

RESOLUTION NO. 49-21/22

Fifth Amendment to Joint Use Lease Agreement

The Fifth Amendment to Joint Use Lease Agreement (“Fourth Amendment”) is entered into effective July 1, 2022 by and between Alum Rock Union Elementary School District (“District”), a political subdivision of the State of California, and Kidango, Inc., a California corporation (“Occupant”).

WHEREAS, District and Occupant are parties to that certain Joint Use Lease Agreement dated effective July 1, 2011 (the “Agreement”), pursuant to which Occupant uses certain District premises described therein for a child development center and for no other purposes.

WHEREAS, the parties entered in that certain First Amendment to Agreement to Joint Use Lease Agreement dated effective September 10, 2015;

WHEREAS, the parties entered into that certain Second Amendment to Agreement to Joint Use Lease Agreement dated Effective May 3, 2016;

WHEREAS, the parties entered into that certain Third Amendment to Agreement to Joint Use Lease Agreement dated Effective January 1, 2017 (the Joint Use Lease Agreement and First Amendment to Joint Use Lease Agreement and Second Amendment to Joint Use Lease Agreement and the Third Amendment to the Joint Use Lease Agreement are hereinafter collectively referred to as the “Joint Use Lease Agreement”);

WHEREAS, the parties entered into that certain Fourth Amendment to Agreement to Joint Use Lease Agreement dated Effective July 1, 2021 (the Joint Use Lease Agreement and First Amendment to Joint Use Lease Agreement and Second Amendment to Joint Use Lease Agreement and Third Amendment to the Joint Use Lease Agreement and the Fourth Amendment to the Joint Use Lease Agreement are hereinafter collectively referred to as the “Joint Use Lease Agreement”);

WHEREAS, pursuant to the Joint Use Lease Agreement Occupant uses certain District facilities for Occupant’s Child Development Center programs service for District students;

WHEREAS, Section 3 of the Joint Use Lease Agreement provides that, subject to District’s termination rights, Occupant may extend the Agreement for two (2) five year terms by written mutual agreement of the parties;

WHEREAS, the First Amendment to Joint Use Lease Agreement provided the first five year extension for the period July 1, 2016 to June 30, 2021;

WHEREAS, the Fourth Amendment to Joint Use Lease Agreement provided the second five year extension for the period July 1, 2021 to June 30, 2026;

WHEREAS. Pursuant to section 17529 of the Education Code, the Governing Board shall, prior to entering into a joint use agreement pursuant to that section, determine that the proposed joint occupancy and use of school district property or building will not: (a) interfere with the educational program or activities of any school or class conducted upon the real property or in any building; (b) unduly disrupt the residents in the surrounding neighborhood; or (c) jeopardize the safety of the children of the school;

WHEREAS, to section 17529 of the Education Code further provides that the term of any joint use agreement pursuant to Section 17529 shall not exceed five years;

WHEREAS; District and Occupant recognize the value of partnering to provide services to youth and families of the community. The District and Occupant also recognize that partnering may improve property through proper maintenance and planned investments.

NOW THEREFORE, for good and valuable consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AMENDMENT TO AGREEMENT

1. Rent for the original space as of July 1, 2022 shall be the rent as of June 30, 2022 increased in accordance with the manner set forth in Section 4 of the Agreement and increased each year thereafter in accordance with the manner set forth in Section 4 of the Agreement.
2. Rent for the Additional Premises included in the Third Amendment, based on 4,485 square feet, was \$1.21 per square foot per month effective July 1, 2021. For each subsequent year, rent for the Additional Premises shall increase in accordance with the manner set forth in Section 4 of the Agreement.
3. Added Facilities at Chavez: Section 1 and Exhibit "A" of the Joint Use Agreement are amended to include the following added District rooms and space located at 2000 Kammerer Ave., San Jose California as part of "Premises" therein totaling 27,792 square feet for the purposes of rent determination and as further specified in Exhibit A and listed in Exhibit B of this Amendment to Agreement and shall be used solely for the purposes specified in the Joint Use Lease Agreement.
4. Rent for Added Facilities at Chavez shall be \$0.75 per square foot for the period July 1, 2022 through June 30, 2023 and shall be \$1.00 per square foot per month effective July 1, 2023 through June 20, 2024 and shall be equal to the rent per square foot for the Original Spaces for 2024-25. For each subsequent year, rent shall increase by 2% each year beginning July 1, 2025.
5. Rent at the Added Facilities at Chavez shall commence and be due and payable upon the enrollment start date at each designated classroom within the Added Facilities at Chavez for July 1, 2022 through June 30, 2023. Partial months shall be prorated on a 30-day basis. Rent for all

non-classroom spaces (i.e., cafeteria building, staff rooms, restrooms) shall start January 1, 2023. Rent for all space shall commence no later than July 1, 2023.

6. Utilities: Occupant shall pay a pro rata share monthly for utility costs based on the actual cost of utilities per square foot for the prior year. The actual pro rata cost for utilities for the 2021-22 fiscal year is estimated at \$0.20 per square foot per month. For the 2022-23 fiscal year, the utility payments shall be effective for six months, beginning January 1, 2023, For subsequent years, utility payments shall be due for twelve months.

7. DELIVERY

- a. If for any reason District cannot deliver possession of the Premises to Occupant on the July 1, 2022, District shall not be subject to any liability nor shall District's failure to deliver the Premises affect the validity of this Lease or the obligations of Occupant hereunder or extend the term hereof, but in such case, Occupant shall not be obligated to pay any rent hereunder until possession of the Premises is tendered to Occupant.
 - b. The Premises are leased to Occupant on an "as is" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Lease, Occupant accepts the Premises in "AS IS" condition. Occupant acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of Occupant's business. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either District or Occupant, and District and Occupant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease. Notwithstanding anything stated in this Section to the contrary, District agrees to perform such repairs or alterations to the Premises that District is required to perform by law.
 - c. Early Occupancy: District agrees to allow the Occupant early occupancy of the Premises prior to July 1, 2022 and after the full execution of this Lease. Such occupancy shall be subject to all the provisions of this Lease and shall not change the termination date. Occupant shall not pay rent during the early occupancy period.
8. Occupant shall not be permitted to paint or place murals on the walls but, at its sole cost and expense, Occupant may make other physical alterations that are temporary, nonstructural, decorative, or cosmetic in nature (including hanging bulletin boards, hanging murals, and other paintings on wood canvasses). Occupant shall not make any repairs or alterations or modifications to the electrical systems, telecommunications systems, ventilation systems, roof systems, plumbing or sewer systems or mechanical or structural systems (collectively, the

“Building Systems”) on the site without the prior written consent of the District. Occupant shall promptly notify the District in writing by work requisition submitted to the Assistant Superintendent of Business Services, or her/his designee, of any requested or needed repairs to any of the Building Systems. Any such repairs, work or alterations resulting from the negligence or intentional acts of Occupant and its employees, students, volunteers and invitees shall be billed directly to, and promptly paid by, Occupant. Any such repairs, alterations or modifications performed by District employees shall be billed at such employee’s hourly rate.

9. SIGNAGE: Upon the District's consent, which shall not be unreasonably withheld, Occupant shall be permitted to place signage at locations of mutual agreement on Site adjacent to the Added Facilities to direct students, staff, parents and visitors and publicize its services.

10. PARKING: The District shall allow Occupant staff and visitors to access the parking at the Site on the same basis as that permitted to District staff. Occupant shall not designate any parking spaces as reserved without the District’s prior written approval. Occupant shall not store or abandon any inoperative vehicles or equipment on any portion of the site.

11. As amended hereby, all other terms and conditions of the Joint Use Lease Agreement shall remain in full force and effect.

ENTERED INTO EFFECTIVE as of the date first written above.

“District”
ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

By _____
Dr. Hilaria Bauer, Superintendent

“Occupant”

KIDANGO, INC.,
A California Corporation

By _____

EXHIBIT A

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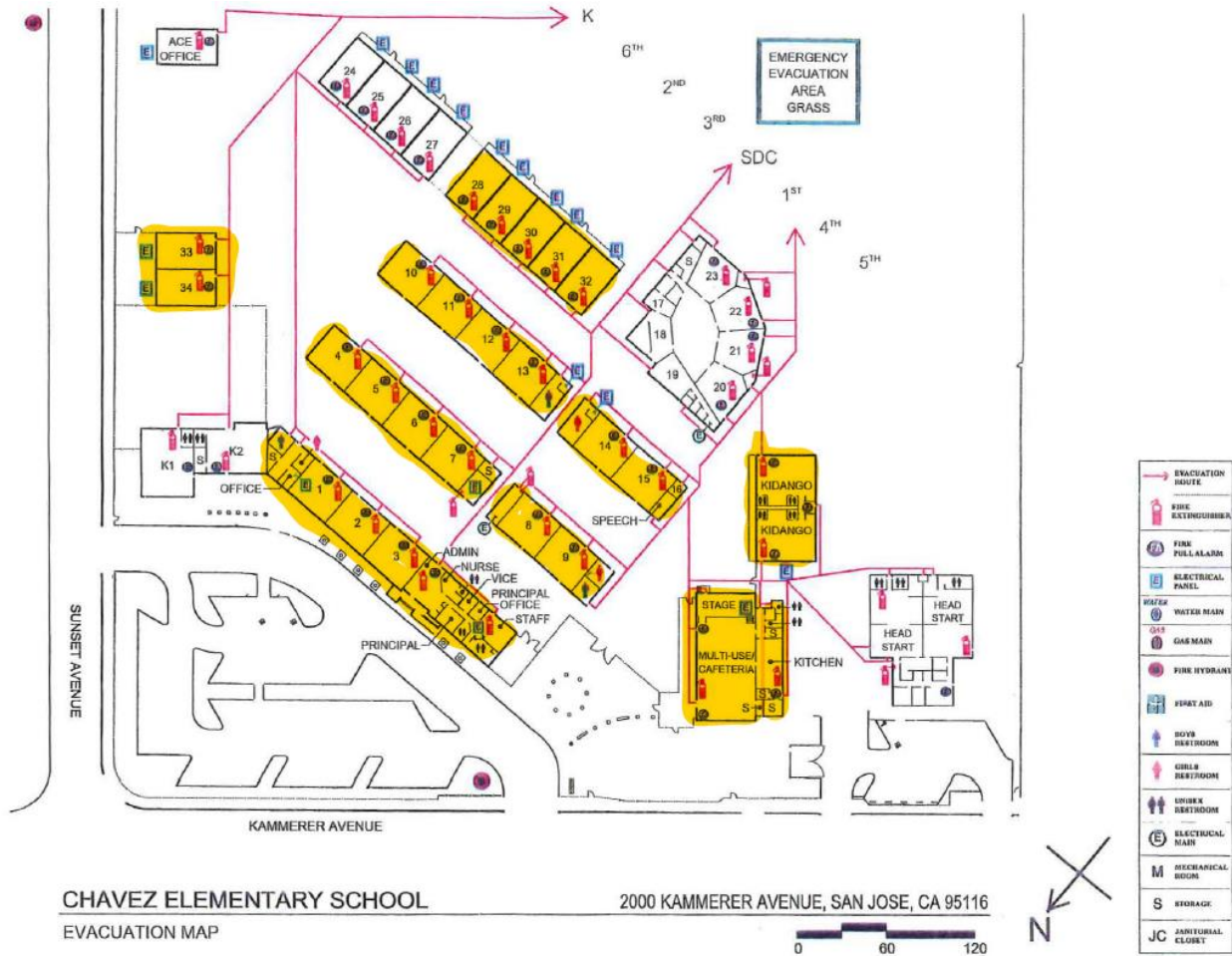


EXHIBIT B

Chavez Square Footages

Note: C = Classroom, S = Support

<u>Rms</u>	<u>Sq Ft</u>	<u>C/S</u>	<u>Comments</u>
1	0	C	Excluded
2	905	C	
3	913	C	
4	904	C	
5	904	C	
6	904	C	
7	904	C	
8	920	C	
9	920	C	
10	904	C	
11	904	C	
12	904	C	
13	904	C	
14	920	C	
15	920	C	
16A			98 S Per Kidango
16B			105 S Per Kidango
24			901 S Include in lease
25			901 S Include in lease
26			901 S Include in lease
27			901 S Include in lease
28			901 S
29			901 S
30			901 S
31			901 S
32			901 S
33	0	C	Excluded
34	0	C	Excluded
K1			Not Included
K2			Not Included
Kidango 92			In Original lease
Kidango 93			In Original lease
Cafeteria			2766 S
Kitchen			663 S Per Kidango
Admin			450 S Per Kidango
Nurse			240 S Per Kidango
V.Princ			89 S Per 5/10/22 email
Principal			176 S Per Kidango
Staff			352 S Per Kidango

RR by Rm 1	115	S	Per 5/10/22 email
Office by Rm 1	111	S	Per 5/10/22 email
Storage by Rm 1	610	S	Per 5/10/22 email
RR at Cafeteria			In prior Amend.
Storage at Caf.	47	S	Per 5/10/22 email
Storage by Rm 7	105	S	Per 5/10/22 email
RR by Rm 9	324	S	Per 5/10/22 email
RR by Rm 13	351	S	Per 5/10/22 email
RR by Rm 14	351	S	Per 5/10/22 email

Total Sq. Ft.	12,730	15,062	27,792
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