

AMENDED AND RESTATED LEASE AGREEMENT

BETWEEN

MONTGOMERY COUNTY, MARYLAND

AND

SHEPPARD PRATT HEALTH SYSTEM, INC

dba Sheppard Pratt School – Rockville

DATED: December 19, 2022

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## **AMENDED AND RESTATED LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT (the "Lease"), dated this 19th day of December, 2022 (the "Effective Date"), by and between MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland (hereinafter, together with its successors and assigns called "the County"), and SHEPPARD PRATT HEALTH SYSTEM, INC, a Maryland corporation doing business as Sheppard Pratt School-Rockville (hereinafter, together with its successors and assigns called the "Tenant") (the County and the Tenant together the "Parties").

### **BACKGROUND:**

1. The County is the owner of a former public school site known as the Aspen Hill Elementary School, located at 4915 Aspen Hill Road in Rockville, Montgomery County, Maryland (as more particularly described in Section 1.A below, the "Property"), which was declared surplus by the Board of Education of Montgomery County and the State Board of Public Works and conveyed by the Board of Education to the County by deed recorded among the Land Records for Montgomery County, Maryland in Liber 12859 at Folio 582 (the "Deed"). A copy of the Deed is incorporated by reference and made a part of this Lease as Exhibit A. The Property is more particularly described in the Legal Description of Property which is incorporated by reference and made a part of this Lease as Exhibit B-1; and

2. Tenant and The Family Foundation, Inc. were parties to that certain Assignment of Lease Agreement, dated February 25, 2003, pursuant to which Tenant was assigned the original lease of the Property, dated August 25, 1999 (the "Prior Lease Agreement"), under which Tenant continues to operate the Property as the Sheppard Pratt School – Rockville, which is a non-public, Type I, special education day school educating boys and girls from grades 1 through grade 12; and

3. The Prior Lease Agreement expired August 31, 2019, and Tenant continues to occupy the Property on a month-to-month basis as allowed within the Holdover provisions contained in expired lease with the County. The County and the Tenant wish to amend and restate the Prior Lease Agreement in this Lease to permit the Tenant to plan for future programming for its students and their parents, as well as for future capital improvements to the Property to accommodate such programming.

4. The County has completed the reuse procedure and has obtained necessary approvals to lease the Property to the Tenant, as set forth in Executive Regulation 4-99AM, Code of Montgomery County Regulations (COMCOR) Section 11B.45.02 ("ER 4-99"), and the Tenant was approved and continues to be approved as an appropriate tenant for the Property; and

5. The County and Tenant wish to amend and restate the Prior Lease Agreement as set forth in this Lease;

NOW THEREFORE, in consideration of the amendment and restatement of the Prior Lease Agreement in this Lease, and for the construction of certain substantial Qualified Capital Improvements to be made to the Property by the Tenant as provided in Article 9 below, and the payment of rent by the Tenant to the County as provided below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PROPERTY; LEASED PREMISES:

A. The "Leased Premises" shall mean the entirety of the Property as shown on Exhibit B-2, and any buildings, walkways, play areas, parking lots, driveways, outdoor recreation fields, other improvements and land located on or within the Leased Premises from time to time. The County leases to Tenant and Tenant leases from the County the Leased Premises, pursuant to the terms set forth in this Lease. The Leased Premises is leased and accepted by Tenant in "as is" condition.

B. Tenant hereby acknowledges that entering into this Lease shall not provide the Tenant with an option to buy the Property or any portion thereof.

2. TERM: The initial term of this Lease commences on the Effective Date of this Lease (the "Commencement Date") and expires Fifteen (15) years at midnight after the Effective Date. (the

“Term”), Each twelve (12) month period, commencing with the Commencement Date, shall be referred to as a “Lease Year”,

3. USE OF THE LEASED PREMISES: The Leased Premises shall be used only for (i) the provision of educational services and related activities (the “Permitted Use”), (ii) community and the County's use as set forth in Articles 6 and 7 of this Lease, and (iii) such other purposes as may be agreed to in writing by the County. Tenant agrees that its use of the Leased Premises, including any use of the Leased Premises by subtenants pursuant to Article 19 herein, shall conform fully with all applicable zoning and subdivision laws and regulations, and shall be subject to all rules, regulations, statutes, permits, resolutions or any other requirements for the use and occupancy of the Leased Premises as established by all appropriate authorities having jurisdiction, including ER 4-99, dealing with the Reuse, Leasing and Sale of Closed Schools by the County. Special events organized by Tenant or its subtenants, which bring large numbers of visitors to the facility shall be coordinated through the community coordinating group established in Article 41 below, with the goal of mitigating the effects of traffic to and from the Leased Premises and parking in the adjacent community.

4. RENT: RENTAL ADJUSTMENTS:

A. Rent: For the first Lease Year is abated, Tenant shall pay to the County starting in rent year # 2 as shown in the following table over the term of the lease.

Year 2	\$75,000.00
Year 3	\$77,250.00
Year 4	\$79,567.50
Year 5	\$81,954.53
Year 6	\$84,413.16
Year 7	\$86,945.56
Year 8	\$89,553.92
Year 9	\$92,240.54
Year 10	\$95,007.76
Year 11	\$97,857.99
Year 12	\$100,793.73
Year 13	\$103,817.54
Year 14	\$106,932.07
Year 15	\$110,140.03

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- B. Due Date for Rent: The first monthly payment shall be due upon the Commencement Date. All Rent payments thereafter shall be made in advance on the first day of each month during the Term and shall be payable to: Montgomery County Maryland DGS Office of Real Estate, P.O. Box 826766, Philadelphia, PA 19182-6766.
- C. Failure to Pay Monthly Rent: Should Tenant fail to submit monthly Rent in accordance with this Lease, and if Tenant's failure continues for more than five (5) business days after receipt of written notice from the County, Tenant shall pay to the County, in addition to and as a part of the monthly Rent in question, a late penalty equal to five percent (5%) of the monthly Rent. If Tenant's failure to pay continues for more than fifteen (15) business days after receipt of the aforesaid written notice from the County, Tenant shall pay to the County, in addition to and as a part of the monthly Rent in question and the aforesaid late penalty, an additional late penalty equal to ten percent (10%) of the monthly Rent. Any late penalty imposed under this Section shall be payable to the County as Additional Rent and shall be paid at the time that the overdue installment of Rent is paid to the County by Tenant.

5. TERMINATION:

- A. Termination for Convenience:
- (1) This Lease and all rights and obligations hereunder may be terminated by the County, for any reason, at any time and at no cost to the County (except as provided in Article 9.D below), whenever the Chief Administrative Officer shall determine that termination of this Lease is in the best interest of the County. A termination pursuant to this Article 5.A shall be a "Termination for Convenience." In such case, the Chief Administrative Officer shall give

written notice to the Tenant not less than (a) eighteen (18) months before the proposed termination, or (b) the remaining Term of the Lease if that period is less than eighteen (18) months. A Termination for Convenience shall be subject to the provisions of Article 5.B.4 and 5.B.5 below.

(2) This Lease and all rights and obligations hereunder may be terminated by the Tenant, for any reason, at any time and at no cost to the Tenant. A termination pursuant to this Article 5.A shall be a "Termination for Convenience." In such case, the Tenant shall give written notice to the County not less than (a) eighteen (18) months before the proposed termination, or (b) the remaining Term of the Lease if that period is less than eighteen (18) months.

B. Termination for Reuse: As required by ER 4-99, Paragraph 6.2, this Lease and all rights and obligations hereunder may be terminated by the County due to a request by the Board of Education for Montgomery County, Maryland (the "BOE") to re-convey the Leased Premises for public education purposes. A termination pursuant to this Article 5.B. shall be a "Termination for Reuse" and shall be made in accordance with the procedures below:

1. Upon written notice to the Tenant of not less than (i) eighteen (18) months before the proposed termination date, or (ii) the remaining Term, if the remaining Term is less than eighteen (18) months.
2. If the termination of this Lease is due to a request by the Board of Education of Montgomery County (herein "Montgomery County Public Schools" or "MCPS") to re-convey the Leased Premises for public education purposes, then before the Chief Administrative Office of Montgomery County ("CAO") can terminate this Lease, the Superintendent of Schools for MCPS must notify both the Tenant and the CAO, on or before September 1 of the second year before the

proposed termination date, that MCPS will need the school for public education purposes.

3. The CAO may, after consulting MCPS if the school is intended to be reconveyed for public educational use, withdraw a termination notice if the Montgomery County Council does not appropriate sufficient funds for any necessary improvements.
4. In the event the Tenant is operating the Leased Premises as a private school during a school year, the County agrees that under no circumstances shall the Tenant be required to surrender the Leased Premises during that school year (i.e. September 1 to July 1), as that term is defined in ER 4-99, Paragraph 2.13.
5. If the County elects to terminate this Lease pursuant to this provision, during the notice period Tenant shall not be obligated to make further Capital Improvements or expenditures to the Leased Premises notwithstanding anything to the contrary elsewhere contained in this Lease, although Tenant shall continue to be responsible for all operating costs and ordinary maintenance and repair of the Leased Premises during the notice period. Under no circumstance will the County be responsible for any needed Capital Improvements during this time period, whether by virtue of an emergency or otherwise. In the event that a needed emergency Capital Improvement renders the Leased Premises uninhabitable, the Tenant shall vacate.
6. USE OF ALL-PURPOSE ROOM BY THE COMMUNITY, DEPARTMENT OF RECREATION AND OTHER COUNTY AGENCIES:
  - A. Community Use of Public Facilities: As required by ER 4-99, Paragraph 6.14, and subject to a nominal charge for utilities to be jointly determined by Tenant and the County's Office of Community Use of Public Facilities or its



successor agency (the "CUPF"), the All-Purpose Room within the Leased Premises (as shown on Exhibit B-2-) shall remain available to the community for use during hours outside of the Tenant's regular use during the Term, subject to the terms herein. For the purposes of this Lease, the "hours of Tenant's regular use" are Monday through Saturday from 9:00 A.M. to 6:00 P.M. Tenant shall forward all requests to use the All-Purpose Room outside of the hours of Tenant's regular use directly to CUPF. CUPF shall honor such requests in accordance with the priorities established in the Guidelines for the Community Use of School and other Public Facilities set forth in COMCOR 44.00.01, et seq., as amended. Tenant acknowledges and agrees that only CUPF may agree to any rental of the All-Purpose Room. Tenant agrees to provide CUPF with a schedule of its activities during Tenant's hours of regular use and outside the hours of Tenant's regular use for the All-Purpose Room on a semi-annual basis. The Fall/Winter schedule (October-March) shall be submitted by September 15 and the Spring/Summer schedule (April-September) shall be submitted by February 1. Times not scheduled for daytime activities by the Tenant shall be deemed to be available for community use; however, such community use during hours outside of the hours of Tenant's regular use shall be limited to Monday through Saturday at night from 6:00 P.M. to 11:00 P.M. and all day Sunday from 9:00 A.M. to 11:00 P.M. The above notwithstanding, each Party agrees to honor and allow any activities scheduled in the All-Purpose Room prior to the Commencement Date. Any use outside of the hours of Tenant's regular use by the Tenant deviating from its previously submitted schedule shall be subject to the approval of CUPF. Tenant agrees to make the All-Purpose Room available, upon request from CUPF, to the Montgomery County Supervisor of Elections for use as a polling facility during the day, if necessary, during primary, general and special elections, irrespective of Tenant's prior scheduled activities.

- B. Tenant Limitation: The Tenant shall not be responsible for (i) providing security and safety measures for the Leased Premises, including, without

limitation the All-Purpose Room, during such community, CUPF and County use, or (ii) mitigating the traffic and parking burdens placed on the adjacent community during such community, CUPF and County use.

7. USE OF EXTERIOR PLAY AREAS AND FIELDS ON LEASED PREMISES:

Tenant shall have the exclusive right to use and occupy the Leased Premises, including, without limitation, the parking lot thereon, subject to and in accordance with the terms and conditions set forth in this Lease. Notwithstanding the foregoing, the community (including the County) shall have the non-exclusive right to use and occupy the outdoor fields for outdoor recreation and athletics located on the Leased Premises (the "Exterior Play Areas and Fields on the Leased Premises") for community and/or County use after 6:00 p.m., Monday through Friday and all day on Saturday and Sunday unless the Tenant needs the Exterior Play Areas and Fields on the Leased Premises for a regularly scheduled activity, or an exception is approved by CUPF. A copy of a letter from CUPF acknowledging Tenant's right to use the Exterior Play Areas and Fields on the Leased Premises, up to 6:00 p.m., Monday through Friday, is attached as Exhibit C.

8. PARKING: Tenant is entitled to full use of the parking facilities which are a part of the Leased Premises as of the Commencement Date. As required by ER 4-99, Paragraph 6.13, parking for Tenant and any other occupants of the Leased Premises, their staff, clients and guests shall be confined to the surface parking areas located on the Leased Premises and any additional parking area approved by the County as a Capital Improvement (defined below). Tenant may not use or permit any other occupants of the Leased Premises, their staff, clients, and guests to use on-street parking in such a way that deprives the nearby property owners of their beneficial use of the public right of way or in any manner that violates the Traffic Management Plan described in Article 42. Subject to all approvals required by all applicable laws, regulations, ordinances and codes, including, without limitation, mandatory referral as required by County regulations, and subject to all of the provisions of this Lease, Tenant may expand the parking facilities to support the Leased Premises, with the express written consent of the County. Tenant shall, at Tenant's risk and expense, be responsible for the ongoing maintenance, cleaning, and repair of all parking facilities, whether in existence at the time of commencement of this Lease or expanded in accordance with this Article. The Tenant shall grant access to all parking facilities to the County's representatives at all times, or to community users of the Leased Premises during times of community use as set forth in Articles 6 and

7 above. Tenant agrees to make repairs as necessary to maintain all of the parking areas in a safe state and as necessary for compliance with any laws, including, but not limited to the Americans with Disabilities Act [42 U.S.C. 12101, et. seq.] (the “ADA”).

9. CAPITAL IMPROVEMENTS:

A. Capital Improvement Definitions:

1. Elective Capital Improvements are Capital Improvements made by Tenant which:
  - a. Increase the value of a closed school to the County;
  - b. Are not required to protect or preserve the structure or systems of the Leased Premises; and
  - c. Are not mandated by County, State, or Federal law or regulation.
  - d. By way of example, and not intended to be a complete list, Elective Capital Improvements include, but are not limited to, work such as installation of program specific improvements (e.g., rock climbing walls, boxing rings, raised platform floors, etc.).
2. Non-Elective Capital Improvements are Capital Improvements made by Tenant which:
  - a. Increase the value of a closed school to the County; and
  - b. Are required to protect and preserve the structure or systems of the Leased Premises; or
  - c. Are mandated by County, State, or Federal code, law or regulation.
  - d. By way of examples, and not intended to be a complete list, Non-Elective Capital Improvements include but are not limited to work such as roof replacement, boiler replacement, HVAC system replacement, replacement of

failing exterior structural walls, electrical system replacement, conversion from oil fired boilers to gas heat, asbestos removal, underground storage tank removal, window replacement (excepting window pane replacements), capitalized parking improvements, plumbing and ADA mandated improvements.

3. Qualified Capital Improvements are Elective or Non-Elective Capital Improvements that have been reviewed and approved in writing by the County and that are specifically identified in the County's written approval as Qualified Capital Improvements. In such written approval, the County shall include whether or not such Qualified Capital Improvements are approved for Rent credits.
4. Capital Improvements are a substantial improvement or addition to a building which extends beyond ordinary repair or maintenance.

B. As Required by ER 4-99, Paragraph 6.4, Approval Process for Non-Elective and Elective Capital Improvements:

1. Tenant must obtain the prior written consent of the County for all Capital Improvements. The County may refuse to approve any Capital Improvement proposed by Tenant. Tenant must submit to the County complete plans, drawings and specifications at least 45 days prior to beginning work on any Capital Improvement. Tenant's submittal to the County must include sufficient detail and content to allow the County to fully evaluate Tenant's proposed improvement. In the event the proposed Capital Improvements are Elective Capital Improvements, two copies of the submission shall be sent by Tenant to the County. The County must coordinate review with the BOE before approving any proposed improvement that may affect the future educational use of the Leased Premises, and with Montgomery

Planning Department staff to consider whether the Regional District Act (MD Code, Art. 28 § 7-112), as amended, requires mandatory referral of the improvement to the Planning Board. The County shall respond in writing to Tenant's submission within 45 days of the receipt of all required documentation. The County reserves the right to deny approval of any and all Capital Improvements proposed by Tenant.

2. In the event of an emergency need for a Capital Improvement, Tenant shall notify the County as soon as practicable under the circumstances, and the County shall respond within a reasonable and appropriate period of time, as dictated by the emergency situation.
3. The County has the right to inspect all work and materials used in any Capital Improvement during and after construction.
4. If any improvement does not comply with the plans and specifications previously approved by the County, Tenant must undertake any necessary corrections at Tenant's sole risk and expense immediately after receiving written notice from the County. The County may treat any failure by Tenant to take all specified corrective action as a default under this Lease and may take any necessary corrective actions. If the County takes any corrective action because Tenant has not done so, Tenant must reimburse the County the cost of the corrective action as additional Rent. Upon satisfaction by the County that Tenant has completed the Capital Improvement in compliance with the approved plans and specification, the County and Tenant shall complete the "Capital Improvements Completion Report" attached hereto as Exhibit D-1.
5. The total cost of all Capital Improvements shall be borne solely by Tenant and may be subject to a Rent credit and/or reimbursement

from the County as set forth below. Except as otherwise provided herein, in the event a Capital Improvement is eligible for a Rent credit, such Rent credit shall commence with the first installment of Rent due after the completion of the Capital Improvements Completion Report.

6. Tenant must obtain any and all permits, approvals and licenses from all appropriate County, State, and/or municipal authorities having jurisdiction over such work. The County, in its capacity as the landlord under this Lease, agrees to cooperate and to provide such assurances as may be reasonably necessary to obtain such permits, approvals and licenses. Tenant shall comply with all applicable zoning, land use, health and safety regulations. This includes, specifically and without limitation, Section 59-3-3.4.5(B)(2)(b) of the Montgomery County Zoning Ordinance, (2014) as amended, ("Zoning Ordinance") which requires site plan review for any expansion of an existing private school building that would exceed the lesser of (a) 7,500 square feet, or (b) a 15% increase over the size of the Leased Premises existing on February 1, 2000, and for the installation of any portable classrooms within the Leased Premises for a period longer than one year.

- C. Rent Credits for Capital Improvements per ER 4-99, Paragraph 6.8: If in the approval of any Qualified Capital Improvements, the County indicates that the same are subject to Rent credit, then the County shall credit the Tenant's annual Rent in an amount not to exceed fifty percent (50%) of the annual amortized cost of the Qualified Capital Improvements, applied in equal monthly installments commencing with the first installment of Rent due after the completion of the Capital Improvements Completion Report. Said annual Rent credit shall be subject to the following conditions:

1. The total of all Rent credits shall not exceed fifty (50%) of the Tenant's annual Rent as set forth in this Lease.

2. Tenant shall not be entitled to Rent credits for any interest or finance charges, fees, administrative costs, performance bonds, permit fees, insurance, operating, maintenance, or repair expenses, or any other costs except the actual costs directly related to the design and construction and/or installation of Capital Improvements as approved by the County, which costs shall be fully documented by Tenant.
3. Capital Improvements completed by Tenant without the prior written approval of the County shall not receive Rent credit.
4. The County must validate all costs for which Tenant requests Rent credits.
5. As required by ER 4-99, Paragraph 6.4(c), in the event the work performed requires corrective action pursuant to Article 9.B.4 above, the costs of such corrective measures are the responsibility of the Tenant and are not eligible for Rent credit. If the Tenant fails to take the required corrective measures, the Tenant will not receive a Rent credit for that improvement.
6. Rent credits for Elective Capital Improvements shall be made if the County in its discretion finds, after consulting MCPS, that the improvement will be of substantial value to the County and/or the MCPS.
7. Future Rent credits may be forfeited, at the County's option, if Tenant defaults and fails to cure as set forth in Article 17, on any term or condition of this Lease.
8. For purposes of determining annual Rent credit amounts, amortization of Capital Improvements shall be made on a straight line basis over

the anticipated useful life of the Capital Improvement or the Term of this Lease, whichever is less.

9. No Rent credits shall be granted for any improvement to the extent that the improvement was paid for by a grant, loan, bond or other financial assistance from Montgomery County, Maryland, or from any other government or instrumentality.

D. As required by ER 4-99, Paragraph 6.9, Partial Reimbursement of Capital Improvements in the Event of Early Termination:

1. In the event the County terminates this Lease pursuant to Article 5 of this Lease, or in the event either party terminates this Lease pursuant to Article 16 of this Lease, the County shall reimburse Tenant one hundred (100%) percent of the remaining unamortized portion of the cost of each Qualified Non-Elective Capital Improvement and fifty (50%) percent of the remaining unamortized portion of the cost of each Qualified Elective Capital Improvement, after the termination date of the Lease, less any Rent credits for such Capital Improvements already granted to Tenant. In the event this Lease is terminated pursuant to Article 18 of this Lease, the County shall reimburse Tenant for the fair market value of the Qualified Capital Improvements to the extent of any applicable awards received by the County, less any Rent credit for such Capital Improvements already granted to Tenant, and such reimbursement shall not preclude Tenant from filing a separate claim against the authority exercising eminent domain pursuant to Article 18 of this Lease.
2. Such reimbursements shall be made in a lump sum within ninety (90) days of such termination date, or, in the event of eminent domain, within thirty (30) days of the County's receipt of such awards, and, in the case of termination under Articles 5 or 16, shall be subject to appropriation of funds by the Montgomery County Council. In the



event appropriations of funds is required, and the County or MCPS is unable to secure the funding necessary to reimburse Tenant, the County shall not terminate this Lease until such time as funding is available; in which event such termination shall be in accordance with Article 5.B.4 of this Lease.

3. In no event shall Tenant be entitled to receive reimbursement from both the County and MCPS for the same Capital Improvement.
4. Capital Improvements performed by Tenant without the prior written approval of the County will not receive reimbursement.
5. [Intentionally Omitted].
6. Except for previously taken Rent credits with respect to Qualified Capital Improvements, the County will not reimburse Tenant for any Qualified Capital Improvements in the event Tenant vacates the Leased Premises before the end of the Term, whether voluntarily or pursuant to legal action for breach of this Lease; however such shall not apply if Tenant vacates the Leased Premises after receiving a notice of termination under Article 5.
7. Tenant shall not be entitled to reimbursement in the Event of Default by Tenant pursuant to Article 17 below.
8. Tenant will not be entitled to reimbursement for any interest or finance charges, fees, administrative costs, bonds, permit fees, insurance, operating, maintenance or repair expenses, or any other costs not directly attributable to the actual construction and/or installation of Qualified Capital Improvements.

9. Tenant will not be entitled to reimbursement for Elective Capital Improvements, unless the improvements are, at the reasonable discretion of the County, determined to be Qualified Capital Improvements and the County approves the same as such pursuant to Article 9.C.
10. No reimbursement will be granted for any improvement to the extent that the improvement was paid for by a grant, loan, bond or other financial assistance from Montgomery County, Maryland or any other government or public agency.

E. Required Capital Improvements: As a condition of granting this Lease to Tenant, commencing with the date of full execution of this Lease, Tenant agrees to act with all commercially reasonable speed to obtain all permits and to commence construction for the Non-Elective Capital Improvements, in accordance with the description and schedule set forth in Exhibit D-2. The Elective Capital Improvements and the Non-Elective Capital Improvements, in accordance with Exhibit D-2, are hereby designated and approved as Qualified Capital Improvements by the County and the same are subject to Rent credit.

10. OPERATING EXPENSES:

- A. Maintenance, Repair and Upkeep of the Leased Premises: As required by ER 4-99, Paragraphs 6.3(a) and 6.3(c), the Tenant shall, at the Tenant's sole risk and expense (unless this Lease expressly provides otherwise), assume full responsibility for the maintenance, repair, upkeep and/or replacement of the entire Leased Premises and all improvements thereon, including but not limited to the repair and/or replacement of all building elements and equipment, fixtures, roof, windows, floors, ceiling tiles, walls, electrical systems, heating and air conditioning systems, plumbing systems, interior and exterior painting, outdoor areas, outdoor fields and playgrounds, shrubbery and landscaping located on the Leased Premises; and the County shall have the right to

determine in its reasonable discretion, and notify Tenant in writing, that such maintenance, repair, upkeep, and/or replacement is required to protect the Leased Premises from damage and deterioration. In the event such maintenance, repair, upkeep and/or replacement is due to the County's use of the Leased Premises, the County shall reimburse the Tenant for all costs and expenses incurred by the Tenant in connection with such maintenance, repair, upkeep and/or replacement within thirty (30) days of the Tenant's delivery to the County of written receipt thereof.

- B. Operating Expenses for Leased Premises: As required by ER 4-99, Paragraph 6.3(b), the Tenant must pay all operating expenses for the Leased Premises, including, but not limited to, utility bills and expenses, janitorial services, trash removal, pest control, snow removal, grounds maintenance, on-site parking facilities, preventive maintenance, day-to-day minor and major maintenance, tree removal, fence repair and/or replacement, and repair or replacement of playground equipment, and any other repair, replacement or maintenance required to keep the Leased Premises in clean and safe operating condition, as determined by the County.

11. FIXTURES AND EQUIPMENT: All items which are attached to the Leased Premises, or are a part of the systems of the Leased Premises at the time the Leased Premises are delivered to Tenant, shall remain with the Leased Premises and shall be delivered to Tenant along with the Leased Premises. All moveable partitions, trade fixtures, floor coverings or equipment installed within the Leased Premises at Tenant's expense shall remain the property of Tenant and may be removed by Tenant at the expiration or other termination of this Lease. Upon removal of the Tenant's property from the Leased Premises, the Tenant, at its sole expense shall repair any damage to the Leased Premises caused by such removal so that the Leased Premises are in substantially the same condition as at the commencement of the Lease Term, reasonable wear and tear excepted.

12. CONDITION OF PREMISES: Tenant accepts the Leased Premises in "as is" condition, and Tenant agrees to maintain the Leased Premises, including all improvements therein, in good condition and state of repair throughout the Term and any extension thereof in accordance with Article 10 above. Tenant acknowledges that Tenant and its predecessors have been in exclusive, continuous use and possession of the Leased Premises since the effective date of the Assignment of

Lease Agreement referred to in Article 2. For purposes of maintenance and upkeep, the Leased Premises includes the improvements, including, without limitation the buildings, walkways, play areas, parking lots, driveways, the Exterior Play Areas and Fields on the Leased Premises, and other improvements and land located on or within the Leased Premises from time to time, but shall not include adjacent athletic fields or outside grounds or other areas not part of the Leased Premises. Tenant agrees to keep the Leased Premises clean and neat in appearance at all times, and to keep grass trimmed, trees treated, and shrubbery pruned as necessary to maintain them in good condition and appearance. Tenant agrees to make repairs and replacements as necessary for the safe use of the Leased Premises, protection of the Leased Premises from damage or deterioration, including changes necessary to comply with state, federal or local laws, including, but not limited to changes, if required, to comply with the ADA, however, per Article 10 above, if such maintenance and repair is due to the County's use of the Leased Premises, the County shall reimburse the Tenant for all costs and expenses incurred by the Tenant in connection with such maintenance and repair within thirty (30) days of the Tenant's delivery to the County of written notice thereof.

13. LIABILITY, PROPERTY DAMAGE AND FIRE INSURANCE:

- A. Tenant Insurance: Tenant agrees to obtain and maintain, during the full Term of this Lease, and any extension thereof, a policy of general liability insurance with a minimum limit of liability of \$5,000,000 (five million dollars) per claim for bodily injury and property damage including Contractual Liability, Premises and Operations, Independent Contractors, Personal Injury and a \$1,000,000 (one million dollars) limit for fire legal liability issued by an insurance company licensed in the State of Maryland and acceptable to the County or by Tenant's duly licensed offshore captive insurance company.
- B. Tenant agrees to obtain and maintain, during the term of the Lease, and any extension thereof, a policy of Automobile Liability Coverage with a minimum limit of liability of one million dollars (\$1,000,000), combined single limit, for bodily injury and property damage coverage per occurrence

including owned automobiles, hired automobiles and non-owned automobiles.

- C. Tenant agrees to obtain and maintain, during the Term of this Lease, and any extension thereof, a policy of workers compensation and employers liability coverage in the amount of \$100,000 (each person) for bodily injury by accident or by disease and \$500,000 for bodily injury by accident or by disease (policy limits).
- D. Tenant agrees to obtain and maintain, an All-Risks Broad Form Property Policy including fire and extended coverage during the Term and any Renewal Periods to protect the full replacement value of all contents of the Leased Premises and all interests of the Tenant, including Capital Improvements, against any loss. Any deductibles under this policy shall be funded by the Tenant. The County does not provide any coverage for Tenant's owned contents and Capital Improvements to the Leased Premises. All such property insurance carried by the Tenant shall contain or be endorsed with a clause waiving all rights of subrogation against the County, so long as such a clause is commercially available. The Tenant hereby waives all claims for recovery from the County for any loss or damage to the Improvements or the property of the Tenant located therein to the extent such loss is or could have been covered by valid and collectible property insurance policies, with the coverages required hereunder and containing a waiver of subrogation.
- E. Installation Floater / Builders Risk – During Capital Improvements - Tenant must require their contractor/subcontractor to provide a Builder's All Risk Policy including fire and extended coverage to protect the interest of the County, contractor and sub-contractors against loss caused by the perils insured in the amount of 100% of the insurable value of the project on a replacement cost basis. The coverage must be written on a completed value form and shall cover all property in the course of construction, including but

not limited to materials and equipment and temporary structures. Coverage shall also include mechanical and electrical. The policy shall also endorse a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence. Tenant and Montgomery County must be named loss payee.

- F. The General Liability, Automobile and any excess liability policies must name Montgomery County as an additional insured. Builders Risk and/or Installation Floaters must name the County as loss payee. All policies must provide the County with forty-five (45) days advance written notice of material amendment or cancellation (except for non-payment of premium, in which case the notice of cancellation would be 10 days), or Tenant shall be responsible for providing the County with such notice. All or any portion of the Tenant's coverage required by this Article 13 may be provided through Tenant's offshore captive insurance company.
  
- G. The Tenant shall, within ten (10) days following execution of this Lease deliver to the County a certificate(s) of insurance and copies of the policies evidencing the coverage(s) required above. The certificate(s) must be issued to Montgomery County, Maryland, Department of General Services, Office of Real Estate, 101 Monroe Street, 9th Floor, Rockville, Maryland 20850. Tenant has the obligation to assure that the County always has a valid Certificate of Insurance in its possession.
  
- H. County Insurance. The County shall obtain and maintain throughout the Term:
  - 1. coverage for general liability with a minimum limit of liability of \$400,000 (four hundred thousand dollars) per claim and \$800,000 (eight hundred thousand dollars) for total claims arising out of the same occurrence for bodily injury and property damage including Contractual Liability, Premises and Operations, Independent Contractors, and Personal Injury; and automobile liability coverage in the amount of \$30,000 (thirty thousand

dollars) per person for bodily injury, \$60,000 (sixty thousand dollars) per claim for bodily injury and \$15,000 (fifteen thousand dollars) per claim for property damage;

2. an All-Risks Broad Form Property Policy including fire and extended coverage during the Term and any Renewal Periods, or its equivalent, to protect against any loss the full replacement value of the Property, but excluding all contents of the Leased Premises and all interests of the Tenant, including Capital Improvements.

The County shall have the right to self-insure. All policies must provide Tenant with forty-five (45) days advance written notice of material amendment or cancellation (except for non-payment of premium, in which case the notice of cancellation would be 10 days), or the County shall be responsible for providing Tenant with such notice.

14. INDEMNIFICATION:

The Tenant will indemnify the County and save it harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal or bodily injury and /or damage to property arising from or out of any occurrence upon or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof including the Exterior Play Areas and Fields on the Leased Premises, occasioned by any negligent act or omission of Tenant, or its invited subtenants, agents, contractors, guests or employees, excepting claims arising out of the negligence or wrongful acts or omissions of the County, the County's agents, and employees or any use of the Leased Premises by the community, the CUPF or the County. The County shall provide to Tenant, as soon as possible following receipt thereof, notice of any and all claims under which County will rely on this indemnification.

15. TENANT'S DUTIES AND COVENANTS:

- A. Waste: Tenant shall not damage or deface the Leased Premises, nor suffer or permit any waste in or upon the Leased Premises.
- B. Hazardous Materials: Tenant shall not keep or store gasoline, other flammable material, any explosive, or hazardous material as defined under State and Federal and County laws and regulations, within the Leased Premises which shall increase the rate of fire insurance on the Leased Premises beyond the ordinary risk established for the type of operations described in Article 3 of this Lease. The County recognizes that such ordinary risk for the type of operations described in Article 3 hereof includes, but is not limited to, keeping small amounts of such materials for purposes of operating lawn maintenance equipment, science laboratories, or other purposes related to the use, maintenance, repair or replacement of the Leased Premises or any portion thereof. Any such increase in the insurance rate due to the above, or due to Tenant's special operations within the Leased Premises, shall be borne by Tenant. Tenant shall not willfully do any act or thing in or about the Leased Premises which may make void or voidable any insurance on the Leased Premises, and Tenant agrees to conform to all reasonable written rules and regulations established from time to time by the County (as a governmental authority and not as a landlord), the Maryland Insurance Rating Bureau, or any other authority having jurisdiction over such matters.
- C. Use: Tenant shall not permit any trade or occupation to be carried on or use made of the Leased Premises outside of the scope of this Lease described in Article 3 hereof. Further, Tenant shall not use or allow to be used the Leased Premises or any part thereof for any illegal, unlawful or improper purpose or for any activity which shall constitute a nuisance to adjacent properties or the adjacent neighborhood. Tenant acknowledges that all of its responsibilities relating to the use or misuse of the Leased Premises and anything therein shall be construed to include use or misuse thereof by Tenant's invited agents, subtenants, employees, students, guests and subtenants, but shall also be



construed to exclude use or misuse thereof by persons or entities approved by the County other than Tenant, its subtenants, invited agents, patrons, guests or employees.

- D. Signage: Tenant shall not place upon the Leased Premises any permanent placard, sign, lettering or awning (a "Projection") except such, and in such place and manner, as first approved in writing by the County or CUPF. The County's or CUPF's approval shall not be unreasonably withheld. Any such sign or Projection must be permitted under the Zoning Ordinance and must be approved by the County agency responsible for administering the Zoning Ordinance, which may withhold its approval for any reason. Tenant's existing signage on the Leased Premises is hereby approved by the County.
- E. Expenses: Tenant shall pay all of its bills and expenses relating to Tenant's use of the Leased Premises on time and shall not permit any disruption of any service, including, but not limited to, utilities, to any portion of the Leased Premises.
- F. Authority: Tenant verifies and acknowledges that the person executing this Lease on behalf of the Tenant has the legal authority to bind the Tenant to the duties and obligations set forth herein. Tenant further verifies and acknowledges that such person's signature creates a binding obligation on the part of the Tenant for the Term. Tenant verifies and acknowledges that it is in good standing and/or qualified to do business in the State of Maryland, as attached as Exhibit I.
- G. Performance: Tenant agrees to and shall perform any and all obligations under this Lease in a timely manner. It is understood, agreed and covenanted by and between the parties that Tenant, at Tenant's expense, shall promptly comply with, observe and perform all of the requirements of all of the statutes, ordinances, rules, orders and regulations now in effect or hereafter promulgated whether required by the Federal Government, State of Maryland,

Montgomery County, or any local government with jurisdiction over the Leased Premises.

- H. Toxic Substances Control Act: Tenant specifically acknowledges its responsibility to comply with the requirements of the Toxic Substances Control Act (“TSCA”) 15 U.S.C. 2601 et seq. and its implementing regulations governing asbestos-containing materials in schools, the Asbestos Hazard and Emergency Response Act (“AHERA”), 40 C.F.R. Part 763, Appendix C Subpart E.

16. DAMAGES TO OR DESTRUCTION OF LEASED PREMISES:

- A. Notice: Tenant shall provide the County with notice, as soon as practicable, of accidents on or damages to the structure, equipment, or fixtures of the Leased Premises or of defects in the roof, plumbing, electric and heating and cooling systems of the building improvements on the Leased Premises, or to any defects or damages to the Property.
- B. Right to Restore or Terminate: In the event that the Leased Premises are substantially destroyed or damaged from whatever cause so as to render all or a substantial portion (which, for purposes of this Lease, shall mean 25% or more of the Leased Premises) of the Leased Premises unfit for the purposes for which such areas were leased, and the Leased Premises can be restored to its pre-existing condition within two-hundred seventy (270) days, the County shall notify the Tenant in writing within thirty (30) days of the date of such destruction or damage whether or not it intends to make such repairs and, if the County elects in such notice to make such repairs, the County shall promptly and with due diligence repair any damage to the Leased Premises. Notwithstanding the foregoing, if the repair of said destruction or damage to the Leased Premises cannot reasonably be accomplished by the County with available insurance proceeds or other available funds within two hundred seventy (270) days following the date of such destruction or damage or if the

County elects not to make such repairs, the County shall notify the Tenant of such in writing within thirty (30) days after the date of the destruction or damage occurred, and the County shall be entitled to terminate this Lease. Nothing contained in this Section 16 shall be construed to impose an obligation on the County to restore the Leased Premises.

17. DEFAULT:

A. Events of Default. Each of the following shall constitute an event of default (the "Event of Default"):

1. Tenant's failure to pay Rent and the continuance thereof for thirty (30) days after receipt from the County of written notice.  
Notwithstanding the foregoing, the County shall not be required to provide Tenant with more than three (3) monthly written notices during any twelve (12) month period.
2. Failure to substantially perform under any term, covenant or condition of this Lease other than failure to pay rent, and the continuance thereof for thirty (30) days after written notice from the County specifying said failure, or such greater time as may be reasonably required to correct such failure, with Tenant acting diligently.
3. The commencement of any involuntary action or proceeding for the dissolution or liquidation of Tenant, or for the appointment of a receiver or trustee of Tenant's property, and the failure to discharge any such action within one hundred twenty (120) days.
4. The making of any assignment for the benefit of Tenant's creditors.
5. The abandonment of the Leased Premises by Tenant. Abandonment is defined as the failure of Tenant to operate the Permitted Use for

one hundred twenty (120) consecutive days or longer, unless otherwise excused under the terms of this Lease.

6. Failure to comply with the Traffic Management Plan required in Article 42, below.

B. Tenant Penalties. In the event that an Event of Default shall occur as hereinabove stated, provided Tenant fails to cure said default within the time period set forth in this Lease, then, and in every such case thenceforth, at the option of the County or the County's assigns pursuant to Article 23 below, the Tenant shall be subject to one of the following penalties, depending upon the nature and severity, in the County's sole judgment:

1. Tenant's right of possession shall end, this Lease shall be terminated by the County, and the County may proceed to recover possession under the laws of the State of Maryland.
2. The County may, but shall not be obligated to, without waiving such Event of Default, undertake appropriate action to correct the Event of Default at the reasonable expense of Tenant, in which case Tenant shall pay the County all incurred costs of such performance promptly upon receipt of an invoice.
3. In addition to the other rights of the County, as set forth in this Article 17.B, in the event Tenant's Event of Default is due to a failure to perform under Article 17.A.2 above, and such Event of Default continues for forty-eight (48) hours after written notice from the County that the cure period specified in Article 17.A.2 above has expired, the County shall charge Tenant, as Additional Rent, the greater of (i) Five Hundred Dollars (\$500) per day for each day such Event of Default continues, or (ii) the actual costs to undertake

appropriate action to correct the Event of Default pursuant to Article 17.B.2 above.

4. The County's acceptance of Rent after the cure period set forth in Article 17.A.1, or Additional Rent as provided in Article 17.B.3 above, shall not constitute a waiver of the County's right to terminate this Lease in accordance with Article 17.B.1 above and recover possession in a subsequent month during the Term.

- C. County Remedies. Upon occurrence of an Event of Default by the Tenant, the County is entitled to all remedies available at law or in equity, including, but not limited to, the right to terminate this Lease, the right to re-let the Leased Premises (if the Lease has been terminated), with any termination of this Lease to be effectuated by appropriate proceedings brought in any court of competent jurisdiction in Montgomery County, Maryland.

Notwithstanding the termination of this Lease, the Tenant shall remain liable for any and all claims, costs, damages, expenses, fees, liabilities and losses suffered by or incurred on behalf of the County as a result of Tenant's Event of Default, including all reasonable attorney's fees and any costs the County incurs recovering possession of the Leased Premises.

- D. No Waiver. In the event that proceedings shall at any time be commenced for recovery of possession as aforesaid and a compromise or settlement shall be affected either before or after judgment whereby the Tenant shall be permitted to retain possession of the Leased Premises, then such proceedings do not constitute a waiver of any condition or agreement contained herein or of any subsequent breach of this Lease. No waiver of any breach of any condition contained herein shall be construed to be a waiver of that condition or of any subsequent breach thereof.

- E. Re-Renting Leased Premises: In the event of a default by Tenant hereunder beyond any applicable notice and cure periods, the County may, in addition to all other right and remedies provided in this Lease or by law or equity, by

appropriate proceedings, recover the Rent then due, or, at its option, the County may re-rent from time to time the Leased Premises, and such re-renting may be for a term or terms equal to, less, or greater than the remaining Term hereunder. The Tenant shall not be liable for any deficiency in Rent for any part of the term of such re-renting beyond the Term of this Lease. County shall be entitled to collect the Rent accruing under such re-renting and to apply the same first to any costs and expenses, including “standard” improvements and repairs necessary for re-renting, and reasonable attorney’s fees incurred in connection with such re-renting and collection of Rent, and then to Rent. Tenant shall be responsible for any remaining deficiency or unrecovered sums. In the event of any suit by the County to recover possession, or for unpaid Rent, the County shall also be entitled to recover costs of suit, including reasonable attorney’s fees.

18. EMINENT DOMAIN:

- A. County Right: The County is entitled to receive any award from a governmental authority other than Montgomery County, Maryland for the fair market value of the land and improvements upon which the Leased Premises are located.
- B. Tenant Right: Tenant is not precluded from claiming, proving and receiving, in a separate claim filed by Tenant against the authority exercising the power of eminent domain, such sums to which the Tenant may be entitled as compensation, including, without limitation, reimbursement of Qualified Capital Improvements, provided that such a separate claim does not interfere with or reduce the County's award and is pursuant to the terms set forth in Article 9.D herein.
- C. Right to Terminate: The County or Tenant may terminate this Lease upon exercise of eminent domain by a condemning authority that renders the Leased Premises unfit for the use and purpose set forth in Article 3 herein.

19. SUBLEASING:

A. County Consent for Tenant Subleasing: As required by ER 4-99, Paragraph 6.10, Tenant must not sublease any part of the Leased Premises without the County's express written consent. The County's written consent must be obtained in the following manner:

1. Tenant must submit to the County a copy of the proposed sublease, a description of the activities and uses proposed by the subtenant, proof of the subtenant's ability to pay Rent, adequately maintain the portion of the Leased Premises that is the subject of the proposed sublease, and otherwise comply with all terms and conditions of this Lease, and any other information pertinent to the proposed subtenant's use and occupancy as may be requested by the County.
2. The County must notify the Montgomery County Council, the Montgomery County Planning Board and BOE of each proposed sublease within ten (10) days after receiving notice from the Tenant, and must consider any comments received from same as required by law.
3. The County shall make a decision on the proposal and must respond in writing to the Tenant not later than forty-five (45) days after receipt of all information required by Article 19.A.1, above, or any additional information that may be requested by the County.
4. The County must not approve any sublease if the County determines, in its sole discretion, that the proposed use of the sublessee's performance is likely to result in a greater negative impact on the surrounding neighborhood than the current use and Tenant.

B. Permitted Subleasing by Tenant: As required by ER 4-99, Paragraph 6.11, subleasing by Tenant shall be permitted only under the following terms and conditions:

1. Each sublessee must comply with all applicable zoning and land use requirements, all reuse restrictions approved in any Montgomery County Council resolution, and all provisions of this Lease.
2. Any rent charged to a sublessee must be limited to the sublessee's prorated share of operating, maintenance, and administrative expenses actually incurred by Tenant, including the cost of any Capital Improvement made or contracted by the Tenant, plus an amount equal to the same rate of Rent the Tenant pays to the County. The County may require satisfactory written evidence of compliance with the provisions of this Article 19.B.2.
3. If the County finds that the Tenant received more Rent or Additional Rent from a sublessee than permitted by this Lease, the Tenant must pay to the County as Additional Rent, with the next Rent payment due, all excess Rent received.
4. The Tenant's obligations to pay all funds due to the County and perform all duties required under this Lease survive any sublease until fully performed by the Tenant.

20. RIGHT OF ENTRY:

A. Repairs and Inspection: As required by ER-99, Paragraph 6.0, the Tenant shall permit the County, as landlord, its agents or employees, at reasonable times and upon reasonable notice (not less than three (3) business days prior written notice) to enter the Leased Premises without charge and without diminution of Rent to: (1) examine, inspect and protect the Leased



Premises; (2) to perform maintenance and repairs the County may in its reasonable discretion consider necessary or desirable; (3) to exhibit the Leased Premises to prospective purchasers or tenants; and, (4) enforce the terms of the Lease and take action, including an inspection of the Leased Premises at least annually, to assure that the Tenant complies with its obligations under the Lease. The County retains all of its rights as a government to enter onto the Leased Premises as permitted by law and for all lawful purposes.

- B. Emergency Access: In cases of an emergency involving imminent risk of injury or death to persons or damage to property, the County, its agents or employees, without prior notice to the Tenant, may enter onto the Leased Premises, however, the County shall notify the Tenant of any such entry under this Article as soon as it is practicable under the circumstance.
- C. Locks: Tenant shall not alter or change exterior locks installed on the Leased Premises, however, in the event of an approved County change, Tenant shall provide the County with keys to the new locks installed in the Leased Premises.

21. RETURN OF THE LEASED PREMISES:

- A. Tenant's Property: At the conclusion of the Term as set forth in Article 2, or following the termination of this Lease for any other cause, the Tenant shall remove all of Tenant's goods and effects from the Leased Premises and return to the County all keys, locks, and other fixtures belonging to the County, in good repair, reasonable wear and tear and damage by casualty excepted. In the event that Tenant's property is not removed from the Leased Premises after the termination of this Lease, the property remaining shall become the property of the County. The County shall dispose of such property in the manner it deems appropriate.

- B. Condition of Leased Premises: The Tenant shall return the Leased Premises to the County in the same condition as received at the beginning of the Lease Term in “broom clean” condition, reasonable wear and tear and damage by casualty and Capital Improvements approved by the County excepted. At the time of termination of this Lease, and at the County’s option, the Tenant shall participate in a walk-through with the County’s agent or employee to inspect the Leased Premises.
- C. Signs: Following termination of this Lease, the Tenant shall remove any and all signs erected by or on behalf of Tenant and shall pay for or repair any damage caused by the installation or removal of such signage.

22. HOLDOVER:

- A. No Right to Holdover: The Tenant shall have no right to holdover and continue to occupy the Leased Premises upon expiration or termination of this Lease without first obtaining the prior written permission of the County.
- B. Holdover with Consent: If the Tenant holds over after the expiration of this Lease with the County’s prior written consent, the tenancy created by such holding over shall be a month-to-month tenancy, but in all other respects shall be governed by the terms of this Lease, provided, however, that (i) in all cases (except an Event of Default by the Tenant) a thirty (30) day notice shall be required to terminate the tenancy created by such consented hold-over; and (ii) the monthly Rent payable hereunder during any such holdover period shall be 150% of the Rent in effect for the last month of the Term then ending; and provided that (a) if, upon the expiration of this Lease, the County and Tenant are actively engaged in good faith negotiations for a renewal or extension of this Lease, the County agrees (on the condition the remainder of such holdover rent is paid timely) to defer payment in excess of such holdover rent above the Rent in effect immediately prior to the expiration of this Lease until the earlier of the sixtieth (60th) day after the expiration of the

Term or the date on which such negotiations cease, and (c) if, on or before the ninetieth (90th) day after the expiration of the Term, County and the Tenant execute and deliver a renewal or extension of this Lease, then County may agree to waive payment of the amount of holdover rent deferred pursuant to this Article.

- C. Holdover without Consent: Notwithstanding the foregoing, if the Tenant holds over the expiration of this Lease without the County's consent, the Tenant shall, in the absence of any agreement to the contrary, be the Tenant at sufferance and shall pay to the County holdover damages equal to the then-current fair market value of the Leased Premises plus Additional Rent in effect immediately prior to the expiration of the Term for the entire period of such tenancy at sufferance, and the County may avail itself of all rights provided at law or in equity.
  
- D. Indemnification: Tenant shall defend, indemnify, and hold the County harmless from and against any and all claims, losses, liabilities, or damages resulting from the Tenant's failure to surrender possession of the Leased Premises in accordance with this Article (including, but not limited to, any and all claims made by any succeeding tenant).

23. ASSIGNMENT: Except as otherwise provided in Article 43, Tenant shall not assign this Lease without the prior written consent of the County, nor shall any assignment hereof be effected by operation of law or otherwise without the prior written consent of the County. Any assignment consented to by the County shall not relieve the Tenant from any of its obligations under this Lease, and such consent by the County shall not be effective unless and until (i) Tenant gives written notice thereof to the County, which notice shall state the name and address of the proposed assignee, and identify the nature and character of the proposed use of the Leased Premises by assignee, (ii) such assignee shall deliver to the County a written agreement in form and substance satisfactory to the County pursuant to which such assignee assumes all of the obligations and liabilities of the Tenant hereunder, and (iii) Tenant shall deliver to the County a copy of the proposed assignment agreement. Tenant shall also provide any additional information the County

reasonably requests regarding such proposed assignment. The County shall not approve any assignment if such an assignment results in any profit or financial gain in excess of permitted costs and expenses. Any assignment without the County's written consent may be declared null and void by the County and, at the County's election, constitute an Event of Default hereunder. The County shall not assign this Lease without prior notice to the Tenant.

24. THE COUNTY'S TITLE AND COVENANT OF QUIET ENJOYMENT: The County covenants that it has full right and power to execute and perform this Lease, and that it shall put Tenant into complete and exclusive possession of the Leased Premises, as set forth herein. The County covenants and agrees that, if Tenant pays all Rent, and performs all of its obligations under this Lease, the Tenant shall, at all times during the Term, and any extensions thereof, have the peaceable and quiet enjoyment and possession of the Leased Premises for the purposes stated in this Lease unless the County terminates this Lease as provided in ER 4-99 or otherwise in accordance with the terms of this Lease.

25. CUMULATIVE REMEDIES: Except as otherwise expressly set forth herein, all remedies granted in this Lease otherwise provided by law shall be cumulative and, unless inconsistent, may be exercised separately, concurrently or successively.

26. BENEFIT AND BURDEN: The provisions of this Lease shall be binding upon, and shall inure to the benefit of the Parties and each of their respective successors, assigns or representatives.

27. DISPUTES: The County and Tenant agree that any dispute concerning a question of fact arising under this Lease which is not resolved by agreement of the Parties shall be decided by the Chief Administrative Officer of Montgomery County, or his/her designee, who shall notify the Parties in writing of the determination made within thirty (30) days of receipt of the matter. The Tenant and the County shall be afforded an opportunity to be heard and offer evidence in support of their respective positions. Pending final decision of a dispute regarding a question of fact hereunder, Tenant and the County shall proceed diligently with the performance of all provisions under this Lease. The decision of the Chief Administrative Officer or his/her designee as to questions of fact

shall be final and conclusive. This Article does not preclude consideration of questions of law by a court of competent jurisdiction in connection with the aforesaid decisions.

28. WAIVER: The waiver at any time by either of the Parties of any particular covenant, condition, obligation, or duty under this Lease shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver shall not be construed or understood as waiving any further or other rights of either Party.

29. NON-DISCRIMINATION: Tenant agrees to comply with the non-discrimination in employment policies in County contracts as required in Sections 11B-33 and 27-19 of the Montgomery County Code, as amended, as well as all other federal, state and local laws, rules and regulations regarding employment discrimination. By signing this Lease, the Tenant assures the County that in accordance with applicable law, it does not, and agrees that it shall not engage in any employment discrimination in violation of the above sections of the Montgomery County Code as well as any other federal, state or local laws, rules and regulations. The Tenant assures the County that in accordance with applicable law; it does not, and agrees that it will not discriminate in any manner on the basis of race, color, religious creed, , ancestry, national origin, age, sex, marital status, sexual orientation, gender identity, family responsibilities, or genetic status of any individual or disability of a qualified individual, or because of any reason that would not have been asserted but for the race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status.

30. CONTRACT SOLICITATION: Tenant represents that it has not retained anyone to solicit or secure this Lease from the County upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees of bona fide established, licensed, commercial selling or leasing agencies (the "Broker") maintained by the Tenant for the purpose of securing business or an attorney rendering professional legal services consistent with the canons of ethics of the profession. Tenant is responsible for paying any Broker's fees or commissions for any Broker with whom Tenant has any contract or agreement and for paying all of Tenant's attorneys' fees in connection with the negotiation of this Lease.

31. ETHICS REQUIREMENT: Tenant understands and agrees that unless authorized pursuant to Section 11B-52 and Chapter 19A of the Montgomery County Code, as amended, that it is unlawful for any person or entity transacting business with the County to employ a public employee contemporaneous with his or her public employment.

32. FORCE MAJEURE: Neither party shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or insurgency, sabotage, inability to obtain any material or service, through natural or other causes beyond the control of either of the Parties, plagues, epidemics, pandemics, outbreak of a communicable disease leading to extraordinary restrictions including quarantine or movement of people or goods, governmental preemption in connection with a national emergency, any rule, order or regulation of any department or subdivision of any government agency; provided, however, that this provision shall not excuse any non-payment of Rent as and when due and payable under this Lease. For purposes of this provision, lack of funds shall not be considered a cause beyond the control of a party.

33. RESIDENT AGENT: The Resident Agent for the Tenant is Kelly Savoca, whose address is the address for notices to the Tenant in Article 34.

34. MAILING NOTICES: All notices required by this Lease shall be in writing and shall be given by either party by first class mail, postage prepaid, return receipt requested or with a nationally recognized overnight delivery service which provides confirmations of receipt, addressed to the County or Tenant, respectively. Notice to the Parties shall be addressed as follows:

THE COUNTY:

MONTGOMERY COUNTY, MARYLAND

Department of General Services  
Office of Real Estate  
101 Monroe Street, 9<sup>th</sup> Floor  
Rockville, Maryland 20850  
Attn: Director

With a copy that does not constitute notice to:

Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, Maryland 20850  
Attn: County Attorney

THE TENANT:

Sheppard Pratt Health System, Inc.  
849 Fairmount Ave, Suite 500  
Towson, MD 21286  
Attn: Chief Financial Officer

35. INDEMNITY BOND: In the event of a default by Tenant under this Lease beyond any applicable notice and cure periods, and upon the request of the County at any time during the Term of this Lease, for reasonable cause in its reasonable discretion, Tenant shall obtain and maintain an executed miscellaneous indemnity bond in the amount of the annual Rent for the current Lease Year to remain in full force and effect throughout the remainder of the Term, as security for the faithful performance of all the terms and conditions of this Lease. The County shall have the right, but not the obligation, to request such a bond from the Tenant. The County, in its reasonable discretion, may accept an appropriate substitute surety. Tenant shall, within fifteen (15) days from the date of the request by the County, deliver to the County the said surety, evidencing the coverage hereinabove stated. Failure to deliver the bond or surety as required is considered by the County to be an Event of Default under this Lease.

36. NON-APPROPRIATION BY COUNTY: Any obligation given by the County in this Lease is subject to, limited by and contingent upon the appropriation and availability of funds, as well as the notice requirements and damages caps stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (the "LGTCA"), and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-5A-02, (together the "County Indemnification Statutes"), all as amended from time to time.

37. GOVERNING LAW: This Lease and its performance is governed, interpreted, construed and regulated by the laws of Montgomery County and the State of Maryland. Should any

provision of this Lease be found invalid or unenforceable no other unrelated provision shall be affected and shall continue in full force and effect.

38. CLAIMS: Any claim or action brought by or on behalf of either Party in connection with the performance of this Lease shall be filed and maintained in a court of competent jurisdiction located in Montgomery County, Maryland.

39. RIGHT OF REDEMPTION: To the extent permitted by law, the Tenant hereby waives any and all rights of redemption and rights to cure any default hereunder (howsoever denominated) after the County recovers possession of the Leased Premises now or hereafter granted to the Tenant pursuant to applicable law. No acceptance by the County of any monies owed by the Tenant to the County shall constitute a waiver of the provisions of this Article, nor shall any refusal by the County to accept any tender by the Tenant of any sums owed by the Tenant to the County, in connection with any purported exercise of any right of redemption or right to cure to which the Tenant would otherwise be entitled, constitute a release of the Tenant from any liability hereunder.

40. RULES AND REGULATIONS: Existing Rules and Regulations are incorporated by reference and made a part of this Lease as Exhibit G. The County reserves the right to amend the existing Rules and Regulations from time to time, at the County's reasonable discretion. Tenant shall comply with any and all Rules and Regulations adopted by the County and provided in writing to the Tenant. Tenant's failure to obey the Rules and Regulations constitutes an Event of Default under this Lease for which the County may pursue any or all of the remedies set forth in Article 17.C, County's Remedies. In the event of a conflict between the Rules and Regulations and this Lease, the Lease is controlling.

41. COMMUNITY LIAISON COMMITTEE: As required by ER 4-99, Paragraph 6.16, the Tenant shall monitor traffic impact on the neighborhood and discuss possible solutions to be implemented and shall keep the community abreast of any activity planned at the school that could substantially impact the community's use of the facility or the quality of life in the neighborhood. Tenant shall respond to community complaints or concerns in an expeditious manner. Tenant shall work cooperatively with the neighborhood and all interested parties on the matter of future traffic improvements pursuant to the Traffic Management Plan attached hereto as Exhibit H or any future



revised version of the plan. The Tenant shall submit to the Office of the Montgomery County Executive and the Montgomery County Council an annual report which shall contain, at a minimum, (i) a summary of the Tenant's interactions with the community, and (ii) the actions, if any, taken or recommended to address complaints or concerns raised by the community in connection with the operation of the school.

42. TRAFFIC MANAGEMENT PLAN:

- A. Compliance: The Tenant shall comply with the Traffic Management Plan (the "Plan"), an updated version of which is attached hereto as Exhibit H.
- B. Requirements: Any traffic management plan shall accomplish the following:
  - 1. Operating Plan: Establish an operating plan for both routine school activities and special events that clearly identifies on-site access, circulation and parking rules and regulations, and the use of off-site parking areas other than on-street parking to prevent a detrimental impact on surrounding residential areas.
  - 2. Drop-off and Dismissal: Identify means by which vehicular traffic associated with school drop-off and dismissal activities shall be contained on site.
  - 3. Monitoring: Establish regular monitoring activities to facilitate identification and implementation of operational access and circulation improvements.
  - 4. Tenant Representative: Provide the name, phone number, address, fax number, and email address of the Tenant representative responsible for enforcing the Plan. Tenant shall be responsible for keeping the Tenant representative information up-to-date.

C. Continuing Review: The Plan shall be subject to review and modification from time-to-time as deemed necessary by the County and as agreed by the Tenant.

43. EFFECT OF ER 4-99 AND COMCOR SEC. 11B.45.02: In the event of any conflict between the terms of this Lease and the provisions of ER 4-99 and COMCOR § 11B.45.02, the provisions of ER 4-99 and COMCOR § 11B.45.02 will control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this agreement to be properly executed.

WITNESS:

TENANT:

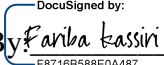
SHEPPARD PRATT HEALTH SYSTEM,  
INC, a Maryland nonprofit corporation

By:  DocuSigned by:  
7C15F140BAE44C1...

By:  DocuSigned by:  
130387A080EE4C5...  
Thomas Hess, Chief of Staff & VP of Schools

Date: 12/19/22

THE COUNTY:  
MONTGOMERY COUNTY, MARYLAND

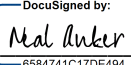
By:  DocuSigned by:  
F8716B58BE0A487  
Fariba Kassiri

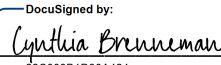
Title: \_\_\_\_\_  
DEPUTY CHIEF ADMINISTRATIVE OFFICER

Date: 12/20/2022

APPROVED AS TO FORM & LEGALITY  
OFFICE OF THE COUNTY ATTORNEY

RECOMMENDED

By:  DocuSigned by:  
6584741C17DE494...  
Neal Anker  
Associate County Attorney

By:  DocuSigned by:  
22C009B1D30A424...  
CYNTHIA L. BRENNEMAN  
DIRECTOR, OFFICE OF REAL ESTATE

Date: 12/20/2022

Date: 12/20/2022

Exhibit A - Deed  
[Background 1]

Exhibit B-1 - Legal Description of Property  
[Background 1]

Exhibit B-2 – Plat Showing the Leased Premises and All-Purpose Room  
[Article 1]

Exhibit C – Letter from CUPF  
[Article 7.A]

Exhibit D-1 –Capital Improvements Completion Report  
[Article 9]

[To be attached per Completion of Capital Improvements per Section 9.B.4]

Exhibit D-2 –Phased Capital Improvements  
[Article 9.E]

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Project and Year Completed	Total Cost
<b>COMPLETED:</b>	
HVAC Upgrade (2020)	\$ 545,000
Secure Doors (2020)	\$ 40,873
Roof Replacement (2019)	\$ 132,985
Bathrooms (2019)	\$ 5,808
<b>PLANNED:</b>	
Exterior Windows (2023)	\$ 400,000
Parking lot repavement	TBD
Lighting	TBD
Painting	TBD
Flooring	TBD
Ongoing modifications for special education population	TBD
Primary electrical supply upgrades (2030)	TBD



Exhibit E – Intentionally Deleted

Exhibit F – Intentionally Deleted

Exhibit G – Rules and Regulations  
[Article 40]

At this time, the County has no existing Rules and Regulations, but reserves the right to promulgate such Rules and Regulation at a later date provided such Rules and Regulations are reasonable and enforced to all similarly situated properties in a uniform and consistent manner.

Exhibit H – Traffic Management Plan  
[Article 42]

Exhibit I - Certificate of Good Standing  
[Article 15.F]