

LEASE

THIS LEASE ("Lease") is between the Maryland-National Capital Park and Planning Commission, a public body corporate (Commission) 9500 Brunett Avenue, Silver Spring, Maryland 20901, and Montgomery County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (County), 101 Monroe St. Rockville, Maryland 20852, (the Commission and the County together the "Parties.")

WHEREAS, the Commission is a public body corporate, created and existing under Article 28 of the Annotated Code of Maryland that is engaged in performing governmental functions of acquiring, developing, maintaining and operating public parks, facilities and recreation areas within Montgomery County and Prince George's Counties.

WHEREAS, the Commission is the fee simple owner of Parcel 878, Tax Map JP341, Tax Account No. 13-00963553, adjacent to Ellsworth Park containing land and improvements located at 8915 Colesville Road, Silver Spring, Maryland. (Leased Premises).

WHEREAS, the Parties agree that the County shall use the Leased Premises only to provide residential and psychiatric rehabilitation services for not more than eight adults at any time.

WHEREAS, the Parties are entering into this Lease to formalize these terms for the use by the County of the Leased Premises.

NOW, THEREFORE, for and in consideration of the covenants, conditions, terms and provisions contained in this Lease, the Parties agree as follows:

1. **Recitals**. The recitals set forth above are incorporated herein by

reference and made a material part of this Lease.

2. **Demise of Leased Premises.** The Commission leases to the County, the Leased Premises identified as Parcel 878, Tax Map JP341, Tax Account No. 13-00963553, adjacent to Ellsworth Park located at 8915 Colesville Road, Silver Spring, Maryland, containing land and improvements as shown on and described in Attachment A. The County accepts the Leased Premises in "As Is" condition. The Commission makes no representation about the condition of the Leased Premises.

3. **Term, Renewal, and Right of Termination.** The term of this Lease commences on June 1, 2006 and expires on May 31, 2013, unless the Lease is terminated earlier in accordance with the provisions of this Lease. Subject to the limitations contained in this Lease, the County may request to extend this Lease for two (2) additional five (5) year periods (Renewal Terms). The County will submit a written notice to the Commission stating the County's desire to extend the term of this Lease to the Commission not less than 12 months before the expiration of the applicable Lease Term. Within thirty (30) days of the receipt of the County notice, the Commission shall grant or deny the request to extend the Lease Term, which it may do in its sole and absolute discretion. If the County holds over after the expiration of the term of the Lease, the tenancy shall be a tenancy from month to month. Notwithstanding anything herein to the contrary, upon 12 months written notice, the Commission may terminate this Lease in the Commission's sole discretion, with or without cause, at anytime. Subject to Paragraph 42, Contingency of Appropriations, if the Commission terminates this Lease, other than under Paragraph 24, Default, before May 31, 2013, the Commission must compensate the Lessee for the unamortized value of the deferred

maintenance, described as alterations, additions and improvements in Paragraph 19, Alterations, Additions and Improvements, not to exceed \$75,000, calculated from June 1, 2006 to the time of termination based on a seven (7) year amortization period (cost of deferred maintenance divided by seven (7) years multiplied by the remaining years of the initial seven year term). The County will submit documents showing the unamortized value of the deferred maintenance described in Paragraph 19, which documents must be satisfactory to and approved by the Secretary-Treasurer of the Commission. The Commissions obligation to reimburse the County does not apply in the event of termination for non appropriation as set forth in Paragraph 42.

4. **Rent.** The County shall pay to the Commission rent of One Dollar (\$1.00) a year, payable on June 1 of each year that this Lease remains in effect.

The County shall make all payments to the Commission at:

Property Management Office, Montgomery County Parks
Maryland National Capital Park and Planning Commission
9500 Brunett Avenue
Silver Spring, Maryland 20901-3299

5. **License Agreement-County.** Notwithstanding any limitation set forth in Paragraph 21, Assignment and Subletting, the County may enter into a license agreement (License) with a State licensed and certified provider (Licensee) to provide services in accordance with the use of the Leased Premises described in Paragraph 6, Use of Leased Premises. The License shall provide that: the Licensee is subject to: (a) Paragraph 7, Restrictions on Use of Leased Premises, (b) Paragraph 15, Insurance-Licensee, (c) Paragraph 16, Indemnification-Licensee, (d) Paragraph 22, Pesticides, (e) Paragraph 23, Hazardous Materials, (f) Paragraph 26, Surrender of Leased Premises,

(g), Paragraph 29, Compliance with Laws, (h) Paragraph 33, Non-Discrimination, (i) Paragraph 37, Permits. , and (j) Paragraph 41, Taxes-Fees.

6. **Use of Leased Premises.** The County shall use the Leased Premises solely for a program of residential and psychiatric rehabilitation services for not more than eight adults at any time and for no other purpose.

7. **Restrictions on Use of Leased Premises.** The County shall not:
- a. use the Leased Premises in violation of any Commission regulation and practice, and any Federal, State and local laws or regulations;
 - b. commit waste on the Leased Premises;
 - c. use the Leased Premises for any purpose that is unlawful or inherently unsafe, or hazardous, including the placement, disposal or storage of any material or substance on the Leased Premises that is illegal, hazardous or toxic, and not permit any other person to bring, place, dispose of or store any material or substance that is illegal, hazardous or toxic;
 - d. allow any person to park a trailer, recreational vehicle, boat, commercial vehicle, truck, or equipment on the Leased Premises;
 - e. allow any person to park on the Leased Premises who is not authorized to use the Leased Premises;
 - f. use the Leased Premises primarily as a storage area for equipment or materials that are not related to the use of the Leased Premises stated in this Lease;
 - g. allow any motor vehicle on the Leased Premises with expired license plates or registration;

- h. use the Leased Premises for repair of motor vehicles or equipment; or
- i. obstruct a sidewalk, driveway, exit, or entrance, or area in the Leased Premises.

8. **Maintenance and Repair-County.** The County shall:

- a. maintain the Leased Premises, including all buildings, structures and improvements in good condition allowing for reasonable wear and tear,
- b. perform all exterior, interior, structural, nonstructural, ordinary and extraordinary repairs, maintenance and replacements, including but not limited to equipment, fixtures, personal property, furnishings, appliances, plumbing, heating, air conditioning, ventilating, communications, electrical, roofs, gutters, water systems, sewer systems, septic systems, gas systems, doors, windows, glass and mechanical systems,
- c. cut, maintain, mulch, fertilize and seed the grass, and trim shrubbery,
- d. remove and dispose of leaves, trash, solid waste, refuse, rubbish and debris, and
- e. keep the building, structures and improvements of the Leased Premises in a state of good repair, maintenance and cleanliness.

9. **Utilities and Services.** The County shall promptly pay all fees, taxes, costs and charges for all services, including electricity, gas, water systems, septic systems, sewer systems, telephone, refuse, cable, communications, janitorial and other services for the building, structures, and improvements on the Leased Premises. If the County must use a service paid for by the Commission, the County shall pay the Commission within 30 days after written request for payment in a form of invoice

satisfactory to the County for the County's pro-rated share of all fees, costs and charges of the services as reasonably determined by the Commission. If the Commission places any buildings, structures or improvements on the Leased Premises after the commencement of the Lease, which are used by the Commission, the Commission shall pay all applicable fees, taxes, costs and charges for the services. If either Party wishes to establish separate metering of a service at the party's sole cost and expense, the other party shall cooperate in that process.

10. **Reimbursement to Commission.** If the County fails in the performance of any of the County's obligations under this Lease, and the County's failure continues for thirty (30) days after written notice from the Commission, the Commission may cure the default on behalf of the County. The Commission has the right to cure as soon as practicable in the case of emergency. Subject to paragraph 42, the County shall reimburse the Commission, upon demand of any sums, amounts, costs, fees, charges or expenses incurred by the Commission to cure the County's default.

11. **Commission Access to Leased Premises.** The Commission shall have access to the Leased Premises for the purpose of: (a) inspecting, maintaining, and repairing the Leased Premises to ensure the safety and preservation of the Leased Premises; provided however, that the Commission's right of access does not impose any obligation on the Commission to inspect, maintain or repair the Leased Premises beyond any obligation imposed under this Lease, and (b) enforcing the Lease. Except in the event of an emergency, the Commission shall have access at reasonable times, subject to the Commission providing actual notice to the County of at least three (3) days prior to access. The Commission shall access the Leased Premises in a manner

that does not infringe upon any privacy rights of the occupants of the Leased Premises.

12. **Public Access to Leased Premises.** The public shall not have access to the Leased Premises without the consent of the County.

13. **Signs.** The County shall not erect, place or install any sign on the Leased Premises without obtaining the written approval in advance from the Director of Parks or the Director's designee.

14. **Insurance-County.** The County shall maintain self-insurance coverage under the Montgomery County Self Insurance Fund.

15. **Insurance-Licensee.** The County will require the Licensee to maintain insurance coverage for the Leased Premises, including all buildings, structures and improvements. This insurance coverage shall be the primary coverage. The insurance must comply with the following provisions:

a. Comprehensive General Liability Insurance

General Aggregate-\$1,000,000.

Occurrence Based Deductible allowed- \$1,000.

Coverage and Limits

Premises and operations- \$1,000,000.

Products and completed operations- \$1,000,000.

Independent contractors- \$1,000,000.

Contractual-Leases - \$1,000,000.

Explosion, collapse, underground hazards- \$1,000,000.

Personal injury and advertising injury- \$1,000,000.

Real Property and Personal Property Damage- \$500,000.

Contractual Indemnity-Hold Harmless- \$1,000,000.

Fire Damage (any one fire)- \$50,000.

Medical expense (any one person)- \$5,000.

b. Automobile Liability

Combined Single Limit- \$1,000,000.

Includes owned, hired and non-owned motor vehicles

- c. Excess Umbrella Liability-\$1,000,000.
- d. Professional Liability- \$1,000,000.
- e. Worker's Compensation
Coverage required by the Maryland Law
- f. The insurance company must be licensed to do business in Maryland and must be acceptable to the Commission. The County will require the Licensee to provide the County and the Commission with certificates of insurance not more than thirty (30) days from the execution of this Lease by the County or not later than thirty (30) days after the County entered into a License Agreement for an operator for the County's facility located on the Lease Premises. The County must provide the Commission with a renewal certificate of insurance on or before expiration of the existing certificate. The certificate must provide for not less than 45 days advance written notice to the Commission in the event of termination, modification or cancellation.
- g. All insurance policies must include the Licensee as the named insured and the County and the Commission as additional insureds. All insurance policies must waive all rights of subrogation against the Commission.

16. **Indemnification-Licensee.** The County will require the Licensee to indemnify, defend and hold harmless the Commission against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, judgments and expenses, including, but not limited to, reasonable attorneys' fees, that are made

against or incurred by the Commission arising from the Licensee's negligence, wrongful conduct, negligence performance or failure to perform any of its obligations under this Lease.

17. **Indemnification- County.** The County will indemnify, defend and hold harmless the Commission against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, judgments and expenses that are made against or incurred by the Commission arising from the County's negligence, wrongful conduct, negligence performance or failure to perform any of the County's obligations under this Lease. Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Local Government Tort Claims Act, Md. Code Ann. Cts. & Jud. Proc. §§ 5-301, et seq. (2002 Repl. Vol.) (the "LGTCA"); Md. Code Ann. Art. 25A, §1A (1957, 2003 Repl. Vol.): (the "County Indemnification Statutes"), all as amended from time to time. Any indemnification given by the County in this Agreement is not intended to create any rights or causes of action in any third Parties or to increase the County's liability above the caps provided in the County's Indemnification Statutes as applicable, all as amended from time to time.

18. **Indemnification-Commission.** The Commission shall indemnify and hold harmless County against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, judgments and expenses, that are made against or incurred by the County arising from the Commission's negligence, wrongful conduct, negligent performance or failure to perform any of the Commission's

obligations under this Lease. Any obligation or liability of the Commission arising in any way from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. Code, as amended from time to time. Any indemnification given by the Commission in this Agreement is not intended to create any rights or causes of action in any third Parties or to increase the Commission's liability above the caps provided in the Commission's Indemnification Statutes as applicable, all as amended from time to time.

19. **Alterations, Additions and Improvements to Leased Premises.** The County intends to make alterations, additions and improvements, also called deferred maintenance, to the Leased Premises. The County shall submit to the Commission a description of the work, a budget, a schedule and any other information and documents required by the Commission for this project and for any future projects by the County. The Commission shall review and approve, approve with modifications or disapprove the work. The Commission shall not unreasonably withhold, condition or delay approval. The County shall apply for and obtain a permit from the Commission and all necessary permits before commencement of construction. The County will require all of their contractors, subcontractors, suppliers and donors to assign all warranties relating to any work, equipment or materials to the County, and the County will, upon termination of this Lease, assign the warranties to the Commission. Upon acceptance by the Commission of the improvements and the work, the Commission is the owner of the improvements, work and warranties. The County shall maintain and repair under Paragraph 8, Maintenance and Repair-County, all alterations, additions and

improvements by the County under this Paragraph.

20. **Reports to Commission.** The County will promptly notify the County's insurance carrier and the Commission of any damage or personal injury on or about the Leased Premises, of which the County has knowledge. The County will promptly report any claim or potential claim to the County's third party investigator for investigation and also promptly report any accident or injury at the Leased Premises to the Park Police at 301-949-3010 and the Property Management Office at 301-495-2520.

21. **Assignment and Subletting.** Except as provided in Paragraph 5, License Agreement-County, the County shall not assign this Lease or sublet or allow any person or legal entity to use any part of the Leased Premises. The Parties acknowledge from time to time during the term of the Lease, the County may contract with different licensees to operate the facility located on the Leased Premises, and that as part of the contract with the new licensee, the County will license the Leased Premises to the new licensee in accordance with the terms of this Lease. The County must promptly notify the Commission in a change in Licensee and must provide the Commission with a copy of any License Agreement for use of the Leased Premises.

22. **Pesticides.** The Parties will comply with all applicable law that governs the use and application of pesticides at the Leased Premises as well as the Commission's Administrative Procedure No. 02-01, effective July 25, 2002, Pesticide Safety & Integrated Pest Management. The County will obtain the prior approval of the Park Manager before application of a pesticide. The Commission will notify the County not less than three (3) days prior to any pesticide application on or proximate to the Leased Premises so that staff and residents with medical conditions (e.g. chemical

sensitivity or respiratory problems) can be relocated during the time of application.

23. **Hazardous Materials.** The Parties will abide by all applicable Federal, State, and County laws and Commission regulations with regard to the storage, use and disposal of Hazardous Materials as the term is defined in such applicable law.

24. **Default-County.**

a. Upon any default of the Lease hereunder, the Parties agree to first notify the other Party of such default by telephone, to resolve any such default by the Parties.

b. The County is in default when the County fails to comply with any term, provision or condition of this Lease in a substantial or material manner.

c. The Commission shall send the County written notice specifying the default. The notice shall provide that the County has not less than 30 calendar days to cure the default, unless the default endangers the public health, safety and welfare, whereby the County shall cure the default as soon as practicable.

d. After the expiration of the cure period, the Commission may issue a notice of termination, unless the Commission determines that the County has cured the default or that the County is making progress satisfactory to the Commission in curing the default. The Commission shall provide the County 30 days written notice of termination of the Lease.

25. **Default-Commission.**

a. Upon any default of the Lease hereunder, the Parties agree to first

notify the other Party of such default by telephone, to resolve any such default by the Parties.

b. The Commission is in default when the Commission fails to comply with any term, provision or condition of this Lease in a substantial or material manner.

c. The County shall send the Commission written notice specifying the default. The notice shall provide that the Commission has not less than 30 calendar days to cure the default, unless the default endangers the public health, safety and welfare, whereby the Commission shall cure the default as soon as practicable.

d. After the expiration of the cure period, the County may issue a notice of termination, unless the County determines that the Commission has cured the default or that the Lessee is making progress satisfactory to the Commission in curing the default. The County shall provide the Commission 30 days written notice of termination of the Lease.

26. Surrender of Leased Premises.

- a. On or before the last day of any term including any renewal term, or upon any earlier termination of the Lease as provided herein, the County shall peaceably surrender the Leased Premises including all buildings, structures and improvements in broom clean condition and good order and repair, ordinary wear and tear excepted, and except for loss by fire or other casualty.
- b. At the end of the Lease Term or any renewal Term, or upon any earlier

termination of the Lease as provided herein, the County shall remove all of County's equipment, vehicles and personal property from the Leased Premises including any of the County's personal property that is affixed to the Leased Premises, provided that the personal property is removed without substantial injury to the Leased Premises. The County may not remove any permanent fixture, which is property, materials or improvements that have become part of the Leased Premises.

27. The Commission's Remedies upon Expiration or Termination. Upon expiration or termination of the Lease, the Commission may in its sole discretion: (a) re-enter the Premises, (b) make any repairs or maintenance that may be necessary, (c) file an action for possession of the Property, and (d) remove any personal property from the Leased Premises. The County shall remain liable for the County's negligence, wrongful conduct, negligent performance or failure to perform any of the Lessee's obligations under this Lease as long as the County is in possession of the Leased Premises.

28. Quiet Enjoyment. So long as the County is not in breach of this Lease, the County shall have quiet and peaceful use of the Leased Premises, subject to the provisions of this Lease, without interference by the Commission or any party claiming by, through or under the Commission.

29. Compliance with Laws. The Parties must comply with all Commission regulations and practices and applicable Federal, State and local laws and regulations. In the event the County is not in compliance with any Commission regulation or practice, the Commission will notify the County and the County will have an opportunity

to cure, all in accordance with Paragraph 24 herein.

30 Notices. The Parties shall send all notices, requests, demands or other communications in writing by: (a) personal delivery, or (b) by certified mail or registered mail, postage prepaid, return receipt requested, to the Commission or County at the respective addresses, set forth below:

The Commission: Property Management Office
M-NCPPC
9500 Brunett Avenue
Silver Spring, Maryland 20901

With a copy that does not constitute notice to:

Office of General Counsel
M-NCPPC
6611 Kenilworth Avenue, Suite 403
Riverdale, Maryland 20737

The County: Montgomery County, Maryland
Department of Public Works and Transportation
101 Monroe Street, 10th Floor
Rockville, Maryland 20850
Attn: Director of Real Estate

With a copy that does not constitute notice to:

Montgomery County, Maryland
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Attn: County Attorney

The Parties must provide prompt written notice to each other of any change in contact information.

31. Non-Waiver. The failure by either Party to insist upon the performance of any provision, condition or term of this Lease, or the failure of either Party to exercise

any right or remedy under this Lease shall not constitute a waiver of provision, condition, term, right or remedy by that Party. The provision, condition, term, right or remedy shall continue in full force and effect, unless waived in writing by the Parties.

32. Applicable Law. This Lease shall be construed in accordance with the laws of the State of Maryland and enforced in a court of competent jurisdiction in Montgomery County, Maryland.

33. Non-Discrimination. The County will not discriminate against any person in violation of Title 498 of the State Code or Chapter 27 of the Montgomery County Code (2004), as amended, or in violation of any applicable federal anti-discrimination law or regulation. The County shall not discriminate against any participant in or applicant for its programs, against any employee or applicant, or against any contractor because of age, sex, race, creed, color, national origin or disability. The County shall ensure that applicants, participants, employees and contractors are treated without regard to age, sex, race, creed, color, national origin or disability. If the County is determined to be in violation of any Federal, State or County nondiscrimination law by the final order of an agency or court, the Commission may terminate or suspend this Lease in whole or in part. If either Party is notified of any violation, the Party will promptly investigate and remediate any violation to the satisfaction of the citing authority.

34. Entire Agreement. This Lease contains the entire agreement between the Parties. This Lease may only be modified by a written amendment signed by the Parties with the same formalities as this Lease.

35. Waiver of Jury. The Parties waive any right to a trial by jury in any legal

action relating to this Lease.

36. Obligations Surviving Lease. Any obligations and liabilities of the Parties, accruing prior to the expiration or termination of the Lease, shall survive the expiration or termination of this Lease.

37. Permits. The County shall obtain all permits and licenses required by Federal, State, and local laws and applicable Commission rules and regulations.

38. Severability. If any provision of this Lease is determined to be invalid or illegal by a court or an administrative agency or body, that provision shall be severed from this Lease and shall not affect the remainder or any other provision of this Lease.

39. Police Services. The Commission Park Police has primary jurisdiction over the Leased Premises pursuant to Md. Ann. Code Art. 28, §5-114 (1957, Repl. Vol.).

40. Successors and Assigns. This Lease is binding upon the Parties and their successors, agents, officers, employees and assignees; and the obligations imposed upon the Parties in this Lease shall be binding upon any successor of the Parties, or any licensee of the County

41. Taxes-Fees. The County shall pay any applicable taxes, fees, assessments, or charges attributable or related to Lessee's use of the Leased Premises.

42. Contingency of Appropriations. The obligations of the Parties under this Lease are subject to and dependent upon appropriations by the Montgomery County Council for this Lease. Each party shall include in the budget for each Fiscal Year during the term of this Lease a request for appropriation in the Fiscal Year of the

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates
written below.

**MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION**

Date: 3/1/07

By: R. Bruce Crawford
Bruce Crawford
Executive Director

Attest:

Date: 3/1/07

By: Patricia Colihan Barney
Patricia Colihan Barney
Secretary-Treasurer

Approved for Legal Sufficiency:

Date: _____

By: [Signature] 2/28/07
Associate General Counsel

COUNTY

MONTGOMERY COUNTY, MARYLAND

Date: 3-1-07

By: [Signature]
Timothy L. Firestine
Chief Administrative Officer

Recommended

Date: 2/28/07

By: Cynthia L. Brenneman
Cynthia L. Brenneman, Director
Office of Real Estate
Department of Public Works and
Transportation

Approved as to form and Legality:

Date: 2/28/2007

By: Sileen P. Basaman
Assistant County Attorney

[illegible]