

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") made this 28 day of Feb 2020 by and between the CITY OF GAITHERSBURG (the "Landlord"), and MONTGOMERY COUNTY, MARYLAND (the "County"), (each individually a "Party" and together the "Parties").

WITNESSETH

WHEREAS, the Landlord is the owner of the fee simple title in the property known as 112 W. Diamond Avenue, Gaithersburg, Maryland, 20877, in Montgomery County, Maryland; and

WHEREAS, the Landlord and the County enter this Lease for the purpose of the County licensing the Leased Premises to a child care provider as part of the County's Policy on Use of County Buildings for the provision of Child Care; and

WHEREAS, the County shall license the Leased Premises to a selected child care provider for the sole purpose of operating a child care program; and

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

NOW THEREFORE, in consideration of the above recitals, which are incorporated into the terms of this Lease, and of the mutual covenants contained in this Lease and for the good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. LEASED PREMISES: The Landlord hereby leases to the County and the County rents from the Landlord for and upon the provisions specified herein, a portion of the land identified as 112 W. Diamond Avenue, Gaithersburg, Maryland, 20877 which is the area shown crosshatched on the Exhibit A, which is attached and incorporated into this Lease.

2. INITIAL TERM: The term of this Lease shall be five (5) years, from July 1, 2019, until June 30, 2024 (the "Initial Term"), unless terminated for cause as provided below before the expiration of the Initial Term.

3. RENEWAL OPTION: Subject to the limitations contained in this Lease, the County shall have the option to extend the Initial Term of this Lease for two (2) additional five (5) year periods (each a "Renewal Term"). The County agrees to provide written notice to the Landlord as to each renewal of the Lease, in writing, not less than six (6) months before the end of the Initial Term or the then Renewal Term. All terms, conditions and covenants in this Lease shall apply during the Renewal Terms.

4. CONSIDERATION: In consideration of services provided and for the rights and obligations provided for in this Lease by the Parties, it shall be the County's obligation to keep the Leased Premises in neat and habitable condition, to maintain them in a good state of repair, and to perform routine duties set forth in paragraph 6. below.

5. USE OF THE LEASED PREMISES: The Leased Premises shall be used as a site for a modular child care facility and the County's child care program and for no other use.

6. SERVICES: The County will maintain at the County's sole cost and expense, the modular facility and the grounds related to such a facility which make up the Leased Premises, in a clean, safe, and sanitary condition.

7. INSURANCE:

A. The County shall obtain and maintain, during the full term of this Lease, and any extension thereof, a policy of general liability insurance (which includes property damage liability, contractual liability, premises and operations, independent contractors, personal Injury and fire legal liability) with a minimum limit of liability of \$400,000 (four hundred thousand

dollars) per individual claim and \$800,000 (eight hundred thousand dollars) per total claims that arise from the same occurrence. The County shall have the right to self-insure. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the Local Government Tort Claims Act, 2016 Maryland Code, Courts & Judicial Proceedings, Section 5-303 et seq., as amended (the "LGTCA"). If the LGTCA is amended to increase any of these limits, then the increased limits shall automatically apply to this Lease.

B. The County agrees that it will not keep in or upon the Leased Premises any article, which may be prohibited by the standard form of fire or hazard insurance policy. In the event the County's articles causes any increase in the insurance policy premiums for the Leased Premises or any part thereof, the County shall pay the additional premiums as they become due. The County has the right to review the Landlord's policy(ies) premiums and rates.

C. The County agrees to hold harmless and hereby indemnifies Landlord from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, occasioned wholly or in part by any negligent act or omission of the County or its employees at or upon the Leased Premises, or the occupancy or use by the County, of the Leased Premises or any part thereof, or the County's use of the exterior areas designated by the Landlord for the comfort and convenience of the County. This indemnification is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (the "LGTCA"), and Md. Code Ann., Cts. & Jud. Proc. §5-5A-02 (together the "County Indemnification Statutes"), all as amended from time to time. This indemnification shall not be considered to be a waiver of governmental immunity and is not intended to create any right or causes of action in third parties. The County shall not, however, be liable for damage or injury occasioned by the acts or omissions of Landlord or its agents, or Landlord's failure to comply with its obligations hereunder.

D. Landlord agrees to hold harmless and hereby indemnifies the County, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, upon or at the Leased Premises or the occupancy or use by Landlord of the Leased Premises or any part thereof, or the Landlord's use of the exterior areas provided for the County for the comfort and convenience of the Landlord, occasioned wholly or in part by any act or omission of Landlord, its agents, contactors or employees, excepting claims arising out of the negligent acts or omissions of the County, the County's agents or employees.

E. All of the furnishings, fixtures, equipment, effects and property of every kind, nature and description belonging to the County or to any person claiming by, through or under the County which, during the continuance of this Lease or any occupancy of the Leased Premises by the County or any claiming under the County, shall be at the sole risk of the County, and if the whole or part or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or from any other cause, no part of said loss or damage is charged to or to be borne by the Landlord unless due to the intentional acts or negligence of Landlord or the Landlord's failure to comply with its obligations hereunder.

F. The County shall deliver to Landlord within forty-five (45) days from execution of this Lease a certificate(s) of insurance and any copies of policies evidencing the coverages required under this Lease. The County reserves the right to self-insure. The County and the Landlord hereby waive any right of subrogation against the other to the extent that the liability arises from a cause covered by insurance and only to the extent of the insurance proceeds recovered, and provided that the Parties' insurance policies permit such a waiver.

8. DESTRUCTION OF LEASED PREMISES: In the event of damage or destruction of the Leased Premises by fire or any other casualty, this Lease shall not be terminated, but the Leased Premises shall be promptly and fully repaired and restored by the County.

9. CONDUCT AND SAFETY OF LEASED PREMISES: Throughout the Initial Term of this Lease and any Renewal Term, County or its Licensee shall conduct all its operations hereunder in a workmanlike, efficient safe and careful manner; shall observe such safety precautions and rules in its operations as the Landlord from time to time may reasonably require; shall maintain an adequate number of employees to supervise and regulate the use of the Leased Premises and shall maintain the Leased Premises at all times in safe and good operating condition and repair.

10. LANDLORD'S RIGHT OF INSPECTION: The Landlord 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 or inspections.

11. SIGNS: The County 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 Landlord. Landlord's approval shall not be unreasonably withheld, conditioned or delayed.

12. QUIET POSSESSION: The Landlord covenants and warrants that it has delivered to the County exclusive possession of the Leased Premises for the purposes set forth in this Lease.

13. NOTICE OF ACCIDENTS AND/OR DEFECTS: The County shall give, and shall require its Licensee to give, prompt written notice to Landlord of accidents on or about or of damages or defects in the Leased Premises or the building in which the Leased Premises are a part.

14. EMINENT DOMAIN: The Landlord is entitled to receive any award from a governmental authority for the fair market value of the land and improvements upon which the Leased Premises are located. The County is not precluded from claiming, proving, and receiving, in a separate claim filed by the County against the authority exercising the power of eminent domain, such sums to which the County may be entitled as compensation, provided that such a separate claim does not interfere with or reduce the Landlord's award. The County or the Landlord may terminate this Lease upon exercise of eminent domain by a condemning authority that renders the Leased Premises unfit for the use set forth in Section 5 herein.

15. DEFAULT: The Landlord or the County shall be deemed to be in default of this Lease when such party shall wrongfully fail to perform any of the provisions, covenants, conditions, or agreements of this Lease continuing for more than sixty (60) days following written notice stating in detail wherein either party has failed to perform. The defaulting Party shall be liable for any and all loss or damage resulting to the other Party from any such default to the extent permitted by applicable law.

In the event the Landlord or County shall default under any one or more of events of default as described herein, Landlord and County may, upon giving not less than thirty (30) days written notice one to the other after the respective period for compliance as previously described had expired, terminate this Lease and thereupon, or at any time thereafter, Landlord may re-take possession of the Leased Premises.

16. WAIVER: No waiver by the Landlord or the County of any breach of any covenant, condition, or agreement herein contained shall operate as a waiver of any succeeding breach thereof, or a waiver of any breach of any of the other terms, covenants, agreements, and conditions herein contained.

17. ASSIGNMENT AND LICENSING: County shall not assign this Lease without the prior written consent of the Landlord, provided that such consent will not be unreasonably withheld, conditioned or delayed. The above notwithstanding, the Landlord hereby approves the licensing of the Leased Premises to a licensed child care provider selected by the County for the sole purpose of operating a child care program at the Leased Premises.

18. SURRENDER OF POSSESSION: County covenants, at the expiration or other termination of this Lease, to remove all goods and effects from the Leased Premises, including signage, not the property of the Landlord and to yield up to the Landlord the Leased Premises in good order and repair and condition in all respects, reasonable wear and tear excepted. At the time of termination of this Lease, and at the Landlord's option, the County must remove the modular building and return the Leased Premises in good order and repair and condition in all respects

reasonable wear and tear excepted.

19. HOLDOVER: If the County 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.

20. NON-APPROPRIATION: The County's obligations under this Lease are subject to, limited by and contingent upon the appropriation and availability of funds. If the County, in its sole discretion, elects not to appropriate funds sufficient to perform its obligations under this Lease in future years of this Lease, then this Lease shall automatically terminate at 11:59 p.m. on the last day for which funding is appropriated. The County's fiscal year begins July 1 and ends June 30. The County shall give the Landlord notice, in writing, seven (7) business days after the County makes a final decision not to appropriate funds sufficient to perform its obligations under this Lease. The County shall not make or to be entitled to make any claims for reimbursement of any kind, except for prepaid items or as otherwise agreed to in this Lease in writing by the Parties.

21. BENEFIT AND BURDEN: All the covenants, provisions, terms, agreements, and conditions of this Lease shall inure to the benefit of and be binding upon the Landlord, its successors or assigns, and upon the County, its successors or assigns.

22. THIRD PARTY BENEFICIARIES: The Parties agree that the County's Licensee is a third-party beneficiary of this Lease. Other than the County Licensee, none of the provisions of this Lease are intended for the benefit of any other third party, and no such other third party shall have the right to enforce the provisions of this Lease.

23. 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:

COUNTY:

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

LANDLORD:

City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, Maryland 20877

With copy that does not constitute a notice:

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

24. COMPLIANCE WITH LAWS: The Parties agree to promptly comply with, observe and perform all requirements of all applicable Federal, State, County and Local statutes, ordinances, rules, orders and regulations in effect during the Term or any renewal term thereof.

25. NON-DISCRIMINATION: The County agrees that it will not discriminate in any manner on the basis of race, color, religious creed, sex, marital status, national origin, ancestry, disability, sexual orientation, gender identity, or genetic status and to require its County Licensee, other agents, or related parties to follow the same non-discrimination requirements.

26. NO BROKERS: The Landlord and the County each represent and warrant to the other that it has not retained any broker, agent, or finder to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

27. ETHICS REQUIREMENT: The Landlord assures the County that it shall adhere to its own ethics Policies and regulations as authorized and approved by the State of Maryland pursuant to Maryland Code General Provisions, Title 5, Subtitle 8, Part III. The County assures the Landlord that it shall adhere to its own ethics policies and regulations pursuant to Chapter 19A and Section 11B-52 of the Montgomery County Code (2014), as amended.

28. NO PARTNERSHIP: Nothing contained in this Lease shall be deemed or construed to create

a partnership or joint venture of or between the Landlord and the County, or to create any other relationship between the Landlord and the County other than that of landlord and tenant.

29. FORCE MAJEURE: Neither Party shall be required to perform its obligations under this Lease, nor shall it be liable for loss or damage for failure to do so, where such failure arises from or through acts of God, strikes, lockouts, labor difficulties, explosions, sabotage, accidents, riots, civil commotions, acts of war, results of any warfare or warlike conditions in this or any foreign country, fire or casualty, energy shortage, or other causes beyond its reasonable control, unless such loss or damage results from its willful misconduct or negligence. Failure to meet monetary obligations shall not be excused by Force Majeure.

30. INVALIDITY OF PARTICULAR PROVISIONS: If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

31. ENTIRE AGREEMENT: This Lease contains all the agreements and conditions made between the Parties and may not be modified in any manner other than by an agreement in writing duly executed by the Parties or their respective successors in interest.

32. RIGHTS AND REMEDIES: In addition to all rights and remedies specifically mentioned in this Lease, the Parties shall have all rights and remedies granted by Law or in equity. Resort to one remedy shall not be construed as a waiver of any other remedy. Failure by the Parties to resort to any or all their respective rights or remedies shall not be a waiver of such rights or remedies, nor to be acquiescence of any Party in any action or default.

33. GOVERNING LAW: This Lease shall be governed by and enforced under the laws of the State of Maryland.

34. WAIVER OF JURY TRIAL: THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF THE COUNTY AND THE LANDLORD HEREUNDER, THE USE OR OCCUPANCY OF THE LEASED PREMISES BY THE COUNTY OR ITS COUNTY LICENSEE, OR ANY CLAIM OF INJURY OR DAMAGE, INCLUDING THE TERMINATION OF THIS LEASE OR THE COUNTY LICENSEE'S EVICTION FROM THE LEASED PREMISES.

35. COUNTERPARTS: This Lease may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each Party may rely on facsimile signature pages if such facsimile pages were originals.

[SIGNATURE PAGE TO FOLLOW]

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

WITNESS:

LANDLORD:

CITY OF GAITHERSBURG

By: _____

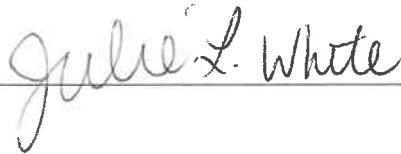
By:  _____

Date: 2-13-2020

WITNESS:

COUNTY:



MONTGOMERY COUNTY, MARYLAND

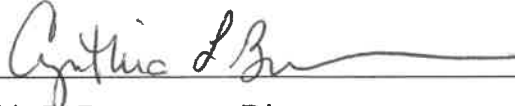
By:  _____

By:  _____
Jerome Fletcher
Assistant Chief Administrative Officer

Date: 2/28/2020

APPROVED AS TO FORM & LEGALITY RECOMMENDED:
OFFICE OF COUNTY ATTORNEY

By:  _____


By:  _____
Cynthia L. Brenneman, Director
Office of Real Estate

Date: 2/25/20

Date: 2/19/2020

Guthrieburg Modular
112 West Diamond Avenue
Exhibit A

