

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "License") is made this ___ day of _____ 2008, by and between the **ARLINGTON COUNTY SCHOOL BOARD**, a body corporate (the "Licensor" or "School Board") and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic (the "Licensee" or "County"), hereinafter jointly referred to as the "Parties".

R-1 Whereas, the Licensee desires to use a portion of certain land owned by Licensor situated in Arlington, Virginia, for the purpose of constructing, using and maintaining a playground in the Nauck neighborhood on the Drew School and Community Center property for the benefit of the community, Arlington Public Schools and the public at large ("Park"); and

R-2 Whereas, the Parties desire to subsequently enter into a land exchange agreement to set forth the terms and conditions of an exchange between the Parties of the fee simple interest of certain real property owned by the School Board for the fee simple interest of certain real property owned by the County ("Land Exchange Agreement"), to reflect appropriate ownership of the property with its present and future intended usages; and

R-3 Whereas, the Parties also desire to enter into a Deed of Lease, simultaneously with the conveyance of the exchanged properties under the Land Exchange Agreement, to allow the County to continue to occupy and use a portion of the existing Drew Community Center building for a suitable term, in accordance with the terms and conditions more fully set forth therein; and

R-4 Whereas, the Parties now desire to enter into this License to allow the more immediate construction of the Park for the benefit of the community until the terms of the Land Exchange Agreement and Deed of Lease are finalized and executed by both Parties; and

R-5 Whereas, the Licensor has agreed to permit Licensee to use an area suitable for the Park upon and within certain land owned by Licensor situated in Arlington, Virginia, under the terms and conditions set forth in this License.

WITNESSETH:

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00), the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. Licensed Premises. Licensor hereby grants to Licensee the right and license to use, upon the terms hereinafter provided, Sixty-Eight Thousand Six Hundred Twenty-Five (68,625) square feet of land, more or less, as shown as "Proposed Drew Park" on Exhibit A-1 attached hereto, ("Licensed Premises"), together with the non-exclusive use, on a first come, first served basis, of the parking area ("Parking Area") for the parking of motor vehicles, subject to all applicable terms and conditions of the Licensor, which such Licensed Premises and Parking area

are located upon and within the Drew School Parcel, Arlington, Virginia, and being a portion of RPC No. 31026011 (“Premises”). The Premises and Licensed Premises are more particularly described in Exhibits A and A-1 attached hereto. Licensee accepts the Licensed Premises in its “AS IS” condition.

2. Permitted Uses. Licensee is permitted by this License to use the Licensed Premises solely for the construction, use and maintenance of a playground, which may include a water play feature, for the benefit and use of the community, Arlington Public Schools and public at large (“Permitted Uses”). Licensee shall, in its performance of the Permitted Uses, comply with all applicable laws, rules, orders, ordinances and regulations of any governmental authority. Licensor further grants to Licensee the right of ingress and egress over and across the Premises, Licensed Premises and Parking Area, in order to place, secure, construct and maintain the Park and associated playground equipment, during the Term (as hereinafter defined) of this License. Licensee is solely responsible for funding the cost of construction of all improvements to the Park for the Permitted Uses. Plans for the design of the Park as the design is currently anticipated are attached hereto as Exhibit B.

3. Term. The term of this License shall begin on the date that this License is executed and delivered on behalf of both Parties (the “License Commencement Date”) and shall continue for a period of twenty-four (24) months (“Initial Term”), unless sooner terminated or extended hereunder or as provided by law. When the last of Licensor and Licensee executes and delivers the License to the other party, said Licensor or Licensee, as the case may be, shall also execute and deliver to the other party for execution the "Confirmation as to License Commencement Date," attached hereto as Exhibit C which shall confirm the License Commencement Date. Licensor’s failure to execute Exhibit C attached hereto shall not in any manner affect the License Commencement Date otherwise established pursuant to the terms of this License.

4. Right to Extend and Renew. So long as Licensee is not in default under the terms of the License beyond any applicable notice and cure period, and subject to the termination provisions in Section 14 herein, this License shall automatically be extended, at no cost to Licensee, beginning at the expiration of the Initial Term for four (4) consecutive additional twenty-four (24) month periods, unless Licensee gives Notice of its intention not to renew to Licensor prior to the expiration of the then-current Term. Each renewal period shall hereinafter be referred to as the “Renewal Term”. The Initial Term and any Renewal Term are collectively referred to as the “Term”. Notwithstanding the foregoing, the Term shall not, in any event, exceed ten (10) years from the License Commencement Date.

5. Maintenance. The Licensee shall be responsible for the maintenance and repair of the Licensed Premises during the Term, including all equipment and fixtures thereto, and shall maintain the Licensed Premises in clean, safe and sanitary condition, and shall not knowingly cause any waste or injury thereto. In the event that repairs required to be made by Licensee pursuant to this License become necessary by reason of Licensee’s failure to maintain the Licensed Premises in good order and condition and in compliance with all applicable laws, orders and regulations, and such failure constitutes a health and/or safety hazard, and such failure continues following at least ten (10) days prior written notice (unless the Licensor reasonably deems the condition to constitute an imminent health or safety hazard), Licensor may, but shall

not be obligated to, make such repairs or remove such hazard, at Licensee's expense. Within thirty (30) days after Licensor renders a reasonably detailed bill for the reasonable costs of said repairs, Licensee shall reimburse Licensor for such reasonable costs.

6. Alterations. Licensee shall make no alterations, installations, additions or improvements in or to the Licensed Premises or the Premises, other than those Licensee reasonably deems to be required for the construction, use and maintenance of the Permitted Uses or as otherwise referenced in this License and permitted by applicable County ordinances and County regulations, without the prior written consent of the Licensor, which consent shall not be unreasonably withheld, conditioned or delayed.

7. Construction, Maintenance and Alteration Requirements. Licensee's construction, maintenance and alterations may be done by independent duly qualified, licensed and bonded contractors or by the County's Department of Parks, Recreation and Cultural Resources, at Licensee's sole discretion, in accordance with all applicable laws, codes, ordinances, rules and regulations, and Licensee shall obtain at its cost any required permits, licenses, registrations, notices or inspection for performance of its work. Notwithstanding any other term or condition hereof to the contrary, Licensee may maintain and perform alterations, by hiring any contractor selected by Licensee to perform such alterations pursuant to the applicable provisions of the Virginia Public Procurement Act and the Arlington County Purchasing Resolution, so long as such contractor is licensed and insured in the Commonwealth of Virginia.

8. No Lien or Encumbrance. The Licensee shall not incur any debt or make any charge against the Licensor, where such debt or charge would create any lien or encumbrance upon the Licensed Premises.

9. Licensor Covenants. Licensor covenants that Licensor is the fee simple owner of the Premises and has the right to grant this License, and that Licensor will make no use of the Licensed Premises which is inconsistent with the rights hereby conveyed to Licensee under its License.

10. Assignment. This License is non-assignable and non transferable by the Licensee.

11. Risk of Loss. All personal property of Licensee, its employees, agents, contractors, business invitees, licensees, customers, clients, and guests in and on the Licensed Premises or the Premises, shall be and remain therein under any and all circumstances at the sole risk of the above described persons and entities, except in the event of Licensor's gross negligence or willful act. The Licensor shall not be liable to any such person or entity for any damage to, or loss of such personal property, except in the event of Licensor's gross negligence or willful act.

12. Insurance.

(A) The Licensee shall either (1) self insure or (2) maintain a policy of public liability insurance, against claims and liability for personal injury, death or property damage occurring on, in or about the Licensed Premises. Any policies of insurance shall name the Licensor as Additional Insured. The policies of insurance shall have limits of not less than One

with a required copy to: Real Estate Bureau Chief
Arlington County, Virginia
Department of Environmental Services
2100 Clarendon Blvd, Suite 900
Arlington, Virginia 22201
Attn: Real Estate Bureau Chief

with a required copy to: Director,
Department of Parks, Recreation and Cultural Resources
2100 Clarendon Boulevard, Suite 414
Arlington, Virginia 22201

with required copy to: Park Development Div. Chief
Department of Parks, Recreation and Cultural Resources
2100 Clarendon Boulevard, Suite 414
Arlington, Virginia 22201

To Licensor: Superintendent
Arlington County Public Schools
1426 N. Quincy Street
Arlington, VA 22207

with required copy to: Assistant Superintendent for Facilities and Operations
Arlington County School Board
2770 S. Taylor Street
Arlington, Virginia 22206

with a copy to: Arlington Public Schools
Assistant Superintendent for Finance
1426 N. Quincy Street
Arlington, Virginia 22207

Notices shall be effective upon receipt.

16. No Partnership or Lease.

(A) The Parties agree that nothing contained in this License shall be deemed or construed as creating: a partnership; joint venture; the relationship of landlord and tenant between Licensor and Licensee; or a leasehold interest.

(B) The Parties further agree that the rights granted under this License shall be deemed a license coupled with an interest, and the Term shall not be shortened nor shall this License be revoked or terminated except as otherwise expressly provided in this License. It is intended that this License shall run with the land and be binding upon any successor or assign of Licensor.

17. Appropriation of Funds. Notwithstanding any provision of this License, all of Licensee's duties and obligations under this License are subject to appropriation of funds by the

County Board of Arlington County, Virginia for the specific purpose of satisfying the payment and performance of such obligations. If such funds are not appropriated or if construction of the Park is not substantially completed for any reason by the expiration of the Initial Term, Licensor may terminate this License upon not less than thirty (30) days prior written notice. If such funds are appropriated or if construction is substantially completed before the expiration of such thirty (30) day period, this License shall remain in effect.

18. No Waiver of Sovereign Immunity. Notwithstanding any other provision of this License to the contrary, nothing in this License, nor any action taken by Licensee or Licensor pursuant to this License, nor any document which arises out of this License shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Licensee or Licensor, or of their respective elected and appointed officials, officers and employees.

19. No Rights in Third Parties. The Parties hereto mutually agree that no provision of this License shall create in the public, or in any person or entity other than those signing this License as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this License or otherwise.

20. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this License to the contrary, neither the Licensor nor the Licensee shall have any obligation to explicitly or implicitly indemnify or hold harmless the other Party or any third party or parties from any liability whatsoever.

21. Approval of License by Licensee and Licensor. This License shall not become effective unless and until both the County Board and the County School Board approve this License and it is signed and delivered on behalf of both the Licensor and Licensee. If this License is not approved by both the County Board and the County School Board, and is not executed and delivered by authorized persons on behalf of each Party, then no liability whatsoever shall accrue to the Licensor or Licensee, and the Licensor and Licensee shall have no obligations whatsoever to each other.

22. Entire Agreement/Applicable Law. This License contains the entire agreement of the Parties hereto with respect to the subject matter hereof. All representations, inducements, or agreements, oral or otherwise, between the parties not contained in this License shall be of no force and effect. This License shall not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Licensor and Licensee. This License shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. The courts of Arlington County, Virginia shall be the proper forum for any disputes arising hereunder.

23. Waiver of Jury Trial. *(Intentionally deleted).*

24. Incorporation of Recitals. The foregoing recitals are fully incorporated into this License by this reference. However, nothing in this License shall require, or be constructed or

interpreted as requiring, either party to enter into the Land Exchange Agreement or Deed of Lease.

IN WITNESS WHEREOF, Licensor and Licensee have caused this License to be executed and delivered as their respective acts, intending to be legally bound by its terms.

LIST OF EXHIBITS:

Exhibit A - Descriptions of Licensed Premises and Premises

Exhibit A-1 – Licensed Premises and Premises

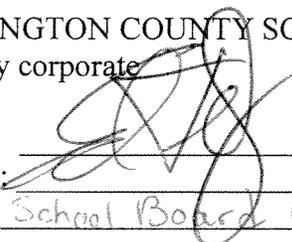
Exhibit B – Design Plans of the Park

Exhibit C – Confirmation of License Commencement Date

[Signatures appear on the following pages.]

LICENSOR:

ARLINGTON COUNTY SCHOOL BOARD,
a body corporate

By: 
Name: Ed Fendley
Title: School Board Chair

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Arlington

The foregoing instrument was acknowledged before me this 17th day of
June, 2008, by Ed Fendley.

Melanie Elliott
Notary Public

My Commission expires: April 30, 2009

Registration No: 308 007

I was commissioned a Notary
Public as Melanie Griffiths

LICENSEE:

Approved as to Form:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, a body politic

County Attorney

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of
_____, 2008, by _____.

Notary Public

My Commission expires: _____

Registration No.: _____

EXHIBIT A

Descriptions of Licensed Premises and Premises

Licensed Premises:

Sixty Eight Thousand Six Hundred Twenty Five (68,625) square feet of land, more or less, to be designated by Licensee, upon and within the Drew School Parcel, being a portion of RPC No. 31026011, as more particularly shown on the attached Exhibit A-1. (The Licensed Premises have been assigned the following street address: 2410 South Kenmore Street, Arlington, Virginia 22206.)

Premises:

All of the Drew School Lot, as shown on a plat attached hereto as Exhibit A-1.

EXHIBIT C

Confirmation as to License Commencement Date

Attached to and made a part of the License Agreement, dated the ___ day of _____ 2008, by and between the **ARLINGTON COUNTY SCHOOL BOARD**, a body corporate (the "Licensor" or "School Board") and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic (the "Licensee" or "County"), hereinafter jointly referred to as the "Parties."

The Parties do hereby declare and evidence that the License Commencement Date is confirmed as being the _____ day of _____, 20__.

LICENSOR:

ARLINGTON COUNTY SCHOOL BOARD, a body corporate

By: _____
Name: _____
Title: _____

LICENSEE:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic

By: _____
Name: _____
Title: _____

DREW PARK

24th Street S. and S. Kenmore Street
Proposed Playground Design

