

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (hereinafter referred to as "this Lease"), made this _____ day of _____, 1995 by and between the STATE OF MARYLAND on behalf of the Board of Public Works, (hereinafter referred to as "Lessor"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (hereinafter referred to as "Lessee"),

WITNESSETH, THAT FOR AND IN CONSIDERATION of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor, in its "as is" condition, all of that real property, situate and lying in Montgomery County, Maryland, which consists of approximately 5.48164 acres of unimproved land in the subdivision of Calverton, 15th Election District, Montgomery County, Maryland and more fully described in the August 8, 1994 Deed of conveyance to Lessor recorded among the Land Records of Montgomery County in Liber 12849 Folio 496, to be used for the purpose of open space and/or parklands and for no other purposes without the consent of the Lessor, (hereinafter referred to as the "Demised Premises"). This Lease does not convey to Lessee any interest in or to any mineral rights.

SUBJECT TO THE OPERATION AND EFFECT of any and all instruments and matters of record or in fact,

UPON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth:

Section 1. Term.

1.1. Length: This Lease shall be for a term (the "Term") of thirty (30) years beginning on the date this Lease is approved by the State of Maryland Board of Public Works. Upon such approval, the parties shall execute a confirmation of the commencement date of the Lease Term and the expiration of the Term.

1.1.1. Renewal Terms: This Lease may be renewed for two (2) additional terms of ten (10) years each (hereinafter referred to as a "Renewal Term") provided the Lessee notifies the Lessor in writing, by at least six (6) months before the end of the then current term, that the Lessee desires to renew this Lease at the end of such current term and the Lessor consents to such renewal in writing within sixty (60) days after receipt of Lessee's request to renew, which consent may be withheld in the sole and absolute subjective discretion of the Lessor and if Lessor consents this Lease shall be so renewed (the Original Term and, if this Lease is renewed for and Renewal Term or otherwise, the period of any such Original Term and any Renewal Term being hereinafter referred to as "the Term"); provided that, at the Lessor's option, such renewal shall not be effective if an Event of Default (as that term is hereinafter defined) exists at the end of the Original Term or the immediately preceding Renewal Term, as the case may be. Any such renewal shall be upon the same terms and subject to the same conditions which are set forth in the provisions of this Lease, except that the Lessee shall have no additional renewal right as created by the provisions of this paragraph 1.1.1. at the end of the Second (2nd) Renewal Term, if any, [it being expressly understood that this Lease shall be for a total combined Term of no longer than fifty (50) years, including Renewal Terms].

1.1.2. Confirmation of Commencement and Termination: The Lessor and the Lessee shall, at the request of either party, confirm, in writing, that, such commencement or such termination has occurred, setting forth therein the Commencement Date and the Termination Date.

1.2. Surrender: The Lessee shall at its expense, at the expiration of the Term or any earlier termination of this Lease, (a) promptly surrender to the Lessor possession of the Demised Premises (including any fixtures, personal property owned by Lessor or other improvements

which, under the provisions of Section 5, are owned by the Lessor) in good order and repair (ordinary wear and tear excepted), (b) remove therefrom the Lessee's signs, goods and effects and any machinery, trade fixtures and equipment on the Demised Premises which are not owned by the Lessor, and (c) repair, to Lessor's satisfaction, any damage to the Demised Premises or the property caused by such removal, provided however, that in no event shall Lessee be required to return the Demised Premises to a condition over and above that which existed prior to the Lessee's use and occupancy thereof.

1.3. Lessor's fee simple interest in the Demised Premises shall not be encumbered or subordinated by operation of this Lease or by any action taken by the Lessee.

Section 2. Rent:

2.1. Amount: As rent for the Demised Premises (all of which is hereinafter referred to collectively as "Rent"), the Lessee shall pay to the Lessor all of the following:

2.1.1. Annual Rent: An annual rent (hereinafter referred to as "the Annual Rent") equal to One Dollar (\$1.00) per year, due and payable in advance on the first (1st) of October of each Lease Year, without any deduction or setoff whatsoever, and without demand.

2.1.2. Additional Rent: Additional rent (hereinafter referred to as "Additional Rent") in the amount of any payment referred to as such in any provision of this Lease which accrues while this Lease is in effect (which Additional Rent shall include any and all charges or other amounts which the Lessee is obligated to pay under any of the provisions of this Lease, other than the Annual Rent), due within thirty (30) days after receipt of written notice from Lessor to Lessee, without any deduction or setoff whatsoever and without demand.

2.2. Where Payable: The Lessee shall pay the Rent, in lawful currency of the United States of America, to the Lessor by delivering or mailing it to Department of General Services, Office of Fiscal and Contract Services, Room 1309, 301 W. Preston Street, Baltimore, Maryland 21201, or to such other address or in such other manner as the Lessor from time to time specifies by written notice to the Lessee.

Section 3. Use of Demised Premises:

3.1. Use: The Lessee shall occupy and use the Demised Premises for open space and/or park lands and for no other purposes.

3.2. Permits, Licenses and Compliance with Legal Requirements: The Lessee shall be responsible for obtaining all permits, licenses, inspections and approvals required for its use and occupancy of the Demised Premises. The Lessee's use and occupancy of the Demised Premises shall be in compliance with the requirements of all applicable Federal, State and local laws, ordinances, rules and regulations, including all applicable regulations promulgated by the State of Maryland.

Section 4. Insurance and Indemnification:

4.1. Insurance to be Maintained by Lessee:

4.1.1. The Lessee shall maintain at its expense, throughout the Term, (a) insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the Demised Premises or arising out of the use thereof by the Lessee or its agents, employees, officers, subtenants, invitees, visitors and guests, under one or more policies of General Comprehensive Liability insurance having such limits as to each as are reasonably required by the Lessor from time to time, but in any event of not less than a minimum coverage of \$~~1,000,000~~^{500,000} combined single limit per occurrence, and shall contain broad form GCL Endorsement or its equivalent, and (b) Worker's Compensation Insurance as required by law. The Lessee shall also maintain, at its own expense throughout the Term, all risk or fire and extended coverage insurance covering any improvements hereafter made to the Demised

Premises, at full replacement value. Each such policy shall (a) name as the insureds thereunder the Lessor and the Lessee, (b) by its terms, be considered primary and noncontributory with respect to any other insurance (if any) carried by the Lessor or its successors and assigns, (c) by its terms, be cancelable only on at least thirty (30) days prior written notice to the Lessor, and (d) be issued by an insurer of recognized responsibility licensed to issue such policy in Maryland.

4.1.2. (a) At least five (5) days before the Commencement Date, the Lessee shall deliver to the Lessor an original or a signed duplicate copy of each such policy (or at the Lessor's option, a certificate thereof), and (b) at least thirty (30) days before any such policy expires, the Lessee shall deliver to the Lessor an original or a signed duplicate copy of a replacement policy therefore (or at the Lessor's option, a certificate thereof). In the event the Lessee fails to pay any insurance premium when due, the Lessor shall have the option but not the obligation of paying such insurance premiums on behalf of the Lessee and, the Lessee shall immediately, upon demand, repay such sum to Lessor as Additional Rent.

4.1.3. Self Insurance: The Lessee, at its sole option, may elect to self insure the insurance required to be maintained in this Section 4 and the Indemnification obligation under sub-section 4.2, through Montgomery County's self insurance program. In the event the Lessee elects to self insure, the Lessee shall deliver to Lessor at least five (5) days before the Commencement Date and, annually thereafter, reasonably satisfactory evidence that such obligations are being covered by Montgomery County's self insurance program.

4.2. Indemnification of Lessor: Subject to the provisions hereof, the Lessee shall be responsible for, and shall provide a defense at Lessor's request, indemnify and hold harmless the State of Maryland, the Board of Public Works and the Department of General Services and its members, officers, agents, and employees against and from, any and all liability or claim of liability (including reasonable attorneys' fees) arising out of (a) the use, occupancy, conduct, operation or management of the Demised Premises by the Lessee, its agents, contractors, servants, employees, subtenants or licensees during the Term, or (b) any work or thing whatsoever done or not done on the Demised Premises during the term by the Lessee, or (c) any breach or default by the Lessee in performing any of its obligations under the provisions of this Lease or applicable law, or (d) any negligent, intentionally tortious or other act or omission of the Lessee or any of its agents, contractors, servants, employees, permitted subtenants or licensees clientele or invitees during the Term, or (e) any injury to or death of any person or damage to any property occurring on the Demised Premises during the Term, but excluding any liability arising from the negligence or intentional tortious act or omission of the Lessor or its agents, contractors, servants, employees, or invitees. The Lessee agrees that indemnification as described in this section shall further mean and include indemnification of any injury or harm as a result of Lessee's use and occupancy of the Demised Premises pursuant to this Lease, even if the injury does not become apparent or does not manifest until after the expiration of this Lease.

Lessor must give Lessee immediate written notice of any liability or claim of liability arising out of the circumstances described in the preceding paragraph so that Lessor's or Lessee's, as the case may be, ability to raise any defenses either may have is not prejudiced.

4.3. Immunity: Nothing in this Lease shall constitute a waiver of any immunity which the Lessor and/or Lessee may be entitled to under the laws of the State of Maryland, as they may be amended from time to time.

Section 5. Improvements to Premises: The Lessee shall not make any alterations, addition or improvement to the Demised Premises without first obtaining the Lessor's written approval thereto, which approval may be withheld in the sole and absolute discretion of the Lessor, such approval shall include approval of detailed plans and specifications for the proposed site plan and its improvements. If the Lessor consents to any such proposed alteration, addition or improvement, it shall be made at the Lessee's sole expense (and the Lessee shall hold the Lessor harmless from any cost incurred on account thereof), and at such time and in such manner as to not unreasonably interfere with the use and enjoyment of the remainder of the parcel from which the Demised Premises is created. Any improvements made to the Demised Premises by

the Lessee shall be made only in a good and workmanlike manner, in compliance with approved plans and specifications and in compliance with all applicable laws, regulations and ordinances. The Lessee shall obtain and deliver to Lessor copies of all necessary permits, licenses and other governmental approvals prior to the commencement of the improvements including evidence of performance, labor and material bonds from any contractors/subcontractors of Lessee in amounts adequate to secure completion of any such improvements. Any and all improvements, repairs, alterations and all other property constructed, attached to or otherwise installed as a fixture within the Demised Premises by the Lessor or the Lessee shall, upon termination of this Lease, become the Lessor's property without payment therefore by the Lessor.

Section 6. Maintenance and Services:

6.1. Maintenance by Lessee: The Lessee shall, at its sole cost and expense, maintain the entire Demised Premises in a neat orderly and safe condition. The Lessee accepts the Demised Premises in an "as is" condition and shall be responsible for, and bear the cost of doing all things necessary to make the Demised Premises safe and suitable for its intended use. The Lessee agrees to follow good soil conservation practices, and at the termination of the Term to surrender unto the Lessor the Demised Premises in as good condition as it was at the beginning of the term, reasonable wear and damage by the elements excepted. The Lessee further agrees, at all times during the term of this Lease, that no abandoned vehicles, equipment, etc. will be allowed to remain on the Demised Premises.

Lessee shall be responsible for controlling Johnson grass and/or Canada thistle or any other noxious weed, designated by the Maryland State Department of Agriculture, on the Demised Premises in compliance with the Agriculture Article of the Annotated Code of Maryland, as amended from time to time. If there is Johnson grass, Canada thistle and/or any other noxious weed on the Demised Premises, a plan of compliance shall be filed with the Maryland State Department of Agriculture with a copy forwarded to the Lessor.

6.2. Public Utility Charges: The Lessee shall pay all charges for the supply, connection and consumption of electricity, gas, heat, water and telephone or other communication services used, and other services rendered or supplied, upon or in connection with the Demised Premises and all other charges and expenses assessed against the Demised Premises on or after the Commencement Date of this Lease, and shall indemnify and hold harmless the Lessor against and from any liability. Any improvements, additions or alterations required to be made to the Demised Premises for utilities shall be done only in compliance with the provisions of Section 5 of this Lease.

Section 7. Lessor's Right of Entry: The Lessor and its agents shall be entitled to enter the Demised Premises at all reasonable times upon two days telephonic notice (a) to inspect the Demised Premises, (b) to make any repair to the Demised Premises or, (c) for any other purpose relating to the operation or maintenance of the Demised Premises, and (d) for fulfilling any other duties or obligations which the Lessor has as an agency of the State of Maryland, provided however, that no notice shall be required in the event of an emergency situation.

Section 8. Fire and Other Casualties: In case of any damage to or destruction of any improvements hereafter constructed on the Demised Premises, Lessee, at its sole cost and expense, shall promptly commence and complete the restoration, replacement or rebuilding of such improvements as nearly as possible to its value, condition and character immediately prior to the damage or destruction.

Section 9. Condemnation:

9.1. Substantial Condemnation: If all or substantially all of the Demised Premises are taken by the exercise of any power of eminent domain or are conveyed to or at the direction of any governmental entity under a threat of such taking (each of which is herein referred to as a "Condemnation"), this Lease shall then terminate on the date (hereinafter referred to as "the Vesting Date") on which the title to so much of the Demised Premises as is the subject of such Condemnation vests in the condemning authority.

9.2. Less than Substantial Condemnation: If less than substantially all of the Demised Premises is taken, as aforesaid, this Lease shall continue in full force and effect unless the Lessee (a) reasonably determines that its ability to use and occupy the Demised Premises, in substantially the same manner as contemplated in this Lease, has been and will continue to be substantially impaired after such Condemnation, and (b) notifies the Lessor thereof within thirty (30) days after the Vesting Date, in which event this Lease shall terminate on the date set forth in such notice [which date shall be at least thirty (30) days and not more than ninety (90) days after the date on which such notice is given]; but

9.3. Condemnation Proceeds: Any proceeds from an award of damages given in connection with a condemnation shall become the sole property of the Lessor and shall be paid directly to the Lessor except for that portion of the award (if any) given specifically as relocation expenses for the Lessee.

Section 10. Assignment and Subletting: The Lessee hereby acknowledges and agrees for itself and its successors and assigns in interest hereunder that, other than assignments or subleases to the Maryland National Capital Park and Planning Commission, it will not (a) assign this Lease or any of its rights under this Lease, as to all or any portion of the Demised Premises or otherwise, or (b) make or permit any voluntary or involuntary, total or partial sale, lease, sublease, assignment, conveyance, license, mortgage, pledge, encumbrance or other transfer of any or all of the Demised Premises or the occupancy or use of any or all of the Demised Premises (each of which is hereinafter referred to as a "Transfer") without first obtaining the express written consent thereto by the Lessor and the State of Maryland Board of Public Works (which consent shall not constitute a consent to any subsequent such Transfer, whether by the person hereinabove named as "the Lessee" or by any such transferee). Any person to whom any Transfer is attempted without such consent shall have no claim, right or remedy whatsoever hereunder against the Lessor, and the Lessor shall have no duty to recognize any person claiming under or through the same. No Transfer made with or without the Lessor's consent shall alter or impair the obligations of the Lessee hereunder before Lessor consents to such Transfer, except to the Maryland National Capital Park and Planning Commission.

Section 11. Default:

11.1. Definition: It shall be an event of default ("Event of Default") if the Lessee fails (a) to pay any Annual Rent, Additional Rent or other sum which it is obligated to pay by any provision of this Lease, when and as due and payable hereunder and without demand therefore, or (b) to perform any of its other obligations under the provisions of this Lease.

11.2. Notice to Lessee, Grace Period: Anything contained in the provisions of this Section to the contrary notwithstanding, on the occurrence of an Event of Default the Lessor shall not exercise any right or remedy on account thereof which it holds under any provision of this Lease or applicable law unless and until

11.2.1. the Lessor has given to the Lessee written notice to cure the defect causing the Event of Default, and

11.2.2. the Lessee has failed, (a) if such Event of Default consists of a failure to pay money within five (5) days after the Lessor gives such written notice to pay all of such money, or (b) if such Event of Default consists of something other than a failure to pay money, within thirty (30) days after the Lessor gives such written notice to cure such Event of Default (or, if such Event of Default is not reasonably curable within such period of thirty (30) days, to begin to cure such Event of Default within such thirty (30) day period and to diligently pursue such cure thereafter until it is fully cured).

11.2.3. Notwithstanding the foregoing, no such notice of default shall be required to be given, and (even if the Lessor gives such notice) the Lessee shall be entitled to no such grace period in any emergency situation in which, in the Lessor's reasonable judgment, it is necessary for the Lessor to act to cure such Event of Default without giving such notice.

11.3. Lessor's Rights on Event of Default:

11.3.1. On the Occurrence of any Event of Default, the Lessor may (subject to the operation and effect of the provisions of subsection 11.2.): (a) terminate this Lease by giving written notice of such termination to the Lessee, which termination shall be effective as of the date of such notice or any later date therefore specified by the Lessor therein and, upon such termination, repossess the Demised Premises in accordance with Section 1.2 of this Lease and the requirements of applicable law; and/or (b) cure such Event of Default in any other manner; and/or (c) pursue any combination of such remedies and/or any other right or remedy available to the Lessor on account of such Event of Default under this Lease and/or at law or in equity. Notwithstanding anything contained herein to the contrary, if the Event of Default arises from Lessee's failure to maintain the Demised Premises as required under Section 6.1 solely because of the fact that Lessee did not receive sufficient appropriated funds in its Montgomery County Budget to cover the maintenance expenses for the Demised Premises, the Lessee shall not be liable for monetary damages to Lessor arising out of a contract claim, except a contractual claim arising from Lessee's indemnification under Section 4.2 b, d and e, but the Lessee shall remain liable under any tort claim asserted by the Lessor or any other person or entity.

Nothing herein contained shall limit or prejudice the Lessor's right to damages, by reason of such termination.

11.3.2. Except as provided in Section 11.3.1, on the occurrence of an Event of Default, the Lessee shall, immediately on its receipt of a written demand therefore from the Lessor, pay to Lessor, as additional Rent, an amount sufficient to reimburse the Lessor for (a) all expenses (including, by way of example rather than of limitation, any and all management expenses, operating expenses and legal expenses for the remainder of the current Fiscal Year and the following Fiscal Year if the Budget has already been approved by the General Assembly, repossession costs and reasonable attorney's fees) incurred by the Lessor (i) in curing or seeking to cure any Event of Default and/or (ii) in exercising or seeking to exercise any of the Lessor's rights and remedies under the provisions of this Lease and/or at law or in equity on account of any Event of Default, and/or (iii) otherwise arising out of any Event of Default.

Section 12. Notices: Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be (a) given in writing, and (b) deemed to have been given (i) forty-eight (48) hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, if to the Lessor: Board of Public Works, c/o Department of General Services, Office of Real Estate, Room 601, 300 W. Preston Street, Baltimore, Maryland 21201 and if to Lessee: Montgomery County Maryland, Department of Facilities and Services, Real Estate Management, 110 N. Washington Street, Room 318, Rockville, Maryland 20850 or to such other address in the United States of America as such party may designate from time to time by notice to the other, or (ii) (if such party's receipt thereof is acknowledged in writing) upon its hand or other delivery to such party.

Section 13. General:

13.1. Effectiveness: This Lease shall become effective upon and only upon its execution and delivery by each party hereto, and upon receipt of approval by the State of Maryland Board of Public Works.

13.2. Complete Understanding: This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in the provisions of this Lease including exhibits attached hereto. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

13.3. Amendment: This Lease may be amended by and only by a written instrument executed and delivered with all formalities and signatures with which this Lease is signed and executed.

13.4. Applicable Law: This Lease shall be given effect and construed by application of the laws of the State of Maryland and the parties hereby expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any questions arising hereunder after all administrative remedies have been exhausted.

13.5. Waiver: The Lessor shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by the Lessor in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

13.6. Severability: No determination by any court, governmental body or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

13.7. Non Discrimination: The Lessee agrees: (a) not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; (c) to post and to cause subcontractors to post in conspicuous places, available to employees and applicants for employment, notices setting forth the substance of this clause; and not to discriminate against any person (s) or group of persons as enumerated in subsection (a), above, in the conduct and operation of its business in the Demised Premises.

13.8. Americans with Disabilities Act Compliance: Lessee represents and warrants that in its use and occupancy of the Demised Premises and the related and supporting facilities and grounds, it shall, in all respects, be solely responsible, financially and/or otherwise, for full and complete compliance with (a) the Maryland Building Performance Standards of the Annotated Code of Maryland, Article 83B, Section 6, Subtitle 4; (b) The Americans with Disabilities Act of 1990 (42 U.S.C., Sections 12101 et seq.); and (c) the Occupational Safety and Health Standards of the State of Maryland and the United States, including but not limited to the presence of friable asbestos or other hazardous materials or chemicals. Notwithstanding the foregoing, Lessee is not assuming liability or responsibility for the presence of hazardous substances on the property at the time the Lessee takes possession of the Demised Premises.

13.9. Termination: . This Lease may be terminated by the Lessor or Lessee in accordance with this clause, in whole, or from time to time in part, whenever the Lessor or Lessee shall determine that such termination is in the best interest of the respective party. The terminating party shall provide the other party with sixty (60) days prior written notice.

13.10. Revenue Lease Affidavit: The Lessee agrees to fully complete, execute and comply with the Revenue Lease Affidavit, "Addendum A", which is attached hereto and fully incorporated as a part of this Lease by reference thereto.

IN WITNESS WHEREOF, each party hereto has executed and sealed this Lease or caused it to be executed and sealed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS:

Lessor:
STATE OF MARYLAND
BOARD OF PUBLIC WORKS

BY: Parris N. Glendening (SEAL)
Parris N. Glendening, Governor

Sandra K. Reynold
Sandra K. Reynold, Secretary (as to the Board of Public Works of the State of Maryland)

BY: Louis L. Goldstien (SEAL)
Louis L. Goldstien, Comptroller

BY: _____ (SEAL)
Lucille Mauer, Treasurer

WITNESS:

Lessee:
MONTGOMERY COUNTY, Maryland, a body corporate and politic of the State of Maryland

Bruce Romer

BY: Bruce Romer (SEAL)
Bruce Romer
Chief Administrative Officer

Approved as to form and legal sufficiency this ____ day of _____ 1995

Execution of the above Lease was authorized authorized and approved by the Board of Public Works at a meeting held December 6, 1995 on as item 6-L.

William J. Dausch
Assistant Attorney General
5/12/88

Linda McGowan
Office of Real Estate
Department of General Services

APPROVED AS TO FORM AND LEGALITY.
OFFICE OF COUNTY ATTORNEY
BY Deanne R. Schwartz Jones
DATE August 29, 1995