



Date: July 8, 2022
To: Board of Directors of Navigator Schools
From: Kevin Sved, CEO
Subject: Hayward Collegiate Amended Lease Agreement

Background

Hayward Collegiate entered a five-year lease agreement with the Good Shepherd Lutheran Church that spans from July 2019 to July 2024. Upon completion of the merger with Hayward Collegiate, the lease agreement will become the obligation of Navigator Schools. In reviewing the existing lease and related amendments, key areas needed clarification, including the lessor’s responsibilities for proper operation and maintenance of electrical systems, plumbing systems, and the heating, ventilation, and air-conditioning (HVAC) systems throughout the premises. Additionally, to be prepared in the event that the lessor does not complete future repairs or services in a timely manner, it was important to add a provision that entitles the lessee to procure the necessary repairs or services and deduct reasonable expenses from its rent obligation. Lastly, in order to operate food services and to have sufficient space to meet program needs, the proposed amended lease adds use of the social hall, kitchen, additional bathrooms, and another small classroom. The proposed amended lease costs are based on a yearly price per square foot of \$1.67 for 2022-23 and \$1.71 for 2023-24. Under the terms of the amended lease, the monthly cost will be \$14,357 in 2022-23, rising 2.5% in 2023-24 to \$14,716.

Recommendation

It is recommended that the Board approve the proposed amended lease with Good Shepherd Lutheran Church and authorize the CEO to execute the lease in substantially the form attached.

AMENDMENT TO 2019 - 2024 LEASE AGREEMENT

This Amendment to 2019-2024 Lease Agreement (“Amended Lease”) is made effective on August 1, 2022 and is made by and between GOOD SHEPHERD LUTHERAN CHURCH, a California non-profit religious corporation (“Lessor” or “Church”) and NAVIGATOR SCHOOLS, a California non-profit public benefit corporation (“Lessee” or “Navigator”).

RECITALS

WHEREAS, on or about February 13, 2019, Lessor entered into that certain 2019-2024 Lease Agreement with Hayward Collegiate, Inc., a true and correct copy of which is attached hereto (“Lease”);

WHEREAS, on or about April 21, 2021, Lessor and Hayward Collegiate, Inc., entered into that certain Second Amendment to Commercial Net Lease, a true and correct copy of which is attached hereto;

WHEREAS, on or about March 15, 2022, Lessor and Hayward Collegiate, Inc., entered into that certain Third Amendment to Commercial Net Lease, a true and correct copy of which is attached hereto;

WHEREAS, Hayward Collegiate, Inc. is merging with Navigator as the surviving corporation and the merger is anticipated to be effective as of July 1, 2022;

WHEREAS, Navigator seeks to continue to build upon the success of Hayward Collegiate in serving the community and build upon the good will developed between the Church and Hayward Collegiate in the service of the community;

WHEREAS, Church is willing to amend the current Lease and allow Navigator to become the new tenant, as per below.

NOW THEREFORE, Lessee and Lessor agree as set forth below.

AGREEMENT

ARTICLE 1. PREMISES

Church agrees to lease to Navigator for the purposes of operating a California public charter school, that certain portion of Church facility located at 166 W. Harder Road, Hayward, California, known as: Classrooms 1,2,3,4, 5, & 6; the associated child play area located between the classroom building and Gading Road; and, the play area adjoining the parking area. Lessee shall also be entitled to use of restroom facilities in the building designated Boys and Girls on a shared basis with Lessor. Each agrees to maintain the restrooms in a clean and sanitary manner. Additionally, the following spaces will be included in this Amended Lease:

- a) exclusive use Monday-Friday of the “pass-through office” that is next to the kitchen
- b) exclusive use of the office adjacent to the “pass-through office”
- c) exclusive use of the meeting room off the Social Hall that between the stage and Harding Rd.
- d) exclusive use of the kitchen Monday-Friday, 6am to 5pm with dedicated storage space over the weekend to be agreed upon
- e) exclusive use of the Social Hall, Monday-Friday 6am to 5pm, including the Social Hall foyer, and the office space located off the Social Hall foyer
- f) shared use of restrooms Monday-Friday 7a-5p that are located off of the foyer outside the sanctuary
- g) exclusive use of the nursery classroom Monday-Friday that is located off of the foyer outside the sanctuary

ARTICLE 2. TERM OF LEASE

This Amended Lease shall be for a term of two years, commencing on the first day of August 2022, and concluding on July 31, 2024. Parties shall notify each other one year in advance of lease expiration of their desire to modify, terminate or extend this Amended Lease.

ARTICLE 3. RENT

Lessee agrees to pay Lessor the amount of \$14,357 per month from August 1, 2022 to July 31, 2023, and \$14,716 from August 1, 2023 to July 31, 2024. Rent shall be payable on or before the third day of each and every month, when due, thereafter, to Good Shepherd Lutheran Church, 166 W. Harder Road, Hayward, California 94544. Lessee understands and agrees that the rental stated herein shall apply during the term of this Amended Lease. Additionally, Lessee agrees to pay 66.77% of utilities, including water, sewage, electricity, and gas. The Lessor will provide copies of the utility bills on a quarterly basis and the Lessee will pay its portion of the utilities bill within 30 days of receipt.

In addition, the Lessee fully understands that any fixtures or improvements which are affixed, (nailed, screwed, bolted or glued) become part of the Premises, and shall at all times remain the sole and exclusive property of Lessor.

ARTICLE 4. USE OF PREMISES

Use: The premises shall at all times be used solely for the purpose of operating a California public charter school and extended day-care activities related directly to such operation.

Operation: Except as set forth in Article 1, the hours of operation shall be 6:00 AM to 6:00 PM five days a week, year-around, not to include legal holidays. Additionally, it is understood by both Lessor and Lessee that any additional times for using the Premises will be coordinated with the Lessor and may occur with or without increased cost to Lessee.

Insurance Hazards: Lessee shall not commit or permit the commission of any acts on the premises nor use or permit the use of the premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policies insuring the entire church or any part thereof. In the event of any unavoidable rate increase in insurance, it is understood by the Lessee that they will assume the cost of any such increase through an adjustment of rent and will be notified of said adjustment at least sixty (60) days in advance.

Waste or Nuisance: Lessee shall not commit or permit the commission by others of any waste on or about the premises or commit or permit the use of the premises for any unlawful purpose.

Compliance With The Law: Lessee shall at Lessee's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state, county or municipal, relating to Lessee's use and occupancy of the premises, whether such statutes, ordinances, regulations and requirements be now in force or hereinafter enacted. The judgment of any court of competent jurisdiction, or the admission by Lessee that Lessee has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Lessor and Lessee and shall be grounds for termination of this Amended Lease by Lessor.

ARTICLE 5. UTILITIES & LAWN CARE

Lessee shall pay for the furnishing of the classrooms and will maintain the open lawn areas inside the school area. The enclosed playground area is the responsibility of Lessee along with telephone service and any additional public utilities used by Lessee, if any, shall be the sole responsibility of the Lessee.

ARTICLE 6. MAINTENANCE, ALTERATION AND REPAIRS

It is understood that from time to time minor alterations, installations, and repairs will be handled by Lessee for their school operation.

Maintenance: Lessee shall at own cost and expense keep and maintain all portions of the Premises under this Amended Lease except as outlined in this section. Lessor shall maintain lawn areas outside the school area, roof, outside walls, and shared Boys and Girls bathrooms. Lessor shall be responsible for proper operation and maintenance of electrical systems, plumbing systems, and the heating, ventilation, and air-conditioning (HVAC) systems throughout the Premises. Lessor is also responsible for pest and vermin control, including termites. In the event that repairs are a result of the Lessee's negligence, Lessee shall be responsible to provide for the resulting repairs. In the event that repairs or extermination services are not provided on a timely basis, Lessee shall be entitled to procure the necessary repairs or services and deduct reasonable expenses from its rent obligation after making good faith efforts to communicate about the situation.

Alterations and Liens: Lessee shall not make or permit any other person to make any alterations or changes of any kind to the existing premises, or any improvement thereon or facility appurtenant thereto without the prior written consent of Lessor. Lessee shall keep the premises free and clear from any and all liens, claims and demands for work performed, materials furnished, or operations conducted on said premises at the instance of request of Lessee. Furthermore, any and all alterations, additions, improvements and fixtures, except furniture and educational materials of Navigator made or placed in or on said premises by Lessee or any other person shall on expiration or termination of this Amended Lease become the property of Lessor and remain on said premises; provided, however, that Lessor shall have the option on expiration or sooner termination of this Amended Lease, to require the Lessee, at Lessee's expense, to remove any and all such alterations, additions, improvements or fixtures.

ARTICLE 7. INDEMNITY AND INSURANCE

Hold Harmless Clause: Lessee agrees to indemnify and hold Lessor and the property of Lessor, including premises, free and harmless from any and all claims, liability, loss, damage or expenses which may arise, result from, or which are incurred as a result of Lessee's occupation and use of the premises.

Liability Insurance: Lessee shall at own cost and expense secure within ten (10) days of the date of the execution of this lease, and maintain during the entire term of this lease and any extensions a broad form comprehensive insurance coverage of public liability issued by an insurance company acceptable to the Lessor and insuring Lessee against loss or liability caused by or connected with Lessee's occupation or use of the premises under this lease in amounts not less than one million five hundred thousand (\$1,500,000).

Worker's Compensation: Lessee shall, at own expense and cost, obtain all necessary worker's compensation insurance which may be required for Lessee or any of Lessee's agents or employees within maintain said insurance coverage during the entire term, as well as any renewals or extensions of this lease.

ARTICLE 8. ACTS CONSTITUTING BREACHES BY LESSEE

Lessee shall be subject to a material default and breach of this lease should: Any rent, or other sums due thereunder, be unpaid when due and remain unpaid for three (3) days after written notice to pay such sums or surrender possession of the premises has been given to Lessee by Lessor.

ARTICLE 9. LIAISON BETWEEN PARTIES

Day to day relations between Lessor and Lessee shall be conducted through the Pastor, Staff, Property Director or designated alternate, representing the Church, and the CEO of Navigator Schools or a designated representative.

ARTICLE 10. GOOD FAITH CONDITIONS

This Amended Lease is entered upon with the understanding that it is impossible that the parties to this Amended Lease can express all of their precise intentions on a written document. Also, that there must be give and take among all persons of Good Will.

ARTICLE 11. MISCELLANEOUS

Provisions from the Lease which are not found in this Amended Lease are deliberate and those terms and conditions no longer apply. This Amended Lease shall be governed by the laws of the State of California.

GOOD SHEPHERD LUTHERAN CHURCH “Lessor”

By:

Its:

Date: _____, 2022

NAVIGATOR SCHOOLS “Lessee”

By:

Its:

Date: _____, 2022