the period of Year 5, \$17,220.28 per month  
For the period of Year 6, \$17,736.88 per month  
For the period of Year 7, \$18,268.98 per month  
For the period of Year 8, \$18,817.04 per month  
For the period of Year 9, \$19,381.55 per month  
For the period of Year 10, \$19,962.99 per month

(b) **Operating Expenses.** In addition to the Base Rent, Tenant shall pay a pro rata share of operating expenses of the real estate of which the Premises are part, parking areas and grounds ("Real Estate"). "Operating expenses" shall mean all costs of maintaining and operating the Real Estate, including but not limited to all taxes and special assessments levied upon the Real Estate, fixtures and personal property used by Landlord at the Real Estate, all insurance costs, all costs of labor, material and supplies for maintenance, repair, replacement and operation of the Real Estate, including but not limited to painting, lighting, snow removal, landscaping, cleaning, depreciation of machinery and equipment used in such maintenance, repair and replacement, and management costs, including Real Estate superintendents. Operating Expenses shall not include property additions and capital improvements to the Real Estate, alterations made by specific tenants, depreciation of the Real Estate, debt service on long term debt or income taxes paid by Landlord.



"Tenant's Pro Rata Share" shall mean the percentage determined by dividing the square feet of the Premises as shown in Paragraph 1, by the square feet of total area of the Real Estate, as defined by the American National Standard published by the Building Owners and Managers Association (BOMA), which at the date hereof is agreed to be **seven thousand two hundred (7,200)** square feet.

Landlord, at its option, may collect "Tenant's Pro Rata Share" of the Operating Expenses as they become due or in estimated payments in advance as determined herein. If Landlord elects to collect estimated payments, then Tenant's Pro Rata Share shall be determined on an annual basis for each calendar year ending on December 31 and shall be pro rated for the number of months Tenant occupied the Premises if Tenant did not occupy the Premises the full year. At this time, Tenant shall pay **one thousand, six hundred and eighty dollars and no cents (\$1,680.00)** per month, on the first of each month in advance with rent for Tenant's estimated Pro Rata Share of the Operating Expenses. Landlord may change this amount at any time upon written notice to Tenant. At the end of each year, an analysis of the total year's Operating Expenses shall be presented to Tenant and Tenant shall pay the amount, if any, by which the Tenant's Pro Rata Share of the Operating Expenses for the year exceeded the amount of the estimated Operating Expenses paid by Tenant within thirty (30) days after Tenant's receipt of the statement. In the event this Lease terminates at any time other than the last day of the year, the excess Operating Expenses shall be determined as of the date of termination. If Tenant's payments of estimated Operating Expenses exceed the amount due Landlord for that calendar year, Landlord shall, at its option, provided Tenant is not then in default under this Lease, apply the excess as a credit against Tenant's other obligations under this Lease or promptly refund such excess to Tenant if the term of this Lease has already expired, in either case without interest to Tenant.

(c) **Payment of Rent.** Tenant agrees to pay the Base Rent as and when due, together with Tenant's Pro Rata Share of the Operating Expenses and all other amounts required to be paid by Tenant under this Lease. In the event of nonpayment of any amounts due under this Lease, whether or not designated as rent, Landlord shall have all the rights and remedies provided in this Lease or by law for failure to pay rent.

(d) **Late Charge.** If the Tenant fails to pay the Base Rent together with the Tenant's Pro Rata share of the Operating Expenses and all other amounts required to be paid by Tenant under this Lease on or before the tenth day after such payments are due, Tenant agrees to pay Landlord at a late charge of five percent (5%).

(e) **Security Deposit.** As partial consideration of the execution of this Lease, the Tenant has delivered to Landlord for Landlord's use and possession of the sum of **nineteen thousand, nine hundred, sixty-two dollars and ninety-nine cents (\$19,962.99)** as Security Deposit. The Security Deposit will be returned to Tenant at the expiration of this Lease if Tenant has fully complied with all covenants and conditions of this Lease.

5. **SERVICES:** Landlord shall furnish None to the Premises during normal business hours, and at such other times as Landlord may deem necessary or desirable, in the manner customary to the Real Estate. Landlord shall have the right to discontinue any service during any period for which rent is not promptly paid by Tenant. Landlord shall not be liable for damages, nor shall the rental be abated, for failure to furnish, or delay in furnishing, any service when failure to furnish or delay in furnishing, is occasioned in whole or in part by needful repairs, renewals or improvements or by any strike or labor controversy or by any accident or casualty whatsoever or by any unauthorized act or default of any employee of Landlord or for any other cause or causes beyond the control of Landlord. Tenant shall pay when due all water, gas, electricity and sewer use fees incurred at or chargeable to the Premises.

6. **ASSIGNMENT OR SUBLEASE:** Tenant shall not assign this Lease or sublet the whole or any part of the Premises, transfer this Lease by operation of law or otherwise or permit any other person except agents and employees of Tenant to occupy the Premises, or any part thereof, without the prior written consent of Landlord. Landlord may consider any factor it deems relevant in determining whether to withhold consent including, but not limited to the following: (a) financial responsibility of the new tenant; (b) identity and business charge of the new tenant; and (c) nature and legality of the proposed use of the Premises. Landlord shall have the right to assign its interest under this Lease or the rent hereunder.

7. **TENANT'S IMPROVEMENTS:** Tenant shall have the right to place partitions and fixtures and make improvements or other alterations in the interior of the Premises at its own expense. Prior to commencing any such work, Tenant shall first obtain the written consent of Landlord for the proposed work. Landlord may, as a condition to its consent, require that the work be done by Landlord's own employees and/or under Landlord's supervision, but at the expense of Tenant, and that Tenant give sufficient security that Premises will be completed free and clear of liens and in a manner satisfactory to Landlord. Upon termination of this Lease, at Landlord's option, Tenant will repair and restore the Premises to its former condition, at Tenant's expense, or any such improvements, additions or alterations installed or made by Tenant, except Tenant's trade fixtures, shall become part of the Premises and the property of the Landlord. Tenant may remove its trade fixtures at the termination of this Lease provided Tenant is not then in default and provided further that Tenant's repairs any damage caused by such removal.

8. **REPAIRS:** Landlord shall maintain the foundations, exterior walls (except store fronts, plate glass doors and other breakable materials used in structural portions) and provide for roof replacement, but not repairs, of the Real Estate and, if necessary or required by the proper governmental authorities, make modifications or replacements thereof.

Tenant agrees that it will make, at its own costs and expense, all repairs and replacements to the Premises not required to be made by Landlord including, but not limited to, all interior and exterior doors, door frames, windows, plate glass, and the heating, air conditioning, plumbing and electrical systems servicing the Premises. Tenant agrees to do all redecorating, remodeling, alterations and painting required by it during the term of the Lease at its own costs and expense, to pay for any repairs to the Premises or the Real Estate made necessary by any negligence or carelessness of Tenant or any of its agents or employees or persons permitted on the Real Estate by Tenant and to maintain the Premises in a safe, clean, neat and sanitary condition. Tenant shall be entitled to no compensation for inconvenience, injury or loss of business arising from the making of any repairs by Landlord, Tenant or other tenants to the Premises or the Real Estate.

9. **CONDITION OF PREMISES:** Except as provided herein, Tenant agrees that no promises, representations, statements or warranties have been made on behalf of Landlord to Tenant respecting the condition of the Premises or the manner of operating the Real Estate or the making of any repairs to the Premises. By taking possession of the Premises, Tenant acknowledges that the Premises were in good and satisfactory condition when possession was taken. Tenant shall, at the termination of this Lease, by lapse of time or otherwise, remove all of Tenant's property and surrender the Premises to Landlord in as good condition as when Tenant took possession, normal wear excepted.

10. **PERSONAL PROPERTY AT RISK OF TENANT:** All personal property in the Premises shall be at the risk of the Tenant only. Landlord shall not be liable for any damage to any property of Tenant or its agents or employees in the Premises caused by any reason whatsoever including, without limitation, fire, theft, steam, electricity, sewage, gas or odors or from water, rain, or snow which may leak into, issue or flow into the Premises from any part of the Real Estate or from any other place or for any damage done to Tenant's property in moving same to or from the Real Estate or the Premises. Tenant shall give Landlord, or its agents, prompt written notice of any damage to or defects in water pipes, gas or warming or cooling apparatus in the Premises.

11. **LANDLORD'S RESERVED RIGHTS:** Without notice to Tenant, without liability to Tenant for damage or injury to property, person or business and without effecting an eviction of Tenant or a disturbance of Tenant's use or possession or giving rise to any claim for setoff or abatement of rent, Landlord shall have the right to:

(a) Change the name or street address of the Real Estate;

(b) Install and maintain signs on the Real Estate;

(c) Have access to all mail chutes according to the rules of the United States Post Office Department;

(d) At reasonable times, to decorate and to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to the Premises, the Real Estate, or part thereof, and any adjacent Real Estate, land, street or alley and during such operations to take into and through the Premises or any part of the Real Estate all materials required and to temporarily close or suspend operation of entrances, doors, corridors, elevators or other facilities as necessary;

(e) Possess passkeys to the Premises;

(f) Show the Premises to prospective tenants at reasonable times;

(g) Take any and all reasonable measures, including inspections or the making of repairs, alterations and additions and improvements to the Premises or to the Real Estate, which Landlord deems necessary or desirable for the safety, protection, operation or preservation of the Premises or the Real Estate.

(h) Approve all sources furnishing signs, painting and/or lettering to the Premises and approve all signs on the Premises prior to installation thereof.

(i) Establish rules and regulations for the safety, care, order, operation, appearance and cleanliness of the Real Estate and to make modifications thereto. See Exhibit B.

**12. INSURANCE:** Tenant shall not use or occupy the Premises or any part thereof in any manner which could invalidate any policies of insurance now or hereafter placed on the Real Estate or increase the risks covered by insurance on the Real Estate or necessitate additional insurance premiums or policies of insurance, even if such use may be in furtherance of Tenant's business purposes. In the event any policies of insurance are invalidated by acts or omissions of Tenant, Landlord shall have the right to terminate this Lease or, at Landlord's option, to charge Tenant for extra insurance premiums required on the Real Estate on account of the increased risk caused by Tenant's use and occupancy of the Premises. Each party hereby waives all claims for recovery from the other for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such policies provided. This waiver shall apply only when permitted by the applicable policy of insurance.

**13. INDEMNITY:** Tenant shall indemnify, hold harmless and defend Landlord from and against, and Landlord shall not be liable to Tenant on account of any and all costs, expenses, liabilities, losses, damages, suits, actions, fines, penalties, demands or claims of any kind, including reasonable attorney's fees, asserted by or on behalf of any person, entity or governmental authority arising out of or in any way connected with either (a) a failure by Tenant to perform any of the agreements, terms or conditions of this Lease required to be performed by Tenant; (b) a failure by Tenant to comply with any laws, statutes, ordinances, regulations or orders of any governmental authority; or (c) any accident, death, or personal injury or damage to or loss or theft of property which shall occur on or about the Premises, or the Real Estate, except as the same may be the result of the gross negligence of Landlord, its employees or agents.

**14. LIABILITY INSURANCE:** Tenant agrees to procure and maintain continuously during the entire term of this Lease, a policy or policies of commercial general liability insurance from a company or companies acceptable to Landlord, at Tenant's own cost and expense, insuring Landlord and Tenant from all claims, demands or actions. Such policy or policies shall, in addition to insuring Tenant, protect and name the Landlord and Landlord's managing agent as additional insured and shall provide coverage in a combined single limit per occurrence of at least **one million dollars and no cents (\$1,000,000.00)** for claims, demands or actions for bodily injury, death or property damage made by or on behalf of any person or persons, firm or corporate arising from, related to or connected with the conduct and operation of Tenant's business in the Premises or arising out of and connected with the use and occupancy of the Real Estate by the Tenant. All such insurance shall provide that Landlord shall be given a minimum of ten (10) days notice by the insurance company prior to cancellation, termination or change of such insurance. Tenant shall provide Landlord with copies of the policies or certificates evidencing that such insurance is in full force and effect and stating the term and provisions thereof. If Tenant fails to comply with such requirements for insurance, Landlord may, but shall not be obligated to, obtain such insurance and keep the same in effect, and Tenant agrees to pay Landlord, upon demand, the premium cost there.

**15. DAMAGE BY FIRE OR OTHER CASUALTY:** If, during the term of this Lease, the Premises shall be so damaged by fire or any other cause except Tenant's negligent or intentional act so as to render the Premises untenantable, the rent shall be abated while the Premises remain untenantable; and in the event of such damage, Landlord shall elect whether to repair the Premises or to cancel this Lease, and shall notify Tenant in writing of its election within sixty (60) days after such damage. In the event Landlord elects to repair the Premises, the work or repair shall begin promptly and shall be carried on without unnecessary delay. In the event Landlord elects not to repair the Premises, the Lease shall be deemed canceled as of the date of the damage. Such damage shall not extend the Lease term.

**16. CONDEMNATION:** If the whole or any part of the Premises shall be taken by public authority under the power of eminent domain, then the term of this Lease shall cease on that portion of the Premises so taken, from the date of possession, and the rent shall be paid to that date, with the proportionate refund by Landlord to Tenant of such rent as may been paid by Tenant in advance. If the portion of the Premises taken is such that it prevents the practical use of the Premises for Tenant's purposes, then the Tenant shall have the right either (a) to terminate this Lease by giving written notice of such termination to the Landlord no later than thirty (30) days after the taking; or (b) to continue in possession of the remainder of the Premises, except that the rent shall be reduced in proportion to the area of the Premises taken. In the event of any taking or condemnation of the Premises, in whole or in part, the entire resulting award of damages shall be the exclusive property of Landlord, including all damages awarded as compensation for diminution in value to the leasehold, without any deduction for the value of any unexpired term of this Lease or for any other estate or interest in the Premises now or hereafter vested in the Tenant.

**17. DEFAULT OR BREACH:** Each of the following events shall constitute a default or a breach of this Lease by Tenant:

- (a) If Tenant fails to pay Landlord any rent or other payments when due hereunder;
- (b) If Tenant vacates or abandons the Premises;

(c) If Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or voluntarily takes advantage of any such act by answer or otherwise or makes an assignment for the benefit of creditors;

(d) If involuntary proceedings under any bankruptcy or insolvency act shall be instituted against Tenant or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant and such proceedings shall not be dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment; or

(e) If Tenant fails to perform or comply with any other term or condition of this Lease or any of the rules and regulations established by Landlord, and if such nonperformance shall continue for a period of ten (10) days after notice thereof by Landlord to Tenant, time being of the essence.

**18. EFFECT OF DEFAULT:** In the event of any default or breach hereunder, in addition to any other right or remedy available to Landlord, either at law or in equity, Landlord may exert any one or more of the following rights:

(a) Landlord may re-enter the Premises immediately and remove the property and personnel of Tenant and shall have the right, but not the obligation, to store such property in a public warehouse or at a place selected by Landlord at the risk and expense of Tenant.

(b) Landlord may retake the Premises and may terminate this Lease by giving written notice of termination to Tenant. Without such notice, the Landlord's retaking will not terminate the Lease. On termination, Landlord may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the Premises and the difference between the rent due for the balance of the Lease term as though the Lease had not been terminated and the fair market rental value of the Premises for the balance of the Lease term as though the Lease had not been terminated which sum shall be immediately due Landlord from Tenant.

(c) Landlord may re-let the Premises or any part thereof for any term without terminating this Lease, at such rent and on such terms as it may choose. Landlord may make alterations and repairs to the Premises. In addition to Tenant's liability to Landlord for breach of this Lease, Tenant shall be liable for all expenses of the re-letting, for any alterations and repairs made, and for the rent due for the balance of the Lease term which sum shall be immediately due Landlord from Tenant. The amount due Landlord will be reduced by the net rent received by Landlord during the remaining term of this Lease from re-letting the Premises or any part thereof. If during the remaining term of this Lease landlord receives more than the amount due Landlord under this sub-paragraph, the Landlord shall pay such excess to Tenant, but only to the extent Tenant has actually made payment pursuant to this sub-paragraph.

**19. SURRENDER - HOLDING OVER:** Tenant shall, upon termination of this Lease, whether by lapse of time or otherwise, peaceably and promptly surrender the Premises to Landlord. If Tenant remains in possession after the termination of this Lease, without a written lease duly executed by the parties, Tenant shall be deemed a trespasser. If Tenant pays, and Landlord accepts, rent for a period after termination of this Lease, Tenant shall be deemed to be occupying the Premises only as a tenant from month to month, subject to all the terms, conditions and agreements of this Lease, except that the rent shall be two hundred percent (200%) the monthly rent specified in the lease immediately before termination.

**20. SUBORDINATION AND ATTORNMENT:** Landlord reserves the right to place liens and encumbrances on the Premises superior in lien and effect to this Lease. This Lease, and all the rights of Tenant hereunder, shall, at the option of Landlord, be subject and subordinate to any liens and encumbrances now or hereafter imposed by Landlord upon the Premises or the Real Estate or any part thereof, and Tenant agrees to execute, acknowledge and deliver to Landlord, upon request, any and all instruments that may be necessary or proper to subordinate this Lease and all right herein to any such lien or encumbrance as may be required by Landlord.

In the event any proceedings are brought for the foreclosure of any mortgage on the Premises, Tenant will attorn to the purchase at the foreclosure sale and recognize such purchaser as the Landlord under this Lease. The purchaser, by virtue of such foreclosure, shall be deemed to be assumed, as substitute Landlord, the terms and conditions of this Lease until the resale or other disposition of its interest. Such assumption, however, shall not be deemed an acknowledgment by the purchaser of the validity of any then existing claims of Tenant against the prior Landlord.

Tenant agrees to execute and deliver such further assurances and other documents, including a new lease upon the same terms and conditions contained herein, confirming the foregoing, as such purchaser may reasonably request. Tenant waives any right of election to terminate this Lease because of any such foreclosure proceedings.

21. **NOTICES:** Any notice or demands given hereunder shall be in writing and personally delivered or sent by certified mail, postage prepaid, at the following addresses or at such other address as either party may from time to time designate in writing:

Landlord: **Peachtree Properties**  
**P.O. Box 27976**  
**Ralston, Nebraska 68127**

Tenant: Bright From The Start  
9840 S. 168th Ave.  
Omaha, NE 68136

Each such notice shall be deemed to have been given at the time it shall be personally delivered to such address or deposited in the United States mail in the manner prescribed herein.

22. **COMPLIANCE WITH ADA:** Tenant shall be responsible for all costs of complying with the Americans with Disabilities Act (ADA) and all similar laws and regulations within the Premises, including the removal of barriers which do not necessitate the removal or modification of load bearing walls.

23. **SUBSTITUTION OF OTHER PREMISES:** Landlord may upon sixty (60) days notice to Tenant substitute for the Premises other premises in the Real Estate (the "Substitute Premises"), provided that the Substitute Premises shall be reasonably usable for Tenant's business hereunder; and, if Tenant is already in occupancy of the Premises, then in addition, Landlord shall pay the reasonable expenses of moving Tenant from the Premises to the Substitute Premises and for improving the Substitute Premises so they are substantially similar to the Premises.

24. **MISCELLANEOUS:**

(a) **Binding on Assigns.** All terms, conditions and agreements of this Lease shall be binding upon, apply and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assigns.

(b) **Amendment in Writing.** This Lease contains the entire agreement between the parties and may be amended only by subsequent written agreement.

(c) **Waiver - None.** The failure of Landlord to insist upon strict performance of any of the terms, conditions and agreements of this Lease shall not be deemed a waiver of any of its rights or remedies hereunder and shall not be deemed a waiver of any subsequent breach or default of any of such terms, conditions and agreements. The doing of anything by Landlord which Landlord is not obligated to do hereunder shall not impose any future obligation on Landlord nor otherwise amend any provisions of this Lease.

(d) **No surrender.** No surrender of the Premises by Tenant shall be effected by Landlord's acceptance of the keys to the Premises or of the rent due hereunder, or by any other means whatsoever, without Landlord's written acknowledgment that such acceptance constitutes a surrender.

(e) **Captions.** The captions of the various paragraphs in this Lease are for convenience only and do not define, limit, describe or construe the contents of such paragraphs.

(f) **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska.

(g) **Partial Invalidity.** If any provision of this Lease is invalid or unenforceable to any extent, then that provision and the remainder of this Lease shall continue in effect and be enforceable to the fullest extent permitted by law.

25. **AGENCY:** The brokers involved in this transaction are:

☐ Agent for Landlord: **None**

☐ Agent for Tenant: **None**

☐ Dual agent representing both Landlord and Tenant: **None**

**26. BROKER COMPENSATION:**

- ☐ Landlord and Tenant acknowledge that None is being paid a fee by Landlord and this fee will be shared by the Brokers based on their separate agreement.
- ☐ Landlord and Tenant will each compensate their respective Brokers. **NONE**

**27. ENVIRONMENTAL REPRESENTATIONS AND COVENANTS; INDEMNITY.** Tenant agrees that it shall not at any time use the Premises in whole or in part to refine, produce, store, handle, transfer, process or transport any of the following in any manner which could result in contamination of the Premises or could result in any violation of or costs or liability under any Environmental Regulation: hazardous substances, pollutant or contaminant, hazardous waste, toxic chemical, hazardous chemical, hazardous material as those terms are defined herein and in the Federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.A. / 9601 [14] and [33]), any so-called "Superfund" or "Superlien" law, or other applicable federal, state, or local statute, ordinance or rule or regulation, nor shall Tenant permit any released or threatened release of any Hazardous Substance on the Premises, nor shall Tenant install or permit the installation of any underground storage tanks in or about the Premises. As used herein the term "Hazardous Substance," shall mean urea formaldehyde, polychlorinated byphenyls, asbestos, asbestos-containing materials, radioactive materials or wastes, petroleum products, or any waste material or other substance which would subject the owner of the Premises to any response costs, damages, penalties or liabilities under any applicable Environmental Regulations. The term "Environmental Regulations," as used herein, means any federal, state or local laws, statutes, codes, ordinances, regulations, requirements or rules relating to any environmental matters, including the removal, handling and disposal of hazardous or toxic waste materials or substances. Tenant shall notify Landlord immediately upon receipt from any governmental entity or agency of any violation or alleged violation of any Environmental Regulation. Tenant covenants that it will not violate or permit the violation of any Environmental Regulation during the term of this Lease or any extension thereof.

**28. ADDITIONAL PROVISIONS:**

- (a) **Offer.** Until this Lease is executed on behalf of all parties hereto, it shall be construed as an offer to lease by Tenant to Landlord.
- (b) **RE License.** Tenant understands that some or all of the owners of the Real Estate may possess a Nebraska Real Estate License.
- (c) **Extension Option.** If Tenant is not in default or breach under the terms of this Lease, Tenant shall have the right to extend this Lease for **two (2)** extension periods of **five (5)** years each, under the same terms and conditions, except that the Base Rent will be **twenty thousand, five hundred, sixty-one dollars and eighty-seven cents (\$20,561.87) with three percent (3%) increase per year thereafter.** Tenant must provide written notice to Landlord of its intent to exercise this option to extend by **within ninety (90) days.**
- (d) **Purchase Option.** So long as Tenant is not in default of this Lease at any time prior to exercise or expiration of the option granted here, Landlord hereby grants Tenant the option to purchase the real estate and then existing improvements legally described as **Lot 2 Palisades Replat 3** (collectively the "Property") on or before 1 NOV, 2015 at the fair market value of the Property on the date of Tenant's exercise of its option, provided that Tenant shall exercise its option in writing delivered to Landlord at the address designated in this lease for the service of notices and Tenant shall close said purchase within thirty (30) days of exercising its option, time being of the essence, and Tenant shall pay rent through the date of closing and all closing costs, including title insurance, recording fees and documentary stamp taxes. The fair market value of the Property shall be determined by an appraisal by a qualified appraiser obtained by Tenant, at Tenant's cost. In the event that Landlord disagrees with Tenant's appraiser, Landlord may obtain an appraisal by a qualified appraiser, at Landlord's cost, and the result of Landlord's appraisal shall govern the purchase price. The rights granted by this option shall be subordinate to any rights of any Mortgagee existing now or at any time in the future and, in the event of a sale of the Property by Landlord, to an unrelated entity or person, prior to Tenant's exercise of its option, this option shall be deemed terminated.

(c) Builder is a licensed realtor in the State Of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

By:

William J. Torczon

Its: **Managing Member**

TENANT:

By:

Bright From The Start

Its:

Jillian Beller & Megan Enger

#### PERSONAL GUARANTY

The undersigned Guarantors, jointly and severally, in consideration of and inducement for Landlord's execution of this Lease, and being financially interested in the success of Tenant, unconditionally guarantee to the Landlord, Landlord's successors and assigns the timely payments of all sums due Landlord from Tenant and the prompt and full performance of all covenants and conditions by Tenant to be performed. The undersigned acknowledge and agree that the Personal Guaranty covers not only the original term of this lease but also any and all extensions, modifications, renewals and/or amendments to the original Lease and that the undersigned guarantors shall remain bound regardless of any waiver, release, forbearance, extension of time or other action taken or permitted by Landlord and regardless of any subletting or assignment by Tenant or anyone in Tenant's interest. **Tenant personal guaranty not to exceed seven hundred and fifty dollars and no cents (\$750,000.00).**

Dated this 26 day of April, 2008.

By:

Megan Enger

Name

4524 S. 47th St

Street Address

Lincoln, NE 68156

City, State, Zip

By:

Jillian R Beller

Name

7025 S. 41st St

Street Address

Omaha NE 68147

City, State, Zip

By:

Name

Street Address

City, State, Zip

By:

Name

Street Address

City, State, Zip

EXHIBIT A

DESCRIPTION OF PREMISES

- \* To be ready for day care business condition with Certificate of Occupancy issued.
- \* Premises will be sprinkled as required by code for day care.
- \* Landlord will provide allowance of fifteen hundred dollars and no cents (~~\$1,500.00~~) for signage for the day care. *5000 <sup>WST</sup> 4/26/08*
- \* Tenant shall have the right to participate in the decisions regarding the finish of the interior, regarding dimensions of rooms and location of restrooms. Tenant shall have the right to make all selections regarding flooring, paint and similar decorative finishes. Landlord to provide standard allowances at time of selections.

## EXHIBIT B

### RULES AND REGULATIONS

- (a) Tenant shall not place or erect any signs or identifying marks, trademarks, insignia or advertising on or about the Premises or the Real Estate except with the prior written consent of Landlord. In the event Tenant shall place or cause to be placed any sign, identifying marks, insignia or advertising on or about the Premises or the Real Estate without the prior written consent of Landlord, Landlord shall have the right and power to remove the same at Tenant's expense.
- (b) All loading and unloading of goods shall be done only at times, in the areas and through the entrances designated for that purpose by Landlord.
- (c) All garbage and refuse shall be kept in the kind of container specified by Landlord, and shall be placed outside of the Premises daily, prepared for collection and removed in the manner and at the times and place specified by Landlord. If Landlord provides or designates a service for collection of refuse and garbage, Tenant shall use that service, at Tenant's expense, provided that cost is reasonably competitive to any identical service available to Tenant. Tenant shall in all events pay for the costs of such service.
- (d) Nothing (including without limitation radio or television aerials) shall be placed or erected on the roof or exterior walls of the Premises without the prior written consent of Landlord, and it is understood that the exclusive use of the roof and exterior walls is reserved to Landlord. Anything so placed or erected on the roof or exterior walls shall be subject to removal without notice or liability at any time and any damage to the walls or roof caused by the removal shall be the responsibility of Tenant.
- (e) No loudspeaker, television, stereo, radio, flashing light or other device shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.
- (f) No auction, fire, "lost our lease," bankruptcy or selling-out sales shall be conducted in the Premises without the prior written consent of Landlord, and none shall be conducted outside the Premises.
- (g) Tenant shall maintain all display windows in a neat, attractive condition, and shall exhibit only first-class materials, goods and items in all display windows. Tenant shall not permit the display of any materials, goods or items which in the sole discretion of the Landlord are considered lewd, obscene, pornographic or otherwise not in keeping with the standards of the Real Estate.
- (h) The sidewalks, entry ways, loading areas, other common areas and other outside areas immediately adjoining the Premises shall be kept clear of debris and snow at all times by Tenant, and Tenant shall not place or permit any obstructions, garbage, refuse, merchandise or displays in those areas.
- (i) Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated by Landlord. Tenant shall furnish Landlord with automobile license numbers assigned to Tenant's car or cars of Tenant's employees, and shall notify Landlord of any changes within five (5) days. In the event Tenant or its employees fail to park their cars in the designated parking areas as aforesaid, then Landlord, at its option, may charge Tenant \$10.00 a day (plus any administrative cost and liquidated damages) for each car parked in any area other than those designated.
- (j) Tenant, its employees and/or its agents shall not solicit business in the common areas, nor shall Tenant, its employees and/or its agents distribute any handbills or other advertising matter in the common areas or on automobiles parked in the common areas.
- (k) Tenant shall keep the Premises at a temperature sufficient to prevent water from freezing in pipes and fixtures.
- (l) Tenant shall not place or maintain any temporary fixture for the display of merchandise outside the Premises or within six (6) feet of any entrances to the Premises, and Landlord shall have the right, without giving prior notice to Tenant and without any liability for damage, to remove any such display from the Premises, except as shall have first received the written consent of Landlord as to size, color, location, nature and display qualities.
- (m) Tenant shall not permit the premises to be used for anything unlawful or illegal whatsoever. Tenant shall not use the Premises, nor permit use of the Premises in any manner, which will tend to create waste or a nuisance nor disturb the peaceful use and enjoyment of the property by other Tenants of the property. Furthermore, Tenant shall not carry on any trade or occupation or operate any instruments, apparatus or equipment which emits an odor or causes a noise discernible outside of the Premises or which may be deemed offensive in nature. In the event that the odor and/or noise from Tenant's business creates a problem with the adjacent Tenants, then at Landlord's sole discretion, Landlord may serve Tenant with a sixty (60) day notice to vacate the Premises.