

LEASE AGREEMENT
BETWEEN
MONTGOMERY COUNTY, MARYLAND

AND
CHI CENTERS INC.

DATED
February 19, 2003

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), entered into this 19th day of February, 200~~7~~³ by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic ("the County") and CHI CENTERS, INC. ("the Lessee") (the County and the Lessee together the "Parties").

WITNESSETH:

WHEREAS, the County is the owner of a former public school site known as the Lone Oak Elementary School in Rockville, Maryland (the "Property"), which was declared surplus by the Board of Education and the State Board of Public Works and conveyed by the Board of Education to the County by deed recorded among the Land Records for Montgomery County, Maryland in Liber 9453 at Folio 615 (the "Deed"). A copy of the Deed is attached to this Lease as Exhibit A and incorporated as if fully set forth. The Property is more particularly described in Exhibit B, attached and incorporated as if fully set forth; and

WHEREAS, the Lessee is a Maryland Corporation that provides services and programs to children and adults with developmental disabilities in Maryland and the District of Columbia; and

WHEREAS, the County and Lessee are parties to a Lease Assignment and First Amendment, dated February 24, 1998 (the "Original Lease"), a copy of which is attached to this Lease as Exhibit C, and incorporated as if fully set forth. The Lessee occupies the Property under the terms of the Original Lease; and

WHEREAS, the Lessee desires to make substantial capital improvements to the Property using State and local government funding; and

WHEREAS, the State portion of said funding requires the Lessee to have a thirty-year lease agreement for the Property; and

WHEREAS, the County has completed the reuse procedure and has obtained necessary approvals to lease the Property to the Lessee, as set forth in Executive Regulation 4-99AM, and the Lessee was selected as an appropriate tenant for the Property; and

WHEREAS, the County and Lessee wish to enter into a thirty-year lease agreement which incorporates all of the terms prescribed for such leases in Executive Regulation 4-99AM;

NOW THEREFORE, in consideration of the terms and conditions of this Lease, including the payment of rent by the Lessee to the County as provided below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PREMISES: The County does hereby lease and demise unto Lessee part of the Property described as the Lone Oak Elementary School, 1010 Grandin Avenue, Rockville, Maryland. The County leases to Lessee the building, walkways, play areas, parking lot, driveway and land contiguous to the building, as outlined in red on Exhibit D attached and incorporated as if fully set forth (the "Leased Premises"). The Leased Premises do not include the wing of the building which houses a child care center under a separate lease with the County. The Leased Premises are leased and accepted by Lessee in "as is" condition.

2. TERM: The term hereby created shall be thirty (30) years, based on the Lessee's contribution of capital improvements as fully described in Exhibit E. The commencement date of this Lease shall be the date of execution hereof, as set forth on page 1 of this Lease. Lessee and the County acknowledge that this Lease is contingent upon the approval of the Board of Public Works of the State of Maryland, and that the County will therefore submit a copy of this Lease to the Board of Public Works for approval. If said approval by the Board of Public Works is not granted, then this Lease and

any subleases entered into by the Lessee hereunder shall be null and void as of the date of action by the Board of Public Works.

3. USE OF THE PREMISES: The Leased Premises shall be used for the provision of educational services, community services and related activities, and for community and the County's use as set forth in Articles 6 and 7, hereof. Lessee agrees that its use of the Leased Premises, including any use of the premises by sublessees, shall conform fully with all applicable zoning ordinances, and will be subject to all rules, regulations, statutes, permits or any other requirements for the use and occupancy of the Leased Premises as established by all appropriate authorities having jurisdiction, including Executive Regulation 4-99AM, dealing with the Reuse, Leasing and Sale of Closed Schools by the County.

4. RENT: RENT ADJUSTMENTS

- A. The annual rent shall be FORTY THOUSAND AND 00/100 (\$40,000.00) DOLLARS, payable in twelve equal installments, during each lease year, of THREE THOUSAND THREE HUNDRED THIRTY-THREE AND 33/100 (\$3,333.33) DOLLARS each.
- B. The first monthly payment hereunder shall be due upon the approval of the Board of Public Works. All payments thenceforth shall be due and payable on the first day of each month during the lease term, at: Montgomery County Government, Leasing Management, P.O. Box 62077, Baltimore, Maryland 21264-2077.
- C. Should the Lessee fail to submit monthly rental payments in the above described manner, and should said failure continue for more than ten (10) calendar days after the first day of the month for which such rental payment is due and payable, Lessee shall pay to the County, in addition to and as a part of the rental payment in question, a late penalty of five percent (5%) of said monthly rental payment. Should Lessee's failure to pay continue for more than

twenty (20) calendar days after a monthly payment becomes due and payable Lessee shall pay to the County, in addition to and as a part of the rental payment in question, a late penalty of fifteen percent (15%) of said monthly rental payment. Should Lessee's failure to pay continue for more than thirty (30) calendar days after a monthly payment becomes due and payable, the County shall have the right to terminate this Lease, recover possession of the Leased Premises and pursue any other legal remedies available to the County under the laws of the State of Maryland. Any late penalty imposed under the Paragraph will be payable to the County as Additional Rent, and must be paid at the time that the overdue installment of Rent is paid to the County by Lessee.

- D. To the annual rent payable by Lessee during the previous lease year shall be added that sum representing one hundred percent (100%) of the amount resulting after (1) multiplying said annual rent payable during the previous lease year by a fraction, the numerator of which shall be the index now known as the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price index for All Urban Consumers, National Average, All Items (1984 = 100), or its successor, for the month two months prior to the last month of the previous lease year and denominator of which shall be said index for the month two months prior to the first month of the previous lease year and (2) subtracting from such product the annual rent payable during the previous lease year. For instance, for a lease commencing in July, 2001, the first annual calculation would be as follows: (current annual rent x (April 2001 CPI U / May 2000 CPI U)) - current annual rent = CPI increase. In any event, and notwithstanding the results obtained through the above calculation, the Lessee's adjusted annual rent will not be less than 103%, nor more than 105% of the rent paid by Lessee the previous year.

5. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT:

- A. This Lease and all rights and obligations hereunder may be terminated by the County, for any reason, at any time, upon written notice to the Lessee of the lesser of:
 - 1. Eighteen (18) months, or
 - 2. The remaining term of the Lease, if the remaining term is less than eighteen (18) months.
- B. If the termination of the Lease (or a refusal by the County to extend the Lease, if the Lease is expiring) is due to a request by Montgomery County Public Schools (herein MCPS) to retrieve and reuse the premises for public educational purposes, then before notice of such a termination may be given to Lessee, the Superintendent of Schools for MCPS must notify both the Lessee and the Chief Administrative Officer of Montgomery County (herein CAO), on or before September 1 of the second year before the proposed termination date, that MCPS will need the school for public educational purposes.
- C. If a notice of termination is given to Lessee, due to a request by MCPS to reuse the premises for public educational use, but the Montgomery County Council does not approve such a reuse and does not appropriate sufficient funds to retrieve and reuse the premises, the CAO may, after consulting with MCPS, withdraw the termination notice.
- D. In the event the Lessee is a private school, the County agrees that under no circumstances will the Lessee be required to surrender the Leased Premises during the normal and usual school year, defined to be September 1 to July 1.

6. USE OF ALL-PURPOSE ROOM BY THE COMMUNITY, DEPARTMENT OF RECREATION AND OTHER COUNTY AGENCIES: Subject to a nominal charge for utilities to be jointly determined by Lessee and the Community Use of Public Facilities (CUPF), any All-Purpose

Room, Gymnasium or Auditorium within the premises shall remain available to the community during the term of this Lease. Lessee agrees to make any All-Purpose Room, Gymnasium and/or Auditorium available for community use through CUPF Monday through Saturday during the daytime from 9:00 A.M. to 6:00 P.M., but only when such use will not interfere with Lessee's previously scheduled daytime activities. For the purposes of this Lease, "Lessee's activities" are defined as those programs and activities directly related to the Lessee's approved occupants. Lessee must forward all requests to use any All-Purpose Room, Gymnasium and/or Auditorium directly to CUPF. CUPF will honor requests in accordance with the priorities established in the Guidelines for the Community Use of Educational Facilities and Services in Chapter 44 of the Montgomery County Code. Lessee acknowledges and agrees that only CUPF may agree to any rental of any All-Purpose Room, Gymnasium and/or Auditorium. Lessee agrees to provide CUPF with a schedule of its activities for any All-Purpose Room, Gymnasium and/or Auditorium on a semi-annual basis. The Fall/Winter schedule (October-March) must be submitted by September 15 and the Spring/Summer schedule (April-September) must be submitted by February 1. Times not scheduled for daytime activities by the Lessee will be deemed to be available for community use. Lessee further agrees to make any All-Purpose Room, Gymnasium and/or Auditorium available Monday through Saturday at night from 6:00 P.M. to 11:00 P.M. and all day Sunday from 9:00 A.M. to 11:00 P.M., but only when such use will not interfere with Lessee's previously scheduled activities during these times, as submitted by the Lessee in its semi-annual schedule. The above notwithstanding, the Lessee agrees to honor and allow any activities scheduled in any All-Purpose Room, Gymnasium and/or Auditorium through CUPF prior to the date of execution of this Lease. Any use by the Lessee deviating from its previously submitted schedule will be subject to the approval of CUPF. Lessee agrees to make any All-Purpose Room, Gymnasium and/or Auditorium available, upon request from CUPF, to the Montgomery County Supervisor of Elections for use as a polling facility during the day, if necessary, during primary, general and special elections, irrespective of Lessee's prior scheduled activities. The County shall hold Lessee harmless and defend Lessee from any claim of liability made or arising out of community or the County's use of the Leased Premises, except for damage or liability arising from the negligent or willful acts or omissions of Lessee, Lessee's agents, employees, guests or contractors.

7. USE OF PLAY AREAS AND FIELDS: Intentionally Deleted.

8. PARKING: Lessee shall be entitled to full use of the parking facilities which are a part of the Leased Premises as of the date of execution of this Lease. Parking for Lessee and any other occupants of the building, their staff, clients and guests will be confined to the surfaced parking areas in existence as of the date of execution of this Lease. The above notwithstanding, and subject to all approvals required by all applicable laws, regulations, ordinances and codes, and subject to all of the provisions of this Lease, Lessee may expand the parking facilities to support the Leased Premises, with the express written consent of the County. Lessee shall, at Lessee's risk and expense, be responsible for the ongoing maintenance, cleaning, and repair of said parking facilities. The Lessee shall grant access to said parking facilities to the County's representatives at all times, or to community users of the premises during times of community use as set forth in Articles 6 and 7 hereinabove. Lessee agrees to make repairs as necessary to maintain the parking area in a safe state and as necessary for compliance with any laws, including, but not limited to the Americans with Disabilities Act [42 U.S.C. 12101, et. seq.]

9. CAPITAL IMPROVEMENTS:

A. Capital Improvement Definitions:

1. Elective Capital Improvements are improvements or additions made by Lessee which :
 - a. Increase the value of the premises to the County;
 - b. Are not required to protect or preserve the building structure or systems; and
 - c. Are not mandated by County, State, or Federal law, code or regulation.
2. Non-Elective Capital Improvements are improvements or additions made by Lessee which:
 - a. Increase the value of a closed school to the County;

- b. Are required to protect and preserve the building structure or systems; or
 - c. Are mandated by County, State, or Federal code, law and/or regulations.
 - d. By way of examples, and not intended to be a complete list, non-elective capital improvements include but are not limited to work such as roof replacement, boiler replacement, HVAC system replacement, replacement of failing exterior structural walls, electrical system replacement, conversion from oil fired boilers to gas heat, asbestos removal, underground storage tank removal, window replacement (excepting window pane replacements), and ADA mandated improvements.
3. Qualified Capital Improvements are Elective or Non-Elective Capital Improvements that have been reviewed and approved in writing by the County and that are specifically identified in the County's written approval as Qualified Capital Improvements.

B. Approval Process for Non-Elective and Elective Capital Improvements:

- 1. Lessee must obtain the prior written consent of the County for all capital improvements. Lessee must submit to the County complete plans, drawings, and specifications at least 45 days prior to beginning work. Lessee's submittal must be of sufficient detail and content to permit the County to fully evaluate Lessee's proposed project. In the event the proposed capital improvements are Elective Capital Improvements, two copies of the submission must be sent by Lessee to the County. The County must coordinate review with MCPS of any proposed improvement that may affect the future educational use of the Leased Premises. The County will respond in writing to Lessee's submission within 45 days of the receipt of all required documentation.

The County reserves the right to deny approval of any and all improvements proposed by Lessee.

2. In the event of an emergency need for a capital improvement, Lessee will notify the County immediately, and the County will respond within a reasonable and appropriate period of time, as dictated by the emergency situation.
3. The County has the right to inspect all work and materials before, during and after construction.
4. The total cost of all capital improvements will be borne solely by Lessee. Lessee will be solely responsible for obtaining any and all permits, approvals and licenses from all appropriate County, State, and/or municipal authorities having jurisdiction over such work.
5. Lessee must comply with all applicable zoning, land use, health and safety regulations. This includes, specifically and without limitation, Section 59-G-2.19 of the Montgomery County Code (1994), as may be amended, which requires site plan review for any expansion of an existing private school building that would exceed the lesser of (a) 7,500 square feet, or (b) a 15% increase over the size of the building existing on February 1, 2001, and for the installation of any portable classrooms within the premises for a period longer than one year.

C. Rent Credits for Capital Improvements:

The County may credit the Lessee's annual rent in an amount not to exceed fifty percent (50%) of the annual amortized cost of Qualified Capital Improvements as defined herein. Said annual rent credit will be subject to the following conditions:

1. The total of all rent credits will not exceed fifty (50%) of the Lessee's annual rent as set forth in this Lease.
2. Lessee will not be entitled to rent credits for any finance charges, fees, administrative costs, performance bonds, permit fees, insurance,

operating, maintenance, or repair expenses, or any other costs except the actual costs directly related to the design and construction and/or installation of capital improvements, which costs must be fully documented by Lessee.

3. Capital improvements completed by Lessee without the prior written approval of the County will not receive rent credit.
4. The County has the right to audit all construction or other costs for which Lessee requests rent credits.
5. The County has the right to inspect all work and materials before, during, and after construction.
6. In the event the work performed is not in compliance with the plans and specifications previously approved by the County, Lessee will immediately undertake any necessary corrections at Lessee's sole risk and expense. The costs of such corrective measures are not eligible for reimbursement. If Lessee fails to take corrective actions within a reasonable time upon written notification in compliance with Article 17 of this Lease, Lessee's right to rent credits for that capital project will be terminated. If necessary in the sole reasonable judgement of the County, the County may perform the corrective action and charge Lessee the cost of that corrective action as additional rent hereunder.
7. Rent credits for Elective Capital Improvements will be made only to the degree that said improvements are determined, at the sole determination of the County, to be of value to the County and/or MCPS.
8. Future rent credits may be forfeited, at the County's option, if Lessee defaults and fails to cure as permitted in Article 17, on any term or condition of this Lease.
9. Only improvements approved and completed after the effective date of Executive Regulation 4-99AM (June 5, 2001) will be eligible for rent

credits, unless such improvements were already approved for credit by the County prior to the effective date of the Executive Regulation.

10. For purposes of determining annual rent credit amounts, amortization of capital improvements will be made over their anticipated useful life. In order to determine an appropriate amortization schedule for capital improvements the anticipated life of such improvements will be determined by the IRS depreciation lifespan schedule.
11. No rent credits will be granted for any improvement to the extent that the improvement was paid for by a grant, loan, bond or other financial assistance from the Montgomery County Government or from any other government or instrumentality.

D. Partial Reimbursement of the Cost of Improvements in the Event of Early Termination by the County:

1. In the event the County terminates this Lease pursuant to paragraph 5 of the Lease Agreement, the County will reimburse Lessee one hundred (100%) percent of the remaining unamortized portion of the cost of each Qualified Non-Elective Capital Improvement and fifty (50%) percent of the remaining unamortized portion of the cost of each Qualified Elective Capital Improvement, less any rent credits for capital improvements already granted to Lessee, upon presentation to the County of documentation as to the cost of the improvements and the contractor's or manufacturer's warranty.
2. Reimbursements will be subject to appropriation of funds by the Montgomery County Council. In the event the County is unable to secure the funding necessary to reimburse Lessee, the County will not terminate the Lease until such time as funding is appropriated.
3. In no event will Lessee be entitled to receive reimbursement from both the County and any other public agency for the same, like item, or work of any nature or description.

4. Capital improvements performed by Lessee without the prior written approval of the County will not receive reimbursement.
5. In the event the work performed is not in compliance with the plans and specifications previously approved by the County, Lessee will, upon written notification in compliance with Article 17 of this Lease, immediately undertake any necessary corrections at Lessee's sole risk and expense. Corrective measures are not eligible for reimbursement by the County. In the event Lessee fails to take the corrective action as requested in writing by the County, Lessee will forfeit its right to rent credits or reimbursement.
6. The County will not reimburse Lessee for any Qualified Capital Improvements in the event Lessee vacates the premises before the end of the lease term, whether voluntarily or pursuant to legal action for breach of this Lease.
7. Lessee shall not be entitled to reimbursement in the event of default by Lessee of any of the terms and conditions of this Lease Agreement, subject to notification under Article 17 of this Lease.
8. Lessee will not be entitled to reimbursement for any finance charges, fees, administrative costs, bonds, permit fees, insurance, operating, maintenance or repair expenses, or any other costs not directly attributable to the actual construction and/or installation of approved capital improvements.
9. Lessee will not be entitled to reimbursement for Elective Capital Improvements, unless the improvements are, at the sole discretion of the County, determined to be Qualified Elective Capital Improvements.
10. No reimbursement will be granted for any improvement to the extent that the improvement was paid for by a grant, loan, bond or other financial assistance from the Montgomery County Government or any other government or public agency.

10. OPERATING EXPENSES:

- A. The Lessee will be fully responsible, at the Lessee's sole risk and expense, to perform all maintenance, repair, and/or replacement which isn't deemed to be a capital improvement within the Leased Premises which the County determines in its sole discretion is required to protect the Leased Premises from damage or deterioration.
- B. The Lessee assumes, at the Lessee's sole risk and expense, full responsibility for the maintenance, repair, and upkeep of the entire leased premises and all improvements thereon, including but not limited to the repair and/or replacement of all building elements and equipment, fixtures, roof, windows, floors, walls, electrical systems, heating and air conditioning systems, plumbing systems, outdoor areas, outdoor fields and playgrounds, shrubbery and landscaping.
- C. The Lessee is fully responsible at the Lessee's sole risk and expense, for all operating expenses for the Leased Premises, including, but not limited to, utility bills and expenses, janitorial services, trash removal, pest control, snow removal, grounds maintenance, preventive maintenance, day to day minor and major maintenance, tree removal, fence repair and/or replacement, and repair or replacement of playground equipment.

11. FIXTURES AND EQUIPMENT: All items which are attached to the building, or are a part of the building's systems at the time the building is delivered to Lessee, shall remain with the building and shall be delivered to Lessee along with the building. All moveable partitions, trade fixtures, floor coverings or equipment installed within the Leased Premises at Lessee's expense shall remain the property of Lessee and may be removed by Lessee at the expiration or other termination of this Lease. Lessee shall, however, repair any damage caused by reason of said removal. Any personal property of Lessee remaining within the Leased Premises after expiration or other termination of this

Lease shall become property of the County. The County shall dispose of any such property in the manner it deems appropriate.

12. CONDITION OF PREMISES: Lessee accepts the Leased Premises in "as is" condition, and Lessee agrees to maintain the Leased Premises, including all improvements therein, in good condition and state of repair throughout the term of this Lease and any extension thereof. For purposes of maintenance and upkeep, the Leased Premises shall include the building, walkways, parking lot, driveway, play areas and all other grounds that are part of the Leased Premises. Lessee agrees to keep the Leased Premises clean and neat in appearance at all times, and to keep grass trimmed, trees treated and shrubbery pruned as necessary to maintain them in good condition and appearance. Lessee agrees to make repairs as necessary for the safe use of the Leased Premises, including changes necessary to comply with law, including, but not limited to changes, if required, to comply with the Americans With Disabilities Act [42 U.S.C. 12101], et. seq.

13. LIABILITY, PROPERTY DAMAGE AND FIRE INSURANCE:

- A. Lessee agrees to obtain and maintain, during the full term of this Lease, and any extension thereof, a policy of general liability insurance with a minimum limit of liability of \$1,000,000 (one million dollars) for bodily injury and property damage including fire legal liability issued by an insurance company licensed in the State of Maryland and acceptable to the County.
- B. Lessee agrees to obtain and maintain, during the term of the Lease, and any extension thereof, a policy of workers compensation and employers liability coverage in the amount of \$100,000 (each person) for bodily injury by accident or by disease and \$500,000 for bodily injury by accident or by disease (policy limits).
- C. Lessee agrees to obtain and maintain, during the term of the Lease, an All Risk Property policy covering 100% of the content of the Leased Premises.

- D. The general liability policy must list Montgomery County, Maryland as additional insured and all policies must provide to the County 60 days prior written notice of cancellation.
- E. The Lessee shall, within ten (10) days following execution of this Lease deliver to the County a certificate(s) of insurance evidencing the coverage(s) required above. The certificate(s) must be issued to Montgomery County, Maryland, Department of Public Works and Transportation, Division of Facilities and Services, 101 Orchard Ridge Drive, Gaithersburg, Maryland 20878. Lessee has the obligation to assure that the County always has a valid Certificate of Insurance.
- F. Lessee will indemnify the County and save it harmless from and against any and all claims, action, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence upon or at the Leased Premises, or the occupancy or use by Lessee of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, guests or employees, excepting claims arising out of the acts, omissions or negligence of the County, the County's agents, contractors and employees. Lessee shall indemnify the County against any penalty, damage or charge incurred or imposed by reason of Lessee's violation of any law, regulation or ordinance in its use and occupancy of the Leased Premises. In case the County shall, without fault on its part, be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold the County harmless at Lessee's sole cost and expense.

14. LESSEE'S INDEMNIFICATION OF COUNTY: Lessee agrees to indemnify and hold harmless and pay for the defense of the County from any and all claims of liability, actions, damages and expenses, including, but not limited to, reasonable attorneys fees and litigation costs, arising out of

or related to Lessee's use or possession of the premises, including play fields and play areas, from any breach of this Lease by Lessee, or from any claim, action, damage, liability or expense occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, guests or employees, except such negligence as may be occasioned by the acts or omissions of the County, the County's employees, agents and contractors, including the County's and community's use as outlined in Articles 6 and 7 above. Lessee further specifically agrees to hold the County harmless and pay for the defense of the County from any claim of liability made in connection with any construction or installation of equipment within the Leased Premises, notwithstanding that any such construction or equipment may or may not be deemed to be a part of the Leased Premises hereinabove described.

15. RESPONSIBILITIES OF LESSEE: Lessee covenants and agrees as follows:

- A. Lessee shall not strip, overload, damage or deface the Leased Premises, hallways, stairways or other approaches thereto or the fixtures therein or used therewith, nor suffer or permit any waste in or upon said Leased Premises.
- B. Lessee shall not keep gasoline or other flammable material or any explosive within the Leased Premises which will increase the rate of fire insurance on the Leased Premises beyond the ordinary risk established for the type of operations described in Article 3 hereof. Any such increase in the insurance rate due to the above, or due to Lessee's special operations within the Leased Premises, shall be borne by Lessee. Lessee shall not willfully do any act or thing in or about the Leased Premises which may make void or voidable any insurance on the Leased Premises, and Lessee agrees to conform to all reasonable rules and regulations established from time to time by the County, the Maryland Insurance Rating Bureau, or any other authority having jurisdiction over such matters.
- C. Lessee shall not use or allow to be used the Leased Premises or any part thereof for any illegal, unlawful or improper purpose or for any activity which will constitute a nuisance to adjacent properties or the adjacent neighborhood.

- D. Lessee shall not place upon the Leased Premises any placard, sign, lettering or awning except such, and in such place and manner as shall have been first approved in writing by the County. The County's approval shall not be unreasonably withheld.
- E. Lessee acknowledges that all responsibilities of Lessee relating to the use or misuse of the Leased Premises and anything therein shall be construed to include use or misuse thereof by Lessee's agents, employees, patrons, guests and sublessees.
- F. Lessee shall comply with all reasonable rules and regulations with regard to the use of the Leased Premises that may be from time to time promulgated by the County, and any violation of said rules and regulations shall be deemed to constitute a violation of this Lease. It is understood that such rules and regulations shall not interfere or prevent the intended uses of the demised premises as set forth in this Lease. Notice of any rules and regulations regarding the use of the Leased Premises will be given to Lessee and will become a part of this Lease Agreement, as an attachment, as promulgated.

16. DESTRUCTION OF PREMISES:

- A. In the event that the Leased Premises are destroyed or damaged from whatever cause so as to render all or a substantial portion of the premises unfit for the purposes for which the premises were leased, and the repair of said destruction or damage cannot reasonably be accomplished by the County within available insurance proceeds, and within ninety (90) days, or whatever time frame is necessary, in the County's judgment, with all parties acting diligently, from the date of such damage, Lessee and the County shall each be entitled to terminate this Lease by written notice to the other within thirty (30) days after the date the irreparable destruction or damage occurred.

- B. In the event that the County is able to undertake the repair of the Leased Premises and determines it is in the County's best interest to do so, the County shall complete said repairs within ninety (90) days from the date of destruction or damage, or whatever time frame is necessary, in the County's judgment, with all parties acting diligently, and this Lease shall not be affected, except that during reconstruction rental payments shall be reduced by a percentage corresponding to the portion of the Leased Premises to which Lessee is denied normal occupancy and use.
- C. In the event that the County does not repair the Leased Premises as hereinabove provided, Lessee shall not be entitled to any compensation or payment from the County for the value of any remaining term of the Lease, including reimbursement for any capital or non-capital improvements made by Lessee to the Leased Premises.
- D. The County reserves the right to not repair the Premises, if it decides, in its sole discretion; repair of the Premises is not in the County's best interest.

17. DEFAULT:

- A. Lessee shall be considered in default of this Lease upon the occurrence of any of the following:
 - 1. Failure to perform under any term, covenant or condition of this Lease and the continuance thereof for thirty (30) days after written notice from the County specifying said failure, or such lesser or greater time as may be required, in the County's sole judgment, with Lessee acting diligently.
 - 2. The commencement of any action or proceeding for the dissolution or liquidation of Lessee, or for the appointment of a receiver or trustee of

Lessee's property, and the failure to discharge any such action within thirty (30) days.

3. The making of any assignment for the benefit of Lessee's creditors.
4. The abandonment of the Leased Premises by Lessee.

B. In the event that the Lessee shall be found in default as hereinabove stated, and shall fail to cure said default within thirty (30) days after written notice from the County (or such period as may be reasonably required to correct the default with exercise of due diligence), or such lesser time as the exigencies of the situation may require, which period shall run simultaneous with the curative period as provided in Article 17A(1) herein, then, and in every such case thenceforth, at the option of the County or the County's assigns, the Lessee shall be subject to one of the following penalties, depending upon the nature and severity, in the County's sole judgment, of the default:

1. Lessee shall pay, as additional rent hereunder, a sum equal to twenty (20%) percent of the current monthly rental amount for each month after the cure period during which the default continues to exist.
2. Lessee's right of possession shall end, the Lease shall be terminated by the County, and the County may proceed to recover possession under the laws of the State of Maryland.
3. The County's acceptance of additional rent as provided in Section C.1 above, will not constitute a waiver of the County's right to terminate The Lease or to recover possession in a subsequent month during the Lease Term if the default continues or an additional event of default occurs.

18. EMINENT DOMAIN:

- A. The County shall receive any award for the fair market value of the land upon which the improvements are located and for the improvements.

- B. Nothing contained hereinabove shall be construed to preclude Lessee from claiming, proving and receiving, in a separate claim filed by Lessee against the authority exercising the power of eminent domain, such sums to which the Lessee may be entitled as compensation, provided that such a separate claim does not interfere with or reduce the County's award.
- C. The County or Lessee may terminate this Lease upon exercise of eminent domain by a condemning authority that renders the Leased Premises unfit for the use and purpose set forth in Article 3 herein.

19. ASSIGNMENT AND SUBLEASING:

- A. Lessee will not assign or sublease any part of the Leased Premises without the County's express written consent. The County's written consent shall be obtained in the following manner:
 - 1. Lessee will submit to the County a copy of the proposed sublease, a description of the activities and uses proposed by sublessee, proof of the sublessee's ability to pay rent, adequately maintain its premises and otherwise comply with all terms and conditions of this Lease, and any other information pertinent to the proposed sublessee's use and occupancy as may be requested by the County.
 - 2. The County will provide copies of the above information to the Montgomery County Council, the Montgomery County Planning Board and MCPS and will solicit and consider their comments on the proposed sublease.
 - 3. The County will make a decision on the proposal and will respond in writing to the Lessee not later than thirty (30) days after receipt of all information required by Article 19A(1) hereinabove, or any additional information that may be otherwise requested by the County.

4. The County will not approve any sublease, and will withdraw an earlier approval, if the County determines that the sublessee's proposed use is likely to result in a greater negative impact to the surrounding neighborhood, or if it finds that sublessee's performance under the sublease following the County's approval is resulting in a greater negative impact to the surrounding neighborhood.
- B. Subleasing or assignment by Lessee shall be permitted only under the following terms and conditions:
1. Lessee will not be permitted to sublease more than fifty per cent (50%) of the net useable square footage of the building.
 2. Subleasing or assignment of any portion of the premises by Lessee will have as its primary goal the recovery of reasonable operating and rent expenses incurred by Lessee in the operation, maintenance and administration of the Leased Premises. Lessee agrees that any rental amounts charged to sublessee or assignees will be limited to the sublessee' or assignees' prorated share of actual operating, maintenance and administrative expenses incurred by Lessee, plus an amount equal to the same square foot rate of rent paid by Lessee to the County.
 3. The County will not approve any assignment, sublease or transfer of any right or interest in any portion of the Leased Premises if such an assignment, sublease or transfer results in any profit or financial gain in excess of the permitted costs and expenses as set forth hereinabove. The County will require written evidence of compliance hereunder.
 4. In the event the County approves a sublease, Lessee remains responsible for the payment of all monies due to the County and for the performance of all obligations required of the Lessee under this Lease.
 5. All sublessee's or assignees must conform to all applicable zoning and land use requirements, to all applicable use and occupancy regulations, laws or statutes, to the use restrictions contained in this Lease, to any

restrictions that have been imposed by the Montgomery County Council on the use of the premises, and to all of the terms and conditions of this Lease.

6. In the event the County determines that Lessee is receiving rental payments from sublessee in excess of the costs permitted herein, Lessee shall pay all of the rents received over and above the allowable costs to the County, as additional rent.

- C. The provisions of paragraph 19(B) 1 to the contrary notwithstanding, Lessee and the County agree that the Leased Premises will be used by a consortium of users totaling nearly 100% of the Leased Premises. The sublessees in the consortium were approved by all reviewing parties, including County Council, the City of Rockville and the County Executive, during the County's Closed School reuse review process. The County Council, the City of Rockville, and the County Executive agreed that these sublessees provide valuable services to at-risk populations and it is in the best interests of the County to house them in the Leased Premises. Any future sublessees must be approved by the County as required in this Article 19, and the Regulation.

20. ACCESS: Lessee shall allow the County and the County's employees or agents to have access to said Leased Premises at all reasonable times and after reasonable notice, during normal working hours for the purpose of inspection, or, at any time in the event of fire or other property damage, or for the purpose of performing any work required to be performed by the County, or which the County considers necessary or desirable, or for any other purpose pursuant to the reasonable protection of the Leased Premises. Lessee shall not alter or change the exterior locks installed on the premises, and in the event of an approved change, shall provide the County with keys to the facility, said keys to be used by the County to obtain access to the facility in emergency situations.

21. SURRENDER OF POSSESSION: Lessee covenants, at the expiration or other termination of this Lease, to remove all goods and effects from the Leased Premises not the property of

the County, and to yield up to the County the Leased Premises and all keys, locks and other fixtures connected therewith (except trade fixtures and other fixtures belonging to Lessee), in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other casualty and damage from any risk with respect to which Lessee is not herein expressly made liable excepted (provided that insurance proceeds from fire or other casualty or damage, if not used to restore the Leased Premises, have been paid to the County).

22. HOLDOVER: In the event that the Lessee shall continue to occupy said Leased Premises or any part thereof after the conclusion of the term of this Lease, the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by the County giving the Lessee not less than thirty (30) days' written notice, to expire on the day of the month from which the tenancy commenced. During any month-to-month tenancy, both Parties shall continue to observe all agreements and covenants contained in this Lease. Lessee shall continue to pay monthly rental at a rate of 150% of the monthly rent rate in effect thirty (30) days prior to the expiration of the then effective lease term or extension for the first six (6) months, and 200% of the monthly rent rate in effect thirty (30) days prior to the expiration of the then effective lease term or extension every month thereafter.

23. NOTICE OF DEFECTS: Lessee shall give to the County prompt written notice of accidents in or damages to the Leased Premises.

24. THE COUNTY'S TITLE AND COVENANT OF QUIET ENJOYMENT: The County covenants that it has full right and power to execute and perform this Lease, and that it will put Lessee into complete and exclusive possession of the Leased Premises. The County covenants and agrees that, if Lessee shall perform all the covenants, conditions, and agreements herein contained to be performed on Lessee's part, Lessee shall at all times during the term of this Lease have the peaceable and quiet enjoyment and possession of the Leased Premises for the purposes leased unless the County terminates this Lease as provided in this Lease and the laws and regulations governing the Reuse of Closed Schools in Montgomery County, Maryland.

25. COMPLIANCE WITH LAWS: It is understood, agreed and covenanted by and between the Parties that Lessee, at Lessee's expense, will promptly comply with, observe and perform all of the requirements of all of the statutes, ordinances, rules, orders and regulations now in effect or hereafter promulgated whether required by the Federal Government, State of Maryland, Montgomery County, or any local government with jurisdiction over the Leased Premises.

26. BENEFIT AND BURDEN: The provisions of this Lease shall be binding upon, and shall inure to the benefit of the Parties and each of their respective successors, assigns or representatives.

27. DISPUTES: The County and Lessee agree that any dispute concerning a question of fact arising under this Lease which is not resolved by agreement of the Parties shall be decided by the Chief Administrative Officer of Montgomery County, or his designee, who shall notify the Parties in writing of the determination made. The Lessee and the County shall be afforded an opportunity to be heard and offer evidence in support of their respective positions. Pending final decision of a dispute hereunder, Lessee and the County shall proceed diligently with the performance of all provisions under this Lease Agreement. The decision of the Chief Administrative Officer or his designee shall be final and conclusive. This Article 28 does not preclude consideration of questions of law by a court of competent jurisdiction in connection with the aforesaid decisions.

28. WAIVER: No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenant, condition or agreement itself or of any subsequent breach thereof.

29. NON-DISCRIMINATION: Lessee agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Lessee assures the County that in accordance with applicable law; it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or disability.

30. CONTRACT SOLICITATION: Lessee represents that Lessee has not retained anyone to solicit or secure this Lease from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Lessee is responsible for paying any Broker's fees or commissions for any Broker with whom Lessee has any contract or agreement and for paying all of Lessee's attorneys' fees in connection with the negotiation of this Lease.

31. PUBLIC EMPLOYMENT: Lessee understands that unless authorized under Sections II-B-52 and Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a Montgomery County employee for employment contemporaneous with his or her County employment.

32. FORCE MAJEURE: Neither party shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or upsurged power, sabotage, inability to obtain any material or service, through natural or other cause beyond the control of either party; provided, however, that this provision shall not excuse any non-payment of rent. For purposes of this provision, lack of funds shall not be considered a cause beyond the control of a party.

33. RESIDENT AGENT: The Resident Agent for the Lessee is:

Alan C. Lovell
10501 New Hampshire Ave.
Silver Spring, MD 20903-1197

34. PROHIBITION OF HAZARDOUS SUBSTANCES: The Lessee agrees not to store or bring hazardous substances onto the Leased Premises. The Lessee shall be responsible for any personal

injuries or personal and real property damage as a result of any hazardous substance being brought on the premises by the Lessee, its agents, contractors, employees or guests.

35. MAILING NOTICES: All notices required or desired to be given hereunder by either party to the other shall be given by certified or registered mail and shall be deemed to be effective when received or refused by the addressee. Notices to the respective parties shall be addressed as follows:

LESSEE:

CHI Centers Inc.
10501 New Hampshire Avenue
Silver Spring, MD 20903-1197

THE COUNTY:

MONTGOMERY COUNTY, MARYLAND
Leasing Management
101 Orchard Ridge Drive, 2nd Floor
Gaithersburg, MD 20878

36. INDEMNITY BOND: Upon the request of the County, concurrent with the effective date of the Lease or at any time during the term of this Lease, Lessee agrees to obtain and maintain an executed miscellaneous indemnity bond in the amount of the annual rent for the current lease year to remain in full force and effect throughout the remainder of the lease term, as security for the faithful performance of all the terms and conditions of this Lease. The County shall have the right, but not the obligation, to request such a bond from the Lessee. The County, in its sole discretion, may accept an appropriate substitute surety. Lessee shall, within fifteen (15) days from the date of the request by the County, deliver to the County the said surety, evidencing the coverage hereinabove stated. Failure to deliver the bond or surety as required is considered by the County to be a material breach of this Lease.

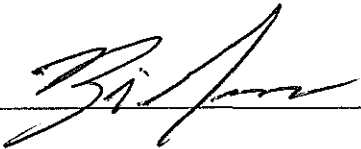
37. INDEMNIFICATION BY COUNTY: Notwithstanding anything in this Lease to the contrary, any indemnification given by the County is subject to the liability and damage caps stated in the Local Government Tort Claims Act. Md. Cts. & Jud. Proc. Code Ann. §§5-301, et seq., as amended from time to time. This indemnification is not intended to be a waiver of governmental immunity by the County, and is not intended to create any rights or causes of action in third Parties. The County shall not be liable for damages or injury occasioned by the acts or omissions of Lessee or its agents, or failure to comply with its obligations under this Lease.

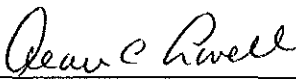
38. GENERAL PROVISIONS: This Lease is governed by the Laws of the State of Maryland. Should any provision of this Lease be found invalid or unenforceable no other unrelated provision will be affected and will continue in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this agreement to be properly executed.

WITNESS:

LESSEE:
CHI, INC.

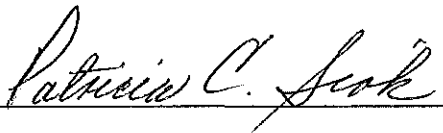
By: 

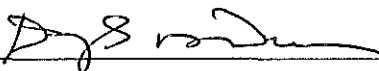
By: 

Date: 1-27-03

WITNESS:

THE COUNTY:
MONTGOMERY COUNTY, MARYLAND

By: 

By: 
DOUGLAS M. DUNCAN

Title: _____
COUNTY EXECUTIVE

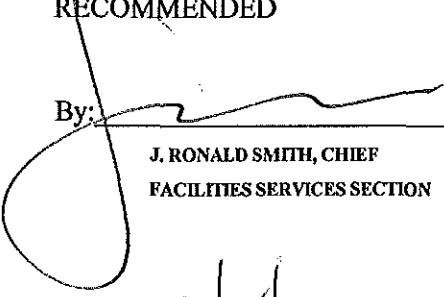
Date: 2/19/03

APPROVED AS TO FORM & LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By: 

Date: 2/6/2003

RECOMMENDED

By: 
J. RONALD SMITH, CHIEF
FACILITIES SERVICES SECTION

Date: 2/5/03