

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made on this 17TH day of September, 2015, between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, (the "**Commission**"), a public body corporate and agency of the State of Maryland, and MONTGOMERY COUNTY, MARYLAND, through its Department of General Services, 101 Monroe Street, 9th Floor, Rockville, Maryland 20850 (the "**County**").

RECITALS:

A. Pursuant to Md. Land Use Code Ann., § 17-101, *et seq.*, as amended, the Commission has responsibility to acquire, own, operate, and maintain property within Montgomery County, Maryland, for purposes set forth therein.

B. The Commission is the owner of that certain land and building generally known as 18410 Muncaster Road, Rockville, Maryland 20855, located in Rock Creek Regional Park (the "**Park**"), and has designed and constructed an activities center known as "Agricultural History Farm Park Activities Center" at the Park (the "**Center**").

C. Pursuant to an Agreement dated May 24, 1972 made by the Commission and Montgomery County, the Commission is responsible for operation and control of all parkland acquired with certain County-derived funds, and is entitled to the receipt of all rents and income from said parkland buildings, which include the Center.

D. The County desires to locate its three agencies serving the County's agricultural community in a centrally located office space and desires to lease a portion of the Center for its purpose.

ACCORDINGLY, the parties agree as follows:

1. PREMISES

The Commission leases to the County and County agrees to rent from the Commission 12,659 square feet or, 84% of 15,070 square feet in the Center, as illustrated on Exhibit "A", which is attached to and made a part of this Lease (the "**Leased Premises**").

2. TERM

A. Initial Term. This Lease shall commence on November 1, 2015 (the "**Lease Commencement Date**"), and expire on October 31, 2019 (the "**Initial Term**"), unless the Lease is terminated sooner in accordance with the provisions of this Lease.

B. Renewal Term. Subject to the Commission's approval and limitations contained herein, the County may have the option to extend this Lease for four additional renewal terms of four year periods each (each being a "**Renewal Term**"),

whereby each Renewal Term would commence immediately after the expiration of the Initial Term or the immediately preceding Renewal Term, as the case may be. Notice of the request to extend the term shall be provided by the County to the Commission, in writing, at least 12 months before the end of the then current Term. If a Lease term is extended, then all of the terms, conditions and covenants in the Lease shall apply during any of the aforementioned Renewal Terms, unless otherwise amended in writing by the parties. The Commission reserves the right to deny the County's request to exercise any such option to extend the term in its sole discretion, provided the Commission so denies such request within 60 days of the Commission's receipt of the County's request to extend said term. For purposes of this Lease, "Term" means the Initial Term and/or any Renewal Term(s).

C. Termination Due to Non-Appropriation. Despite anything in this Lease to the contrary, and subject to Section 29.B. below, the County agrees that any time fund are not appropriated or provided for the operation of the Center or the Park, as the case may be, the Commission upon losing the necessary funding for the operation of the Center or the Park may terminate this Lease with 90 days written notice to the County.

3. RENT

A. Rent. It is the intent of the parties that the County's rent payments to the Commission for the lease of the Leased Premises include its *pro rata* cost of all Operating Cost (defined in Section 4 below) incurred in keeping and operating the Center, including the Utility Cost as set forth in Section 4.A. below. Commencing November 1, 2015, the County shall pay to the Commission the annual rental fee of \$143,274.50, to be payable in equal, consecutive monthly payments of \$11,939.54 each month (the "**Rent**"). The County shall send all rent payments to:

M-NCPPC
Enterprise Operations
10611 New Hampshire Avenue
Silver Spring, Maryland 20903

B. Due Date. Rent shall be due and payable on the first day of each month during the Term. If the Lease commences on any day that is not the first day of a month, then any Rent payable for that first month shall be prorated. Failure to pay the Rent by the fifth (5th) day of the month shall result in a late fee of ten percent (10%) of the Rent then due.

C. Annual Increase. The Commission and the County agree that the Rent shall increase each year from the previous year's Rent, based on the higher amount between the following: (a) three percent (3.0%); or (b) the annual percentage increase in the Consumer Price Index (CPI) (referred to as the "**Annual Increase**"). The Commission shall notify the County of the increase to the Rent in writing, but the obligation to pay Rent and any increase shall not be deferred or waived upon a failure of the Commission to provide notice of the Rent increase.

4. ADJUSTMENT TO OPERATING COSTS

A. Utilities. The County shall be responsible for the payment of its share of all utility costs for the Leased Premises, including water, sewer, electricity, and gas (collectively, the "**Utility Cost**") which Utility Cost is included in the Rent. The County's proportionate share of the Utility Cost shall equal 84.0% of all utility costs incurred by the Commission in connection with the use and operation of the Center.

B. Operating Cost Adjustment. The parties acknowledge that the Operating Cost will fluctuate from time to time. Accordingly, the parties agree that the Commission may assess and adjust the Operating Cost in a periodic manner. The Commission shall provide to the County a copy of documentation showing the Operating Cost on an annual basis. If the County's *pro rata* Operating Cost is greater than the annual Rent then in effect, then the Commission will invoice the County for the additional amount, and the County shall pay to the Commission such additional amount within 30 days from the date of the invoice. If the County's *pro rata* Operating Cost is less than the annual Rent then in effect, then the Commission will credit the difference and deduct such difference from the next monthly Rent(s) due.

C. Annual Rent Adjustment. Upon each annual anniversary of the Lease Commencement Date, the Rent amount shall be adjusted so that the Annual Increase and any increase in Operating Cost shall be added to the Rent amount from the immediate prior lease year, and the County shall pay such adjusted Rent amount in a manner set forth in Section 3 and Section 4.B. above, as applicable.

D. Operating Cost Defined. For the purposes of this Lease, "**Operating Cost**" means all costs and expenses incurred in maintaining, renovating, and operating the Center, including any capital improvements, any parking lot and roof works, structural and non-structural works, and other building maintenance and repair, mechanical systems maintenance and repair, as well as personnel costs, janitorial services, pest control, trash removal.

5. USE OF THE PREMISES

A. The use of the Leased Premises is limited for purposes of office space usage by the County for its Cooperative Extension Service and Soil Conservation District, and as otherwise expressly allowed in this Lease (the "**Use**"). The County shall have the right to occupy the Leased Premises 24 hours a day, seven days a week.

B. The County acknowledges that the Commission intends to lease portions of the Center, consisting of approximately 2,411 square feet, to the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, or other tenant as deemed acceptable to the Commission, which area is illustrated on Exhibit "A".

C. The County further acknowledges and agrees that certain portions of the Leased Premises shall be made available for use by other tenants or members of the public from time to time without compensation to the County or any deduction from the Rent. In particular, a small conference room, as shown on Exhibit "A" (the "**Conference Room**"), shall be available for use on a shared basis as needed by the other tenants from time to time. The County shall be responsible for scheduling of the Conference Room and the schedule for the use thereof shall be posted in a conspicuous manner.

D. The Harvest Room (also known as the Multipurpose Room) (the "**Harvest Room**"), shall be available for use by the public, and the following shall apply:

(1) Except the County, the Commission may charge a fee for the use of the Harvest Room to any users.

(2) The County may use the Harvest Room during daytime hours on Mondays to Thursdays from 8:00 am to 6:00 pm, and Fridays from 8:00 am to 4:00 pm on a non-exclusive basis, provided always that the public shall have priority in using the Harvest Room.

(3) All use of the Harvest Room shall be scheduled through the Commission.

E. If the County uses the Leased Premises after normal business hours, the County shall be responsible to open, close, and secure the Leased Premises.

F. The Commission shall retain the right-of-use for one office to maintain staff representation on the Lease Premises, as indicated on Exhibit "A". The Commission's representative shall be called upon to settle any disputes or questions relative to the use of any of the conference rooms or public areas. The Commission representative or his/her designee shall be the final authority in settling disputes regarding the use of the conference rooms or public areas. The ultimate control of the shared conference rooms, public areas, and other common areas shall remain with the Commission.

G. The County shall not use the hallways, meeting or conference rooms, garage, kitchen, mechanical rooms, equipment storage areas, and public areas as office space or for the storage of furniture, office machines or other items.

H. The County shall provide staffing for the common reception area during normal business hours.

I. The County shall have the right to use, subject to the terms and conditions set forth in this Lease, the kitchen area, as identified on Exhibit A (the "**Kitchen Area**"), to host cooking programs, and:

(1) The County acknowledges that the currently existing stove located

in the Kitchen Area does not meet applicable Federal, State, and local codes, laws, rules, and regulations (the "**Stove**"). The County agrees that, as a condition precedent to its right to use the Kitchen Area, it shall, at its sole costs and expense, either (a) replace the Stove with a stove that is compliant with applicable Federal, State, and local codes, laws, rules, and regulations; or (b) make the necessary repairs to cause the Stove to be in compliance with applicable Federal, State, and local codes, laws, rules, and regulations.

(2) The County shall be responsible, at its sole costs and expense, for

(a) the maintenance and upkeep of the Kitchen Area, including the Stove (whether new or repaired); and

(b) assuring that the Kitchen Area is in compliance with all applicable Federal, State, and local codes, laws, rules, and regulations.

(3) The County agrees to make any of the necessary repairs to the Kitchen Area as set for in this Lease. If the County fails to make the requisite repairs set forth in this paragraph, then the County shall not have any right to use the Kitchen Area without the prior written consent of the Montgomery County Parks Department acting on behalf of the Commission. Prior to the County's use of the Kitchen Area and the Stove, the County shall provide written evidence, to the Commission's satisfaction, of the Kitchen Area and Stove (or a new stove) being in compliance with the applicable Federal, State, and local codes, laws, rules, and regulations.

6. INSURANCE

The County represents and warrants to the Commission that it is self-insured through the County's Self Insurance Fund established under Section 20-37 of the Montgomery County Code (2004) as amended. The County further warrants and covenants that it shall maintain self-insurance coverage, under the Montgomery County Self Insurance Fund, at all times during the Term, and covenants that the County's insurance coverage shall be the primary coverage.

7. MAINTENANCE & SERVICES

The Commission shall provide the following maintenance services at the Leased Premises: janitorial, trash removal, pest control building maintenance and repair, mechanical systems maintenance and repair, grounds and road maintenance, including snow and ice removal. Except as provided in this Lease, the County shall maintain the Leased Premises in good order and repair during the term of this Lease. The County shall be responsible for maintenance and repair of any of its fixtures and personal property in the Leased Premises and the maintenance and repair of any services, including but not limited to telephone systems, kitchen systems, and office equipment.

8. HEATING/AIR-CONDITIONING (HVAC)

The Commission agrees to provide heat and air conditioning during those seasons of the year when such services are typically provided at all Commission facilities from 7:30 a.m. until 6:30 p.m., Monday through Friday (and Saturday, if Commission determines that HVAC service is necessary), exclusive of legal County holidays or other closure days, in amount and quantities sufficient to maintain a balanced, comfortable manner in all space occupied by the County. The air conditioning shall be balanced as to provide a temperature range between 74 and 78 degrees Fahrenheit. The heating shall be balanced as to provide a temperature range between 68 and 72 degrees Fahrenheit. The Commission shall, during emergencies, change these temperature guidelines in accordance with Federal, State and local requirements or recommendation. If the Commission adopts any different target temperature and schedule from the foregoing, then such new target temperature and schedule shall automatically apply to this Lease and the Commission shall provide a prompt notice of such changes to the County.

9. COMMISSION'S RIGHT OF ACCESS AND INSPECTION

The Commission shall be entitled to enter to view or inspect the Leased Premises at any reasonable time for lease compliance, for maintenance, and to make repairs.

10. PARKING

The County may use the 44 space employee/staff parking lot as shown on Exhibit A. The parking lot immediately adjacent to the Center shall be available for use by the public and/or visitors to the Center. Both employee and public parking areas will be designated with proper signs by the Commission which may not be removed at any time.

11. TELEPHONE; FAX; INTERNET

The County shall be responsible, at its sole costs and expense, for telephone, fax, and/or internet services, billings, maintenance, and any system charges, additions or deletions. The County shall be responsible for the payment of the foregoing bills with each agency being billed directly by its phone or internet service company. The Commission shall not assume any responsibility for any cost of the telephone, fax, or internet system or for providing such services. Any additional telephones, trunk lines, extensions, rewiring, telephones/internet relocations or related expenses shall be at the County's sole costs, expense, and responsibility. Any new system or upgrades will be at the County's sole costs, expense and responsibility. The County will be required to either maintain the existing telephone system at its sole costs and expense or acquire and install a new phone system at its sole costs and expense.

12. FIXTURES AND EQUIPMENT

All items which are attached to the building within the Lease Premises, or are part of the building's systems at the time the Center is delivered to the County, shall remain with the Center building and shall be delivered to the County along with the Leased Premises. All moveable partitions, trade fixtures, floor coverings or equipment installed within the Leased Premises at the County's expense shall remain the property of the County and may be removed by the County at the expiration or other termination of this Lease. The County shall, however, repair any damage caused by installing or removing such partitions, fixtures, floor coverings, or equipment. Any personal property remaining within the Leased Premises at the time of occupancy by the County shall become the property of the County. The County shall dispose of any such property in the manner it deems appropriate in accordance with the applicable laws.

13. SIGNS

The County shall not place upon or remove from the Leased Premises any placard, sign, lettering or awning except such, and in such place and manner as shall have been first approved in writing by the Commission. The Commission's approval shall not be unreasonably withheld.

14. QUIET POSSESSION

The Commission covenants and warrants that it will deliver to the County possession of the Leased Premises with appurtenances upon execution and delivery of this Lease for the purposes herein set forth.

15. INDEMNIFICATION

The Parties are both participants in the Self Insurance Fund established under Section 20-37 of the Montgomery County Code (2004) as amended, and are both subject to the liability limitations specified in the Local Government Torts Claim Act, Md Cts. and Jud. Proc. Code Ann. Sections 5-301 et. seq. (2015 Replacement Volume). This provision is expressly not intended to create any rights to recovery in any third party or to create a multiplier for any statutorily permitted recovery.

16. EMINENT DOMAIN

In the event the Leased Premises is taken by a public or quasi-public authority under any power of eminent domain or condemnation, the Lease herein set forth shall terminate and the Commission shall be entitled to such award by the condemning authority. The County may separately seek and keep compensation for its loss of use, but in no event the County be entitled to share in any proceeds awarded to the Commission.

17. DEFAULT

The Commission or the County shall be in default of this Lease when either party (the "Defaulting Party") fails to perform or satisfy any of the provisions, covenants, conditions or terms of this Lease which are to be performed by the Defaulting Party within sixty (60) days after written notice is sent from the other party (the "Non Defaulting Party") setting forth the details of the defaulting event. The Defaulting Party shall be liable for any and all loss or damage resulting from any such default.

18. RIGHTS OF THE PARTIES UPON DEFAULT

A. In the event the Defaulting Party default under any one or more of the events of default as described in Paragraph 17 above, the Non Defaulting Party may, upon giving not less than 30 days' written notice one to the Defaulting Party, after the respective periods for compliance as previously described have expired, terminate this Lease. In the event the Commission terminates the Lease hereunder, the Commission may re-enter the Leased Premises and have the possession of the same.

B. In the event the Commission recovers possession, all permanent additions, movable trade fixtures and improvements made or installed by the County shall become part of the Leased Premises and shall revert to the Commission upon the termination or expiration of the Lease, except the County may remove personal property, moveable trade fixtures, or equipment as described in Paragraph 12 above.

19. CASUALTY

A. In the event the Leased Premises are destroyed or damaged from whatever casualty, so as to render all or a substantial portion of the Center unfit for the Use, and the repair of said destruction or damage cannot reasonably be accomplished by the Commission within 90 days from the date of such damage the Commission may terminate this Lease by providing written notice to the County within 60 days after the such destruction or damage has occurred.

B. In the event that the Commission is able to undertake the repair of the Leased Premises, the Commission shall complete said repairs within 240 days from the date of destruction or damage and this Lease shall not be affected.

C. In the event that the Commission is not able to repair the Leased Premises as hereinabove provided, the County shall not be entitled to any compensation or payment from the Commission for the value of any remaining term of the Lease.

20. WAIVER

No waiver by the Commission or the County of any breach of any term, covenant, condition, or herein contained shall operate as a waiver of the term covenant, condition, or agreement itself or of any subsequent breach thereof.

21. LEGAL REQUIREMENTS

The County warrants and covenants to the Commission that it will comply with all applicable laws, regulations, and rules regarding the Use and occupancy of the Leased Premises during the Term, including, without limitation, non-discrimination (as set forth in § 11B-33 and Chapter 27 of the Montgomery County Code), public employment (as set forth in § 11B-52 and Chapter 19A of the Montgomery County Code), and adherence to the federal and local Americans with Disabilities Act ("**ADA**"). For avoidance of doubt, the County acknowledges and agrees that it will make the Leased Premises ADA compliant, at the County's costs, to the extent it is not so compliant at the time of the commencement of this Lease.

22. ASSIGNMENT AND SUB-LEASE

Except for the agencies listed in paragraph 5.A. of this Lease, the County shall not assign this Lease or sublet the Leased Premises without the prior written consent of the Commission, which consent may be withheld in its sole and absolute discretion.

23. SURRENDER OF POSSESSION

The County covenants, at the expiration or other termination of this Lease, to remove all goods and fixtures installed in the Leased Premises not the property of the Commission, and to yield up to the Commission the Leased Premises, all keys, locks, and other fixtures connected therewith (except trade fixtures and other fixtures belonging to the County) in good repair, order and condition in all respects, excepting reasonable wear and tear caused by use thereof and damage by fire or other casualty and damage from any cause with respect to which the County is not herein expressly made liable accepted. Upon the expiration or termination of this Lease, all permanent additions, improvements, and fixtures existing in the Leased Premises, regardless of whether it was made or installed by the County, shall become part of the Leased Premises and shall revert to the Commission.

24. HOLDOVER

In the event that the County shall continue to occupy said leased premises or any part thereof after the conclusion of the term of this Lease, or any extension thereof, the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by either party giving the other not less than 30 days' written notice, to expire on the day of the month from which the tenancy commenced. During any month-to-month tenancy, both parties shall continue to observe all agreements and covenants contained in this Lease.

25. INTEGRATED AGREEMENT

This Lease 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 both parties.

26. BENEFIT AND BURDEN

All of the covenants, provisions, terms, agreements, and conditions of this Lease shall inure to the benefit of and be binding upon both parties and their respective successors or assigns.

27. POLICE SERVICES

A. The Maryland-National Capital Park Police, Montgomery County Division (the "**Park Police**"), exercises primary police authority over the Commission properties including the Center and Leased Premises. The Park Police will continue to provide its police services regarding the Leased Premises in its customary manner and the County shall contact the Park Police in the following manner:

For Emergency Police Service:

Call 911 and request the Park Police or call the Park Police directly:

Emergency 301-949-3010

M-NCPPC Park Police Non-Emergency 301-949-3080

B. If the County hosts an event where the County determines that security and/or parking control are necessary, the County shall first offer to hire at its sole costs and expense the Park Police or off-duty Park Police to provide the necessary services for these events at the applicable hourly rate for Park Police officers pursuant to any collective bargaining agreement between the Park Police and the Fraternal Order of Police Lodge 30 in force at the time of each event, except that if Park Police declines such offer, or cannot assure coverage on the dates required, the County may retain other security and parking control assistance.

28. NOTICES

All notices required or desired to be given hereunder by either party shall be given in writing via certified mail, and shall be addressed as follows:

County:

Montgomery County, Maryland
Department of General Services
110 Monroe Street, 9th Floor
Rockville, Maryland 20850
Attention: Director of Real Estate

Commission:

M-NCPPC
Enterprise Operations
10611 New Hampshire Avenue
Silver Spring, Maryland 20903

Copy to:
Montgomery County, Maryland
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Attention: County Attorney

Copy to:
M-NCPPC
Office of the General Counsel
6611 Kenilworth Avenue, Suite 200
Riverdale, Maryland 20737

For avoidance of doubt, a copy of the foregoing notice to any person other than the foregoing designated addressee shall not constitute complete notice. Either party may change its mailing address hereunder by giving notice thereof to the other party in the manner set forth hereinabove.

29. STATE LAW and NON-APPROPRIATION

A. State Law. Wherever applicable, this Lease is subject to the damage caps and notice requirements set forth in the Local Government Tort Claims Act, set forth at Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Maryland Code, annotated; Section 5-509 of the Courts and Judicial Proceedings Article of the Maryland Code, annotated; and Md. Code Ann. Art. 25A, Section 1A; and Md. Code, all as amended from time to time. This foregoing provision is expressly not intended to create any rights to recovery in any third party or to create a multiplier for any statutorily permitted recovery.

B. Non-Appropriation.

(1) The Commission acknowledges that the County has appropriated funds only for payment of rent for the first year of the term of this Lease. The Commission further acknowledges and agrees that the County's obligations under the Lease, to pay rent in future years, is subject to the appropriation of funding for such purpose in future years by the County. The term "County", as used herein, includes the County Executive, the County Council, and all County employees and agents of the County. The County makes no warranty, guarantee, or representation and undertakes no obligation to request or obtain an appropriation of funds in future years for payment of rent. The Commission acknowledges and agrees that the County's budget constitutes an executive and legislative function that cannot be contracted away. The Commission irrevocably waives any claim against the County for unpaid rent or other damages which occur after the date of non-appropriation, if funds are not appropriated in future years for payment of rent, including any claim that the failure to appropriate such funds constitutes a breach of any express or implied covenant of good faith and fair dealing or any other implied obligation on the part of the County to appropriate funds. The Commission does not waive any claims which arise from the County's performance of its obligations under the Lease prior to the date of non-appropriation.

(2) If the County, in its sole discretion, elects not to appropriate funds for payment of rent in future years of this Lease, then this Lease shall automatically terminate at 11:59 p.m. on the last day for which funding is appropriated.

(3) The County's fiscal year begins July 1 and ends June 30. It is anticipated that the final action on the County's budget will take place each May, for the upcoming fiscal year, between the 15th and 31st of the month. The County shall give the Commission notice, in writing, within five business days after the County makes a final decision not to appropriate funds sufficient for the County to pay rent for a full fiscal year under this Lease. Such notice will clearly state the number of months, if any, in the upcoming fiscal year for which the County has appropriated funds sufficient to pay rent and will state the date by which the County will vacate the Leased Premises. If this Lease is terminated under this section, the Commission, in addition to waiving all claims for any damages, shall not be entitled to reimbursement of any kind, whether for the cost of unamortized build-out, fit, finishes, or for rent abatement, or other expenses incurred by Commission under this Lease

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

[Separately attached hereto]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates written below.

MONTGOMERY COUNTY, MARYLAND

Date: 9/24/15

By: Ramona Bell-Pearson
(Signature)

Typed Name: Ramona Bell Pearson

Title: Asst. Chief Admin. Officer

WITNESS/ATTEST

By: Julie L. White
(Signature)

Typed Name: Julie L. White

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date: _____

By: Patricia Colihan-Barney
Patricia Colihan-Barney
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

MSC
M-NCPPC Legal Department

Date: 10/2/2015

ATTEST

By: Joseph Zimmerman

Joseph Zimmerman
Secretary-Treasurer

APPROVED AS TO FORM & LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By: David R. [Signature]

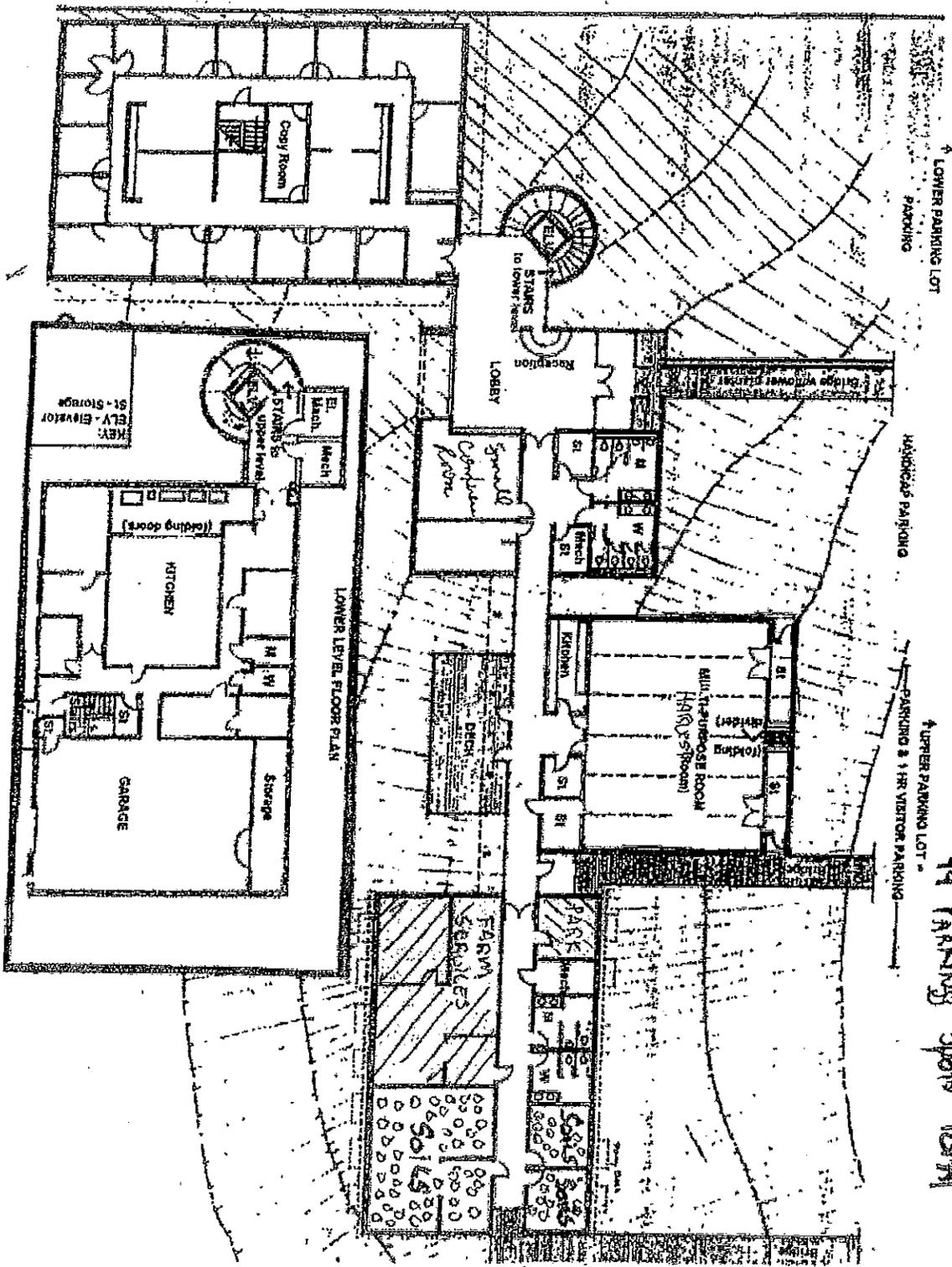
RECOMMENDED

By: Cynthia L. Brenneman

Cynthia L. Brenneman, Director,
Office of Real Estate

Date: 7/17/15

Date: 7/16/15



5 parking spots reserved
 94 parking spots total