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#4283

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A LEASE AGREEMENT WITH SALESIANUM SCHOOL INC. FOR THE LEASE OF THE PREMISES KNOWN AS BAYNARD STADIUM LOCATED AT 1 STADIUM DRIVE ALONG THE WESTERLY BOUNDARY OF BRANDYWINE PARK

Sponsors:

**Council
President
Gregory**

**Council
Member
Chukwuocha
Congo
Shabazz?
Prado
Williams
Dorsey Walker
Freel
Cabrera
M. Brown
Walsh**

WHEREAS, pursuant to City Charter Sec. 2-308, the City Council may by ordinance authorize the leasing of real estate for more than one year; 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 Tax Parcel No. 26-014.10-006 (the "Property"); and

WHEREAS, Salesianum School, Inc. ("Salesianum"), has been educating young men in the City for 113 years and since 1956 Salesianum has enjoyed a long and storied history with the Property; and

WHEREAS, the Property is in dire need of improvements and is confronting serious physical and economic challenges that would impact its ability to be a community asset going forward; and

WHEREAS, Salesianum considers itself well positioned to largely assume from the City management and maintenance responsibilities and has proposed to City a long-term lease of Baynard Stadium and some of the surrounding areas as evidenced by and subject to the terms of a Lease Agreement (the "Agreement"), a substantially complete copy of said Agreement is attached hereto and made a part hereof in Exhibit A, and contingent upon City Council approval.

**NOW THEREFORE THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Authorization of the Agreement. The City is hereby authorized to execute the attached Agreement, or a substantially similar version thereof with Salesianum to allow for the lease of the Property subject to the terms and conditions stated in the Agreement.

SECTION 2. Further Action. 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, make all required payments and otherwise carry out the intent of this Ordinance in the name of and on behalf of the City.

SECTION 3. Effective Date. This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

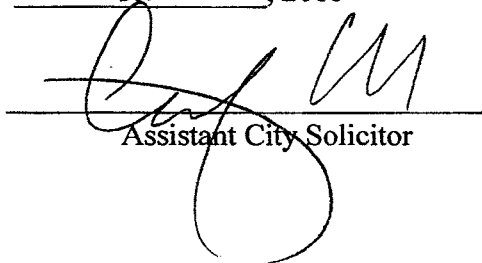
First Reading . . .November 3, 2016
Second Reading . . .November 3, 2016
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this ^{9th} day of
November, 2016



Assistant City Solicitor

Approved this ____ day of _____, 2016.

Mayor

SYNOPSIS: This Ordinance authorizes the City to enter into a Lease Agreement with Salesianum School, Inc. to allow for the lease of the City owned property known as Baynard Stadium, located at 1 Stadium Drive in exchange for a commitment from Salesianum to invest approximately \$20,000,000 in improvements and assumption of day to day operations and management responsibilities.

LEASE

THIS LEASE (this "Lease"), dated the _____ day of [____], 2016, is made by and between The City of Wilmington, a Municipal Corporation of the State of Delaware, its officials, employees and agents ("Landlord" or the "City"), having an address of 800 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 North Park Drive along the westerly boundary of Brandywine Park in the City;

WHEREAS, Baynard Stadium is an historic and treasured community asset utilized for athletic and cultural events since its opening and dedication as "Baynard Field" in 1922;

WHEREAS, Salesianum has been educating young men in the City for 113 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 caretaking in order to preserve and enhance future utilization of Baynard Stadium;

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

WHEREAS, Baynard Stadium is owned by the City and managed and maintained by the State of Delaware (the "State"), and both the City and State have expressed in 2016 strong interest in entering into a long-term covenant with Salesianum whereby Salesianum would manage and maintain Baynard Stadium, and in so doing Salesianum would renovate and improve the Stadium thereby enhancing utilization for the community at large and Salesianum;

WHEREAS, Salesianum considers itself well positioned to largely assume from the City and State the management and maintenance responsibilities that would transfer to Salesianum with a long-term lease or acquisition 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 \$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; and

WHEREAS, in light of the foregoing Salesianum desires to lease from the City the Leased Premises 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" is defined in Section 5.

(b) "Arbitrator" is defined in Section 32.

(c) "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.

(d) "Award" is defined in Section 32.

(e) "City Street Signs" is defined in Section 18.

(f) "Closing Date" means the date that is specified in Tenant's Exercise Notice.

(g) "Commencement Date" means the date that Tenant has obtained such irrevocable commitments for investment, donations and/or financing as it deems necessary and appropriate to undertake its obligations as set forth ("funding requirements"), as determined by Tenant. On establishing the Commencement Date, Landlord and Tenant will enter into an Agreement Regarding Dates in the form attached as Exhibit D; provided that if Tenant has not met its funding requirements for the Contemplated Improvements by June 30, 2017 then Tenant shall have the right, at its election, to terminate this Lease and both parties shall be released of all liability hereunder.

(h) "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, all in accordance with the Plans and Specifications, to be completed according to the Estimated Timeline:

(i) ~~bleachers;~~

- (ii) field with synthetic turf;
- (iii) track;
- (iv) bathrooms, locker rooms, and concessions;
- (v) scoreboard;
- (vi) press box and lights;
- (vii) creation of replacement office space for use by, *inter alia* Salesianum and the Division, together with appurtenant meeting, recreation and community meeting places; and

(viii) landscaping and reconfiguration of the parking areas, including the creation of additional parking spaces.

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

(j) "Division" means the State of Delaware Division of Parks and Recreation, a division of the Department of Natural Resources and Environmental Control.

(k) "Division Improvements" means the creation, construction and development at the Leased Premises of tennis courts, all in accordance with the Plans and Specifications.

(l) "DRAA" is defined in Section 32.

(m) "Election Notice" is defined in Section 17.

(n) "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.

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

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

(q) "Exercise Notice" is defined in Section 17.

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

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

18.

(t) "Improvements" means any and all of the buildings, structures, betterments, hallways, entrances, exits, paving, 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.

(u) "Improvements Value" is defined in Section 16.

(v) "Land Value" is defined in Section 16.

(w) "Landlord" means The City of Wilmington, as the same may from time to time be constituted.

(x) "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.

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

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

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

(bb) "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, consisting of approximately 102.43+/- acres as more particularly shown on that certain plan entitled Existing Conditions & Topographic Survey Plan of Baynard Stadium prepared by CDA Engineering, Inc., dated October 18, 2016 and attached hereto as Exhibit A and as further described on Exhibit B attached hereto.

(cc) "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.~~

- (dd) "Logos" is defined in Section 18.
- (ee) "Naming Rights" is defined in Section 18.
- (ff) "Offer" is defined in Section 17.
- (gg) "Offer Notice" is defined in Section 17.
- (hh) "Option" is defined in Section 17.
- (ii) "Permitted Use" means the construction, financing, operation, 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, and commercial activities serving a public purpose, all uses ancillary thereto (which may include, at Tenant's option, all or any number of the following: solar panels, ancillary merchandise sales, or live entertainment) and for any other use permitted by law subject to the terms of this Lease. A Permitted Use shall not include any Prohibited Use.
- (jj) "Personal Property" is defined in Section 5.
- (kk) "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.
- (ll) "Primary Logo" is defined in Section 18.
- (mm) "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 or may tend to injure or detract from the moral character or image of the Leased Premises within the community. 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.
- (nn) "Purchase Price" is defined in Section 17.
- (oo) "Preexisting Users" means Salesianum School, Howard High School of Technology, Delaware Military Academy, St. Elizabeth High School, Charter School of Wilmington, City of Wilmington, Catholic Youth Ministry, Knights of Columbus, Padua Academy, St. Ann School, New Castle County Cross Country Track (N5CTA), Kuumba Academy Charter School, Second Chance Track Club, West End Neighborhood House, St. Mary Magdalen School, Friere Charter School and other organizations that have had a consistent and meaningful use of the Leased Premises over the past five (5) years.

- (pp) "Preexisting User Agreement" is defined in Section 4.
- (qq) "Recorder's Office" means the Office of the Recorder of Deeds in and for New Castle County, Delaware.
- (rr) "Renewal Term" is defined in Section 2.
- (ss) "Renewal Term Commencement Date" is defined in Section 2.
- (tt) "Renewal Term Expiration Date" is defined in Section 2.
- (uu) "Rent" means Ten Dollars (\$10).
- (vv) "Respondent" is defined in Section 32.
- (ww) "Sale Property" is defined in Section 17.
- (xx) "Secondary Logo" is defined in Section 18.
- (yy) "Signage" is defined in Section 18.
- (zz) "Stadium Name" is defined in Section 18.
- (aaa) "Subdivision Plan" is defined in Section 24.
- (bbb) "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) Tenant can use the Athletic Facility, for their intended purposes without any further material work or interference to Tenant in conducting its ordinary activities; and
 - (ii) A permanent or temporary certificate of occupancy for the use and occupancy of the Athletic Facility shall have been issued.
- (ccc) "Taxes" is defined in Section 6.
- (ddd) "Tenant" means Salesianum School Inc., a Delaware corporation, as the same may from time to time be constituted.
- (eee) "Term" is defined in Section 2.
- (fff) "Transfer" means any sale, exchange, assignment, pledge, transfer, gift, hypothecation, mortgage or encumbrance. Notwithstanding the foregoing, the term Transfer expressly excludes: ~~(i) grants of easements, leases, licenses, concession agreements, Use~~

Agreements, use rights of 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.

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

(hhh) "Utility Expenses" is defined in Section 6.

(iii) "Values" is defined in Section 33.

(jjj) "Value Component" is defined in Section 16.

2. Term; Contingency.

(a) The term of this Lease (the "Term") shall commence on the Commencement Date and shall expire on the fiftieth (50th) anniversary (the "Expiration Date") of the Commencement Date.

(b) Provided that, at the Expiration Date, no Event of Default exists after any applicable notice and cure periods, this Lease shall automatically renew without any action by Tenant (the "Renewal Term") on the day immediately succeeding the Expiration Date (the "Renewal Term Commencement Date"). The Renewal Term shall expire on the fiftieth (50th) anniversary of the Renewal Term Commencement Date (the "Renewal Term Expiration Date"). The terms and conditions of the Renewal Term shall be upon the same terms and conditions as are in effect hereunder immediately preceding the commencement of such Renewal Term.

(c) Notwithstanding the foregoing, the parties contemplate that the Division shall continue to manage and operate the Leased Premises during periods of Alterations and Improvements at the Leased Premises 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 Alterations and Improvements. Landlord shall cooperate with Tenant in 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 as well as cooperating in any efforts employed by Tenant to seek relief from the requirements of applicable Laws, tax obligations or permitting requirements and, in connection therewith, 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 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 arrears, commencing on the Commencement Date. Thereafter annual payments of the Rent shall be paid in arrears 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 Preexisting Parties and the General Public.

(a) Landlord and Tenant hereby acknowledge and agree that on and from the date hereof, the Preexisting Users shall have the right, opportunity and privilege to continue to have use and access to the Athletic Facility for athletic endeavors consistent in an uninterrupted and meaningful manner, substantially consistent with such access and use rights the Preexisting Users have of the Leased Premises as of the date hereof. The rights of the Preexisting Users shall be subject, however, in all respects, to the terms and conditions of a Preexisting User Agreement entered into between Tenant and each Preexisting User, the terms and conditions of which shall be subject to the reasonable review and approval of the Landlord's Department of Parks and Recreation, which consent shall not be unreasonably withheld, conditioned or delayed (the "Preexisting User Agreement"). If said Preexisting User Agreements are determined to require City Council approval for their implementation, such approval is hereby authorized and no further action by City Council shall be required. To the extent that Preexisting Users currently use Baynard Stadium as of the date hereof, Landlord agrees such obligations may continue, provided that Tenant shall have the right, at its election, to modify the amount that Preexisting Users may be charged pursuant to a Use Agreement, which shall be subject to the reasonable review and approval of the Landlord's Department of Parks and Recreation, which shall not be unreasonably withheld, conditioned or delayed, so long as such modification is nominal and modest in nature and is not revised more than once per year.

(b) Subject to the terms hereof, Tenant hereby acknowledges that the general public's use of the track for general, recreational use shall be permitted hereunder. Such use shall be permitted during normal hours of operation of the Athletic Facility as and when 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. The use of the track by the general public as set forth herein shall be in its "as is" in its present condition. The general public's use of the track shall not interfere with the construction of any Improvements or Alterations, with the use of the Leased Premises by Tenant or by Tenant's assignees, employees, subtenants, or invitees, or with the use of the Leased Premises by any user of the Leased Premises under a User Agreement or Preexisting User Agreement. The general public shall use the track at their own risk, and nothing contained herein shall be construed to allow the general public use of any other Improvement on the Leased Premises or any other access to the Leased Premises (except such access that is necessary for ingress and egress to the track). The rights hereunder are subordinate, under and subject to matters of public record and all applicable laws, ordinances and regulations.

5. Improvements and Alterations.

(a) Tenant intends to construct, develop, finance, reconstruct, alter or otherwise improve the Leased Premises for the Permitted Use and all related facilities and other Improvements in accordance with the Plans and Specifications. Tenant shall be responsible for the payment of all costs of its construction of the Athletic Facility and Improvements. Tenant shall have the right to make additional alterations, additions, demolitions, improvements, replacements or changes (collectively, "Alterations") to the Leased Premises following the initial construction of the Improvements, at Tenant's expense, so long as Landlord has reviewed and provided consent for said Alterations, which consent 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.

(b) Landlord and Tenant shall cooperate in good faith to determine the feasibility of the installation and construction at the Leased Premises of the Division Improvements and in connection therewith the parties shall enter into such agreements with one another or with the Division as may be necessary and mutually acceptable to the parties to set forth the terms and conditions for the construction and payment of all costs of construction of the Division Improvements. Landlord agrees to cooperate with Tenant in taking all actions as are reasonably necessary to obtain any necessary approvals for the Division Improvements. If the construction of the Division Improvements are determined to require City Council approval, such approval is hereby authorized and no further action by City Council shall be required.

(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 reversionary or other estate or 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 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 is Renewal Term) or date of sooner termination of the Term of this Lease, title to the Athletic Facility 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 alone shall be entitled to deduct all depreciation on Tenant's income tax returns for the Athletic Facility 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, paneling, partitions, lighting, 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 (collectively, "Personal Property"), 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.

(g) The Contemplated Improvements shall be Substantially Completed within five (5) years of the date hereof, subject to Force Majeure as described in Section 31.

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 exempt from real estate taxes as the fee interest is owned by an entity exempt from the assessments of real estate taxes; and Landlord agrees to cooperate with Tenant in taking all actions as are reasonably necessary to obtain any necessary approvals for the exemption from, or the reduction and/or reassessment of, Taxes of the Leased Premises.

(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 water, sewer, steam, heat, gas, hot water, electricity, light and power, and other service or services furnished to the Leased Premises (hereinafter referred to as "Utility Expenses").

(c) All Taxes or Utility Expenses which shall become payable with respect to the calendar or fiscal year, as the case may be, in which the Term of this Lease terminates, shall be apportioned pro-rata between Landlord and Tenant in accordance with the respective portions of such year during which such Lease Term shall be in effect.

(d) All Taxes shall be billed to Tenant or to such other persons as Tenant may elect. Tenant shall have the right to contest the amount or the validity of all Taxes by appropriate proceedings permitted by Law or in such other manner as Tenant may deem suitable. Landlord agrees to execute and deliver any appropriate applications or other instruments which may be necessary or desirable to permit Tenant to contest the validity or obligation of any Taxes and agrees to fully cooperate with Tenant in such contest.

(e) Nothing in this Lease shall require or be construed to require Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, income, gross receipt or profit taxes that are or may be imposed upon Landlord, its successors or assigns.

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 make all restorations and Improvements necessary to maintain the Leased Premises in that condition. All such maintenance restorations, Improvements and repairs shall be done in a good and workmanlike manner. Notwithstanding

the foregoing, Tenant shall not be responsible for any of the foregoing maintenance obligations that have been delegated to the Division by separate agreement.

(b) Intentionally omitted.

(c) 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 and county governments and other governmental authorities having jurisdiction over the Leased Premises and governing Tenant's use and occupancy of the Leased Premises.

(d) 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 of the nature referred to in paragraph (c) 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 and agrees to fully cooperate with Tenant in such contest.

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 percent (80%) of the full replacement cost of such Athletic Facility and improvements, and in any event, not less than an amount necessary to prevent the application of any requirement of co-insurance in the event of any insured casualty.

(b) Insurance. Tenant, at its sole cost and expense, shall at all times during the Term of this Lease, provide and maintain, for the mutual benefit and protection of Landlord and Tenant, 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

Tenant and any Vendor shall purchase and keep in force and effect workers' compensation insurance that will provide the applicable statutory benefits for all of the tenant and vendor's employees who may or do suffer covered injuries or diseases while involved in the performance of their work for the Tenant or Vendor; and, even if permitted to do so by statute, Tenant 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.

Tenant and any Vendor 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

Tenant and any Vendor shall purchase: (1) motor vehicle liability coverage, for owned, hired and non-owned vehicles, covering any and all claims for bodily injury and property damage that arise out of Vendor's performance of work for the City of Wilmington, (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 Vendor, with defense provided in addition to and separate from policy limits for indemnities of the named insured, (b) coverage for Independent Contractor Liability providing coverage in connection with such portion of the Services being subcontracted prior to any of the Services being subcontracted, in accordance with the terms and conditions of this Agreement, (c) coverage for Broad Form Property Damage Liability, (d) coverage for Personal Injury and Advertisers Liability, (e) products and completed operations. (e) the City of Wilmington shall be named as an "Additional Insured" on the CGL coverage.

(iii) Professional Liability Insurance

Each vendor hired by Lessee shall provide professional liability insurance with limits of at least \$1,000,000 per occurrence and \$5,000,000 annual aggregate.

(iv) General Requirements for all Insurance

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

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.

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.

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.

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.

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; and any similar insurance in the name of Tenant or Vendor shall be excess and non-contributing.

Deductibles for insurance provided under this contract shall not exceed five percent (5%) of policy limits.

Tenant and any vendor shall provide the City with a Certificate 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 policy referred to in this paragraph 7 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(e) 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 cooperate fully with Tenant in order to obtain the largest possible recovery under any insurance policy carried by Tenant and shall execute any and all consents or other documents and take all other actions necessary in order to effectuate the same and to cause such proceeds to be paid in accordance with the provisions of this Lease. 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) Landlord shall not be liable for and Tenant will indemnify and hold Landlord harmless from any loss, liability, costs and expenses, including reasonable attorneys' fees, arising out of any claim of injury or damage on or about the Leased Premises caused by the negligence or willful misconduct of or breach of this Lease by Tenant, its employees, subtenants or invitees, or arising out of Tenant's use of the Leased Premises, unless such claim for injury or damage is based in whole or in part upon the negligence or willful misconduct of or a breach of this Lease by Landlord, its agents, employees, contractors or invitees. 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 for any 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, unless such damage results from the negligence or willful misconduct of or breach of this Lease by Landlord, its agents, employees, contractors or invitees. Landlord shall not be liable or responsible for any loss, damage or injury to any property or person occasioned by theft, fire, court order, 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, except in each case if such loss, damage or injury to property or person results from the negligence or willful misconduct of or a breach of this Lease by Landlord or its agents, employees, contractors or invitees.

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 prior 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 organization related to the Oblates of St. Francis de Sales and OSFS Service Corporation, or 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 thirty (30) 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 the rights of Preexisting Users, Landlord acknowledges and agrees that Tenant may enter into license, use, sublease, lease and occupancy agreements (the "Use Agreements") for the use of all or any part of the Athletic Facility located at the Leased Premises, including, without limitation for uses that are harmonious, tangential or supportive of the Permitted Use, both commercial and retail, under such terms and conditions as Tenant may desire, provided consideration payable under such Use Agreements are at prevailing market rates. 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 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 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 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 address of the holder of any Leasehold Mortgage (a "Leasehold Mortgagee"). Landlord agrees that so long as any Leasehold Mortgage shall remain unsatisfied of record 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 the prior consent in writing of the Leasehold Mortgagees.

(b) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Mortgagees. Each Leasehold Mortgagee shall thereupon have the same opportunity as Tenant, after service of such notice upon it, to remedy or cause to be remedied, the defaults complained of, and Landlord shall accept such performance by any Leasehold Mortgagee as if the same had been done by Tenant. No notice by Landlord to Tenant hereunder shall be deemed to have been duly given unless and until a copy thereof has been so served on the Leasehold Mortgagees.

(c) If any Event of Default shall occur and be continuing which, pursuant to any provision in this Lease, entitles Landlord to terminate this Lease, and if before the expiration of thirty (30) days from the date of service of notice of termination upon the Leasehold Mortgagees, a Leasehold Mortgagee shall have notified Landlord of its desire to nullify such notice and shall have paid Landlord all rent and other payments then in default, and shall have complied or shall commence to comply with all of the other requirements of this Lease that are then in default and shall prosecute the same to completion with reasonable diligence, then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect.

(d) If Landlord shall elect to terminate this Lease by reason of any ongoing Event of Default on the part of Tenant, each Leasehold Mortgagee shall not only have the right to nullify any notice of termination by curing such default, as aforesaid, but shall also

have the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than six (6) months, provided that such Leasehold Mortgagee shall cure or cause to be cured any then existing monetary defaults and meanwhile pay the Rent, and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed thereafter, and provided further that such Leasehold Mortgagees shall forthwith take steps to acquire or sell Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or otherwise and shall prosecute the same to completion with all due diligence. If at the end of the said six (6) month period, the Leasehold Mortgagee shall be actively engaged in steps to acquire or sell Tenant's interest herein, the time for the Leasehold Mortgagee to comply with the provisions of this Section 11 shall be extended for such period as shall be reasonably necessary to complete such steps with reasonable diligence and continuity. Any ongoing and continuing Event of Default by Tenant not reasonably susceptible of being cured by a Leasehold Mortgagee or by the occurrence of any such foreclosure or other proceeding shall be deemed to have been waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Tenant's interest in this Lease, except that any of such Events of Default which are reasonably susceptible of being cured after such completion and acquisition shall then be cured with reasonable diligence. A Leasehold Mortgagee, or its designee, or other purchaser in foreclosure proceedings, may become the legal owner and holder of Tenant's interest in and under this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure, and must comply with all the terms herein.

(e) Landlord agrees that the names of the Leasehold Mortgagees 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.

(f) Nothing herein contained shall require any Leasehold Mortgagee or its nominee to cure any default of Tenant except as expressly provided in Sections 11(d) and (i) hereof.

(g) Landlord agrees, promptly after being requested to do so, to execute, acknowledge and deliver any agreements modifying this Lease requested by a Leasehold Mortgagee, provided that such modification does not decrease Tenant's obligations, decrease Landlord's rights, increase Landlord's obligations pursuant to this Lease, or expand or alter the scope of permitted uses under this Lease of Tenant or of Leasehold Mortgage should Leasehold Mortgagee foreclose on Tenant's interests hereunder.

(h) Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee an agreement, prepared at the sole cost and expense of Tenant and in form satisfactory to such Leasehold Mortgagee, among Landlord, Tenant and Leasehold Mortgagee, agreeing to all of the provisions of this Section 11.

(i) In the event of the termination of this Lease prior to the expiration of the Term, except by condemnation or eminent domain (under Section 16) or pursuant to Section 17 hereof, Landlord shall serve upon each Leasehold Mortgagee written notice that this Lease has been terminated together with a statement of any and all sums which would at the time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. In the event Landlord shall have given any such notice of its intention to terminate or the termination of this Lease, or if this Lease shall be rejected, disaffirmed, or otherwise terminated in connection with any bankruptcy, reorganization, or insolvency proceeding of Tenant, Landlord shall, upon written request of a Leasehold Mortgagee made within thirty (30) days of receiving such notice of intention to terminate or of such rejection, disaffirmance or termination, promptly execute and deliver a new lease of the Leased Premises to such Leasehold Mortgagee or its designee; provided, however, that at or prior to the execution and delivery of said new lease, the Leasehold Mortgagee shall have paid, or caused to be paid, all sums due and payable by Tenant hereunder to the date of commencement of the term of the new lease, together with Landlord's reasonable expenses incurred in terminating this Lease and preparing, executing, and delivering the new lease, and shall have cured all existing monetary defaults hereunder and all other defaults hereunder which are reasonably within the power of the Leasehold Mortgagee to perform (any defaults not reasonably within the power of the Leasehold Mortgagee to perform shall be deemed waived as to the Leasehold Mortgagee, its designee, and their respective successors and assigns). Such new lease shall be for the remainder of the Term hereof subsequent to the date of such termination of this Lease, shall have the same priority as this Lease and shall be upon the terms and conditions herein contained. Upon the execution of such new lease, Landlord shall allow to the tenant named therein and such tenant shall be entitled to an adjustment in an amount equal to the net income derived by Landlord from the Leased Premises during the period from the date of termination of this Lease to the date of execution of such new lease. If the holders of more than one Leasehold Mortgagee shall make written requests upon Landlord for a new lease in accordance with the provisions of this Section, the new lease shall be entered into pursuant to the request of the Leasehold Mortgagee whose Leasehold Mortgage shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a Leasehold Mortgagee junior in lien shall be, and be deemed to be, void and of no force or effect.

(j) If any Leasehold Mortgagee or its designee shall either become the owner of the interest of Tenant hereunder by the exercise of any remedy provided for in the Leasehold Mortgage, or shall enter into a new lease with Landlord as provided in subsection (i) above, such Leasehold Mortgagee or its designee shall have the right to assign and sublease such interest as provided in Section 11(n) hereof.

(k) No Leasehold Mortgagee shall be personally liable for the performance or observance of any covenants or conditions to be performed or observed by Tenant unless and until such Leasehold Mortgagee becomes the owner of Tenant's interest hereunder upon the exercise of any remedy provided for in the Leasehold Mortgage or enters into a new lease with Landlord pursuant to subsection (i) above. Thereafter, such Leasehold Mortgagee shall be liable for the performance and observance of such covenants and conditions

only so long as the Leasehold Mortgagee owns such interest or is the tenant under such a new lease.

(l) There shall be no merger of the leasehold estate created by the Lease with the fee estate in the Leased Premises by reason of the fact that the same person may own or hold (i) the leasehold estate created by the Lease or any interest in such leasehold estate, and (ii) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in the leasehold estate created by the Lease and the fee estate in the Leased Premises shall join in and record a written instrument effecting such merger.

(m) Landlord covenants and warrants that during the Term of this Lease, Landlord shall subordinate its fee simple interest in the Leased Premises to any such Leasehold Mortgage. Landlord shall not place any lien upon the Leased Premises.

(n) Provided that no Event of Default on the part of Tenant shall have occurred and be continuing, a Leasehold Mortgagee, upon becoming Tenant as provided above, shall have the right, without the prior consent of Landlord, (i) to sublet all or part of the Leased Premises, including the Improvements, at any time and from time to time, provided that such subleases are on commercially reasonable terms and in accordance with the permitted uses allowable under this Lease; and (ii) to assign Tenant's interest in this Lease and the Leased Premises.

(o) Each Leasehold Mortgagee shall be given notice of any arbitration proceedings by the parties hereto, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that a Leasehold Mortgagee shall not elect to intervene or become a party to such proceedings, such Leasehold Mortgagee shall receive notice of and a copy of any award or decision made in said arbitration proceedings.

12. Performance by Assignee or Sublessee. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any assignee or sublessee of Tenant 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 without hindrance or molestation by anyone.

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 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 sixty (60) days after Tenant's receipt of written notice thereof from Landlord to Tenant, but subject however to Tenant's right to contest to the extent provided in this Lease; or

(ii) 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, other than those referred to in subparagraph (i) above, 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 if Tenant shall not, in good faith, have promptly commenced to remedy such default and shall be diligently and continuously proceeding therewith, but subject however to Tenant's right to contest to the extent provided in this Lease; or

(iii) 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

(iv) 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, as its sole and exclusive remedies, will be entitled (i) if the Default involves the payment of Rent or any other sum, to terminate this Lease upon sixty (60) days' prior written notice to Tenant, provided that any such notice of termination will be void and of no effect if Tenant pays all amounts due prior to the last day of such 60-day period, and (ii) if the Event of Default does not involve the payment of money, to file an action for specific performance of the unperformed obligation forming the basis of the Event of Default.

(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 to share in the net proceeds of any award upon a taking, shall be as follows:

(i) Landlord shall be entitled to receive that portion of the award as shall represent compensation for the fair market value of the Leased Premises, considered as vacant and unimproved land, such value being hereinafter referred to as the "Land Value;" and

(ii) Tenant shall be entitled to receive the balance of the award, but, subject to the provision of Section 16(d), not less than the fair market value of the Improvements (the "Improvements Value").

(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 paid to Tenant after deducting the Land Value of that portion of the Leased Premises which was taken, and the Land Value shall be turned over to Landlord.

(d) The Land Value and the Improvements Value (Land Value and Improvements Value also being referred to as a "Value Component") shall be as determined by the appraisal that is the basis for the condemnation award or, if not reasonably determinable on that basis, will be established by appraisal pursuant to the procedures established in Section 33 hereof. If the total award is less than the sum of the Land Value and Improvements Value, each party shall recover that percentage of the total award that is based on the ratio, expressed as a percentage, of its Value Component to the total of the Value Components.

17. Tenant's Option. Landlord hereby grants to Tenant an exclusive, irrevocable option to purchase the Leased Premises during the Term of this Lease (the "Option") under the following terms and conditions set forth below. Notwithstanding any other provision

of this Agreement, Tenant may assign the Option to any affiliate of Tenant independent of any assignment of this Agreement or to any lenders as security. In the event Tenant elects to exercise the Option, Tenant shall deliver notice to Landlord of such election (the "Exercise Notice") in the form attached hereto as Exhibit H at least ninety (90) days prior to the Closing Date. On the Closing Date or on such other date Landlord and Tenant may mutually agree, the Leased Premises shall be conveyed by special warranty deed, free and clear of any liens or other encumbrances, but subject to any easements, restrictions, and other agreements of record in the Recorder of Deeds in and for New Castle County, Delaware. The Leased Premises shall be conveyed to Tenant on the Closing Date, or such other date Landlord and Tenant may mutually agree, in its then condition, "AS IS," with all faults and without any indemnities of any nature, or warranties or representations on the part of Landlord, its employees or agents with respect to condition, permitted uses or any other matter pertaining to the Leased Premises. Tenant shall be responsible for paying for all recording fees, half of transfer taxes (if any), title insurance and other costs and expenses typically paid by a purchaser in transactions of this type in Wilmington, Delaware. Landlord shall be responsible for half of transfer taxes (if any) and other costs and expenses typically paid by a seller in transactions of this type in Wilmington, Delaware. All property taxes, utilities, water rents, sewer charges and other expenses typically prorated, shall be apportioned on a per diem basis between Landlord and Tenant as of the Closing Date.

(a) Tenant's right to exercise the Option will vest when Landlord offers or desires to extend an offer to a third party, when Landlord contemplates a transfer of the Leased Premises to a non-affiliated governmental or non-profit agency or if Landlord receives a bona-fide offer to purchase for all or part of the Leased Premises (the "Sale Property") acceptable to the Landlord (each of the foregoing, collectively an "Offer"). Landlord shall promptly, and prior to acceptance or extension of such Offer, provide Tenant with a written notice of such Offer (the "Offer Notice"). The term "offer" shall include all counter offers. Following delivery of the Offer Notice, Tenant shall have a period of thirty (30) days to give written notice (the "Election Notice") to Landlord of Tenant's election either (i) to purchase the Sale Property subject to the terms and conditions as set forth in this Lease, or (ii) to waive the right to purchase the Sale Property. Failure of Tenant to give an Election Notice within said 30-day period shall be deemed to be a waiver by Tenant of the right to purchase the Sale Property. In the event Tenant elects to purchase the Sale Property, the Offer Notice, the Election Notice and this Lease, including without limitation the terms and conditions contained in in this Section 17, together with all additional terms and conditions mutually acceptable to the parties, shall constitute a contract for the sale and purchase of the Sale Property. In the event Tenant elects to waive its right to purchase the Sale Property or is deemed to have waived such right, Landlord may proceed to sell pursuant to the terms and conditions of such Offer and the Tenant's Option shall terminate upon the consummation of such sale with respect to the Sale Property but shall continue if the Sale Property does not constitute all of Leased Premises subject to this Lease.

(b) The purchase price shall be established based on the Land Value valuation method set forth in Sections 16 and Section 33 hereof (the "Purchase Price");

(c) The Option will expire without notice and be of no further effect if not exercised on or before the expiration of the term of this Lease;

(d) Tenant has paid ten and 00/100 dollars as non-refundable consideration which shall be applied toward the Purchase Price if the Tenant exercises the Option;

(e) If necessary, Tenant shall obtain, at its sole cost and expense, a final, unappealable and unappealed subdivision of the Leased Premises from remaining balance of Brandywine Park, subject to the regulations promulgated by the City for subdivision approval.

Landlord agrees that the Memorandum of Lease will reflect the Option granted to Tenant.

18. Naming, Sponsorship and Advertising.

(a) During the Term of this Agreement, Landlord hereby grants to Tenant the exclusive license to name all or any part of the Leased Premises (the "Stadium Name"), including without limitation, re-naming that certain drive shown on Exhibit A designated thereon as "Stadium Drive" pursuant to the terms hereunder (the "Naming Rights"). Subject to the foregoing, Tenant shall have the unrestricted right and privileged to modify or add all other naming opportunities on the Leased Premises at its own discretion for any purpose, including, but not limited to, fundraising purposes. If said Naming Rights are determined to require City Council approval for their implementation, such approval is hereby authorized and no further action by City Council shall be required.

(i) If Tenant shall exercise the rights contained in Paragraph 18(a) above and renames Baynard Stadium, then Tenant agrees that the athletic playing field located at the Leased Premises shall be renamed either 'Samuel Baynard Field' or 'Baynard Field'. By way of example, if the Tenant elects to rename Baynard Stadium to John Doe Stadium, then the athletic field therein shall be known as either 'Samuel Baynard Field at John Doe Stadium' or 'Baynard Field at John Doe Stadium'.

(ii) If Tenant shall exercise the rights contained in Paragraph 18(a) above and renames any part of the Leased Premises other than Baynard Stadium and the athletic field therein, Tenant agrees to allow Landlord the ability to offer a proposed name and financial compensation for the acquisition of naming rights for such portion of the Leased Premises that Tenant intends on renaming.

(b) During the Term of this Agreement, 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 Agreement (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 the replacement City Street Signs under this Agreement. 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 related government agency (the "Highway and Public Transportation Signs") to identify the Athletic Facility by the Stadium Name and Logo. To the extent the cost to purchase and/or replace the Highway Signs in accordance with this provision is not borne by the controlling body thereof, the initial cost of purchasing the replacement Highway Signs under this Agreement will be paid for by Tenant.

19. 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, 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.

20. 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.

21. 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.

22. 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. To the extent permitted by applicable law, the parties hereto hereby waive any law that renders any provision hereof prohibited or unenforceable in any respect.

23. 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.

24. 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; provided, however, that the Tenant shall have the right to seek, file and record a subdivision plan of the Leased Premises from the remainder of the Landlord's retained lands (a "Subdivision Plan"). Any Subdivision Plan may be amended, resubdivided and enlarged from time to time by Tenant in accordance with applicable subdivision ordinances and regulations, and such amendments, resubdivisions and enlargements shall not be deemed to be an amendment of Lease requiring Landlord's approval, and Tenant may execute a record plan without the joinder of Landlord if such record plan does not materially affect the obligations or rights of Landlord under this Lease. In the event the City of Wilmington or any other governmental agency or authority requires the consent or approval of Landlord other than or in addition to Tenant (as the applicant), Landlord shall furnish such consent or approval and execute any plans, applications or other documents necessary for that purpose, provided the same shall be at no cost to Landlord; and if Landlord fails to do so, Tenant shall be authorized to do so hereby as the attorney-in-fact of Landlord, which power shall be irrevocable and coupled with an interest.

25. 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.

26. 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, their respective heirs, successors, administrators and assigns.

27. 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.

28. Authority. Each party warrants that it has full power, authority and legal right to execute and deliver this Lease, and to keep and observe all of the terms and provisions of this Lease on such party's part to be observed and performed. Each party warrants that this Lease is its valid and enforceable obligation.

29. 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 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.

30. 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.

31. 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, 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.

32. Arbitration.

(a) All disputes among or between the parties under this Lease, except for Excluded Disputes (as defined hereafter), shall be resolved by arbitration under the expedited procedures of the Delaware Rapid Arbitration Act, 10 Del. C. § 5801, et seq. (the "DRAA"). Each party represents and warrants that it is not a "consumer" as such term is defined in 6 Del. C. § 2731. By agreeing to this Section 32, (i) each party hereby waives, and acknowledges and agrees that it shall be deemed to have waived, any objection to the application of the procedures set forth in the DRAA, (ii) consents to the procedures set forth in the DRAA, and (iii) acknowledges and agrees that it has chosen freely to waive the matters set forth in subsections (b) and (c) of Section 5803 of the DRAA. In connection therewith, each party understands and agrees that it shall raise no objection to the submission of the dispute to Arbitration in accordance with this Section 32 and that it waives any right to lay claim to jurisdiction in any venue and any and all rights to have the Dispute decided by a jury.

(b) The Arbitration shall be conducted in accordance with the Rules; provided that the parties may agree to depart from the Rules by (i) adopting new or different rules to govern the Arbitration or (ii) modifying or rejecting the application of certain of the Rules. To be effective, any departure from the Rules shall require the consent of the Arbitrator and shall be in writing and signed by an authorized representative of each such party.

(c) The Arbitration shall take place in Wilmington, Delaware, or such other location as the parties and the Arbitrator may agree.

(d) The Arbitration shall be presided over by one arbitrator (the "Arbitrator") as selected by the parties. The parties shall promptly meet and confer to identify a mutually agreeable Arbitrator who shall have professional experience similar and commensurate with the nature of the dispute. In the event that the parties are unable to agree upon the identity of the Arbitrator within forty-five (45) days of the commencement of the Arbitration, or the Arbitrator is unable or unwilling to serve, then either party may file a petition with the Court of Chancery pursuant to Section 5805 of the DRAA.

(e) No discovery shall be taken in support of the Arbitration, although each side shall exchange such documents and other information as may be required by this Lease. In addition, each side shall exchange such additional information as may be directed by the Arbitrator, either on his own motion or on application of any party for good cause shown.

(f) The Arbitrator shall conduct the hearing, administer oaths, and make such rulings as are appropriate to the conduct of the proceedings. The Arbitrator shall allow each of the parties an opportunity to present evidence and witnesses and to cross examine witnesses presented by the opposing party. In no event, however, shall witnesses other than employees or experts retained or employed by the parties, or former employees of the parties, be called to testify at the arbitration.

(g) The arbitral award (the "Award") shall (i) be rendered within 120 days after the Arbitrator's acceptance of his or her appointment; (ii) be delivered in writing; (iii) be the sole and exclusive final and binding remedy with respect to the dispute between and among the parties without the possibility of challenge or appeal, which are hereby waived; and (iv) be accompanied by a form of judgment. The Award shall be deemed an award of the United States, the relationship between the parties shall be deemed commercial in nature, and any dispute arbitrated pursuant to this Section 32 shall be deemed commercial. The Arbitrator shall have the authority to grant any equitable or legal remedies, including, without limitation, entering preliminary or permanent injunctive relief; provided, however, that the Arbitrator shall not have the authority to award (and the parties waive the right to seek an award of) punitive or exemplary damages or any other damages or relief that is inconsistent with the limitations on damages provided for under this Agreement.

(h) The parties hereto agree that, subject to any non-waivable disclosure obligations under federal law, the Arbitration, and all matters relating thereto or arising thereunder, including, without limitation, the existence of the dispute, the Arbitration and all of its elements (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any decision of the Arbitrator or Award), shall be kept strictly confidential, and each party hereby agrees that such information shall not be disclosed beyond: (i) the Arbitrator and necessary support personnel; (ii) the participants in the Arbitration; (iii) those assisting the parties in the preparation or presentation of the Arbitration; and (iv) other employees or agents of the parties with a need to know such information. In all events, the parties participating in the Arbitration proceedings shall treat information pertaining to the Arbitration with the same care that they treat their most valuable proprietary secrets. In the event that federal law imposes upon either party an obligation to disclose the fact of the Arbitration or the nature of the claims or counterclaims asserted, such party shall disclose no more than the minimum information required by law after first consulting with and attempting in good faith to reach agreement with the opposing party regarding the scope and content of any such required disclosure.

(i) Each party hereto shall bear its own legal fees and costs in connection with the Arbitration; provided, however, that each such party shall pay one-half of any filing fees, fees and expenses of the Arbitrator or other similar costs incurred by the parties in connection with the prosecution of the Arbitration.

(j) Notwithstanding any provisions of this Lease, or any statute protecting the confidentiality of the Arbitration and proceedings taken in connection therewith, in the event that either party in the Arbitration (the "Respondent") is required to defend himself, herself or itself in response to later proceedings instituted by the other in any court, relating to matters decided in the Arbitration, such party shall be relieved of any obligation to hold confidential the Arbitration and its proceedings in order to submit, confidentially if and to the extent possible, sufficient information to such court to allow it to determine whether the doctrines of res judicata, collateral estoppel, bar by judgment, or other, similar doctrines apply to such subsequent proceedings.

(k) Notwithstanding anything to the contrary set forth in this Section 32, if any amendment to the DRAA is enacted after the date of this Lease, and such amendment would render any provision of this Section 32 unenforceable thereunder, such provision shall be excluded and the remaining provisions of this Section 32 shall be enforced to the fullest extent permitted by law.

33. Appraisal. In the event the parties are unable to agree upon the Value Components as provided in this Lease, each party shall appoint an M.A.I. appraiser licensed to do business in the State and having at least ten (10) years of experience appraising commercial properties. Each appraiser so selected shall furnish the parties with a written appraisal within forty-five (45) days of its selection, setting forth its determination of the Value Components under the terms of Section 16 as of the date the appraisal procedure is initiated (the "Values"). In the event that the greater of the two appraisals is within five percent (5%) of the lesser of the two appraisals, the average of the two appraisals shall be treated as the Values. In the event that the greater of the two appraisals is not within five percent (5%) of the lesser of the two appraisals, the parties shall again attempt to agree upon the Values. In the event the parties are unable to mutually agree upon the Values within fifteen (15) days of the date the two appraisals are received, the appraisers appointed by the parties shall select one (1) disinterested M.A.I. appraiser licensed to do business in the State and having at least ten (10) years of experience appraising commercial properties, and such disinterested appraiser shall furnish the parties with a written appraisal within forty-five (45) days of its selection, setting forth its determination of the Values under the terms of Section 16 as of the date the appraisal procedure is initiated. In the event that the appraisal of the disinterested appraiser is (a) within five percent (5%) of only one of the two previous appraisals, the average of the disinterested appraiser's appraisal and the appraisal that is within five percent (5%) shall be treated as the Values or (b) within five percent (5%) of both of the two previous appraisals, the average of the three appraisals shall be treated as the Values. In the event that the appraisal of the disinterested appraiser is not within five percent (5%) of either of the two previous appraisals by the appraisers appointed by the parties, the Values shall be determined by arbitration pursuant to the provisions of Section 32. The cost of the appraisal by the appraiser appointed by a party shall be at the expense of such party, and all costs of the third appraiser shall be paid in equal shares by the parties.

34. 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, and no fee shall be charged for such consent or approval. In any event, failure of Landlord or Tenant to notify the other of its consent or approval, or the withholding thereof, within thirty (30) days after request therefor (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. If Landlord or Tenant shall contend that the other party is unreasonable in withholding any such consent or approval, the question shall be decided by mediation in the manner provided in Section 32 hereof. If the mediator or judge shall determine that such other party was unreasonable in withholding any such consent or approval, such consent or approval shall thereupon be deemed ~~to have been given and such other party shall forthwith pay and/or reimburse the first party for~~

all costs incurred by the first party (including the fees and expenses of counsel and witnesses) in connection with such arbitration, and the first party shall be entitled to all other rights and remedies.

35. Limited Liability. Anything in this Lease to the contrary notwithstanding, Landlord agrees that it shall look solely to the estate and property of Tenant for the collection of any judgment (or other judicial process) requiring the payment of money by Tenant in the event of any default or breach by Tenant with respect to any of the terms, covenants and conditions of this Lease to be observed or performed by Tenant, and no other assets of Tenant's members or beneficiaries or their respective members, partners, officers, directors or shareholders shall be subject to levy, execution or other procedures for the satisfaction of Landlord's remedies. Anything in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of Landlord for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed or performed by Landlord, and no other assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies.

36. Lender Required Modifications. In the event any lender of Tenant requires any modifications to this Lease hereafter, the parties agree to make such reasonable modifications as do not materially and adversely affect the rights or obligations of the parties hereto.

37. Computation of Time Periods. All periods of time referred to in this Lease shall include all Saturdays, Sundays and 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 national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or national holiday.

38. Memorandum of Lease; Recordation. Landlord and Tenant agree that this Lease shall not be recorded. A memorandum of this Lease, including, without limitation the provisions of Sections 17, 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. Landlord and Tenant agree that promptly after the Commencement Date, a "Lease Commencement and Expiration Agreement" substantially in the form of Exhibit D shall be executed by each party in order to confirm the Commencement Date and establish the date of the expiration of the Term.

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

Salesianum Revisions 11/3

{signature page follows}

11/3

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

Approved as to form this ____ day of **CITY OF WILMINGTON**
_____, 2016.

City Solicitor

By: _____

Name: _____

Title: _____

Date: _____

SALESIANUM SCHOOL INC.

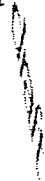
By: _____ (SEAL)

Brendan P. Kennealy

President

APPENDIX OF EXHIBITS

EXHIBIT A	Plan
EXHIBIT B	Legal Description
EXHIBIT C	Memorandum of Lease
EXHIBIT D	Lease Commencement and Expiration Agreement
EXHIBIT E	Exercise Notice



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EXHIBIT A

1

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EXHIBIT B

[LEGAL DESCRIPTION OF LEASED PREMISES]

1

EXHIBIT C - FORM OF MEMORANDUM OF LEASE

Tax Parcel No.: 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 _____, 2016 with respect to a certain Lease ("Lease") between the City of Wilmington, a Municipal Corporation of the State of Delaware, its officials, employees and agents ("Landlord") and Salesianum School, Inc., a Delaware corporation ("Tenant") pursuant to Section 38 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:** One (1) Fifty (50) year automatic renewal term
6. **Purchase Option:** Tenant has an Option to purchase the Leased Premises, as described in in Section 17 of the Lease.

The purpose of this Memorandum of Lease is to give record notice of the Lease and of the rights created thereby, including the Option, 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.

Salesianum Revisions 11/3

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:

My commission expires:

[Notary Seal]

STATE OF DELAWARE

) SS.

COUNTY OF NEW CASTLE

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

Notary Public

Name:

My commission expires:

[Notary Seal]

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EXHIBIT A [TO MEMORANDUM OF LEASE]

[DESCRIPTION OF LEASED PREMISES]

11/3

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

Approved as to form this ____ day of **CITY OF WILMINGTON**
_____, 2016.

City Solicitor

By: _____
Name: _____
Title: _____
Date: _____

WITNESS:

SALESIANUM SCHOOL INC.

By: _____ (SEAL)
Brendan P. Kennealy
President

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]

Salesianum Revisions 11/3

EXHIBIT D

[LEASE COMMENCEMENT AND EXPIRATION AGREEMENT TO BE ADDED]

EXHIBIT E

[LETTERHEAD OF EXERCISING PARTY]

_____, 20[]

The City of Wilmington
800 French Street
Wilmington, Delaware 19801

Re: Exercise Notice

Dear Gentlemen:

Reference is made to that certain Lease, dated as of [_____, 20__] (the "Lease"), as amended by an Amendment to Lease dated as of [_____, 20__] (the "Amendment", together with the Lease, collectively the "Agreement"), between The City of Wilmington ("Landlord"), having an address of 800 French Street, Wilmington, Delaware 19801 and Salesianum School Inc., a Delaware corporation ("Tenant") having an address of 1801 North Broom Street, Wilmington, Delaware 19802. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Agreement. This letter is intended to serve as Tenant's Exercise Notice in accordance with the Agreement. Tenant hereby advises you that it desires to exercise the Option to purchase the Leased Premises in accordance with the terms and conditions of the Agreement. Closing of the sale of the Leased Premises shall occur on [_____].

Please sign the enclosed copy of this Exercise Notice to acknowledge your agreement with the terms hereof. Should you have any questions, or if the foregoing does not accurately reflect your understanding, please do not hesitate to contact us.

Very truly yours,

CONSENTED TO BY:

The City of Wilmington

By: _____
Name:
Title: