

**BALTIMORE COUNTY PUBLIC SCHOOLS**

**DATE:** June 8, 2004

**TO:** **BOARD OF EDUCATION**

**FROM:** Dr. J. Hairston, Superintendent

**SUBJECT:** **MEMORANDUM OF UNDERSTANDING BETWEEN THE BOARD OF EDUCATION OF BALTIMORE COUNTY AND BALTIMORE COUNTY, MARYLAND**

**ORIGINATOR:** J. Robert Haines, Deputy Superintendent of Business Services

**RESOURCE PERSON(S):** Donald F. Krempel, Ph.D., Executive Director  
Department of Physical Facilities  
Richard H. Cassell, P.E., Administrator  
Office of Engineering and Construction

**RECOMMENDATION**

That the Board of Education approves the Memorandum of Understanding between the Board of Education of Baltimore County and Baltimore County, Maryland

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## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this \_\_\_\_ day of \_\_\_\_\_ 2004, by and between the **BOARD OF EDUCATION OF BALTIMORE COUNTY** (hereinafter referred to as "the Board"), and **BALTIMORE COUNTY, MARYLAND, a body corporate and politic** (hereinafter referred to as "the County")

### RECITALS

WHEREAS, the Board is the fee simple owner of the property known and described as 8301 Lynch Road in Dundalk, Baltimore County, Maryland 21222 that is improved by a building known as the Inverness Elementary School ("the Premises"). The Premises are more particularly shown on the site plan attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the County desires to raze the existing improvements and construct a community center for the use of the citizens of Baltimore County; and

WHEREAS, the parties desire to enter into this Memorandum of Understanding ("MOU") which defines their respective rights, duties, and liabilities relative to the Premises.

NOW, THEREFORE, WITNESSETH in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **1. USE**

1.1 The Board hereby permits the County to raze the existing improvements on the Premises and construct a community center which will provide various activities and services to the citizens of Baltimore County, including, but not limited to, recreational activities. ("the Project").

1.2 The County shall not use or occupy or permit the Premises or any part thereof to be used or occupied, nor do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way (a) violate any of the covenants, agreements, provisions and conditions of this MOU; (b) violate the certificate of occupancy then in force with respect thereto; (c) make it difficult for either the Board or the County to obtain fire or other insurance required hereunder; or (d) will constitute a public or private nuisance.

### **2. TERM**

The Term shall be for Fifty (50) years and shall commence on May 1, 2004 and terminate on April 30, 2054. If the date of such commencement is hereafter advanced or

postponed, then the date to which it is advanced or postponed shall thereafter be the commencement date for all purposes of the provisions of this MOU.

### **3. RENT**

3.1. As Rent for the Premises, the County shall pay unto the Board a Nominal Annual Rent of One Dollar and No Cents (\$1.00).

### **4. QUIET ENJOYMENT**

The Board represents that it has the right and capacity to enter into this MOU. The Board covenants and agrees that upon the County=s paying the Rent and performing and observing all of its obligations, the County may peaceably and quietly have, hold and enjoy the Premises for the Term, without hindrance or molestation by anyone claiming paramount title or claims through the Board subject, however, to the covenants, agreements, terms and conditions and other obligations of this MOU.

### **5. CONSTRUCTION OF IMPROVEMENTS**

5.1. The County shall at its expense construct a community center on the Premises pursuant to a general design for such facility in accordance with construction plans and specifications approved by the Board in its reasonable discretion. The Project shall be of fireproof construction according to the standards and ratings of the local fire insurance rating organization. It shall be constructed in a good and workmanlike manner and in accordance with all requirements of local ordinances, with the rules, regulations and requirements of all departments, boards, bureaus, officials, and authorities having jurisdiction thereof and with the requirements of the foregoing rating organization.

5.3 The County may at any time during the course of construction request that the final plans be modified in such particulars as may be specified by the County, and the Board agrees that it will not unreasonably withhold, delay or condition its consent to such changes.

### **6. ALTERATIONS**

6.1. After completion of the Project, the County may from time to time during the Term make such structural or non-structural changes, alterations, additions, substitutions, or improvements (collectively referred to as AAlterations@) to the Project as the County may reasonably consider necessary and desirable to adapt or equip the Project for the County=s use and occupancy. All such Alterations shall be done at the County=s sole cost and expense and shall be done in a good and workmanlike manner. The County further agrees to indemnify and hold the Board harmless from any claims or liability arising by reason of making such Alterations.

6.2. The County shall make no Alterations to the Project unless the County shall first deliver plans and specifications therefore to the Board and obtain the Board=s prior approval thereof, which shall not be unreasonably withheld, delayed or conditioned.

## **7. INSURANCE**

As a local subdivision of the State of Maryland, the County is self-insured with respect to any and all claims concerning public liability and property damage liability. The amount of its liability coverage is limited by Maryland State Law as codified in Section 5-301 *et seq* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, also known as the "Local Government Tort Claims Act". In no event shall Tenant=s obligation hereunder be greater than that set forth in the Local Government Tort Claims Act, as amended from time to time.

## **8. UTILITIES AND SERVICES**

The County shall, at its sole cost and expense, arrange for the furnishing of all utilities, including gas, electricity, light, heat, steam, power, water and sewer, telephone or other communication services used, necessary for the operation of the Premises, and the County covenants and agrees to pay all charges therefor directly, to the applicable public utility or governmental authority furnishing such service to the Premises, the amounts due for such services as indicated by meters measuring the County=s consumption thereof.

## **9. INDEMNIFICATION**

9.1 Except as hereinafter provided, the County will defend and will indemnify the Board and save it harmless from and against any and all claims, actions, damages, liabilities, and expenses in connection with the loss of life, bodily injury, or damage to property or business arising from, related to, or in connection with the occupancy or use by the County of the Premises or occasioned wholly or in part by any act or omission of the County or its contractors or subcontractors, or its or their agents or employees; provided such indemnification shall not apply to the gross negligence or willful acts of the Board or its contractors or subcontractors, or its or their agents, employees or invitees.

9.2 Notwithstanding the provisions of Section 9.1, the County's liability hereunder shall be limited to the limits of liability contained in Sec. 5-301 *et. seq.* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, also known as the "Local Government Tort Claims Act". In no event shall the County=s obligation hereunder be greater than that set forth in the Local Government Tort Claims Act, as amended from time to time.

**10. COMPLIANCE WITH LAWS**

The County, throughout the Term and at its sole expense, in its use and possession of the Premises shall keep in force all licenses, consents and permits necessary for the lawful use of the Premises. It is understood and agreed that the County, in making any alterations, additions, or repairs, as well as its use of the Premises, shall comply fully with all Federal and State Laws, County ordinances, and regulations of public authority, as well as the requirements of the Association of Fire Underwriters, or similar insurance body, all at the County=s expense.

**11. REPAIRS AND MAINTENANCE**

The County shall, throughout the Term of this MOU, at its own cost, and without any expense to the Board, keep and maintain the Premises and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in good, sanitary and neat order, condition and repair, and except as specifically provided in this MOU, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty or any other cause whatsoever.

**12. DAMAGE AND DESTRUCTION OF IMPROVEMENTS**

In the event of any damage, destruction or partial destruction of any improvement that is a part of the Premises, the County may elect, in its sole discretion, to either (a) terminate this MOU with at least sixty (60) days prior written notice to the Board or (b) at its own expense promptly repair and restore such damage or destruction to the Premises to a condition as good or better than that which existed prior to the damage or destruction.

**13. NOTICES**

Any notice required to be given under this MOU shall be in writing, hand- delivered, sent by recognized receipted courier, or mailed by United States certified mail, return receipt requested, postage prepaid. Notices shall be addressed as follows:

To the Board: Board of Education of Baltimore County  
6901 N. Charles Street  
Towson, MD 21204  
Attn.: \_\_\_\_\_  
Tel.: \_\_\_\_\_

To the County: Office of Budget and Finance  
Court House, 1<sup>st</sup> Floor  
400 Washington Avenue  
Towson, MD 21204  
Attn: George Klunk  
Property Manager  
Tel.: 410.887.8157

With a copy to: Baltimore County Office of Law  
Courthouse, 2<sup>nd</sup> Floor  
400 Washington Avenue  
Towson, MD 21204  
Attn.: Nancy C. West  
Assistant County Attorney  
Tel.: 410.887.4420

#### **14. ASSIGNMENT AND SUBLETTING**

The County agrees that it will not transfer, assign or sublet the Premises, in whole or in part, nor grant any interest, privileges or license whatsoever in connection with this MOU, without the prior written consent of the Board, which will not be unreasonably withheld, delayed or conditioned. Any lawful levy or sale on execution or other legal processes, shall be classified as an assignment within the meaning of this MOU, as shall be adjudicated in bankruptcy, voluntary or involuntary, or an appointment of a Receiver by a State or Federal Court, or insolvency of the County or the execution of a deed or other instrument for the benefit of creditors. In the event of any subletting or assignment, the County hereunder shall remain liable for the performance of all the terms, covenants and conditions of this MOU throughout the term hereof.

#### **15. BOARD'S USE OF PREMISES**

If at any time in the future, the Board wishes to construct any improvements on the Premises, it may do so provided that such improvements do not interfere with or otherwise materially affect the County's ability to utilize the community center for its intended purpose as stated herein. In the event that the Board elects to make any improvements, the parties acknowledge and agree that they will in good faith cooperate with one another in the location, design, and operation of any such improvements.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding the day and year first written above.

WITNESS:

**BOARD OF EDUCATION OF BALTIMORE COUNTY**

\_\_\_\_\_

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

Board President  
Baltimore County Public Schools

\_\_\_\_\_

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

Joe A. Hairston,  
Superintendent

**BALTIMORE COUNTY, MARYLAND**

\_\_\_\_\_

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

Anthony G. Marchione  
Administrative Officer

Reviewed and Approved:

\_\_\_\_\_

Fred Homan, Director  
Office of Budget and Finance

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY:**  
(Subject to execution by the duly authorized administrative official)

\_\_\_\_\_  
Office of the County Attorney  
\*Approval of Legal Form and Sufficiency Does Not Convey  
Approval or Disapproval of the Substantive Nature of This  
Transaction. Approval Is Based Upon Typeset Document  
--All Modifications Require Re-Approval.