

THE CITY OF PROVIDENCE  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

# RESOLUTION OF THE CITY COUNCIL

No. 551

**Approved** November 8, 2004

RESOLVED, That His Honor the Mayor is requested to Execute a lease for the land owned by the City of Providence located at 99 Berkshire Street, Assessor's Plat 70, Lot 565 to the Head Start Board of Directors, Inc. for a period of five years at an annual rental of One Dollar (\$1.00), and with other such terms and conditions as may be imposed by the Committee on City Property, the City Council, His Honor the Mayor, and the City Solicitor.

IN CITY COUNCIL  
NOV 4 2004  
READ AND PASSED

*Josephine DiFuzzo*  
ACTING PRES.

*Charles R. Clement*  
CLERK

**APPROVED**

11/8/04

*[Signature]*  
**MAYOR**

IN CITY COUNCIL

AUG 5 2004

FIRST READING

REFERRED TO COMMITTEE ON  
CITY PROPERTY

CLERK

THE COMMITTEE ON  
CITY PROPERTY

Approves Passage of  
The Within Resolution

*Claire A. Besture*  
Oct. 20 2004 Clerk

*Councilwoman Bornaio (By Request)*

## LEASE

THIS INDENTURE OF LEASE made and entered into this \_\_\_\_\_ day of January, 2004, by and between the CITY OF PROVIDENCE, a municipal corporation, created by the General Assembly the State of Rhode Island, (hereinafter referred to as the "LESSOR") and HEAD START BOARD OF DIRECTORS, INC., a corporation organized and existing under the laws of the State of Rhode Island having its principal place of business at 20 Almy Street, Providence, Rhode Island (hereinafter referred to as the "LESSEE").

This Lease is upon the following covenants, terms and conditions:

### 1. DESCRIPTION:

1.1. The LESSOR in consideration of the rents and charges hereinafter reserved, does hereby grant, demise and lease unto the LESSEE, subject to the conditions, reservations and covenants hereinafter specified, that certain tract and parcel of land situated at 99 Berkshire Street, in the City of Providence (hereinafter described as the "Demised Premises"), Assessor's Map 70, Lot 565.

1.2. The Demised Premises are demised and let subject to the rights of any parties hereof and the state of the title thereof as of the commencement of this lease, and to any state of facts which an accurate survey or physical inspection thereof might show, and to all zoning regulations, restrictions, easements, rules and ordinances, building restrictions, easements, rules and ordinances, now in effect or hereafter adopted by any governmental authority having jurisdiction.

1.3. LESSEE has examined the title of the Demised Premises and has found the same to be satisfactory to it.

2. TERM:

2.1. The original term of this lease shall be for a five (5) year period commencing on September 1, 2003 and expiring on August 31, 2008.

2.2. With the agreement of the Mayor, this lease may be renewed for one additional five (5) year period, commencing September 1, 2008.

3. RENT:

3.1. LESSEE agrees to pay to the LESSOR an annual sum of ONE DOLLAR (\$1.00) per year.

3.2. LESSEE agrees to provide a lead-safe certificate prior to occupancy, and provide a lead-free certificate annually as inspection date comes due for the term of the lease.

4. USE AND OCCUPANCY:

4.1. Use - The premises are let for use by the LESSEE to operate a day care and pre-school facility.

4.2. Occupancy - The LESSEE accepts said premises in their present condition.

4.3. Nothing herein shall imply any duty upon the part of the LESSOR to do any work and performance thereof by LESSOR shall not constitute a waiver of LESSEE'S default in failing to perform same.

4.4. The Lessee shall not mutilate, damage, misuse or suffer waste in the premises, but shall keep the same, and, upon the termination hereof, deliver them up in a good condition as they are now in, or may be put in, by the LESSOR; ordinary wear and tear expected.

4.5. The LESSEE shall keep the leased premises in a neat and orderly condition at all times according to the requirements of the Department of Public Property of the

City of Providence, and no refuse or discarded materials shall be allowed to accumulate thereon.

4.6. The premises shall be open at all reasonable times to the inspection of the LESSOR, its agents or servants.

## 5. UTILITIES:

5.1. The LESSEE agrees it will pay for all utility costs used or consumed upon the premises as and when the charges for the same become due and payable.

## 6. TERMINATION AND CANCELLATION:

6.1 Termination - Upon the termination under the terms hereof, or of any extensions hereto, the LESSEE covenants to surrender and yield up peacefully and quietly to the LESSOR possession of the premises in as good condition as they were at the time of delivery of possession as herein provided, reasonable wear and tear excepted. Any internal alterations and/or additions need not be removed.

6.2. On the termination of this Lease for any cause, the LESSOR may re-enter and take possession of the whole or any part of the premises and expel all persons therefrom and remove their effects without being taken or deemed guilty of any manner of trespass, without prejudice to its other rights or remedies against the LESSEE, and demand for rent and notice to quit or of intention to re-enter is hereby expressly waived on the part of the LESSEE.

6.3. In case the LESSEE shall fail to perform any stipulation or condition herein, or shall be declared bankrupt or insolvent according to law or shall make an assignment for the benefit of creditors, then and in any of said cases, this LEASE shall be terminated and the premises shall automatically revert to the LESSOR.

6.4. Upon termination or expiration of this Lease for whatever cause, or the vacating of the premises by LESSEE, the LESSEE shall have the privilege to remove and

upon the request of the LESSOR shall remove (at the LESSEE'S own expense) its movable business fixtures, trade fixtures, furniture, machinery, equipment, signs, insignia and other indicia of the LESSEE'S tenancy or use.

6.5. Any property not immediately removed by the LESSEE upon the expiration or other termination of this Lease shall, upon such termination or expiration become the absolute property of the LESSOR, and the LESSOR may sell or dispose of the same as it may see fit.

6.6. Cancellation - Upon a finding by two-thirds of the City Council that the Demised Premises are needed for public use, the City Council may cancel this Lease, provided that LESSEE is given at least one (1) academic year's notice prior to the date of cancellation. Said cancellation operates as a termination of this Lease.

## 7. BREACH OR DEFAULT:

7.1. In the event of any failure on the part of the LESSEE to pay said rent and charges at the time and in the manner aforesaid, or in case of failure on its part to perform any or all of the covenants and agreements herein contained on its part to be kept and performed, and if such failure shall continue for twenty (20) days after written notice thereof, the LESSOR, by any agent duly authorized, shall be at liberty to declare this Lease at an end, and may thereupon enter and take immediate and full possession of said premises and repossess the same as of its former estate, without prejudice to its right to recover full rent and charges for the time for which the LESSEE has been in possession, and any damages, including but not limited to costs and attorneys' fees, which the LESSOR may have suffered by reason of any breach of the terms or conditions of this Lease on the part of the LESSEE

7.2 No such expiration or termination of this Lease shall relieve LESSEE of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination.

## 8. INDEMNIFICATION AND INSURANCE:

8.1. LESSEE shall make no claim against LESSOR for any loss, damage or injury to LESSEE or LESSEE'S property arising out of any fire, theft or casualty in the Demised Premises except in cases of the omission, fault, negligence or other misconduct of the LESSOR'S servants, agents or employees subsequent to the execution of this Lease.

8.2 The LESSEE shall indemnify, protect and accept all liability of the LESSOR, if any, from and against all demands, claims, actions, cost, expense or losses resulting from any and all personal injuries or property damage sustained by any person or persons or about the Demised Premises which occurs during the term of this Lease, and indemnifying the City of Providence from any and all claims of individuals claiming right to said property under their rights of redemption or any other legal claim to title to said real estate.

8.3. LESSEE shall apply for and cause to be issued a public liability insurance policy in the name of the LESSEE. Such insurance policy shall be issued by a reputable insurance company licensed to do business in the State of Rhode Island, and shall be in the sum of not less than \$500,000.00 in case of damage or injury to any one person, not less than \$500,000.00 for any one accident and \$100,000.00 with respect to damage to property, such policy or policies insuring both the LESSEE and LESSOR from liability imposed by law upon the LESSOR or LESSEE, or both, for any damages suffered by any person or persons for injuries to their person or persons or property in and about the premises.

8.4. Certificates evidencing the existence of the insurance coverage shall be delivered to the LESSOR upon request prior to the commencement of the term of the Lease and thereafter at least thirty (30) days prior to the expiration of any existing policy. Such policies shall provide that the LESSOR shall receive thirty (30) days notice of any

material change or cancellation thereof. Such policies shall also name the LESSOR as an additional party insured on the Certificate of Insurance.

8.5. In the event of any damage or destruction of the premises resulting from a cause of casualty covered by insurance as herein before provided, the LESSEE shall promptly notify the LESSOR and the insurer and within sixty (60) days file proof of the loss with the insurer and proceed with the collection of the claim without delay.

#### 9. REPAIRS, ALTERATIONS OR IMPROVEMENTS:

9.1. The LESSEE accepts said premises in their present condition, and it is further understood and agreed that it shall be the sole duty of the LESSEE, at the LESSEE'S own sole cost and expense for any and all repairs, renovations, modifications, alterations, improvements or additions made in the premises, which alterations shall, upon LESSEE'S default or termination or expiration of said Lease, become the property of the LESSOR.

9.2. **LESSEE shall notify and obtain written consent from the LESSOR before it makes any improvements or alterations in or to the premises. Such consent will not be unreasonably withheld.**

9.3. LESSEE shall promptly pay all amounts owing to its contractors and materialmen, so as to avoid the possibility of a lien attaching to the demised premises, and should any such lien be made or filed, the LESSEE shall bond against or discharge the same within thirty (30) days after written notice by the LESSOR.

In the event that LESSEE does not bond against or discharge any lien filed against the Demised Premises by contractors or materialmen supplying labor or materials to the Demised Premises on behalf of LESSEE, LESSEE shall reimburse the LESSOR for attorneys' fees incurred in defense of proceedings to enforce or foreclose such lien(s).



9.4. LESSEE shall, at its sole expense, to keep the interior of the premises clean, neat and in good order, repair and condition and to keep all refuse, rubbish and debris in covered containers.

9.5. LESSEE shall not injure, overload, deface or otherwise harm the Demised Premises or commit any nuisance thereon.

9.6. LESSEE hereby waives any rights to make repairs at the expense of LESSOR which it may have under any present or future laws, ordinances, orders, rules and regulations of all federal, state and municipal governments.

#### 10. SUBLETTING AND ASSIGNMENT:

10.1. Except to a federally or state-funded pre-school child care program, LESSEE shall not assign nor in any manner transfer this Lease or any estate or interest therein, nor permit any transfer thereof by operation of law, nor permit any use or occupancy of the same other than by LESSEE, nor sublet the demised premises or any part thereof, nor grant any license, concession or other right of occupancy of any portion of the Demised Premises. However, the LESSOR, in its sole discretion, may agree to an assignment or sublease by the LESSEE. Such agreement must be in writing. No assignment, sublease or transfer of the whole or any part of the demised premises nor the permitting of other use or occupancy of the same shall in any way affect or reduce LESSEE'S obligations under this LEASE.

#### 11. INTEREST OF PUBLIC OFFICIALS:

No member of the City Council of the City of Providence and no other public official or employee of Providence who exercises any functions or responsibilities in the review or approval of the carrying out of this Lease shall have any financial interest, direct or indirect, in the Lease. Nor shall any of the above mentioned be employed by the LESSEE.

12. TAXES:

LESSEE represents that all real estate and personal property taxes assessed by the City of Providence against LESSEE are current as of the date of the execution of this Lease and that as a condition to this Lease LESSEE must remain current in its payment of all taxes assessed against said real and personal property. A failure to be current or remain current in the payment of taxes owed to the City of Providence shall constitute a breach of this Lease.

13. NOTICES:

13.1. All notices to the LESSEE shall be sent by registered or certified mail addressed to the LESSEE at its business offices at 20 Almy Street, Providence, Rhode Island or at such other address as the LESSEE, shall designate in writing to LESSOR.

13.2. All notices to the LESSOR shall be sent by registered or certified mail addressed to the LESSOR at the Office of the Controller, Providence City Hall, 25 Dorrance Street, Providence, Rhode Island 02903, with a copy to the Providence Law Department, 275 Westminster Street, Providence, Rhode Island 02903.

13.3. Notwithstanding any provisions in this Lease to the contrary concerning modifications, a change in address may be effected by a registered or certified letter sent by either party to the other.

14. MISCELLANEOUS:

14.1. Holding Over - If LESSEE shall hold possession of the Demised Premises beyond the term specified herein, LESSEE shall pay to LESSOR, for each month or portion thereof as LESSEE shall retain, possession, 150% of the rent and other charges specified herein, and shall be liable to the LESSOR for any and all lost rentals and other damages sustained by LESSOR by virtue of such continued occupancy. In the absence of

any express, written agreement between LESSOR and LESSEE, no act or failure to act by LESSOR shall be deemed and acceptance of LESSEE'S occupancy for any fixed term (beyond the term fixed herein) in excess of one month. Nothing herein shall preclude LESSOR from the exercise of any right of re-entry or other remedy under this Lease or under law.

14.2. Relationship - It is understood and agreed by the parties hereto that this Lease does not create a fiduciary relationship between them, that LESSEE shall be an independent contractor, and that nothing in this agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever, and neither shall have power to bind or obligate the other except as set forth herein.

14.3. Construction - All reference herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural where applicable.

14.4. Original Copies - This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same agreement.

14.5. Captions - The captions appearing in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or construe or describe the scope or intent of any provisions of this Lease nor in any way affect this Lease.

14.6. Binding Effect - The terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns and any person or persons, natural or corporate, claiming through or under them, or any of them.

14.7. No Accord and Satisfaction - No acceptance by LESSOR of a lesser sum than the stipulated rental provided for herein, or any other charge then due shall be deemed to be other than on account of the earliest installment or such rent or charge due,

nor shall any endorsement or statement or any check or letter accompanying any check or payment as rent or the charge be deemed an accord and satisfaction, and LESSOR may accept such check or payment without prejudice to LESSOR'S right to recover the balance of such installment or pursue any other remedy in this Lease provided.

14.8. Condemnation - If the whole of the Demised Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then this Lease shall automatically terminate as of the date that possession has been taken, neither party hereto incurring any liability to the other therefore and LESSEE shall not be entitled to any monies for any portion of the Lease term which would exist but for the condemnation of the Demised Premises.

14.9. Waiver - The failure of the LESSOR to insist in any one or more instances upon the strict and literal performance of any of the covenants, terms or conditions of this Lease, or to exercise any option or election of the LESSOR herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant, term, condition, option or election, but the same shall continue and remain in full force and effect. The receipt by the LESSOR of rent with knowledge of the breach of any covenant, term or condition hereof by the LESSEE shall not be deemed to be a waiver of such breach and no waiver by the LESSOR of any covenant, term or condition or other provisions of this Lease of the breach thereof shall be deemed to have been made by the LESSOR, unless in writing signed on behalf of LESSOR.

14.10. Bankruptcy - This Lease is made on the express condition that if the LESSEE shall become bankrupt or insolvent according to law, or if any assignment shall be made or a receiver shall be appointed due to its financial condition, then the LESSOR, unless and only to the extent restrained by law, may immediately, or at any time thereafter and without notice or demand, enter upon said premises or any part thereof, in the name of the whole, and declare ended, and thereby end this Lease and repossess said premises and expel therefrom the LESSEE and those claiming under it, and remove their

effects, if necessary, without being guilty of any manner of trespass, and without prejudice to any remains which may be used for the recovery of rent or damages for breach of covenant.

14.11. Severability - In the event any provision or clause of this Lease be declared invalid by act of any public authority or in the course of judicial or arbitration proceedings, such invalidity shall not affect the continuing validity of the remaining clauses and paragraphs hereof.

14.12. Written Modifications - No modifications of any provisions of this Lease shall be of any force or effect unless in writing signed by the parties hereto.

14.13. Governing Law - This Lease shall be governed by and construed in accordance with the laws of the State of Rhode Island.

#### 15. DISPUTE:

15.1. In the event that any dispute shall arise regarding the interpretation of or the performance of any of the terms of this Lease which cannot be resolved between LESSOR and LESSEE, then a determination of the dispute shall be made upon majority vote of the Property Committee of the Providence City Council which shall be binding upon the parties and may be entered in a court of competent jurisdiction; provided that LESSEE shall have an opportunity to be heard before the full Property Committee prior to its determination. LESSOR and LESSEE must provide each other with at least thirty (30) day notice of any hearing before said Property Committee.

#### 16. COVENANT OF QUIET ENJOYMENT:

16.1. LESSEE upon the performance of all the terms of this Lease, shall at all times during the Lease term, if not earlier due to termination, cancellation or to condemnation proceedings, peaceably and quietly enjoy the Demised Premises without disturbance from the LESSOR.

IN WITNESS WHEREOF, the LESSOR and LESSEE have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2004, the CITY OF PROVIDENCE having caused these presents to be executed in duplicate, and its corporate seal to be thereunto affixed by DAVID N. CICILLINE, its MAYOR, duly authorized, by City Council Resolution, No. \_\_\_\_\_ approved \_\_\_\_\_.

\_\_\_\_\_  
David N. Cicilline, Mayor

Approved as to form:

\_\_\_\_\_  
Joseph Fernandez, City Solicitor

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence, on this \_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared David N. Cicilline, Mayor of the City of Providence, to me known and known by me to be the party executing the foregoing instrument on behalf of the said City, and he acknowledged said instrument, by him executed in his capacity as aforesaid, to be his free act and deed of the said City of Providence.

\_\_\_\_\_  
Notary Public  
My commission expires:

Head Start Board of Directors, Inc.

\_\_\_\_\_  
By:

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence, on this \_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared \_\_\_\_\_, \_\_\_\_\_ of the Head Start Board of Directors, Inc., to me known and known by me to be the party executing the foregoing instrument on behalf of the said entity, and \_\_\_\_ acknowledged said instrument,

by \_\_\_\_ executed in \_\_\_\_ capacity as aforesaid, to be \_\_\_\_ free act and deed of the said  
Head Start Board of Directors, Inc.

\_\_\_\_\_  
Notary Public

My commission expires:



Department of Law

October 25, 2004

Hon. Michael Clement  
City Clerk  
City Hall  
Providence, RI 02903

Dear Mr. Clement:

At a City Property Committee meeting held on October 20, 2004, three leases to be executed by the Head Start Board of Directors were on the agenda for review and approval. The Committee requested that I send a letter memorializing the Solicitor's position on these three leases, which are:

- 20 Almy Street (AP 2, Lot 104)
- 99 Berkshire Street (AP 70, Lot 565)
- Ralph Street (AP 108, Lot 161)

Specifically, the Committee sought an indication that the leases were "legally sound." Since I drafted these leases, following an established model long in use by my predecessor, I will so attest. The only issue subject to negotiation prior to the submission of the leases was the duration of the leasehold.

If I can be of further assistance to you, please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adrienne G. Southgate", is written over a horizontal line.

Adrienne G. Southgate  
Deputy City Solicitor

cc: Chairwoman DiRuzzo



RESOLVED, That His Honor, the Mayor, is hereby authorized to execute a lease for the land owned by the City of Providence and located at 99 Berkshire Street as part of Assessor's Plat 70, of Lot 565, in the City of Providence, a legal description of which is included in the attached Lease Agreement, to the Head Start Board of Directors, Inc. for a period of five years at an annual rental of \$1.00 and with other such terms and conditions as may be imposed by the Committee on City Property, the City Council, His Honor the Mayor, and the City Solicitor.