

**MEMORANDUM**

June 10, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 22-16, Sligo Creek Holdings, LLC, - "The Siena School" - Lease Amendment

Expedited Bill 22-16, Sligo Creek Holdings, LLC, - "The Siena School" - Lease Amendment, sponsored by Lead Sponsor Council President Floreen at the request of the Maryland-National Capital Park and Planning Commission, is scheduled to be introduced on June 14, 2016. A public hearing followed by action is tentatively scheduled for June 28 at 1:30 p.m.

Bill 22-16 would approve an amendment to a lease between the Maryland-National Capital Park and Planning Commission (M-NCPPC) and Sligo Creek Holdings, LLC, a Maryland limited liability company, d/b/a The Siena School, for certain land in Sligo Creek Stream Valley Unit #4 (Siena School). The M-NCPPC leased 1.47 acres of park land to the Siena School on July 29, 2011. (©11-30) The lease was amended on May 30, 2012 (©31-36) and June 29, 2012 (©37-50), and currently expires on June 29, 2032. The leased property is being used for school staff parking, student drop-off, and busses in conjunction with the adjacent improved property owned by the Siena School. The special exception permitting the operation of a private school on the Siena School property is at ©51-60. The Siena School requested a lease amendment to add 4 years to the term of the lease to support a 20-year loan the school is seeking to obtain for capital improvements. Director of Parks Mike Riley explained the details in his May 31 transmittal memorandum at ©9-10. The Montgomery County Planning Board resolution approving the lease amendment, subject to Council approval, is at ©61.

MD Code, Land Use, §17-204(a)(2)(i) contains the following restriction on a lease of property by the M-NCPPC:

The term of a lease may not exceed 20 years without the prior approval of the lease by legislative enactment of the county where the lease property is located.

Expedited Bill 22-16 would approve this proposed lease amendment.

| This packet contains:         | <u>Circle #</u> |
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| Expedited Bill 22-16          | 1               |
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Expedited Bill No. 22-16  
Concerning: Sligo Creek Holdings, LLC,  
- "The Siena School" - Lease  
Amendment  
Revised: May 31, 2016 Draft No. 1  
Introduced: June 14, 2016  
Expires: December 14, 2017  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the Maryland-National Capital Park  
and Planning Commission

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**AN EXPEDITED ACT** to approve amendments to a certain ground lease between the Maryland-National Capital Park and Planning Commission and Sligo Creek Holdings, LLC, a Maryland limited liability company, d/b/a The Siena School, for certain land in Sligo Creek Stream Valley Unit #4.

By adding to  
Laws of Montgomery County 2016

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1.       Lease Approval.** As required by MD Code, Land Use, § 17-  
2 204, the Council hereby approves the attached amendments to the ground lease for  
3 a period longer than 20 years between the Maryland-National Capital Park and  
4 Planning Commission and Sligo Creek Holdings, LLC, a Maryland limited liability  
5 company, doing business as “The Siena School,” for certain land in Sligo Creek  
6 Stream Valley Unit #4.

7           **Sec. 2.       Expedited Effective Date.** The Council declares that this  
8 legislation is necessary for the immediate protection of the public interest. This Act  
9 takes effect on the date when it becomes law.

10

11 *Approved:*

12

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Nancy Floreen, President, County Council

Date

13 *Approved:*

14

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Isiah Leggett, County Executive

Date

15 *This is a correct copy of Council action.*

16

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Linda M. Lauer, Clerk of the Council

Date

**FIRST AMENDMENT OF LEASE**

THIS FIRST AMENDMENT OF LEASE (the "Amendment") is made by **THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**, a public body corporate and agency of the State of Maryland (the "Commission"), and **SLIGO CREEK HOLDINGS, LLC**, a Maryland limited liability company, doing business as "The Siena School" (the "Lessee").

**RECITALS:**

A. The Commission and Lessee entered into a Lease Agreement dated July 29, 2011, with an Addendum to Lease dated May 30, 2012 (collectively, the "Agreement"), for Lessee's use of approximately 1.47 acres of Commission property as described in Attachment A ("Leased Premises").

B. The Agreement has a term of 20 years which commenced on June 29, 2012 and expires on June 28, 2032.

C. Lessee is the owner of improved property located at 1300 Forest Glen Road, Silver Spring, Maryland (the "School"), which is adjacent to the Leased Premises. A portion of the Leased Premises is used for parking by Lessee's school staff, student drop-off, and buses.

D. Lessee is in the process of securing a 20-year bank loan ("Loan") for the construction of a new addition to the School. A condition of Lessee securing the Loan, scheduled to close on May 24, 2016, among others, is that Lessee's Agreement with the Commission must remain in effect during the 20-year loan period, in order that the Loan term and the lease term run concurrently for the same period. The Agreement currently has 16 years remaining on the lease term.

E. To meet the foregoing Loan condition, Lessee made a request to the Commission on April 25, 2016, to modify the Agreement to add four additional years to the lease term, so the Agreement expires 20 years after the effective date of the Loan.

F. The Commission is willing to grant Lessee the term modification pursuant to the terms and conditions herein.

G. Pursuant to Land Use Article, Section 17-204(a)(2)(i), the Montgomery County Council (the "Council") must, by legislative enactment, approve this Amendment as it will cause the Agreement to exceed a 20-year duration.

**NOW THEREFORE**, for and in consideration of the respective covenants, promises and agreements provided herein the Commission and the Lessee agree as follows:

1. **Incorporation of Recital.** The above Recitals are incorporated into this Amendment by reference.

2. **Term and Rent.** Section 3 of the Agreement is deleted in its entirety and replaced with the following:

“3. **Term and Rent.**

- A. **Lease Term.** Subject to Section 42 herein, this Lease shall commence on the date that deed transferring title of the Siena School Property to Lessee is executed and delivered (the “**Lease Commencement Date**”), and shall terminate twenty-four (24) years thereafter, unless the Lease is terminated earlier in accordance with the provisions of this Lease.
- B. **Rent.** Lessee shall pay the Commission an annual rent of One Dollar and No Cents (\$1.00) (“**Base Rent**”) each and every year for twenty (20) years beginning on the Lease Commencement Date, payable annually in advance, without notice or demand, on or before the anniversary of the Lease Commencement Date. Thereafter, Lessee shall pay an annual rent each and every year for four (4) years as defined in the Rent Table below, payable annually in advance, without notice or demand, on or before the anniversary of the Lease Commencement date.

| <b>RENT TABLE</b>        |                                 |
|--------------------------|---------------------------------|
| <b>Lease Year Number</b> | <b>Annual Rent (in dollars)</b> |
| 21                       | \$12,000                        |
| 22                       | \$12,480                        |
| 23                       | \$12,979                        |
| 24                       | \$13,498                        |

- C. **Late Payment and Returned Check Charges.** If the Base Rent and/or other payments due under the Lease is not received by the Commission by the Fifth day from the date the Base Rent and/or such other payment is due, the Lessee shall pay the Commission a late charge equal to 10% of any amount then due. Payment of such late charge shall not excuse or waive the late payment of the Base Rent and/or other payments due. If the Lessee presents a check to the Commission that a bank returns unpaid, the Commission may require the Lessee to make payment by certified check or money order. In addition, the Lessee shall pay to the Commission a returned check fee of \$35.00 for each returned check, plus any other fees, costs, charges, and expenses incurred in collecting the payment.
- D. **Holdover.** In the event Lessee fails to timely vacate and surrender the Leased Premises to the Commission upon expiration or termination of the Lease, Lessee shall pay \$1,667 per month, or any prorated amount thereto, to the Commission as holdover rent for all holdover period until the Commission regains possession of the Leased Premises. In the event

Lessee's holdover lasts longer than one year, there will be four percent annual increase in the applicable holdover year from the preceding year's holdover rent amount.

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

Park Property Management  
Montgomery County Department of Parks  
Maryland-National Capital Park and Planning Commission  
16641 Crabbs Branch Way  
Rockville, MD 20855"

3. **Replacement of Attachment "A".** Attachment "A" to the Lease is deleted and replaced with the Attachment A attached to this Amendment.

4. **Administrative Requests.** Lessee shall submit a written request to Commission a minimum of 30 days in advance for consent of, or for any Lease amendment, extension, assignment, name change, loans, or other administrative processing, and include with such request a non-refundable payment to the Commission for administrative costs in the amount of \$2,500.

5. **Lessee Name.** The Agreement is amended to reflect that the name of the Lessee is Sligo Creek Holdings, LLC, a Maryland limited liability company, doing business as "The Siena School", with the retroactive effect as of July 29, 2011.

6. **Representation and Warranty.** Lessee represents, warrants, and avers that Lessee is, and has been, in compliance with all terms of the Agreement at all times relevant. Lessee further represents and warrants that entering into this Amendment will not violate any material agreement to which Lessee is a party.

7. **Prior Condition to Amendment.** This Amendment is expressly conditioned upon Lessee's obtaining Bank of Georgetown's prior written consent for entering into this Amendment, in accordance with the requirements set forth in that certain Recognition Agreement dated June 29, 2012, entered into between the Commission and Bank of Georgetown, and Lessee agrees to bear any costs associated with obtaining the foregoing approval from Bank of Georgetown.

8. **Effective Date.** The date of this Amendment shall be the last date written on the signature page herein.

9. **No Other Changes.** Except as modified in this Amendment, all other terms and conditions of the Agreement remain the same.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Commission and the Lessee have executed this Amendment on the date written below.

SLIGO CREEK HOLDINGS, LLC

By: [Signature]  
(Signature)

Printed Name: Clay Kaufman

Title: Head of School

Lessee Fed ID # 74-3149478

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

By: [Signature]  
Patricia Colman-Barney,  
Executive Director

ATTEST:

Date: 5-23-16

By: [Signature]  
Joseph Zimmerman,  
Secretary-Treasurer

SEEN AND CONSENTED TO:

By: [Signature]

Printed Name: TIMOTHY F. VEITH

Title: EXECUTIVE VICE PRESIDENT

For: Bank of Georgetown

Attachment A - Leased Premises



|  |                       |
|--|-----------------------|
|  | Leased Premises       |
|  | MNCPPC Property       |
|  | Sligo School Property |

## LEGISLATIVE REQUEST REPORT

Expedited Bill 22-16

*Sligo Creek Holdings, LLC, - "The Siena School" - Lease Amendment*

**DESCRIPTION:** Approval of a four-year extension lease term, totaling a 24-year lease term for M-NCPPC property

**PROBLEM:** Maryland Code, Ann., Land Use Article, §17-204(a)(2)(i), requires that M-NCPPC obtain Montgomery County Council's approval for any lease with a term greater than 20 years.

**GOALS AND OBJECTIVES:** Sligo Creek Holdings, LLC (Lessee) seeks to obtain a construction loan. One of the conditions to this loan is having a 24-year total lease term. M-NCPPC, as landlord, and Lessee desires to obtain County Council's approval in order to meet the construction loan requirements.

**COORDINATION:** M-NCPPC, Park Property Management

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** M-NCPPC, Michelle Grace, Assistant Division Chief, 301-495-2467

**APPLICATION WITHIN MUNICIPALITIES:** Not applicable.

**PENALTIES:** None.



**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MEMORANDUM**

DATE: May 31, 2016  
TO: Montgomery County Council  
VIA: Mike Riley, Director of Parks  
FROM: Jim Poore, Chief, Facilities Management Division  
Michelle Grace, Assistant Division Chief, Facilities Management Division

*for C. Michelle Grace*  
*ff*

**STAFF RECOMMENDATION:**

Approval of Lease Amendment for Sligo Creek Holdings, LLC, *d/b/a The Siena School*, to extend lease term for an additional 4 years with conditions.

**BACKGROUND:**

The Commission entered into a Lease Agreement with the Siena School dated July 29, 2011, with an Addendum to Lease dated May 30, 2012, for the School's use of approximately 1.47 acres of Park property as shown in the Lease Amendment "Attachment A - Leased Premises."

The School is in the process of securing a 20-year bank loan for the construction of a new addition to the School. A condition of the loan is that the School's Lease Agreement with the Commission must remain in effect during the 20-year loan period. Currently, 16 years remain under the original lease term.

In a written request received on April 25, 2016, Siena School requested the Commission modify the Agreement to expire twenty years after the effective date of the loan. The current Lease Agreement has a term of twenty (20) years which commenced on June 29, 2012 and expires on June 28, 2032.

The Commission desires to amend the lease and provide for an additional four (4) years to meet the requirements of the loan. A Lease Amendment is attached for reference.

The Siena School is the owner of improved property located at 1300 Forest Glen Road, Silver Spring, Maryland, which is adjacent to Park property. Formerly, the school site was owned by the Boys and Girls Club, but was purchased by Siena School. A Special Exception to operate the School in the R-60 zone and the School's acquisition each occurred in 2012.

A portion of the Leased Premises is used for parking by the School's staff, student drop-off and buses during certain school hours and school days. Improvements to the School property and adjacent Park property were contemplated during the lease negotiations in 2012. Therefore, the

Lease provides that Siena School may improve the leased area and construct new parking areas, stormwater management facilities, recreational fields, and landscaping. Additionally, Siena shall provide improvements to the pedestrian access between the leased premises and the adjacent Park such as roads, driveways, parking lots and stormwater management facilities, recreational fields, landscaping and access enhancements.

The Department of Parks is seeking County Council approval to grant Siena School the term modification pursuant to the terms and conditions outlined in the Lease Amendment attached, some of which are listed below.

1. Lessee's lender approval of lease amendment.
2. Rental payment for years 21-24.
3. Minor term revisions (late fee, holdover rent, administrative fee for future requests).
4. Revised Attachment A.

Department of Park staff recommends County Council approval of this Lease Amendment via legislative enactment.

**Attachments:**

Lease Amendment (with Attachment A - Leased Premises)  
Existing Lease Agreement and Addendum; Recognition Agreement  
Resolution 16-065

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.

RECITALS:

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.

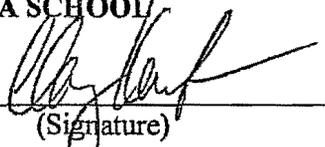
42. **Contingencies.** This Lease is contingent on the Lessee obtaining a Special Exception for its proposed uses and purchasing the Siena School Property. The Commission and Lessee have the right to terminate this Lease if either contingency does not occur.

**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

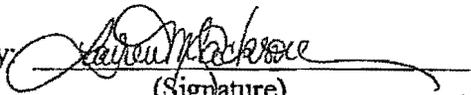
By:   
(Signature)

Typed Name: Clay Kaufman

Title: Head of School

**WITNESS**

Date: July 29, 2011

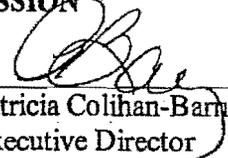
By:   
(Signature)

Typed Name: Lauren M. Jackson

Title: Office Manager

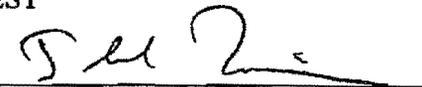
**THE MARYLAND-NATIONAL  
CAPITAL PARK AND PLANNING  
COMMISSION**

Date: 8/4/11

By:   
Patricia Colihan-Barney  
Executive Director

**ATTEST**

Date: 8-5-11

By:   
Joseph Zimmerman  
Secretary-Treasurer



**Attachment 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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: \_\_\_\_\_

ADDENDUM #1 TO LEASE

THIS ADDENDUM #1 TO LEASE ("Addendum") is made this 30<sup>th</sup> day of May, 2012, 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, as an Addendum to that certain Lease, dated July 29, 2011 ("Lease") and is made on the following premises:

## RECITALS:

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 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 and in furtherance thereof and in connection therewith, Lessee will make certain alterations and improvements to the existing improvements on the Siena School Property, including installation of a fire sprinkler system to the existing building which will require a new water service connection and vault (the "Water Service Connection") to service the fire sprinkler system.

D. Due to the location of certain specimen trees on the Siena School Property, Siena proposes and desires to construct, install and maintain the new Water Service Connection within the portion of the Leased Premises as more particularly depicted on Attachment B, attached hereto (the "Water Service Connection License Area").

E. The Commission is willing to permit the installation of the Water Service Connection on the Water Service Connection License Area and the parties have agreed to amend the Lease by the execution of this Addendum in order to confirm their agreement and obligations with respect to the foregoing.

**NOW, THEREFORE**, in consideration of the foregoing Recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission and Siena hereby agree to modify the Lease as follows:

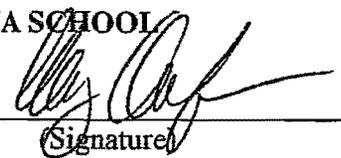
1. **Construction of Water Service Connection on Leased Premises.** Anything in Sections 4 and 5 of the Lease to the contrary notwithstanding, Lessee is permitted, subject to obtaining and complying with all requirements of a Site Utility Permit and Water Service Connection Permit issued by the Washington Suburban Sanitary Commission ("WSSC"), to construct, install and maintain, at Lessee's sole cost and expense, a water service connection with a vault and appurtenant structures, within the Water Service Connection License Area outlined in red and depicted on Attachment B hereto, in order to provide for a water service connection to serve a new fire sprinkler system as part of the Improvements intended to be made by Lessee to the existing improvements located on the Siena School Property. Prior to submission of Lessee's application to the WSSC for permits for the Water Service Connection, Lessee will provide the Commission with a set of plans for the installation of the Water Service Connection for review and approval, which approval will not be unreasonably conditioned, withheld or delayed. The Commission will provide, upon WSSC's request, a license agreement in favor of the WSSC for the installation and maintenance of the Water Service Connection on the form customarily used by the Commission with respect to WSSC water and sewer facilities on Commission property. Furthermore, prior to the commencement of any work, Lessee shall obtain from the Commission a valid Park Construction Permit which is to be issued in accordance with the customary practices and requirements of the Commission. The Lessee acknowledges that the Commission shall have no responsibility to maintain the Water Service Connection and the Lessee covenants, represents, and warrants that it will be solely responsible for maintaining the Water Service Connection. The provisions of this Section 1 are expressly made subject to the satisfaction of the contingencies set forth in Section 42 of the Lease.
  
2. **Recordation.** If either the Commission or the Lessee require this Lease or a memorandum of the same to be recorded in the land records, then Lessee shall:
  - (a) cause to be prepared a recordable form of this Lease or a memorandum of this Lease at Lessee's sole costs and expenses; and
  - (b) pay any and all costs and expenses associated with recording this Lease or memorandum thereof, including but not limited to any recordation or transfer taxes associated with such recording, if any.
  
3. Except as modified herein, the terms and provision of the Lease remain in full force and effect.

**SIGNATURE PAGE FOLLOWS**

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

THE SIENA SCHOOL

Date: May 30, 2012

By:   
(Signature)

Typed Name: Clay Kaufman

Title: Head of School

WITNESS

Date: May 30, 2012

By:   
(Signature)

Typed Name: Lauren Jackson

Title: Office Manager

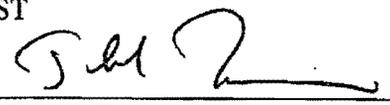
THE MARYLAND-NATIONAL  
CAPITAL PARK AND PLANNING  
COMMISSION

Date: 6/14/12

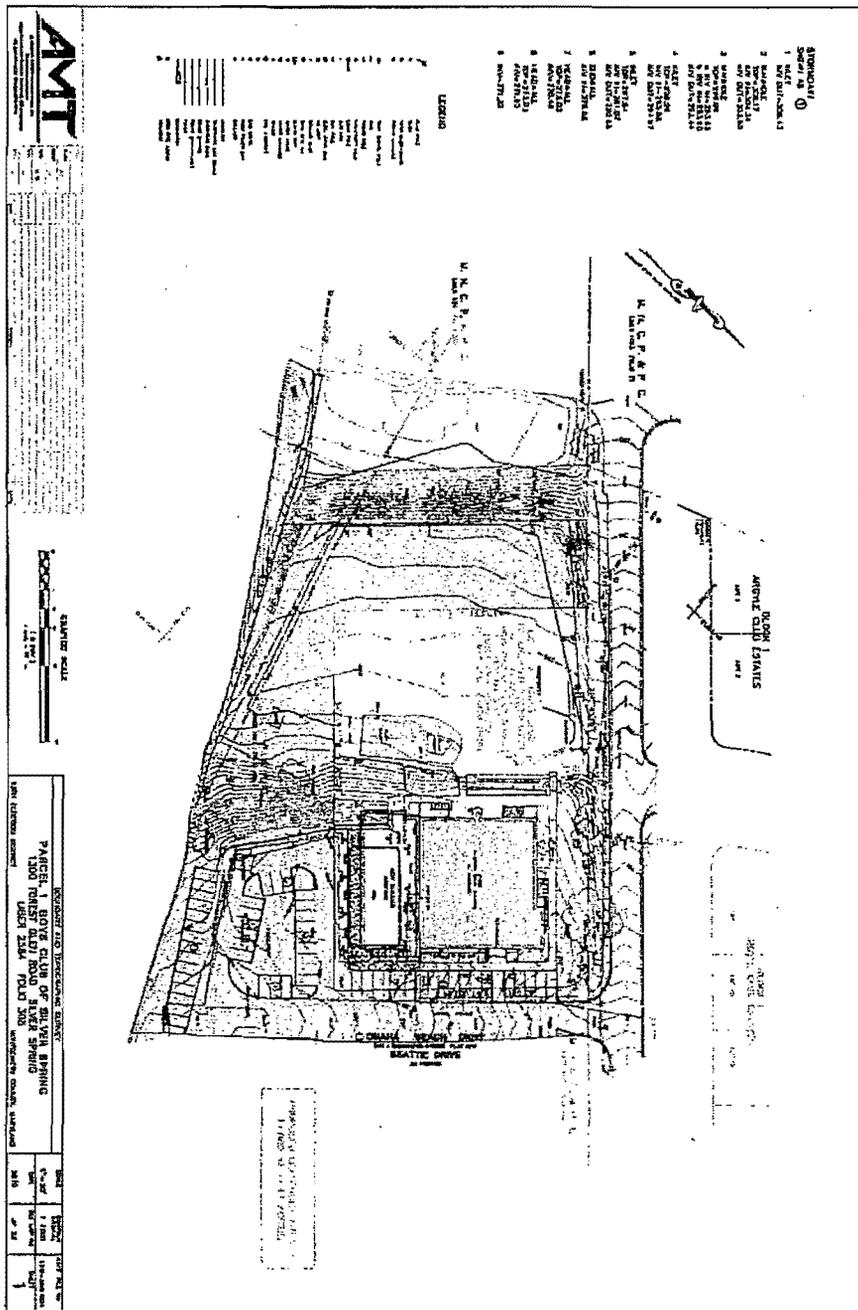
By:   
Patricia Colihan-Barney  
Executive Director

ATTEST

Date: 6-15-12

By:   
Joseph Zimmerman  
Secretary-Treasurer

# Attachment A Leased Premises



**Attachment B**  
**Water Service Connection License Area**



## RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT ("Agreement") is made as of June 29, 2012, between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ("Landlord") and BANK OF GEORGETOWN ("Lender").

### Recitals

In accordance with the Lease dated July 29, 2011 between Landlord, as landlord, and The Siena School, which is the registered trade name used by Siena Learning, LLC, a Delaware limited liability company, as tenant ("Siena School"), as amended by Addendum # 2 dated May 30, 2012 (collectively and as so amended, "Lease"), Landlord has leased to Siena School or its designated affiliate, certain real property located in Montgomery County, Maryland and more particularly described in Exhibit A attached hereto ("Property"). Siena School has designated Sligo Creek Holdings, LLC, a Maryland limited liability company and an affiliate of Siena School ("Tenant"), to be the tenant under the Lease and to hold and assume the rights, and perform the obligations, of Siena School under the Lease, and Landlord has approved such designation. 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 public body corporate validly existing 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. Landlord has delivered to Lender a true, accurate and complete copy of the Lease, including all amendments thereto. The Lease has not modified, supplemented or amended in any way, except for those amendments described in the Recitals above, 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 through the date of this Agreement. 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: Property Management  
M-NCPPC  
10611 New Hampshire Avenue  
Silver Spring, Maryland 20903

And

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

If to Lender: Bank of Georgetown  
438 North Frederick Avenue, Suite 318  
Gaithersburg, Maryland 20877  
Attention: Gerard M. McLoughlin, Jr.  
Senior Vice President

And

Bank of Georgetown  
1054 31st Street, NW, Suite 18  
Washington, DC 20007  
Attention: Gerard M. McLoughlin, Jr.  
Senior Vice President

With copies to:

Brian C. Rosenberg, Esquire  
Offit Kurman, P.A.  
8171 Maple Lawn Boulevard, Suite 200  
Fulton, Maryland 20759

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.

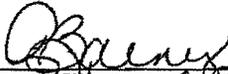
IN WITNESS WHEREOF, Landlord and Lender have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

LANDLORD:

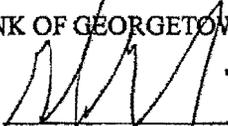
MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

  
\_\_\_\_\_  
Joseph C. Zimmerman  
Secretary-Treasurer

By:  (SEAL)  
Name: Patricia C. Bamey  
Title: Executive Director

LENDER:

BANK OF GEORGETOWN

By:  (SEAL)

Gerard M. McLoughlin, Jr.  
Senior Vice President

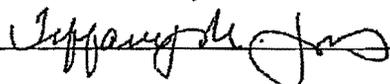
**Acknowledgment, Waiver and Indemnification**

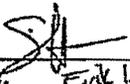
Tenant acknowledges that it has read, understood and accepted the terms of this Agreement. Tenant waives any right of action, claim or recourse against Landlord and Lender, its agents and employees, by reason of any act or omission to act under the terms of this Agreement and specifically authorizes 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:

SLIGO CREEK HOLDINGS, LLC  
A Maryland Limited Liability Company



By:  (SEAL)

Name: Erik Hoyer  
Title: Member

**ACKNOWLEDGMENTS ON FOLLOWING PAGES**

LENDER:

BANK OF GEORGETOWN

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

Gerard M. McLoughlin, Jr.  
Senior Vice President

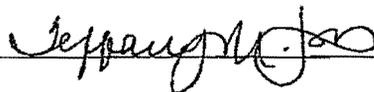
**Acknowledgment, Waiver and Indemnification**

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:

SLIGO CREEK HOLDINGS, LLC  
A Maryland Limited Liability Company

 \_\_\_\_\_

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

Name: Erik Hoyer  
Title: Member

**ACKNOWLEDGMENTS ON FOLLOWING PAGES**

**Acknowledgments**

STATE OF MARYLAND, CITY/COUNTY OF Prince George's, TO WIT:

I HEREBY CERTIFY that on this 19<sup>th</sup> day of June, 2012, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Patricia C. Barney, and acknowledged her/himself to be the Executive Director of MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, and acknowledged that s/he, being authorized so to do, executed the foregoing document for the purposes therein contained, in the aforementioned capacity.

IN WITNESS MY Hand and Notarial Seal.

Mechelle T. Myers (SEAL)  
NOTARY PUBLIC

My Commission Expires:

8/9/14

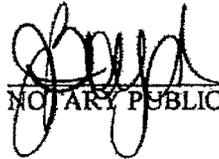


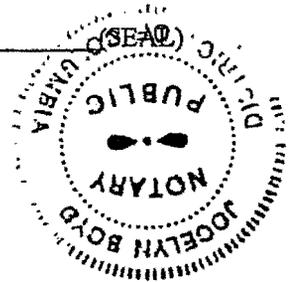
ADDITIONAL ACKNOWLEDGMENTS ON FOLLOWING PAGES

STATE OF MARYLAND, CITY/COUNTY OF District of Columbia WIT:

I HEREBY CERTIFY that on this 27 day of June, 2012, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Gerard M. McLoughlin, Jr., and acknowledged himself to be a Senior Vice President of BANK OF GEORGETOWN, and acknowledged that he, being authorized so to do, executed the foregoing document for the purposes therein contained, in the aforementioned capacity.

IN WITNESS MY Hand and Notarial Seal.

  
NOTARY PUBLIC



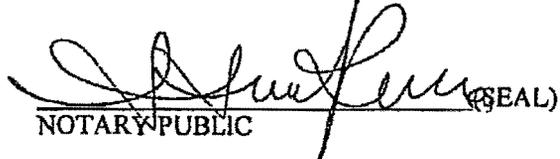
My Commission Expires:

10/31/2015

District of Columbia  
STATE OF MARYLAND, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this 14<sup>th</sup> day of June, 2012, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Erik Hever, and acknowledged her/himself to be the member of SLIGO CREEK HOLDINGS, LLC, a Maryland limited liability company, and acknowledged that s/he, being authorized so to do, executed the foregoing document for the purposes therein contained, in the aforementioned capacity.

IN WITNESS MY Hand and Notarial Seal.

  
NOTARY PUBLIC (SEAL)

My Commission Expires:

6/30/2014

Athena Marie Russo  
Notary Public, District of Columbia  
My Commission Expires 6/30/2014

**Certification**

THIS IS TO CERTIFY that the foregoing Recognition Agreement was prepared by or under the supervision of the undersigned, an attorney at law duly admitted to practice before the Maryland Court of Appeals.

  
Brian C. Rosenberg

STATE OF MARYLAND, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_ day of June, 2012, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Gerard M. McLoughlin, Jr., and acknowledged himself to be a Senior Vice President of BANK OF GEORGETOWN, and acknowledged that he, being authorized so to do, executed the foregoing document for the purposes therein contained, in the aforementioned capacity.

IN WITNESS MY Hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC (SEAL)

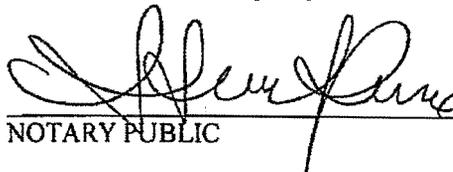
My Commission Expires:

\_\_\_\_\_

District of Columbia  
STATE OF MARYLAND, CITY/COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this 14<sup>th</sup> day of June, 2012, before me, the subscriber, a Notary Public of the jurisdiction aforesaid, personally appeared Erik Haver, and acknowledged her/himself to be the member of SLIGO CREEK HOLDINGS, LLC, a Maryland limited liability company, and acknowledged that s/he, being authorized so to do, executed the foregoing document for the purposes therein contained, in the aforementioned capacity.

IN WITNESS MY Hand and Notarial Seal.

  
NOTARY PUBLIC (SEAL)

My Commission Expires:

6/30/2014

Athena Marle Russo  
Notary Public, District of Columbia  
My Commission Expires 6/30/2014

**Certification**

THIS IS TO CERTIFY that the foregoing Recognition Agreement was prepared by or under the supervision of the undersigned, an attorney at law duly admitted to practice before the Maryland Court of Appeals.

\_\_\_\_\_  
Brian C. Rosenberg

**EXHIBIT A**

Property Description

DESCRIPTION OF  
A LEASE AREA

MARYLAND NATIONAL CAPITOL PARK  
& PLANNING COMMISSION, OWNERS

TO

THE SIENA SCHOOL

JUNE, 2012

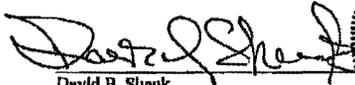
BEING a parcel of land, hereinafter described in, through, over and across the property acquired by Maryland National Capitol Park & Planning Commission from The Bullis School, Inc. by deed dated July 8, 1946 and recorded among the Land Records of Montgomery County, Maryland in Liber 1025 at Folio 453; being more particularly described as now surveyed:

BEGINNING for said parcel of land at a point on the southeastern Right of Way Line of Forest Glen Road, said point being distant 43.00 feet from the beginning of the first call or North 47° 46' 42" East 1101.09 foot line of said M.N.C. P. C. property; thence running with the Forest Glen Road right of way

1. North 47° 45' 17" East for a distance of 69.00 feet to the westernmost corner of The Boys' Club of Greater Washington property as shown on a plat entitled "Boys Club of Silver Spring" and recorded among said Land Records as Plat No. 5017, said point being at the beginning of the first call or North 47° 46' 40" East 280.28 foot line as described in a deed from the Boys' Club of Silver Spring, Inc. to The Boys Club of Greater Washington by deed dated January 7<sup>th</sup>, 1959 and recorded April 14, 1959 among said Land Records in Liber 2584 at Folio 308; thence running with the Boys' Club property the following four (4) courses and distances
2. South 43° 03' 24" East for a distance of 200.00 feet to a point; thence
3. North 47° 45' 16" East for a distance of 300.00 feet to a point; thence
4. North 43° 03' 24" West for a distance of 180.28 feet to a point; thence
5. 31.13 feet along the arc of a curve deflecting to the left having a radius of 20.00 feet, and a chord bearing and distance of North 87° 39' 18" West for a distance of 28.08 feet to a point on the southeastern right of way line of Forest Glen Road; thence leaving the common lines with the Boys' Club property and running with the said right of way line
6. North 47° 45' 26" East for a distance of 59.50 feet to a point; thence leaving said right of way line and running in, through, over and across the M.N.C. P. C. property the following sixteen (16) courses and distances
7. South 34° 07' 06" East for a distance of 7.24 feet to a point; thence
8. South 45° 37' 39" East for a distance of 65.00 feet to a point; thence
9. South 43° 40' 19" East for a distance of 67.00 feet to a point; thence

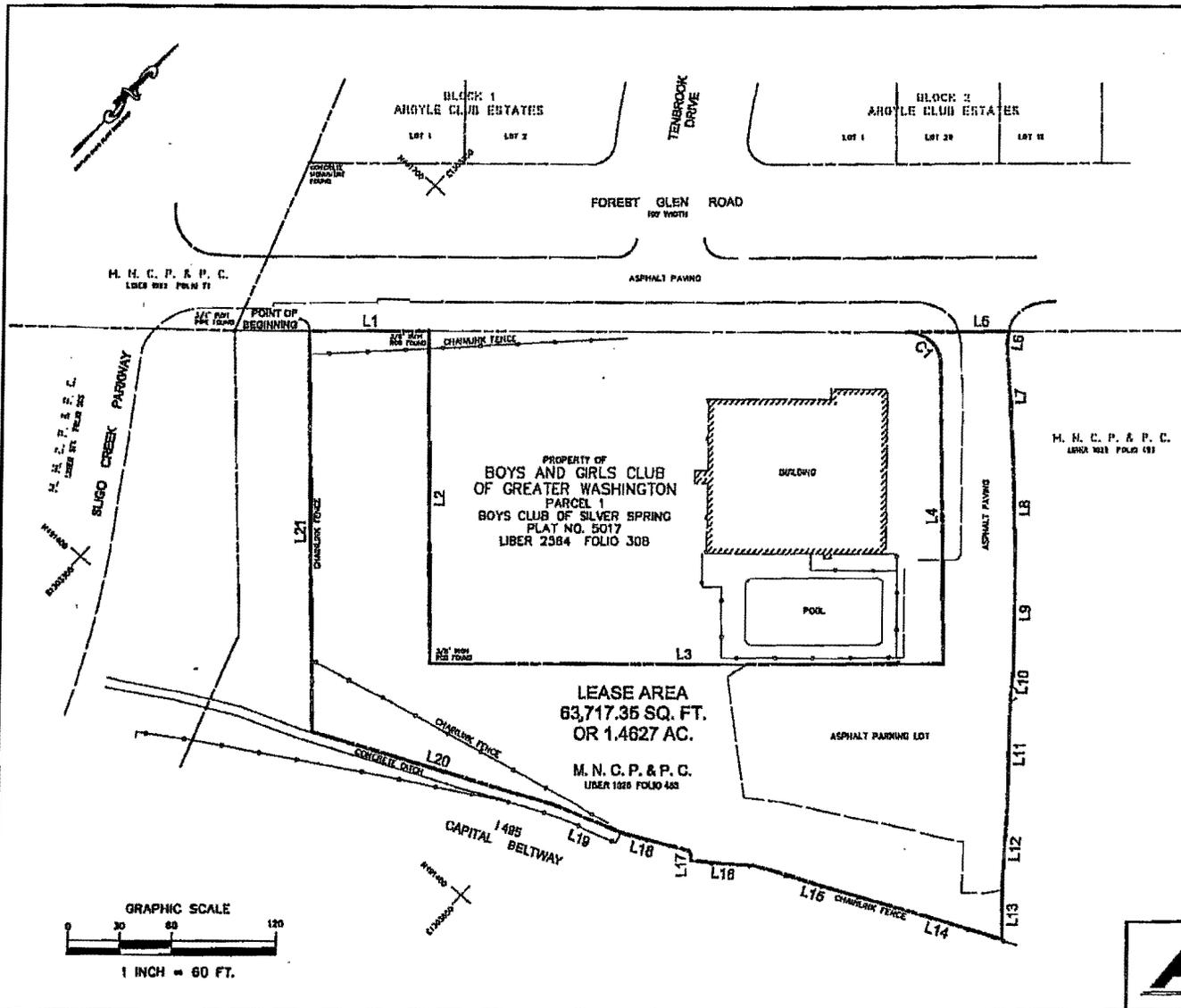
10. South 41° 39' 33" East for a distance of 59.00 feet to a point; thence
11. South 37° 36' 09" East for a distance of 25.00 feet to a point; thence
12. South 41° 02' 59" East for a distance of 61.50 feet to a point; thence
13. South 39° 01' 24" East for a distance of 50.00 feet to a point; thence
14. South 42° 57' 17" East for a distance of 30.00 feet to a point; thence
15. South 65° 37' 54" West for a distance of 75.00 feet to a point; thence
16. South 65° 00' 32" West for a distance of 75.00 feet to a point; thence
17. South 52° 31' 44" West for a distance of 37.00 feet to a point; thence
18. North 45° 40' 22" West for a distance of 5.50 feet to a point; thence
19. South 62° 37' 55" West for a distance of 42.00 feet to a point; thence
20. South 70° 19' 05" West for a distance of 42.00 feet to a point; thence
21. South 64° 31' 57" West for a distance of 149.50 feet to a point; thence
22. North 43° 14' 40" West for a distance of 240.50 feet to the point of beginning

CONTAINING 63,717.35 square feet or 1.4627 acres of land, more or less.



David B. Shank  
Property Line Surveyor  
Maryland Reg. No. 315  
Expires: 9/10/2012  
For A. Morton Thomas and Associates, Inc.





| LINE TABLE |         |               |
|------------|---------|---------------|
| LINE #     | LENGTH  | DIRECTION     |
| L1         | 69.00'  | N47° 45' 17"E |
| L2         | 200.00' | S43° 03' 24"E |
| L3         | 300.00' | N47° 45' 18"E |
| L4         | 180.28' | N43° 03' 24"W |
| L5         | 59.50'  | N47° 45' 26"E |
| L6         | 7.24'   | S34° 07' 08"E |
| L7         | 65.00'  | S48° 37' 39"E |
| L8         | 67.00'  | S43° 40' 19"E |
| L9         | 59.00'  | S41° 39' 33"E |
| L10        | 25.00'  | S37° 36' 09"E |
| L11        | 61.50'  | S41° 02' 59"E |
| L12        | 50.00'  | S39° 01' 24"E |
| L13        | 30.00'  | S42° 57' 17"E |
| L14        | 79.00'  | S65° 37' 54"W |
| L15        | 75.00'  | S68° 00' 32"W |
| L16        | 37.00'  | S52° 31' 44"W |
| L17        | 5.50'   | N45° 40' 22"W |
| L18        | 42.00'  | S62° 37' 55"W |
| L19        | 42.00'  | S70° 19' 05"W |
| L20        | 149.50' | S64° 31' 57"W |
| L21        | 240.50' | N43° 14' 40"W |

| CURVE TABLE |        |        |                 |              |
|-------------|--------|--------|-----------------|--------------|
| CURVE #     | LENGTH | RADIUS | CHORD DIRECTION | CHORD LENGTH |
| C1          | 31.13' | 20.00' | N87° 39' 18"W   | 28.08'       |

SKETCH OF A  
LEASE AREA  
FROM  
M. N. C. P. & P. C.  
TO  
THE SIENA SCHOOL  
JUNE 2012 SCALE: 1"=60'

**AMT**  
A. MORTON THOMAS AND ASSOCIATES, INC.  
CONSULTING ENGINEERS  
12750 TWINBROOK PARKWAY, ROCKVILLE, MD 20852-5700  
PH (301) 881-8545 FAX (301) 881-0814

67



Law Offices Of  
MILLER, MILLER & CANBY  
**MM&C**  
CLIENT FOCUSED. RESULTS DRIVEN.

200-B MONROE STREET, ROCKVILLE, MARYLAND 20850 P: 301.762.5212 F: 301.424.9673 WWW.MILLERMILLERCANBY.COM

All attorneys admitted in Maryland and where indicated.

PATRICK C. MCKEEVER (DC)  
JAMES L. THOMPSON (DC)  
LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER

MAURY S. EPNER (DC)  
JOSEPH P. SUNTUM  
SUSAN W. CARTER  
ROBERT E. GOUGH  
DONNA E. MCBRIDE (DC)  
GLENN M. ANDERSON (FL)

HELEN M. WHELAN (DC, WV)  
MICHAEL G. CAMPBELL (DC, VA)  
SOO LEE-CHO (CA)  
AMY C.H. GRASSO (DC)  
DAMON B. OROBONA (DC)

JSKLINE@MMCANBY.COM

March 18, 2013

Mr. John Nissel  
Deputy Director of Operations  
M-NCPPC, Parks Department  
9500 Brunett Avenue  
Silver Spring, MD 20901

RE: Special Exception Case No. S-2822,  
Petition of Siena Learning, LLC

Dear John:

Following up on our brief conversation of the other day, I enclose for your information and records two Opinions of the County Board of Appeals.

The first Opinion, dated April 26, 2012, granted the original special exception to The Siena School. The second Opinion, dated March 4, 2013, was the result of a recent administrative modification clarifying the hours of operation for the School. Together they constitute the operational framework for the School into the future.

If you have any questions about the attached materials, please give me a call.

Sincerely yours,

MILLER, MILLER & CANBY



Jody S. Kline

JSK/dlt  
Enclosures

**BOARD OF APPEALS  
For  
MONTGOMERY COUNTY**

**CORRECTED RESOLUTION  
*Effective Date***

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. S-2822**

**PETITION OF SIENA LEARNING, LLC  
d/b/a THE SIENA SCHOOL**

**RESOLUTION TO MODIFY SPECIAL EXCEPTION**

(Resolution Adopted December 5, 2012)

(Effective Date of Resolution: **March 4, 2013**)

The Board of Appeals has received a letter, dated November 19, 2012, from Jody S. Kline, Esquire, on behalf of Siena Learning, LLC (the School). Mr. Kline requests an administrative modification of the special exception by changing Condition 6, pertaining to hours of operation for the School, of the Board of Appeals Opinion dated April 26, 2012. Mr. Kline explains that the requested changes do not reflect any proposed change in the operation of the school, but rather a realization that the original condition did not completely encompass the activities that can be anticipated in connection with the operations approved for the use.

The Board of Appeals granted Case No. S-2822 to Siena Learning, LLC, to permit a special exception, under Section 59-G-2.19 of the Montgomery County Zoning Ordinance, to operate a private school.

The subject property is in Parcel 706, located at 1300 Forest Glen Road, Silver Spring, MD 20901, in the R-60 Zone.

The Board of Appeals considered the modification request at its Worksession on December 5, 2012. The Board made some slight, editing changes to the proposed new Condition 6 so that it reads as follows:

6. Hours of operation for any on-site activity will be from 7:00 a.m. until 7:30 p.m., Monday through Friday, except for special events when the facility can stay open as late as 9:00 p.m., and on Saturday from 8:00 a.m. until 5:00 p.m.

Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the slight adjustment of the hours of operation for the School is corrective in nature and does not increase the outward impact of the special exception, and does not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Carolyn J. Shawaker, seconded by Catherine G. Titus, Chair, with Stanley B. Boyd and David K. Perdue, Vice-Chair, in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2822, Petition of Siena Learning, LLC, is re-opened to receive Jody S. Kline's letter dated November 19, 2012; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is granted; and

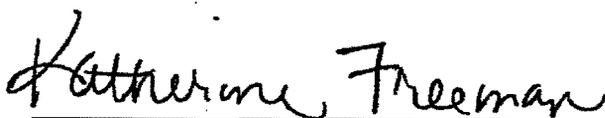
**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



David K. Perdue

Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 4<sup>th</sup> day of March, 2013.



Katherine Freeman  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-2822**

**PETITION OF SIENA LEARNING, LLC  
d/b/a THE SIENA SCHOOL**

**OPINION OF THE BOARD**  
(Opinion Adopted March 28, 2012)  
(Effective Date of Opinion: April 26, 2012)

Case No. S-2822 is an application, under Section 59-G-2.19 of the Montgomery County Zoning Ordinance, for a special exception to operate a private school. The Hearing Examiner for Montgomery County held a hearing on the application on January 6, 2012, closed the record in the case on March 5, 2012, and on March 14, 2012 issued a Report and Recommendation for approval of the special exception.

Decision of the Board: **Special Exception Granted Subject to  
The Conditions Enumerated Below.**

The subject property is in Parcel 706, located at 1300 Forest Glen Road, Silver Spring, MD 20901, in the R-60 Zone.

The Board of Appeals considered the Report and Recommendation at its Worksession on March 28, 2012. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Petitioner must comply with the terms of its revised Site Plan (Exhibit 33(c) for Phase I and Exhibit 43(a) for Phases II and III); its revised Landscape and Lighting Plan (Exhibits 33(d)(i) and (ii)); its revised Transportation Management Plan -TMP (Exhibit 36(a)); its Second Amended Statement of Operations (Exhibit 40(a)); and the Stormwater Management Plan ultimately approved by the Department of Permitting Services. Physical

improvements are limited to those shown on the revised site and landscape plans.

3. Up to eight large-scale events and activities that are inherent in the operation of a private educational institution are permitted in an academic year. These events are described in the Second Amended Statement of Operations (Exhibit 40(a)). Petitioner must finalize an agreement with Montgomery County Parks to permit overflow parking at the Argyle Park-Schweinhaut Senior Center for these large-scale events, as indicated in Exhibit 24, and in the TMP (Exhibit 36(a)).
4. Academic school year operations are limited to no more than 225 students and 55 staff (excluding volunteers, visiting coaches and parents) in grades 4 to 12. At no time shall the Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time. Petitioner must provide one on-site parking space for each staff member, unless it demonstrates to the Board's satisfaction in an administrative modification request that a lesser number of spaces will suffice. The following caps are imposed on the number of Siena students and staff on site at any given time:

Phase I 110 students & 20 Staff

Phase II 225 students & 55 Staff (or the number of staff parking spaces, whichever is less)

Phase III 225 students & 55 Staff (or the number of staff parking spaces, whichever is less)

The same caps shall apply to summer school.

5. A summer program may be conducted for no more than 10 weeks. School operations may include summer day camps, including after-care and recreational activities, community accessible education, indoor/outdoor recreation, academic programs, drama and art classes, and facility rentals. The summer program is limited to 225 children and 55 staff. At no time shall the Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time.
6. Hours of operation for any on-site activity will be from 7:30 a.m. until 6:00 p.m., Monday through Friday, except for special events when the facility can stay open as late as 9:00 p.m., and Saturday, 8:00 a.m. until 5:00 p.m.
7. The 0.1 foot-candle standard specified in Zoning Ordinance §59-G-1.23(h) is hereby waived for this site in the interests of public safety, as long as Petitioner complies with its revised Landscape and Lighting Plan (Exhibits 33(d)(i) and (ii)).

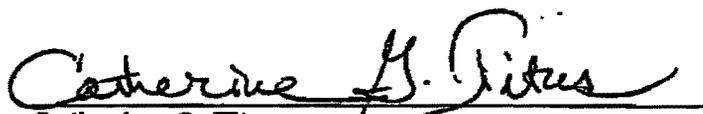
8. Pursuant to Zoning Ordinance §59-E-4.5, a waiver is hereby granted from the setback requirements of Zoning Ordinance §59-E-2.83 for the parking areas along the east side of the property, to the extent necessary to allow parking as depicted in the revised Site Plans (Exhibit 33(c) for Phase I and Exhibit 43(a) for Phases II and III).
9. No vehicles destined for the school are allowed to be queued off-site and onto adjacent streets during the morning drop-off and afternoon pick-up periods. On-street parking in the vicinity of the site in connection with the Siena School use is prohibited.
10. Petitioner must denote "staff-only" parking along the proposed parallel parking on the drive access and in the drop-off loop, closest to the Phase II building addition.
11. Petitioner must satisfy the Policy Area Mobility Review (PAMR) by paying a total of \$163,800 to the Montgomery County Department of Transportation (MCDOT). Any payment schedule must be made consistent with the issuance of all building permits relating to the physical improvements described as Phases I, II and III in the revised site plans. If a partial payment agreement is not established, then the full amount is due at the time of initial building permits.
12. A sign permit must be obtained for the proposed monument and wall signs (Exhibits 44(a) and (b)), and a copy of the permit for the approved signs must be submitted to the Board of Appeals before the signs are posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed signs or amend the design of the proposed signs to have them conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
13. Petitioner must provide three inverted-U bike racks near the main entrance in a well-lit and weather-protected area.
14. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a private educational institution.
15. All children must be under the direct supervision of a staff member at all times, both inside and outside the building. Outdoor play may not begin before 8:30 a.m. No amplified music may be played by Petitioner outside the building.
16. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.
17. Plans for future construction are subject to review by DPS officials to ensure compliance with the applicable development standards. Approval

of the special exception in this case should be taken as an interim, not final, determination by the Board of Appeals that the planned construction in Phases II and III will meet all development standards applicable at that time. Petitioner must file with the Board of Appeals a valid permit (or permits) issued by DPS for any future construction on the site, and ultimately Petitioner's construction must bring the building within the applicable development standards.

18. The Board will retain jurisdiction for two years after Siena School's operations commence on the site to ensure that the Siena School's activities, in combination with other activities at the site, are not having an unduly adverse effect on the surrounding neighborhood due to traffic, noise, lighting, parking, or the intensity, frequency, or duration of activities. After the first year of operations, Petitioner must have a traffic and parking study done to determine the impacts of the total cumulative number of car trips and parking generated by the regular academic program, the Boys and Girls Club activities, the before and after-school programs and the summer programs, whether or not the traffic exceeds the capacity of the roads. The results of the traffic study must be shared with Technical Staff and NCA, FGCA and SFCCA. It must also be filed with the Board of Appeals. The Board will thereafter schedule a work session to determine whether additional conditions are needed to protect the community.
19. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Carolyn J. Shawaker, seconded by Walter S. Booth, with Stanley B. Boyd, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement the Board adopted the following resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 26<sup>th</sup> day of April, 2012.



Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.





**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
16-065

**CORRECTED RESOLUTION**

WHEREAS, The Maryland-National Capital Park and Planning Commission ("**Commission**") is authorized by Maryland Code Annotated, Land Use Article § 17-204, to lease to any responsible person any land in the metropolitan district acquired for park purposes; and

WHEREAS, Maryland Code Annotated, Land Use Article § 17-204(a)(2)(i) requires that the term of a lease may not exceed 20 years unless the Montgomery County Council ("**Council**") approves a longer duration by legislative enactment; and

WHEREAS, the Commission entered into a Lease Agreement dated July 29, 2011 (Commission Contract No. 320135-000), with an Addendum to Lease dated May 30, 2012 (collectively, the "**Lease**"), with Sligo Creek Holdings, LLC, a Maryland limited liability company, doing business as "The Siena School" ("**Tenant**"), for a 20-year term for Tenant to operate a school under the Lease; and

WHEREAS, Tenant seeks to extend the term of the Lease by additional four years, making the total term of the Lease to 24 years, to fulfill a lender's condition to a construction loan Tenant desires to obtain to build a new addition to its school; and

WHEREAS, Commission's Montgomery County Department of Parks recommends approving a lease amendment to grant to Tenant additional four years to the Lease, extending the Lease term to a 24-year term in total.

NOW THEREFORE BE IT RESOLVED, that the lease amendment as described above between the Commission and Tenant is hereby approved by the Montgomery County Planning Board on this 19<sup>th</sup> day of May, 2016, subject to the Council's approval of the same via legislative enactment, and the Executive Director is authorized to execute said lease amendment on behalf of the Commission; and it is further

RESOLVED, that the Executive Director, or her designee, is hereby directed to submit the aforementioned lease amendment between the Commission and Tenant to the Council for its action.

\* \* \* \* \*

**CERTIFICATION**

This is to certify the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, with Commissioners Dreyfuss, Presley, and Fani-Gonzalez voting in favor of the motion, at its regular meeting held on Thursday, May 19, 2016, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board