

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT is entered into by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter called "City," and Cedars Youth Services, Inc. 620 N. 48th Street, Suite 100, a local non-profit human services agency, hereinafter called "Operator," as of the _____ day of _____, 2005.

RECITALS

1. City previously entered into the Center Park Garage Redevelopment Agreement providing for the joint redevelopment of the southwest corner of the ground floor of the Center Park Garage into a 3,200 square foot child care center and 900 square foot outdoor play area (Child Care Facility).

2. Operator now desires to continue to operate the Child Care Facility to serve up to 60 children.

3. The Child Care Facility will continue to be operated as a support for businesses currently located in the downtown area and as an incentive and business development tool for businesses considering location or expansion in the downtown area.

4. The operation of the Child Care Facility by Operator will constitute a valuable service to and for the City and will be in the best interests of the public health, safety, morals and general welfare of the public.

NOW, THEREFORE, in consideration of the covenants contained herein, City and Operator hereby agree to provide for the lease of the Child Care Facility as follows:

1. Premises. The leased premises shall be the 3,200 square foot child care center and the 900 square foot outdoor play area (hereinafter collectively referred to as the Child Care Facility) located in the southwest corner of the ground floor of the Center Park Garage located on Lot 2, Block 1, Centrum Block Addition, Lincoln, Lancaster County, Nebraska.

2. Preparation of Leased Premises. City shall provide improvements to enhance and provide pigeon protection for the area around the child care facility and playground as provided to be completed not later than January 31, 2005 and the City shall continue to use its best efforts to deliver the same as soon as reasonably possible. In addition the City shall provide improvements to facilities per specifications provided by the Operator and as mutually agreed to by the City and the Operator. The City's financial responsibility for these improvements shall not exceed \$25,000.

3. Term. The term of this Lease shall begin on October 1, 2003 (Commencement Date) and shall last thereafter for a period of ten (10) years. If operation of the Child Care Facility is discontinued prior to the end of such term, then either party shall have the right to terminate this Lease without further obligation by either party upon thirty (30) days written notice to the other party.

4. Rental. Starting on the Commencement Date, Operator shall pay to the City rent on an annual basis in the amount of \$1.00 per year.

5. Operation. In consideration of the rights granted to Operator by this Lease, Operator shall perform the operational obligations as sets forth in this Lease.

6. Use. The Child Care Facility may be used and occupied only for a child care facility and for no other purpose or purposes without the written consent of City. Operator agrees to operate the Child Care Facility, adequately staffed, during the term of this Lease and any renewal thereof, unless prevented from doing so by economic conditions or causes beyond the Operator's control, and to conduct its business at all times in good faith, in a high grade and reputable manner. Operator shall promptly comply with all laws, ordinances and regulations affecting the Child Care Facility and promulgated by duly constituted governmental authority and including insurance company requirements affecting the cleanliness, safety, use, and occupancy of said facility. Operator shall only use or permit to be used those areas specifically designated for their use by the City for the loading and unloading of children and supplies for the Child Care Facility. The City shall maintain or replace appropriate signs, marks, lines, or other traffic control devices as it deems necessary to assure that said loading and unloading areas are reasonably available for use by the Child Care Facility. In addition, the City will provide one parking stall within the Center Park Garage for use by Operator and will establish a procedure to allow parents free use of the Center Park Garage for the loading and unloading of children attending the Child Care Facility.

Operator shall not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status, or receipt of public assistance in the use, occupancy, or enjoyment of the Child Care Facility, nor will Operator itself or any one claiming under or through Operator establish or permit such practices of discrimination or segregation with reference to the use of the Child Care Facility.

7. Priority. Preference and priority in the use of the Child Care Facility shall be given to employees of businesses currently located in the downtown area.

8. Hours of Child Care Facility. Operator may establish reasonable hours regarding the use of the Child Care Facility.

9. Utilities. Operator shall pay for all heating, air conditioning, electricity, gas, energy management system, telephone, telecommunication, television, water, and sewer charges used in the Child Care Facility. If City elects to supply electricity, water or sewer to the Child Care Facility, Operator shall use only such services supplied by City in the Child Care Facility. Operator shall pay for such service so supplied by City used in the Child Care Facility at rates no greater than if supplied by the public utility which would otherwise serve the Child Care Facility. The charges for any such services furnished by City shall be payable monthly based on City's billing therefor, which billing the City shall have the right to modify monthly based on changes in rates or Operator's usage. If Operator desires verification of City's billing, it shall have the right to require City to test meter electricity and water services provided to Operator's Child Care Facility at Operator's sole cost and expense.

City shall not be liable in damages or otherwise if the furnishing by City or by any other supplier or any utility service or other service to the Child Care Facility shall be interrupted or impaired by fire, accident, riot, strike, act of God, the making of necessary repairs or improvements or by any causes beyond City's control.

10. Business Improvement District Assessments. City shall pay (or reimburse Operator) for all management and/or maintenance assessments levied against the Child Care Facility as part of any business improvement district created under the authority of the Business Improvement District Act (Neb. Rev. Stat. § 19-4015 et seq.)

11. Improvements and Repairs. The City shall not be obliged to make repairs, replacements or improvements of any kind under the amount of \$500 per item upon the Child Care Facility, or to any equipment, facilities or fixtures therein contained for the exclusive use of Operator. Said equipment, facilities, or fixtures shall at all times be kept in good order, condition and repair by Operator, and in a clean, sanitary and safe condition and in accordance with all applicable laws, ordinances and regulations of any governmental authority having jurisdiction. Operator shall permit no waste, damage or injury to the Child Care Facility.

Operator, at its own expense, shall provide and maintain necessary trade fixtures, equipment, and floor covering required by it and all interior painting and decorating.

Operator shall not erect or install any exterior or interior window or door signs, advertising media or window or door lettering or placards without City's prior written consent. Operator shall not install any exterior lighting or plumbing fixtures, shades, or awnings, or make an exterior decoration or painting or build any fences, or make any changes to the building, without City's prior written consent.

Operator covenants not to suffer any mechanic's lien to be filed against the Child Care Facility or the Center Park Garage by reason of any work, labor, services or materials performed at or furnished to the Child Care Facility, to the Operator, or to anyone holding the Child Care Facility through or under the Operator. If any such mechanic's lien shall at any time be filed, the Operator shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but the Operator shall have the right to contest any and all such liens. If the Operator shall fail to cause such lien to be discharged within thirty (30) days after being

notified of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy of the City, the City may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by the City, and the amount so paid by the City and/or all costs and expenses, including reasonable attorney's fees, incurred by the City, in procuring the discharge of such lien, shall be deemed to be additional amounts due City for the Child Care Facility and shall be due and payable by the Operator to the City on the first day of the next following month. Nothing in this lease contained shall be construed as a consent on the part of the City to subject the City's estate in the Child Care Facility to any lien or liability under the Lien Laws of the State in which the Child Care Facility are located.

12. Furnishings. Operator may provide additional decorations or furnishings to the Child Care Facility from time to time, or may alter the floor, ceiling, or wall coverings or decorations, all at its own cost, as it may deem necessary, in such manner as to not interfere with the intended uses of any part of the Child Care Facility. However, no permanent decoration or wall or floor covering, and no permanent alteration of the Child Care Facility of any nature, shall be made without prior written approval by the City. Upon the termination of this Lease, Operator may remove from the Child Care Facility any trade fixture, equipment, decoration, or furnishing provided or installed by it, but shall restore and leave the Child Care Facility and any furnishing and equipment provided by City in the same and as good condition as at the beginning of this Lease, ordinary wear, tear, and loss excepted.

13. Insurance. Operator agrees to procure and maintain a policy of insurance, at its own cost and expense, insuring City and Operator from all claims,

demands or actions for injury or death of more than one person in any one accident to the limit of \$2,000,000, and for damage to property in an amount of not less than \$300,000, made by or on behalf of any person or persons, firm or corporation arising from, related to, or connected with, the conduct and operation of Operator's business in the Child Care Facility. Said insurance shall not be subject to cancellation except after at least thirty (30) days' prior written notice to City, shall provide that City's coverage will not be affected by acts or omissions of Operator and the policy or policies, or duly executed certificate or certificates for the same, together with satisfactory evidence of the payment of premium thereon, shall be deposited with City at the commencement of the term and renewals thereof not less than thirty (30) days prior to the expiration of the term of such coverage.

14. Damage by Fire or Other Casualty. In case the building in which the Child Care Facility is situated shall be partially or totally destroyed by fire or other casualty insurable under standard fire and extended coverage insurance so as to become partially or totally untenable, the same shall be repaired as speedily as possible at the expense of City, unless City shall elect not to rebuild, as hereinafter provided.

In case the Center Park Garage building in which the Child Care Facility is situated, including common areas, shall be destroyed or so damaged by fire or other casualty as to render more than fifty percent (50%) thereof untenable (hereinafter "substantial destruction or damage") or in case of any destruction not covered by City's insurance, or if the unexpired minimum term of this Lease is two years or less on the date of any substantial destruction or damage, then City may, if it so elects, rebuild or restore said buildings to good condition and fit for occupancy within a reasonable time

after such destruction or damage, or may, elect by notice, in writing within sixty (60) days after such destruction or damage not to rebuild or restore said buildings and to terminate this Lease. The above shall apply whether or not any part of the Child Care Facility is damaged or destroyed. If City elects to rebuild or restore said buildings, it shall, within said sixty (60) day period, give Operator thereof notice of its intention so to do and shall proceed with the rebuilding and restoration as promptly as may be reasonable. If repairs of untenable space are not initiated within 120 days of the event or incident rendering such space untenable, then Operator shall have the right to terminate this Lease.

In no event in the case of any such destruction shall City be required to repair or replace Operator's leasehold improvements, trade fixtures, furniture, furnishings or floor coverings and equipment. Operator covenants to make such repairs and replacements.

15. Security. Operator shall provide security for the Child Care Facility at all times and shall take all responsible precautions to protect against theft and vandalism.

16. Signs. No advertising sign or graphic advertising display shall be permitted in the Child Care Facility or in the Center Park Garage, and no such sign or graphic display may be installed or displayed without written approval by the City.

17. Indemnification of City. Operator agrees to indemnify and save City harmless against any and all claims, demands, damages, costs and expenses, for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by the City or by any person whatsoever may at any time be using, occupying, or visiting the Child Care Facility, or be on or about the Child Care Facility when such loss, injury, death, or damage shall be caused by or may result from any

negligent act or omission or intentional misconduct of the Operator, or from any breach or default on the part of Operator in the performance of any covenant or agreement on the part of Operator to be performed pursuant to the terms of this lease, or from any negligent act or omission or intentional misconduct of Operator's agents, contractors, servants, employees, sublessees, concessionaires or licensees, in or about the Child Care Facility, or the Center Park Garage. In case of any action or proceeding brought against City by reason of such claim, upon notice from City, Operator covenants to defend such action or proceeding. City shall not be liable and Operator waives all claims for damage to person or property sustained by Operator or Operator's employees, agents, servants, invitees and customers resulting by reason of the Child Care Facility or any equipment or appurtenances thereunto appertaining becoming out of repair. All property belonging to Operator or any occupant of the Child Care Facility shall be there at the risk of Operator or such other person only, and City shall not be liable for damage thereto or theft or misappropriation thereof.

18. Indemnification of Operator. City agrees to indemnify and save Operator harmless against any and all claims, demands, damages, costs, and expenses for any loss, injury, death, or damages to persons or property which at any time may be suffered by the Operator or by any person whosoever may at any time be using or occupying or visiting the Child Care Facility or be on or about the Child Care Facility when such loss, injury, death, or damage shall be caused by or in any way result from any negligent act or omission or errors of the City's architect or contractor in the design and construction of the Child Care Facility.

19. Controlling Effect. It is recognized by the parties hereto that they have entered into another written agreement regarding the redevelopment and operation of

the Center Park Garage and nothing in this Lease is intended to override, eliminate, or affect the other agreement or condition or covenants between the parties except as the same may be inconsistent with the terms of this Lease. This Lease shall be controlling as to all items stated herein.

20. No Assignment. Operator may not assign this Lease or sublet or sublease any part of the leased premise, or assign any of the obligations or rights under this lease, without prior written approval of City.

21. Default. This Lease may be terminated by either party due to substantial breach of the other party if after thirty (30) days written notice to the other party of such breach and demand for cure, such breach has not been substantially cured.

22. Approval Not Unreasonably Withheld and Timely Approval. Whenever approval or consent of any party is required hereunder, such consent shall not be unreasonably withheld or delayed.

Except as may be specifically otherwise stated, any approval or disapproval required in this Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval.

If any party to this Agreement submits any item to another party to this Agreement for approval pursuant to this Agreement, and the approving party fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

23. Low Income Subsidy. It is understood and agreed by the City that Operator is entering into this Agreement on the premises that Operator's lease and operation of the Child Care Facility will be held by the Lancaster County Assessor or

Lancaster County Board of Equalization to be tax exempt. It is further understood and agreed by the City that in the event the lease and operation of the Child Care Facility is not held to be tax exempt, that the Operator's operational budget for the Child Care Facility does not include funds to pay for any such tax assessment. Therefore, City agrees that if the Operator's lease and operation of the Child Care Facility is not held to be tax exempt, the City/Operator shall use the City's community development application process for available Community Development Block Grant funds to subsidize eligible low-income users of the Child Care Facility in an amount equal to Operator's tax liability associated with the lease and operation of the Child Care Facility.

24. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and to heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, the parties have subscribed their names this _____ day of _____, 2005.

ATTEST: **CITY OF LINCOLN, NEBRASKA**
A Municipal Corporation

City Clerk _____ Coleen J. Seng, Mayor _____

ATTEST: **CEDARS YOUTH SERVICES, INC.,**
Operator

Secretary _____ By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this day of
 , 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on
behalf of the City of Lincoln, Nebraska.

Notary Public _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of
 , 2005, by _____ of Cedars
Youth Services, Inc.

Notary Public _____