

DUPLICATE ORIGINAL

DUPLICATE



THE CITY OF SAN DIEGO

EDUCATIONAL ENRICHMENT SYSTEMS, INC.

Flat Rate Lease

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT "Lease" is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and EDUCATIONAL ENRICHMENT SYSTEMS, INC., hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated at 6960 Linda Vista Road in the City of San Diego, County of San Diego, State of California, described in Section 9.0, Exhibit "A," attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "Premises" or "Leased Premises."

1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of operating a children's day care center and preschool for low-income families described in Section 9.7, Low Income Policy, in accordance with the General Development Plan referenced in Section 6.12 hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue said purposes throughout the Lease Term hereof. Failure to continuously use the Premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions. By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Leased Premises.

1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the Lease Term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Lease Term, or if during the Lease Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Leased Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Leased Premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management. Throughout the term of this Lease agreement, LESSEE shall provide competent management of the Leased Premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of children's day care center and preschool and related activities in a fiscally responsible manner and in compliance with Federal and State accreditation standards.

1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.6, Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized

representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

- 1.8 Rates and Charges. All charges for merchandise and services or facilities on said Premises shall be in accordance with the schedule set forth in Section 9.5, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative. All proceeds including fees collected by LESSEE from the operation of the Premises shall be used to further the purpose of the LESSEE in a manner beneficial to the Premises and/or programs offered at the Premises.
- 1.9 Political Activities. The Leased Premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by two or more candidates of different parties such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the Premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the Premises for the purposes specified herein. LESSEE agrees that all activities conducted on the Premises will be as stated in Section 1.2, Uses, hereof.
- 1.11 Public Signage. LESSEE shall, at all times during the Lease Term, maintain a prominent CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this Lease. The sign shall be installed by LESSEE at a location agreeable to CITY.
- 1.12 Parking. During the term of this Lease, LESSEE shall have exclusive use of all parking spaces located on the Leased Premises. If these spaces are inadequate to satisfy the off-street parking requirements associated with the uses specified in Section 1.2 herein, then LESSEE shall enter into suitable off-site parking agreements at its sole cost and expense so that there is always compliance with off-street parking requirements. Pursuant to Section 1.3, the CITY assumes no responsibility in this matter and is under no obligation to waive or reduce any off-street parking requirements now in effect or which hereafter may be in effect.



SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be five (5) years commencing on the first day of the calendar month following execution by the City Manager, "Lease Term", subject to LESSEE'S right to extend as provided in Section 2.4. "Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this Lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. CITY may record such deed only on the expiration or earlier termination of this Lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.
- At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified Lease Term, any liens and encumbrances must be approved in writing by the City Manager.
- 2.4 Right to Extend. Provided that LESSEE is not in default of this Lease, LESSEE has the right to extend this Lease two times for an additional term of five (5) years each, subject to all original agreements, considerations, covenants, and conditions herein.

To exercise this right, LESSEE shall, no sooner than one year prior and no later than one hundred eighty (180) days prior to the last day of the fifth Lease Year and tenth Lease Year, give City written notice of LESSEE'S intent to extend the Lease and submit to CITY for the review and approval of the City Manager, a Development Plan for capital improvements on the Leased Premises that restores the existing improvements to an "as-new" condition that substantially matches or exceeds the condition of the improvements described in the original Development

Plan, "Subsequent Development Plan". Each Subsequent Development Plan shall include detail of the proposed improvements, estimated project costs, a project timeline/schedule, a date for completion of construction, and a guaranteed minimum dollar amount that will be allocated for project costs. Furniture, trade fixtures, equipment and other personal property not affixed to the Premises shall not be included as part of LESSEE'S project costs. Upon approval by the City Manager, whose approval shall not be unreasonably withheld, and upon issuance of building permits, LESSEE shall have one (1) year to begin construction of the improvements described in the approved Subsequent Development Plan. If LESSEE fails to complete construction by the scheduled completion date, CITY will be entitled to damages in the amount of seventy five dollars (\$75) per day for every day of failure to meet the schedule of development until completion of development, said amount representing liquidated damages therefor. If LESSEE fails to submit and implement the Development Plan or complete construction within one (1) year of the scheduled completion date stated in the approved Development Plan, CITY may, at its option, terminate this Lease.

SECTION 3: RENT

- 3.1 Time and Place of Payment. The administrative fee defined in Section 3.2 below is due annually in advance on or before the first day of each Lease Year. All rents or fees required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Consideration and Administrative Fee.

- a. Consideration. LESSEE is to provide day care services to low income families during the term of this Lease.
- b. Administrative Costs. LESSEE shall pay a fee of Two Thousand Six Hundred Twenty One Dollars (\$2,621) per Lease Year "Administrative Fee" or "Fee", payable annually, to partially offset the CITY'S costs of administering this Lease. The Administrative Fee is subject to annual



adjustments based on percentage increases in the Consumer Price Index ("CPI") as hereinafter provided. However, CPI adjustments shall not increase the fee in excess of six percent (6%) per year.

- c. (1) CPI Adjustments. On the anniversary date of each Lease Year following the commencement date of this Lease, the Fee shall be adjusted to reflect the percentage increase in the CPI based on the average of the indices for the third quarter (July, August, September) of the calendar year prior to each adjustment.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S.

Department of Labor's Comprehensive Official Index most comparable to the aforesaid index. If a Fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

In no event shall the adjusted Fee as established by the CPI be less than the Fee in existence immediately prior to the adjustment date. The failure of CITY to deliver timely notice of any Fee adjustment shall not constitute a waiver by CITY of its rights hereunder.

- (2) CPI Adjustment Computation. The Fee adjustment for each one (1) year period shall be calculated by CITY as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of index figures published by the CPI using the months of July, August and September of 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of index figures published by the CPI using the months of July, August and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of Two Thousand Five Hundred Dollars (\$2,500).

Example Calculation for Calendar Year 2003 Fee Adjustment

Current Index (Third Quarter 2003)	187.1	
		----- = 1.048 (Adjustment
Base Index (Third Quarter 2001)	178.5	Multiplier)

The "base figure" is then multiplied by the adjustment multiplier to determine the new Fee. Using the foregoing example, the adjusted Fee is calculated as follows:

\$2,500	(Base Figure)
x 1.0481	(Adjustment Multiplier)
\$2,621	(Adjusted Fee)

- 3.3 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. These records and accounts will be made available by LESSEE at the Leased Premises and will be complete and accurate showing all income and receipts from use of the Premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this Lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.
- 3.4 Delinquent Administrative Fee. If LESSEE fails to pay the Administrative Fee when due, LESSEE shall pay, in addition to the unpaid Fee, five percent (5%) of the delinquent Fee. If the Fee is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from Fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment of the Fee be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the Fee for the audited period has been underpaid in excess of five percent (5%) of the total required Fee, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said Fee was underpaid, in addition to the unpaid Fee as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is subject to the due date provided in this Lease for Administrative Fee payments and the provision for delinquent Administrative Fees. The existence of the fifty percent (50%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Leased Premises.
- 3.6 Annual Budget. LESSEE shall submit to the City Manager by February 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the calendar year commencing January 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the Premises.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

- 4.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest therein during the term of this Lease. LESSEE shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent subletting, occupation, or use by another person. Any such subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease of the majority portion of the leasehold, that this Lease or the requested sublease otherwise be revised to comply with standard CITY Lease requirements that are then current. The City Manager may also require, as a condition to approval of any sublease of a commercial nature (e.g., food vending or telecommunications installations), that LESSEE pay CITY market rents for such uses. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express conditions that CITY be given notice and cure rights and that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the Leased Premises in accordance with Section 6.12, Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the Lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this Lease.

4.4 Defaults and Remedies.

a. Default. Each of the following shall constitute an event of default under this Lease:

- (1) LESSEE fails to make any payment required under this Lease when due;
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default, other than those requiring payment to CITY, is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion;
- (3) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

- (4) LESSEE is adjudicated a bankrupt;
- (5) LESSEE makes a general assignment for the benefit of creditors;

b. Remedies.

- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three (3) Day Notice to Pay or Quit, or CITY may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premise or to possession thereof, and CITY may enter and take possession of the premise (provided, however, in the event that any default described in Section 4.4.a Defaults, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion), and may recover from LESSEE the sum of:
 - (2) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (3) the worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award exceeds (b) the amount of rental loss, if any, as LESSEE affirmatively proves could have been reasonably avoided;
 - (4) the worth at the time of award of the amount by which (a) the unpaid rent for the balance of the Lease Term after the time of award exceeds (b) the amount of rental loss, if any as LESSEE affirmatively proves could be reasonably avoided;
 - (5) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
 - (6) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (1) and (2) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (3) of this Section,

the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the term "rent" shall include Base Rent, Percentage Rent and any other payments required by LESSEE.

- c. If there is a deed of trust or mortgage on the leasehold interest, CITY will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30) day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (1) CITY may correct the default(s) and charge the costs thereof to the account of LESSEE, which charge will be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct the default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee and beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant will be the responsibility of the

terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, will have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary will give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this Lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- d. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- e. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is

brought to the attention of the City Council by the City Manager or by any concerned citizen.

- f. Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- g. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- h. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- i. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.
- j. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- k. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- l. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.
- 5.2 Insurance.
- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
- (1) Public liability and property damage insurance in the amount of not less than Three Million Dollars (\$3,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
 - (3) Professional errors and omissions and child molestation insurance to be included in a policy of comprehensive general liability for LESSEE'S activities as a day care center and preschool. CITY

shall be named as an additional insured on the comprehensive general liability policy and a certificate holder on the policy providing professional errors and omissions and child molestation.

The above policies shall also be primary and not contributing to any insurance provided by CITY and will not terminate without thirty (30) days prior written notice.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) **Additional Insured.** All insurance policies will, by separate endorsement, name "The City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) **Modification.** CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) **Accident Reports.** LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.



names and addresses of any witnesses, and other pertinent information.

- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Leased Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Leased Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Leased Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said Premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the Lease Term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12, Development Plan, hereof and with all applicable laws.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written

approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Leased Premises. All utilities will be installed underground.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Leased

Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

- 6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay

rent to CITY at the rate in effect immediately prior to said expiration or termination.

- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Development Plan. LESSEE agrees to develop the Leased Premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this Lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.
- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation or release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release of any applicable law shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated in this Lease herein.

In the event of any release of a hazardous substance, in connection with LESSEE'S use of the Premises, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such hazardous substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE shall not utilize any hazardous substance on the Premises in violation of any applicable law. In addition, LESSEE shall not sell any hazardous substance on the Premises without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause a Phase I environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities due to LESSEE'S use of the Premises. If any hazardous substances exist in quantities greater than that allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment or an additional Hazardous Materials Assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal of such substances recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

6.14 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Leased Premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Leased Premises.

6.15 Water Quality - Best Management Practices and Stormwater Pollution Prevention Plan. CITY and LESSEE are committed to the implementation of programs to manage activities on the Leased Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPS") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days of the execution of this Lease, BMP and SWPPS that will control erosion and reduce the amount of pollutants and other sediments discharged from the Leased Premises. The BMP and SWPPS will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SWPPS for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPS as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SWPPS have been developed and implemented by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWPPS.

The BMP and SWPPS will be incorporated into this Lease as Section 9.8 BMP and SWPPS.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the Leased Premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.
- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral

understanding between the parties with respect to the Leased Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or Leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.

(4) The penalties that may be imposed upon employees' for drug abuse violations.

- c. LESSEE shall include in each sublease agreement language which indicates the subLESSEE'S agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code ("Title 24") and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the SUBLESSEE'S agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the Premises are situated.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Leased Premises in a creditable manner.
- 7.16 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

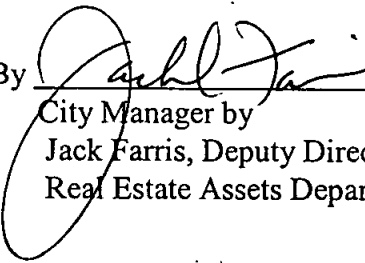
SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this Lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

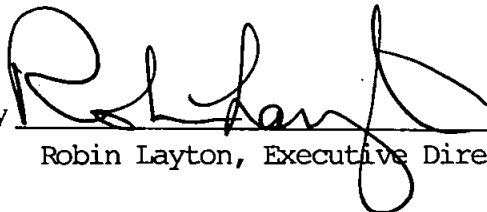
THE CITY OF SAN DIEGO

Date SEP 07 2004

By 
City Manager by
Jack Farris, Deputy Director
Real Estate Assets Department

LESSEE: EDUCATIONAL ENRICHMENT
SYSTEMS, INC.

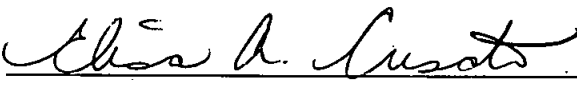
Date 6/04/2004

By 
Robin Layton, Executive Director

By _____

APPROVED as to form and legality this 17th day of September, 2004

CASEY GWINN, CITY ATTORNEY

By 
Elisa A. Cusato, Deputy City Attorney

CAN/cj
3/16/04

I:\Novins\LEASE-Educational Enrichment Systems, Inc2

SECTION 9: EXHIBITS

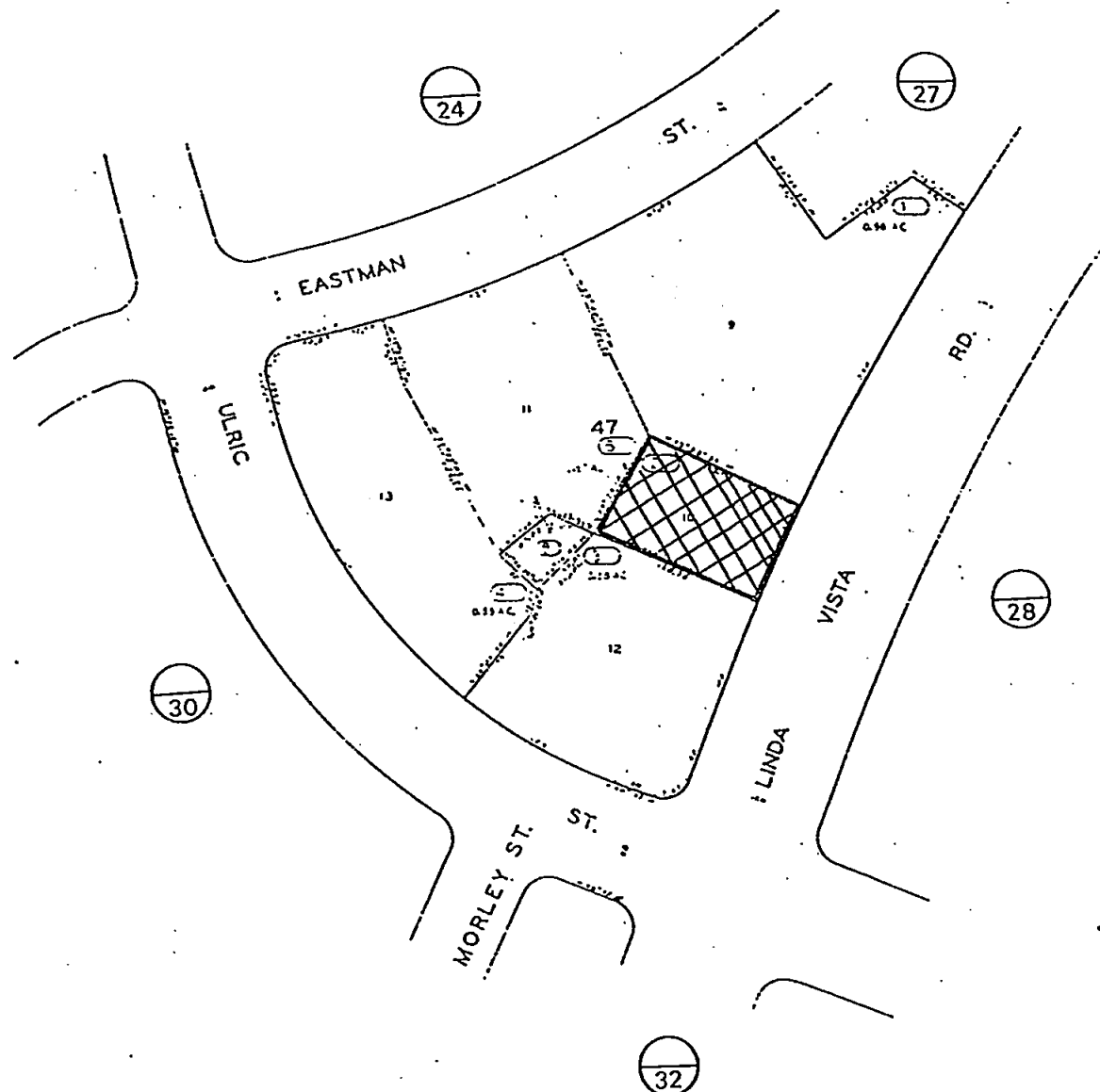
9.1 Legal Description.

Lot 10 in Block 47 of Linda Vista Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2883, filed in the Office of the San Diego County Recorder, July 2, 1952.

تاریخ: ۱۳۸۵/۱۰/۱۵

[illegible]

Section 9.2

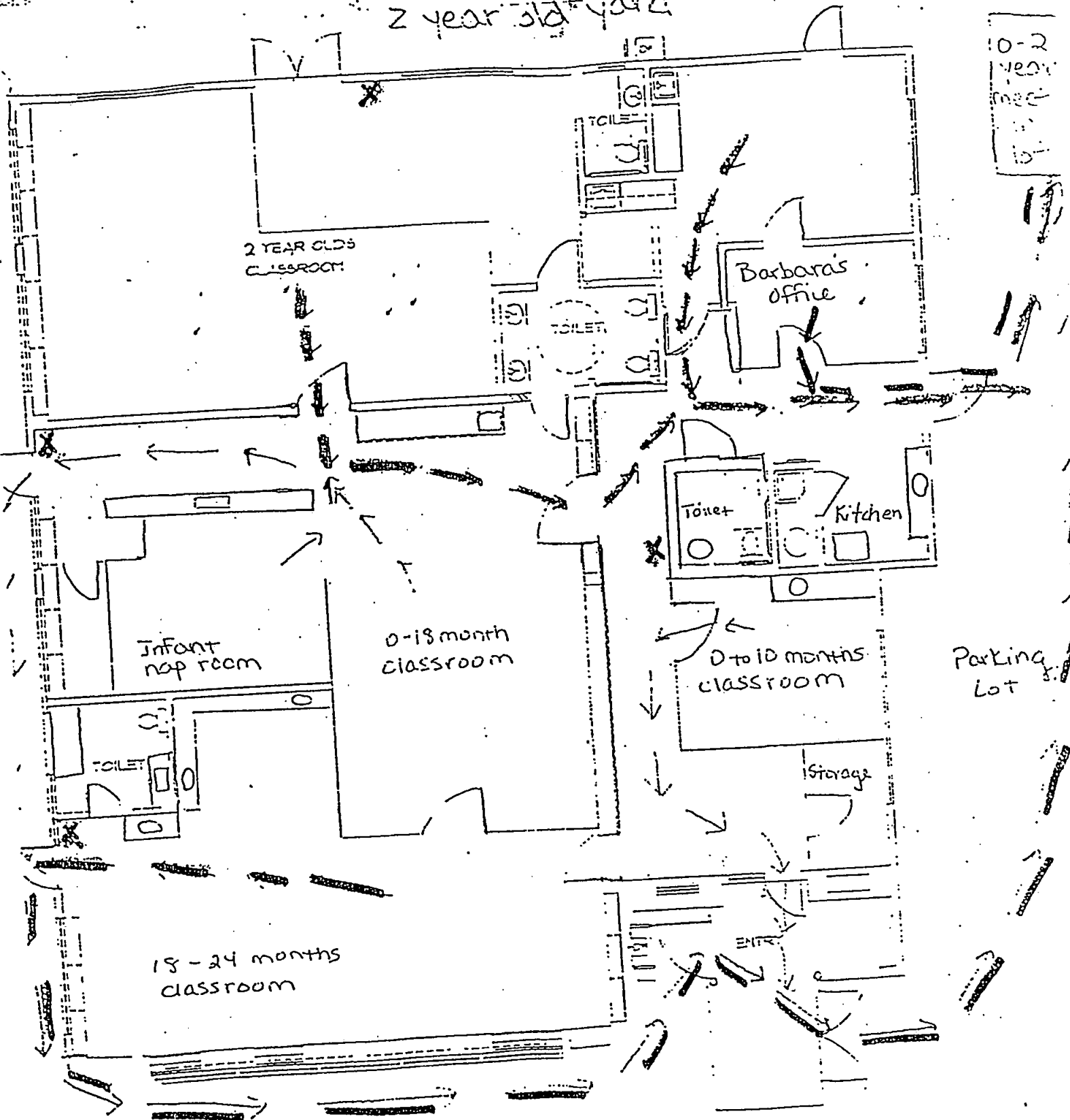


SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 431 PAGE 29

MAP 2883 - LINDA VISTA UNIT NO. 1 - BLK 47
RDS 4119

Section 9.3

2 year old yard



0-2 year
nec
10'

Parking
Lot

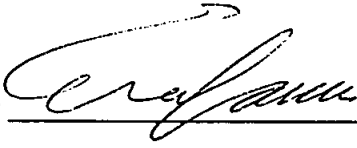
Infant Yard

Corporate Name.

EDUCATIONAL ENRICHMENT SYSTEMS, INC.

CORPORATE NAME

I, Eva Games, certify that I am the
Secretary of the corporation named in the attached agreement;
that Robin Layton, who signed this agreement on behalf of the corporation, was
then Executive Director of said corporation; that said agreement was duly signed
for and on behalf of said corporation by authority of its governing body, pursuant to a resolution
duly adopted by its Board of Directors on May 21, 2004, and is within the
scope of its corporate powers; and that set out below are the names of the officers and directors
of said corporation.

By 

CORPORATE SEAL

Name Sue Hodges, President
Title

Name Susan Chortek-Weisman, Vice President
Title

Name Eva Games, Secretary
Title

Name Robin Layton, Executive Director

Family Fee Schedule

Family Pays			Family Size and Income Level											
Hourly	Part-time Daily	Full-time Daily	1-2	3	4	5	6	7	8	9	10	11	12	
50%	0.20	1.00	2.00	1820	1950	2167	2513	2860	2925	2990	3055	3120	3185	3250
	0.25	1.25	2.50	1893	2028	2253	2614	2974	3042	3109	3177	3245	3312	3380
	0.30	1.50	3.00	1965	2106	2340	2714	3089	3159	3229	3299	3369	3440	3510
	0.35	1.75	3.50	2038	2184	2426	2815	3203	3276	3349	3421	3494	3567	3640
	0.40	2.00	4.00	2111	2262	2513	2915	3317	3393	3468	3544	3619	3694	3770
	0.45	2.25	4.50	2184	2340	2600	3016	3432	3510	3588	3666	3744	3822	3900
	0.53	2.65	5.30	2257	2418	2686	3116	3546	3627	3707	3788	3869	3949	4030
	0.61	3.05	6.10	2329	2496	2773	3217	3661	3744	3827	3910	3993	4076	4160
	0.69	3.45	6.90	2402	2574	2860	3317	3775	3861	3946	4032	4118	4204	4290
	0.77	3.85	7.70	2475	2652	2946	3418	3889	3978	4066	4154	4243	4331	4420
	0.85	4.25	8.50	2548	2730	3033	3518	4004	4095	4186	4277	4368	4459	4550
	0.93	4.65	9.30	2621	2808	3120	3619	4118	4212	4305	4399	4492	4586	4680
75%	1.01	5.05	10.10	2693	2886	3206	3719	4232	4329	4425	4521	4617	4713	4810
	1.05	5.25	10.50	2730	2925	3250	3770	4290	4387	4485	4582	4680	4777	4875

The following is applicable only to children in families that are identified as "Grandfathered"

1.05	5.25	10.50	2731	2926	3251	3771	4291	4388	4486	4583	4681	4778	4876
1.09	5.45	10.90	2766	2964	3293	3820	4347	4446	4544	4643	4742	4841	4940
1.21	6.03	12.05	2839	3042	3380	3920	4461	4563	4664	4765	4867	4968	5070
1.32	6.60	13.20	2912	3120	3466	4021	4576	4680	4784	4888	4992	5096	5200
1.44	7.18	14.35	2985	3198	3553	4122	4690	4797	4903	5010	5116	5223	5330
1.55	7.75	15.50	3057	3276	3640	4222	4804	4914	5023	5132	5241	5350	5460
1.67	8.33	16.65	3130	3354	3726	4323	4919	5031	5142	5254	5366	5478	5590
1.78	8.90	17.80	3203	3432	3813	4423	5033	5148	5262	5376	5491	5605	5720
1.90	9.48	18.95	3276	3510	3900	4524	5148	5265	5382	5499	5616	5733	5850
2.01	10.05	20.10	3349	3588	3986	4624	5262	5382	5501	5621	5740	5860	5980
2.13	10.63	21.25	3421	3666	4073	4725	5376	5499	5621	5743	5865	5987	6110
2.24	11.20	22.40	3494	3744	4160	4825	5491	5616	5740	5865	5990	6115	6240
2.36	11.78	23.55	3567	3822	4246	4926	5605	5733	5860	5987	6115	6242	6370
100%	2.47	12.37	24.73	3640	3900	4333	5026	5720	5850	5980	6110	6240	6370

Educational Enrichment Systems, Inc. Child Development Centers

Site 1

Linda Vista Infant/Toddler
6960 Linda Vista Road
San Diego, CA 92111
(858) 278-2457
License # 372005253

FULL DAY

Days of Operation: 249 (Year Round)
Hours of Operation: 6:30 a.m. - 6:30 p.m.
Licensed Capacity: 32 Infants (Ages birth to 2 yrs.)
24 Toddlers (Ages 2 to 3)
Total Enrollment: 24 Infants, 24 Toddler
Fees: *

Site 2

Linda Vista Child Development Center
2360 East Jewett Street
San Diego, CA 92111
(858) 278-2571
License # 376600627

Opened October 2000

FULL DAY

249 (Year Round)
6:30 a.m. - 6:30 p.m.
144 Preschool (Ages 3 to 5 yrs.)
144 Preschool
*

Site 3

Oceanside Child Development Center
C/O Center & Home (P.O. Box 879)
Oceanside, CA 92054 (92049-0879)
(760) 721-0107
License # 372006487 & 372006488

STATE PRESCHOOL

FULL DAY

Rancho Del Oro State Preschool
400 Rancho Del Oro Drive
Oceanside, CA 92057
(760) 967-6819
License # 37600271

STATE PRESCHOOL

Days of Operation:	206 (11 months)	249 (Year Round)	249 (Year Round)
Hours of Operation:	8:00 a.m. - 5:00 p.m.	6:00 a.m. - 11:00 p.m.	8:00 a.m. - 3:00 p.m.
License Capacity:	24 Infants (Ages birth to 2 yrs.) 136 Preschool (Ages 2 to 5)		30 Preschool (Ages 3 to 5 yrs.)
Total Enrollment:	120 (5 sessions)	44 Infant/Toddlers (0-3yrs.) 69 Preschool (3-5yrs.)	60 (Two sessions)
Fees:	**	*	**

Site 4

Site 5

Vista State Preschool
410 West California Avenue
Vista, CA 92083
(760) 726-2530
License # 372005162

Days of Operation: 206 (11 Months)
Hours of Operation: 8:00 a.m. - 3:30 p.m.
License Capacity: 44 Preschool (Ages 3 to 5 yrs.)
Total Enrollment: 110 (5 sessions)
Fees: **

Site 6

Pala State Preschool
P.O. Box 28
Pala, CA 92059
(760) 742-1323/1459
License # 372006451

206 (11 Months)
8:00 a.m. - 11:30 a.m.
20 Preschool (Ages 3 to 5 yrs.)
20
**

* Parents are employed or enrolled in a job training program. Fees are based on a sliding scale / no charge for families whose income is below the monthly adjusted income that is below seventy-five percent (75%) of the State's medium income, adjusted for family size.

** No charge to families that qualify base on State Department of Education Income Ceilings.

Educational Enrichment Systems, Inc. employs 120 staff for the Child Development programs. Those positions include:
Site Directors, Master Teachers, Teachers, Teacher Assistants, Cooks, and Office Managers. Rev. 10/28/02

- 9.7 Low Income Policy - Families with incomes less than 50 percent of the State Median Income (SMI) are considered to be below the State poverty level for the child care and development programs, and no fees are assessed. Pursuant to Education Code Section 8.263.1, the family income eligibility ceiling is 75 percent of SMI for all child care and development programs to which this fee schedule applies.

Families with incomes above 75 percent of SMI based upon the Fee Schedule effective October 1, 1997, who had children in subsidized child care prior to January 1, 1998, retain eligibility for those specific children through a "grandfather" clause. These children will remain eligible until family income exceeds 100 percent of SMI on the applicable fee schedule or until eligibility is lost because of other existing criteria. Families with incomes at or below 75 percent of SMI based upon the Fee Schedule effective October 1, 1997, who had children in subsidized child care prior to January 1, 1998, cannot be "grandfathered." These children will lose eligibility when their family's income exceeds 75 percent of SMI on the applicable fee schedule or when eligibility is lost because of other existing criteria. Children that are added after January 1, 1998, to subsidized families with previously "grandfathered" siblings have eligibility only if the family's income adjusted for its new family size is at or below 75 percent of SMI on the applicable fee schedule. However, the new child's eligibility will be lost upon the family's income exceeding 75 percent of SMI on the applicable fee schedule. The "grandfathered" children will maintain eligibility until the family's income exceeds 100 percent of SMI of the applicable fee schedule. Only families with no "grandfathered" children can be monitored for family eligibility. Families with "grandfathered" children must be tracked on the eligibility of the individual child.

For Alternative Payment programs, full-time care is defined as enrollment for six or more hours per day, while part-time care is enrollment for less than six hours per day.

For family child care home networks reimbursed under the Standard Reimbursement Rate (SRR) and for Center-based programs, full-time care is defined as enrollment for 6.5 or more hours per day, while part-time care is enrollment for less than 6.5 hours per day.

School-Age Community Child Care ("Latchkey") Programs operate on a quarter day (less than 2.5 hours per day) basis. Families served at this level shall be charged a fee equal to one-half of the part-time fee shown on the schedule. Example: A family of three whose gross monthly income is \$2,200 and whose child with the longest period of services is less than 2.5 hours per day will be assessed one-half of the part-time fee of \$2.00 or \$1.00 per day. The Hourly Family Fee should be used where applicable.

9.8 BMP and SWPPS.

To be attached.

RESOLUTION NUMBER R- 299590

ADOPTED ON SEP 07 2004

WHEREAS, the City is the owner of a 4,030 square foot building located at 6960 Linda Vista Road [the Property]; and

WHEREAS, the property has been leased to Educational Enrichment Systems, Inc. [EES], a non-profit corporation, since 1992 for a child care facility serving low-income families; and

WHEREAS, EES has continually maintained and improved the Property during the term of its lease using a combination of CDBG Funds, private donations, state grants, and annual fund raising totaling more than \$331,000; and

WHEREAS, the City of San Diego and EES have negotiated a renewal of the lease for fifteen years (five years with 2-five year options) to manage and operate the Property as a child care center serving low-income families; and

WHEREAS, the under the terms of the proposed lease, EES shall pay no rent but shall pay an annual administrative fee of \$2,621, adjusted annually, and shall be responsible for the continued maintenance and improvement of the Property and its facilities pursuant to a previously approved Development Plan; and

WHEREAS, the City's valuation staff has determined the annual fair market rental value of the Property to be \$64,500; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a lease agreement with Educational Enrichment Systems, Inc., a non-profit corporation, for the operation and management of a child care center serving low-income families at 6960 Linda Vista Road, for an initial term of five years with two additional five-year options to extend, at no rent plus administrative cost recovery, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 299590.

APPROVED: CASEY GWINN, City Attorney

By



Carrie L. Gleeson
Deputy City Attorney

CG:mm
08/23/04
Or.Dept:READ
R-2005-202

Internal Revenue Service
District Director

Department of the Treasury

LA:EO:80: 1639

Date: JUL 21 1980

Employer Identification Number:

95-3415446

Accounting Period Ending:

June 30

Form 990 Required: ☒ Yes ☐ No

Person to Contact:

B. Brewer

Contact Telephone Number:

(213) 688-4553

► Educational Enrichment Systems, Inc.
6970 Linda Vista Rd.
San Diego, Ca. 92111

Dear Applicant:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in section 170(b)(1)(A)(vi) and 509(a)(1).

If your sources of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status and foundation status. Also, you should inform us of all changes in your name or address.

Generally, you are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. If you have paid FICA taxes without filing the waiver, you should contact us. You are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes. If you have any questions about excise, employment, or other Federal taxes, please let us know.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

The box checked in the heading of this letter shows whether you must file Form 990, Return of Organization Exempt from Income tax. If Yes is checked, you are required to file Form 990 only if your gross receipts each year are normally more than \$10,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. The law imposes a penalty of \$10 a day, up to a maximum of \$5,000, when a return is filed late, unless there is reasonable cause for the delay.

P.O. Box 2350, Los Angeles, Calif. 90053

(over)

Letter 947(DO) (5-

You are not required to file Federal income tax returns if you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter, we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees.

If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

A handwritten signature in cursive script that reads "W. H. Connett".

District Director

TW

cc: David Hofman u/PA

ENDORSED
FILEDIn the office of the Secretary of State
of the State of California

SEP 11 1979

MARCH FONG EU, Secretary of State

Kathleen P. Gutierrez
Deputy

ARTICLES OF INCORPORATION

OF

EDUCATIONAL ENRICHMENT SYSTEMS, INC.

NAME

FIRST: The name of the corporation is: EDUCATIONAL
ENRICHMENT SYSTEMS, INC.

PURPOSES AND POWERS

SECOND: The purposes of the corporation are:

(a) For the organizing and operating exclusively for charitable and educational purposes including specifically but not limited to information, research and services in the field of early childhood development and education.

(b) The general purposes and powers are to have and exercise all rights and powers conferred on non-profit corporations under the laws of California, including the power to contract, rent, buy or sell personal or real property; provided, however, that this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this corporation.

(c) Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation.

THIRD: This corporation is organized pursuant to the General Nonprofit Corporation Law of the State of California and does not contemplate pecuniary gain or profit to the members thereof and it is organized for nonprofit purposes.

FOURTH: The County in this State where the principal office for the transaction of the business of the corporation is located is San Diego.

FIFTH: (a) The number of Directors of this corporation shall be not less than three (3).

(b) The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

<u>NAME:</u>	<u>ADDRESS:</u>
Mike Foote	7969 Engineer Road, Suite 209 San Diego, CA 92111
Cathy Fredericks	5592 Burlingame Buena Park, CA 90621
Nancy Peterson	2204 Recodo Court La Costa, CA 92008

(c) Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the Minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of such Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by the unanimous written consent of the Board of Directors without a meeting and that the Articles of Incorporation authorize the Directors to so act, and such statement shall be prima facie evidence of such authority.

(d) The manner in which the Directors shall be chosen and removed from office, their qualifications, powers, duties, compensation and tenure of office, the manner of filling vacancies on the Board, and the manner of calling and holding meetings of Directors, shall be as stated in the By-Laws.

(e) Directors shall not be personally liable for the debts, liabilities, or obligations of the corporation.

SIXTH:

(a) This corporation is not organized, nor shall it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits

or dividends to the members thereof and is organized solely for nonprofit purposes.

(b) The property of this corporation is irrevocably dedicated to charitable purposes, and upon liquidation, dissolution or abandonment of the owner, after providing for the debts and obligations thereof, the remaining assets will not inure to the benefit of any private person but will be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable or religious purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(c) If this corporation holds any assets on trust, or the corporation is formed for charitable purposes, such assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the corporation has its principal office, on petition therefor by the Attorney General or by any person concerned in the liquidation, in a proceeding to which the Attorney General is a party.

SEVENTH: None of the activities of this corporation shall consist of the carrying on of propaganda, or otherwise attempting, to influence legislation, nor shall this corporation participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

EIGHTH: Notwithstanding any other provision in these Articles of Incorporation, the corporation shall be subject to the following limitations and restrictions:

(a) The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(b) The corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(c) The corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(d) The corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(e) The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

NINTH: This corporation is not authorized, nor shall it have the power, to issue capital stock.

TENTH: These Articles may, except as provided by law imposing more stringent requirements, be amended as follows:

(a) Before any Directors, other than the incorporators, have been admitted to the corporation, by a writing signed by two-thirds (2/3) of the incorporators.

(b) After Directors other than the incorporators have been admitted to the corporation, by resolution of the Board of Directors and by two-thirds (2/3) or more of a quorum of the members.

IN WITNESS WHEREOF, the undersigned, including the persons hereinabove named as the first Directors, have executed these Articles of Incorporation on this 7th day of September, 1979.

Michael J. Juto
Robert F. Edwards
Harvey A. Peterson