

TOWN OF RIVERHEAD

Resolution # 937

APPROVES LICENSE AGREEMENT BETWEEN THE TOWN OF RIVERHEAD AND DAY HAVEN FOR RE-USE OF FACILITY AT STOTZKY PARK

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

WHEREAS, the Riverhead Water District (RWD) is the owner of certain real property running from Pulaski Street on the southerly end and County Road 58 (Route 58) on the north and is commonly known as Stotzky Park; and

WHEREAS, the Community Development Agency (CDA) in or around 1991 determining there was a need for affordable day care facilities with the Town of Riverhead secured grant funding for the construction of a "Child Care Center" located at 165 Columbus Ave., Riverhead, New York; and

WHEREAS, the Child Care Center has been vacant and the Town Board authorized the issuance of a Request For Qualifications (the "RFQ") for qualified parties looking to establish a social model adult day care/Alzheimer program at the former children's day care building; and

WHEREAS, Day Haven submitted a response to the RFQ; and

WHEREAS, the Town Board has considered the response to the RFQ and the request for changes to the building and upon due consideration, has determined that proposed construction and re-use of 1,699 square feet of the facility and exterior grounds for a social model adult day care/Alzheimer program will serve the residents of the Town of Riverhead and will not impede or impair current operations or use of Stotzky Park.

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Riverhead hereby approves the terms and conditions of the License Agreement in substantially the form attached between the RWD, the CDA and Day Haven; and be it further

RESOLVED, that the Supervisor, be and hereby, is authorized to execute the Agreement in substantially the form attached; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a copy of this resolution to Day Haven Adult Day Services, 2210 Smithtown Avenue, Ronkonkoma, New York 11779, the Recreation Department, the Seniors Department, Town Engineer, Accounting Department and Office of the Town Attorney; and be it further

RESOLVED, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a copy of same may be obtained from the Office of the Town Clerk.

LICENSE AGREEMENT

This LICENSE AGREEMENT (hereinafter “License”) made this _____ day of December, 2017, by and between the Town of Riverhead Community Development Agency (“CDA”), an Urban Renewal Agency, duly organized under the laws of the State of New York, and the Riverhead Water District (“District”), a municipal corporation, both with offices at 200 Howell Avenue, Riverhead, New York, 11901 (collectively “Licensor”) and Community Program Centers of Long Island, Inc. d/b/a Day Haven Adult Day Services, a not-for-profit corporation duly organized under the laws of the State of New York, with offices at 2210 Smithtown Avenue, Ronkonkoma, New York 11779 (“Licensee”).

WITNESSETH

WHEREAS, the District is the owner of certain real property which runs from Pulaski Street on the southerly end and County Road 58 (Route 58) and is commonly known as Stotzky Park; and

WHEREAS, the CDA in or around 1991 seeing a need for affordable day care facilities with the Town of Riverhead secured grant funding for the construction of a "Child Care Center" located at 165 Columbus Ave., Riverhead, New York; and

WHEREAS, the Child Care Center has been vacant and a Request For Qualifications (the “RFQ”) was issued in or around August 10, 2017 for Senior/Adult Care Providers and their teams seeking to establish a social model adult day care/Alzheimer program at the former children’s day care building (the “facility”) and exterior grounds at Stotzky Park, Columbus Avenue, Town of Riverhead, New York; and

WHEREAS, the Licensee submitted a response to the RFQ and has stated it desire, goals and plans for creation, establishment and maintenance of a model social adult day care program to serve about, but not limited to, 25 participants within a shared intergenerational setting comprising

approximately 1,500 square feet of interior space at the facility as estimated by Licensee & associated use of the exterior grounds; and

WHEREAS, the Licensee's response to the RFQ set forth its prior experience, including similar programs that it has established, the project team, financial capacity and suitability of the program for shared intergenerational use, among other things; and

WHEREAS, the Licensor has reviewed the response by Licensee and has considered same, as well as the proposed construction improvements as requested the Licensee's and has determined that Licensor shall undertake the proposed construction and permit the re-use of 1,699 square feet of the facility and exterior grounds as proposed by Licensee for a social model adult day care/Alzheimer program will serve the residents of the Town of Riverhead and further determined the re-use will not impede or impair the use of current operations at Stotzky Park, Columbus Avenue, Town of Riverhead, New York; and

NOW THEREFORE, in consideration of the terms and mutual obligations herein and other good and valuable consideration, the parties do hereby agree as follows:

1. **Licensing.** Upon the terms and conditions hereinafter set forth, Licensor hereby licenses to Licensee the right to the non-exclusive use of 1,699 square feet of the facility as depicted on Drawing dated October 2, 2017 and the exterior grounds as shown on Google Map collectively attached hereto as Exhibit "A" (collectively the "Licensed Premises").

2. **Term of the License.** The term of this License (the "term") shall be three years and shall commence on April 1, 2018 and shall end on March 31, 2021.

3. **License Fee.** In consideration of the type of use to which the Licensee intends to conduct at the premises, the Licensee shall pay the Licensor an annual fee of \$18,000. Payment of that license fee in the amount of \$1,500 shall be made monthly on or before the first day of

each month. To assist with start-up costs incurred by the Licensee, no license fee shall be due for the first three months of the license or from the first day licensee begins use whichever is later.

4. **Condition of the Licensed Premises.** Licensee is familiar with the Licensed Premises, has examined same, and, except for the construction as explicitly hereinafter provided in Exhibit B annexed hereto and made a part hereof, Licensee agrees to accept the licensed premises in its “as is” condition without reliance upon any representations or warranties of or made by Licensor.

5. **Use of the Licensed Premises.** Licensee agrees to utilize the licensed premises as a social model adult day care/Alzheimer program serving about, but not limited to, 25 participants daily. The Licensee agrees and understands that Licensor has relied upon Licensee’s response to the RFQ that adult day care/Alzheimer services will be open Monday through Friday (excluding holidays) from 8 o’clock am to 4 o’clock pm. Furthermore, the Licensee agrees that it will provide programs up to six hours in length, which includes snack and/or lunch. The Licensee’s staff will be allowed to be on the premises during non-program times starting at 7:00 AM and ending at 5:00 PM to prepare for or close the program. Notwithstanding stated goals for enrollment and intended hours and days of operation, in the event that the projected enrollment and need for services is not met, the parties agree that they will renegotiate terms and conditions of the license without penalty. Notwithstanding anything herein to the contrary, Licensee shall have exclusive use of Licensed Premises during days of operation from 7:00 AM to 5:00 PM.

During the hours and days of the operation of the adult day care/Alzheimer services (8 o’clock am to 4 o’clock Monday through Friday, excluding holidays) the Licensor will have use of that part of the building which is not part of the 1,699 square feet as well as the common areas as depicted on the plan incorporated as Exhibit A. At all times, the Licensor shall be restricted

from using or accessing, except in an emergency, the Program's Supervisor's office and any other closets or storage areas, as agreed to, where any participant records or equipment/supplies are stored. During the non-operational hours and days, the Licensor will have use of the entire building and Licensee shall have non-exclusive use of bathrooms, hallways, entrances and other common areas during hours of operation. Further, upon agreement of both parties, to achieve a shared intergenerational setting, the Licensor shall have youth or other recreational programming using the building in which the Licensed Premises is located.

6. **Utilities.** Licensor shall be responsible, at its sole expense, for the payment of the following utility services: water, electricity, fuel, propane and security system. Licensee shall be responsible, at its sole expense, for the payment of the following utility services: cable television, internet and telephone.

7. **Repair, Maintenance and Inventory of License Premises.**

a) Licensor, at its sole expense, agrees to make renovations, repairs and maintain the Licensed Premises as more fully set forth in Exhibit B.

b) Licensee shall not alter the Licensed Premises without the prior permission

8. **Assignment.** Notwithstanding anything to the contrary contained in the License, Licensee shall not assign this license, the use of the Licensed Premises, in whole or in part, or permit Licensee's interest to be vested in any other party other than Licensee by operation of law or otherwise without the expressed written consent of the Licensor. A transfer of more than fifty (50%) percent at any one time, or in the aggregate from time to time, of the stock, partnership or other ownership interests in Licensee, direct or indirectly, shall be deemed to be an assignment of this License.

9. **Insurance and Indemnification.** Licensee will be responsible for providing

comprehensive general liability insurance in the amount of not less than \$1,000,000 with a company or companies reasonably satisfactory to the Licensor. Licensee will provide certificates of the foregoing insurance, showing the Town of Riverhead as “Additional Insured” to the extent of their interest. ~~Finally,~~ Licensee agrees to indemnify and hold the Town of Riverhead and their respective officers, employees, agents, representatives and officials harmless from any and all loss or liability, including liability for damages or for injuries or death to person, arising out of the acts or negligence of Licensee, its officers, directors, employees, agents, and representatives. Licensor agrees to indemnify and hold the Licensee and its respective officers, employees, agents, and representatives harmless from any and all loss or liability, including liability for damages or for injuries or death to person, arising out of the acts or negligence of Licensor, its officers, officials, directors, employees, agents, and representatives Without limiting the generality of the foregoing, Licensee agrees to indemnify and hold the Town of Riverhead harmless from any lien claimed or asserted for labor, materials or services furnished to Licensee in connection with the use of the property. Licensee will work with the Town of Riverhead to ensure adequate coverage of all property and liability with all concerned entities being named as “additional insured”.

10. **Notices:** Any notices to be given under this License shall be in writing and shall be sent by registered or certified mail, return receipt requested. If such notice is directed to Licensor, it shall be addressed to the attention of the Riverhead Town Supervisor and the Office of the Riverhead Town Attorney at 200 Howell Avenue, Riverhead, New York. If such notice is directed to the Licensee, it shall be addressed to Community Program Centers of Long Island, Inc. d/b/a Day Haven Adult Day Services, a corporation duly organized under the laws of the State of New York, with offices at 2210 Smithtown Avenue, Ronkonkoma, New York 11779.

11. **Miscellaneous:** (a) Merger. All prior understandings and agreements between

the parties with respect to the subject matter hereof are merged within this agreement, which alone, fully and completely sets forth the understanding of the parties with respect to the subject matter hereof. This license may not be changed or terminated orally, or in any manner, other than in writing signed by the party against whom enforcement is sought.

b) Nothing contained in this Agreement either expressly or impliedly shall invalidate any pre-existing non-conforming use upon the real property owned by the Licensee or constitute any admission by the Licensee that any violation exists now or shall exist in the future.

12. **Cross Default**: To the extent that the Licensor and Licensee are parties to related agreements, any default under the related agreements shall be deemed to be a default under this License, and any default under this license shall be deemed a default under such similar agreements.

13. Termination: Licensee may terminate this Agreement in its absolute discretion upon 30 days written notice to Licensor.

14. Program Fees: Licensee may impose reasonable fees for participation in the program operating in the Licensed Premises provided that Licensee agrees that to the extent a program participant is eligible under the NYS Medicaid Program or other government benefit program (hereinafter, Government Program) and such Government Program provides payment for such program participant and requires the Licensee accept such payment by the Government Program as payment in full, Licensee will not impose or collect program fees from such participants eligible for payment from such Government Program. The Licensee to the extent practical shall make the program eligible to Town of Riverhead residents before extending to participants who do not reside within the Town of Riverhead.

IN WITNESS WHEREOF, Licensor and Licensee do hereby execute this License as of

the date and year first above written.

Town of Riverhead Community
Development Agency
By: Sean M. Walter, Supervisor

The Riverhead Water District
By: Sean M. Walter, Supervisor

Community Program Centers of Long Island, Inc.
d/b/a Day Haven Adult Day Services,
By:

SCHEDULE A
TO LICENSE AGREEMENT
(Preliminary Drawing dated Oct. 1, 2017 & Google Map – Licensed Premises)

SCHEDULE B TO LICENSE AGREEMENT

The responsibilities of the Licensor shall be as follows:

1. Prior to occupancy, construction, improvements, modifications shall be made to the building for not less than two (2) bathrooms to accommodate the program, removal of the large wall separating two rooms and construction of an office area in the same room. At least, one of the two bathrooms shall be fully ADA accessible. Basic infrastructure will also be installed for networking, cable, internet, TV and electrical.
2. Prior to occupancy, a Certificate of Occupancy shall be provided to Licensee that the building may be lawfully occupied as a "day care facility", an adult day facility" and that the building is multiple occupancy which includes "day care facility", an adult day facility" together with municipal use.
3. Prior to occupancy, not less than four (4) handicapped parking spaces reserved for the Lessee's use shall be installed.
4. Prior to occupancy, a handrail or other railing shall be installed on walkway from parking lot to the existing building entrance and ADA compliant ramps at all program exits.
5. Prior to commencement of the second year of the license, construction, improvements modifications to the building for a third bathroom to accommodate the program and westerly vestibule.
6. All major building services, including all repairs to and maintenance of the major or structural components of the building structure (i.e. the roof, walls, HVAC).
7. Provide and maintain a working kitchen and appliances. Replacement and repair of all appliances.
8. Service contract for and maintenance of security system.
9. Service contract for and maintenance of propane.
10. Service contract for and maintenance of fire system.
11. Service contract for and maintenance of HVAC.
12. The following utilities (water, electricity, fuel, propane)
13. Pest control.
14. All exterior maintenance of Town property including cleaning, marking/designation of parking, and snow removal of roadways, walkways and parking lot, lawn and landscape maintenance and tree trimming outside the fenced playground area occupied by Licensee.
15. Maintenance and replacement of interior fire extinguishers.
16. Daily and routine janitorial service, cleaning and maintenance of the

common areas (entrance and hall) and the area being used by Licensor that is the non-licensed premises or that area within building that is outside of 1,699 square feet as shown on the Preliminary Drawing dated October 1, 2017.

The responsibilities of the Licensee shall be as follows:

1. Daily and routine cleaning and maintenance of licensed premises.
2. Provision of paper supplies, cleaning supplies and equipment.
3. Purchase, and repair, of furniture, furnishings and window treatments.
4. Purchase and replacement of telephones. Maintenance of the telephone system. Service contract for telephone, if applicable.
5. Cable and internet service.

THE VOTE

Hubbard Yes No Giglio Yes No

Wooten Yes No Dunleavy Yes No

Walter Yes No

The Resolution Was Thereupon Duly Declared Adopted