

#4587

Sponsors:

**Council
President
Shabazz**

**Council
Members
Freel
Chukwuocha
Congo
Harlee**

WHEREAS, pursuant to Wilm. C. (Charter) §1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

WHEREAS, Wilm. C. §2-621(a) authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

WHEREAS, pursuant to Wilm. C. §2-621(c) non-profit organizations are exempt from the City's bid procedures and that upon the declaration of a property as approved for disposition, by resolution of City Council, the Department of Real Estate and Housing may lease property owned by the City to a non-profit organization; and

WHEREAS, the City of Wilmington ("City") is the owner of that certain real property commonly known as Baynard Stadium, located at 1 Stadium Drive, Wilmington, Delaware, being part of Tax Parcel No. 26-014.10-006 located in Brandywine park (the "Property"); and

WHEREAS, the City has not managed the Property since 1969 and the Delaware Department of Natural Resources and Environmental Control ("DNREC") has managed the Property since 1998; and

WHEREAS, in recent years DNREC has operated the Property at loss of approximately \$100,000 per year plus the cost of capital improvements; and

WHEREAS, the Property is in need of several million dollars of capital improvements and the needed capital funds are not available from the State of Delaware, New Castle County, or the City of Wilmington; and

WHEREAS, on March 30, 2017 the Mayor formed the Baynard Stadium Working Group to examine options for the future use and vitality of the Property, and the group studied the historic use, reviewed the related financials, and held public meetings; and

WHEREAS, based on the Baynard Stadium Working Group's report, the Mayor sought letters of interest from organizations interested in entering into a public-private partnership to preserve and reinvigorate the Property; and

WHEREAS, Salesianum School Inc. ("Salesianum"), a nonprofit organization, was the only organization that expressed an interest in entering into a public private partnership for the Property; and

WHEREAS, Salesianum is well positioned to assume the management and maintenance responsibilities for the Property because it is adjacent to the property, it has been educating students in the City for 115 years and Salesianum has enjoyed a storied history with the Property since at least 1956; and

WHEREAS the City and Salesianum have negotiated the proposed lease attached hereto and made a part hereof in Exhibit A to ensure unprecedented public access to and enjoyment of the field and to ensure the long term vitality of this important City property; and

WHEREAS the lease requires Salesianum to make necessary capital improvements at its expense, maintain the property at its expense, and provide increased public access as prescribed, and it permits Salesianum to offer naming opportunities to raise funding, license the property to third parties for a fee, and enter into utility easements as needed for the property.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the City of Wilmington Office of the Mayor is hereby authorized to

execute the attached Agreement with Salesianum to allow the lease of the Property subject to the terms and conditions stated in the agreement and the appropriate officers of the City are hereby authorized and directed to take all such actions, and to execute, deliver, file and record all such documents publish all notices, and otherwise carry out the intent of this Resolution and Lease in the name of and on behalf of the City.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution authorizes the City to enter into a Lease with Salesianum School, Inc. to preserve Baynard Stadium. The Lease requires Salesianum to make significant capital improvements to the property at its expense, provide unprecedented public access to the field, and undertake the day to day operations and management responsibilities of the property at its expense.

W0102033

LEASE

THIS LEASE (this "Lease"), dated the _____ day of _____, 2018 (the "Effective Date"), is made by and between The City of Wilmington, a Municipal Corporation of the State of Delaware ("Landlord" or the "City"), having an address of 800 N. French Street, Wilmington, Delaware 19801, and Salesianum School, Inc., a Delaware corporation ("Tenant" or "Salesianum"), having an address of 1801 North Broom Street, Wilmington, Delaware 19802.

RECITALS:

WHEREAS, Baynard Stadium is located on W. 18th Street along the westerly boundary of Brandywine Park in the City;

WHEREAS, Baynard Stadium is a historic and treasured community asset that has been utilized for athletic and recreational events since its opening and dedication as "Baynard Field" in 1922;

WHEREAS, Salesianum has been educating young men in the City for 115 years, and since 1956 Salesianum has enjoyed a long and storied history with Baynard Stadium;

WHEREAS, Baynard Stadium is located adjacent to Salesianum's campus and is recognized by Salesianum as a coveted community asset requiring stewardship and caretaking in order to preserve and enhance future utilization of Baynard Stadium;

WHEREAS, Baynard Stadium is a prominent fixture in the City that faces significant physical and economic challenges to maintain its prominence in the community;

WHEREAS, Baynard Stadium is owned by the City and has been managed and maintained by the State of Delaware (the "State") through the Department of Natural Resources and Environmental Control ("DNREC"), and both the City and State have expressed a strong interest in entering into an agreement with Salesianum whereby Salesianum would manage and maintain Baynard Stadium, and in so doing Salesianum would renovate and improve the Stadium, thereby enhancing its utilization for both the community at large and Salesianum;

WHEREAS, DNREC currently maintains Brandywine Park and Baynard Stadium and the arrangement between DNREC and the City will be revised in keeping with this Lease;

WHEREAS, Salesianum considers itself well positioned to assume from the City and State the management and maintenance responsibilities of Baynard Stadium;

WHEREAS, Salesianum is geographically and financially well-suited to serve as caretaker of Baynard Stadium and desires to restore and renovate it to a state-of-the-art athletic and cultural venue with an investment of approximately \$15,000,000-20,000,000 over five (5) years, thereby transforming Baynard Stadium with improved turf, track, lights, bleachers, locker room and restroom facilities, scoreboard, landscaping and hardscaping;

WHEREAS, the City has determined that Salesianum's investment in Baynard Stadium will provide positive economic development opportunities for the City and its residents;

WHEREAS, the City and Salesianum intend for Existing Users (hereinafter defined) of Baynard Stadium to be able to continue to have access to Baynard Stadium; and

WHEREAS, in light of the foregoing, Salesianum desires to lease from the City the Leased Premises (hereinafter defined) under the terms and conditions of this Lease.

NOW, THEREFORE, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, kept and performed, Landlord has demised and leased and by these presents does demise and lease unto Tenant, and Tenant, does hereby take and hire from Landlord, for the term and upon and the subject to the covenants and conditions hereinafter expressed, the Leased Premises, together with any and all improvements, appurtenances, rights, privileges and easements benefitting, belonging, or pertaining thereto.

1. Definitions. As used in this Lease, the following terms shall have the meanings set forth below. Unless the context requires otherwise, the singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires, and Section references are references to the Sections of this Lease.

(a) "Alterations" shall mean any alteration, addition, demolition, replacement, or change to the Leased Premises following the initial construction of the Contemplated Improvements.

(b) "Athletic Facility" means Baynard Stadium, together with any and all Improvements erected on the Leased Premises that exist as of the date hereof or that are developed at the Leased Premises for the Permitted Use.

(c) "City Time" means the time allocated to the City for it or its designees and invitees to use the Athletic Facility, which allocation is described in Section 4(b), and expressly excludes Salesianum Time.

(d) "City Street Signs" is defined in Section 17.

(e) "Commencement Date" means the date that is later of (i) the Effective Date or (ii) the date that the Wilmington City Council approves this Lease.

(f) "Contemplated Improvements" means the construction, renovation, refurbishment or replacement, restoration or other improvement of the following items located or to be constructed and located upon the Leased Premises, which items are more particularly described on Exhibit D attached hereto, all in accordance with the Plans and Specifications reviewed and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and with such items to be completed in accordance with the Estimated Timeline provided to Landlord:

- (i) bleachers;
- (ii) field with synthetic turf;
- (iii) track;
- (iv) bathrooms, locker rooms, and concessions;
- (v) scoreboard;
- (vi) press box;
- (vii) stadium lights;
- (viii) replacement office space for use by, *inter alia* Salesianum and the Division, together with appurtenant meeting, recreation and community meeting places; and
- (ix) landscaping and reconfiguration of the parking areas, including the creation of additional parking spaces.

(g) "DBE" is defined in Section 5.

(h) "Division" means the State of Delaware Division of Parks and Recreation, a division of DNREC.

(i) "Effective Date" is defined in the first paragraph of this Lease.

(j) "Estimated Timeline" means a document prepared by Tenant, in Tenant's sole discretion, that shall designate a basic estimate of the timeline to construct, renovate, refurbish, replace, or restore the Contemplated Improvements, which shall be prepared after the completion of the Plans and Specifications. Tenant may, in its sole discretion, update the Estimated Timeline by written notice to Landlord.

(k) "Existing Users" means sports teams and other individuals or organizations, excluding Salesianum, who, historically, have been specifically invited, or otherwise specifically permitted, to use Baynard Stadium;

(l) "Event of Default" is defined in Section 14.

(m) "Excluded Transaction" is defined in Section 9.

(n) "Expiration Date" is defined in Section 2.

(o) "Force Majure" is defeined in Section 29.

(p) "Highway and Public Transportation Signs" is defined in Section

(q) "Improvements" means any and all of the buildings, structures, betterments, hallways, entrances, exits, paving, tracks, parking areas, tennis courts and ancillary athletic structures, support beams, footers, foundations, walls, pilings, stanchions, pile caps, ramps, loading docks, windows, stairwells, elevators, elevator shafts, betterments and other improvements of any kind or nature whatsoever necessary or appropriate for the Permitted Use, together with such Contemplated Improvements as may exist from time to time, including utilities, conduits, mechanical systems, electrical systems, plumbing systems, HVAC systems, machinery, boilers, pumps, tanks, power risers, emergency systems, life safety systems, identification, entrance, exit, and other directional signs, markers or lights, and any and all other equipment and fixtures, located in, on, over, across, under, upon, above, or through the Leased Premises and that are constructed and maintained on the Leased Premises from time to time.

(o) "Landlord" means The City of Wilmington.

(p) "Law(s)" means all present and future laws, statutes, codes, ordinances, orders, rules and regulations of all federal, state, local and municipal governments, agencies and authorities having jurisdiction over the Leased Premises.

(q) "Lease" is defined in the recitals.

(r) "Leasehold Mortgage" is defined in Section 11.

(s) "Leasehold Mortgagee" is defined in Section 11.

(t) "Leased Premises" means the property commonly known as Baynard Stadium (including the surrounding parking and structures roughly located between 18th Street, Interstate 95, and the CSX Railroad tracks), including the unpaved parking lot that is currently used by Salesianum for student parking and is located between the little league baseball field and Interstate 95, but excluding the baseball fields and adjacent park lands all of which are part of that certain parcel of land located in the City of Wilmington, New Castle County, State of Delaware, identified as part of Tax Parcel Number 26-014.10-006, as more particularly shown on that certain plan entitled Lease Exhibit Site Survey Baynard Stadium and attached hereto as Exhibit A and as further described on Exhibit B attached hereto.

(u) "Lease Year" means each successive twelve (12) calendar month period during the Term commencing on the Commencement Date; provided, however, that if the Commencement Date is a day other than the first day of a calendar month, then the first Lease Year shall include the partial calendar month during which the Commencement Date falls and the following twelve (12) full calendar months.

(v) "Legal Requirements" means all federal, state, county, administrative, municipal and other governmental statutes, laws, rules, actionable policies, actionable guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions applicable to Tenant in connection with this Lease or affecting the Leased Premises or the maintenance, construction, use, condition, operation or alteration thereof, whether now or hereafter enacted and retroactively and lawfully in force, including, any and all of the foregoing that relate to the use of the Leased Premises for the Permitted Use.

(w) "Logos" is defined in Section 17.

(y) "Material Alteration" shall mean any Alteration that, if constructed and permanently maintained at the Leased Premises, would materially and adversely restrict Public Time or City Time at the Leased Premises.

(z) "Material Improvement" shall mean any Improvement that, if constructed and permanently maintained at the Leased Premises, would materially and adversely restrict Public Time or City Time at the Leased Premises.

(aa) "Naming Rights" is defined in Section 17.

(bb) "Permitted Use" means the construction, financing, operation, development and long-term use of a multi-purpose stadium, track and associated athletic improvements, together with related infrastructure as a venue for Tenant and a broad range of other civic, community, athletic, educational, cultural, public, and commercial activities supportive or harmonious with the Athletic Facility, together with all uses ancillary thereto, including, without limitation, solar panels, ancillary merchandise sales, or live entertainment and for any other use permitted by law subject to all applicable Legal Requirements. A Permitted Use shall not include any Prohibited Use.

(cc) "Plans and Specifications" means those certain plans and specifications prepared by or at the direction of Tenant for the Contemplated Improvements to be constructed at the Athletic Facility.

(dd) "Public Time" means the nonexclusive time for the public to use designated portions of the Athletic Facility, as set forth in Section 4(a).

(ee) "Primary Logo" is defined in Section 17.

(ff) "Prohibited Use" means selling, distributing, displaying, advertising or offering for sale any item that is inconsistent with the quality and operation of the Leased Premises, may tend to injure or detract from the moral character or image of the Leased Premises within the community, or that may bring disrepute on the Landlord. Without limiting the generality of the foregoing, no occupant or advertiser of or on the Leased Premises shall sell, distribute, display, advertise or offer for sale (i) any alcohol or alcoholic beverages, (ii) any paraphernalia commonly used in the use or ingestion of alcohol or illicit drugs, or (iii) any x-rated, pornographic, lewd, or so-called "adult" newspaper, book, magazine, film, picture, video tape, video disk, or other representation or merchandise of any kind. Additionally, all uses prohibited by or in violation of the law shall constitute a "Prohibited Use".

(gg) "Recorder's Office" means the Office of the Recorder of Deeds in and for New Castle County, Delaware.

(hh) "Renewal Terms" is defined in Section 2.

(ii) "Rent" means Ten Dollars (\$10).

(jj) "Salesianum Time" means all time that is not City Time. Salesianum and Salesianum's Users shall have the right of exclusive use of the Leased Premises from 3 pm to 10 pm on weekdays (subject to the designation of City Time during such period), unless Salesianum determines to make the Leased Premises available during those hours for Public Time. Salesianum Time and Public Time may run concurrently.

(kk) "Salesianum's Users" refers to Salesianum's invitees, employees, assignees, designees, subtenants, subleasees, and licensees.

(ll) "Secondary Logo" is defined in Section 17.

(mm) "Signage" is defined in Section 17.

(nn) "Stadium Name" shall be the name given to the Athletic Facility, as such name may be changed by Tenant pursuant to the Naming Rights granted herein.

(oo) "Substantially Completed" means construction of all Improvements for the use and operation thereof in accordance with applicable Law, and with the reasonable and customary requirements of insurance underwriters, and the project architect shall have issued its certificate of substantial completion certifying that:

(i) The applicable Improvements shall have been substantially completed so that only *de minimis* punch-list items remain to be completed;

(ii) Tenant and Public can use the Athletic Facility, for their intended purposes without any further material work or interference to Tenant and Public in conducting its ordinary activities; and

(iii) A permanent or temporary certificate of occupancy for the use and occupancy of the Athletic Facility shall have been issued.

(pp) "Taxes" is defined in Section 6.

(qq) "Tenant" means Salesianum School Inc., a Delaware corporation, as the same may from time to time be constituted.

(rr) "Term" is defined in Section 2.

(ss) "Transfer" means any sale, exchange, assignment, pledge, transfer, gift, hypothecation, mortgage or encumbrance. Notwithstanding the foregoing, the term Transfer expressly excludes: (i) grants of licenses, subleases, concession agreements, Use Agreements, use rights of any preexisting users or transfers not in fee; (ii) any Leasehold Mortgage entered into in accordance with the terms of this Lease, (iii) unsecured borrowings or other indebtedness made or obtained by Tenant, including, by way of example and without limitation, equipment financing, any synthetic leases, leveraged leases or capitalized lease obligations; or (iv) involuntary transfers, including without limitation transfers in foreclosure, transfers in lieu of foreclosure, condemnations or deeds in lieu of condemnation, bankruptcy or other court-ordered sales.

(tt) "Use Agreements" is defined in Section 9.

2. Term; Contingency.

(a) Subject to the renewal options set forth in Section 2(c) below, the term of this Lease (as it may be extended, the "Term") shall commence on the Commencement Date and shall expire on the day immediately preceding the fiftieth (50th) anniversary of the Commencement Date, unless extended or terminated pursuant to Section 2(c) below (the "Expiration Date").

(b) Tenant shall have the right, at its sole election, to terminate this Lease within sixty (60) days of the Commencement Date, if it is unable to obtain the funding required to complete the Contemplated Improvements. In such an event, both parties shall be released of all requirements under the Lease and the Lease shall terminate.

(c) Absent written notice from Tenant to Landlord at least sixty (60) days prior to the Expiration Date (a "Termination Notice"), this Lease shall automatically renew without any action by Tenant beyond the initial Expiration Date and each successive Expiration Date thereafter, on a year to year basis ("Renewal Terms"), provided, however, there shall be no more than fifty (50) Renewal Terms, as long as (i) Tenant continues to operate as a non-profit school; (ii) Tenant continues to use the Athletic Facility, and (iii) an Event of Default has not occurred and be continuing.

(d) The terms and conditions of the Renewal Terms shall be upon the same terms and conditions as are in effect hereunder immediately preceding the commencement of such Renewal Terms.

(e) Notwithstanding the foregoing, the parties contemplate that the Division may continue to manage and operate the Leased Premises during construction of the Contemplated Improvements pursuant to Section 5 hereof. In connection therewith, the Division and Tenant shall endeavor to enter into such interim, transitional operations management agreements as maybe necessary or desired by the parties to continue the operations of the Leased Premises during construction of the Contemplated Improvements. Landlord shall cooperate in providing information to Tenant for purposes of obtaining permits, approvals and entitlements as may be necessary to operate the Leased Premises for the Permitted Use including, without limitation, seeking approvals for pedestrian access points, including via walkways or pedestrian bridges over W. 18th Street, To the extent permissible by applicable law, and subject to the City's obligation to comply with all Legal Requirements and to discharge its regulatory and/or adjudicatory functions, Landlord shall execute and deliver any and all documents, agreements and instruments and take all other actions, without cost to Landlord, as may reasonably be requested by Tenant in connection with the foregoing.

3. Rent. Tenant shall pay the Rent to Landlord, at the address set forth above (or at such other address as may subsequently be designated by Landlord, in writing, at least thirty (30) days in advance), in advance, commencing on the Commencement Date. Thereafter annual payments of the Rent shall be paid in advance on the first day of every Lease Year. Rent payable in respect of the Lease Year during which the Term terminates shall be adjusted and

prorated between Landlord and Tenant after such termination, and Tenant's obligation to pay Rent for the Lease Year preceding termination of the Term shall survive such termination.

4. Use of Leased Premises by the City of Wilmington, and the General Public.

(a) Subject to the terms hereof, Tenant hereby acknowledges that the general public's use of designated portions of the Athletic Facility, as such areas are designated by Tenant in its sole discretion, for general, recreational use (such as use of the track for walking and running) shall be permitted hereunder on a nonexclusive basis, together with Salesianum's Users, during Public Time. By way of example only, and without limitation, during Public Time (say, during morning or evening daylight hours, as so posted) the track could be used by the public. Such use shall be permitted during normal hours of operation of the Athletic Facility as determined by Tenant. Such use shall be subject to all such reasonable rules and regulations for safety and operations as Tenant may prescribe in its discretion, including, without limitation, any restrictions Tenant may establish to prevent the objectionable or unlawful use of the Athletic Facility or use that could cause immediate damage to the Athletic Facility. The general public's use of designated portions of the Athletic Facility shall not interfere with the construction of any Improvements, Contemplated Improvements or Alterations, or with the use of the Leased Premises by Tenant or by Salesianum's Users. The general public shall use the designated portions of the Athletic Facility at their own risk, and nothing contained herein shall be construed to allow the general public use the Athletic Facility except as provided herein. Tenant shall make designated portions of the Athletic Facility available to the general public for a minimum of ninety (90) daylight hours per month subject to Force Majeure, safety limitations instituted by Tenant in accordance with this Section, the weather, acts of God and other similar causes beyond the control of Tenant. Tenant will publicly post the Public Time hours, which posting may be accomplished via electronic means, including websites, Twitter, Facebook and/or similar platforms. The rights of the public described herein are subordinate, under and subject to matters of public record and all applicable Laws, ordinances and regulations.

(b) Subject to Force Majeure, safety limitations instituted by Tenant in accordance with this Section, the weather, acts of God and other similar causes beyond the control of Tenant, Tenant will make the Athletic Facility available for scheduling by the City of Wilmington Department of Parks and Recreation for public use, at no charge, for a minimum of an average of thirty (30) hours per month as determined on an annual basis for City Time. Any unused City Time shall be forfeited. By way of example only, and without limitation, providing time for the City to hold a Wednesday night summer track meet would constitute City Time. Tenant and the Director of the City of Wilmington Department of Parks and Recreation or his/her designee shall meet no less than twice per year to discuss the scheduling and allocation of City Time. Salesianum shall maintain a schedule for the Athletic Facilities, and the Director of the City of Wilmington Department of Parks and Recreation, his/her designee, or his/her successor will determine who is permitted to use designated portions of the Athletic Facilities during City Time. Such determination will be made at least fourteen (14) days prior to the use of the Athletic Facilities. Such use shall be permitted during normal hours of operation of the Athletic Facility as and when agreed to by Landlord and Tenant. Such use shall be subject to all such reasonable rules and regulations for safety and operations as Tenant may prescribe in its

discretion, including, without limitation, any restrictions Tenant may establish to prevent the objectionable or unlawful use of the Athletic Facility or use that could cause immediate damage to the Athletic Facility. All use of the Athletic Facility during City Time shall be at such user's own risk, and nothing contained herein shall be construed to allow the general public use of the Athletic Facility except as provided herein. Subject to compliance with applicable Legal Requirements and any rules and regulations established by Tenant, users during City Time shall be permitted to sell concessions in areas of the Athletic Facility designated by Tenant and retain the full profits from those sales. The use of the Athletic Facility during City Time shall not interfere with the construction of any Improvements or Alterations. Prior to any use of the Athletic Facility during City Time, the City or its invitees shall maintain, at the City's or such invitees' expense respectively, a policy of commercial general liability insurance, with a broad form contractual liability endorsement and with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage and \$3,000,000 aggregate. Tenant shall be provided a copy of the insurance certificate(s) prior to any entry of the Leased Premises during City Time. For the City's use of the facility, it may meet these insurance requirements or rely on its self-insurance.

(c) The parties hereto agree that Existing Users will continue to have the right to access and use designated portions of the Athletic Facilities under terms, scope, and rate in keeping with inflation that is similar to historical practices so long as that Existing User continues to use the Athletic Facilities yearly. The time for exclusive use of the Athletic Facilities by Existing Users under Section 4 will be credited against City Time.

5. Improvements and Alterations.

(a) Tenant shall cause the Leased Premises to be constructed, developed, reconstructed, altered or otherwise improved for the Permitted Use in accordance with the Plans and Specifications. All of the Contemplated Improvements, as depicted on the Plans and Specifications, shall be Substantially Completed within five (5) years of the date hereof, subject to Force Majeure as described in Section 29.

(b) Tenant shall have the right to make Alterations to the Leased Premises or to construct additional Improvements at the Leased Premises, each at Tenant's sole cost and expense; provided, however, any Alteration or Improvement that is a Material Alteration or Material Improvement, as the case may be, shall be subject to Landlord's written consent which shall not be unreasonably withheld, conditioned or delayed. Tenant shall be solely responsible for all engineering, technical and safety standards for the installation and continued operation and use of all Improvements and Alterations.

(c) Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the interest of Landlord in and to the Leased Premises. Whenever and as often as any mechanic's lien shall have been filed against the Leased Premises based upon any action or omission of Tenant or of anyone claiming through Tenant, Tenant shall either (i) within thirty (30) days after written notice from Landlord of the filing thereof, take such action by bonding, deposit or payment as will remove the lien as to the Leased Premises such as reasonably protects the Leased Premises from execution of such

lien, to the reasonable satisfaction of Landlord, or (ii) contest any such lien in good faith and with all due diligence so long as any such contest, or action taken in connection therewith, protects the interests of Landlord and any Leasehold Mortgagee. If Tenant shall fail to cause such lien to be so removed or fail to commence any such contest within such thirty (30) day period after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may discharge the same by paying the amount of such lien or any portion thereof without inquiry as to the validity thereof, and such amount and all costs and expenses, including reasonable attorneys' fees and interest, incurred by Landlord in procuring the discharge of such lien shall be due and payable by Tenant to Landlord, as additional rent hereunder. Tenant shall indemnify and keep indemnified and defend and hold harmless Landlord against all such liens, charges and encumbrances, expressed or implied, which may encumber the Leased Premises as a result of or in connection with Athletic Facility, Improvements or such Alterations, work, labor, services or materials.

(d) Prior to commencing any construction of Improvements or any Alterations, Tenant shall obtain builders' risk insurance covering the Improvements and the Alterations to the full extent of the insurable replacement cost thereof for special perils. The policy shall expressly waive and bar any claim of subrogation against Landlord. Further, Tenant shall obtain a workers' compensation insurance policy providing statutory benefits for the City and State, including employers' liability, and including a waiver of subrogation against Landlord. All policies shall be provided by insurers licensed to do business in the State.

(e) Prior to commencing any construction of Improvements or any Alterations, Tenant and Tenant's general contractor shall review the City of Wilmington's Disadvantaged Business Enterprise ("DBE") list and shall incorporate potential DBE's into the bid package mailing list or otherwise invite such potential DBE's to submit bids in the same manner as all other potential bidders when bidding for construction or operational contracts. Tenant and Tenant's general contractor shall also work with local workforce development programs to identify local residents who would be eligible for employment on said construction or operational opportunities and shall work with said workforce development program to implement placement strategies to allow for increased participation of local residents to the extent practical without undue burden or cost.

(f) Until the Expiration Date (or Renewal Term Expiration Date if there are Renewal Terms) or date of sooner termination of the Term of this Lease, title to the Contemplated Improvements and all other Improvements and Alterations, and the equipment and all other items installed on the Leased Premises shall remain solely in Tenant, and Tenant shall be entitled to deduct all depreciation on Tenant's income tax returns for the Contemplated Improvements and such other Improvements, Alterations, equipment and items. Upon the Expiration Date (or Renewal Term Expiration Date if there is Renewal Term) or date of sooner termination of the Term of this Lease, the Athletic Facility and such other Improvements, Alterations, equipment shall be and become the property of Landlord, free from any liens or claims of Tenant whatsoever, without any compensation therefor from Landlord to Tenant, except that all tangible personal property not permanently part of the Athletic Facility, including furniture, furnishings, business and trade fixtures, machinery and communications, office and other equipment installed by or at the expense of Tenant, or by or at the expense of any subtenant and which may be removed by such subtenant under the provisions of its sublease, shall be and

remain the property of Tenant or such subtenant, as the case may be, for all purposes and may be removed at or prior to the Expiration Date (or Renewal Term Expiration Date if there is Renewal Term) or date of earlier termination of the Term of this Lease; provided that in the event of such removal at the Expiration Date (or Renewal Term Expiration Date if there is Renewal Term) or date of earlier termination, Tenant or such subtenant shall repair or pay the cost of repairing any damage to the Athletic Facility caused thereby.

6. Taxes and Utility Expenses.

(a) Commencing upon the Commencement Date, Tenant shall, during the Term of this Lease, pay and discharge, or shall cause to be paid and discharged, as and when the same shall become due and payable, to the extent legally assessed against the Leased Premises, all real estate taxes, special and general assessments, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary (hereinafter referred to as "Taxes") and each and every installment thereof which shall or may during the term of this Lease be charged upon, or with respect to, the Leased Premises or any part thereof, or any buildings, appurtenances or equipment situate thereon, under or by virtue of all present or future Laws, ordinances, requirements, orders, rules or regulations of the federal, state or county governments and of all other governmental authorities whatsoever. It is the intention and understanding of the parties hereto that the Leased Premises are currently exempt from real estate taxes as the fee interest is owned by an entity exempt from the assessments of real estate taxes.

(b) Landlord shall during the Term of this Lease, pay and discharge, or shall cause to be paid and discharged as and when the same shall become due and payable, to the extent legally assessed against the Leased Premises, all charges for storm water, sewer, and water. Tenant shall during the Term of this Lease, pay and discharge, or shall cause to be paid and discharged, as and when the same shall become due and payable, to the extent legally assessed against the Leased Premises, all charges for utility expenses furnished to the Lease Premises, other than storm water, sewer and water.

7. Maintenance, Repair and Obligations.

(a) Tenant shall, at its sole cost and expense, keep, or cause to be kept, the Leased Premises in good order and repair and shall make all restorations and Improvements necessary to maintain the Leased Premises in a good, safe and clean condition. Notwithstanding the other provisions of this Lease this shall include (i) making necessary repairs to structures and playing surfaces; (ii) cutting the grass and maintaining the property; (iii) abiding by the city Housing and Building Codes; (iv) maintaining parking areas; (v) maintaining all structures and playing surfaces; (vi) removal of snow and ice for parking lots on the Leased Premises; and (vii) maintaining parking lots, sidewalks, and guardrails within the Leased Premises. Tenant shall provide Landlord with notice of any proposed Alterations or Improvements and shall not commence construction on any Material Alterations and/or Material Improvements without obtaining Landlord's approval for the plans and specifications for such Material Alterations and/or Material Improvements. All such maintenance restorations, Improvements, Alterations and repairs shall be done in a good and workmanlike manner by qualified contractors. Nothing

shall preclude the Tenant from entering into an agreement with the Division for the Division to undertake the obligations set forth in this Section 7(a).

(b) During the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all Laws of the federal, state, city and county governments and other governmental authorities having jurisdiction over the Leased Premises and governing Tenant's use and occupancy of the Leased Premises.

(c) Tenant shall have the right to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Tenant or Landlord or both (if legally required), without cost or expense to Landlord, the validity or application of any Laws, other than Laws of the City, of the nature referred to in paragraph (b) above. Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant to contest the validity or application of any such Law, other than a Law of the City.

8. Insurance and Indemnity.

(a) Fire and Extended Coverage Insurance. Tenant shall at all times during the Term of this Lease, at Tenant's sole cost and expense, insure the Athletic Facility and all other insurable Improvements hereafter erected or constructed on the Leased Premises or in the Athletic Facility and all equipment installed therein, against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles or smoke, and also against such other risks, if any, as at the time are customarily insured against under a policy of "Extended Coverage" or as otherwise required by any financing, in a minimum amount of not less than eighty hundred percent (80%) of the full replacement cost of such Athletic Facility and improvements.

(b) Insurance. Tenant, at its sole cost and expense, for the mutual benefit of the Landlord and Tenant, shall at all times during the Term of this Lease, provide or confirm the procurement of, workers' compensation, general liability and property damage liability insurance coverage for personal injury, sickness, disease or death, or for damage or injury to or destruction of property (including the loss of the use thereof) occurring upon, in, or about the Leased Premises or the Athletic Facility or any Improvements hereafter erected or constructed thereon, to wit:

(i) Workers' Compensation & Employer's Liability Insurance

(A) Tenant, subtenant and any vendor or independent contractor engaged for work or services on the Premises shall purchase and keep in force and effect workers' compensation insurance affording statutory coverage and containing statutory limits that will provide the applicable statutory benefits for employees of any employer who may or do suffer covered injuries or diseases while involved in the performance of their work at the Premises; and, even if permitted to do so by statute, Tenant, subtenant, independent contractor, or vendor shall not reject any workers compensation insurance option that, in the absence of such a rejection, would be applicable to any of the said employees. The policy providing the workers' compensation insurance shall include: (1) broad form all-states coverage;

(2) an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the City of Wilmington, its officials or employees.

(B) Tenant, subtenant, and any vendor or independent contractor shall purchase, and keep in force and effect, Employers' Liability insurance with maximum limits for each employee of \$1,000,000 for each bodily injury by accident, or occupational disease, and \$1,000,000 aggregate maximum limits for all bodily injuries by accidents and occupational diseases within the coverage period, regardless of the number of employees who may sustain bodily injuries by accident or occupational disease.

(ii) Automobile and General Liability Insurance

(A) Tenant and any vendor shall purchase: (1) motor vehicle liability coverage with liability limits for bodily injury of at least \$1,000,000 with a combined single limit, and \$100,000 for property damage for owned, hired and non-owned vehicles, covering any and all claims for bodily injury and property damage that arise out of tenant's or vendor's performance of work, and (2) comprehensive Commercial General Liability (CGL) insurance with limits of no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. The CGL policy shall be extended by endorsement or otherwise to also include (a) coverage for Contractual Liability assumed by Tenant, and/or vendor, subtenant or independent contractor, with defense provided in addition to and separate from policy limits for indemnities of the named insured, (b) coverage for Independent Contractor Liability, (c) coverage for Broad Form Property Damage Liability, (d) coverage for Personal Injury and Advertisers Liability, (e) products and completed operations. The City of Wilmington shall be named as an "Additional Insured" on the motor vehicle liability coverages and CGL coverages.

(iii) Professional Liability Insurance

(A) Each vendor or independent contractor hired by Tenant shall provide professional liability insurance with limits of at least \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Tenant shall procure at its own expense excess insurance to limits deemed commercially reasonable for anticipated purposes.

(iv) General Requirements for all Insurance

(A) All insurance required under this contract except workers' compensation, employers liability, and professional liability shall be annually renewed and certification and notice thereof provided on a policy(s) that specifically names the City of Wilmington, its officials and employees as additional insureds.

(B) Each policy shall provide an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the City of Wilmington, its officials or employees.

(C) Each policy shall be endorsed to require the insurer to give the City of Wilmington at least thirty (30) days' advance written notice of the insurer's intention to cancel, refuse to renew, or otherwise terminate the policy, suspend or terminate any coverage under the policy, or reduce any policy limits, increase any policy deductibles, or

otherwise modify or alter any terms or conditions of the policy or renewal issued by the same insurer.

(D) Each policy shall be written by a carrier licensed by the State of Delaware to do insurance business of the type involved in the State of Delaware, and which has, and maintains for the life of this contract, at least an "A" rating from the A.M. Best Agency with "Stable" outlook.

(E) Any change in this rating or outlook must be related to the City of Wilmington by the Tenant or vendor or insurance carrier as soon as possible upon learning of same; and the vendor shall use due diligence with its insurance broker or carrier to keep track of same.

(F) All insurance required under this contract except workers' compensation, employer's liability and professional liability shall expressly provide that such insurance shall be primary insurance.

(G) Deductibles for insurance provided under this contract shall not exceed two percent (2%) of policy limits.

(H) Tenant shall procure and retain records including Certificates of Insurance evidencing the above-stated coverages and other requirements, indicating the waiver of subrogation, and naming the City as an additional insured.

(c) Every insurance policy shall, to the extent obtainable, provide that it will not be cancelled or modified except upon thirty (30) days written notice to Landlord. Tenant shall advise Landlord promptly of any policy cancellation, reduction or amendment which adversely affects Landlord. Tenant shall deliver to Landlord certificates of insurance evidencing the existence of all policies of insurance referred to in Sections 5(d) and 8. Tenant shall be permitted to maintain the coverages required by this Lease under one or more blanket policies of insurance that also cover other properties owned by affiliates of Tenant.

(d) Landlord shall not carry any insurance concurrent in coverage and contributory in the event of a loss with any insurance which may be carried by Tenant if the effect of such separate insurance would be to reduce the protection or the payment to be made under Tenant's insurance. Landlord shall immediately notify Tenant of the taking out of any separate insurance and the terms thereof.

(e) Except as otherwise specifically provided in this Lease, Tenant shall defend, indemnify and hold Landlord harmless from any and all claims, lawsuits, loss, liability, costs or expenses, including reasonable attorneys' fees, arising out of or related to (i) any claim of bodily injury, property damage or other damages on the Leased Premises or (ii) the activities, improvements and uses of the Leased Premises contemplated by this Lease, except to the extent that such injury or damage results from the negligence or willful misconduct of Landlord or its authorized agents, employees or contractors. Landlord shall not be liable to Tenant or Tenant's agents, employees, invitees or any person entering upon the Leased Premises in whole or in part because of Tenant's use of the Leased Premises or any claim of, damage or injury to persons or property due to any condition, design, or defect in the Leased Premises or its mechanical systems

which may exist or occur, except to the extent that such claim or damage results from the negligence or willful misconduct of Landlord. Landlord shall not be liable or responsible for any loss, damage or injury to any property or person occasioned by theft, fire, requisition or order of governmental body or authority, or other matter beyond control of Landlord, or, except as otherwise specifically provided in this Lease, for any injury or damage or inconvenience to Tenant which may arise through the repair or alteration of any part of the Leased Premises by Landlord in accordance with the terms of this Lease, or failure to make repairs, or from any other cause whatever.

9. Assignment and Sublease. Tenant shall not assign this Lease or otherwise Transfer the Leased Premises or any portion thereof to any person other than Tenant without obtaining, on each occasion, the express prior written consent of Landlord, subject to and in accordance with the terms of this Lease. Notwithstanding the foregoing, Tenant shall have the right to assign this Lease, or any interest in the Improvements or any Alterations or to sublet the whole or any part of the Leased Premises to any affiliate of Tenant, successor by merger or consolidation, or acquirer of substantially all of the stock in Tenant or substantially all of the assets of Tenant (an "Excluded Transaction") without the consent of Landlord provided that Landlord shall receive written notice of such Excluded Transaction at least sixty (60) days prior to the effective date thereof which shall include reasonable evidence that such transaction is in fact an Excluded Transaction (and provided further that the proposed transfer complies with all other provisions of this Lease, does not alter Landlord's rights under the Lease, and does not impose any additional obligation on Landlord). Subject to Public Time and City Time, Landlord acknowledges and agrees that Tenant may enter into license and occupancy agreements (the "Use Agreements") for the use of all or any part of the Athletic Facility located at the Leased Premises for uses that are harmonious, tangential or supportive of the Permitted Use, under such terms and conditions as Tenant may desire and in compliance with applicable law; provided such consideration payable under such Use Agreements are at prevailing market rates or at such other rates approved by the Landlord. Notwithstanding the above, Tenant shall endeavor to engage other community and local groups who may be interested in utilizing the Leased Premises and Tenant shall develop criteria that will allow such groups to have reasonable access and use to the Leased Premises.

10. Utility Easements. Tenant shall have the right to enter into agreements with utility companies limited to the term of the Lease independently or indefinitely with the written permission of the Landlord creating easements in, across, over and through the Leased Premises in favor of such utility companies as are required in order to provide complete utility service to the Athletic Facility or any other improvements constructed on the Leased Premises, and Landlord covenants and agrees to consent thereto and to execute any and all documents, agreements and instruments and to take all other actions in order to effectuate the same, all at Tenant's sole cost and expense. If the grant of said utility easements are determined to require City Council approval, such approval is hereby deemed authorized and no further action by City Council shall be required.

11. Leasehold Mortgages. In connection with any Financing, Tenant shall be entitled to grant a mortgage against its estate and interest arising under this Lease (each, a "Leasehold Mortgage") and to assign any interest in this Lease or any permitted sublease as

collateral security for such Financing, upon the condition that all such Leasehold Mortgages shall be subject to each and all the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein. Tenant shall inform Landlord in writing of the name and current address of the holder of any Leasehold Mortgage (a "Leasehold Mortgagee"). Landlord agrees that so long as the obligation secured by any Leasehold Mortgage remains outstanding, the following provisions shall apply:

(a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without prior notice in writing to any Leasehold Mortgagee.

(b) Landlord shall, upon serving Tenant with any notice of default, serve a copy of such notice upon any Leasehold Mortgagee to the extent that Tenant has provided Landlord with the address for such Leasehold Mortgagee.

(c) Landlord agrees that the name of any Leasehold Mortgagee may be added to the loss payable endorsement of any and all insurance policies required to be carried by Tenant hereunder on the condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgages or other collateral document shall so provide.

(d) Nothing herein contained shall require any Leasehold Mortgagee or its nominee to cure any default of Tenant.

(e) Landlord shall, upon request, promptly, execute, acknowledge and deliver to each Leasehold Mortgagee an agreement, prepared at the sole cost and expense of Tenant and in such form as shall be satisfactory to such Leasehold Mortgagee, but subject to Landlord approval which shall not be unreasonably withheld, conditioned or delayed.

12. Performance by Assignee. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any permitted assignee of Tenant with the Landlord's written consent which shall not be unreasonably withheld, conditioned or delayed and the performance of such act shall be deemed to be performance by Tenant and shall be acceptable as Tenant's act by Landlord.

13. Quiet Enjoyment. Tenant, upon paying the Rent and all other sums and charges to be paid by it under this Lease, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Leased Premises during the term of this Lease.

14. Default Provisions.

(a) The occurrence and continuance any one or more of the following events shall constitute an "Event of Default" under this Lease:

(i) If Salesianum ceases to operate as a non-profit school; or

(ii) If Salesianum ceases to use the Athletic Facilities as contemplated in this Lease; or

(iii) If default shall be made in the due and punctual payment of any Rent or any other monetary payments to be made by Tenant to Landlord hereunder, when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after Tenant's receipt of written notice thereof from Landlord to Tenant; or

(iv) If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this Lease—including without limitation the City and Public Time requirements in Section 4, the Improvements and Alterations requirements in Section 5, and maintenance and repairs requirements in Section 7—and such default shall continue for a period of sixty (60) days after receipt of written notice specifying such default from Landlord to Tenant; or, if it shall not be reasonably possible to cure such default within a period of sixty (60) days, then such longer period reasonably designated by Landlord in order to allow Tenant to promptly remedy such default following Tenant's receipt of the default notice; or

(v) Tenant shall fail to vacate the Leased Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only; or

(vi) The leasehold interest of Tenant shall be levied upon under execution or be attached by process of law, except by an action by any Leasehold Mortgagee, and Tenant shall fail to contest diligently the validity of any lien or claimed lien and give reasonably sufficient security to Landlord to insure payment thereof, or Tenant shall fail to satisfy any judgment rendered thereon and have the same released, and such default shall continue for sixty (60) days after written notice thereof to Tenant.

(b) If an Event of Default has occurred and continues beyond those periods of time herein granted to cure the same, then Landlord, in addition to any other remedies to which Landlord may be entitled at law or in equity, Landlord shall have the right to terminate this Lease by giving Tenant a notice of termination, whereupon Tenant's rights under this Lease shall terminate.

(c) LANDLORD AND TENANT EACH AGREE TO AND THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, AND ANY CLAIM OR INJURY OR DAMAGE AND/OR ANY STATUTORY REMEDY.

15. Casualty. In the event of damage to or destruction of the Athletic Facility by fire or other casualty, Tenant, shall promptly restore the Athletic Facility as nearly as practicable to its condition prior to such damage or destruction. All insurance proceeds received by Tenant shall be applied to the payment of restoration of the Athletic Facility. In no event shall

Landlord have any obligation under this Lease to repair, restore or rebuild the Athletic Facility or any other Improvements.

16. Condemnation.

(a) If at any time during the Term of this Lease, title to the whole or materially all of the Leased Premises shall be taken by exercise of the right of condemnation, eminent domain or by agreement between Landlord and those authorized to exercise such right (all such proceedings being collectively referred to herein as a "taking") this Lease shall terminate and expire on the date of such taking and the rent shall be apportioned and paid to the date of such taking.

(b) In the event of the taking of the whole or materially all of the Leased Premises during the Term of this Lease, the rights of Landlord and Tenant shall be dictated by applicable law. At a minimum, Tenant shall be entitled to receive the appraised fair market value of the improvements and its property interest, which amount should take into consideration the tenant's total investment in capital improvements to the Leased Premises up to the date of the take. Additionally, Landlord commits to Tenant in good faith that other property or properties will be made available to Tenant for a lease comparable to this Lease.

(c) If at any time during the Term of this Lease, title to less than the whole or materially all of the Leased Premises shall be taken, this Lease shall continue, provided that the portion of the Leased Premises remaining may be utilized by Tenant for the same purposes for which it was used prior to the taking and all of the award collected by Landlord shall be held jointly by Landlord and Tenant and applied and paid over toward the cost of restoration of the Leased Premises and Improvements, to as nearly the same condition as possible as they existed before the taking. Any balance remaining in said fund after payment of the cost of restoration shall be used to thereafter maintain the Leased Premises.

17. Naming, Sponsorship and Advertising.

(a) During the Term of this Lease, Landlord hereby grants to Tenant the exclusive license to name all or any part of the Leased Premises, including, without limitation the stadium, field, track, locker rooms, tennis courts and Stadium Drive (the "Naming Rights"). Tenant shall have the unrestricted right and privilege to control all other naming opportunities on the Leased Premises at its own discretion for any purpose, including, but not limited to, fundraising purposes. The City Council is hereby deemed, by approving this Lease, to have expressly waived naming rights for the Leased Premises, including specifically with respect to Stadium Drive under Section 2-3 of the Wilmington City Code. In the event Tenant is not able to exercise such Naming Rights Tenant shall have the right to terminate this Lease in which event this Lease and all of Tenant's obligations hereunder shall be null and void and of no further force or effect.

(b) During the Term of this Lease, the parties agree that Tenant will have the right and privilege to develop, at Tenant's expense, a graphic design incorporating the name of the Athletic Facility to be used as the primary logo associated with the venue (the "Primary Logo"). Tenant may also develop, at Tenant's expense, derivative graphic designs

related to the Primary Logo to be used periodically for ancillary marketing and promotional purposes pursuant this Lease (the "Secondary Logos") (collectively, the "Logos").

(c) In connection to the Naming Rights granted to Tenant hereunder, Tenant will be entitled to have certain signage or other forms of exposure of the Athletic Facility placed in, on and around the Leased Premise (the "Signage"); provided such Signage shall comply with the requirements of applicable law.

(d) Subject to the requirements of applicable law, Tenant shall have the right and privilege to sell advertising and pursue sponsorship opportunities in any manner on the Leased Premises.

(e) As of the Effective Date, Tenant and City will use reasonable commercial efforts to cause any existing public roadway signs referencing the Athletic Facility and controlled by the City (the "City Street Signs") to identify the Leased Premises with the Logos and Stadium Name. Tenant shall be responsible for the initial cost of purchasing and installing the replacement City Street Signs under this Lease. Such signs must be substantially similar to the existing signs or otherwise approved by the City. Thereafter, the City will be responsible for the cost, maintenance, repair and replacement of the City Street Signs installed hereunder in the same manner the City maintains, repairs and replaces City Street Signs in its normal course of business.

(f) As of the Effective Date, Tenant and Landlord will use reasonable commercial efforts to cause any existing federal, state and/or local public roadway and/or public transportation signs referencing the Athletic Facility and controlled by the county, state and/or federal government or any related government agency (the "Highway and Public Transportation Signs") to identify the Athletic Facility by the Stadium Name and Logo. To the extent that there is any cost to purchase and/or replace or install the Highway and Public Transportation Signs that is not being voluntarily borne by the controlling body thereof, then such cost will be solely paid for by Tenant in a timely manner.

18. Notices. Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid, by United States registered or certified mail, return receipt requested, by hand delivery, or by overnight courier, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this paragraph. Notices shall be deemed given when so sent; but time periods for performance following notice shall run from the date the notice has been received or receipt is refused.

19. Estoppel Certificate. Tenant or Landlord, at any time, and from time to time, upon not less than twenty (20) days prior written notice from the other party, will execute, acknowledge and deliver to the requesting party, it being intended that such statement delivered pursuant to this Section may be relied upon by the requesting party or by other persons reasonably designated by the requesting party, a certificate certifying:

(i) That this Lease is unmodified and in full force and effect (or, if there have been modifications that this Lease is in full force and effect as modified and stating the modifications);

(ii) Whether or not there are then existing any offsets or defenses against the enforcement of any of the covenants, agreements, terms or conditions hereof upon the part of the certifying party to be performed or complied with (and, if so, specifying the same);

(iii) The date through which the Rent and other charges under this Lease have been paid;

(iv) Such other factual statements concerning this Lease as may be reasonably requested.

20. Governing Law. This Lease and the performance of all the terms and conditions contained herein shall be governed, interpreted, construed and regulated by the laws of the State of Delaware. All disputes in connection with this Lease shall be resolved by the courts of New Castle County, Delaware. The parties agree to submit exclusively to the jurisdiction and venue of said courts.

21. Partial Invalidity. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, except if such term, covenant, condition or provision is material to each party receiving the benefit of its bargain hereunder in all material respects, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or enforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

22. Severability. Any provision of this Lease that may be determined by competent authority to be illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining terms and provisions hereof, and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any terms and provisions hereof in any other jurisdiction.

23. Reliance and Amendments. No oral statement or prior written matter shall have any force or effect. Landlord and Tenant each agree that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or cancelled except by writing subscribed by all parties.

24. Counterparts. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

25. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant, and their respective successors and assigns.

26. No Partnership. It is understood and agreed that no party hereto shall be construed or held to be a partner, joint venturer or associate of the other in the conduct of the other's business, nor shall either party be liable for any debts incurred by the other; but it is understood and agreed that the relationship is and at all times shall remain that of landlord and tenant.

27. Headings; Pronouns. The headings of the sections of this Lease are for convenience only and have no meaning with respect to this Lease or the rights or obligations of the parties hereto. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: "person", as used herein, includes an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; "Leased Premises" includes each portion of the Leased Premises and each estate or interest therein; "hereof", "herein", and "hereunder" and other words of similar import refer to this Lease as a whole; "Lease" includes these presents as supplemented or amended from time to time by written instrument(s) entered into by Tenant or Landlord; "Landlord" includes Landlord's successors and assigns; "Tenant" includes Tenant's permitted successors and assigns; and "parties" means Landlord and Tenant. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns or nouns shall include the plural and vice versa.

28. Survival. All provisions of this Lease providing for indemnification or limitation of or protection against liability of either party and all other provisions hereof expressly stated to survive the termination of this Lease shall survive the termination, cancellation, or expiration of this Lease.

29. Force Majeure. Neither party will be in default under this Lease if that party's performance is delayed or prevented by or due to strike, lockout, inability to obtain labor and materials, war, riot, unusually severe weather conditions, acts of God and other similar causes beyond the control of that party that were not reasonably foreseeable, and the time within which that party must comply with any of the terms, covenants and conditions of this Lease will be extended by a period of time equal to the period of time that performance by that party is delayed or prevented by the causes specified above.

30. Consents. Whenever the consent or approval of Landlord or Tenant is required under this Lease, Landlord and Tenant agree that such consent or approval shall not be unreasonably withheld or delayed; provided, that such consent or approval shall not require any regulatory or adjudicatory determination or ruling by Landlord. In any event, the failure of Landlord or Tenant to respond to a request for its consent or approval under this Lease within sixty (60) days after being properly provided notice under this Lease of such request (except where some other period of time is expressly provided for in this Lease) shall constitute Landlord's or Tenant's consent or approval, as the case may be. If either party shall withhold its approval of or consent to any proposed action, person or thing, such party shall specify its reasons therefor. Notwithstanding anything to the contrary herein, the parties hereby acknowledge and agree that this Section 30 shall not be applicable to any consent or approval of a regulatory or adjudicatory nature, and nothing in this Lease shall be deemed to limit or impair the regulatory or police power of the City.

31. Computation of Time Periods. All periods of time referred to in this Lease shall include all Saturdays, Sundays and City, state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or holiday when City offices are closed, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or holiday when City offices are closed.

32. Memorandum of Lease; Recordation. Landlord and Tenant agree that this Lease shall not be recorded. A memorandum of this Lease in the form of Exhibit C (the "Memorandum of Lease") shall be duly executed by both Landlord and Tenant, concurrently with their execution of this Lease, and shall be recorded in the Recorder's Office at Tenant's sole cost and expense.

33. Time of the Essence. TIME IS OF THE ESSENCE IN ALL PROVISIONS OF THIS LEASE.

34. Records and Audits. Tenant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all income, costs and expenses pertaining to this Lease and such other records as may be deemed necessary by the City to assure proper accounting hereunder. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for five years after the expiration of this Lease unless permission to destroy them is granted by the City.

IN WITNESS WHEREOF, the parties have hereunto set their hands, the day and year first above written.

WITNESS:

CITY OF WILMINGTON

By: _____

Name: _____

Title: _____

Date: _____

WITNESS:

SALESIANUM SCHOOL INC.

By: _____ (SEAL)

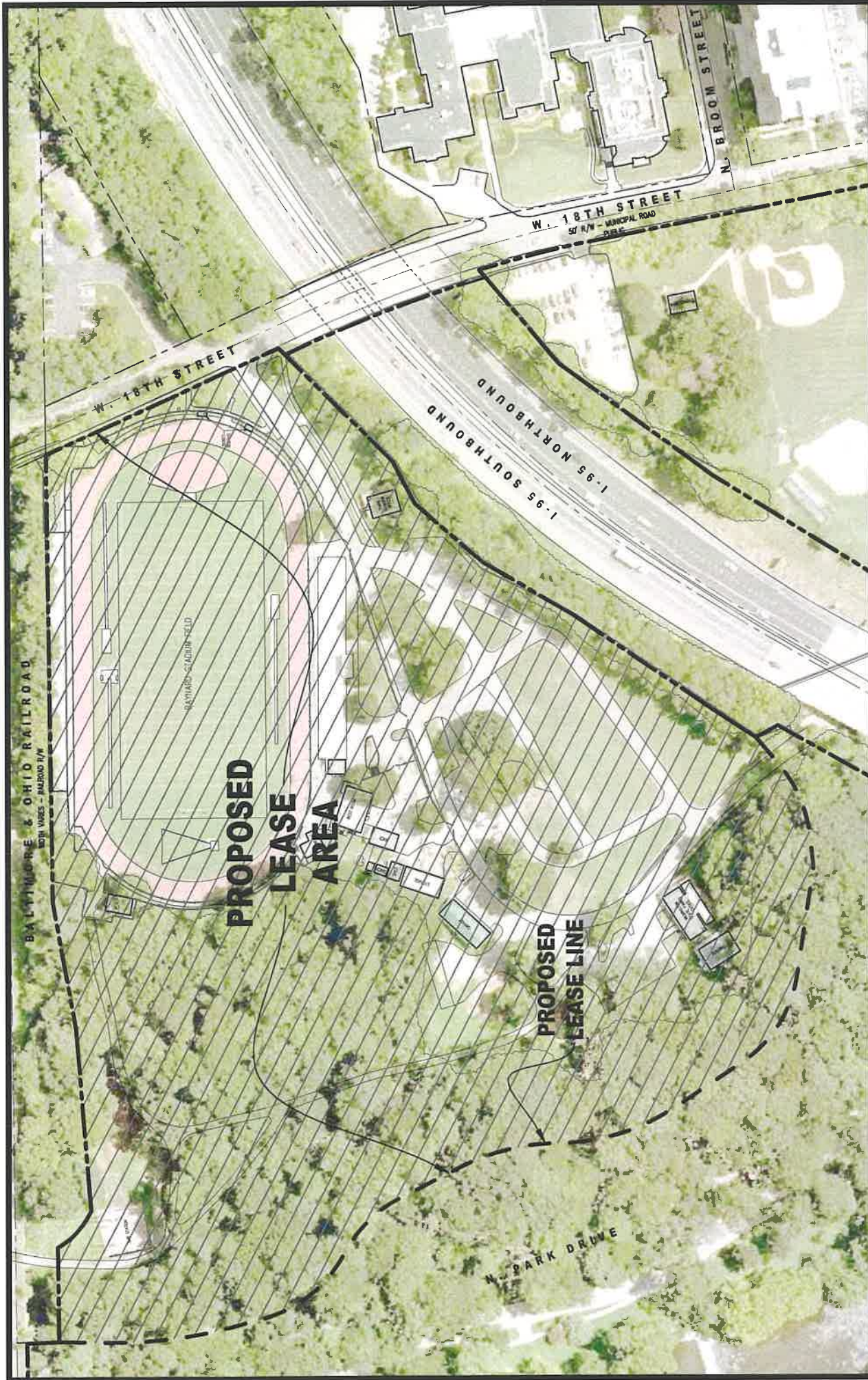
Brendan P. Kennealey

President

APPENDIX OF EXHIBITS

EXHIBIT A	Plan
EXHIBIT B	Legal Description
EXHIBIT C	Memorandum of Lease
EXHIBIT D	Description of Contemplated Improvements

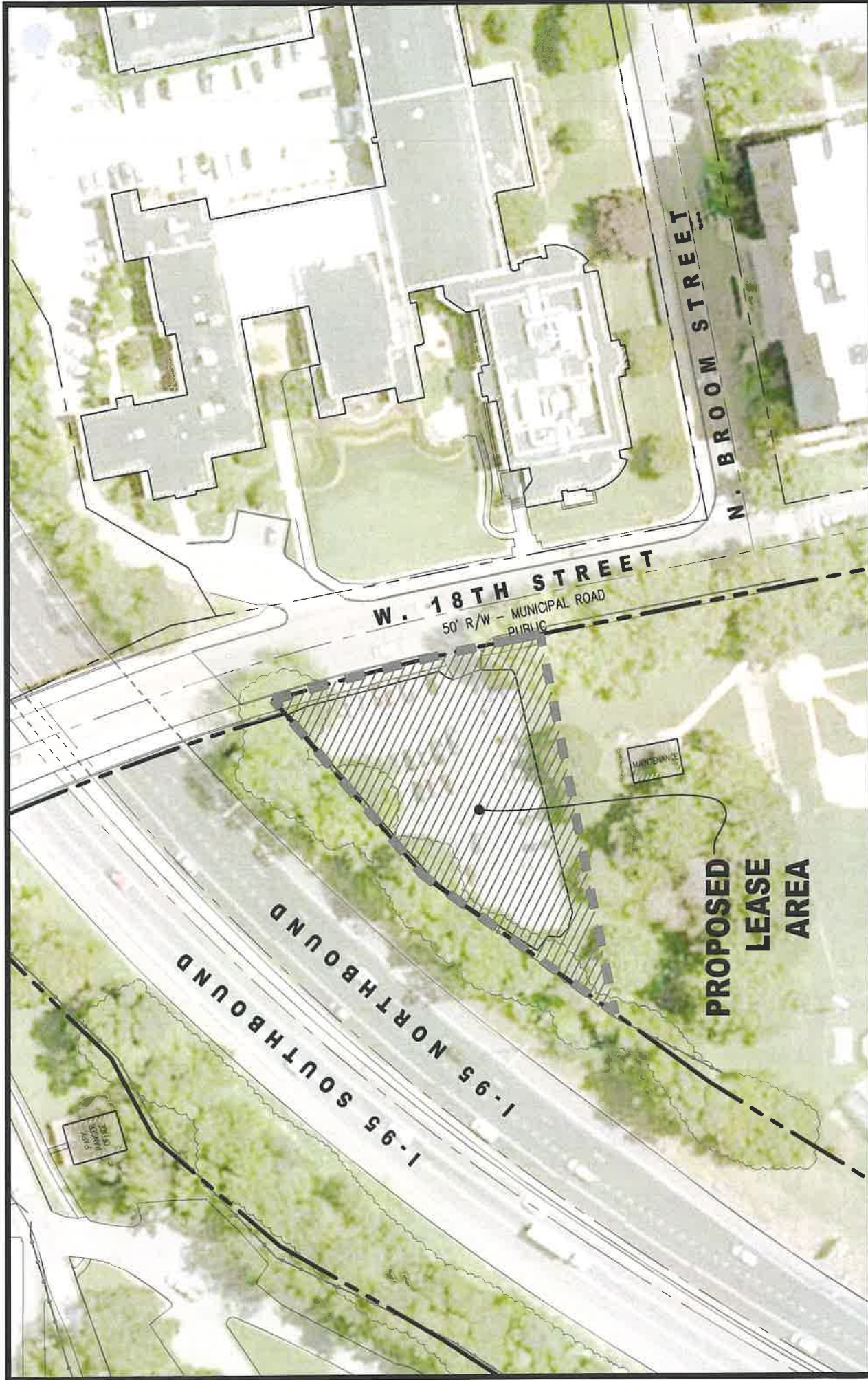
EXHIBIT A



PROJECT NUMBER: 16.160.00
SCALE: 1" = 150'
DRAWING NUMBER: EXHIBIT A

LEASE EXHIBIT PLAN
BAYNARD STADIUM
PREPARED FOR
RICHARDS, LAYTON & FINGER, P.A.
CITY OF WILMINGTON | NEW CASTLE COUNTY | DELAWARE

CDA ENGINEERING INC.
CIVIL/SITE ENGINEERING AND LAND PLANNING
6 LARCH AVENUE
SUITE 401
WILMINGTON, DE 19804
Tel: 302 998 9202
Fax: 302 691 1314
cdaengineering.com



PROJECT NUMBER: 16.160.00
SCALE: 1" = 80'
DRAWING NUMBER: EXHIBIT B

LEASE EXHIBIT PLAN
GRAVEL PARKING LOT
PREPARED FOR
RICHARDS, LAYTON & FINGER, P.A.
CITY OF WILMINGTON | NEW CASTLE COUNTY | DELAWARE

CDA ENGINEERING INC.
CIVIL/SITE ENGINEERING AND LAND PLANNING
6 LARCH AVENUE
SUITE 401
WILMINGTON, DE 19804
Tel: 302.998.9202
Fax: 302.691.1314
cdaengineering.com

EXHIBIT B

STADIUM

BEGINNING at the point of intersection of the southwesterly side of West 18th Street (width varies) and the southeasterly side of CSX Railroad (width varies) (CSX Valuation Map No. V08255);

THENCE from the said point of BEGINNING and along said southwesterly side of West 18th Street, S 43° 36' 52" E, 305.47' to its point of intersection thereof with the northwesterly side of Interstate Route I-95 (DeLDOT Contract No 64-04-021, 64-01-054, and 64-01-055) (width varies);

THENCE thereby, the following six (6) described courses and distances:

1. S 25° 34' 55" W, 184.58' to an angle point;
2. S 42° 49' 47" W, 44.84' to an angle point;
3. S 27° 21' 30" W, 119.62' to an angle point;
4. S 06° 33' 46" W, 112.70' to an angle point;
5. S 14° 47' 30" W, 209.54' to an angle point, and
6. S 13° 42' 29" W, 61.81' to an angle point;

THENCE along a Proposed Lease Line through lands, now or formerly, of City of Wilmington-Mayor & Council (Tax Parcel No. 26-013.40-075), the following fourteen (14) described courses and distances:

1. S 31° 42' 55" W, 45.36' to a point of curvature;
2. Along the arc of a circle curving to the right (radius = 150.00') (chord = 84.00' chord bearing = S 47° 58' 34" W) an arc distance 85.14' to a point of tangency;
3. S 64° 14' 13" W, 39.75' to an angle point;
4. S 79° 30' 36" W, 128.86' to a point of curvature;
5. Along the arc of a circle curving to the right (radius = 150.00') (chord = 125.55' chord bearing = N 76° 35' 17" W) an arc distance 125.15' to a point of tangency;
6. N 52° 41' 09" W, 96.25' to a point of curvature;
7. Along the arc of a circle curving to the right (radius = 250.00') (chord = 143.88' chord bearing = N 35° 57' 43" W) an arc distance 145.94' to a point of reverse curvature;
8. Along the arc of a circle curving to the left (radius = 250.00') (chord = 117.36' chord bearing = N 32° 48' 47" W) an arc distance 118.46' to a point of tangency;
9. N 46° 23' 17" W, 81.69' to a point of curvature;
10. Along the arc of a circle curving to the left (radius = 150.00') (chord = 90.85' chord bearing = N 64° 00' 55" W) an arc distance 92.30' to a point of reverse curvature;
11. Along the arc of a circle curving to the right (radius = 155.00') (chord = 124.58' chord bearing = N 57° 56' 49" W) an arc distance 128.21' to a point of tangency;
12. N 34° 15' 06" W, 33.20' to a point of curvature;
13. Along the arc of a circle curving to the right (radius = 555.00') (chord = 154.80' chord bearing = N 26° 14' 07" W) an arc distance 155.30' to a point of tangency, and
14. N 18° 13' 08" W, 54.11' to an angle point in the southeasterly side of CSX Railroad aforesaid;

THENCE thereby, the following five (5) described courses and distances:

1. N 70° 01' 20" E, 111.71' to an angle point;
 2. Along the arc of a circle curving to the left (radius = 100.00') (chord = 58.72' chord bearing = S 67° 02' 31" E) an arc distance 59.60' to an angle point;
 3. N 66° 01' 20" E, 215.01' to an angle point;
 4. N 60° 33' 35" E, 152.07' to an angle point, and
 5. N 70° 01' 20" E, 520.92' to its point of intersection thereof with the aforementioned southwesterly side of West 18th Street, the first mentioned point and place of BEGINNING.
- CONTAINING WITHIN said described metes and bounds 16.01 acres of land be the same, more or less.

PARKING LOT

BEGINNING at a point on the southwesterly side of West 18th Street (width varies), said point being further located from the intersection of the centerline of said West 18th Street and the centerline of North Broom Street (at 60' wide) by the following two (2) described courses and distances:

1. Along the said centerline of North Broom Street (extended) S 59° 43' 08" W, 30.00' to the said southwesterly side of West 18th Street, and

2. THENCE thereby, N 30° 16' 52" W, 145.78' to a point, the point and place of BEGINNING.

THENCE from the said point of BEGINNING, along a new line through lands, now or formerly, of City of Wilmington-Mayor & Council (Tax Parcel No. 26-013.40-075), S 59° 43' 08" W, 237.40' to the easterly side of Interstate 95 (width varies);

THENCE thereby, in part, and along the southeasterly side of said Interstate 95 the following two (2) described courses and distances:

1. N 17° 06' 04" E, 144.70' to an angle point, and

2. N 30° 15' 27" E, 142.13' to the southwesterly side of West 18th Street aforesaid;

THENCE thereby, the following two (2) described courses and distances:

1. Along the arc of a circle curving to the right (radius =1,607.02') (chord =151.76', chord bearing =S 32° 59' 15" E), an arc distance of 151.82' to a point of tangency, and

2. S 30° 16' 52" E, 16.29' to a corner point, the first mentioned point and place of BEGINNING.

CONTAINING WITHIN said described metes and bounds 0.52 acre of land be the same, more or less.

EXHIBIT C - FORM OF MEMORANDUM OF LEASE

Tax Parcel No.: Portion of 26-014.10-
006 Prepared by and return to:

Richards, Layton & Finger, P.A.

920 North King Street
Wilmington, DE
19801 Attn: Sara T.
Toner, Esq.

MEMORANDUM OF LEASE

This Memorandum of Lease is entered into as _____, 2018 with respect to that

certain Lease ("Lease") between the City of Wilmington, a municipal corporation of the State of Delaware ("Landlord"), and Salesianum School, Inc., a Delaware corporation ("Tenant"), pursuant to Section 32 of the Lease, for purposes of memorializing and recording certain terms thereof, and to give record notice of the Lease and the rights created thereby, including the Option. The summarized terms provided herein are not intended to fully or completely set forth the provisions of the Lease, for an understanding of which reference must be made to the Lease, and nothing in this Memorandum of Lease shall have the effect of in any way modifying, supplementing or abridging the Lease or any of its provisions as the same now or may hereafter

be in force and effect.

All capitalized terms not defined in this Memorandum of Lease are

defined in the Lease.

- | | | |
|----|---------------------------------|--------------------------------|
| 1. | Date of Lease: | [T/B/S] |
| 2. | Description of Property: | See Exhibit A attached hereto. |
| 3. | Commencement Date: | [T/B/S] |
| 4. | Term: | Fifty (50) Years |
| 5. | Renewal Term: | Fifty (1) year renewal terms. |

The purpose of this Memorandum of Lease is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed.

This Memorandum of Lease is not intended to modify the Lease. In the event of any inconsistency between the Lease and this Memorandum of Lease, the Lease shall control.

This Memorandum of Lease is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

Upon the termination of the Lease, Tenant agrees to execute and deliver to Landlord a notice of termination, in recordable form. In the event Tenant does not execute and deliver such a notice within ten (10) days after written request, Landlord may execute and record a notice of termination, without the joinder of Tenant, which shall be conclusive evidence of the termination of the Lease.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgments.

WITNESS:

CITY OF WILMINGTON

By: _____

Name: _____

Title: _____

Date: _____

WITNESS:

SALESIANUM SCHOOL INC.

By: _____ (SEAL)

Brendan P. Kennealey
President

STATE OF DELAWARE)

) SS.

COUNTY OF NEW CASTLE)

This instrument was acknowledged before me this ____ day of _____, ____, by _____, as _____ of the City of Wilmington, a Municipal Corporation of the State of Delaware, on behalf of said corporation .

A

Notary
Public
Name:

[Notary Seal]

My commission expires:

STATE OF DELAWARE)

) SS.

COUNTY OF NEW CASTLE)

This instrument was acknowledged before me this ____ day of _____, ____ by
Brendan P. Kennealey, as President of Salesianum School, Inc., a Delaware corporation, on
behalf of said corporation.

Notary
Public
Name:

[Notary Seal]

My commission expires

**EXHIBIT A [TO MEMORANDUM OF LEASE] [DESCRIPTION OF LEASED
PREMISES]**

STADIUM

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CONTAINING WITHIN said described metes and bounds 0.52 acre of land be the same, more or less.

EXHIBIT D

DESCRIPTION OF CONTEMPLATED IMPROVEMENTS

By entering this lease agreement with the City of Wilmington, Salesianum School seeks to rehabilitate Baynard Stadium such that it can return to its rightful place in our community as a preferred venue for athletics and competition for all ages, while also serving as a proud focal point for recreation for members of the nearby community. Salesianum School's initial investment in the Leased Premises is described as follows:

- A. South Bleacher Structure - serving as the anchor of the project, this new structure will be the architectural focal point of the new stadium and is likely to include:
 - a. Bleachers – mix of seat back and regular bleachers and handicapped accessible accommodations.
 - b. Locker Rooms – for both home and visiting teams
 - c. Public Restrooms
 - d. Concessions
 - e. Press Box and Coaches Boxes
 - f. Community Room – Multi-purpose space overlooking the field with a capacity for 35-50
 - g. Pedestrian Walk
 - h. Stadium Storage
 - i. Ticket Booths
- B. Field – Multi-purpose field for varsity-level football, soccer, lacrosse as well as other sports. Synthetic turf will be selected based on performance for multi-sports as well as concussion reduction.
- C. Track – A new 8-lane track is planned to accommodate competitive high school-level meets. Multiple track geometries will be considered to coordinate optimal field dimensions, track configuration and spectator viewing.
- D. Field Events – The goal will be to locate all high-school level field events, per DIAA, within the stadium complex, including high jump, pole vault, long jump, triple jump, shot put and discus throw.
- E. Scoreboard – Digital scoreboard will allow for personalized graphics for each home team.
- F. Stadium Lights – New LED stadium lights and poles with shielding to limit light overflow.
- G. Office Space – Available for Salesianum and other including DNREC and Park Rangers.
- H. Retail – Supportive and harmless retail space, such as concessions and merchandise.
- I. Maintenance Facilities – These will include shop and storage facilities for DNREC and Salesianum equipment and vehicles as well as open bays for landscape materials.
- J. Parking – Most parking will remain open and unpaved to keep in the spirit of the State Park, but some lined spaces will be added. Handicapped parking spaces and new drop off location will be added on the interior (away from 18th Street).
- K. Signage – Identification, wayfinding, and donor recognition signage will be incorporated into the stadium complex.
- L. Building / Site Systems – All mechanical, electrical, plumbing, public address, telecommunication and life safety systems will be replaced or upgraded to meet current

codes. Stormwater management systems will also be integrated to meet regulatory requirements.

Notes:

Due to the proximity of the CSX Railroad Tracks to the field the North Bleachers will likely need to be reconfigured or eliminated in order to meet code requirements. Seating capacity will be adjusted accordingly to maintain a seated audience of between 3,000 and 4,000 spectators. Additionally, grassed berms and widened plaza areas are anticipated to allow extra capacity, as has historically been the case at the stadium.