

LEASE AGREEMENT  
BETWEEN  
MONTGOMERY COUNTY BOARD OF EDUCATION  
AND  
MONTGOMERY COUNTY, MARYLAND

DATE: 12/28/06

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Exhibit A – Leased Premises

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") made this 28<sup>th</sup> day of December, 2006, by and between the MONTGOMERY COUNTY BOARD OF EDUCATION (the "Landlord), and MONTGOMERY COUNTY, MARYLAND (the "County"), (The Landlord and the County together the "Parties.").

WITNESSETH

WHEREAS, the Landlord is the owner of the fee simple title in the property known as the R. Sargent Shriver Elementary School, located at 12518 Greenly Drive, Silver Spring, Maryland 20906 in Montgomery County, Maryland; and

WHEREAS, the Landlord has authorized use of a portion of the school for a child care program; and

WHEREAS, Landlord approves the sublicensing of a portion of the school to a child care provider to be selected by County for the sole purpose of operating a child care program; and

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

NOW THEREFORE, in consideration of the covenants hereinafter contained and for other good and valuable consideration as hereinafter provided, and the respective premises and mutual promises herein contained, the Parties hereto mutually agree as follows:

1. LEASED PREMISES: Landlord hereby demises and leases unto the County and the County hereby rents from Landlord for and upon the provisions hereinafter specified 1,888 square feet within the R. Sargent Shriver Elementary School (the "Leased Premises"), located at 12518 Greenly Drive, Silver Spring, Maryland 20906. The Leased Premises includes the area outlined in RED on Exhibit A attached hereto and made a part hereof.

2. TERM: The term of this Lease shall be five (5) years, commencing on August 1, 2006 and expiring July 31, 2011 (the "Initial Term"), unless terminated for cause as hereinafter provided before the expiration of such Initial Term. The Rent Commencement Date shall be the date that the Landlord delivers the Leased Premises to the County, which shall be on or about August 15, 2006.

3. RENEWAL OPTION: Subject to the limitations contained herein, the County shall have the option to extend the Initial Term of this Lease for two (2) additional five (5) year periods (the "Renewal Terms"). The County agrees to provide written notice to Landlord as to each renewal of the Lease, in writing, not less than six (6) months before the end of the Initial Term or the then Renewal Term. All of the terms, conditions and covenants in this Lease shall apply during the aforementioned Renewal Terms.

4. RENT: The County shall pay to Landlord for the first year of the Initial Term as reimbursement of operating costs an amount equal to Eleven Dollars and Fifty Cents (\$11.50) per square foot of the Leased Premises for an annual cost of Twenty-One Thousand Seven Hundred Twelve Dollars (\$21,712) payable in equal monthly installments of One Thousand Eight Hundred Nine Dollars and Thirty-Three Cents (\$1,809.33). All payments are to be made in advance on the first day of each month during each Lease Year and shall be payable to Department of Financial Services, Montgomery County Public Schools, 850 Hungerford Drive, Rockville, Maryland 20850. Beginning with July 1, 2007 and the first of July thereafter during

the Term and any Renewal Term, Landlord will establish a per square foot rate to be paid by the County for the next Lease Year, based on the rates charged to non-profit joint occupancy tenants in Montgomery County Public Schools ("MCPS"), as set forth in Paragraph 8.

5. USE OF THE LEASED PREMISES: The Leased Premises shall be used for a child care program.

6. USE OF OUTDOOR PLAYGROUND AREAS: The County shall have access to the outdoor playground areas adjacent to the Leased Premises when used by the County in connection with its child care program and during its normal hours of operations.

7. SERVICES: Landlord shall provide the services indicated below to the Leased Premises, except on the following days: (i) when the R. Sargent Shriver Elementary School is closed; (ii) when 12-month MCPS employees are not required to work; and (ii) when building services are not provided under the terms of this Lease:

(A) Facilities maintenance services as follows:

- (i) Routine facility inspections;
- (ii) Preventive maintenance;
- (iii) Repair and replacement of electrical, mechanical, plumbing and structural systems and components installed or constructed as a part of the original child care facility, which includes, but is not limited to, electronic systems, such as fire, security alarm and audio systems; electric lamp replacement; roofs, locks, doors, windows, walls, ceilings, walks, etc; and
- (iv) Refuse removal and disposal.

(B) Maintenance, security, sanitizing and utility services as follows:

- (i) Interior cleaning and sanitizing services;

- (ii) Exterior grounds maintenance;
- (iii) 24-hour security services; and
- (iv) Electrical, water, sewage and other utility services.

(C) On days when Landlord is not required to provide such services, the child care provider/licensee may continue its use of the Leased Premises by contracting directly with the Inter-Agency Coordinating Board (ICB) for necessary support services.

8. REIMBURSEMENT FOR COST OF SERVICES: Landlord's rental costs are based on the rates charged to non-profit joint occupancy tenants leasing space in MCPS. These costs are established. The County accepts such square footage rates as the basis for rental paid to MCPS during the impending fiscal year.

9. COUNTY'S IMPROVEMENTS: The County shall be permitted to perform minor remodeling and improvements to the Leased Premises when requested by the occupant and approved by Montgomery County's Department of Family Resources. Before performing any minor remodeling and improvements, the County will obtain formal approval from the school principal and perform such work in a manner that will not cause any disturbance to the instructional program at the school. Improvements are limited to installation of shelving, minor changes in office arrangements, addition of electrical outlets, office repainting, carpet repairs and other non-structural changes. Work performed shall be in accordance with current construction and life safety codes. No structural, electrical or mechanical systems shall be altered without the concurrence of Landlord, which concurrence shall not be unreasonably conditioned, delayed or withheld.

10. MODERNIZATION OF ENTIRE HOST SCHOOL: Landlord and County agree that if modernization of the entire R. Sargent Shriver Elementary School is undertaken by Landlord, the

Leased Premises shall also be modernized. The County shall share in the design and construction costs on a pro-rata basis, using the gross square footage of the R. Sargent Shriver Elementary School as the denominator. The County reserves the option of relocating the child care facility within the host school, as space and other factors allow, for the period during which the school is being modernized. All costs to provide a child care facility at another school on a temporary basis shall be borne by the County.

11. PROPERTY DAMAMGE AND PUBLIC LIABILITY INSURANCE:

A. The County shall have the right to self-insure. The Parties are both members of the Montgomery County Self-Insurance Program. Section 20-37(c) of the Montgomery County Code restricts the legal defense fund to members of the fund and does not allow for outside entities. The certificate of insurance evidences limits of insurability for general liability coverage in the amounts of \$500,000 aggregate and \$200,000 each occurrence and \$20,000 per person, \$40,000 per accident for bodily injury and \$15,000 for property damage for automobile liability and State of Maryland statutory limits for worker's compensation. The limits of liability for both Parties for tort claims filed against either or both of them are as stated in the Local Government Tort Claims Act (the "LGTCA"), Md. Ann. Code, Cts. & Jud. Proc. §§ 5-301 et seq, (2002 Replacement Volume). This insurance policy must be maintained continuously by the County during the Initial Term of this Lease and during any Renewal Term.

B. The County agrees that it will not keep in or upon the Leased Premises or any part thereof, any article, which may be prohibited by the standard form of fire or hazard insurance policy. In the event that the County keeps articles on the Leased Premises that cause any increase in the insurance premiums for the Leased Premises, the County shall pay the additional premiums as they become due. The Parties agree that the County's Division of Risk Management will purchase and maintain any required additional policies.

C. The County agrees to hold harmless and hereby indemnifies Landlord, and the managing agent, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence, or occasioned wholly by any act or omission of the County or its employees at or upon the Leased Premises, or the occupancy or use by the County, of the Leased Premises, or the County's use of the exterior areas designated by Landlord for the comfort and convenience of the County. This indemnification is subject to the notice requirements and the liability and damage caps stated in the LGTCA. This indemnification shall not be considered to be a waiver of governmental immunity and is not intended to create any rights or causes of action in third parties. The County shall not, however, be liable for damage or injury occasioned by the acts or omissions of Landlord or its agents, or Landlord's failure to comply with its obligations hereunder.

D. The County shall deliver to Landlord a certificate of insurance evidencing the coverage hereinabove described within thirty (30) days after execution of this Lease.

E. The Landlord shall obtain and maintain, during the Initial Term of this Lease, and any Renewal Term, a policy of general liability insurance with limits of \$1,000,000 including fire, legal liability, contractual liability, products and completed operations, and personal injury. Montgomery County, Maryland must be named as additional insured on the liability policy.

F. Landlord agrees to hold harmless and hereby indemnifies the County, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal 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 Landlord of the Leased Premises or any part thereof, or the Landlord's use of the exterior areas provided for the County for the comfort and

convenience of the Landlord, or occasioned wholly or in part by any act or omission of Landlord, its agents, contractors, or employees, excepting claims arising out of the acts or omissions of the County, the County's agents, and employees. This indemnification is subject to the notice requirements and the liability and damage caps stated in the LGCTA. This indemnification shall not be considered to be a waiver of governmental immunity and is not intended to create any rights or causes of action in third parties. The Landlord shall not, however, be liable for damage or injury occasioned by the acts or omissions of the County or its agents, or the County's failure to comply with its obligations hereunder.

H. Landlord shall deliver to the County a certificate of insurance evidencing the coverage hereinabove described within thirty (30) days after the execution of this Lease.

12. DESTRUCTION OF LEASED PREMISES: In the event of damage or destruction of the Leased Premises by fire or any other casualty, this Lease shall not be terminated, but the Leased Premises shall be promptly and fully repaired and restored as the case may be by the Landlord to the extent of Landlord's insurance proceeds provided such repair and or restoration returns the Leased Premises to substantially the condition prior to such damage or destruction. Due allowance, however, shall be given for reasonable time required for adjustment and settlement of insurance claims, and for such other delays as may result from government restrictions, and controls on construction, if any, and for strikes, national emergencies and other conditions beyond the control of the Landlord. It is agreed that in the event of damage or destruction, this Lease shall continue in full force and effect, except for abatement of rent as provided herein. If the condition is such as to make the entire Leased Premises "Untenantable", then the rental which the County is obligated to pay hereunder shall abate as of the date of the occurrence until the Leased Premises have been fully restored by the Landlord. Any unpaid or prepaid rent for the month in which said condition occurs shall be prorated and credited or paid to the appropriate party. If the Leased Premises are partially damaged or destroyed, then during the period that the



County is deprived of the use of the damaged portion of said Leased Premises, the County shall only be required to pay rental prorated to reflect that portion of the Leased Premises which continues to be "Tenantable" and appropriate for the County's Use of the Leased Premises. Landlord will proceed at its expense and as expeditiously as may be practicable to repair the damage. Notwithstanding any of the foregoing, in the event of substantial damage or destruction, and Landlord should decide not to repair or restore the Leased Premises or the building, in which event and at Landlord's sole option, Landlord may terminate this Lease forthwith, by giving the County a written notice of its intention to terminate within sixty (60) days after the date of the casualty. No compensation, or claim, or diminution of rent other than as described above will be allowed or paid, by Landlord, by reason of inconvenience, annoyance, or injury to business, arising from the necessity of repairing the Leased Premises or any portion of the Building of which they are a part.

13. CONDUCT AND SAFETY OF FACILITY: The County or its licensee shall conduct all of its operations hereunder in a workmanlike, efficient, safe and careful manner; shall observe such safety precautions and rules in its operations as the Landlord from time to time may reasonably require. The County shall maintain an adequate number of employees to supervise and regulate the use of the facility and shall maintain the facility at all times in safe and good operating condition and repair.

14. LANDLORD'S RIGHT OF INSPECTION: The Landlord shall be entitled to visit and inspect the Leased Premises during reasonable hours and after reasonable notice but shall be under no obligation to make any visits of inspections.

15. CONDITION OF LEASED PREMISES: The County agrees to maintain the Leased Premises, including all improvements therein, in good condition and state of repair throughout the Initial Term of this Lease and any Renewal Terms.

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

17. QUIET POSSESSION: Landlord covenants and warrants that it will deliver to the County exclusive possession of the Leased Premises with appurtenances in conformity with the law, upon execution and delivery of this Lease for the purposes herein set forth.

18. EMINENT DOMAIN: Should the Leased Premises be taken by a public or quasi-public authority under any power of eminent domain or condemnation, this Lease shall terminate and the Landlord and the County shall be entitled to such award by the condemning authority as shall be proportionate to their interest in the premises.

19. DEFAULT: The Landlord or the County shall be deemed to be in default of this Lease when such Party shall wrongfully fail to perform any of the provisions, covenants, conditions, or agreements of this Lease which are to be performed by such Party after thirty (30) days written notice stating in detail wherein either Party has failed to so perform. The defaulting Party shall be liable for any and all loss or damage resulting to the other Party from any such default.

20. WAIVER: No waiver by the Landlord or the County of any breach of any covenant, condition, or agreement herein contained shall operate as a waiver of the covenant, condition, or agreement itself or of any subsequent breach thereof.

21. RIGHTS OF THE PARTIES: In the event the Landlord or the County shall default under any one or more of the events of default as described in the Lease, Landlord and the County may,

upon giving not less than thirty (30) days' written notice one to the other, after the respective period for compliance as previously described had expired, terminate this Lease and thereupon, or at any time thereafter, Landlord may re-enter the Leased Premises and have the possession of the same.

22. ASSIGNMENT AND LICENSING: The County shall not assign this Lease or license the Leased Premises without the prior written consent of Landlord, provided that such consent will not be unreasonably withheld, conditioned or delayed. The above notwithstanding, the Landlord hereby approves the licensing of the Leased Premises to a child care provider to be selected by the County for the sole purpose of operating a child care program.

23. SURRENDER OF POSSESSION: The County covenants, at the expiration or other termination of this Lease, to remove all goods and effects from the Leased Premises not the property of the Landlord, and to yield up to the Landlord the Leased Premises in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other casualty and damage from any risk with respect to which the County is not herein expressly made liable excepted.

24. HOLDOVER: In the event that the County shall continue to occupy said Leased Premises or any part thereof after the conclusion of the Initial Term of this Lease, or any Renewal Term, the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by either Party giving the other not less than thirty (30) days' written notice, to expire on the day of the month from which the tenancy commenced. During any month-to-month tenancy, both Parties shall continue to observe all agreements and covenants contained in this Lease.

25. NON-APPROPRIATION: This Lease shall terminate automatically on July 1 of any year for which the Montgomery County Council does not make an appropriation of funds to pay the

obligations stated in this Lease. The County shall give Landlord at least thirty (30) days written notice of the lack of appropriation. The County shall not make or to be entitled to make any claims for reimbursement of any kind, except for prepaid items or as otherwise agreed to in this Lease in writing by the Parties.

26. INTEGRATED AGREEMENT: This Lease contains all of the agreements and conditions made between the Parties and may not be modified orally or in any other manner other than by an agreement in writing signed by all the Parties or their respective successors in interest.

27. BENEFIT AND BURDEN: All of the covenants, provisions, terms, agreements, and conditions of this Lease shall inure to the benefit of and be binding upon the Landlord or its successors or assigns and upon the County, its successors or assigns.

28. MAILING NOTICES: All notices required or desired to be given hereunder by either party shall be given in writing and shall be addressed as follows:

COUNTY:

Montgomery County, Maryland  
Department of Public Works  
and Transportation  
Office of Real Estate  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, Maryland 20850  
Attn: Director of Real Estate

LANDLORD:

Montgomery County Board of Education  
850 Hungerford Drive  
Rockville, Maryland 20850

With copy that does not constitute a notice:

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

29. STATUTORY PROVISIONS: It is understood, agreed and covenanted by and between the Parties that the Landlord and County, as their interests may appear and at their respective expense, will promptly comply with, observe and perform all of the requirements of all applicable Federal, State, County and Local statutes, ordinances, rules, orders and regulations in effect during the Initial Term or the Renewal Term.

30. NON-DISCRIMINATION: Landlord agrees to comply with the non-discrimination in policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code (2004), as amended, as well as all other applicable state and federal laws and regulations regarding discrimination. The Landlord 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, sex, martial status, national origin, ancestry, disability, sexual orientation or genetic status.

31. CONTRACT SOLICITATION: Landlord represents that it has not retained anyone to solicit or secure this Lease from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established, licensed commercial selling or leasing agencies maintained by the Landlord for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.

32. PUBLIC EMPLOYMENT: Landlord understands that unless authorized under Chapter 19A and Section 11B-52 of the Montgomery County Code (2004), as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

33. GENERAL PROVISIONS:

(A) Entire Agreement: It is further understood and agreed that this instrument contains the entire agreement between the Parties hereto and shall not be modified in any manner except by an instrument in writing duly executed by the Parties hereto.

(B) Rights and Remedies: In addition to any and all rights and remedies specifically mentioned in this Lease, the Parties shall have all rights and remedies granted by Law or in equity. Resort to one remedy shall not be construed as a waiver of any other remedy. Failure by the Parties to resort to any or all of their respective rights or remedies shall not be considered to be a waiver of such rights or remedies, nor to be acquiescence of any Party in any action or default.

(C) Governing Law: The provision of this Lease shall be governed by the laws of the State of Maryland. If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby.

SIGNATURE PAGE TO FOLLOW

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

WITNESS:

LANDLORD:

MONTGOMERY COUNTY BOARD OF EDUCATION.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Richard G. Hawes, Director  
Department of Facilities Management

Date: \_\_\_\_\_

WITNESS:

TENANT:

MONTGOMERY COUNTY, MARYLAND

By:  \_\_\_\_\_

By:  \_\_\_\_\_

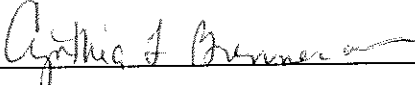
~~Scott W. Reilly~~  
Joseph F. Beach, Assistant  
Chief Administrative Officer

Date: 12/28/2006

APPROVED AS TO FORM & LEGALITY  
OFFICE OF COUNTY ATTORNEY

RECOMMENDED:

By:  \_\_\_\_\_

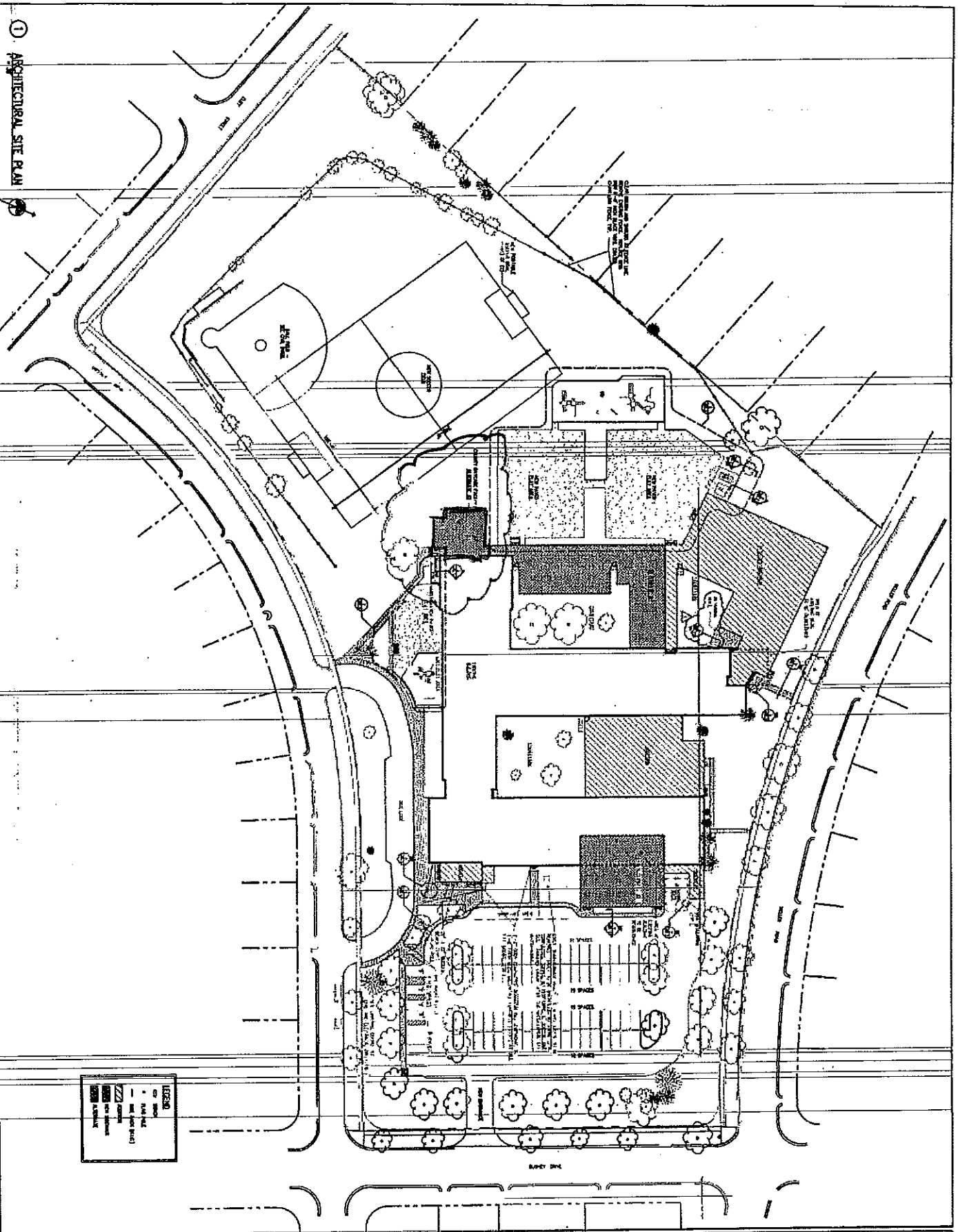
By:  \_\_\_\_\_

Cynthia L. Brenneman, Director  
Office of Real Estate

Date: 5/5/2006

Date: 5/6/06

① ARCHITECTURAL SITE PLAN



**LEGEND**  
 - - - - - EXISTING  
 - - - - - PROPOSED  
 - - - - - EXISTING DRIVE  
 - - - - - PROPOSED DRIVE  
 - - - - - EXISTING SIDEWALK  
 - - - - - PROPOSED SIDEWALK  
 - - - - - EXISTING LANDSCAPE  
 - - - - - PROPOSED LANDSCAPE

AS1.2  
 1/1/78

ARCHITECTURAL  
 SITE PLAN  
 W/ ALTS.  
 1" = 30'  
 DATE: 01/11/78

PROPOSED: 1/1/78  
 REVISIONS:  
 1/1/78  
 2/1/78  
 3/1/78  
 4/1/78  
 5/1/78  
 6/1/78  
 7/1/78  
 8/1/78  
 9/1/78  
 10/1/78  
 11/1/78  
 12/1/78

ADDITIONS AND REOPEN FOR:  
 MONTGOMERY COUNTY PUBLIC SCHOOLS:  
 DOWNCOUNTY CONSORTIUM ES #27  
 (CONNECTICUT PARK)  
 MONTGOMERY COUNTY, MARYLAND

EXHIBIT A

ARCHITECTURE  
 703-78-5300