

DRAFT  
SPECIAL USE AGREEMENT  
FOR  
ALBANY PRESCHOOL  
850 MASONIC

THIS AGREEMENT entered into July 01, 2005, between the CITY OF ALBANY, 1000 San Pablo Avenue, Albany, CA and ALBANY Preschool, (“Lessee”), 850 Masonic Avenue, Albany, CA.

FOR AND IN CONSIDERATION of the mutual terms, covenants and conditions herein, City of Albany grants to Lessee, the license to operate the area described in Exhibit A attached, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. LOCATION. This license shall be limited to the area (“premises”) shown on the drawing labeled Exhibit B, which Exhibit and all provisions thereof is attached hereto and made a part hereof.

2. TERM – CANCELLATION. The terms of the license shall commence on July 01, 2005 and continue until June 30, 2010 with an option to renew for an additional two (2) years with the terms and conditions of this agreement, subject to prior cancellation by the City of Albany upon at least one (1) year notice to Lessee given if Lessee has become unwilling or unable to operate on the premises in accordance with the requirements of the City of Albany.

Should Lessee hold over after the expiration of the term with the express or implied consent of the City of Albany, such holding over shall be deemed to be a tenancy from month-to-month subject to all of the terms and conditions of this agreement.

Upon expiration or termination of the term, Lessee shall remove from the premises or otherwise dispose of in a manner satisfactory to City, all personal property belonging to Lessee located on the premises. Should Lessee fail to remove or dispose of Lessee’s property as herein provided, City may, in its election, consider such property abandoned and may dispose of same at Lessee’s expense. Also, at the expiration or termination of the term Lessee shall quit and surrender the said premises, including real property improvements, in a good state of repair, reasonable wear and tear excepted, damage by matters over which Lessee has no control excepted, provided that such exculpatory provision shall not extend to any risk which Lessee is required to insure against as herein provided.

3. RENT. The monthly rent shall be the in-kind services provided by Lessee (the parents of the Preschool enrollees) for maintenance and upkeep. In addition, Lessee will reimburse the City of Albany \$525 per month for rental of adjacent property, to be billed quarterly. The Lessee agrees to reimburse the City of Albany for any future increase(s) in the monthly rental of adjacent property throughout the term of this agreement.

The Lessee will be notified in writing of any increase in rental fee within 30 days of the City's notification of any increase. The City does not guarantee that the adjacent property will continue to be available to Lessee through the term of this agreement should the property owner discontinue renting the property. Lessee agrees to cooperate and vacate the adjacent property upon thirty days notice, should City determine that it is unavailable.

4. PURPOSE – DAYS AND HOURS. The subject premises shall be used only by the Lessee for the purposes described in item 3 of "Exhibit "A".

Lessee expressly agrees at all times during the terms of this agreement, at its own cost and expense, to operate the premises in a clean, safe, wholesome and sanitary condition free of trash, garbage or obstructions of any kind and conduct its operation in compliance with any and all present and future laws, general rules or regulations of any governmental authority now or at any time during the term of this agreement in force relating to sanitation or public health, safety or welfare; and lessee shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto, adopted by Federal, State or other governmental bodies or departments of officers thereof, and this agreement is expressly subject to present and future regulations and policies of the City of Albany. Lessee shall remedy without any delay any defective, dangerous or unsanitary conditions.

No goods, merchandise or materials, which are in any way explosive or hazardous, shall be kept, stored or sold in or on said premises. No offensive or dangerous trade, business or occupation shall be carried on therein or thereon.

5. UTILITIES – TAXES.

(a) Utilities. Lessee shall pay 30% of the total PG&E bill received by the Senior Center, to be billed quarterly.

6. CONDITION OF PREMISIS. The taking of possession of the premises by the Lessee shall, in itself, constitute acknowledgement that the subject premises in their presently existing condition, "as is", and that the City shall not be obligated to make any alterations, additions, improvements, or repairs thereto, except as may be expressly provided herein. As per the Parks, Recreation and Open Space Master Plan, adopted October 18, 2004, the City, in its sole discretion will evaluate the premises and may choose to repair seismic deficiencies that may be present, not to exceed a cost of forty two thousand dollars (\$42,000), to be paid for from the City's per capita allotment of Proposition 40 Park Bond funds, subject to approval for the use of these funds for this purpose by the State of California, Department of Parks and Recreation. In the event that the City proceeds to make seismic repairs, Lessee shall cooperate and provide City with access as is necessary for the completion of said project.

7. ALTERATIONS/IMPROVEMENTS. At any time during the term hereof, Lessee shall have the right, subject to prior written approval by City as hereinafter provided, to construct alterations, additions and/or improvements ("alterations") to the premises, at the Lessee's sole cost and expense and without reimbursement from the City of Albany.

Whenever Lessee desires to construct alterations, it shall prepare specifications and working drawings therefore and submit same to City for approval, which approval City shall not unreasonably withhold, provided that the proposed work will be of high quality, compatible with the purposes described in item 3 of Exhibit "A", and compatible in finish, color and design with the existing structures on the premises and the school environment.

Upon expiration or termination of this agreement, any alterations to the premises or to any structures located thereon, including fixtures, shall remain on the premises and be surrendered to and become the property of the City of Albany.

8. SERVICES CITY OF ALBANY SHALL PROVIDE. The City shall provide no services or other in-kind benefits except as expressly set forth herein.

9. FACILITIES LESSEE SHALL PROVIDE. Lessee shall furnish and keep available all equipment and items necessary to properly operate the facility for its purposes, and care for and maintain Lessee's facilities and equipment thereof.

10. MAINTENANCE OF FACILITIES. Lessee agrees to maintain any and all of the facilities, improvements and equipment on the premises in good order and repair, at Lessee's cost and expense, during the entire term. Should Lessee fail, neglect or refuse to do so, the City shall have the right, but not an affirmative obligation, to perform such maintenance or repairs for the Lessee's account and the Lessee agrees to promptly reimburse the City for the cost thereof, provided, however, that the City shall first give Lessee ten (10) days' written notice of its intention to perform such maintenance or repairs for the Lessee's account for the purpose of enabling Lessee to proceed with such maintenance or repairs at its own expense. City shall not be obligated to make any repairs at its own expense. City shall not be obligated to make any repairs to or maintain any improvements on the subject premises. Lessee hereby expressly waives the right to make repairs at the expense of the City and the benefits of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California, if applicable.

11. QUALITY OF SERVICE AND CONTROL OF RATES AND CHARGE. Lessee agrees that it will maintain a high standard of service at least equal to that of similar facilities in the San Francisco East Bay region.

12. PARK INSPECTION AND MAINTENANCE. The City reserves the right to ingress and egress to inspect the premises as deemed necessary by City.

13. INDEMNIFY. Lessee hereby waives all claims and recourse against the City including the right to contribution for loss or damage by reason of death or injury to persons or damages to property, whether the person or property of Lessee, its agents or employees, or third persons arising from, growing out of or in any way connected with or incident to this agreement except claims from the sole active negligence of City, its officers, agents or employees. Lessee's liability pursuant to this indemnification agreement shall not exceed sums equal to those set forth in paragraph 14(b) below being the amounts of insurance Lessee is required to carry hereunder.

14. INSURANCE. Lessee shall procure and keep in force during the term hereof, at Lessee's own cost and expense, the following required policies on insurance with companies doing business in California and which are acceptable to City, naming the City of Albany as an additional insured where possible.

(a) Worker's Compensation Insurance as required by the laws of California (if employees are to be hired).

(b) Comprehensive general liability to all operations (including the use of owned and non-owned motor vehicles, contractual liability insuring the indemnify provisions of this agreement, and Products Liability), providing Bodily Injury and Property Damage Liability protection in the amount of \$2,000,000 per occurrence. The Lessee shall be specified as the insured. The Certificate shall name the City of Albany as an "additional insured". Such insurance shall be endorsed to provide that as respect coverage afforded on behalf of the City, such coverage shall be primary insurance and any other insurance available to City under any other policies shall be excess over the insurance required hereby.

(c) Property insurance providing against loss or damage by fire and such other risks, included in an extended coverage endorsement, including vandalism and malicious mischief in an amount of not less than one hundred percent (100%) of the full replacement value of the premises.

15. ASSIGNMENT AND SUBLETTING. Lessee shall neither assign, sublease, or otherwise convey any interest in this agreement or arising hereunder to any persons, entity or entities whatsoever. Any attempt to assign or sublet shall be void. The Lessee's interest hereunder shall not be assignable in bankruptcy, nor shall said interest be assignable by operation of law. Any document by which any such interest hereunder is conveyed with such consent shall provide that the person acquiring such interest acknowledges familiarity with the terms of the agreement and any Master Agreement and takes his interest subject to the terms and conditions hereof and recognizes that upon expiration or termination of this agreement, City at its sole option may elect to treat any assignee, subtenant or holder of an interest conveyed by Lessee as City's tenant.

16. GOOD FAITH. The parties hereto agree to deal in good faith in all aspects of this agreement.

17. MODIFICATION OF AGREEMENT. Notwithstanding any of the provisions of this agreement, the parties may hereafter, by mutual consent, agree modifications thereof or additions thereto in writing, which are not forbidden by law. City shall have the right to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

18. NONDISCRIMINATION. The Lessee and Lessee's members shall not discriminate because of gender, race, religion, color or national origin, against any person by refusing to furnish such person any accommodation, facility, service or privilege. Nor shall the Lessee or Lessee's employees or members publicize the accommodations,

facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of gender, race, religion, color or national origin.

In the performance of this contract, the Lessee will not discriminate against any applicant because of gender, race, color, religion, ancestry or national origin. Lessee will take affirmative action to ensure that members are recruited and treated without regard to their gender, race, color, religion, ancestry or national origin.

19. NOTICES. Any notices required or permitted to be given under this agreement shall be by certified mail and addressed to respective parties at their addresses indicated on the first page hereof. Such notices shall include any proposed City Council discussion regarding budget hearings, or any other action whatsoever affecting Albany Preschool. Lessee will be notified at least 72 hours prior to the scheduled discussion, hearing or action.

20. CITY'S RIGHT TO TERMINATE. City shall have the right to terminate this lease in the event that Lessee is not in compliance with the terms, conditions, and obligations under this lease, or in the event that the City has been named as a defendant in any lawsuit and determines, in its sole discretion, that it is not longer in the best interest of the City to continue to lease these premises.

21. MISCELLANEOUS. Headings are for convenience only and shall not be considered in the interpretation of this agreement. This agreement shall benefit and bind the successors and assigns of the respective parties hereto. Should either party bring any legal action or other proceeding for the breach of any term, covenant or conditions of this agreement, the courts shall award reasonable attorney's fees to one of the parties herein based upon the degree to which such party prevailed in such action or proceeding.

IN WITNESS WHEREOF, the parties here have affixed their signature the day hereinabove written.

LESSEE

CITY OF ALBANY

By \_\_\_\_\_

By \_\_\_\_\_

Approved as to form and content:

\_\_\_\_\_  
City Attorney

EXHIBIT A

TO THAT CERTAIN PROPERTY USE AGREEMENT  
DATED JULY 01, 2005  
BETWEEN  
CITY OF ALBANY  
AND  
ALBANY PRESCHOOL (“LESSEE”)

1. LOCATION OF PREMISES: The premises are located at 850 Masonic Ave. Albany, CA 94706.
2. TERM: Period of five (5) years, commencing July 01, 2005 and ending June 30, 2010, with an option to extend an additional two (2) years with the same conditions.
3. PURPOSE CLAUSE: For the operation of a non-profit cooperative community play center for pre-school age children during the school year observed by the Albany Unified School District and also for the operation of an 8-week summer school session.
4. Uses shall be limited to the specific uses described above and shall not include other uses without first obtaining written permission from the Director of Recreation and Community Services, City of Albany.

LESSEE

CITY OF ALBANY

By\_\_\_\_\_

By\_\_\_\_\_

By\_\_\_\_\_

By\_\_\_\_\_