

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") made this 10th day of May, 1991 by and between the MONTGOMERY COUNTY BOARD OF EDUCATION, (hereinafter referred to as "Lessor") and FOUNDATION FOR WORKING FAMILIES, INC., (hereinafter referred to as "Lessee").

W I T N E S S E T H

WHEREAS, the Lessor is the owner of the fee simple title in the land at 14323 Stonebridge View Drive, Gaithersburg, in Montgomery County, Maryland 20879; and

WHEREAS, Lessor approves the subleasing of the leased premises to a day care provider to be selected by Lessee for the sole purpose of operating a day care program (hereinafter referred to "Sublessee")

WHEREAS, the Montgomery County Board of Education authorized using aforementioned site for the construction by Lessee of a modular day care facility and playground; and

WHEREAS, it is the desire and intent of both parties hereto that such a facility be maintained and operated in accordance with and subject to the terms and conditions as hereinafter set forth.

NOW THEREFORE, in consideration of the sum of ONE and 00/100 (\$1.00) DOLLAR, and for other good and valuable consideration as hereinafter provided, and the respective premises and mutual promises herein contained, the parties hereto mutually agree as follows:

1. PREMISES:

Lessor hereby demises and leases unto the Lessee and the Lessee hereby rents from Lessor for and upon the provisions hereinafter specified the land identified as 14323 Stonebridge View Drive, Gaithersburg, in Montgomery County, Maryland, outlined in RED on Exhibit "A" which is attached hereto and made a part hereof, which land is hereinafter referred to as the Leased Premises.

2. TERM:

Original Term - The term hereby created shall be five (5) years commencing on or around April 1, 1991, unless terminated for cause as herein provided before the expiration of such term. Lessor and Lessee shall exchange letters setting forth the lease commencement and termination date.

3. RENEWAL OPTION:

Subject to the limitations contained herein, Lessee shall have the option to extend the term of this lease for three additional five (5) year periods. Notice as to each extension of the original lease shall be provided by Lessee to Lessor, in writing, not less than six (6) months before the end of the previous term. All of the terms, conditions and covenants in this Lease shall apply during the aforementioned extended term.

4. USE OF THE PREMISES:

The leased premises shall be used as a site for a modular child care facility and playground.

5. LESSEE'S IMPROVEMENTS:

A. Initial Improvements - The Lessor hereby grants the Lessee the right at Lessee's expense to construct a modular facility and playground on the leased premises as shown on Exhibit A.

B. Future Improvements - The Lessee shall have the right at any time and from time to time during the lease term and any extension thereof to make such alterations, changes and improvements to the modular facility or grounds located on the leased premises as the Lessee or Sub-Lessee shall deem desirable for the operation of a child care facility. Such non-structural alterations, changes and improvements to the modular facility or grounds shall not require the prior written approval of the Lessor. Any structural alteration, change and/or construction to the building or grounds located on the leased premises shall require the prior written approval of the Lessor, which approval shall not be unreasonably withheld.

(1) Building Plans - The Lessee shall prepare working plans, drawings and specifications (hereinafter referred to as the "Building Plans") for any proposed major or structural alteration, change or new construction to the building or grounds, improvements, building fixtures, and/or equipment

located on the leased premises, which Building Plans shall be submitted to the Lessor for approval, whose approval shall not be unreasonably withheld. Once the Building Plans are approved by the Lessor, said Building Plans may not be changed without Lessor's approval.

(2) Character of Work - All work performed by the Lessee, pursuant to this Lease, shall be performed in a good and workmanlike manner with good materials and in accordance with approved Building Plans. The Leased Premises shall be left at the completion of such work in a safe and clean condition and in good order and repair.

(3) Lessor's Inspection - Upon reasonable notice to the Lessee and at reasonable hours, the Lessor may inspect the work from time to time in order to assure itself that such work is being carried on in accordance with the requirements of this Lease; provided, however, that the failure of the Lessor to inspect such work shall not be considered a waiver of any right accruing to the Lessor upon any failure of the Lessee to perform such work in accordance with this Lease. Lessee shall, at least ten (10) days prior to the substantial completion of any work for which Building Plans are required and approved in accordance with this Lease, notify Lessor, in writing, of the substantial completion of said work and the Lessor may within such period prior to completion make a final inspection to insure the work has been completed in accordance with the requirements of this Lease.

6. MANDATORY ASSIGNMENT OF LEASE

Lessor and Lessee agree that upon the completion of the modular facility and acceptance of this facility by the Operating Entity as defined by the Agreement for Dependent Care Resources, between Work/Family Directions Development Corporation and Foundation for Working Families, Inc., all rights, interests, responsibilities, and obligations of Lessee under this Lease shall be assigned by Lessee to the Operating Entity.

7. LESSEE'S PUBLIC LIABILITY INSURANCE

A. During the term of this lease or any extension thereof, Lessee shall at all times indemnify, defend and hold the Lessor harmless against all actions, claims, demands, costs, damages, penalties, or expense which result from the negligence or fault of the Lessee, which may be brought or made against the Lessor or which the Lessor may pay or incur by reason of any work on the Leased Premises which may be performed by or at the direction of the Lessee pursuant to this Lease. Payments made by Lessee do not create rights in any third party nor act as an admission of responsibility on the part of Lessor. The Lessee shall carry with an authorized company a policy of liability insurance with bodily injury limits of at least \$500,000 for any accident to one person and \$1,000,000 for each occurrence, with vandalism and property damage limits of \$100,000 for each occurrence.

B. Lessee shall be responsible for insuring improvements and betterments and Lessee's personal property on the premises. The Lessee agrees, within thirty (30) days hereof, to deliver to the Lessor the said policy or a certificate of insurance evidencing such insurance.

C. The Lessee shall keep in force the normal liability insurance either through self-insurance or through a responsible company or companies on the premises as described in Exhibit "A". Lessor shall hold Lessee harmless for any injury sustained on property not under Lessee's control, except when such injury is caused by negligence of Lessee, Lessee's agents, or assigns. Lessor further agrees to hold Lessee harmless against all claims, actions, costs and damages on the property which are due to Lessor's or its agents, assigns or employee's negligence.

8. CONDUCT AND SAFETY OF FACILITY:

Lessee or Sub-Lessee shall conduct all of its operations hereunder in a workmanlike, efficient, safe and careful manner; shall observe such safety precautions and rules in its operations as the Lessor from time to time may reasonably require; shall maintain an

adequate number of employees to supervise and regulate the use of the facility and shall maintain the facility at all times in safe and good operating condition and repair.

9. LESSOR'S RIGHT OF INSPECTION

The Lessor shall be entitled to visit and inspect the leased premises during reasonable hours and after reasonable notice but shall be under no obligation to make any visits of inspections.

10. CONDITION OF PREMISES:

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, walkway, and grounds contiguous to the building as shown on Exhibit A. 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.

11. SIGNS:

Lessee shall not place upon or remove from 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 Lessor. Lessor's approval shall not be unreasonably withheld.

12. QUIET POSSESSION:

Lessor covenants and warrants that it will deliver to the Lessee exclusive possession of the Leased Premises with appurtenances in conformity with the law, upon execution and delivery of this Lease and Agreement for the purposes herein set forth.

13. HOLD HARMLESS:

The Lessee agrees that it will at all times indemnify and hold the Lessor harmless against all actions, claims, demands, costs, damages or expenses of any kind which may be brought or made against the Lessor or which the Lessor may pay or incur by reason of the Lessee's negligent performance or wrongful failure to perform any of its obligations under this lease or by reason or any occurrence in or upon the Leased Premises which occurs as a result of the negligence or fault of the Lessee.

14. EMINENT DOMAIN:

Should the Leased Premises be taken by a public or quasi-public authority under any power of eminent domain or condemnation, the Lease and Agreement herein set forth shall terminate and the Lessor and the Lessee shall be entitled to such award by the condemning authority as shall be proportionate to their interest in the premises.

15. OPERATING EXPENSES:

A. Lessee shall be responsible for all operating expenses relating to the use and occupancy of the leased premises, and the modular constructed thereon to include all maintenance and repair of building and equipment, fixtures, roof, windows, electric systems, utilities, janitorial services, refuse removal, telephones, security, maintenance and repair of heating and air conditioning systems, plumbing systems, pest control and any other expense incurred by virtue of the Lessee's use of operation of the leased premises.

B. Lessor shall be responsible for the ongoing maintenance, snow and ice removal and repair of the sidewalks. Lessor shall be responsible for the maintenance of the grounds, including but not limited to grass mowing. Lessee shall reimburse Lessor for the cost of these services within thirty (30) days from the receipt of documentation from the Lessor.

16. DEFAULT:

The Lessor or Lessee shall be deemed to be in default of this Lease and Agreement when said party shall wrongfully fail to perform any of the provisions, covenants, conditions, or agreements of this Lease and Agreement which are to be performed by either the Lessor or Lessee within sixty (60) days, as either is reasonably required to so perform, and after written notice is sent from the Lessor or Lessee, one to the other, stating in detail wherein either party has failed to so perform. The defaulting party shall be liable for any and all loss or damage to the other party resulting from any such default. It is understood that any time funds are not appropriated or provided for the operation and/or maintenance of this facility, the Lessee shall have the right to terminate this Lease with thirty (30) days' written notice to the Lessor.

17. DESTRUCTION OF MODULAR FACILITY ON LEASED PREMISES:

A. In the event that the modular facility on the leased premises is destroyed or damaged from whatever cause so as to render all or a substantial portion of the facility unfit for the purposes for which the facility is used, and the repair of said destruction or damage cannot reasonably be accomplished by Lessee within ninety (90) days from the date of such damage, Lessee and Lessor shall each be entitled to terminate this Lease by written notice to the other within thirty (30) days after the destruction or damage occurred.

B. In the event that the Lessee is able to undertake the repair of the leased premises, Lessee shall complete said repairs within ninety (90) days or a reasonable time given the circumstances for the necessary repairs from the date of destruction or damage and this Lease shall not be affected.

C. In the event that Lessee is not able to repair the modular facility on the leased premises as hereinabove provided, this Lease shall terminate immediately upon notice from Lessee and Lessee shall not be entitled to any compensation or payment from Lessor for the value of any remaining term of the Lease.

18. WAIVER:

No waiver by the Lessor or Lessee 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.

19. RIGHTS OF LESSOR:

In the event the Lessor or Lessee shall default under any one or more of the events of default as described in Paragraph 16 hereof, Lessor and Lessee may, upon giving not less than thirty (30) days' written notice one to the other, after the respective periods for compliance as previously described have expired, terminate this Lease and thereupon, or at any time thereafter, Lessor may re-enter the Leased Premises and have the possession of the same.

20. ASSIGNMENT AND SUB-LEASE:

Lessee shall not assign this Lease except as provided in Paragraph 6 herein or sublet the Leased Premises without the prior written consent of Lessor, provided that such consent will not be unreasonably withheld. The above notwithstanding, Lessor hereby

approves the subleasing of the leased premises to a day care provider to be selected by Lessee for the sole purpose of operating a day care program.

21. SURRENDER OF POSSESSION:

Lessee covenants, at the expiration or other termination of this Lease, to remove the modular facility and all goods and fixtures installed on the leased premises not the property of Lessor within ninety (90) days of said expiration or other termination. Upon removal of the modular, the foundation shall be levelled, the leased premises shall be covered with dirt and the lawn and grass area shall be restored to original order and condition in all respects, reasonable wear and tear caused by use thereof excepted.

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, or any extension thereof, the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by either party giving the other 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.

23. INTEGRATED AGREEMENT

This Lease contains all of the agreements and conditions made between the parties and may not be modified orally or in any other manner other than by an agreement in writing signed by all the parties or their respective successors in interest, and approved by the mandatory assignee as defined in Paragraph 6.

24. BENEFIT AND BURDEN:

All of the covenants, provisions, terms, agreements, and conditions of this Lease shall inure to the benefit of and be binding upon the Lessor or its successors or assigns and upon Lessee, its successors or assigns.

25. FURTHER ASSURANCES:

Lessor must execute and deliver any instrument and perform any acts necessary and reasonably requested by Lessee in furtherance of the purpose of this Lease.

26. MAILING NOTICES:

All notices required or desired to be given hereunder by either party shall be given in writing and shall be addressed as follows:

LESSEE:

Foundation for Working Families, Inc. Montgomery County Board of
c/o Department of Family Resources Education
101 Monroe Street 850 Hungerford Drive
Rockville, MD 20850 Rockville, MD 20850

with a copy to:

James Savitz, Esquire
444 North Frederick Avenue
Suite 200
Gaithersburg, MD 20877

LESSOR:

Either party may change its mailing address hereunder by giving notice thereof to the other party in the manner set forth hereinabove.

27. PARENT, SCHOOL, COMMUNITY PARTICIPATION:

Recognizing that the child care program is being operated on the Stone Mill school site to serve community needs, Lessee guarantees that the provider shall meet with the community as needed to obtain input for child care program development and feedback on the programs provided.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be properly executed the day and year first above written.

WITNESS:

LESSOR:
MONTGOMERY COUNTY BOARD OF
EDUCATION

By: Carl Hansen

By: [Signature] Title

Date: 5/6/91

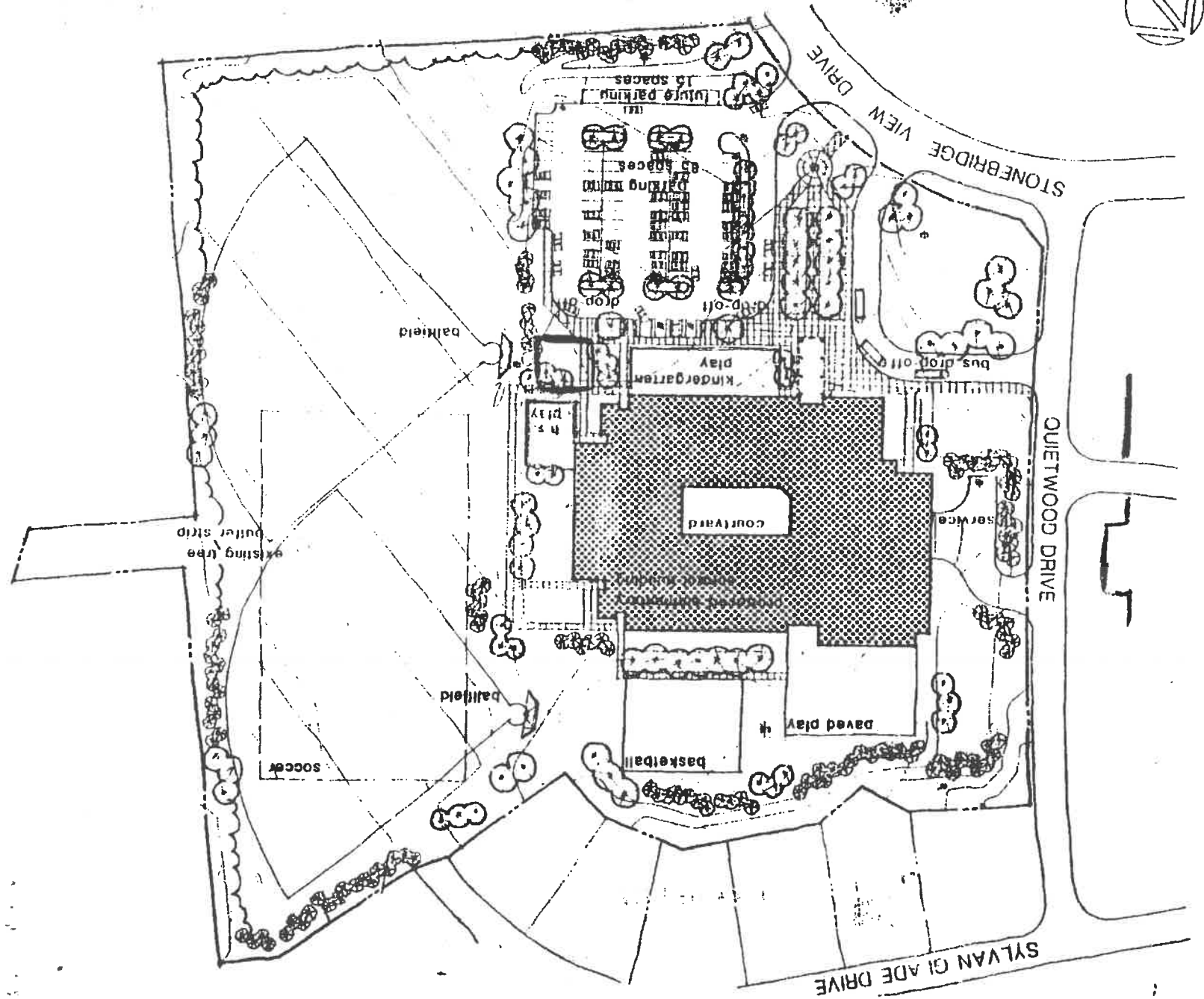
WITNESS:

LESSEE:
FOUNDATION FOR WORKING FAMILIES, INC.

By: Reginald Thomas By: [Signature]

Date: May 12, 1991

29700



MUDDY BRANCH ELEMENTARY SCHOOL
PROPOSED SITE PLAN



EXHIBIT A

AGREEMENT FOR
DEPENDENT CARE RESOURCES

THIS AGREEMENT, made as of March 1, 1991, between WORK/FAMILY DIRECTIONS DEVELOPMENT CORPORATION ("W/FDD"), a corporation organized under the laws of the Commonwealth of Massachusetts, whose address is 930 Commonwealth Avenue, South, Boston, Massachusetts 02215-1212 and Foundation for Working Families, Inc. ("FWF"), a not-for-profit corporation organized under the laws of the State of Maryland, whose principal address is 101 Monroe Street, Rockville, Maryland 20850.

WHEREAS, W/FDD is engaged in developing community-based dependent care resources for business and industry; and

WHEREAS, FWF is engaged in facilitating public/private partnerships in Maryland to create or maintain child care facilities; and

WHEREAS, W/FDD has entered an agreement (the "Prime Agreement") with International Business Machines Corporation ("IBM") to develop, support, expand and improve the quality of dependent care resources in selected communities where IBM employees and retirees live and work; and

WHEREAS, a relatively large population of IBM employees resides in the area of North Potomac, Maryland, a substantial number of whom have used child care services provided at a center located in vacant classroom space in the Stone Mill Elementary School; and

WHEREAS, some of the said classroom space within the Stone Mill school is no longer available for use as a child care center; and

WHEREAS, FWF wishes to purchase and construct a modular building unit (the "Unit") and to donate the Unit subject to certain restrictions to Montgomery County for use as a child care center to be located on the grounds of the Stone Mill Elementary School (the "Site"); and

WHEREAS, FWF will ensure that the child care program at the Unit is available on a priority basis for children of IBM employees; and

WHEREAS, the parties to this Agreement wish to set forth their mutual rights, obligations and liabilities and the terms and conditions under which they shall perform their respective undertakings,

NOW THEREFORE, it is agreed as follows:

1. Statement of Transaction.

- A. W/FDD will provide the sum of up to three hundred sixty-two thousand dollars (\$362,000) to FWF for the sole purpose of enabling FWF to purchase and construct the Unit (at a cost not to exceed \$230,000) for use as a child care center on the grounds of the Stone Mill Elementary School in North Potomac, Maryland and for costs ancillary to such construction (architectural design; landscaping and playground preparation; site preparation; project management and contingencies; and FWF administration at a total cost not to exceed \$132,000). The funds provided hereunder are intended solely for capital and ancillary expenses of FWF in connection with the Unit; no part of the funds to be provided hereunder are intended to be or shall be used for the on-going programmatic costs of FWF, nor shall anything herein be interpreted as intending or creating any commitment by W/FDD or by IBM to provide any further funds to support on-going operations of FWF.
- B. FWF shall, on its own behalf and not as an agent of W/FDD:
- a. Enter all necessary agreements and take all necessary and reasonable steps to purchase the Unit within fifteen days after the execution of this Agreement (the Unit shall be of a size and design and constructed of materials which will enable it to house a licensed child care center serving at least 58 children, including 6 infants; 12 toddlers and two year olds; 20 three and four year olds; and 20 school age children and shall conform in all material respects with the CMSI specifications dated 8/31/90, attached hereto as Appendix A and made a part hereof; and
 - b. Enter a lease agreement with the Montgomery Public Schools which agreement shall ensure that the Unit may be used for the operation of a child care center at the Site for at least five years, with a binding option or options allowing such use to continue for an additional fifteen years.
- C. Effective upon completion of construction of the Unit and the procurement of a Use and Occupancy Permit, FWF shall, on its own behalf and not as an agent of W/FDD, enter all necessary agreements and take all reasonable and necessary steps to donate the Unit to Montgomery County (the "County"), subject to the obligations enumerated in this Paragraph 1C. If the County for any reason does not accept FWF's donation of the Unit subject to such obligations, FWF shall, in W/FDD's discretion, either donate the Unit, subject to such obligations, to another entity selected by W/FDD or retain the Unit and assume such obligations itself. (In any case, the entity with title to the Unit at such point

shall be referred to hereinafter as the "Unit Owner".) The Unit Owner shall:

- a. execute a lease with a fully qualified provider of child care services to operate a child care center at the Unit with a licensed capacity to serve the numbers and ages of children described in Paragraph 1B on or before September 1, 1991. Such lease shall be for at least a three year period with options to renew for additional three year periods and shall set rent at a rate no greater per square foot of useable space than the County charges to child care providers located in other County-owned modular units. The parties hereto acknowledge and agree: (1) that, pursuant to the County's Policy and Procedure for Tenant Selection for Child Care Programs in County Facilities, it will extend a right of first refusal to lease the Unit to the child care provider which is currently located at the Stone Mill Elementary School and which will be displaced from such school; and (2) that such current provider is Academy Child Development Center, Inc. ("Academy").
- b. assume all of FWF's rights and obligations under the lease between FWF and the Montgomery Public Schools described in Paragraph 1Bb hereof.
- c. use the Unit primarily for the operation of a child care center and provide that the Unit will be used as a child care center at all times during the Unit owner's lease of the Site and ownership of the Unit. W/FDD may enforce such obligations by injunctive, specific performance or other equitable relief without prejudice to any other rights and remedies W/FDD may have.
- d. require in its lease with the provider that children of IBM employees are given priority in access to at least 48% of the available spaces at the Unit. Priority, after an age group's slots at the child care program are fully enrolled, is defined as: IBM parents on the wait list shall have the right of first refusal on spaces vacated when a child leaves the program or transitions to an older age group, if there are less than 48% IBM children enrolled in the program.
- e. require in its lease with the provider that the child care provider shall apply for the child care center at the Unit to become accredited by the National Association for the Education of Young Children ("NAEYC") as soon as the center is eligible to become so accredited under NAEYC accreditation rules.

- f. require in its lease with the provider that at all times such provider keep and maintain the Unit and all equipment and fixtures therein repaired, whole and of the same kind, quality and description and in such good repair, order and condition as the same are at the time such provider takes possession of the Unit.
- g. obtain and maintain (i) All Risk Property Insurance equal to the full replacement value of the Unit, naming FWF as a loss payee; (ii) Premises Liability Insurance in the amount of one million dollars (\$1,000,000). (The parties understand and agree that the County may maintain a self-insurance fund in satisfaction of these obligations.)
- h. require the child care provider to obtain and maintain adequate and appropriate insurance covering its occupancy of and operations at the Unit.
- i. assume by assignment all of FWF's rights and obligations set forth in this Agreement as of the effective date of transfer of the Unit (not including assumption of liability for FWF's breach of any obligation prior to the date of such transfer).

D. FWF shall at all times cooperate with W/FDD and/or W/FDD's designee to permit access to the Unit to observe FWF's operations pursuant to this Agreement and/or to observe the progress of construction, and shall respond diligently and in good faith to any and all requests for information and any and all advice or suggestions made by W/FDD and/or its designee concerning such operations or construction. After the Unit Owner shall have taken title to the Unit it shall likewise cooperate with W/FDD and ensure that W/FDD shall have reasonable access to the Unit and shall likewise respond to W/FDD's requests for information.

E. FWF, acting through its Board of Directors, shall designate a person to be the Project Manager to oversee the construction under this Agreement. Such Project Manager shall:

- a. Define with FWF's Board of Directors the scope of work to be accomplished in order to meet the deadlines established hereunder, enumerate the specific tasks and activities to be completed for each phase of construction, set schedules for the completion of such tasks and activities, generate requests for bids from contractors and do all other administrative tasks necessary to manage the completion of construction, licensing and all other tasks under this Agreement efficiently and in a superior and timely manner;

- b. Select and negotiate appropriate terms and conditions with a General Contractor, an architect and all other personnel necessary for the successful and timely completion of construction under this Agreement;
- c. Coordinate all project activities, maintaining frequent contact with the General Contractor and Architect and making frequent site visits to monitor the progress of the construction and coordinate compliance with and responses to all regulatory requirements and requests, including without limitation those of child care licensing agencies and any municipal agencies whose permissions and approvals are necessary preconditions to occupancy of the Unit and the operation of a child care center at the Unit;
- d. Submit periodic reports to FWF's Board of Directors and W/FDD detailing progress and needs of all contractors, agencies and others involved in the completion of construction, the timetable for such reports to be established in cooperation with W/FDD and designed to coordinate with the project schedule to be delivered to W/FDD under Paragraph 3Ah hereof.
- e. Review and manage all budget documentation, requisitions, invoices, correspondence, certifications, reports and other documents necessary to and/or generated in the course of construction.

2. Real Estate and Corporate Documentation.

The following documentation shall be delivered to W/FDD prior to the payment of any funds to FWF under this Agreement:

A. With respect to status and operations of FWF, FWF shall provide to W/FDD the opinion of its legal counsel to the effect that:

1. FWF has been duly organized and is validly existing as a not-for-profit corporation in good standing under the laws of the State of Maryland, and has all requisite corporate power and authority to own and operate its properties and to carry on its business as now being conducted and as contemplated in this Agreement.
2. FWF has, and its officers and agents acting on its behalf have, full legal authority to engage in the transactions contemplated by this Agreement; and the execution and delivery of the Agreement, the consummation of the transactions herein contemplated, and compliance with the terms, conditions and provisions of this Agreement do not and will not

conflict with or result in a breach of any of the terms, conditions or provisions of its corporate charter or articles of incorporation or its bylaws or any applicable enabling statute or any agreement or instrument to which it is a party or by which it is bound, or constitute a default thereunder; and it is not a party to or bound by any agreement or instrument or subject to any charter or other corporate restriction or judgment, order, writ, injunction, decree, law, rule or regulation which may materially and adversely affect its ability to perform its obligations under this Agreement; and this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.

3. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, nor any governmental administrative proceeding or investigation, nor known threat of same, which involves the possibility of any judgment, finding or ruling or liability which may materially adversely affect FWF's performance of or ability to perform this Agreement.

4. FWF is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, has received a Determination Letter to such effect, and is exempt from Federal income tax under Section 501(a) of such Code.

B. With respect to the purchase and construction of the Unit at the Site, FWF shall provide to W/FDD the opinion of its legal counsel to the effect that:

1. All approvals appropriate and necessary to the successful completion of the purchase and construction of the Unit at the Site have been secured.
2. The Site and the Unit can be used for the construction and operation of a child care center as contemplated in this Agreement, and such use will not violate any federal, state or municipal laws, regulations or ordinances, including, without limitation, those pertaining to zoning, environmental protection, historic preservation, urea formaldehyde foam insulation, lead paint, hazardous waste, asbestos, radon, and the condition of any wells, septic systems and/or standing water at the Site. Moreover, all necessary and desirable inspections and tests have been performed with satisfactory results, whether or not required by any such laws, regulations or ordinances, with respect to environmental conditions, hazardous

waste, and the condition of any wells, septic systems and/or standing water located at the Site.

3. Budget.

A. For the purchase of the Unit and ancillary costs, W/FDD shall deliver to FWF the following sums upon FWF's delivery to W/FDD of the following documents:

PAYMENTS:

a.	for architectural design	\$10,000
	for project management and contingencies	10,000
	for landscaping and playgrounds	10,000
	for siting costs	97,000
	for FWF administration	<u>5,000</u>
	TOTAL	\$132,000
b.	toward the purchase and construction of the Unit	\$57,500

DOCUMENTS TO BE DELIVERED:

- a. the opinion of FWF's counsel required under Paragraph 2 of this Agreement;
- b. a copy of a lease between Montgomery County Public Schools and FWF for the period necessary to construct the Unit at the Site, to obtain a use and occupancy permit, and to use the Unit for the provision of child care at the Site for at least five years, with an option or options allowing an additional fifteen years of such use;
- d. a copy of a fully executed and binding agreement between FWF and a qualified general contractor providing for all site preparation necessary for the construction of the Unit at the Site and for all landscaping and other tasks necessary for the construction of an infant/toddler playground at the Site;
- e. a copy of a fully executed and binding agreement for FWF's purchase of the Unit and the construction of the Unit at the Site;

f. a copy of a fully executed and binding agreement between FWF and the Unit Owner providing for the transfer of the Unit to the Unit Owner and the Unit Owner's acceptance thereof conditioned upon the Unit Owner's acceptance of FWF's assignment and delegation of all of FWF's interests, rights and obligations under this Agreement, including the terms and conditions set forth in Paragraph 1C hereto, such donation to be effective after the completion of construction of and the issuance of a Use and Occupancy Permit for the Unit at the Site; and

g. a certificate or certificates of insurance evidencing all coverages required in Paragraph 9 of this Agreement;

h. a project schedule detailing all activities and events necessary for the completion of FWF's obligations to purchase the Unit, prepare the Site, complete construction and transfer the Unit to the Unit Owner pursuant to this Agreement.

B. An amount up to the sum of \$147,500 will be paid in installments upon W/FDD's receipt and satisfactory review of certifications by FWF and the contractor, signed under pain and penalty of perjury, that specified percentages of construction have been completed in accordance with benchmarks identified in the construction contract and that there are no materials or mechanics or other liens outstanding against the Property. W/FDD will advance funds in proportion to the percentage of the work completed as so certified at the time of each requisition.

C. To complete the purchase of the Unit W/FDD shall deliver to FWF the sum of \$25,000 upon FWF's delivery to W/FDD of the following documents:

- a. a use and occupancy permit;
- b. a copy of a duly executed and binding transfer and acceptance of title to the Unit between FWF and the Unit Owner.

4. Reports.

Until the effective date of FWF's transfer of the Unit to the Unit Owner, FWF shall submit monthly status reports to W/FDD, the first such report to be submitted to W/FDD on or before March 15, 1991. Such reports shall include such information as may reasonably be requested by W/FDD from time to time in writing and at least fourteen (14) days in advance of the date upon which such report is to be submitted to W/FDD. In addition, FWF shall provide information on a continuing basis in response to such reasonable inquiries as W/FDD may make from time to time by telephone.

FWF shall submit a written follow-up report to W/FDD on or before thirty days after the effective date of such transfer which shall contain a full summary of all activities performed by FWF under this Agreement; a financial summary of expenditures under this Agreement; a summary of major problems and/or obstacles encountered during the implementation of this Agreement, how they were resolved and with what success; and such other related information as W/FDD may then reasonably request.

FWF shall continue to provide information after the termination of this Agreement in response to occasional reasonable inquiries from W/FDD concerning the work performed under this Agreement and the ongoing results of such work. In such event, if FWF will incur material expense in formulating a response to any such inquiries FWF and W/FDD will negotiate in good faith to provide for reimbursement to FWF for its reasonable expenses.

5. Relations with W/FDD and IBM.

FWF shall designate a person to W/FDD to act as a contact person for W/FDD and IBM; shall, apart from contacts with IBM families incidental to this Agreement and except for contacts with IBM employees who are affiliated with FWF, communicate directly only with W/FDD unless otherwise requested by W/FDD or IBM management; and shall meet as requested by W/FDD or IBM management with local staff of IBM to plan and provide such activities as IBM management and W/FDD may reasonably request in order to promote awareness and stimulate use of child care resources developed or expanded under this Agreement.

6. Complaints.

FWF (and after transfer of the Unit, the Unit Owner, subject to applicable County regulations, if any) will receive and respond to any complaints from any source concerning its activities under this Agreement or the activities of any employees, agents or contractors with whom FWF becomes involved under this Agreement expeditiously and professionally and will promptly report such complaints to W/FDD and consult with W/FDD during efforts to resolve such complaints.

7. Audits.

FWF shall maintain accurate and complete records to document its performance and activities under this Agreement and its expenditures and other dispositions of funds received pursuant to this Agreement. Such records shall be kept in such a way that they may be readily audited, shall be consistent with generally accepted accounting principles and shall conform to all applicable law. While this Agreement remains in force and for three (3) years after its expiration or termination, W/FDD shall

have the right at any time and from time to time, during normal business hours, at W/FDD's expense, and upon reasonable notice to FWF, to examine and audit any and all of FWF's records and accounts pertaining to this Agreement. Records will be kept for three years after termination of this Agreement or until the final disposal of any claims or litigation arising out of the performance of this Agreement, whichever is longer.

8. Legal Obligations.

A. FWF agrees that, in performing its obligations under this Agreement, it will comply with all applicable local, state, and federal laws, rules and regulations. Further, FWF agrees not to enter into any subcontracts, employment contracts, or agency relationships for the purpose of implementing this Agreement which do not specifically require the subcontractor, employee, or agent thereunder to abide by all applicable legal requirements. These requirements include, but are not limited to: licensing and registration laws governing FWF's activities pursuant to this Agreement; wage and hour laws; privacy legislation; legislation regarding the handicapped; equal employment opportunity statutes, executive orders and regulations; the Foreign Corrupt Practices Act; the Immigration Reform and Control Act of 1986, as amended; and the Regulations of the United States Department of Commerce relating to the Export of Technical Data; insofar as they relate to the services to be performed under this Agreement.

B. Regarding nondiscrimination in employment, FWF agrees not to discriminate against any employee because of race, color, religion, sex, age or national origin; and to comply with, where applicable, the equal opportunity clause of Section 202 of Executive Order No. 11246; the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era in 41 CFR Sec. 60-250.4; and the Affirmative Action Clause for handicapped workers found in 41 CFR Sec. 60-741.4. FWF additionally agrees, if required, to file annually a Form 100-EEO-1 and to develop, if required, an Affirmative Action Program, and hereby certifies that it will not maintain any facilities it provides for its employees in a segregated manner nor permit its employees to perform their services at any locations under its control where segregated facilities are maintained. In addition, FWF will not enter into any subcontracts, employment contracts, or agency relationships for the purpose of implementing this Agreement which do not specifically require the subcontractor, employee or agent thereunder to abide by these requirements.

C. FWF agrees that for the purpose of compliance with the requirements of the Occupational Safety and Health Act of 1970, services performed pursuant to this Agreement shall be deemed entirely within FWF's responsibility. FWF shall notify W/FDD promptly, in writing, if a charge of non-compliance with the Act has been filed against FWF in connection with services being

performed hereunder on the Unit or on any premises leased or owned by IBM.

9. Indemnification and Liability Insurance.

A. FWF and any successor or assignee agree to indemnify and save harmless W/FDD and IBM from and against any obligation, loss, cost, damage or expense, including reasonable attorneys' fees, to the extent that such obligation, loss, cost, damage or expense arises out of claims or actions based upon allegations of error, omission or malfeasance by FWF or such successor or assignee in performing its obligations under this Agreement or out of claims or actions arising out of such party's purchase, construction, donation or ownership of the Unit under this Agreement. Without limitation hereof, such indemnification shall include: (i) any claims involving Hazardous Substances previously released on or affecting the Site or which may be released on or affect the Site hereafter; (ii) any loss, cost, damage or expense incurred under or imposed by any body of law pertaining to health, safety or environmental protection; and (iii) any fines, penalty payments, reasonable attorney's fees, sums paid in connection with any judicial or administrative investigation or proceedings, costs of cleanup assessed by a governmental or quasi-governmental agency, and similar expenditures that relate in any way to the Site, the Unit, FWF or a successor or assignee, without regard to whether FWF or such successor or assignee would have ultimately been responsible for such claims, fines, payments, fees, sums or costs. FWF and any successor or assignee agree that they will notify W/FDD immediately both orally and in writing of any events, complaints or occurrences of any kind which could give rise to a claim or action against FWF, such successor or assignee, W/FDD or IBM and further agree to conduct such surveys of complaints and possible claims as W/FDD may request.

B. FWF shall obtain and maintain an insurance policy or policies covering FWF's activities in performance of this Agreement to insure against any loss which W/FDD, IBM or FWF might suffer as a consequence of errors, omissions or malfeasance by FWF, its agents or employees. Such policy or policies shall be occurrence form and shall include comprehensive general liability insurance, including contractual liability and personal injury insurance in the minimum amount of one million dollars (\$1,000,000.00) per occurrence. FWF shall obtain any riders to such policy or policies necessary to cover any special facilities or hazards located upon the Site. Such policy or policies shall name W/FDD and IBM as an additional insureds.

C. In addition, FWF shall obtain and maintain: (i) Builder's Risk Insurance at the full replacement value of the Unit as that may be from time to time, naming W/FDD and IBM as loss payees; (ii) Builder's Liability Insurance in the amount of one million

dollars (\$1,000,000), naming W/FDD and IBM as additional insureds; and (iii) Worker's Compensation and/or Employer's Liability Insurance in the amount of at least one hundred thousand dollars (\$100,000) covering any of its employees as required by statute in any jurisdiction in which it performs services.

D. Prior to the advance of funds hereunder, FWF shall provide to W/FDD certificates of such insurance which shall indicate, where required herein, that W/FDD and IBM are included as additional insureds in each liability policy and that 30 days' advance written notice will be furnished each insured in the event of cancellation, non-renewal or any material change in insurance.

E. FWF shall require and confirm that all suppliers and contractors with whom FWF contracts in the performance of its obligations under this Agreement have adequate and proper insurance including (i) Worker's Compensation and/or Employer's Liability Insurance in the amount of at least one hundred thousand dollars (\$100,000) covering any of its employees as required by statute; and (ii) comprehensive general liability insurance in the minimum amount of one million dollars (\$1,000,000) per occurrence.

F. The parties understand and agree that if the County is the Unit Owner, it may maintain a self-insurance fund in satisfaction of the obligations in this Paragraph.

10. Representations and Warranties of FWF.

FWF hereby represents and warrants as follows:

- (a) It is duly incorporated and validly existing as a corporation in good standing, under the laws of Maryland.
- (b) It has the power and authority to own its assets and carry on its business as now being conducted, and to enter into, and perform in accordance with, the terms of this Agreement.
- (c) It has, and its officers and agents acting on its behalf have, full legal authority to engage in the transactions contemplated by this Agreement; and the execution and delivery of the Agreement, the consummation of the transactions herein contemplated, and compliance with the terms, conditions and provisions of this Agreement do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of its corporate charter or articles of incorporation or its bylaws or

any applicable enabling statute or any agreement or instrument to which it is a party or by which it is bound, or constitute a default thereunder; and it is not a party to or bound by any agreement or instrument or subject to any charter or other corporate restriction or judgment, order, writ, injunction, decree, law, rule or regulation which may materially and adversely affect its ability to perform its obligations under this Agreement; and this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.

- (d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, nor any governmental administrative proceeding or investigation, nor known threat of same, which involves the possibility of any judgment, finding or ruling or unusual liability which may materially adversely affect FWF's performance of or ability to perform this Agreement.
- (e) FWF is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, has received a Determination Letter to such effect, and is exempt from Federal income tax under Section 501(a) of such Code.
- (f) The Site and the Unit can be used for the construction of a child care center as contemplated in this Agreement, and such will not violate any federal, state or municipal laws, regulations or ordinances, including, without limitation, those pertaining to zoning, environmental protection and historic preservation. Moreover, all necessary and desirable inspections and tests have been performed with satisfactory results, whether or not required by any such laws, regulations or ordinances, with respect to environmental conditions, hazardous waste, and the condition of any wells, septic systems and/or standing water located on the Unit.

11. Disclosure of Information.

FWF shall keep in confidence and shall not use, other than for the implementation of this Agreement, without W/FDD's prior written permission, any data and information relating to the business and affairs of IBM or W/FDD.

Such confidential information in the case of IBM shall include, without limitation:

- any information which IBM or W/FDD specifically notifies FWF is to be treated as confidential;
- IBM's cost, budget, and financial data;
- information regarding IBM's insurance coverage;
- information regarding the present or projected demographics (including, but not limited to, geographical and age distribution data) of the IBM employee/ retiree/ dependents population;
- family status, age, address, dependent care arrangements, and other personal information about individually identifiable IBM employees and their family members;
- information regarding planned or potential changes in the missions, products, services, locations, physical sizes, manpower resources, labor resource allocations, organizational structure, and hours of operation of IBM plants, labs, regional and area and branch offices, headquarters facilities, and other IBM facilities and organizational entities;
- planned or potential changes in IBM's employee benefits plans and programs, employee services, working conditions, working days and hours, IBM's work force reduction, retraining, and transfer plans, and IBM's internal guidelines for administration of personnel policies, practices, plans, and programs.

Such confidential information in the case of W/FDD shall include, without limitation:

- any information which W/FDD specifically notifies FWF is to be treated as confidential;
- the provisions of this Agreement;
- information concerning W/FDD's internal operations including, without limitation, insurance coverage, fiscal policies and practices, products and services under development, marketing strategies, and contracts with third parties;
- information about software developed for and/or used in the implementation of this Agreement;

This paragraph shall not apply to any information which is previously known to FWF without obligation of confidence, or which, without breach of this Agreement, is publicly disclosed either prior or subsequent to FWF's receipt of such information,

or which is rightfully received by FWF from a third party without obligation of confidence.

12. Communications Materials.

A. FWF shall submit all written or other communications materials intended to publicize FWF's activities under this Agreement to W/FDD for its review and approval prior to their use of such materials. FWF shall consult with W/FDD concerning which of such materials must indicate credit to IBM for its funding hereunder. In any case in which such credit is given the following statement shall be used: "Funding for this project was provided through the IBM Funds for Dependent Care Initiatives, administered by Work/Family Directions Development Corp."

B. All media inquiries, such as inquiries from the press pertaining to IBM's or W/FDD's potential or actual involvement with FWF shall be reviewed by W/FDD prior to the release of any information.

C. Any materials developed by FWF in the course of implementation of this Agreement may be reproduced, altered and otherwise used, royalty-free, by W/FDD and/or by any W/FDD contractor in the course of implementation of the Prime Agreement. Such rights shall be world-wide and irrevocable and shall survive the termination or expiration of this Agreement.

D. Nothing contained in this Agreement shall be construed as conferring on FWF any right or license to use in writing or for public broadcast any name, trade name, trademark, service mark, logo or other designation of W/FDD or IBM, or any contraction, abbreviation or simulation of any of the foregoing.

13. Independent Contractor Status.

Each party hereto shall at all times be deemed to be performing as an independent contractor and not as an agent or employee of another party or IBM. The acts and omissions of each party's respective employees, agents, and contractors shall be deemed to be those of such party only and not of the other party. Each party shall be solely responsible for the payment of compensation of its own employees, agents, and contractors performing in connection with this Agreement. No party shall be responsible for payment of workers' compensation, disability benefits, unemployment insurance, or for withholding income taxes and social security for any employee, agent, or contractor of another party.

14. Term and Termination.

A. Upon execution by all parties hereto, this Agreement shall be effective immediately and, unless terminated sooner as

provided hereinbelow, shall continue in effect until fifteen years after the date of execution of this Agreement, whereupon it shall expire.

B. This Agreement may be terminated prior to the expiration of its term as set forth above in accordance with the following conditions:

- i. If FWF shall under such laws as shall be applicable to it commence any case or proceeding, or file any petition in bankruptcy, or for reorganization, liquidation or dissolution, or be adjudicated insolvent or bankrupt, or shall apply to any tribunal for a receiver, intervenor, conservator or trustee for itself or for any substantial part of its property; or if there shall be commenced against it any such action and the same shall remain undismissed; or if by any act it shall indicate its consent to, approval of, or acquiescence in any such proceeding, or the appointment of any receiver, intervenor, conservator or trustee for it or any substantial part of its property or shall suffer any of the same to continue undischarged; or if it shall become subject to any intervention whatsoever that shall deprive it of the management of the aggregate of its property or any substantial part thereof; or if it shall wind up or liquidate its affairs or there shall be issued a warrant of attachment, execution or similar process against any substantial part of its property, and such warrant, execution or process shall remain undismissed, unbonded or undischarged for a period of 31 days, this Agreement shall be deemed immediately terminated upon the occurrence of such event.
- ii. If FWF is found by W/FDD to have made fraudulent use of funds, or if an administrative or judicial body has revoked any license which may be required for FWF to carry on its business and perform its obligations and functions under this Agreement, or if FWF is discovered by W/FDD to have made any misrepresentation or omitted to disclose any material facts which bear on its ability to perform this Agreement, the Agreement shall be deemed immediately terminated upon the occurrence of such event.
- iii. If IBM shall terminate the Prime Agreement, W/FDD may, in its discretion, terminate this Agreement as of the effective date of termination of the Prime Agreement. Where W/FDD itself has received sufficient advance notice to permit it to do so, W/FDD shall notify FWF in writing at least thirty (30) days prior to the termination date of the Prime Agreement or as soon as

is practicable under the circumstances of such termination.

- iv. In the event of a material breach of this Agreement by FWF prior to FWF's transfer of the Unit to the Unit Owner, which breach cannot be cured, or (in the case of a curable breach) which breach has not been cured within thirty (30) days after W/FDD notifies FWF in writing of the fact and nature of the breach, W/FDD, acting in its sole discretion, may either:

- (a) require FWF to return to W/FDD any and all sums paid under this Agreement until W/FDD is satisfied that the breach is cured; or
- (b) terminate this Agreement for cause by giving FWF written notice of termination, and the effective date of such termination shall be fifteen (15) days after the date that such notice of termination is given.

- v. In the event of the Unit Owner's material breach of this Agreement W/FDD may terminate this Agreement for cause and/or obtain an order for specific performance, payment of damages and/or any other remedy available under applicable law.

C. In the event of termination pursuant to subsection A above all documentation and other materials relating to this Agreement and FWF's performance thereof shall be transferred by FWF to W/FDD or to an entity or person designated by W/FDD.

15. FWF's Relationship with Successor to W/FDD.

In the event of expiration or termination of the Prime Agreement, W/FDD shall have the right, as against FWF to assign to IBM or IBM's designee all of W/FDD's rights hereunder and to delegate to IBM or IBM's designee all of W/FDD's duties hereunder. In the event that this Agreement is assigned by W/FDD to any person or entity, FWF shall continue to perform its obligations in accordance with this Agreement in cooperation with W/FDD's successor or assign.

16. Assignment of FWF's Rights and Obligations.

FWF may not assign its interests or rights or delegate its obligations under this Agreement to anyone without W/FDD's prior written consent, provided, however, that FWF shall assign such interests and rights and delegate such obligations to the Unit Owner as provided in Paragraph 1C.

17. FWF Responsible for Tax Consequences.

FWF shall have the sole responsibility for ascertaining any federal, state or local tax consequences affecting its business and operations as a result of its participation under this Agreement and shall have sole responsibility for the payment of any and all taxes and duties imposed by all governmental entities resulting from FWF's duties, obligations, performance and receipts under this Agreement.

18. Miscellaneous Provisions.

A. All covenants and agreements herein contained shall extend to and be obligatory upon all successors, assigns and subcontractors of the respective parties hereto.

B. One or more copies of this Agreement may be signed by the parties hereto, each of which copies shall be deemed an original and all of which shall be deemed to constitute but one and the same instrument.

C. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be inoperative or unenforceable as applied in any particular situation, such circumstances shall not have the effect of rendering any other provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.

D. This Agreement may not be terminated by either party hereto except in the manner and with the effect herein specifically provided.

E. This Agreement shall not be changed, modified or amended nor shall a waiver of its terms or conditions be deemed effective except by a writing signed by the parties hereto.

F. No remedy by the terms of this Agreement conferred upon or reserved by any party hereto is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute on or after the date of this Agreement including, without limitation, the right to such equitable relief by way of injunction, mandatory or prohibitory, to prevent the breach or threatened breach of any of the provisions of this Agreement or to enforce the performance hereof.

G. The section captions contained in this Agreement are for convenience only and shall not be deemed part of this Agreement.

H. All notices, requests, demands or other instruments which may be or are required to be given by either party to the other party, shall be in writing, and each shall be deemed to have been properly given when served personally on an officer of the party to which such notice is to be given, or upon expiration of a period of 72 hours (excluding weekends and holidays) from and after the postmark thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, addressed as follows:

If intended for W/FDD: Work/Family Directions Development Corp.
930 Commonwealth Ave., South
Boston, MA 02215-1212

With a copy to: Kotin, Crabtree & Strong
61 Chatham Street
Boston, MA 02109

or, if intended for FWF:

Foundation for Working Families
c/o Dept. of Family Resources
101 Monroe Street
Rockville, MD 20850

With a copy to: James Savitz, Esq.
444 North Frederick Avenue - Suite 200
Gaithersburg, MD 20877

Any party may change the address to which subsequent notices are to be sent to it by notice to others given as aforesaid.

IN WITNESS WHEREOF, the parties have hereunto set their hands by the officers thereunto duly authorized as of the day and year first above written.

ACCEPTED AND AGREED:

Work/Family Directions
Development Corporation

By: Thomas L. Hagg

Title: Vice-President

Date: 3/14/91

ACCEPTED AND AGREED:

Foundation for
Working Families

By: James Savitz

Title: President

Date: 3/8/91

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