

RESOLUTION NO. 2155

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
AUTHORIZING THE EXECUTION OF A LEASE WITH WINDY  
ACRES FOR PRESCHOOLERS

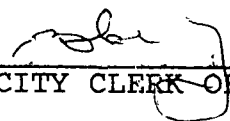
BE IT RESOLVED by the City Council of the City of Soledad that the City Manager is hereby authorized and directed for and in behalf of the City Council to execute and deliver a Lease with Windy Acres for Preschoolers, a California non-profit corporation, in the form of the document hereunto attached, marked Exhibit "A".

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 11th day of May, 1992 by the following vote:

- AYES, and in favor thereof, Councilmembers: Fabian Barrera, Ben Jimenez, Jr., Fred Ledesma, Mayor Pro Tem John Holguin, Mayor Joe Ledesma
- NOES, Councilmembers: None
- ABSENT, Councilmembers. None

  
MAYOR OF THE CITY OF SOLEDAD

ATTEST:

  
CITY CLERK OF THE CITY OF SOLEDAD

14

LEASE AGREEMENT  
CITY OF SOLEDAD  
FOR  
237 SOLEDAD STREET

This lease executed in duplicate at Soledad, California on 5-11-92 between the City of Soledad, "Lessor", and Windy Acres for Preschoolers "Lessee",

1. DESCRIPTION OF PREMISES

The Lessor hereby leases to Lessee, and Lessee hires from Lessor, on the terms and conditions hereinafter set forth, those certain premises situated in the City of Soledad and known as 237 Soledad Street as shown on the diagram attached hereto and marked Exhibit "A".

2. LEASE TERM

2.1 Basic Term. The term of this lease shall be for a period of sixty (60) months beginning July 1, 1992 and terminating June 30, 1997.

2.2 Option Term. Unless notice is provided by Lessee to Lessor prior to April 1, 1997, this lease agreement shall be automatically renewed subject to the terms and conditions of this lease agreement, unless otherwise specified, for one additional twelve (12) month term. This Option Term is provided to allow the negotiation of a new lease term.

3. RENT

3.1 Basic Term Rent. A minimum monthly rent of \$350 per month shall be paid by Lessee to Lessor.

The first month's rent is forgiven.

3.2 Option Term Rent. During the option period specified above, the rent shall be the minimum monthly rent, adjusted automatically for the year immediately proceeding the

option term according to the general cost of living index, which, as of the commencement date of this Agreement, is agreed to be entitled "Consumers' Price Index, San Francisco, California, All Urban Consumers, All Items Indexed", published by the Bureau of Labor Statistics, U.S. Department of Labor. In no case shall the minimum monthly rent rate be reduced.

3.3 Rent Payment. Rent is due and payable in advance on the first (1st) day of each calendar month at the office of the Lessor, 248 Main Street, Soledad, CA 93960 or any other place Lessor may designate in writing.

Rent payments not received by the fifteenth of each calendar month will be subject to a \$25 late charge.

#### 4. ALTERATIONS

Lessee may make non-structural alterations to the premises provided, however, that approval of such improvements, alteration or additions must be obtained in advance in writing from the Lessor.

If Lessee makes any alterations to the premises as provided in this Section, the alterations shall not be commenced until two (2) days after Lessor has received notice from Lessee stating the date the installation of the alterations is to commence so that Lessor can post and record an appropriate notice of non-responsibility.

Lessee shall pay, when due, all sums of money that may become due or purportedly due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for Lessee in, at, upon or about the premises and which may be secured by any mechanics, materialman's or other lien against the premises or Lessor's

interest in the premises, and Lessee shall cause each such lien to be fully discharged and released at the time performance of the obligation secured matures or becomes due.

Lessee shall obtain and pay for all necessary permits and license and inspection fees before commencement of all alterations.

5. LESSOR'S MAINTENANCE

Lessor, at its cost, shall maintain, in good condition, the following:

- a. The structural parts of the building, which structural parts include only the foundations, bearing and exterior walls (excluding glass and doors), subflooring, and roof.
- b. The unexposed electrical, plumbing, and sewage systems, including without limitation, those portions of the systems lying outside the premises.
- c. Window frames, gutters, and downspouts on the buildings.
- d. Heating system.

6. ACCEPTANCE OF PREMISES

Lessee's taking possession of the premises on commencement of the term shall constitute Lessee's acknowledgement that the premises are in good condition.

7. USE

The premises are leased to the Lessee for the purpose of a Preschool. Lessee shall not use, or permit said premises or any part thereof to be used for a purpose or purposes other than the purpose or purposes for which the said premises are hereby leased.

Lessee shall obtain any permit necessary for the operation of this facility. Failure to obtain any such permit shall be deemed a breach of this agreement.

8. LESSEE'S MAINTENANCE OF PREMISES

Lessee, at its sole expense shall maintain the premises and all improvements, installations and facilities on the leased premises at all times in a neat, clean, orderly, and safe condition, and provide janitorial services and supplies. Such maintenance shall include, but is not limited to:

- a. Maintenance landscaping.
- b. Interior painting.
- c. Carpet cleaning.
- d. Burglar and fire alarms.
- e. Interior and exterior fire hoses and fire extinguishers.
- f. Repairs or replacements caused by acts of third parties, including theft and intentional acts.
- g. Lessee at its cost shall maintain in good, clean, safe and sanitary conditions and repair, all Lessee's personal property, signs, storefronts, plate-glass windows, interior lighting fixtures, tubes, bulbs.
- h. Lessee shall be liable for any damage to the building in which the premises are located resulting from the acts or omissions of Lessee, its authorized representatives, and/or third parties.
- i. Other normal maintenance.
- j. All work necessary to comply with Federal, State, County, municipal and other governmental agencies

and bodies having or claiming jurisdiction.

k. All work recommended by Lessor's or Lessee's insurance broker. Any such recommendation shall be in writing.

Lessor shall not have any responsibility to maintain the premises except as provided in Section 5 (Lessor's Maintenance) of this Agreement.

9. INSPECTION AND ENTRY

Lessor and/or its authorized representatives shall have the right to enter the premises at all reasonable times and for any of the following purposes:

- a. To determine whether the premises are in good condition and whether Lessee is complying with its obligations under this Agreement.
- b. To do any necessary maintenance and to make any restoration to the premises that Lessor has the right or obligation to perform.
- c. To serve, post or keep posted any notices required or allowed under the provisions of this Agreement.
- d. To shore the foundations, footings, and walls of the building and other improvements that are part of the premises.
- e. To erect scaffolding and protective barricades around and about the premises, but not so as to prevent entry to the premises, and to do any other act or thing necessary for the safety or preservation of the premises, if any excavation or other construction is undertaken or about to be undertaken on any adjacent property or nearby street. Lessor's right under this provision

extends to the owner of adjacent property on which excavation or construction is to take place and the adjacent property owner's authorized representatives.

- f. To run gas, water, sewer, electric or telephone conductors, pipes, conduits or ductwork where necessary or desirable over, under or through the leased premises in a manner which will not unreasonably interfere with Tenant's use of the leased premises. Lessor shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Lessor's entry on the premises as provided in this Section, except damage resulting from the acts or omissions of Lessor or its authorized representatives. Lessee shall not be entitled to an abatement or reduction of rent if Lessor exercises any rights reserved in this Section.

Lessor shall conduct its activities on the premises as allowed in this Section in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Lessee.

10. UTILITIES

Lessor shall pay all water, sewage and garbage bills for services provided for the premises. Lessee shall pay all electric and gas bills for services provided for the premises.

Lessee shall notify the City utility department and other utility provider prior to moving in to register for utilities.

11. SURRENDER AT END OF TERM

Lessee agrees on the last day of said term, or sooner termination of this Lease, to surrender unto Lessor premises in good condition, reasonable use and wear thereof and damages by act of God or by the elements excepted, and to remove all of Lessee's signs from said premises.

12. NONDISCRIMINATION

The Lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the Lessee itself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees on the land herein leased.

13. COMPLIANCE WITH LAW

Lessee shall, at its sole cost and expense comply with all of the requirements of all municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, and shall faithfully observe in the use of the premises all municipal ordinances, regulations and Conditional Use Permit now in force or which may hereafter be in force.

The judgement of any court of competent jurisdiction, or

the admission of Lessee in any action or proceeding against Lessee, whether Lessor is a party thereto or not, that Lessee violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between Lessor and Lessee.

14. RELOCATION

Lessee understands and agrees that Lessor will provide no moving assistance to Lessee in the event that Lessee vacates the premises either voluntarily or through the operations of this Lease. Lessee specifically waives any and all benefits that might be made available by Lessor under the provisions of Federal, State or local law, including the provisions of the California Relocation Assistance Law and the Federal Uniform Assistance and Real Property Acquisition Policies Act of 1970.

Lessee:

By: Renee Pearcey  
By: Rene M. Gorch

15. NON-LIABILITY FOR DAMAGE

This Lease is made upon the express condition that Lessee shall indemnify and hold harmless Lessor from and against any and all claims, damages, causes of action, suits, or damages (including costs and expenses incurred in connection therewith), for death or injury to persons or for loss of or damage to property arising out of or in connection with the use or occupancy of the premises by Lessee, its agents, servants, employees, or invitees and not caused by Lessor's negligence; except that Lessor shall be liable to Lessee for damage

resulting from acts or omissions of Lessor or its authorized representatives. In the event of any claims made or suits filed, Lessor shall give Lessee notice thereof and Lessee shall have the right to defend or to settle the same to the extent of its interest hereunder.

16. INSURANCE REQUIREMENTS

Lessee shall at its own expense maintain the following insurance:

Public Liability & Property Damage Insurance.

Lessee, at its own cost, shall maintain public liability and property damage insurance with liability limits of not less than \$500,000 per person and \$1,000,000 per occurrence, and property damage limits of not less than \$300,000 per occurrence, with an aggregate coverage of \$500,000 insurance against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the premises, and/or third parties.

Lessee's Fire Insurance. Lessee, at its own cost, shall maintain on all its personal property, Lessee's improvements, and alterations, in, on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of their actual cash value. The proceeds from any such policy shall be used by Lessee for the replacement of personal property, the restoration of Lessee's improvements or alterations or maintenance of premises. Lessee and Lessor shall be named as co-insureds, and the policy shall contain

cross-liability endorsements.

All insurance shall name the City of Soledad/Soledad Redevelopment Agency its officials, officers and employees as additional insured. Additionally, all insurance required under this Agreement shall:

- a. Be issued by insurance companies authorized to do business in the State of California, with a financial rating of at least an A + 3A status as rated in the most recent edition of Best's Insurance Reports.
- b. Be issued as a primary policy.
- c. Contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy. Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with the Lessor at the commencement of the term, and on renewal of the policy not less than thirty (30) days before expiration of the term of the policy.

If, in the opinion of an insurance broker/consultant retained by the Lessor, the amount of insurance coverage at that time is not adequate, Lessee shall increase the insurance coverage as required by Lessor's insurance broker/consultant. However, the initial increase may not be required sooner than three (3) years from the date on which this Agreement was executed.

17. SAFETY

Lessee shall take all safety precautions necessary to protect its employees, invitees, agents, and members of the general public from risk of harm arising from Lessee's use of the premises.

18. LIMITATIONS ON USE

Lessee's use of the premises as provided in this Agreement shall be in accordance with the following:

- a. In accordance with City of Soledad granted Conditional Use Permit.
- b. Lessee shall comply with all laws concerning the premises or Tenant's use of the premises, including, without limitation, the obligation at Lessee's cost to alter, maintain, or restore the premises in compliance and conformity with all laws relating to the condition, use, or occupancy of the premises during the term.
- c. Lessee shall not use the premises in any manner that will constitute waste, nuisance, or unreasonable annoyance (including, without limitation, the use of loudspeakers or sound or light apparatus that can be heard or seen outside the premises) to owners or occupants of adjacent properties.
- d. Lessee shall not do anything on the premises that will cause damage to the premises. The premises shall not be overloaded.

19. DESTRUCTIONS OF PREMISES

In the event of a partial destruction of said premises during the said term, from any cause for which Lessor is

responsible for repair according to the terms and conditions of this Lease, Lessor shall forthwith repair the same, provided such repairs can be made within (90) days under the laws and regulations of State, Federal, County or municipal authorities, but such partial destruction shall in no way annul or void this Lease, except that Lessee shall be entitled to a proportionate reduction in rent to be based upon the extent to which the making of such repairs shall interfere with occupancy of the demised premises by Lessee. If such repairs cannot be made within ninety (90) days, Lessor may, at its option, make and the same within a reasonable time, this Lease continuing in full force and effect and the rent to be proportionately reduced as aforesaid in this paragraph. In the event that Lessor does not so elect to make repairs which cannot be made in ninety (90) days, this Lease may be terminated at the option of Lessee.

Except as provided above in respect to any partial destruction which Lessor is obligated to repair or may elect to repair under terms of this paragraph, the provisions of Section 1932, Subdivision 1, and of Section 1933, Subdivision 4, of the Civil Code of the State of California are waived by Lessee.

Notwithstanding anything to the contrary herein, in the event that the building in which the demised premises may be situated be destroyed to the extent of not less than twenty percent (20%) of the replacement cost thereof, Lessor may elect to terminate this Lease, whether the demised premises be injured or not. A total destruction of the building in which the said premises may be situated shall terminate this Lease. In the event of any dispute between Lessor and Lessee relative to the provisions of this paragraph, they shall each select an

arbitrator.

Two (2) arbitrators so selected shall select a third arbitrator and the three (3) arbitrators so selected shall hear and determine the controversy and their decision thereon shall be final and binding upon both Lessor and Lessee, who shall bear the cost of such arbitration equally between them.

20. ASSIGNMENT OR SUBLETTING

Lessee shall not assign the Lease, or any interest therein, and shall not sublet the said premises or any part thereof.

21. REMEDIES OF LESSOR

The following rights and remedies shall be available to Lessor in the event Lessee commits any acts of default during the term. These rights and remedies shall not be exclusive, but shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law.

(a) Even though Lessee breaches this Lease, or abandons the leased premises, this Lease shall continue in full force and effect for so long as Lessor does not terminate Lessee's right to possession of the leased premises; and Lessor shall be entitled to enforce all its rights and remedies under the Lease, including the right to collect rent as it becomes due. It is hereby specifically agreed between the parties that acts of maintenance of efforts to relet the leased premises, and/or appointment of a receiver on initiative of Lessor to protect Lessor's interest under this possession, will not constitute a termination of Lessee's right to possession. After the occurrence of the acts of default or abandonment by Lessee, and for so long as Lessor does not terminate Lessee's rights to possession of the leased premises, Lessee shall be permitted to

sublet the property or assign its interest in the Lease with the consent of Lessor. Lessor shall not be deemed to have terminated Lessee's right to possession until Lessor gives written notice of such election to terminate.

(b) Lessor may elect, by written notice to Lessee, to terminate Lessee's right to possession of the leased premises at any time after the occurrence of any acts of default by Lessee, and in such event may, at Lessor's option, declare this Lease and Lessee's right to possession terminated. It is hereby specifically agreed between the parties that acts of maintenance of efforts to relet the leased premises, and/or appointment of a receiver on initiative of Lessor will not constitute a termination of Lessee's right to possession. In the event Lessor elects to terminate this Lease and Lessee's right to possession as aforesaid, Lessor may recover as damages from Lessee the following:

- (1) The worth at the time of award of the unpaid rental which has been earned at the time of termination of the lease; and
- (2) The worth at the time of award of the amount by which the unpaid rental which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such loss of rental that Lessee proves Lessor could have reasonably avoided, and
- 3) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's act or default or which in the ordinary course of things would be likely to result therefrom.

The phrase "the worth at the time of the award" as referred to in subparagraph(b) (3) shall be computed by discounting such an amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(c) Efforts by Lessor to mitigate the damages caused by Lessee's breach of this Lease shall not waive Lessor's right to recover damages under the foregoing provisions.

(d) Nothing in the foregoing subparagraphs shall affect the right of Lessor to indemnification against liability arising prior to the termination of this Lease for personal injuries or property damage, or against mechanics' liens or other liens, claims or expenses.

22. ATTORNEYS FEES ON DEFAULT

In case suit shall be brought for an unlawful detainer of the said premises, for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Lessee to be kept or performed, Lessee shall pay to Lessor reasonable attorneys fees which shall be fixed by court.

23. NOTICES

Any notice required or desired to be given relative to this Agreement shall be deemed delivered if delivered personally or twenty-four (24) hours after the same is reduced to writing, sealed in an envelope, and deposited, postage prepaid, in the regular United States Mail, addressed to the respective parties

as follows:

LESSOR:           City Manager  
                  City of Soledad  
                  Post Office 156  
                  Soledad, CA 93960

TENANT:           Windy Acres for Preschoolers  
                  Post Box 416  
                  Soledad, CA 93960

24. WAIVER

The waiver by Lessor of any breach of any term, covenant or conditions herein contained shall not be deemed to be a waiver of such term, covenant, or conditions or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any delinquent rental payment hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

25. TAXES AND ASSESSMENTS

As a further consideration for this Lease, Lessee further covenants and agrees to pay from and after the commencement date a pro rata share of the then current year's taxes, and to pay all taxes, assessments and levies of any name, nature and kind whatsoever which accrue to become due or delinquent during the remainder of the term of this Lease and which may be taxed, charges, assessed, levied to imposed by any present or future law of the United States of America or the State of California

or by other, resolution, ordinance or other exercise of authority by the County of Monterey or other municipality or county of township, of any board, department, commissioner or other person, officer of body so authorized under present and future laws of the United States of America or the State of California, upon or against said real property as well as the buildings and said improvements situated thereon, the fixtures, appliance and appurtenances belonging to such buildings, the leasehold estate, possessory interest and upon any and all chattels, as well as against Lessor by reason of its ownership of the property.

The parties hereto acknowledge that Lessor is a municipality and, as such, is not subject to taxation by other levels of government. The preceding paragraph shall not be deemed or construed so as to require Lessee to pay any personal income taxes, personal property taxes, estate or inheritance taxes or franchise taxes levied against any successor in interest to lessor but not directly against said property, even though such taxes shall become a lien against the property.

26. ENTIRE AGREEMENT

This Agreement contains the entire Agreement of the parties hereto and no obligation other than those set forth herein will be recognized.

27. AGREEMENT MODIFICATION

This Agreement may be terminated, extended, or amended in writing by the mutual consent of the parties hereto. Such modification may be executed by the City Manager on behalf of the City.

28. SEVERABILITY

If any term, covenant, condition or provision of this Agreement is found by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall no no way be affected, impaired, or invalidated thereby.

29. TIME IS OF THE ESSENCE

Time is of the essence of each provision of this Agreement.

30. CONSENT OF PARTIES

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

31. CAPTIONS

The titles or heading to the paragraphs of this Lease are not part of this Lease and shall have no effect upon the construction of interpretation of any part of this Lease.

32. RULES AND REGULATIONS

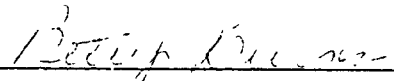
Lessor shall have the right from time to time to promulgate reasonable rules and regulations and amendments thereto for the safety, care and cleanliness of the building in which the demised premises are located and for the preservation of good order. Upon delivery of a copy of such rules and regulations or upon receiving written notice of such rules and regulations, together with a copy thereof, Lessee will comply with the rules and regulations, and a violation of any of them shall constitute a breach and default by Lessor of this Lease. If there is a conflict between the Lease and any rule or regulation, this Lease shall prevail. No such rules and regulations shall require Lessee to pay any additional rent under this Lease.

LESSOR: CITY OF SOLEDAD

BY :   
BLAIR KING, CITY MANAGER

DATE. 5/15/62

ATTEST

BY 

LESSEE

BY 