



THE CITY OF SAN DIEGO

June 15, 2006

Dear Lessees:

Effective immediately please make a correction to the General Provisions section of your lease outline with the City of San Diego.

Under the NOTICES section there is a paragraph informing lessees where to mail any written notices. This needs to be changed to the following address:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700 (M. S. 51A)
San Diego, CA 92101-9586

Sincerely,

James Barwick
Real Estate Assets Director

KC/cj

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Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

COPY

LEASE AMENDMENT

This Lease Amendment ("Amendment"), executed in triplicate as of **JUN 22 1999**, at San Diego, California, by and between The City of San Diego, a municipal corporation in the County of San Diego, State of California ("CITY"), as lessor, and Educational Enrichment Systems, Inc. ("LESSEE"), as lessee, is made with reference to the following facts:

A. CITY leases to LESSEE and LESSEE leases from CITY certain real property (the "Premises") described in the flat rate lease dated July 20, 1998 and filed in the office of the City Clerk of San Diego as Document No. RR-290449 ("Lease").

B. The parties desire to amend the Lease as provided in this Amendment.

THEREFORE, the Lease is amended to provide, and LESSEE and CITY agree as follows:

1. The third paragraph of Section 1.2 Uses, is deleted and replaced with the following:

"LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, except for temporary closures due to repairs, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY. Closures for repairs that are no longer than 14 days or are approved in writing by the City will not be deemed a failure to continuously use the premises provided."

2. The final paragraph in Section 1.5 Easements and Reservations, is deleted in its entirety and replaced with the following:

"However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will repair physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights."

3. Section 1.6 Competent Management, is deleted in its entirety and replaced with the following:

"Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a children's day

RR- **291841**
DOCUMENT NO. **JUN 22 1999**
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SAN DIEGO, CALIFORNIA

care center and preschool and related activities in a fiscally responsible manner and in compliance with Federal and State accreditation standards.

4. Section 1.9 CITY Use, is deleted in its entirety and replaced with the following:

"The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use. The CITY agrees to defend, indemnify and hold LESSEE harmless from any and all claims, liabilities or damages, including attorneys' fees incurred in connection with or arising out of such use by CITY. In addition, CITY agrees to give LESSEE reasonable advance notification of any such usage in order to afford LESSEE opportunity to secure its personal property as it deems appropriate. LESSEE shall be entitled to a representative in attendance in any such event or program."

5. Section 2.3 Surrender of Premises, is deleted in its entirety and replaced with the following:

"At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed and where the termination is due to an alleged default by LESSEE, the LESSEE has not notified the City in writing of LESSEE's dispute as to the basis for termination, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises."

6. Section 3.2 Rent, is deleted in its entirety and replaced with the following:

"The rent during the first ten years of the term hereof shall be Six Hundred Dollars (\$600.00) per lease year. On the first day of the eleventh year rent will be adjusted to reflect the current rate charged to non-profit leases. In no event shall the adjusted rent exceed 80% of the then current fair market rent as evidenced by an appraisal performed by a qualified professional real estate appraiser selected by mutual consent of CITY and LESSEE. The rent adjustment will remain in effect throughout the end of said term. Rent is payable to CITY on the first day of each lease year in advance. In the event that rent is

increased to greater than Twelve Thousand Dollars (\$12,000) per lease year, then annual rent shall be recalculated as monthly rent and the rent shall be payable to CITY on the first day of each month."

7. Section 4.2 Assignment and Subletting, is deleted in its entirety and replaced with the following:

"LESSEE shall not assign this lease or any interest therein and 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. In no event shall such consent be unreasonably withheld. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"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 assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. 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 or assignee.

8. The second of four paragraphs in Section 4.3 Encumbrance, is deleted in its entirety and replaced with the following paragraph:

"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. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity. Further, 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."

9. Subsection 4.4a(2) Defaults and Remedies, is revised to read as follows:

"LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, which petition is not dismissed within 90 days of filing; or"

10. Subsection 4.5 d. Eminent Domain, is revised to read as follows:

"Any award in eminent domain shall be distributed as follows: 1) LESSEE for LESSEE's then remaining leasehold interest and its interest in the installations or improvements on the Property and 2) to City for City's ownership interest in the Property."

11. The following sentence is added to the end of Subparagraph 5.2 a.(2), Insurance:

"This does not preclude the City Manager from agreeing to cure any outstanding default of the LESSEE pursuant to the mortgage or otherwise agreeing to comply with the provisions of the Loan Agreement and Deed of Trust with respect to application of insurance proceeds."

12. The following paragraphs are added to the end of Section 8.3 City Option to Purchase:

With respect to the City's option to purchase set forth above (the "Purchase Rights"), the following shall apply:

- (a) The Purchase Rights shall be exercisable by the City, in accordance with this Section, both before and after any transfer of Borrower's interest in the leased premises, including but not limited to LESSEE's rights under the Lease, by foreclosure, trustee's sale, or other action or proceeding for the enforcement of an approved Lender's deed of trust or by deed or assignment in lieu thereof (collectively a "Foreclosure").
- (b) The Purchase Rights shall not apply to any Foreclosure; provided, however, that nothing herein shall prohibit or prevent the City from being a purchaser at any foreclosure sale.

- (c) In the event that the Purchase Rights are exercised by the City prior to a Foreclosure, the City agrees that the net proceeds of the purchase price paid by the City (the "Net Purchase Proceeds") shall in no event be less than the amount necessary to pay the Lender's loan in full, including the outstanding principal balance, all accrued interest and all other sums due under the applicable loan documents, including all costs and expenses related to the Foreclosure.
- (d) If the Lender succeeds to the LESSEE's rights under the Lease pursuant to a Foreclosure, and the Purchase Rights are thereafter exercised by the City, the City agrees that the Net Purchase Proceeds shall in no event be less than the sum (this sum referred to as the "Minimum Net Sales Proceeds") of (i) the amount which would have been necessary to pay the Lender's loan in full on the date of the Foreclosure, including the outstanding principal balance, all accrued interest and all other sums due under the applicable loan documents, including all costs and expenses related to the Foreclosure (the "Foreclosure Loan Balance"); plus (ii) an amount equal to all sums reasonably expended by the Lender to repair and refurbish the leased premises to marketable condition and bring the leased premises into compliance with all applicable laws and regulations (the "Refurbishment Costs"); plus (iii) an amount equal to interest of eight percent (8%) per annum on the Foreclosure Loan Balance from the date of the Foreclosure through and including the date the Net Purchase Proceeds are paid by the City to the Lender; plus (iv) an amount equal to interest on the Refurbishment Costs, calculated from the date of the expenditure of same through and including the date the Net Purchase Proceeds are paid by the City to the Lender, at the lesser of (i) the Cost of Funds Rate (as such term is defined below); or (ii) eight percent (8%) per annum. For purposes hereof, "Cost of Funds Rate" means the Index Figure in effect as of the date of the applicable disbursement plus one-quarter percentage point (1/4%). For purposes hereof, "Index Figure" means the asked yield for the most recently auctioned United States Treasury Bond or Note with a stated maturity date which is two (2) years from the date of determination (or the nearest month thereafter available), as shown on the Telerate page 5 (or such other page as may replace it), rounded upward to the nearest one-eighth (0.125%) of one percent. If at any time the Index Figure is no longer available, Lender, with notice to City, will choose a new index that is based on comparable information.
- (e) LESSEE shall pay to Lender any costs of the Lender's release or direction of reconveyance in connection with the release of the deed of trust.

13.. The following sentence is added to the end of Section 7.3 City Approval..

"The City Manager is authorized to execute a Ground Lessor's Consent, Nondisturbance, Attornment, and Estoppel Agreement in the form attached as Exhibit "A" to this Amendment."

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 _____

By



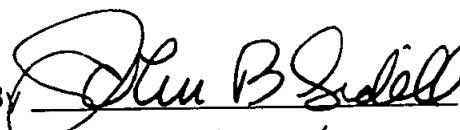
~~City Manager~~

Real Estate Assets Director

LESSEE: EDUCATIONAL ENRICHMENT
SYSTEMS, INC.

Date 6-23-99

By



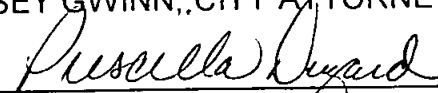
Its

President

APPROVED as to form and legality this 13th day of July, 1999

CASEY GWINN, CITY ATTORNEY

By



Deputy City Attorney

LMF

06/22/99

(R-99-1507)

RESOLUTION NUMBER R- **291841**ADOPTED ON **JUN 22 1999**

WHEREAS, on July 20, 1998, by Resolution No. R-290449, the Council of The City of San Diego approved a lease agreement between the City and Educational Enrichment Systems, Inc. [Lessee], for the construction and operation of a child care center adjacent to Montgomery Middle School; a copy of the lease agreement is on file in the office of the City Clerk as Document No. RR-290449; and

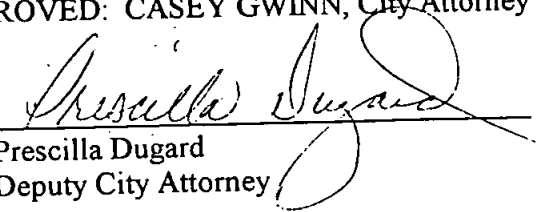
WHEREAS, Lessee now wishes to amend the lease agreement to obtain funding for the construction of the child care facility; and

WHEREAS, the City finds that the project is consistent with goal of Council Policy 300-12 to increase the availability of child care facilities and programs and agrees to amend the lease agreement; 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, a First Amendment to Lease Agreement with Educational Enrichment Systems, Inc., for the expansion of the child care facility located adjacent to Montgomery Middle School, under the terms and conditions set forth in that First Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- **291841**

APPROVED: CASEY GWINN, City Attorney

By


Prescilla Dugard
Deputy City Attorney

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