

SPONSORED BY: MAYOR NOVAK, COUNCIL MEMBERS LINDSEY & MILLER

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-34
Series of 2007

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A RESOLUTION APPROVING THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND METRO NORTH CHILDREN'S ADVOCACY CENTER

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Ground Lease Agreement between the City of Northglenn and the Metro North Children's Advocacy Center, attached hereto as **Exhibit A**, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2007.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

GROUND LEASE AGREEMENT

The following LEASE is made on this _____ day of _____, 2007, between the City of Northglenn, Colorado, a Colorado home rule municipality (hereinafter referred to as "City" or "City") and Metro North Children's Advocacy Center (hereinafter referred to as "Advocacy Center" or "Tenant") (either party may be referred to individually as a "Party" or both parties may be collectively referred to as the "Parties") with respect to the following facts:

RECITALS

WHEREAS, the City is the owner of a certain parcel of Property located within the City of Northglenn more specifically described in the attached **Exhibit A** (the "Property");

WHEREAS, the Parties desire that Advocacy Center lease the Property, for the purpose of using the Property as a child Advocacy Center; and

WHEREAS, the Parties desire that Advocacy Center shall pay rent to City in the form of ten dollars (\$10.00) per month, paid on an annual basis.

TERMS

NOW, THEREFORE, City and Advocacy Center hereby agree as follows:

1. Definitions.

For the purposes of this Lease, the following terms shall have the following definitions:

(a) *Demised Premises* shall mean the Property and all easements, rights, rights-of-way, and licenses thereto, and the existing improvements, located at _____.

(b) *Improvements* shall mean all buildings, structures, and improvements now existing upon the Property during the term of the Lease, and including landscaping, lighting, fencing, irrigation, and drainage facilities, and any restoration, addition to, or replacement thereof.

2. Demised Premises and Term.

City, in consideration of the rents hereinafter reserved and the terms, covenants, conditions, and agreements set forth in this Lease to be kept and performed by Advocacy Center, does hereby demise and let unto Advocacy Center, and Advocacy Center does hereby hire and take from City, the Demised Premises for a term of one year. Provided however, that said Lease shall be automatically renewable at the termination of each one year term (the "Anniversary Date"), unless either party gives 60 days written notice of the intent to terminate this Lease.

3. Rental.

Advocacy Center hereby agrees to pay and City hereby agrees to accept as rent for the Term rent of \$120.00 per year, payable on or before December 15 of each year for the succeeding year, except for the initial rental payment, which shall be due on approval of this Agreement.

4. Taxes and Utilities.

(a) During the period of time the City has owned and been the sole occupant of the Property, the Property has been exempt from real estate taxation. As of the date first listed in this Lease, there are no unpaid real estate taxes, assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, or similar governmental charges relating to the property owed by the City. Advocacy Center will, at Advocacy Center's own cost and expense, bear, pay, and discharge prior to delinquency, all real estate taxes, assessments, and charges, duties, impositions, license and permit fees, charges for public utilities other than those specified below of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter sometimes collectively referred to as "Impositions"), which shall, pursuant to present or future law or otherwise, during the term hereby granted, be levied, charged, assessed, or imposed upon, or grown or become due and payable out of or for, or become or have become a lien on the Demised Premises, and the Improvements, or the sidewalks, streets, or vaults adjacent thereto.

(b) The City shall provide to Advocacy Center all utility service provided to the property, including trash, snow removal, water, sewer, telephone, cable, electricity, and natural gas, up to a maximum amount of \$_____ per month. All costs in excess of \$_____ per month shall be reimbursed by the Advocacy Center to the City.

(c) The Advocacy Center may, at its discretion, and at its cost and expense, install a T-1 line. Subject to the limitations of subsection (b) of this Section 6, the City shall thereafter be responsible for the payment of any monthly fees and costs associated with such service.

5. Repairs.

Advocacy Center shall at all times during the term of this Lease, at Advocacy Center's own cost and expense, keep the Demised Premises and the Improvements thereon, and all sidewalks, curbs, vaults, and vault spaces adjoining the Demised Premises, and all appurtenances to the Demised Premises, in good order, condition, and repair, ordinary wear and tear excepted, and in such condition as may be required by law.

6. Compliance with Law.

(a) Advocacy Center shall at all times during the term of the Lease, at Advocacy Center's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations, and requirements now or hereafter enacted or promulgated, of every governmental authority and municipality having jurisdiction over the Demised Premises, and of any agency

thereof, relating to the Demised Premises, or the Improvements now or hereafter located thereon, or the facilities or equipment therein, or the streets, sidewalks, vaults, vault spaces, curbs, and gutters adjoining the Demised Premises, or the appurtenances to the Demised Premises, or the franchises and privileges connected therewith, whether or not such laws, rules, orders, ordinances, regulations, or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Demised Premises, replacements, or repairs, extraordinary as well as ordinary, and Advocacy Center shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations, or requirements shall now exist or shall hereafter be enacted or promulgated.

(b) Advocacy Center shall have the right, provided it does so with due diligence and dispatch, to contest by appropriate legal proceedings, without cost or expense to City, the validity of any law, rule, order, ordinance, regulation, or requirement of the nature hereinabove referred to in this Article 5. Advocacy Center may postpone compliance with such law, rule, order, ordinance, regulation, or requirement until the final determination of such proceedings. No provisions of this Lease shall be construed so as to permit Advocacy Center to postpone compliance with such law, rule, order, ordinance, regulation, or requirement if any sovereign, municipal, or other governmental authority shall threaten to carry out any work to comply with the same or to foreclose or sell any lien affecting all or any part of the Demised Premises which shall have arisen by reason of such postponement or failure of compliance.

7. Alterations.

Advocacy Center shall have the right, at Advocacy Center's expense, from time to time during the term of this Lease to make any alteration, addition, or modification to the Demised Premises or the Improvements thereon; provided that, after said alterations, additions, or modifications, the Demised Premises shall be for the same general use, and said alterations, additions, or modifications shall not lessen the market value of the Demised Premises; and provided further, that if any such alteration, addition, or modification shall involve the structure or exterior of the Improvements, and shall cost more than Ten Thousand Dollars (\$10,000), or should Advocacy Center determine to remove or materially demolish the Improvements, then Advocacy Center shall obtain City's prior written consent thereto, which consent shall not be unreasonably withheld or delayed. It is expressly understood that City's consent may be conditioned upon the furnishing by Advocacy Center of waivers of mechanics' and materialman's liens from all persons furnishing materials or labor.

8. Use of Demised Premises.

(a) Advocacy Center may use and occupy the Demised Premises and the Improvements thereon solely for the use of the Demised Premises as a child advocacy center.

(b) Advocacy Center will not use or keep or allow the Demised Premises or any portion thereof or any buildings or other improvements thereon or any appurtenances thereto, to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy.

(c) Advocacy Center's use of the Demised Premises shall include the ability to use the

existing furnishings. Provided, however, if Advocacy Center desires new or additional furnishings, such furnishings shall be purchased at the sole cost and expense of Advocacy Center, and shall remain the personal property of Advocacy Center at the expiration of the term of this Lease.

9. Insurance.

Advocacy Center will at all times during the term of this Lease maintain insurance on the Demised Premises of the following character:

(a) **Commercial General Liability Insurance.** Commercial or comprehensive general liability insurance on an occurrence basis, insuring against any and all claims for damages to person or property or loss of life or of property occurring on or about the Premises arising from any tortious acts or negligence of Advocacy Center or any of Advocacy Center's agents, employees, licensees or contractors, with coverage limits of not less than \$150,000 for bodily injury or death to any one person and not less than \$600,000 for bodily injury or death arising from any one accident or occurrence, and not less than \$500,000 for property damage, with such deductibles as Advocacy Center may customarily carry in the conduct of its business.

(b) **Property.** Insurance against loss or damage by fire and other risks and perils from time to time included under standard extended coverage endorsements in an amount equal to not less than ninety percent (90%) of the replacement value of the Improvements.

10. Casualty.

If the Improvements on the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Advocacy Center shall promptly notify City of such destruction or damage. Rent shall not abate hereunder by reason of any damage to or destruction of the Improvements, except as specifically provided for in this Lease.

11. Indemnity.

Advocacy Center agrees to indemnify, hold harmless and defend City hereto, its agents, assigns, employees, officers, and officials from and against all claims, demands, liabilities, suits, judgments and decrees, losses and costs and expenses of any kind or nature whatsoever on account of claims made by a third party and which are caused by Advocacy Center or its agents or personnel.

12. Condemnation.

(a) **Entire Condemnation.** If at any time during the term of this Lease all or substantially all of the Demised Premises or the Improvements thereon shall be taken in the exercise of the power of eminent domain by any sovereign, municipality, or other public or private authority, then this Lease shall terminate on the date of vesting of title in such taking. Substantially all of the Demised Premises and the Improvements thereon shall be deemed to have been taken if the remaining portion of the Demised Premises shall not be of sufficient size to

permit Advocacy Center to conduct its activities thereon in a manner similar to that prior to such taking.

(b) Any award for such taking of all or substantially all of the Demised Premises shall be paid entirely to City.

(c) *Partial Condemnation.* If less than all or substantially all of the Demised Premises or the Improvements thereon shall be taken in the exercise of the power of eminent domain by any sovereign, municipality, or other public or private authority, then Advocacy Center, at its option, may elect to continue this Lease in full force and effect or terminate this Lease. If Advocacy Center shall elect to maintain this Lease in full force and effect, the entire award for such partial condemnation shall be paid over to City, and Advocacy Center shall proceed with reasonable diligence to carry out any necessary repair and restoration so that the remaining Improvements and appurtenances shall constitute a complete structural unit or units which can be operated on an economically feasible basis under the provisions of this Lease. All of such repair and restoration shall be carried out by Advocacy Center in accordance with the provisions of this Lease. In the event Advocacy Center elects to continue this Lease in full force and effect after a partial condemnation, there shall be no abatement in the Rent Advocacy Center is required to pay hereunder.

(d) Should Advocacy Center elect to terminate this Lease upon a partial condemnation, Advocacy Center shall provide City with written notice of such election within thirty (30) days after the date of vesting of title for such taking. Advocacy Center shall specify in such written notice the date on which this Lease shall terminate, which date shall be no more than 60 days after delivery of such notice to City (the "Termination Date").

13. Assignment and Subletting.

Advocacy Center may not assign this Lease or any interest herein or sublet the Demised Premises at any time, without City's consent, which may be withheld in City's sole discretion.

14. Injunction.

Each Party, in addition to any other rights reserved to the Parties, and notwithstanding the concurrent pendency of summary or other dispossession proceedings between City and Advocacy Center, shall have the right at all times during the term of this Lease to restrain by injunction any violation or attempted violation by the other Party of any of the terms, covenants, conditions, or agreements of this Lease, and to enforce by injunction any of the terms, covenants, conditions, and agreements hereof.

15. Default and Termination.

(a) The occurrence of any of the following shall constitute a material default and breach of this Lease by Advocacy Center:

(i) Failing to use the Demised Premises for the permitted uses set forth in Section 8,

use of the Demised Premises for an unlawful purpose, or failure to comply with any law, regulation, ordinance, or other legal requirement relating to the Demised Premises.

(ii) Failure by Advocacy Center to comply with an material obligation under this Lease or failure to pay the rental required to be paid by Advocacy Center hereunder where such failure continues for thirty (30) days after written notice thereof by City to Advocacy Center;

(iii) Failure by Advocacy Center to pay the Impositions required to be paid hereunder by Advocacy Center where such failure continues for thirty (30) days after written notice thereof by City to Advocacy Center; or

(iv) Pursuant to any other default or breach of this Lease by Advocacy Center, City obtains a money judgment against Advocacy Center in a court of competent jurisdiction, and such judgment is not paid to City within sixty (60) days after such judgment becomes final.

(b) In the event of any such default by Advocacy Center (beyond any applicable cure period), then in addition to any other remedies available to City at law or in equity, City, shall have the immediate option to terminate this Lease and all rights of Advocacy Center hereunder by giving written notice of such intention to terminate in the manner specified in this section of the Lease.

(c) In the event of the vacation or abandonment of the Demised Premises by Advocacy Center, combined with Advocacy Center's failure to honor its repair and/or maintenance obligations, City shall have the right to re-enter the Demised Premises and take possession of the Demised Premises pursuant to legal proceeding or pursuant to any notice provided by law.

(d) Upon a default or breach of any term of this Lease by City hereunder, Advocacy Center shall have all of the rights and remedies provided by law or equity.

16. City's Right to Cure Advocacy Center's Defaults.

Whenever and as often as Advocacy Center shall fail or neglect to comply with and perform any term, covenant, condition, or agreement to be complied with or performed by Advocacy Center hereunder, then, upon thirty (30) days' prior written notice to Advocacy Center, City at City's option, in addition to all other remedies available to City, may perform, or cause to be performed, such work, labor, services, acts, or things, and take such other steps, including entry onto the Demised Premises and the Improvements thereon, as City may deem advisable, to comply with and perform any such term, covenant, condition, or agreement which is in default, in which event Advocacy Center shall reimburse City upon demand, and from time to time, for all costs and expenses suffered or incurred by City in so complying with or performing such term, covenant, condition, or agreement. The commencement of any work or the taking of any other steps or performance of any other act by City pursuant to the immediately preceding sentence shall not be deemed to obligate City to complete the curing of any term, covenant, condition, or agreement which is in default.

17. City's Expenses.

Advocacy Center shall reimburse City upon demand for all reasonable expenses, including attorneys' fees, incurred by City in connection with the collection of any rent in default hereunder, or the termination of this Lease by reason of a material default of Advocacy Center, as such term is defined above, or the enforcement of any other obligation of Advocacy Center which is in default hereunder, or the protection of City's rights hereunder, or any litigation or dispute in which City becomes a party or otherwise becomes involved, without fault on its part, relating to the Demised Premises or City's rights or obligations hereunder. If the leasehold interest of Advocacy Center hereunder shall hereafter be held by more than one person, corporation, or other entity, and if litigation shall arise by reason of a dispute among such persons, corporation, or other entities, and if City is made a party to such litigation without City's consent, then Advocacy Center shall reimburse City upon demand for all reasonable expenses, including attorneys' fees, incurred by City in connection with any such litigation.

18. Merger.

In no event shall the leasehold interest, estate, or rights of Advocacy Center hereunder, or of the holder of any mortgage upon this Lease, merge with any interest, estate, or rights of City in or to the Demised Premises, it being understood that such leasehold interest, estate, and rights of Advocacy Center hereunder, and of the holder of any mortgage upon this Lease, shall be deemed to be separate and distinct from City's interest, estate, and rights in or to the Demised Premises, notwithstanding that any such interests, estates, or rights shall at any time or times be held by or vested in the same person, corporation, or other entity.

19. Present Condition of Premises.

Advocacy Center represents that the Demised Premises, the improvements thereon, the sidewalks and structures adjoining the same, sub-surface conditions, and the present tenancies, uses, and non-uses thereof, have been examined by Advocacy Center and Advocacy Center's agents and that Advocacy Center accepts the same, without recourse to City, in the condition or state in which they or any of them now are, without representation or warranty, expressed or implied in fact or by law, as to the nature, condition, or usability thereof, or as to the use or uses to which the Demised Premises or any part thereof may be put, or as to the prospective income from, and expense of operation of, the Demised Premises.

20. City's Right of Entry.

At any time, without notice, City and City's authorized agents and employees shall have the right from time to time, at City's option, to enter and pass through the Demised Premises and the Improvements thereon during business hours to examine the same and to show them to prospective purchasers, fee mortgagees, and others, but this shall not obligate City to make any such entry or examination.

21. Notices.

Except as provided herein to the contrary, any notice, request or demand to be given pursuant to this Lease, shall be in writing and shall be sent by United States certified mail, return receipt requested, or delivered by a reputable overnight courier delivery service, addressed to City or Advocacy Center, as the case may be, at their respective addresses set forth below:

City: City Manager
City of Northglenn
P.O. Box 330061
Northglenn, CO 80233-8061

Advocacy Center:

All such notices, requests and demands shall be deemed given upon receipt of the addressee (or upon wrongful refusal of attempted delivery). Either Party may, by notice, designate different and/or additional addresses for notices, requests or demands to it.

22. Non-Waiver.

The waiver of a breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

23. Surrender.

Advocacy Center shall, on the last day of the term of this Lease or upon any termination of this Lease pursuant to Article 16 (Default and Termination) hereof, or upon any other termination of this Lease, well and truly surrender and deliver up the Demised Premises, with the Improvements then located thereon into the possession and use of City, without fraud or delay and in good order, condition, and repair, free and clear of all lettings and occupancies, free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by City, without any payment or allowance whatever by City on account of or for any buildings and improvements erected or maintained on the Demised Premises at the time of the surrender, or for the contents thereof or appurtenances thereto.

24. No Partnership.

City shall not be deemed, in any way or for any purpose, to have become, by the execution of this Lease or any action taken under this Lease, a partner of Advocacy Center, in Advocacy Center's business or otherwise, or a member of any joint enterprise with Advocacy Center.

25. No Oral Changes.

This Lease may not be changed or modified orally, but only by an agreement in writing

signed by the Party against whom such change or modification is sought to be enforced.

26. Bind and Inure.

The terms, covenants, conditions, and agreements of this Lease shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns. Any waiver of rights by either Party hereto shall be deemed to be a waiver of such rights not only by such Party but shall be deemed to be a waiver of such rights for and on behalf of each and every successor and assignee of such Party. The term Advocacy Center as used herein shall in each instance be deemed to mean the person or persons, corporation or corporations, or other entity or entities that from time to time shall be primarily obligated under this Lease to perform the obligations of Advocacy Center hereunder.

27. Force Majeure.

The time within which either Party hereto shall be required to perform any act under this Lease, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure, or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties, or any other cause beyond the reasonable control of either Party hereto, excluding, however, the inability or failure of either Party to obtain any financing which may be necessary to carry out its obligations. Notwithstanding the foregoing, unless the Party entitled to such extension shall give notice to the other Party hereto (plus concurrent notice by telephone or telegraph if such other Party's telephone number is not readily available) of its claim to such extension within three (3) business days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

28. Hazardous Material.

(a) Advocacy Center shall keep and maintain the Demised Premises in compliance with, and shall not cause or permit the Demised Premises to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions ("Hazardous Materials Laws") on, under, about, or affecting the Demised Premises. Advocacy Center shall not use, generate, manufacture, store, or dispose of on, under or about the Demised Premises or transport to or from the Demised Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials").

(b) Advocacy Center shall be solely responsible for, and shall indemnify and hold harmless the City, its directors, officers, employees, agents, successors, and assigns from and

against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to Advocacy Center's use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Demised Premises, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Demised Premises, and the preparation and implementation of any closure, remedial, or other required plans; and (iii) all reasonable costs and expenses incurred by the City in connection with clauses (i) and (ii), including, but not limited to, reasonable attorneys' fees.

(c) Advocacy Center shall, at its expense, take all necessary remedial action(s) in response to the presence of any Hazardous Materials on, under, or about the Demised Premises created by Advocacy Center.

29. Governmental Immunity

Nothing herein shall be construed as a waiver of any protections or immunities the City may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed as of the day and year first above written.

CITY:

CITY OF NORTHGLENN

Kathleen M. Novak, Mayor

ATTEST:

Diana Lentz, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY