

LEASE

THIS LEASE ("Lease") is made this 29<sup>th</sup> day of July, 2011, between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate (the "Commission"), 6611 Kenilworth Riverdale, Maryland 20737 and The Siena School, or its designated affiliated entity ("Siena" or the "Lessee"), whose address is 9727 Georgia Avenue, Silver Spring, MD 20910.

R E C I T A L S:

A. The Commission is a public body corporate, created and existing under Article 28 of the Annotated Code of Maryland that is engaged in performing governmental functions of acquiring, developing, maintaining and operating public parks, facilities and recreation areas within Montgomery County and Prince George's Counties, and, in such capacity, the Commission is the fee simple owner of approximately 1.47 acres of land located as shown on **Attachment A** (the "Leased Premises").

B. The Lessee is the contract purchaser of a certain parcel of land identified on Attachment A as "Property of Boys and Girls Club of Greater Washington, Parcel 1, Boys Club of Silver Spring, Plat No. 5017, Liber 2584, Folio 308, Tax Map JP22, Parcel N458" (referred to herein as the "Siena School Property").

C. The Lessee intends to obtain a loan from a lender to make certain improvements to the Siena School Property and the Leased Premises and in order to obtain said loan, enter into a deed of trust with a lender and pledge as security its fee interest in the Siena School Property as well as the leasehold interest created by this Lease.

D. The Lessee intends to seek a Special Exception ("Special Exception") to permit the operation of an educational institution and other uses permitted under the Special Exception on the Siena School Property and the Leased Premises.

E. The Lessee intends to improve existing, construct new, or install driveways, parking lots, stormwater management facilities, recreational fields, and landscaping on the Leased Premises and improve pedestrian access between the Leased Premises and the Commission's adjacent park (such, roads, driveways, parking lots, stormwater management facilities, recreational fields, landscaping, and access enhancements hereinafter referred to as "Improvements").

F. The Lessee represents that it will fund the Improvements at the Lessee's sole expense, construct them according to the Commission's standards, and maintain, repair, and replace them all at the Lessee's sole expense and according to the practices of the Commission.

G. The Commission has determined that the Lessee's obligations under this Lease will fulfill public and park purposes by assisting in mitigating the adverse effects of storm water

runoff and the growth of invasive plant species, by reducing the Commission's operating expenses, and by allowing public access to the Leased Premises during specified periods of time as shown on **Attachment B** ("Access Schedule")

H. The Commission and the Lessee intend that this Lease shall set forth the terms and conditions under which the Lessee shall occupy the Leased Premises during the term hereof.

**NOW, THEREFORE**, for and in consideration of the covenants, conditions, terms and provisions contained in this Lease, the parties agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a material part of this Lease.
2. **Demise of Leased Premises.** The Commission leases to the Lessee, the Leased Premises as shown on and described on Attachment A, commencing on the Lease Commencement Date specified below.
3. **Term and Rent.**

A. **Lease Term.** Subject to Section 42 below, the demise of the Leased Premises as provided in this Lease commences on the date that deed transferring to title of the Siena School Property to Lessee is executed and delivered (the "Lease Commencement Date"), and terminates twenty (20) years thereafter, unless the Lease is terminated earlier in accordance with the provisions of this Lease.

B. **Rent.** The Lessee shall pay to the Commission a rent of One Dollar and no/100 (\$1.00) payable annually ("Base Rent") in advance, without notice or demand, beginning on the Lease Commencement Date, and continuing on the same day of each year thereafter for the entire term of this Lease. Additional Rent (as defined in Section 11) shall be due and payable upon demand.

C. **Rent Payment Address.** Subject to change by written notice from the Commission, the Lessee shall make all Rent payments to the Commission at:

Property Management Office, Montgomery County Parks  
The Maryland-National Capital Park and Planning Commission  
10611 New Hampshire Avenue  
Silver Spring, Maryland 20903

4. **Use of Leased Premises.**

A. The Lessee shall use the Leased Premises solely for activities conducted in association with the operation of a private educational institution and such other uses as may be permitted under the Lessee's Special Exception, such activities shall include

before school or after school programs and outdoor sports and recreational activities operated by the Lessee and/or its designee(s) or sublessee(s).

B. Subject to the requirements of Lessee's Special Exception, the Commission may use any parking lots, roads, driveways, and recreational fields located all, or in part, on the Leased Premises except during the Lessee's normal hours of operation (including before school or after school programs) or during special events held on the Leased Premises by the Lessee and/or its designee(s) or sublessee(s). The Lessee shall post signs on the Leased Premises advising the public of the Commission's rights with respect to this Section 4(B).

5. **Restrictions on Use of Leased Premises.** The Lessee shall not:

A. Use the Leased Premises in violation of any Commission law, regulation and practice and any Federal, State and local law and regulation;

B. Commit waste on the Leased Premises;

C. Use the Leased Premises for any purpose that is unlawful, unsafe, and hazardous or in violation of any law or regulations;

D. Place, dispose of or store any material or substance on the Leased Premises that is illegal, controlled, hazardous or toxic, and not permit any other person to bring, place, dispose of or store any material or substance that is illegal, controlled, hazardous or toxic;

E. Allow any person to park a recreational vehicle or boat on the Leased Premises;

F. Except for uses in connection with commercial deliveries or services, special events, buses used by the Lessee in the operation of its private educational institution, or permitted construction, allow any person to park a commercial vehicle, truck, or equipment on the Leased Premises;

G. Allow any person to park who is not authorized to use the Leased Premises;

H. Except in connection with permitted construction, repairs or new improvements, use the Leased Premises as a storage area for equipment or materials;

I. Allow any motor vehicle by Lessee's employees or contractors on the Leased Premises with expired license plates, or registration;

J. Use the Leased Premises for repair of motor vehicles or equipment; and

K. Obstruct a sidewalk, driveway, exit, or entrance, or area in the Leased Premises.

6. **Pesticides.** The Lessee shall comply with any Commission law, regulation and practice, and any Federal, State, and local law and regulation governing the use of pesticides, including but not limited to storage, inventory, purchase and disposal, and application. Lessee shall not use any pesticide that is prohibited by any Commission law, regulation and practice, and any Federal, State, and local law or regulation. Lessee shall obtain prior written approval from the Director of Parks or the Director's designee before application of any pesticide on the Leased Premises.

7. **Hazardous Materials.**

A. The Lessee shall not use or store any asbestos, hazardous or toxic materials or substances, (hereinafter "Hazardous Material"), as defined in any Federal, State, Commission or local laws, regulations and rules.

B. If the Lessee causes or permits the release of any Hazardous Material, as defined above in this paragraph, in or on the Leased Premises, the Lessee shall indemnify, defend and hold the Commission harmless from any and all actions, claims, demands, costs, damages and expenses of any kind, including: (1) attorneys fees, (2) diminution in value of the Leased Premises, and (3) damages for the loss or restriction on use of the Leased Premises, which are made against or incurred by the Commission arising during or after the Term of this Lease. The Lessee is liable during the Term of this Lease and as long as Lessee has possession of the Leased Premises, whichever period is longer. The Lessee is not liable for the release of Hazardous Materials on the Premises prior to the commencement of this Lease.

8. **Improvements.** The Lessee shall construct the Improvements at its sole cost in accordance with the applicable building codes and the Commission's standards. The Commission shall not be responsible for any part of the cost of the Improvements.

9. **Lessee – Maintenance, Repair, and Replacement.** The Lessee shall, at its sole costs and expense, in accordance with the annual maintenance plan and schedule approved by the Commission in accordance with this section as set forth below :

A. Maintain the Leased Premises, including all Improvements, in a good state of repair and cleanliness including without limitation nonstructural, ordinary and extraordinary repairs, maintenance and replacements, routine and periodic maintenance of all grass areas, including mowing , mulching, and fertilizing, and managing invasive plant species;

B. Perform routine maintenance of trees, shrubs, and other plantings on the Leased Premises and replace any diseased, dying or dead trees, shrubs or other plantings on the Leased Premises required by a landscaping or storm water

management plan approved by the Commission or any local, State, or Federal agency having jurisdiction;

- E. Perform periodic maintenance of playing surfaces;
- F. Clear all vehicular and pedestrian ways of ice and snow; and
- G. Remove and dispose of trash, solid waste, refuse, rubbish and debris.

The Lessee shall meet with the Commission's designee annually to establish an annual maintenance plan and schedule for the Leased Premises. If the parties are unable to agree on the annual maintenance plan and schedule by the first day of September of each year, then the Lessee shall maintain the Leased Premises in accordance with the then current, reasonable and customary management and maintenance practices and policies of the Commission.

The Lessee shall have a commercially reasonable time to repair or rebuild improvements damaged or destroyed by casualty.

10. **Utilities and Services.** The Lessee shall promptly pay all fees, taxes, costs and charges for all services, including electricity, gas, water systems, septic systems, sewer systems, telephone, refuse, cable, communications, janitorial and other services for improvements and activities used by Lessee on the Leased Premises.

11. **Reimbursement to Commission.** If the Lessee fails in the performance, to the Commission's satisfaction, of any of Lessee's obligations under this Lease, and Lessee's failure continues for thirty (30) days after written notice from the Commission, such failure to perform shall be considered a default ("Default") and the Commission may cure the Default on behalf of the Lessee. The Lessee shall reimburse the Commission, upon demand of any out-of-pocket sums, amounts, costs, fees, charges or expenses incurred by the Commission to cure Lessee's Default, such as without limitation, materials, labor, administrative costs, and professional fees, and the amount of the reimbursement shall be additional rent ("Additional Rent"). Costs will be based on charges as reported through the Commission's PayPass system or an equivalent program.

12. **Commission Access to Leased Premises.** In addition to any access granted under Section 4(B), the Commission shall have access to the Leased Premises for the purpose of:

- A. Inspecting the Leased Premises, and performing any maintenance or repair not performed by Lessee in accordance with the Lease obligations;
- B. Enforcing the Lease;

- C. Accessing adjacent parkland;
- D. Assuring in emergencies the safety, improvement or preservation of the Leased Premises; and
- E. During the last six months of the lease term, showing the Leased Premises to any prospective new lessees.

The Commission shall provide two (2) business days written notice to Lessee, except in emergency.

13. **Public Access to Leased Premises.** Subject to Sections 4(B) and 12(C), the public shall not have access to the Leased Premises without the consent of the Lessee, which consent shall not be unreasonably withheld, conditioned, or delayed.

14. **Security and Liens.**

A. The Lessee may pledge as security to a lender a deed of trust covering the Lessee's leasehold interest in the Leased Premises created by this Lease as security. The deed of trust shall be limited solely to the Lessee's leasehold interest in the Leased Premises and shall not include the Commission's fee interest in the Leased Premises. If a lender requires a recognition agreement generally in the form of the recognition agreement shown in **Attachment C** as a condition of making a loan to the Lessee, the Commission shall enter into such an agreement with the lender provided that the Commission determines that the recognition agreement adequately protects the Commission's interests.

B. The Lessee shall not permit any liens to be imposed or maintained against the Leased Premises for any labor, service or material furnished to Lessee. If any lien is asserted against the Leased Premises or the Lessee's leasehold interest in the Premises, the Lessee shall promptly at the Lessee's sole cost and expense have the lien discharged by payment, bond or otherwise.

15. **Signs.** The Lessee shall not erect, place or install any sign on the Leased Premises without obtaining the written approval in advance from the Director of Parks or the Director's designee. The Lessee may place a temporary sign associated with a special event without prior written approval of the Director of Parks or the Director's designee, so long as Lessee removes the sign within forty-eight (48) hours after posting of the sign.

16. **Insurance.** Lessee shall maintain insurance coverage for the Leased Premises, including all improvements. This insurance coverage shall be the primary coverage. The insurance must comply with the following provisions:

- A. Comprehensive General Liability insurance

General Aggregate -\$1,000,000.  
Occurrence Based Deductible allowed - \$1,000.

Coverage and Limits

Premises and operations - \$1,000,000.  
Products and completed operations - \$1,000,000.  
Independent contractors - \$1,000,000.  
Contractual-Leases - \$1,000,000.  
Explosion, collapse, underground hazards - \$1,000,000.  
Personal injury and advertising injury - \$1,000,000.  
Real Property and Personal Property Damage -  
Replacement Value.  
Contractual Indemnity-Hold Harmless - \$1,000,000.  
Fire Damage (any one fire) - \$50,000.  
Medical expense (any one person) - \$5,000.

- B. Automobile Liability
  - Combined Single Limit - \$1,000,000.
  - Includes owned, hired and non-owned motor vehicles
- C. Excess Umbrella Liability -\$1,000,000.
- D. Worker's Compensation
  - Coverage required by the Maryland Law

E. The insurance company must be licensed to do business in Maryland and must be acceptable to the Commission. The Lessee must provide the Commission with a certificate of insurance before occupancy of the Leased Premises and must provide the Commission with a renewal certificate of insurance on or before expiration of the existing certificate. The certificate must provide for not less than forty-five (45) days advance written notice to the Commission in the event of termination, modification or cancellation.

F. All insurance policies must include the Lessee as the named insured and the Commission as an additional insured. All insurance policies must waive all rights of subrogation against the Commission.

G. The Lessee shall provide insurance sufficient to cover the replacement value of all improvements on the Leased Premises. In the event insurance coverage is not sufficient for any reason, the Lessee shall repair the Leased Premises so that is in a safe condition.

17. **Indemnification - Lessee.** The Lessee shall indemnify, defend and hold harmless the Commission against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, judgments and expenses, including, but not

limited to, reasonable attorneys' fees, that are made against or incurred by the Commission arising from the Lessee's negligence, wrongful conduct, negligence performance or failure to perform any of the Lessee's obligations under this Lease; provided that the Commission shall provide written notice to Lessee within ten (10) business days of its first receiving notice of such claim or other actual or threatened liability and afford Lessee a reasonable opportunity to handle the defense of such claim or liability.

18. **Alterations to Leased Premises.** The Lessee shall obtain the written approval in advance from the Executive Director of the Commission or the Executive Director's designee prior to making any alterations, additions or improvements to the Leased Premises. The Lessee shall comply with all applicable Commission, State, Federal and local laws and regulations.

19. **Reports to Commission.** The Lessee shall promptly notify the Lessee's insurance carrier and the Commission of any damage or personal injury on or about the Leased Premises which occurs by any cause, including, but not limited to negligence, accident, fire, water, flood, wind, explosion, wrongful act and vandalism. Lessee shall notify the Park Police at 301-949-3010 and the Property Management Office at (301) 495-2520.

20. **Assignment and Subletting.** Lessee shall not assign this Lease or allow any person or legal entity to use or sublet any part of the Leased Premises (other than in the normal course of facility operations conducted from the Siena School Property) without prior written consent of the Commission, which consent shall not be unreasonably withheld, conditioned or delayed, as to the terms and provisions of the assignment or sublease, the identity of the assignee or sublessee and its capabilities and financial responsibility. Notwithstanding the previous sentence, the Commission shall not be obligated to approve an assignment or subletting if the Commission determines that the proposed assignee's or sublessee's proposed use of the Leased Premises does not fulfill a public and a park purpose. If the Commission consents to a subletting or assignment, the Lessee, the sublessee, and/or the assignee shall be jointly and severally obligated and liable to the Commission under the terms of the Lease. The Lessee must submit to the Commission a fully executed copy of the sublease or assignment not less than fifteen (15) days after the Lessee and the sublessee or the assignee execute the sublease or assignment. No such assignment or sublet of the Leased Premises by the Lessee shall be effective until approved by the Commission in writing. The foregoing limitations on subletting to the contrary notwithstanding, if Lessee's Special Exception approval allows Lessee to have a sublessee or other occupant or user of the Siena School Property, and provided Lessee's use and operation under the Special Exception remains the primary use of the Siena School Property, such sublessee's use shall not be deemed be an assignment or subletting under this Lease and such sublessee shall be permitted to use the Leased Premises consistent with the rights of Lessee in accordance with the terms of this Lease without the prior consent of the Commission, but Lessee shall remain fully responsible for the performance of all obligations as Lessee under



this Lease and the provisions of Section 17 shall be deemed to apply to, and cover, any liability or claims arising out of any actions of such sublessee.

21. **Termination.** Subject to compliance with any agreements of the Commission executed pursuant to or contemplated by Section 14(A) hereof, if the Commission determines during the term of the Lease that Lessee has materially defaulted in the performance of this Lease (for purposes of this Lease, a "Lessee Default"), the Commission may serve upon the Lessee a notice of default, and if within thirty (30) days of such notice, the Lessee fails to cure the specified Lessee Default (provided, however, that if such Lessee Default is not susceptible to cure within such thirty (30) day period, such cure period shall automatically be extended so as to allow sufficient time for such cure, but in no event shall such cure period exceed ninety (90) days unless otherwise agreed by the parties), then (1) the Commission may (but shall not be obligated to) make such payment or do such act as may be reasonably necessary to cure such event, and charge the amount of the expense thereof to the Lessee, which amount shall be due and payable by the Lessee upon demand, or (2) the Commission may, without terminating this Lease, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of such event, or (3) the Commission shall have the right to terminate this Lease upon written notice to the Lessee. Notwithstanding any other provision hereof, if the Lessee is unable to obtain a loan from a lender to make improvements to the Siena School Property and the Leased Premises, the Lessee shall have the right to terminate this Lease and this Lease shall be deemed null and void co-incident with such termination.

22. **Surrender of Leased Premises.**

A. On or before the last day of the Lease term, or upon any earlier termination of the Lease as provided herein, Lessee shall peaceably surrender the Leased Premises including all improvements in good order and repair and otherwise in the same condition as upon the later of commencement of the Lease or the completion of construction of any improvement on the Leased Premises, as the case may be, except for: (1) ordinary wear and tear; (2) loss by fire or other casualty not caused by the Lessee; and (3) any repair or replacement that is covered by insurance proceeds payable or assigned to the Commission.

B. The Lessee shall remove all of the Lessee's equipment, vehicles and personal property. The Lessee may remove the Lessee's personal property that is affixed to the Leased Premises, provided that the personal property is removed without substantial injury to the Leased Premises. The injury is not substantial if the Lessee promptly restores the Leased Premises to the condition existing prior to the installation of the personal property and the restoration is to the satisfaction of the Commission. The Lessee may not remove any permanent fixture, which is property, materials or improvements that has become part of the Leased Premises.

23. **The Commission's Remedies upon Expiration or Termination.** The

Commission shall have the right and option upon expiration or termination of the Lease to: (a) re-enter the Leased Premises, (b) make any repairs or maintenance that may be necessary, (c) expel the Lessee or anyone claiming through the Lessee, and (d) remove any property from the Leased Premises. The Lessee shall remain liable for the Lessee's negligence, wrongful conduct, negligent performance or failure to perform any of the Lessee's obligations under this Lease, plus court costs and reasonable attorney's fees.

24. **Quiet Enjoyment.** So long as the Lessee performs all of the Lessee's obligations under this Lease, the Lessee shall have quiet and peaceful use and enjoyment of the Leased Premises, subject to the provisions of this Lease, without interference by the Commission or any party claiming by, through or under the Commission.

25. **Compliance With Laws.** The Lessee shall promptly comply with all Commission laws, regulations and practices and applicable Federal, State and local laws and regulations.

26. **Notices.** The parties shall send all notices, requests, demands or other communications in writing by: (a) personal delivery, or (b) certified mail or registered mail, postage prepaid, return receipt requested, to the Commission or the Lessee, at the respective addresses set forth below:

The Commission:      Property Management  
                                 M-NCPPC  
                                 10611 New Hampshire Avenue  
                                 Silver Spring, Maryland 20903

                                 Office of General Counsel  
                                 M-NCPPC  
                                 6611 Kenilworth Avenue  
                                 Riverdale, Maryland 20737

The Lessee:              The Siena School  
                                 9727 Georgia Avenue  
                                 Silver Spring, MD 20910

With copy to:            Miller, Miller & Canby  
                                 200-B Monroe Street  
                                 Rockville, Maryland 20850  
                                 Attn: Jody S. Kline, Esq.

Either party may change its notice address by written notice to the other party.

27. **No Partnership.** The Commission is not a partner, joint venturer or associate of the Lessee in the Lessee's use of the Leased Premises.

28. **Periodic Reviews.** At the end of each five years, the Commission shall review the use of the Leased Premises under this Lease, the Lessee's performance under this Lease and other matters related to this Lease, and provide any report of such review to the Lessee. No change in the terms or requirements of this Lease may be imposed without the express written consent of the Commission and the Lessee.

29. **Non-Waiver.** The failure by the Commission to insist upon the performance of any provision, condition or term of this Lease, or the failure of the Commission to exercise any right or remedy shall not constitute a waiver of provision, condition, term, right or remedy by the Commission. The provision, condition, term, right or remedy shall continue in full force and effect, unless waived in writing by the Commission.

30. **Applicable Law.** This Lease shall be construed in accordance with the laws of the State of Maryland and enforced in a court of competent jurisdiction in Montgomery County, Maryland.

31. **Non-Discrimination.** The Lessee shall not discriminate against any participant in or applicant for its programs, against any employee or applicant, or against any contractor because of age, sex, race, creed, color, national origin or disability. The Lessee shall ensure that applicants, participants, employees and contractors are treated without regard to age, sex, race, creed, color, national origin or disability. If the Lessee is determined to be in violation of any Federal, State or County nondiscrimination law by the final order of an agency or court, the Commission may terminate or suspend this Lease in whole or in part.

32. **Entire Agreement.** This Lease contains the entire agreement between the parties. This Lease may only be modified by a written amendment signed by the parties.

33. **Waiver of Jury.** The Lessee waives any right to a trial by jury in any legal action relating to this Lease.

34. **Obligations Surviving Lease.** Any obligations, duties and liabilities of the Lessee under the Lease shall survive the expiration or termination of this Lease.

35. **Permits.** The Lessee shall obtain all permits and licenses required by the Commission, Federal, State, and local laws and regulations.

36. **Severability.** If any provision of this Lease is determined to be invalid or illegal by a court or an administrative agency or body, that provision shall be severed from this Lease and shall not affect the remainder or any other provision of this Lease.

37. **Independent Contractor.** The Lessee is an independent contractor. The Lessee and its agents, officers, employees, assigns, contractors and representatives are

not agents or employees of the Commission.

38. **INTENTIONALLY DELETED.**

39. **Successors and Assigns.** This Lease is binding upon the parties and their successors, agents, officers, employees, assignees, contractors, representatives and sublessees.

40. **Applicability of Maryland Natural Resources Article, Title 5, Subtitle 11.** Anything herein to the contrary notwithstanding with respect to the obligations of the Lessee to maintain the Leased Premises or its indemnification and insurance obligations hereunder, the Commission acknowledges that the Lessee is, and is intended to be, an "owner" of the Leased Premises as such term is defined under Annotated Code of Maryland, Natural Resources Article, Title 5, Subtitle 11, Section 5-1101(e) and that the provisions of the Natural Resources Article, Title 5, Subtitle 11 shall be applicable to the use by the public of the Leased Premises and are not waived hereunder

41. **Taxes -Fees.** The Lessee shall pay any taxes, fees, assessments, or charges attributable or related to the Lessee's use of the Leased Premises. The Lessee reserves the right to handle appeals of any tax assessment or reassessment of the premises for real estate tax purposes.

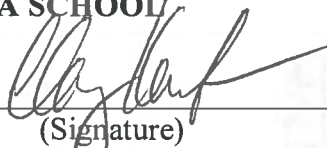
42. **Contingencies.** This Lease is contingent on the Lessee obtaining a Special Exception for its proposed uses and purchasing the Siena School Property. The Commission and Lessee have the right to terminate this Lease if either contingency does not occur.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Commission and the Lessee have executed this Lease on the dates written below.

**THE SIENA SCHOOL**

Date: July 29, 2011

By:   
(Signature)

Typed Name: Clay Kaufman

Title: Head of School

**WITNESS**

Date: July 29, 2011

By:   
(Signature)

Typed Name: Lauren M. Jackson

Title: Office Manager


**THE MARYLAND-NATIONAL  
CAPITAL PARK AND PLANNING  
COMMISSION**

Date: 8/4/11

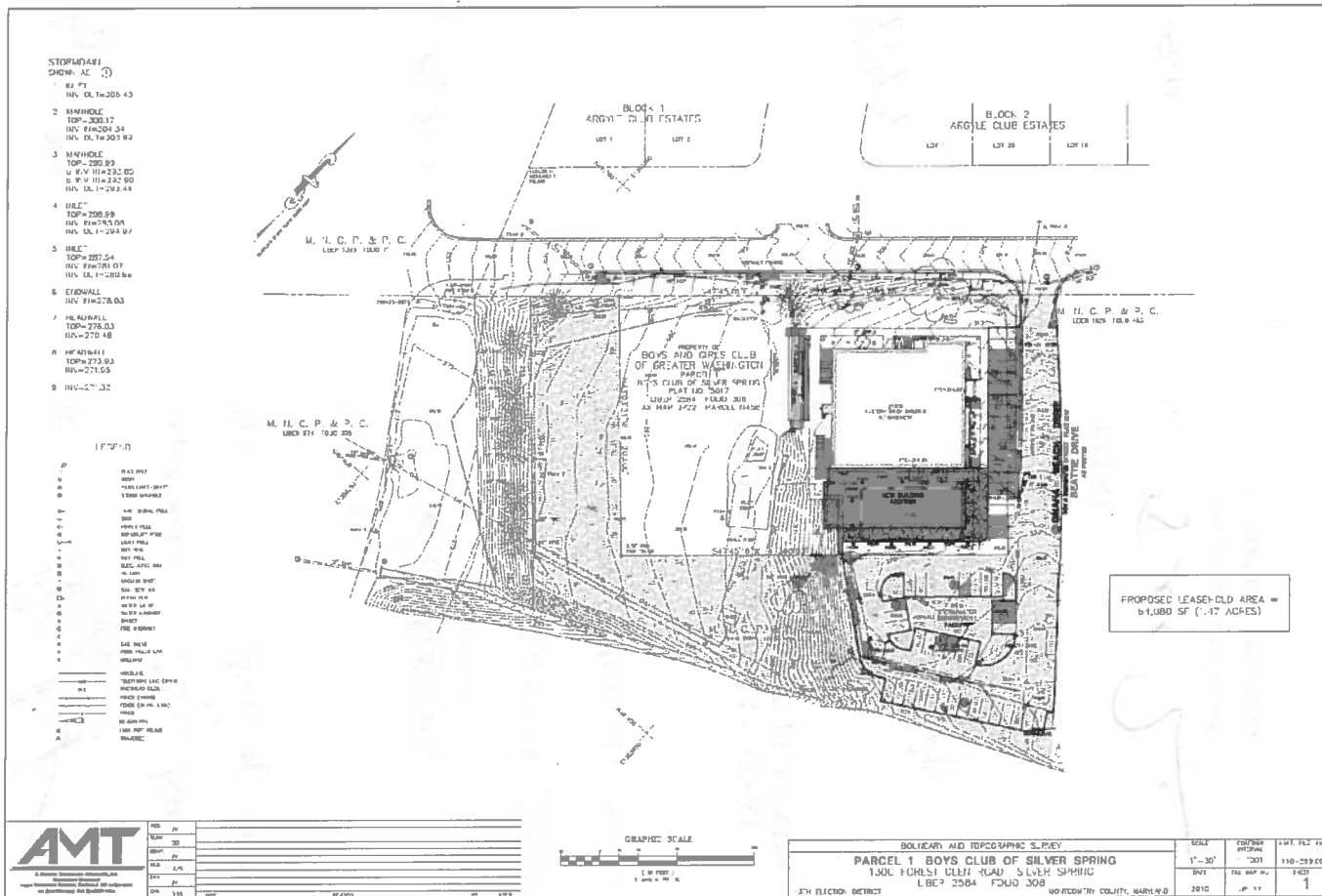
By:   
Patricia Colihan-Barney  
Executive Director

**ATTEST**

Date: 8-5-11

By:   
Joseph Zimmerman  
Secretary-Treasurer

Attachment A  
Leased Premises



**Attachment B**  
**Access Schedule**

- I. The Lessee shall have exclusive use of the Leased Premises throughout the calendar year on weekdays (Monday through Friday) from 7:30 am through 6:00 pm except for Federal, State, or Local holidays.
  
- II. In the case of an event to be held outside of the periods of exclusive use as described above in Item I, if the Lessee desires exclusive use of the Leased Premises for such an event, the Lessee shall make a request for exclusive use to the Commission at least thirty (30) days in advance. The Commission may deny the Lessee's request if the Commission determines, at its sole discretion, approving the request would interfere with public or park purposes. Notwithstanding the previous sentence, the Commission may not otherwise unreasonably withhold or deny approval of the Lessee's request.
  
- III. Except as otherwise provided in this Attachment C, the Lessee shall have non-exclusive use of the Leased Premises.

# Attachment C Recognition Agreement

## RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 20\_\_\_\_,  
between \_\_\_\_\_ ("Landlord") and \_\_\_\_\_, a  
\_\_\_\_\_, ("Lender").

### Recitals

In accordance with the \_\_\_\_\_ dated \_\_\_\_\_ ("Lease"),  
Landlord has leased to \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), the real property located in  
\_\_\_\_\_, Maryland and more particularly described in the Lease ("Property"). Lender  
proposes to make a loan ("Loan") to Tenant, the security for which will include a deed of trust covering  
Tenant's leasehold estate in the Property ("Deed of Trust").

As a condition precedent to making the Loan to Tenant, Lender has required Landlord to execute and  
deliver this Agreement.

### Agreements

NOW THEREFORE, in consideration of these premises and the covenants and agreements set forth  
below, Landlord and Lender agree as follows:

1. Landlord's Consent to Deed of Trust. Landlord consents to the execution, delivery and recordation of  
the Deed of Trust.
2. Landlord's Representations and Warranties. Landlord represents and warrants to Lender as follows:
  - a. Landlord is a \_\_\_\_\_ duly organized, validly existing, and in good standing  
under the laws of the State of Maryland. Landlord has the power and authority to consummate the transactions  
contemplated hereby, and has taken all necessary action to authorize the execution, delivery, and performance  
of this Agreement.
  - b. The execution, delivery and performance by Landlord of this Agreement: (i) are within the  
legal powers of Landlord; (ii) have received all necessary governmental approval; (iii) will not violate any  
provision of law, or any order of any court or other agency of government; and (iv) will not result in a breach  
of or constitute a default under any agreement or other instrument to which Landlord is a party or by which  
Landlord or the Property is bound. This Agreement constitutes the legal, valid and binding obligations of  
Landlord, enforceable against Landlord in accordance with its terms.
  - c. Attached hereto as Exhibit A is a true, accurate and complete copy of the Lease. The Lease  
has not modified, supplemented or amended in any way and the Lease represents the entire agreement between  
Landlord and Tenant as to the leasing of the Property. There is no default on the part of Landlord under the  
Lease and, to Landlord's knowledge, there is no default on the part of Tenant under the Lease. Rent has been  
paid on the Lease through \_\_\_\_\_, 20\_\_\_\_. There has been no assignment, hypothecation or  
pledge of Landlord's interest in the Lease or the rents due under the Lease.
  - d. Landlord's fee estate in the Property is unencumbered except by the Lease, and no person  
other than Landlord has any interest in such fee estate except under the Lease.
3. Lender's Rights Upon Lease Default.
  - a. Landlord shall give Lender, in the manner described by Section 7 of this Agreement, a copy of  
each notice given by Landlord to Tenant of a default by Tenant under the Lease ("Lease Default") at the same  
time as Landlord gives such notice of a Lease Default to Tenant.



b. Lender shall have the right (but shall have no obligation), for a period 20 days from receipt of notice, to cure or cause to be cured the Lease Default. Landlord shall accept performance by Lender with the same force and effect as though performed by Tenant. Landlord shall not commence exercising its remedies under the Lease or applicable law as a result of a Lease Default by Tenant so long as Lender in good faith (i) has commenced promptly to cure the Lease Default and continues diligently to prosecute such cure to completion, or (ii) if possession of the Property is required in order to cure the Lease Default or if the Lease Default is of a nature that it cannot be cured by Lender, has commenced to institute and continues diligently to pursue foreclosure proceedings and obtain possession and, upon obtaining possession, commences promptly and diligently pursues to completion cure of any Lease Default capable of cure by Lender; provided, however, that Lender shall have delivered to Landlord a written agreement to take the actions described in clause (i) or (ii) above, and that during the period in which such action is being taken all of the other obligations of Tenant under the Lease are being duly performed. At any time after the delivery of such agreement, Lender may notify Landlord that it has relinquished possession of the Property, or that it will not institute or will discontinue foreclosure proceedings, or that it deems and requests and receives Landlord's concurrence that the Lease Default has been cured by Tenant, and in such event Lender shall have no further liability under such agreement to take any of the actions described in clause (i) or (ii) above and, unless the Lease Default has been cured, Landlord shall have the unrestricted right to terminate the Lease and to take any other action it deems appropriate by reason of any Lease Default by Tenant.

4. Execution of Replacement Lease.

a. Upon request by Lender made within 30 days after (i) Lender's receipt of notice of the termination of the Lease for any reason, or (ii) Lender's completion of foreclosure proceedings or any other action pursuant to which Lender or its designee obtains possession of the Property, Landlord shall cooperate with Lender in connection with any proceedings to remove Tenant from the Property, and shall execute and deliver a new lease ("Replacement Lease") of the Property to Lender or its designee, for the remainder of the term of the Lease, upon all the covenants, conditions, limitations and agreements contained in the Lease, provided that Lender shall pay to Landlord, simultaneously with the delivery of the Replacement Lease, all unpaid rent due under the Lease through the date of the commencement of the term of the Replacement Lease and all expenses, including but not limited to reasonable attorneys' fees and disbursements and court costs incurred by Landlord in connection with the Lease Default, the termination of the Lease, the eviction of Tenant and the preparation of the Replacement Lease.

b. The Replacement Lease and the leasehold estate created thereby shall maintain the same priority as this Lease with regard to any mortgage encumbrance or pledge on the Property or any other lien, charge or encumbrance thereon, whether or not the same shall then be in existence, and shall provide that liens, charges or encumbrances on the Property which were subordinate to the Deed of Trust shall not be or become a lien, charge or encumbrance with respect to the Replacement Lease. Concurrent with the execution and delivery of the Replacement Lease, Landlord shall assign to the tenant named therein all of Landlord's right, title and interest in and to all moneys (including insurance and condemnation proceeds), if any, then held by or payable to Landlord which Tenant would have been entitled to receive but for the termination of the Lease.

c. Between the date of termination of the Lease and the date of execution and delivery of the Replacement Lease, Landlord shall not cancel any subleases or accept any cancellation, termination or surrender thereof, unless such termination shall be effected as a matter of law on the termination of the Lease, without notice to Lender.

5. No Amendment of Lease. Landlord shall not enter into any amendment of the Lease or accept any cancellation or termination of the Lease without Lender's prior written consent.

6. Estoppel Certificates. Upon request by Lender from time to time, Landlord shall execute and deliver to Lender or any person designated by Lender a written statement certifying (a) whether the Lease is in full force and effect, (b) whether there are any amendments to the Lease, and if so, specifying the amendments, (c) whether there are any then-existing setoffs or defenses against the enforcement of any of Tenant's rights under the Lease, and if so, specifying such matters in reasonable detail, (d) the dates, if any, to which rent or other

sums due under the Lease have been paid, (e) that Landlord has no knowledge of any then existing defaults of Tenant under the Lease, or if there are such defaults, specifying them in detail, (f) that Landlord has no knowledge of any event having occurred that authorized the termination of the Lease by Landlord, or if such event has occurred, specifying it in reasonable detail, and (g) any and all other matters reasonably requested by Lender.

7. Notices. All notices, demands, requests and other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if sent by hand delivery, Federal Express (or similar overnight courier service), or by United States certified mail (return receipt requested), postage prepaid, addressed to the party for whom it is intended at its address hereinafter set forth:

If to Landlord:

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If to Lender:

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Notice shall be deemed given as of the date of hand delivery, as of the date specified for delivery if by overnight courier service or as of 2 calendar days after the date of mailing, as the case may be.

8. Successors and Assigns Bound. The covenants and agreements contained in this Agreement shall bind, and the rights under this Agreement shall inure to, the respective successors and assigns of Landlord and Lender.

9. Governing Law. The validity of this Agreement, each of its terms and provisions, and the rights and obligations of Landlord and Lender under this Agreement, shall be governed by, interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Maryland (without regard to principles of conflicts of laws).

10. Severability. In the event that any provision of this Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

11. Integration; No Oral Modification. This Agreement constitutes the entire agreement and understanding between Lender and Landlord concerning the subject matter of this Agreement, and supersedes all prior and contemporaneous oral and written agreements with regard thereto. This Agreement may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

12. Time Is of the Essence. Time is of the essence of this Agreement.

13. Tense; Gender; Section Headings. In this Agreement, the singular includes the plural and vice versa. Each reference to any gender also applies to any other gender. The section headings are for convenience only and are not part of this Agreement.

14. Jury Trial Waiver. Landlord and Lender jointly waive trial by jury in any action or proceeding to which Landlord and Lender may be parties, arising out of or in any way pertaining to this Agreement, the Deed of Trust or the Lease. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Agreement. This waiver is knowingly, willingly and voluntarily made by Landlord and Lender, and each of them hereby represents that no representations of fact or opinion have been made by any individual to induce this waiver of trial by jury or to in any way modify or nullify its effect. Landlord and Lender further represent that they have been represented in the signing of this Agreement and in the making of this waiver by their respective independent legal counsel, selected of their own free will, and that they have had the opportunity to discuss this waiver with their respective counsel.

IN WITNESS WHEREOF, Landlord and Lender have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

\_\_\_\_\_

LANDLORD:

\_\_\_\_\_  
A \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

LENDER:

\_\_\_\_\_  
A \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Acknowledgment, Waiver and Indemnification**

Tenant acknowledges that it has read, understood and accepted the terms of this Agreement. Tenant waives any right of action, claim or recourse against Landlord and Lender, its agents and employees, by reason of any act or omission to act under the terms of this Agreement and specifically authorizes them to undertake the actions contemplated in this Agreement with or without prior notice to Tenant. Tenant indemnifies Lender, its successors and assigns and Landlord against any costs, including reasonable attorneys fees, in enforcing the legal operation and effect of this Waiver and Acknowledgment. Landlord and Lender are authorized to rely on this Acknowledgment, Waiver and Indemnification.

WITNESS/ATTEST:

\_\_\_\_\_

TENANT:

A \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_