

FM 9214

LEASE AND AGREEMENT

This LEASE AND AGREEMENT, made this 4th day of August 1976, by and between MONTGOMERY COUNTY, MARYLAND, THE EXECUTIVE thereof and his agents as designated, (hereinafter sometimes referred to as the "Lessor" or the "County"), and the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (hereinafter sometimes referred to as the "Lessee" or the "Commission");

W I T N E S S E T H

WHEREAS, the County under the authority of Article 77, Chapter 47, Laws of Maryland, 1959, as amended, has responsibility to acquire, own, operate and maintain surplus school facilities within Montgomery County, Maryland; and

WHEREAS, the County is the owner of the fee simple title in the land and building known as the Parkside Elementary School located at Brunett Avenue, Silver Spring, in Montgomery County, Maryland; and

WHEREAS, the County and the Commission in accordance with their intent and purpose to effect cost savings by reduction in use of lease space in Montgomery County, by maintaining and operating an office facility in a surplus school, and

WHEREAS, to effectuate such purpose, the County and the Commission intend to provide for the Commission to lease from the County the improvements described on Attachment A for the operation of an office facility for the Commission; and

WHEREAS, it is the desire and intent of both parties hereto that such facility be maintained and operated in accordance with and subject to the terms and conditions as hereinafter set forth;

NOW THEREFORE, for and in consideration of the sum of ten dollars (\$10.00), receipt of which is hereby acknowledged by the Lessor, and the respective premises and mutual promises herein contained, the parties hereto agree as follows:

ARTICLE I

Lease - Demised Premises

Lessor hereby demises and leases unto the Lessee and the Lessee hereby rents from Lessor for and upon the provisions hereinafter specified that structure at 9500 Brunett Drive,

Silver Springs, known as the Upper Building of Parkside Elementary School in Montgomery County, Maryland, as cross-hatched on Exhibit "A" which is attached hereto and made a part hereof (hereinafter referred to as "Demised Premises").

ARTICLE II

Term

Original Term - The term of this demise and all affiliation of the parties hereunder to be performed shall commence July 1, 1976 and shall terminate on June 29, 1986, unless terminated for cause as herein provided before the expiration of such term.

Option to Extend - Subject to the limitations contained in this Article II, Lessee shall have the option to extend the term of this Lease for a period of four (4) years and three hundred and sixty-four (364) days from the end of the original term by giving notice to the Lessor of its intentions to exercise such option six (6) months or more before the end of the original term. All of the terms, conditions and covenants provided in this Lease and Agreement shall apply during the aforementioned extended term. Provided, however, that the Lessor reserves the right to deny Lessee's request to exercise such option.

ARTICLE III

Lessee's Improvements

The Lessee shall have the right at any time and from time to time during the demised term to make such alterations, changes and new construction to the building, improvements, building fixtures and/or equipment located on the demised premises as the Lessee shall deem desirable for the convenience or requirement of operation of the business of offices for the Parks Department and related functions of the Maryland-National Capital Park and Planning Commission. Provided, that any major or structural alteration, change and/or new construction to the building, improvements, building fixtures and/or equipment located on the demised premises requires the prior written approval of the County in the manner designated by this Article III, which approval shall not be unreasonably withheld.

Building Plans - The Lessee shall prepare working plans, drawings and specifications (hereinafter referred to as the "Building Plans") for any proposed major or structural alteration, change or new construction to the building, improvements, building fixtures, and/or equipment located on the demised premises which Building Plans shall be submitted to the Lessor for approval. Once the Building Plans are approved by the Lessor, said Building Plans may not be changed except in accordance with the provisions of this Article III. Provided, however, that any building plans submitted by the Lessee and approved by the Lessor prior to the execution of this Lease, shall be exempted from the provisions of this Article III, except as to changes made to such plans after the execution of this Lease.

Character of Work - All work performed by the Lessee, pursuant to this Article III, shall be performed in a good and workmanlike manner with good materials and in accordance with approved Building Plans. The Demised Premises shall be left at the completion of such work in a safe and clean condition and in good order and repair.

Lessor's Inspection - After notice to the Lessee and at reasonable hours, the Lessor may inspect the work from time to time in order to assure itself that such work is being carried on in accordance with the requirements of this Article III; provided, however, that the failure of the Lessor to inspect such work shall not be considered a waiver of any right accruing to the Lessor upon any failure of the Lessee to perform such work in accordance with this Article III, notwithstanding anything herein to the contrary. Lessee shall, at least ten (10) days prior to the proposed completion of any work for which Building Plans are required and approved in accordance with this Article III, notify Lessor, in writing, of the proposed completion of said work, and the Lessor may within such period prior to completion make a final inspection to assure itself that this said work has been completed in accordance with the requirements of this Article III.

Lessee's Public Liability Insurance - During the period of this Lease, the Lessee shall at all times indemnify, defend and hold the Lessor harmless against all actions, claims, demands,

costs, damages, penalties or expense which result from the negligence or fault of the Lessee, which may be brought or made against the Lessor or which the Lessor may pay or incur by reason of any work on the Demised Premises which may be performed by or at the direction of the Lessee pursuant to this Article III or otherwise. The Lessee reserves the right to self insure in the amounts required in this Article III, or in the alternative, shall carry, with a company authorized and to obtain and keep in force during the term of this lease or any extension thereof, a policy of liability insurance with bodily injury limits of at least \$500,000 for any accident to one person and \$500,000 for each occurrence, with vandalism and property damage limits of \$100,000 for each occurrence, in an insurance company licensed in this area and acceptable to the Landlord.

Lessee shall be responsible for insuring or self-insuring improvements and betterments and his own personal property on the premises. The Lessee agrees, within thirty (30) days hereof, to deliver to the Lessor the said policy or a certificate of insurance evidencing such insurance.

The Lessor shall keep in force their normal fire and liability insurance written by a responsible company or companies on the premises as described in Exhibit "A." And Lessor shall hold harmless Lessee for any injury sustained on property not under Lessee's control, except when such injury is caused by negligence of Lessee, his agents, or assigns.

Parties mutually agree to waive all rights of action against the other party to the extent of each other's insurance recovery.

Insurance on Building Work - During the period from the commencement of the construction of the Lessee's improvements, the Lessee shall carry fire and extended coverage insurance to the extent of the full insurable value of the Lessee's improvements at all times as the work progresses. Certificates of insurance or certified copies of all insurance policies shall be deposited with the Lessor evidencing compliance with the foregoing insurance requirements. The Lessor acknowledges that the Lessee is self-insured for fire and extended coverage which insurance is agreed to satisfy this provision.

Restoration - If, at any time after the execution of this Lease and Agreement, the improvements on the demised premises are destroyed or damaged by fire or the elements or by any other cause, the Lessee, at its own expense, whether or not the proceeds or insurance shall be sufficient therefore, shall either restore or rebuild the improvements as nearly as possible to the condition existing just prior to said destruction or damage. Lessee shall be responsible for damage to the building caused by his own negligence.

ARTICLE IV

Operation

Discrimination - Lessee shall not discriminate because of race, creed, color or natural origin against any member of the public desiring to use the facility.

Upkeep of Demised Premises - Lessee shall maintain at Lessee's sole cost and expense, the facility and the grounds related to such facility as described on Attachment "A" in a clean, safe and sanitary condition. Maintenance of the grounds as described on Attachment "A" shall be renegotiated at such time as final determination of the use of the Parkside Lower Building is made.

Conduct and Safety of Facility - Lessee shall conduct all of its operations hereunder in a thoroughly workmanlike, efficient, safe and careful manner; shall observe such safety precautions and rules in its operations as the Lessor from time to time may require; shall maintain an adequate number of employees to supervise and regulate the use of the facility and shall maintain the facility at all times in safe and good operating condition and repair.

Use - The Lessee shall not use the facility for any other use than that of an office facility or as contemplated herein and set forth below. The all-purpose room shall be reserved for community use as requested in advance, and approved by the Lessee. Grounds and play areas shall remain in public use, except as may be modified by consent of Lessor to a user of the Lower Parkside Building.

Lessor's Right of Inspection - The Lessor shall be entitled to visit and inspect the demised premises during reasonable hours and after reasonable notice but shall be under no obligation to make any visits or inspections.

ARTICLE V

Lessee's Repairs and Liens

Repairs - At all times during the term of this Lease and Agreement, the Lessee, at its own cost and expense, shall maintain the Demised Premises and all improvements, landscaping, utilities, fixtures, parking facilities, and equipment thereon in good order and repair, making all repairs and replacements, interior and exterior, structural and non-structural.

Removal of Trade Fixtures - The Lessee may remove at or prior to the termination of this Lease and Agreement any personal property, trade fixtures or equipment installed by it on the premises which may be removed without damaging the improvements on the demised premises.

Bonds - During the period from the commencement of the construction of the Lessee's improvements, the Lessee shall require that such improvements be guaranteed by performance and labor and materialman's bonds as required by law for public contracts of the State of Maryland and its political subdivisions. (Article 90, Section 11, Annotated Code of Maryland).

Signs - The Lessee may install or remove any signs on the exterior of the facility; provided, however, any sign so installed shall state that the facility is owned by Montgomery County and in use by the M-NCPPC.

ARTICLE VI

Possession; Quiet Enjoyment and Title

Possession - Lessor covenants and warrants that it will deliver to the Lessee exclusive possession of the Demised Premises, with appurtenances in conformity with the law, upon execution and delivery of this Lease and Agreement for the purposes herein set forth.

ARTICLE VII

Insurance and Indemnification

Lessee's Indemnity - The Lessee agrees that it will at all times indemnify and hold the Lessor harmless against all actions, claims, demands, costs, damages or expenses of any kind which may be brought or made against the Lessor or which the Lessor may pay or incur by reason of the Lessee's negligent performance or wrongful failure to perform any of its obligations under this Lease and Agreement or by reason or any occurrence in or upon the Demised Premises which occurs as a result of the negligence or fault of the Lessee.

ARTICLE VIII

Eminent Domain

Taking - Should the Demised Premises be taken by a public or quasi-public authority under any power of eminent domain or condemnation, the Lease and Agreement herein set forth shall terminate and the Lessor and the Lessee shall be entitled to such award by the condemning authority as shall be proportionate to their interest in the premises.

ARTICLE XI

Utilities Cost

The Lessee shall pay all charges for fuel, water, gas, electricity, or other public utilities necessary for the operation of the Facility.

ARTICLE X

Defaults

Lessee's Default - The Lessee shall be deemed to be in default of this Lease and Agreement when the Lessee shall wrongfully fail to perform any of the provisions, covenants, conditions, or agreements of this Lease and Agreement to be kept or performed by the Lessee within sixty (60) days, as is reasonably required to so perform, and after written notice from the Lessor to the Lessee stating in detail wherein the Lessee has failed so to perform. The Lessee shall be liable for any and all loss or damage resulting from any wrongful default.

Waiver - No waiver by the Lessor of any default, violations, or break of any condition or provision of this Lease and Agreement by the Lessee shall constitute or be construed as a waiver of any other default, violation or break of any condition or provision of this Lease and Agreement by the Lessee.

ARTICLE XI

Rights of Lessor and Lessee

Lessor's Right of Re-Entry - In the event that Lessee shall default under any one or more of the events of default as hereinabove provided in Article X, Lessor may, upon giving not less than fourteen (14) days written notice to Lessee, after the respective periods for compliance, as hereinabove provided, have expired, terminate this Lease and Agreement and thereupon, or at any time thereafter Lessor may re-enter the Demised Premises and have the possession of the same and/or may recover possession thereof in the manner prescribed by the statutes relating to summary proceedings or similar statutes, it being understood that no re-entry for condition broken and no notice to quit possession, or other statutory notices or prerequisites are hereby expressly waived by Lessee.

Lessor's Rights Upon Termination - All permanent additions, fixtures and improvements made or installed by the Lessee shall become part of the Demised Premises and shall revert to the Lessor upon the termination of this Lease and Agreement.

ARTICLE XII

Assignment and Sub-Lease

Assignment and Sub-Lease - Lessee shall not assign this Lease and Agreement or sublet the Demised Premises without the prior written consent of Lessor.

ARTICLE XIII

Surrender

Surrender - On the last day of the term, the Lessee shall surrender the Demised Premises and all improvements thereon in as good condition as when Lessee took possession, except for ordinary wear and tear, and ownership shall thereupon be vested in the Lessor free and clear of all encumbrances.

ARTICLE XIV

Notices

All notices required to be given by either party hereunder shall be in writing and sent by Certified Mail, Return Receipt Requested. Notices to Lessor shall be sent to the Montgomery County Government, Office of Facilities Management and Services, Rockville, Maryland 20850. Notices to Lessee shall be sent to the Maryland-National Park and Planning Commission, Executive Director, 8787 Georgia Avenue, Silver Spring, Maryland 20907.

Either party may change its mailing address hereunder by giving notice thereof to the other party in the manner set forth in this Article XIV.

ARTICLE XV

Recordation

Recordation - In the event that Lessee shall deem it necessary to record this Lease and Agreement or a short-form memorandum thereof, Lessee shall pay the total of the fees, charges costs of documentary stamps, and any other taxes or charges, if any, in connection with the recording of this Lease and Agreement and any supplemental agreement thereto or memorandum thereof.

ARTICLE XVI

Miscellaneous Provisions

Article and Section Titles - The Article and Section headings of this Lease and Agreement are intended merely for convenience of reference and are not a part of this Lease and Agreement and shall have no effect upon the construction or interpretation of any part of this Lease and Agreement.

Integrated Agreement - This instrument contains all of the agreements and conditions made between the parties and may not be modified orally or in any other manner other than by an agreement in writing signed by all the parties or their respective successors in interest.

Successors and Assigns - All of the covenants, provisions, terms, agreements and conditions of this Lease and Agreement shall inure to the benefit and be binding upon the Lessor or their successor or assignee of Lessor and upon Lessee, their successors and assignee of Lessor and upon Lessee, their successors and assigns (as hereinabove permitted).

IN WITNESS WHEREOF, the parties hereby have caused this Lease and Agreement to be properly executed the day and year first above written.

ATTEST:

A. Edward Navarre

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Don L. Egan

DATE

ATTEST:

Joan W. Hosenan

MONTGOMERY COUNTY, MARYLAND

William D. Hosenan

3/4/76

DATE

APPROVED AS TO FORM AND LEGALITY.
OFFICE OF COUNTY ATTORNEY
BY R. E. Fudenberg
DATE July 26, 1976

MNEPPC - 1976 - Aug 4
Approved as to form
and sufficiency
SS Noel

ATTACHMENT A

PARKSIDE SCHOOL
METES AND BOUNDS DESCRIPTION
PART OF MONTGOMERY COUNTY, MARYLAND, BOARD OF EDUCATION PROPERTY
WHEATON (13th) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

Beginning at a point at the intersection of the westerly right-of-way line of Brunett Avenue (70' r/w) and the northerly right-of-way line of Sligo Creek Parkway, said point being an arc distance of 368.37 feet in a westerly direction from a pipe placed 3.04 feet east along said arc from the southwest corner of Lot 9, Block "K", Section Two, "North Hills of Sligo Park" as recorded November 8, 1945 in Plat Book 26, Plat No. 1662, and running thence,

1. 219.15 feet westerly along the arc of the curve to the right having a radius of 990.58 feet and a chord bearing and distance of North $55^{\circ} 25' 57''$ West, 218.70' feet to a monument (M-NCPPC No. 262), thence
2. North $85^{\circ} 57' 30''$ East, 133.69 feet to a monument (M-NCPPC No. 263), thence
3. South $70^{\circ} 29' 10''$ East, 396.75 feet to a monument (M-NCPPC No. 264), thence
4. North $36^{\circ} 30' 37''$ West, 489.06 feet to a point, thence
5. North $67^{\circ} 39' 30''$ East, 640.68 feet to a point, thence
6. South $07^{\circ} 32' 50''$ East, 435.39 feet to point, thence
7. South $79^{\circ} 00' 00''$ East, 350.00 feet to a point, thence
8. South $06^{\circ} 08' 00''$ West, 140.00 feet to the point of beginning, containing 277,964.65 square feet or 6.38119 acres of land.

PARADISE ELEMENTARY SCHOOL

EXHIBIT A

