

ORDINANCE NO. 973

AN ORDINANCE RATIFYING A LAND USE AGREEMENT BETWEEN THE CITY OF EUREKA SPRINGS, ARKANSAS AND EUREKA SPRINGS COMMUNITY CHILD DEVELOPMENT CENTER, INC.

WHEREAS, the City of Eureka Springs, Arkansas entered into a Land Use Agreement with Eureka Springs Community Child Development Center, Inc. on the 29th day of June, 1973; and

WHEREAS, the City Council of Eureka Springs, Arkansas recognizes the requirement that Agreements entered into by the City of Eureka Springs should be pursuant to or ratified by proper and appropriate Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Eureka Springs, Arkansas that the hereinafter set forth Land Use Agreement be ratified:

THOMAS D. LEDBETTER
ATTORNEY AT LAW

POST OFFICE BOX 637
HARRISON, ARKANSAS 72601
501-363-6127

POST OFFICE BOX 366
EUREKA SPRINGS, ARKANSAS 72632
501-253-9444

PASSED AND ORDAINED by the City Council of Eureka Springs,
Arkansas, on this _____ day of _____, 1974.

APPROVED:


FRED L. NAFF, MAYOR

ATTEST:


TRUIE S. WALSH, CITY CLERK

THOMAS D. LEDBETTER
ATTORNEY AT LAW

POST OFFICE BOX 637
HARRISON, ARKANSAS 72601
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501-255-9444

LAND USE AGREEMENT

THIS AGREEMENT, made and entered into this 29th day of June, 1973, by and between the CITY OF EUREKA SPRINGS, ARKANSAS, hereinafter referred to as First Party, and EUREKA SPRINGS COMMUNITY CHILD DEVELOPMENT CENTER, INC., hereinafter referred to as Second Party,

WITNESSETH:

1. First Party, in consideration of the valuable service rendered to the City of Eureka Springs, Arkansas, by Second Party's operation of the Eureka Springs Community Child Development Center and of the covenants and agreements hereinafter stipulated to be mutually kept and performed by the parties hereto, does hereby grant, upon the terms and conditions hereinafter stated to Second Party, its successors and assigns, the use of the following described property, to-wit:

All that part of the Interstate Summer Normal and Educational Assembly Grounds, Eureka Improvement Company Survey of the City of Eureka Springs, Arkansas, commonly known as Harmon Park, which is bounded by Glen Avenue on the East and Southeast, by the driveway alongside the existing building on the Southeast, by an unnamed road which runs behind and along the Northwest side of the existing building on the Southwest, West, Northwest, and North, and, on the East, by a line running due North and South from a point on the centerline of said road to the center of a maple tree one foot in diameter located in the peninsula formed by Glen Avenue directly across from the existing Harmon Park Building, it being the intention of First Party herein to give a land use agreement on all that part of Harmon Park on which the existing building now stands and on which a proposed building will stand and on the immediate surrounding play grounds.

2. To have and to hold the same unto Second Party, its successors and assigns from date hereof until June 15, 1983, and for successive terms of five years each, provided Second Party is actively using the premises for its programs at the end of each such expiring term.

3. All buildings and other permanent improvements erected and placed on the premises shall remain thereon and shall be and become the property of First Party; Second Party shall secure the approval of the City Planning Commission for

any building and/or exterior remodeling plans. First Party shall maintain adequate fire insurance on all buildings now located or subsequently erected on the above described property during the term of this agreement or any extension thereof.

4. First Party shall pay all charges for water, gas, electricity, trash collection and other utilities, except telephone service, used on or for the above described property during the term of this agreement or any extension(s) thereof.

5. First Party will maintain all roads, streets, sewer and water lines, curbs, walks, grounds, fences, trees, outdoor lights, picnic tables, barbecues, wading pools, gazebos, etc. as necessary for the use of Harmon Park as a public park.

Second Party will maintain all buildings, including interior plumbing and electrical lines and fixtures, and playground equipment, except that major repairs, such as re-roofing, shall be paid for by First Party.

6. Second Party shall make the buildings and facilities on the above described property available to any public or private group for use at any reasonable time, so long as such use will not conflict with the activities of Second Party in such building or on such premises. It is understood and agreed by both parties hereto that Second Party shall have full possession and control of the above described property and improvements thereon during the term of this agreement or any extension(s) thereof.

7. It is anticipated that this Land Use Agreement will be assigned by the Second Party as security for a construction loan in the amount of \$ 14,000.00 to the Bank of Eureka Springs, Eureka Springs, Arkansas, and that the money loaned by said Bank will be used to pay for the construction of a new building on the above described premises. The First Party hereby consents and agrees to the assignment of this Agreement to the Bank of Eureka Springs as security for said loan. It is further agreed by the parties hereto that said anticipated loan shall be repaid to the Bank of Eureka Springs within a period of 10 years. In the event that Second Party fails to pay the promissory note to be held by the Bank of Eureka Springs, in accordance

with the terms of said note, and makes default thereon, it is further agreed that the Bank of Eureka Springs shall have the right to enter upon said property, take possession of same and/or sublease same during the time of the unexpired portion of this Agreement or if sooner paid, until the balance of said note is paid in full (which ever event happens first). It is the intention of the parties hereto that the lands covered by this Agreement and the improvements thereon shall not revert back to First Party until said loan is paid in full or until the expiration of the original lease period.

8. First Party agrees to warrant and defend the title to said premises against all persons save whatever existing rights the Women's Club of Eureka Springs may hold and agrees that so long as Second Party shall keep the covenants of this agreement Second Party shall peaceably and quietly hold, enjoy and occupy said premises during the term of this agreement and any extension(s) thereof.

9. Each and every covenant, agreement, term, provision, and condition herein contained shall extend to and be binding upon the successors and assigns of the parties hereto and shall be deemed and treated as covenants real running with the premises aforesaid during the term hereof.

10. Any amendments, changes or alterations mutually agreed upon by the parties respecting the terms of this agreement shall be in writing and attached hereto. No covenant, warranty or agreement between the parties respecting the terms of this agreement shall be binding unless specifically contained herein, it being the intention of both parties to set out their entire agreement in the terms of this agreement.

IN WITNESS WHEREOF, we have hereunto set out hands and seals this

29th day of June, 1973.

CITY OF EUREKA SPRINGS, ARKANSAS EUREKA SPRINGS COMMUNITY CHILD DEVELOPMENT CENTER, INC.

David L. Craft

Frederic S. Walsh

June J. Westphal
Barbara J. Peltus

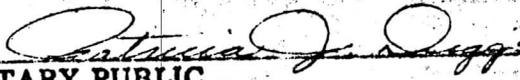
ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF CARROLL

This day personally appeared before me, the undersigned Notary Public, Fred L. Naff and Trule Walsh the Mayor and City Clerk-Recorder respectively of the City of Eureka Springs, Arkansas, acting under resolution duly passed by the City Council of said City, and June J. Westphal and Barbara O. Pettus, the President and Secretary respectively of Eureka Springs Community Child Development Center, Inc., acting under resolution duly passed by the Board of Directors of such corporation, all well known to me to be the parties in the above and foregoing agreement and stated that they had executed the same for the purposes and considerations therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 29th day of June, 1973.


NOTARY PUBLIC

MY COMMISSION EXPIRES:

11-15-75