

JACKSON COTTAGE L E A S E

THIS LEASE made and entered into this 1st day of February, 2009, by and between CITY OF MEDFORD (hereinafter "Lessor") and Easter Seals Oregon, a non-profit corporation, (hereinafter "Lessee"),

WITNESSETH

In consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

DESCRIPTION OF PREMISES

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, for the term, at the rental, and upon the conditions set forth herein, those certain Premises described as Jackson Cottage, 809 W. McAndrews, (hereinafter the "Premises"), located in the city of Medford, Oregon. Included with the lease is the nonexclusive right to use the parking areas and park amenities within Jackson Park as now or hereinafter existing.

TERM OF LEASE

The term of this Lease shall be for ten (10) years. Said term shall commence on the 1st day of February 2009. Said term shall end at midnight on the 31st day of January 2019, unless sooner terminated or renewed pursuant to any provision hereof.

RENT

Lessee shall pay Lessor as rental, during said term, the annual rental of One Dollar (\$1.00) per year, payable in advance, on the 1st day of February of each year throughout the term of the Lease. The rent has been established to reflect the savings below market rent resulting from the exemption from taxation.

RENEWAL OPTION

If the lease is not in default when the option is exercised, or when the renewal term is commenced, Lessee shall have the option to renew this lease for a term of an additional ten (10) years.

The option may be exercised by written notice to Lessor given not less than 90 days before the last day of the expiring term. Giving such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties.

The terms and conditions of the lease for the renewal term shall be identical with the original term, including the option to renew this lease.

USE OF AND IMPROVEMENTS TO PREMISES

Lessee shall typically use the leased premises for activities and operations such as:

- ◆ Educational programs
- ◆ Day Camps
- ◆ Special events
- ◆ Office space for Lessee [and compatible non-profit organization(s) when approved in writing by both the Lessee and the Lessor]
- ◆ Storage for supplies, equipment and vehicles

Lessee may, upon written approval by Lessor, be granted permission to make structural improvements to the building and surrounding grounds at Lessee's expense. All improvements must be approved by the Parks & Recreation Department and all proper City approvals and permits must be obtained by Lessee prior to making such improvements.

COVENANTS OF LESSEE

Lessee covenants and agrees to perform the following:

- (a) To pay all rent promptly when due.
- (b) Not to commit or allow any strip or waste of any part of the leased Premises without prior permission from the Lessor.
- (c) To defend and indemnify Lessor, Lessor's agents and employees, and to hold them forever harmless from any and all claims and demands whatever for injuries to persons or property arising from or in any way connected with the possession or use of the said Premises by Lessee, Lessee's employees, agents and licensees at any time during the lease term and to reimburse Lessor, Lessor's agents and employees, for any and all costs and expenses, including attorneys' fees, arising out of or in any way connected with any and all such claims or demands. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties or by any condition of the premises except to the extent caused by Lessor's negligence or breach of duty under this lease.

(d) Lessee, at the expiration or sooner termination of this Lease, or any extension or renewal hereof, will quietly and peacefully vacate and deliver the within Premises to Lessor in as good and tenantable condition as the same are at the beginning of this Lease, reasonable wear and tear and damage by fire or other unavoidable casualties alone excepted.

(e) If Lessee holds over after the expiration of the term of this Lease, and shall not have agreed in writing with Lessor upon the terms and provisions of a new lease prior to such expiration, Lessee shall remain bound by all of the terms and provisions hereof, except that tenancy shall be from month to month.

(f) Lessee will keep the leased Premises free and clear of all liens for labor and/or materials performed or furnished to Lessee at said Premises.

(g) Lessee shall not use or occupy the Premises in violation of applicable laws, rules or regulations of the United States, State of Oregon, or any other public authority, and Lessee's continued use or occupancy of any portion of the Premises in violation of such law, rule or regulation, after ten (10) days written notice from Lessor to discontinue any such use or occupation, shall at the option of Lessor constitute a breach of this Lease.

(h) Lessee agrees to maintain said premises and property in the same condition, order and repair as they are at the commencement of this lease, except for ordinary wear and tear. Lessor acknowledges that Lessee may make major alterations and improvements to the Premises in order for the facility to be better suited for the intended purposes. Lessee must obtain Lessor's consent before making any improvements to the Premises. Lessor's consent to Lessee making necessary alterations and improvements to or upon said Premises shall not be unreasonably withheld, and Lessee acknowledges that said alterations or improvements shall be made at Lessee's expense. All improvements shall comply with the Medford Municipal Code. Lessee shall have no right to make any alterations to the premises or to make any repairs at the expense of the Lessor. The Lessor shall have no responsibility whatsoever to make any repairs to the premises during the term of this lease, regardless of the cause of any damage or deterioration. Upon termination of this lease, all alterations, additions and improvements (including without limitation all non-temporary structures, electrical, lighting, plumbing, heating and air-conditioning equipment, foundations, doors, windows, partitions, drapery, carpeting, shelving, counters, physically attached fixtures, and plants growing in the ground) shall at once become part of the Premises and belong to Lessor, unless the terms of the applicable consent provide otherwise. Lessor may, upon termination of the lease, require Lessee to remove certain improvements, alterations and additions, and upon receipt of notice of specific improvements, alterations and additions to be removed, Lessee shall

remove the same and restore the Premises to the condition that existed at the commencement of the lease. No removal of any improvements, alterations, or additions shall be required upon termination of the Lease unless removal was specified as a condition of Lessor's consent.

(i) Lessee shall pay for all heat, light, power, gas, water, sewage, telephone and other services or utilities used on the Premises during the lease term. Said utilities will be in place at time of occupancy. If not, Lessor will provide the hook-ups.

(j) Lessee shall pay any and all special service fees, charges or taxes imposed by the City of Medford, County of Jackson, State of Oregon, or other governmental authority arising from Lessee's use or occupancy of the premises, or seek an exemption therefrom pursuant to statute.

(k) Lessee shall pay for all service required to keep the sewer systems inside and outside the premises in good condition and repair and for any services necessary in case such sewer system within the building becomes clogged.

(l) Lessee shall pay for all janitorial services required inside the premises. Lessor agrees to maintain sprinkler system; provide on-going lawn and tree maintenance as consistent with the rest of the tax lot; and continue trash collection from all cans on the grounds.

(m) Lessor and its agents shall have access to all leased buildings and grounds for inspection purposes within a period of four hours following verbal notification unless such advance notice, for any reason, conflicts with Lessee's activities. If so, a time of mutual convenience shall be arranged. Lessor's right of inspection is solely for the purpose of ensuring compliance with this lease.

COVENANTS OF LESSOR

Lessor shall have the ability to schedule programs, meetings and special events at the facility. Such scheduling will not conflict with those activities scheduled by the Lessee and must be mutually agreed upon.

TAXES AND OTHER EXPENSES

Lessee shall reimburse Lessor, within fifteen (15) days after notice from Lessor, for any real property taxes Lessor is required to pay on the premises during the lease term. Lessee shall be responsible for doing whatever is necessary to obtain an exemption from assessment and obligation for payment of real property taxes, on this property, pursuant to ORS 307.166. Ordinarily the premises would be exempt from assessment for real property taxes so long as this property is used for municipal purposes pursuant to ORS 307.090.

HAZARD INSURANCE

Lessee agrees to keep and maintain in force, at Lessee's expense, a hazard insurance policy or policies, subject to the approval of the City, and shall list the Lessor as named insured up to the limits of liability set forth herein. Said policy or policies shall include extended coverage upon the buildings and improvements now or hereafter existing upon the premises, insuring the same for the replacement value thereof, and Lessee shall provide Lessor with a copy(s) or certificate(s) for such coverage. Said insurance shall provide for payment of loss to Lessor (and such holder of a mortgage or deed of trust as may be designated by Lessor), and shall include in each instance appropriate endorsement to the effect that Lessor shall be provided with not less than ten (10) days advance notice of cancellation or nonrenewal. Lessor shall use the proceeds of any insurance recovery on loss to the real or personal property for repair or replacement of the same. The Lessee may at its own expense purchase any additional coverage it may desire for its own benefit.

SUBROGATION OF CLAIMS

Anything to the contrary in this lease notwithstanding, neither party, nor its officers, directors, employees, agents or invitees, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, when such loss is caused by any of the perils which are or could be insured against under a standard policy of full replacement cost insurance for fire, theft and all risk coverage, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees (this clause shall not apply, however, to any damage caused by intentionally wrongful actions or omissions); provided, however, that if, by reason of the foregoing waiver, either party shall be unable to obtain any such insurance, such waiver shall be deemed not to have been made by either party. Each party shall give the other party notice at any time when it is unable to obtain insurance with such a waiver of subrogation and the foregoing waiver shall be effective until thirty (30) days after notice is given. Each party represents that its current insurance policies allow such waiver.

DAMAGE TO THE PREMISES

In the event the leased Premises are destroyed by fire, or other unavoidable casualty or are so damaged as to render the same wholly unfit for occupancy and such damage or destruction cannot be reasonably repaired within ninety (90) days from the date thereof, then this lease shall terminate as of the

date of said damage or destruction, and Lessee shall immediately surrender said Premises to Lessor. If, however, said destruction or damage can be repaired within ninety (90) days, or the Premises are so damaged as not to be rendered wholly unfit for Lessee's occupancy, then ~~Lessor~~ Lessee shall be obligated to repair the same with all reasonable dispatch.

COMPREHENSIVE LIABILITY INSURANCE

Lessee shall keep and maintain in force, at Lessee's expense, a policy or policies of comprehensive liability insurance, written by an insurer authorized to do business in Oregon and satisfactory to Lessor, insuring Lessee and Lessor (and such other persons, firms, or corporations as are designated by Lessor) against liability, costs and expenses, including counsel fees, for injury to or death of persons or damage to property arising out of or in any manner connected with the above described Premises, improvements thereon, or the operations or activities of the Lessee, Lessee's invitees, licensees or any other persons thereon. The limit of liability of such insurance shall not be less than One Million Dollars (\$1,000,000) for injury to one or more persons, and One Hundred Thousand Dollars (\$100,000) for property damage, and Lessee shall arrange for Lessor to be provided with certificates of such coverage, including in each instance appropriate endorsement to the effect that Lessor shall be provided with not less than ten (10) days advance notice of cancellation or nonrenewal.

ASSIGNMENT AND SUBLETTING

Lessee shall not assign or sublet this Lease or any of Lessee's rights hereunder without written consent of Lessor.

CONDEMNATION

If the whole of the leased property, or such portion thereof as will make the leased property unsuitable for the purposes herein leased, is condemned for any public use or purpose by any legally constituted authority, then in either of such events this Lease shall cease from the time when possession is taken by such public authority. Such termination shall be without prejudice to the rights of either the Lessor or the Lessee to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the Lessor nor the Lessee shall have any rights in or to any award made to the other by the condemning authority.

If part of the leased property is taken by eminent domain, and such taking does not render the leased property unsuitable for the purposes herein leased, this Lease shall not terminate by virtue of such

taking. In such event the Lessor shall be entitled to recover compensation from the condemning authority, on behalf of Lessee, for any loss or damage caused by them in such partial condemnation. Lessor shall pay Lessee its proportional share of the loss or damage. Alternatively, Lessor shall be entitled to all of the proceeds of condemnation, and Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of condemnation.

DEFAULT AND REMEDIES

Lessor's Rights and Remedies:

Lessor may terminate this lease for any reason upon one hundred eighty (180) days written notice to Lessee. Such notice of termination shall not constitute a breach of this lease and Lessor shall not be liable in damages therefore. This lease agreement may be terminated by the Lessor upon ninety (90) days written notice in the event of material breach by the Lessee of the terms and conditions stated herein. Material breach includes, but is not limited to, situations in which Lessee's interest, or any part of its interest, in this Lease is assigned or transferred, either voluntarily or by operation of law, except with Lessor's consent, or any other violation of the Covenants of Lessee specified herein.

Lessee shall be in default under this Lease if Lessee fails to observe or perform any of the provisions of this Lease (other than the payment of money) to be observed or performed by Lessee where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. However, on failure to perform, Lessor shall have the right without any further demand or notice, to re-enter the Premises and eject all persons from the Premises, using all necessary force to do so, and either:

- A. Declare this Lease at an end, or
- B. Without terminating this Lease, relet the Premises, or any part of the Premises, as the agent and for the account of Lessee upon such terms and conditions as Lessor may deem advisable.

Lessee shall allow any such re-entry without hindrance, and Lessor shall not be liable in damages for any such re-entry, or be guilty of trespass or forcible entry.

- C. It is expressly understood that the rights hereinabove provided, shall be deemed cumulative and nonexclusive and that the Lessor may exercise any other right or remedy which the Lessor may have

at law or in equity under the statutes and the laws of the State of Oregon.

Lessee Rights and Remedies:

Lessee may terminate this lease for any reason upon thirty (30) days written notice to Lessor. Such notice of termination shall not constitute a breach of this lease and Lessee shall not be liable in damages therefore.

WAIVER

One or more waivers by either party of any covenant or condition shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition. Lessor's consent to or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

NOTICES

All notices required hereunder shall be given to the parties herein at their addresses provided below unless and until advised by the parties of a change in such address:

<u>Lessor</u>	<u>Lessee</u>	
City of Medford	Easter Seals Oregon	Easter Seals Oregon
Michael Dyal,	J. David Cheveallier,	Katie Shepard,
City Manager	President/CEO	Rogue Valley Area Director
411 W. 8 th Street	5757 SW Macadam Ave	711 E. Main Street, Suite 15
Medford, OR 97501	Portland, OR 97239	Medford, OR 97504

Any notice required or permitted under this lease shall begin to run on the date such notice is delivered, if properly sent, postage prepaid by certified or registered mail addressed to the address first given in this lease, or to such other address as may be specified from time to time by each of the parties in writing. Notice shall be construed as delivered as of the postmark date of sender's mail receipt form.

SUCCESSOR INTERESTS

The covenants, conditions and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, assigns and successors in interest of the parties hereto, provided, however, that nothing contained in this paragraph shall alter the restrictions hereinabove contained relating to assignment.

GENDER

In construing this agreement it is understood that the Lessor may be more than one person and that Lessee may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

LESSOR

CITY OF MEDFORD

Gary Wheeler, Mayor

LESSEE

EASTER SEALS OREGON

J. David Cheveallier, President/CEO

EXHIBIT A

EXCEPTIONS TO PROPERTY BEING IN GOOD ORDER AND CONDITION:

1. Most windows and glass doors have been broken by vandals.
2. Exterior doors are damaged.
3. Slate pathways have been removed by thieves.
4. The only heater, a propane fired gas log free-standing unit, has a vandalized thermostat so is inoperable.
5. Landscape plantings have suffered from lack of water and many are dead or dying.
6. A rear bedroom is unfinished – no sheetrock or floor covering.
7. Carpets that smelled of cat urine have been removed from some rooms.
8. A once functioning burglar alarm system has been disconnected.
9. Paved road access, parking, and infrastructure wiring and plumbing for electricity, telephone, water, and sewer are anticipated to be completed by March 2006, under a separate contract by the Lessor.
10. Additional items may be added to this list following execution by both parties and prior to lessee assuming occupancy.