

## LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") made this 5 day of April, 1988 by and between the MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION, (hereinafter referred to as "Lessor) and MONTGOMERY COUNTY, MARYLAND, (hereinafter referred to as "Lessee").

WITNESSETH

WHEREAS, the Lessor, under the authority of Article 66D, Section 5-101 Maryland Annotated Code, 1976 Supp., as amended, has responsibility to acquire, own, operate and maintain property within Montgomery County, Maryland; and

WHEREAS, the Lessor is the owner of the fee simple title in the land known as Martin Luther King Park, more specifically 1100 Jackson Road, Silver Spring, in Montgomery County, Maryland; and

WHEREAS, the Montgomery County Planning Board meeting as the Park Commission, approved on October 23, 1986, a staff recommendation to authorize 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 a portion of Martin Luther King Park, more specifically, 1100 Jackson Road, Silver Spring, in Montgomery County, Maryland, as illustrated 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 four (4) years eleven (11) months commencing on or around January 1, 1988, unless terminated for cause as herein provided before the expiration of such term. Lessor and Lessee shall exchange letters setting forth the lease commencement date.

3. RE. OPTION:

Subject to the limitations contained herein, Lessee shall have the option to extend the term of this lease for one additional four (4) year, eleven (11) month period. Notice as to each extension of the original lease shall be provided by Lessee to Lessor, in writing, six (6) months or more 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 to construct a modular facility and playground on the leased premises as shown on Exhibit B. Lessor acknowledges that Lessee is the sole owner of the modular facility to be constructed on the leased premises.

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. 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 - After 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. 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. The Lessee reserves the right to self insure in the amounts required in this Paragraph 6, or in the alternative, shall carry, with an authorized company a policy of liability insurance with bodily injury limits or at least \$100,000 for any accident to one person and \$300,000 for each occurrence, with vandalism and property damage limits of \$50,000 for each occurrence.

- B. Lessee shall be responsible for insuring or self-insuring improvements and betterments and Lessee's personal property on the premises. The Lessee agrees, with thirty (30) days hereof, to deliver to the Lessor the said policy or a certificate of insurance evidencing such insurance.
- C. The Lessor shall keep in force the normal fire and 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.
- D. In the event of a claim, the parties mutually agree to waive all rights of action against the other party to the extent of each other's insurance recovery.

7. Parking - Lessor acknowledges that Lessee and Lessee's patrons shall be entitled to full use of the parking lot Lessor is responsible for the ongoing maintenance, snow and ice removal and repair of said parking lot. Lessor will make every reasonable effort to remove snow and ice from said parking lot.

8. MAINTENANCE OF LEASED PREMISES:

Lessee shall maintain at Lessee's sole cost and expense, the facility and the grounds related to such facility as described on Exhibit "A" in a clean, safe and sanitary condition.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 re: n c ny occurrence in or upon the Leased Premises which occurs as a result of the negligence or fault of the Lessee.

15. 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.

16. OPERATING EXPENSES:

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, snow and ice removal or treatment, 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.

17. DEFAULT:

The Lessor or Lessee shall be deemed to be in default of this Lease and Agreement when either the Lessor or Lessee 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 Lessor or Lessee shall be liable for any and all loss or damage resulting from any such default. It is understood that any time funds are not appropriated or provided for the operation of this facility, the Lessee shall have the right to terminate this Lease with thirty (30) days' written notice to the Lessor.

18. 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 irreparable 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 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, Lessee shall not be entitled to any compensation or payment from Lessor for the value of any remaining term of the Lease.

19. 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.

20. 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 17 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.

**21. SIGNMENT AND SUB-LEASE:**

Lessee shall not assign this Lease 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.



26 FILED NOTICE:

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

LESSEE:

Montgomery County, Maryland  
Department of Facilities & Services  
Space & Leasing Management  
110 North Washington Street  
Rockville, Md. 20850

LESSOR:

Maryland National Capital Park &  
Planning Commission  
9500 Brunette Avenue  
Silver Spring, MD 20850

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

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

WITNESS:

[Signature]

LESSOR:

MARYLAND NATIONAL CAPITAL PARK &  
PLANNING COMMISSION  
By: [Signature] ACTUAL EXEC DUTY  
Title  
Date: APRIL 5 1988

WITNESS:

[Signature]

LESSEE:

MONTGOMERY COUNTY, MARYLAND  
By: [Signature]  
Alastair McArthur, Assistant  
Chief Administrative Officer

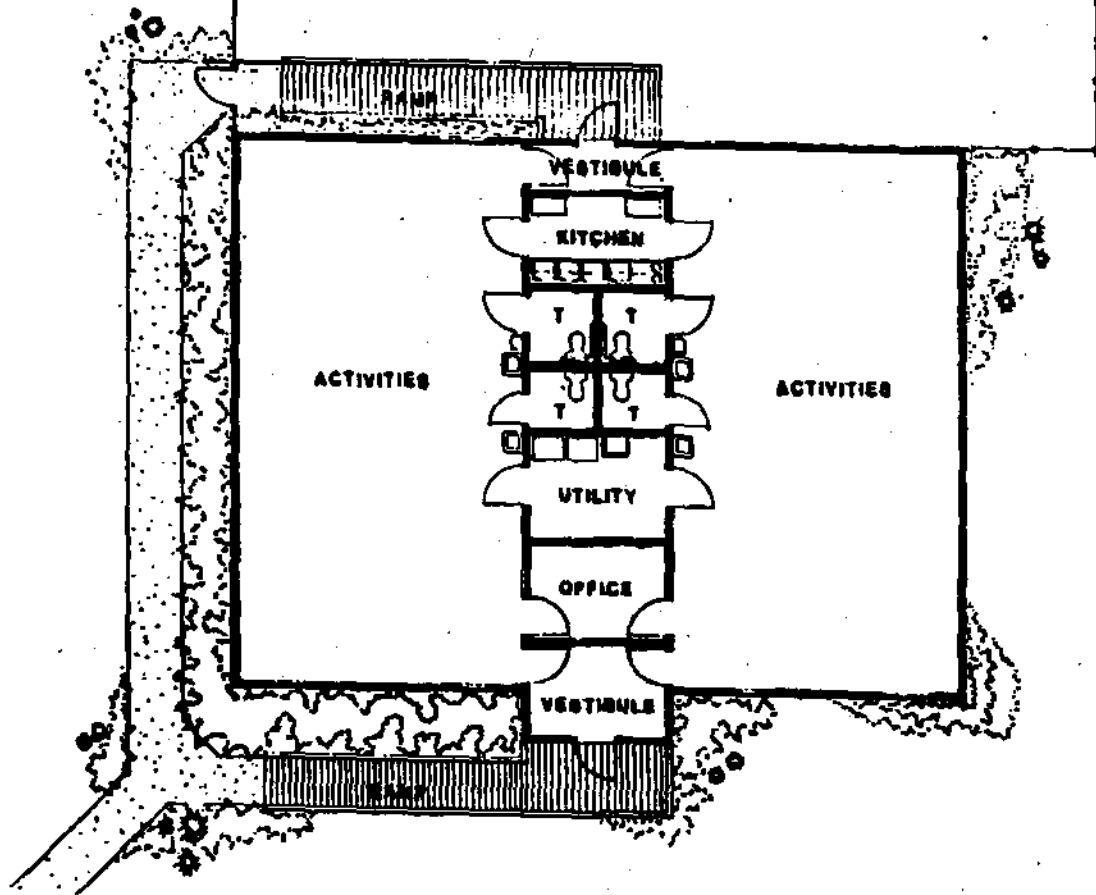
RECOMMENDED BY:

By: [Signature]  
Gloria W. Kratz, Chief  
Space & Leasing Management  
Date: 5-2-88

APPROVED AS TO FORM & LEGALITY  
OFFICE OF COUNTY ATTORNEY

By: [Signature]  
Date: 4-29-88

APPROVED AS TO LEGAL SUFFICIENCY  
[Signature]  
M-NCPPC Legal Department  
Date: May 2/88



**CHILD CARE CENTER  
MODULAR UNIT**

*EXHIBIT B*

