

PROPOSED LEASE AGREEMENT

This Agreement is made and entered into this 1st day of May, 2005 by and between the CITY OF COSTA MESA, a municipal corporation ("CITY") and CHILDS-PACE INC., a non-profit corporation ("TENANT").

1. PREMISES.

CITY hereby leases to TENANT and TENANT hereby leases from CITY, on the terms and conditions hereinafter set forth, space located within the real property located at 1860 Anaheim Avenue, Costa Mesa, California, 92627 (the "PREMISES"). A description and outline of the space encompassing the PREMISES is attached hereto as Exhibit 1.

2. TERM.

The term of this Agreement shall be for one (1) year commencing on May 1, 2005, and ending on April 30, 2006, unless terminated at an earlier time as hereinafter provided. At the end of each term, the Agreement shall be automatically renewed for an additional one (1) year term unless otherwise terminated by either TENANT or CITY.

3. RENT.

TENANT shall pay to CITY as rent for the PREMISES Four Hundred and Fifty-Three Dollars (\$453.00) per month, in advance, till June 30, 2005 and Five Hundred Dollars (\$500.00) per month, in advance, on July 1, 2005 and on the first day of each month during the term of this Agreement. Rent shall be payable without notice or demand and without any deduction, off-set, or abatement in lawful money of the United States.

The amount of rent for the PREMISES shall be increased each additional year by the Consumer Price Index for all Urban Consumers (CPIU) for Los Angeles, Anaheim, and Riverside for the prior fiscal year. The maximum allowable increase based on the CPIU is five percent (5%) annually.

4. USE.

TENANT shall use the PREMISES only for extended day care for low-to-moderate-income families in Costa Mesa. TENANT shall not use or permit the use of the PREMISES for any other purpose without CITY'S prior written consent. TENANT may conduct reasonable support activities during the normal operating hours of the PREMISES with a request at least 72 hours prior to the activity. TENANT shall comply with all laws concerning the PREMISES or TENANT'S use of the PREMISES including, without limitation, the obligation, at TENANT'S cost, to alter, maintain or restore the PREMISES in compliance and conformity with all laws relating to the condition, use, or occupancy of the PREMISES by TENANT during the term of this Agreement. TENANT shall not use or permit the use of the PREMISES in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant of the building containing the PREMISES, which shall unreasonably disturb any other tenant.

TENANT hereby accepts the PREMISES in their condition existing as of the date that TENANT possesses the PREMISES subject to all applicable zoning, municipal, county and state laws, ordinances, regulations governing or regulating the use of the PREMISES and accepts this Agreement subject thereto and to all matters disclosed thereby. TENANT hereby acknowledges that CITY has not made any representation or warranty to TENANT as to the suitability of the PREMISES for the conduct of TENANT'S business.

5. TAXES.

TENANT shall pay prior to the delinquency all taxes assessed against and levied upon the trade fixtures, furnishings, equipment and other personal property of TENANT contained in the PREMISES. If any of TENANT'S said personal property shall be assessed with CITY'S property, TENANT shall pay to CITY the taxes attributable to TENANT within ten (10) days after receipt of a written statement from

CITY setting forth the applicable taxes. Failure to pay the subject taxes shall constitute a default of the Agreement as provided in Paragraph 12 herein.

6. UTILITIES.

TENANT shall make all arrangements and pay for all telephone services supplied to the PREMISES. CITY shall provide heat, electricity, water and restrooms located within the building complex at no additional cost to TENANT. TENANT shall at all times maintain the thermostats at Federal Law Energy Saving Level.

7. MAINTENANCE AND REPAIRS.

(a) CITY'S OBLIGATIONS.

Except as provided in Paragraph 10, and except for damages caused by any negligent or intentional act or, omission of TENANT, TENANT'S agents, employees or invitees, CITY shall keep in good condition and repair the foundations and exterior walls of the PREMISES. CITY shall maintain the landscaping and other improvements, of which the PREMISES are a part. CITY shall also provide custodial services for restroom facilities.

(b) TENANT'S OBLIGATIONS.

Subject to the provisions of subparagraph (a), above, and Paragraph 10, TENANT, at TENANT'S sole cost and expense, shall keep in good order, condition and repair the PREMISES and every part thereof. If TENANT fails to perform TENANT'S obligations as stated herein, CITY may, at its option, enter the PREMISES ten (10) days after delivering written notice to TENANT, put the same in good order, condition and repair, and the costs thereof together with interest thereon at the rate of ten percent (10%) per annum shall become due and payable as additional rent to CITY together with TENANT'S next rental installment.

8. ALTERATIONS AND ADDITIONS.

TENANT shall not, without CITY'S prior written consent, make any alterations, improvements or additions in or about the PREMISES. TENANT, at CITY'S option, may be required by CITY to remove any such alterations, improvements, or additions at the expiration of the term of this Agreement and to restore the PREMISES to their prior condition by giving TENANT thirty (30) days written notice prior to the expiration of the term.

TENANT shall notify CITY in writing at least thirty (30) days prior to the commencement of any work relating to the alterations, additions, or improvements affecting the PREMISES. Work shall not commence until written approval has been obtained from CITY. Such approval and any special conditions pertaining to the work required of TENANT by CITY shall be signed by the parties and made a part of this Agreement. Permits and licenses necessary for the work shall also be obtained prior to commencement of the work.

TENANT shall pay, when due, all claims for labor and materials furnished to or for TENANT at or for use in the PREMISES. TENANT shall not permit any mechanic's liens or materialmen's liens to be levied against the PREMISES for any labor or material furnished to TENANT or claimed to have been furnished to TENANT or TENANT'S agents or contractors in connection with work of any character performed or claimed to have been performed on the PREMISES by or at the direction of TENANT.

Unless CITY requires their removal as set forth above, all alterations, improvements or additions which are made on the PREMISES by TENANT shall become the property of CITY and remain upon and be surrendered with the PREMISES at the expiration of the term of this Agreement. Notwithstanding the provisions of this paragraph, TENANT'S trade fixtures, furniture, equipment and other machineries other than that which is affixed to the PREMISES so that it cannot be removed without material or structural

damage to the PREMISES shall remain the property of TENANT and be removed by TENANT at the expiration of the term of this Agreement.

9. INSURANCE.

TENANT shall provide and maintain the following forms and amounts of insurance during the term of this Agreement:

a. Liability: Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

b. Workers' Compensation: A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the State of California now in force and any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof.

c. Property Coverage: Personal property insurance for the actual cash value against the hazards of fire, theft burglary vandalism and malicious mischief.

The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

a. Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."

b. Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

c. Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

TENANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to the commencement of this Agreement. Failure of TENANT to procure or maintain required insurance shall constitute a material breach of contract upon which CITY may immediately terminate this Agreement. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which TENANT may be held responsible for payments of damages to persons or property.

10. INDEMNITY.

TENANT shall defend, indemnify and hold CITY harmless from and against any and all claims arising from TENANT'S, or TENANT'S employees or agents, use or occupancy of the PREMISES or from the conduct of TENANT'S business or from any activity, work, or things which may be permitted or suffered by TENANT in or about the PREMISES including all damages, costs, attorney's fees, expenses and liabilities incurred in the defense of any claim or action or proceeding arising therefrom.

11. ASSIGNMENT.

TENANT shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of TENANT'S interest in this Agreement or in the PREMISES without CITY'S prior written consent. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement.

Regardless of CITY'S consent, no subletting or assignment shall release TENANT of TENANT'S obligation to pay the rent and to perform all other obligations to be performed by TENANT hereunder for the term of this Agreement.

12. DEFAULT.

(a) The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by TENANT:

(1) Failure to pay rent when due, if the failure continues for five (5) days after written notice has been given to *TENANT*.

i. TENANT may request in writing for a delay in payment between the months of July and September of each year. Upon such request, City shall grant the delay on the condition that Tenant pay all outstanding rent payments by October 1st of the same year in which such delay is requested.

(2) Failure to pay taxes on TENANTS property, when due, if the failure continues for ten (10) days after written notice has been given to TENANT.

(3) Abandonment and vacation of the PREMISES (failure to occupy the PREMISES for fourteen (14) consecutive days shall be deemed an abandonment and vacation).

(4) Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to TENANT by CITY.

Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that TENANT perform the provisions of this Agreement or pay the rent that is in arrears as the case may be, within the applicable period of time. No such notice shall be deemed forfeiture or a termination of this Agreement unless CITY so elects in the notice.

(b) If TENANT commits a default under this Agreement, CITY may, at its option, terminate TENANT'S right to possession of the PREMISES upon thirty (30) days written notice to TENANT. In the event of such termination, CITY has the right to recover from TENANT the pro-rated rent accumulated at the time of the termination of this Agreement and any other amount, including, but not limited to court costs, and attorney's fees necessary to compensate CITY for the eviction of TENANT and all detriment and damages proximately caused by TENANT'S default. These remedies are not exclusive, but are cumulative and in addition to any remedies now or hereafter allowed by law.

13. SIGNS.

TENANT shall not have the right to place, construct or maintain any sign, advertisement, awning, banner, or other exterior decorations on the building or other improvements that are a part of the PREMISES without CITY'S prior written consent.

14. SURRENDER.

(a) On the last day of a term that is not being renewed, or on any earlier termination, TENANT shall surrender the PREMISES to CITY in good condition, broom clean, ordinary wear and tear accepted. TENANT shall repair, at its sole cost, any damage to the PREMISES occasioned by its use thereof, or by the removal of TENANT'S trade fixtures, furnishing and equipment, which repair shall include the patching and filling of holes and repair of structural damage. TENANT shall remove, at its sole cost, all of its personal property and fixtures on the PREMISES prior to the expiration of the term of this Agreement and, if required by CITY pursuant to Paragraph 9, above, any alterations, improvements or additions made by TENANT to the PREMISES. If TENANT fails to surrender the PREMISES to CITY on the expiration of the Agreement as required by this paragraph, TENANT shall defend, indemnify and hold CITY harmless from all damages resulting from TENANT'S failure to vacate the PREMISES, including, without limitation, claims made by any succeeding tenant resulting from TENANT'S failure to surrender the PREMISES.

(b) In the event CITY determines that TENANT'S use of the PREMISES constitutes a violation of law, a nuisance or waste, TENANT shall surrender the PREMISES on three (3) days written notice, and TENANT shall defend, indemnify and hold CITY harmless from all damages resulting from CITY'S efforts to abate such activities.

15. NOTICES.

Any demand, notice or declaration provided for under this Agreement shall be in writing and served either personally or sent by certified United States mail, postage prepaid, addressed to the parties as set forth below:

CITY
Jana Ransom, Recreation Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628

TENANT
Susan Kopicki, Chaiman of the Board
Childs-Pace, Inc.
511 El Modena Avenue
Newport Beach, CA 92663

Such notice shall be deemed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this paragraph.

16. INSPECTIONS.

CITY shall have the right to enter the PREMISES at reasonable times for the purpose of inspecting same, showing the same to prospective purchasers or lenders, and making such alterations, repairs, improvements or additions to the PREMISES or to the building of which the PREMISES are a part as CITY may deem necessary or desirable.

17. WAIVERS.

No waiver by CITY of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by TENANT of the same or any other provision. CITY'S consent to or approval of any act shall not be deemed to render unnecessary the obtaining of CITY'S consent to or approval of any subsequent act by TENANT. The acceptance of rent hereunder by CITY shall not be a waiver of any preceding breach by TENANT of any provision hereof, other than the failure of TENANT to pay the particular rent so accepted, regardless of CITY'S knowledge of such preceding breach at the time of its acceptance of such rent.

18. PRIOR AGREEMENTS.

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document *appurtenant hereto*.

20. SEVERABILITY.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

21. TERMINATION.

Except as provided in Paragraph 14(b), either party may terminate this Agreement by giving the other written notice no fewer than thirty (30) days in advance of such termination and in accordance with the provisions for giving notice as set forth in Paragraph 15.

22. AMENDMENT.

Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

TENANT

City Manager of the City of Costa Mesa

Name and Title

Social Security or Taxpayer ID Number