

**FIRST AMENDMENT TO LEASE AGREEMENT**

**Stone Mill Elementary School**

This First Amendment ("Amendment") to Lease Agreement is being made this 13<sup>th</sup> day of JANUARY, 201<sup>4</sup>, between the MONTGOMERY COUNTY BOARD OF EDUCATION (the "Board or Landlord"), and MONTGOMERY COUNTY, MARYLAND (the "County"), (the Board and the County together the "Parties.").

WHEREAS, the Board and the Academy Child Development Center, Inc. ("ACD"), entered into a Lease Agreement dated September 5, 1991 for a portion of land which the Board has fee simple title to, located at the Stone Mill Elementary School, and

WHEREAS, the ACD pursuant to that Lease Agreement constructed a modular unit and agreed to take all reasonable and necessary steps to donate the modular to Montgomery County, Maryland ("County"); and

WHEREAS, pursuant to the Transfer Agreement dated August 13, 1991, the ACD transferred responsibility for the modular building to the County for the operation by the County of a child care center, more specifically located at Stone Mill Elementary School located at 14237 Stonebridge View Drive, Gaithersburg, Maryland, 20879, in Montgomery County, Maryland (the "Leased Premises"); and

WHEREAS, the Lease Agreement and the Transfer Agreement are collectively known as the "Lease": and

WHEREAS, the Lease Term expired on March 31, 2011; and

WHEREAS, the Parties have agreed to extend the term of the Lease for an additional five (5) years and nine (9) months;

WHEREAS, the Parties hereby elect to extend the Lease, subject to certain terms and conditions agreed upon by the Parties as follows:

NOW THEREFORE, for the mutual promises herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Unless otherwise set forth in this First Amendment to Lease, all capitalized terms shall have the same meanings as set forth in the Lease.
2. Extended Term: Effective as of the date hereof, the Lease Term shall be extended for an additional five (5) years and nine (9) months, commencing April 1, 2011 and terminating December 31, 2016, and is hereafter referred to as the "Extended Term".
3. County's Public Liability Insurance: Paragraph 7 of the Lease, entitled "County's Public Liability Insurance", shall be deleted in its entirety and the following shall be added in lieu thereof:

"PROPERTY DAMAGE AND LIABILITY INSURANCE:

A. The County and the Board shall have the right to self-insure. The Parties are both members of the Montgomery County Self-Insurance Program. Section 20-37(c) of the Montgomery County Code restricts the legal defense fund to members of the fund and does not allow for outside entities. Their certificates of insurance evidence limits of insurability for general liability coverage in the amounts of \$500,000 aggregate and \$200,000 each occurrence and \$20,000 per person, \$40,000 per accident for bodily injury and \$15,000 for property damage for automobile liability and State of Maryland statutory limits for worker's compensation. The limits of liability for the County for tort claims filed against the County are as stated in the Local Government Tort Claims Act (the "LGTC"), Md. Ann. Code, Cts.& Jud. Proc. §§ 5-301 et seq, (2013 Replacement Volume). The limits of liability for the Board for tort claims filed against it are as stated in Section 4-105 of the Education Article, Annotated Code of Maryland. Membership in the Montgomery County Self-Insurance Program must be maintained continuously by the County and the Board during the Initial Term

of this Lease and during any Renewal Term.

B. The County agrees that it will not keep in or upon the Leased Premises or any part thereof, any article, which may be prohibited by the standard form of fire or hazard insurance policy. In the event that the County keeps articles on the Leased Premises that cause any increase in the insurance premiums for the Leased Premises, the County shall pay the additional premiums as they become due. The Parties agree that the County's Division of Risk Management will purchase and maintain any required additional policies.

C. The County agrees to hold harmless and hereby indemnifies Board, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, or occasioned wholly by any act or omission of the County or its employees at or upon the Leased Premises, or the occupancy or use by the County, of the Leased Premises, or the County's use of the exterior areas designated by Board for the comfort and convenience of the County. This indemnification is subject to the notice requirements and the liability and damage caps stated in the LGTCA. This indemnification shall not be considered to be a waiver of governmental immunity and is not intended to create any rights or causes of action in third parties. The County shall not, however, be liable for damage or injury occasioned by the acts or omissions of Board or its agents, or Board's failure to comply with its obligations hereunder.

D. Board agrees to hold harmless and hereby indemnifies the County, from and against any and all claims, actions, 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 Board of the Leased Premises or any part thereof, or the Board's use of the exterior areas provided for the County for the comfort and convenience of the Board, or occasioned wholly or in part by any act or omission of Board, its agents, contractors, or employees, excepting claims arising out of the acts or omissions of the County, the County's agents, County Licensees and employees. This indemnification is subject to the notice requirements and the liability and damage caps stated in the Maryland Education Article. This indemnification shall not be considered to be a waiver of governmental immunity and is not intended to create any rights or causes of action in third parties. The Board shall not, however, be liable for damage or injury occasioned by the acts or omissions of the County or its agents, or the County's failure to comply with its obligations hereunder.

E. The County shall deliver to MCPS DFM a certificate of insurance evidencing the coverage described above within thirty (30) days after the execution of this Lease.

F. The County shall require its Licensee to provide evidence of insurance coverages as follows:

(1) A policy of comprehensive liability insurance, including fire legal liability in a company authorized to do business in Maryland and in a form satisfactory to the Board with coverage of not less than \$1 Million liability per occurrence and \$2 Million aggregate(2) A policy of All Risk Property insurance on the Leased Premises against fire and other named casualties; and

(3) Five Hundred Thousand Dollars (\$500,000.00) auto liability (if County Licensee has any company owned vehicles);

(4) Workers' Compensation per State of Maryland statute.

All policies shall contain provisions naming the County and the Board as additional insureds, and shall contain a provision that each said policy shall not be canceled or terminated without thirty (30) days written notice to the County and to the Board.

G. The County agrees to include a provision in the their License Agreement that the Licensee must agree to hold harmless the County and the Board from all claims, actions, damages, liability and expenses, including reasonable attorney fees, arising out of any occurrence or occupancy of the Leased Premises or of the exterior use of the building arising under the Sublease or License Agreement. The Licensee must provide copies of policies or certificates of insurance to the Board's Department of Facilities Management within 15 calendar days of signing a sublease or license agreement. "

4. Assignment and Sub-Lease: Paragraph 20 of the Lease, entitled "Assignment and Sub-Lease" shall be deleted in its entirety and the following shall be added in lieu thereof:

"20. Assignment and Sub-Lease: The County shall not assign this Lease or license/sublease the Leased Premises without the prior written consent of Board, provided that such consent will not be unreasonably withheld, conditioned or delayed. The above notwithstanding, the Board hereby approves the subleasing or licensing of the Leased Premises to a licensed child care provider to be selected by the County for the sole purpose of operating a child care program. However, the County shall provide a copy of the proposed Sublease or License Agreement to the MCPS Director of Department of Facilities Management for approval prior to presentation to the Licensee."

5. Mailing Notices: Paragraph 26 of the Lease shall be deleted in its entirety and the following shall be added in lieu thereof:

“26. Mailing Notices: All notices required or desired to be given in accordance with this Lease by either party must be given by first class mail with a nationally recognized receipted delivery service, postage prepaid, addressed to the Board or the County, respectively. Notices to the Parties must be addressed as follows:

COUNTY:  
Montgomery County, Maryland  
Department of General Services  
Office of Real Estate  
101 Monroe Street, 9th Floor  
Rockville, Maryland 20850  
Attn: Director of Real Estate

BOARD:  
Montgomery County Board of Education  
Department of Facilities Management  
45 West Gude Drive, Suite 4000  
Rockville, Maryland 20850

With copy that does not constitute a notice:

Office of the County Attorney for Montgomery County, Maryland  
101 Monroe Street, 3rd Floor  
Rockville, Maryland 20850  
Attn: County Attorney”

6. The following provisions are added to the original Lease Agreement Dated 5/11/1991:

“27. MARYLAND SEX OFFENDER LAW: The County’s agreement with its Licensee shall require compliance with Maryland laws regarding registered sex offenders. A registered sex offender is prohibited from entering onto real property used for a public or non-public elementary or secondary school or on property on which is located a “family day care or a licensed child care facility”. (Section 11-722 of Criminal Procedure Article). The County shall require that any person/contractor/subcontractor who enters a contract to provide services at the Leased Premises will not knowingly employ an individual to work at a school if the individual is a registered sex offender.

28. PESTICIDES USE IN SCHOOLS: The Board has implemented a regulation regarding integrated pest management in schools, labeled ECF-RB, attached hereto and incorporated herein as Exhibit "A" in accordance with the Annotated Code of Maryland, Article – Agriculture. Tenant agrees to comply with the integrated pest management program established for the school within its Leased Premises by following the procedures outlined in the regulation.

29. RECYCLING: All public facilities are required by the Montgomery County Government to recycle 50 percent of all solid waste material generated. The Board has implemented a regulation regarding recycling, labeled ECF-RC, attached hereto and incorporated herein as Exhibit "B." County agrees to have the Licensee comply with the recycling plan for the Leased Premises by collecting recyclable waste material generated by its operation into appropriate receptacles provided by County for this purpose and pick-up equal to the service standards provided in Montgomery County Public Schools.

30. TEMPORARY SUSPENSION OF USE: Upon at least ninety (90) days prior written notice, Landlord may suspend the County's use and occupancy of the Leased Premises during summer months (June 15 to August 30), or at other times, if major renovations at the school site will prevent the safe operation of a child care program during the construction period.

31. STATUTORY PROVISIONS: : It is understood, agreed and covenanted by and between the Parties that the Board and County, as their interests may appear and at their respective expense, will promptly comply with, observe and perform all of the requirements of all applicable Federal, State, County and Local statutes, ordinances, rules, orders and regulations in effect during the Initial Term or the Renewal Term. The County shall require its Licensee to comply with all applicable statutes, ordinances, rules, regulations and MCPS policies and procedures in effect that have been provided to the County in writing and are available for review at <http://www.montgomeryschoolsmd.org/departments/policy/>."

32. Non-Discrimination: The Board agrees to comply with the non-discrimination in policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code (2004), as amended, as well as all other applicable state and federal laws and regulations regarding discrimination. The Board 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 race, color, religious creed, sex, marital status, national origin, ancestry, disability, sexual orientation or genetic status. The County shall require its Licensee to agree to the same covenants of non-discrimination set forth herein.

33. NON-APPROPRIATION: This Lease shall terminate automatically on July 1 of any year for which the Montgomery County Council does not make an appropriation of funds to pay the obligations stated in this Lease. The County shall give Board at least thirty (30) days written notice of the lack of appropriation. The County shall not make or to be entitled to make any claims for reimbursement of any kind, except for prepaid items or as otherwise agreed to in this Lease in writing by the Parties.

34. REVIEW OF MCCA RECORDS: The County agrees that its agreement with its Licensee shall include a provision that gives the County and the Board written authorization to review the records of the Maryland Child Care Administration relating to Licensee's operation as permitted by law.

35. RESPONSIBILITIES OF THE COUNTY: The County covenants and agrees to the following responsibilities and shall include them in its sublease or license agreement with its County Licensee:

- A. The County will not and will require its Licensee not to strip, overload, damage or deface the Leased Premises or hallways, stairways, or other approached thereto, of said building, or the fixtures therein or used therewith, nor to suffer or permit any waste to, in or upon the Leased Premises or any part of said building.
- B. The County will not and will require that its Licensee not to keep gasoline or other flammable material or any other explosive in the Leased Premises or in the building of which they are a part which will increase the rate of fire insurance on the building beyond the ordinary risk established for the types

of operations above provided to be conducted therein or in violation of Board Regulations and any such increase in the insurance rate due to the above, or County's special operations carried on within the Leased Premises, shall be borne by County. County shall not do any act or thing upon the Leased Premises or in or about the building of which they are a part which makes void or voidable any insurance on the said premises or building and County expressly agrees to conform to all rules and regulations from time to time established by the Maryland Insurance Rating Bureau, or any other authority having jurisdiction.

- C. The County will not, and will require its Licensee not to use or allow anyone else to use 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 or disrupt school activities or operations.
  
- D. That all covenants of the County relating to the use or misuse of the Leased Premises and of the property of which they are a part or anything therein shall be construed to include use or misuse thereof by County's agents and employees.
  
- E. The County will require its Licensee to supervise and conduct its activities in such a manner as to ensure no disruption to the learning environment of the school.
  
- F. The County will require its Licensee to comply with all rules and regulations for the building promulgated from time to time by the Board or at its direction and any violation of said rules and regulations shall be a violation of this lease.
  
- G. The County will require its Licensee, to the extent the Licensee makes

improvements to the Leased Premises, to comply with the Americans with Disabilities Act and all federal, state and local laws regarding providing access and services to disabled persons. The Board agrees that the Leased Premises as delivered to the County will comply with the Americans with Disabilities Act and all federal, state and local laws regarding providing access and services to disabled persons.

- H. The County will require the Licensee not to discriminate against children whose parents participate in state or local subsidy programs.
  
- I. The County agrees to maintain reports relating to the County's Licensee's license(s) or certification(s) as a Child Care Provider for inspection and evaluation for Board and parental review. County will report to Board any violation or revocation of its Licensee's Maryland Child Care Administration ("MCCA") license within ten (10) days.
  
- J. The County agrees to, and to require its Licensee to 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 Montgomery County Public Schools- Department of Facilities Management ("MCPS-DFM").
  
- K. The County agrees to require the Licensee to pursue accreditation of Licensee's Program by the Maryland State Department of Education or by another nationally recognized accreditation system.
  
- L. To use the Leased Premises only for the provision of infant and child day care services and those activities related to such services.
  
- M. To provide its Program in accordance with any and all applicable state, local and federal laws pertaining to the operation of child care centers and must maintain its license or certification to provide such services in accordance

with the requirements of the entity issuing such license or certification.

- N. To not have pets in or about the Leased Premises. This provision does not limit the County or the County's Licensee, employees or guest's right to have bona fide service animals on the Leased Premises. The County agrees to, and requires its County Licensee to be solely responsible for the proper care of service animals in the Leased Premises and in keeping the Leased Premises clean and free of debris and waste associated with the care and feeding of service animals.
  
- O. The County agrees to, and to require its County Licensee: (a) to close and lock all entrance doors and windows in the Leased Premises when the Leased Premises are not in use, (ii) before closing and leaving the Leased Premises at any time, must close all windows and doors and secure the Leased Premises, (iii) not to place any additional locks or bolts of any kind upon any of the entrance or interior doors or windows. The County or County Licensee shall not change any existing locks without prior written approval of MCPS DFM. In the event an approved change is made to the existing locks, the County and/or County Licensee must provide MCPS DFM with keys to the new locks. Upon the termination of this Lease Agreement, the County must return all keys of the building, offices, and bathrooms, either furnished to, or otherwise procured by, the County to MCPS DFM. In the event of the loss of any keys provided to the County, the County must pay the Board the cost of such keys and/or locks.
  
- P. To perform any and all obligations under this Lease in a timely manner.
  
- Q. To repair any damage, at its sole expense, to the Leased Premises caused by removal of the County's property from the Leased Premises, so that the Leased Premises are in substantially the same condition as at the commencement of the Lease Term, reasonable wear and tear excepted.

- R. To acknowledge that the person executing this Lease on behalf of the County has the legal authority to bind the County to the duties and obligations set forth in this Lease. The County further verifies and acknowledges that such person's signature creates a binding obligation on the part of the County for the term of this Lease.
- S. To verify and acknowledge that at the time of the execution of the License Agreement that the County Licensee is in good standing and/or qualified to do business in the State of Maryland.
- T. County agrees to require that the Licensee take appropriate measures to conserve and efficiently use energy and other resources (i.e., heat, cooling, water, and utilities). County agrees to abide by Board's standards, policies, rules and regulations for operating and maintaining schools, as attached as Exhibit B, "Resource Conservation Policy and Guidelines".

36. GENERAL PROVISIONS:

(A) Entire Agreement: It is further understood and agreed that this instrument contains the entire agreement between the Parties hereto and shall not be modified in any manner except by an instrument in writing duly executed by the Parties hereto.

(B) Rights and Remedies: In addition to any and all rights and remedies specifically mentioned in this Lease, Landlord and County shall have all rights and remedies granted by Law or in equity. Resort to one remedy shall not be construed as a waiver of any other remedy. Failure by Landlord or County to resort to any or all of their respective rights or remedies shall not be considered to be a waiver of such rights or remedies, nor to be acquiescence of any party in any action or default.

(C) Governing Law: The provision of this Lease shall be governed by the laws of

the State of Maryland. If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby.”

This First Amendment to Lease Agreement is incorporated into the Lease Agreement and shall be deemed a part thereof. All terms and provisions of the Lease Agreement not expressly modified in this First Amendment shall remain the same and in full force and effect.

SIGNATURE PAGE FOLLOWS

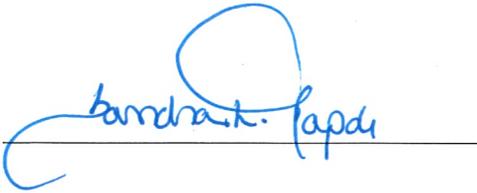
IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be properly executed.

WITNESS:

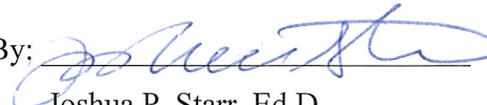
BOARD:

BOARD OF EDUCATION OF  
MONTGOMERY COUNTY

By:

  
\_\_\_\_\_

By:

  
Joshua P. Starr, Ed.D.,  
Superintendent of Montgomery County Public  
Schools

Date:

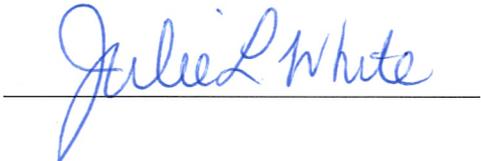
1.13.2015

WITNESS:

COUNTY:

MONTGOMERY COUNTY, MARYLAND

By:

  
\_\_\_\_\_

By:

  
\_\_\_\_\_

Ramona-Bell Pearson  
Assistant Chief Administrative Officer

Date:

12/10/14

APPROVED AS TO FORM & LEGALITY  
OFFICE OF COUNTY ATTORNEY

RECOMMENDED:

By:

  
\_\_\_\_\_

By:

  
Cynthia L. Brenneman, Director  
Office of Real Estate

Date:

11/5/14

Date:

11/3/14