WHEN RECORDED RETURN TO:

[illegible] Street NW
[illegible], DC 20005
D09-0988

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

USE EASEMENT AND MAINTENANCE AGREEMENT

This Use Easement and Maintenance Agreement ("**Easement**") is entered into as of this 29th day of December, 2009 (the "**Effective Date**"), by the DISTRICT OF COLUMBIA, a municipal corporation, its successors and assigns, by and through its Department of Real Estate Services (the "**District**"), to and for the benefit of MARET SCHOOL, INC., a District of Columbia non-profit corporation ("**Grantee**").

W I T N E S S E T H :

WHEREAS, the District is the owner in fee of those certain parcels of land situate, lying and being in Washington, D.C. located at 3265 S Street, N.W., Washington, D.C., as more fully described on **Exhibit A** attached hereto (the "**Land**") together with the improvements thereon (collectively, the "**Property**");

WHEREAS, the Property includes certain fields (including a swimming pool located thereon (the "**Swimming Pool**") as more particularly shown on **Exhibit B** attached hereto (collectively, the "**Project Site**"). The Project Site is currently used primarily for recreational purposes (e.g., sports activities);

WHEREAS, the District Department of Parks and Recreation ("DPR") has identified Grantee pursuant to Section 10-3[illegible]4(a) of the DC Official Code and has determined the terms under which Grantee will use and make certain improvements to the Project Site and has requested that the Department of Real Estate Services ("**DRES**") execute this Easement on behalf of the District;

WHEREAS, DPR and Grantee have agreed that: (i) Grantee will perform certain construction, removal and installation work on the Project Site in connection with the renovation of the Project Site, as more particularly set forth in Section 7 below (the "**Project**"); (ii) Grantee shall perform certain maintenance to and repair of the Project Site during the Term (as defined below) as more particularly set forth in Section 8 below (the "**Maintenance and Repair**"); and (iii) in consideration of the performance of such construction, maintenance and repair, Grantee is hereby granted the right to exclusively use the Project Site during certain designated times as more particularly set forth in Section 9 below (the "**Exclusive Use**"). The Project, the Maintenance and Repair and the Exclusive Use are sometimes collectively referred to herein as the "**Use and Maintenance**"; and

WHEREAS, accordingly, Grantee and the District have agreed that Grantee shall have by grant from the District an easement to perform the Use and Maintenance upon and subject to the terms and conditions herein contained.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten Dollars ($10.00) in hand received by the District, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the District, the District hereby grants, and conveys the following rights, privileges, authority and easement to Grantee for the benefit of Grantee, and the District and Grantee hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein as if fully set forth herein.

2. Designation. The District hereby designates DPR as the District department having the responsibility for administering this Easement on behalf of the District, as set forth in that certain Memorandum of Agreement (the "**MOA**"), a copy of which is attached hereto as **Exhibit D**. Any approvals or other actions required to be taken by the District pursuant to this Easement shall be made or taken by DPR as such administering department on behalf of the District.

3. Representations. Each of the District and Grantee hereby represents and warrants to the other that (i) it has all requisite right, power and authority to execute and deliver this Easement and to perform its obligations under this Easement, and (ii) it has taken all necessary action to authorize the execution, delivery and performance of this Easement, and (iii) neither the execution and delivery of this Easement by it or the performance of its obligations hereunder conflicts with any other agreement to which it is a party.

4. Grant of Easement. the District hereby creates, establishes and grants to Grantee, during the period beginning on the Effective Date and ending on June 29, 2020 (the "**Term**"), the right, privilege, authority and easement in, on, under, through, upon, over and across the Project Site, for the purposes of entering upon same from time to time at all times, without notice, to perform the construction of the Project, to perform the Maintenance and Repair, to enjoy and obtain all of the benefits of the Exclusive Use and to conduct all lawful activities necessary and incident to all of the foregoing; together with free and unlimited access to, from, within and over all points of the Project Site, by foot and by vehicles, to conduct and perform all of the foregoing, subject to the terms and conditions set forth herein; provided, however, that with respect to the Exclusive Use only, such right, privilege, authority and easement shall be limited to the times set forth on **Exhibit C** attached hereto. Further, the District hereby grants to Grantee a non-exclusive easement, in common with others, to use the parking areas located on the Land during the exercise of Grantee's other rights hereunder. The District agrees to reasonably cooperate with Grantee to effectuate the purposes of this Easement. Further, the District agrees that the District shall take reasonable actions to prevent any interruption of the rights, privileges, authority and easements granted to Grantee pursuant to this Easement,

including, without limitation, the Exclusive Use. District shall not enter into any agreement with any other person or entity that will materially or substantially interfere with the exercise of Grantee's rights, privileges, authority and easements granted to Grantee hereunder.

5. Termination. Except as otherwise expressly set forth in Section 18(b), this Easement and the rights granted herein may not be terminated or revoked by the District during the Term. Notwithstanding anything to the contrary set forth herein, Grantee may, in Grantee's sole and exclusive discretion, terminate this Easement upon no less than one hundred eighty (180) days advance written notice (the "**Early Termination Notice**") to the District, which Early Termination Notice shall state the effective date of such termination (the "**Early Termination Date**"); provided, however, that if Grantee has commenced actual construction of the Project (i.e., has broken ground) the Early Termination Date may not occur until construction of the Project has been substantially completed. In the event Grantee delivers an Early Termination Notice, this Easement and all of Grantee's rights and obligations hereunder shall terminate as of the Early Termination Date, other than any of such rights or obligations that expressly survive the termination of this Easement by their terms.

6. Extension of the Term. In the event Grantee desires to extend the Term for an additional period of no more than nine (9) years (the "**Renewal Term**"), Grantee shall request such extension by giving written notice ("**Extension Request**") to the District not earlier than three hundred sixty-five (365) days or later than one hundred eighty (180) days prior to the expiration of the initial Term. Within thirty (30) days following the District's receipt of the Extension Request, the District shall advise Grantee in writing whether it consents to such Renewal Term, which consent may be withheld or conditioned in the sole discretion of the District.

7. The Project.

(a) Construction of the Project. Grantee shall perform, or cause to be performed, the renovation of the Project Site by installing an artificial turf baseball, lacrosse and soccer field (the "**Artificial Turf Field**") and, to the extent necessary for such construction, relocate the Swimming Pool to another location on the Land, as identified and agreed to by the District. Following the Effective Date, Grantee shall promptly apply for all Permits and shall thereafter diligently pursue obtaining same. District shall, upon request by Grantee, promptly execute applications for such Permits in its capacity as owner of the Property as may be required by the District government or other applicable issuing authority, at no cost or expense to the District. Grantee shall complete construction of the Project within the six (6) month period following the date on which Grantee obtains all Permits (subject to the provisions of Section 21). During the Term, whether as part of the initial construction of the Project or otherwise, Grantee shall have no obligation to install lighting for the Artificial Turf Field. However, if Grantee elects, in Grantee's sole discretion, to install such lighting during the Term, Grantee may make such installation provided that same complies with all applicable laws. The Easement

granted by District to Grantee pursuant to Section 4 includes the right, privilege, authority and easement to perform the scope of work set forth in the Project Plans (defined below) and all other work that is: (i) reasonably contemplated by the Project Plans, and/or (ii) required as a consequence of governmental or quasi-governmental directives or orders, site conditions or other unforeseen conditions in order to fully complete the Project.

(b) Construction Plans. Prior to the commencement of the construction of the Project, Grantee shall submit to DPR, for DPR's approval, the construction plans and designs for the Project (the "**Project Plans**"). As more particularly set forth in Section 14, DPR shall not unreasonably withhold, condition or delay its approval of the Project Plans, provided that same are in accordance with applicable laws and the applicable provisions of this Easement.

(c) Acceptance of Project. Pursuant to Section 1105.6 of Title 19 of the District of Columbia Municipal Regulations, all improvements made to the Project Site pursuant to this Easement or otherwise by Grantee or any other private persons or organizations shall become the property of the District. If required, Grantee and the District shall file the appropriate District government donation documents with respect to any such improvements made by Grantee.

(d) Specific Construction Provisions. The provisions set forth on Exhibit E shall apply to the construction of the Project.

8. Maintenance and Repair. It is the intent of the parties to augment DPR's current responsibilities with respect to the Project Site and neither the District nor DPR relinquishes the District's duties, responsibilities and obligations with respect to the Project Site by entering into this Easement. Notwithstanding the foregoing, during the Term, Grantee shall exclusively provide ordinary maintenance and repair to the Project Site to the extent commercially reasonable for use of the Project Site as a recreational field, and shall keep the Project Site in a clean and orderly condition; provided, however, that the Swimming Pool (whether or not relocated during the construction of the Project) and any other improvements to the Project Site installed by District or any other person or entity other than Grantee, shall not be deemed part of the Project Site (and use of the Swimming Pool by Grantee is expressly excluded from the Exclusive Use) for the purposes of Grantee's maintenance and repair obligations hereunder, and Grantee shall have no obligation to maintain, repair or replace any of same. The District and DPR agree that during the Term, as long as no Event of Default (defined below) by Grantee exists hereunder, Grantee shall be the sole and exclusive entity responsible for maintaining the Project Site, and the District shall not take any action or perform any work with respect to the Project Site during the Term except as may be otherwise expressly set forth in Section 11(b). Notwithstanding anything to the contrary set forth in this Easement, from and after completion of the initial construction of the Project, Grantee shall have no obligation to make any replacements or improvements of a capital nature to the Project Site, other than those that may be required to repair any damage caused by Grantee that is in excess of normal wear and tear. The Easement granted by District to Grantee

pursuant to Section 4 includes the right, privilege, authority and easement to perform all work and other activities necessary or desirable to accomplish the Maintenance and Repair.

9. Use.

(a) Exclusive Use. During the Term, Grantee shall have the exclusive use of the Project Site during the times set forth on **Exhibit C** and no other person or entity shall have the right to use the Project Site for any purpose during such times. The Easement granted by District to Grantee pursuant to Section 4 includes the right, privilege, authority and exclusive easement to exclusively use and enjoy the Project Site during the times set forth on **Exhibit C**.

(b) Other Use. During such times other than as provided in **Exhibit C**, the District shall have the right to permit persons and entities to use the Project Site. Notwithstanding the foregoing, the District shall not permit any other person or entity to use the Project Site (or make any alteration of the Project Site) in a manner that will interfere with the Exclusive Use or materially increase the Maintenance and Repair obligations of Grantee. In addition to the Exclusive Use, from time to time Grantee may also seek to use the Project Site outside of the times set forth on **Exhibit C** pursuant to DPR's (or its successor's) then regular permitting and scheduling process, provided, however, that such additional use shall be subject to approval by DPR (or its successor) in its reasonable discretion.

10. Standards. During the Term, Grantee agrees to abide by DPR's landscaping design standards and any other regulations, rules and policies of the District or DPR relating to District-owned facilities or property, including any subsequent reasonable changes and additions made to such standards, regulations, rules and policies; provided, however, that no such regulations, rules or policies or any changes or additions thereto shall materially reduce the rights of Grantee hereunder (including, without limitation, Grantee's rights to use the Project Site as set forth herein) or materially increase the obligations of Grantee hereunder or materially increase the expense or costs to Grantee of performing such obligations or exercising such rights.

11. Inspection of Project Site; Removal.

(a) Inspection of Project Site. The District, acting through DPR, shall have the right to conduct onsite inspections at any time during the course of the progress of renovations and improvements to the Project Site carried out by Grantee pursuant to this Easement. Such inspections shall be made at reasonable times and upon reasonable advance notice to Grantee. DPR shall also make an inspection no later than fifteen (15) business days following notification by Grantee of the completion of any approved material renovations or improvements performed by Grantee in accordance with this Easement (including completion of the initial construction of the Project or any material part thereof). Grantee shall forward

copies of all relevant warrantees and guarantees to DPR, if any, with respect to such material renovations or improvements.

(b) Removal. Following five (5) days" advance written notice to Grantee (or such shorter notice as may be possible in the event of an emergency), the District reserves the right, in its reasonable discretion, to remove any dangerous condition resulting from maintenance, improvements and/or beautifications performed by Grantee and not cured or corrected by Grantee following such notice. The District agrees that all improvements, equipment and other materials installed by Grantee at the Project Site are intended for and shall be used at the Project Site unless otherwise agreed by Grantee in writing. The District agrees not to remove any items from the Project Site installed by Grantee at the Project Site which do not present a dangerous condition (and then only after the notice to Grantee as provided above).

12. Specific Responsibilities.

(a) Maintenance of Corporate Existence. In order to facilitate contributions to Grantee, Grantee agrees that during the Term Grantee shall maintain (a) its corporate existence under the laws of the District of Columbia as a not-for-profit corporation and (b) its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the duration of this Easement.

(b) Financial Responsibility. Grantee shall be authorized by the District to perform only those maintenance and improvement activities to the Project Site as contemplated by this Easement or as otherwise approved by District in writing. The District shall have no responsibility or liability for any monies owed under any contracts entered into by Grantee.

13. Intentionally Deleted.

14. Approvals and Review; Cooperation; Notices of Closing.

(a) Approvals and Review. Consistent with the spirit of cooperation embodied in this Easement, the District agrees that the District, whether acting through DPR or any other agency or department, shall (i) use its reasonable efforts to review and approve all materials (including the Project Plans) forwarded by Grantee which require the District's approval hereunder in a timely and expeditious manner and to provide assurance, where requested by Grantee, to ensure that the Project Site meets the District's standards for safety, and (ii) inspect completed projects on behalf of the District in a timely manner. It is understood and agreed between the parties to this Easement that any and all construction and improvements of the Project Site (other than routine Maintenance and Repair), including, but not limited to, landscaping and/or installation of material improvements on the Project Site, must be approved by the District in writing, such approval not to be unreasonably withheld, conditioned or delayed. As set forth in Section 2, any approvals required of District pursuant to this Section shall be made or taken by DPR as the administering

department on behalf of the District, and DPR shall make or deny such approvals in accordance with the terms of this Section.

(b) Notices of Closing. Grantee agrees to provide to the District at least thirty (30) days' notice (or such shorter notice as may be possible in the event of an emergency) prior to the commencement of any major renovations or other Maintenance and Repair the performance of which will require the closing of the Project Site or any material portion of the Project Site, so that the community may be adequately notified by DPR.

15. Communication and Notices. The parties hereto agree to reasonably maintain open lines of communication at all times during the Term. Except where otherwise provided in this Easement, all notices and requests required or permitted by this Easement, including, without limitation, any change in the person designated to receive notices, shall be deemed properly given if sent by certified mail (return receipt requested), hand delivery, or recognized express delivery service to the person(s) designated by the parties to receive such notice at the address listed below or to such other address or person(s) designated by either party from time-to-time:

For the District

Director
Office of Parks and Recreation
3149 16th Street, NW
Washington, DC 20010
With a copy to:

Department of Real Estate Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009
Attention: Director

And a copy to:

Office of Attorney General
1100 15th Street, NW, Suite 800
Washington, DC 20005
Attention: Deputy Attorney General
Commercial Division

For Grantee:

Darwin L. Walker
Maret School, Inc.
3000 Cathedral Avenue, NW
Washington, DC 20008

16. Insurance. During the Term, Grantee shall maintain (i) general liability insurance, naming District as an additional insured, with respect to Grantee's responsibilities at the Project Site under this Easement and providing for limits of liability of not less than $1,000,000 for both injury to or death of a person and for property damage per occurrence, and (ii) umbrella and/or excess liability coverage of not less than $5,000,000. In addition, Grantee agrees that each contract between Grantee and a contractor for construction of the initial Project and/or the maintenance of the Project Site shall require that such contractor shall maintain a policy of general liability insurance, naming District as an additional insured, with respect to such contractor's responsibilities at the Project Site under such contract and providing for limits of liability of not less than $1,000,000 for both injury to or death of a person and for property damage per occurrence. Grantee agrees to provide copies of certificates of the insurance to DPR evidencing such insurance prior to (i) Grantee's initial entry on the Project Site pursuant to this Easement, with respect to Grantee, and (ii) the commencement of any work under a contract at the Project Site, with respect to a contractor.

17. Assignment by Grantee. Grantee shall not assign this Easement without the prior written consent of the District, which consent may be withheld in the District's sole and absolute discretion. Upon any permitted assignment of this Easement by Grantee, Grantee shall have no obligations for matters arising hereunder from and after the date of such assignment, and the District shall look solely to such assignee for all such obligations arising from and after the date of such assignment, provided that such assignee agrees in writing to assume all of such obligations.

18. Event of Default; Remedies.

(a) Event of Default. It shall be an "**Event of Default**" by Grantee hereunder if Grantee shall default in the observance or performance of any material term, covenant or condition of this Easement or the MOA on Grantee's part to be observed or performed and Grantee shall fail to remedy such default within thirty (30) days after written notice by the District (which notice shall specify the nature of such default), provided that if such default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise susceptible to cure), then Grantee shall have such additional period of time as may be reasonably necessary to cure such default (not to exceed one hundred eighty (180) days), provided that Grantee commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure.

(b) Remedies. If an Event of Default exists hereunder, District may (i) terminate this Easement upon thirty (30) days written notice to Grantee, or (ii) after giving Grantee a written notice of its intention to do so at least five (5) days before District's commencing to cure such Event of Default (or such shorter notice as may be possible in the event of an emergency), cure such Event of Default, at Grantee's

sole cost and expense, in which event Grantee shall reimburse District its actual out-of-pocket costs for such cure within ten (10) business days after demand therefor.

19. Easement Runs With the Land. This Easement shall run with the Land through the Term and shall apply to and bind the Property and the owners of the Property, and their heirs, executors, administrators, and successors in interest.

20. Miscellaneous Provisions.

(a) Indemnity. Grantee hereby indemnifies and agrees to defend and hold the District and all its officers and agents harmless (i) from claims for personal injury, death or property damage arising from Grantee's use of the Property Site or caused by the gross negligence or willful misconduct of Grantee, its agents, employees, contractors, subcontractors or invitees, regardless of whether or not such injury, death or damage resulting from Grantee's acts or omissions or defaults was caused in part by the District unless such cause is due to the District's gross negligence or willful misconduct; and (ii) from all claims, demands, fines, penalties, charges, orders, judgments and enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including remediation costs, attorneys' fees and defense costs, arising directly or indirectly, in whole or in part, out of (a) the presence on the Project Site of any Hazardous Substances (as hereinafter defined) placed on the Project Site by Grantee, its officers, employees, agents, contractors or invitees or any spilling, leaking, pumping or other release into the environment (collectively, a "**Discharge**") of any Hazardous Substance on, under or from the Project Site or the Property in violation of any Environmental Laws (as hereinafter defined) caused by Grantee, or (b) any activity by any third persons occupying or present on the Project Site or the Property at the request or invitation of Grantee, its officers or employees regarding the handling of Hazardous Substances in the Project Site. As used in this Easement, the term "Hazardous Substances" means any substance, material, condition, mixture or waste that is now or hereafter defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "oil," "pollutant," or "contaminant: under any provision of District, federal or other applicable law. As used in this Easement, "Environmental Laws" means every applicable law, ordinance, regulation, judicial or administrative order or decree, permit, license, approval, authorization and similar requirement of every federal and District governmental agency or other governmental authority relating to any Hazardous Substances. Grantee shall bear the risk of all loss, destruction or damage to any real or personal property constructed or placed by Grantee on the Project Site and the District shall not be liable for any damage to said real or personal property of Grantee for any cause whatsoever absent negligence or willful misconduct on the part of the District or its agents and employees.

(b) Nondiscrimination. Grantee shall not discriminate against any person because of race, creed, color, religion, sex, national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of business or business in

furnishing or by refusing to furnish to such person or persons the use of any facility, including any and all services, privileges, accommodations and activities provided within the Project Site. Grantee's noncompliance with the nondiscrimination provisions of this paragraph 20(b) shall constitute a material breach of this Easement, and shall constitute an Event of Default hereunder if not cured within thirty (30) days after written notice by the District (which notice shall specify the nature of such default). In the event of such an Event of Default, the District may take appropriate action to enforce compliance, may terminate this Easement, may declare Grantee ineligible for further agreements with the District or may pursue such other remedies as may be provided by law or in equity.

(c) Anti-Deficiency Provision. The District and Grantee acknowledge and agree that the obligations of the District to fulfill financial obligations of any kind pursuant to any and all provisions of this Easement, or any subsequent Easement, amendment, or addendum, entered into pursuant to this Easement or referenced herein to which the District is a party, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. Sections 1341, 1342, 1349, 1351, (ii) D.C. Official Code Section 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code Section 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned. The District agrees to exercise all lawful and available authority to satisfy any financial obligations of the District that may arise under this Easement, including, without limitation, attempting to obtain the necessary appropriations and/or the reprogramming of available funds if such reprogramming is legal and necessary to satisfy the District's financial obligations, if any; however, since funds are appropriated annually by Congress on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, the District's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress. The District makes no representation or assurance that Congress will grant the authorizations and appropriations necessary for the District to perform any financial obligations under this Easement. Nothing in this Easement shall be construed as an attempt to create an obligation of the District in advance or in anticipation of any appropriation.

(d) Headings. The titles to sections of this Easement are not a part of this Easement and shall have no effect upon the construction or interpretation of any part hereof.

(e) Successors in Interest and Assigns. All of the covenants, agreements, terms and conditions contained in this Easement shall inure to, and be binding upon, the District and Grantee, and their respective heirs, executors, administrators, successors and assigns.

(f) Severability. In the event that any provision of this Easement conflicts with the law under which this Easement is to be construed or if any such

provision is held invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties hereto in accordance with applicable law and the remainder of this Easement shall remain in full force and effect.

(g) Governing Law. This Easement shall be construed in accordance with the laws of the District of Columbia.

(h) Execution in Counterparts. This Easement may be executed by the District and Grantee in counterparts with the same effect as if the District and Grantee had signed on the same instrument.

(i) Damage to Property. Each party hereto shall use reasonable efforts to not damage the property of the other party located at or on the Project Site or other adjunct property.

(j) Entire Agreement. This Easement, including all exhibits attached hereto, represents the entire agreement between the parties hereto and supersedes all prior agreements and understandings.

(k) Approvals and Consents. Except where expressly provided as being in the discretion of a party hereto, where approval, acceptance, consent or similar action by either party is required under this Easement, such action shall not be unreasonably withheld, conditioned or delayed.

(l) No Waiver. A delay or omission by either party hereto to exercise any right or power under this Easement shall not be construed to be a waiver thereof except as otherwise provided herein. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained.

(m) Survival. Any provision of this Easement expressly identified as surviving termination or expiration of this Easement, as well as any provision of this Easement that contemplates performance or observance subsequent to termination or expiration of this Easement, shall continue in full force and effect following any such termination or expiration.

(n) No Reliance by Third Parties. This Easement is entered into solely between, and may be enforced only by, Grantee and the District. This Easement shall not be deemed to create any rights in third parties, including suppliers and customers of a party hereto, or to create any obligations of a party hereto to any such third parties.

(o) Recordation. This Easement shall be recorded in the land records of the District of Columbia, the cost thereof to be borne solely by the recording party.

(p)Modifications. This Easement shall not be modified or amended except as may be agreed to in writing and signed by the parties hereto.

21. Force Majeure. Notwithstanding any other provision in this Easement, neither District nor Grantee, as the case may be, shall be considered in breach of, or default in, its obligations under this Easement, in the event of delay in the performance of such obligations due to Force Majeure (defined below). It is the purpose and intent of this provision that, in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or Grantee, as applicable, shall be extended for the period of the Force Majeure, provided however, that (i) the party seeking the benefit of this Section 21 promptly notifies the other party in writing of the existence of such Force Majeure event after it becomes aware of such Force Majeure event, and (ii) the party seeking the delay must take reasonable actions to minimize the delay. As used herein, the term "**Force Majeure**" means an act or event, including, as applicable, an act of God, act of the public enemy, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisitions and laws or orders of government or civil, military, or naval authorities, or any other cause, whether similar or dissimilar to the foregoing that is not within the reasonable control of Grantee (or District in the event District's claim is based on a Force Majeure event), so long as such act or event, in each case, (i) is not due to the fault or negligence of Grantee (or District in the event District's claim is based on a Force Majeure event), (ii) is not reasonably foreseeable and avoidable by Grantee (or District in the event District's claim is based on a Force Majeure event), and (iii) results in a delay in performance by Grantee (or District in the event District's claim is based on a Force Majeure event).

[SIGNATURES ON NEXT PAGE]

APPROVED AS TO LEGAL SUFFICIENCY

Susan C. Longstreet

Date: Dec. 30, 2009

Susan C. Longstreet
Deputy Attorney General
Commercial Division
Office of the Attorney General

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on its behalf by Robin-Eve Jasper, Director, Department of Real Estate Services of the District of Columbia, a municipal corporation, and does hereby constitute and appoint Robin-Eve Jasper as its true and lawful attorney-in-fact to acknowledge these presents as its act and deed, as of the 31st day of December, 2009.

THE DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

By: _____ for Robin-Eve Jasper
Robin-Eve Jasper
Director, Department of Real Estate Services

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on its behalf by Thomas A. Carr, President of the Board of Trustees, and Mary Josephine Talbott, Head of School, of Maret School, Inc., a District of Columbia non-profit corporation, and does hereby constitute and appoint Thomas A. Carr and Mary Josephine Talbott as its true and lawful attorney-in-fact to acknowledge these presents as its act and deed, as of the 31 day of December, 2009.

GRANTEE:

MARET SCHOOL, INC.
a District of Columbia non-profit corporation

By: _____
Name: Thomas A. Carr
Title: President of the Board of Trustees

By: _____
Name: Mary Josephine Talbott
Title: Head of School

APPROVED

District of Columbia Department of Parks and Recreation:

By: _____
Jesus S Aguirre
Acting Director

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THE DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

By: _____
Robin-Eve Jasper
Director, Department of Real Estate Services

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GRANTEE:

MARET SCHOOL, INC.
a District of Columbia non-profit corporation

By: _____
Name: Thomas A. Carr
Title: President of the Board of Trustees

By: Mary Josephine Talbott
Name: Mary Josephine Talbott
Title: Head of School

APPROVED

District of Columbia Department of Parks and Recreation:

By: _____
Jesus S.Aguirre
Acting Director

DISTRICT OF COLUMBIA) ss:

I, _____, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Robin-Eve Jasper, Director, Department of Real Estate Services, who is named as attorney-in-fact for the DISTRICT OF COLUMBIA, a municipal corporation, the grantor in the foregoing and attached instrument, dated as of December __, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of the DISTRICT OF COLUMBIA, a municipal corporation, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:_____
[Notarial Seal]

DISTRICT OF COLUMBIA) ss:

I, DESIREE HYSON, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Thomas A. Carr, who is named as attorney-in-fact for MARET SCHOOL, INC., a District of Columbia non-profit corporation, the grantee in the foregoing and attached instrument, dated as of December 29, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of MARET SCHOOL, INC., a District of Columbia non-profit corporation, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Desireé Hyson
Notary Public

My Commission Expires:_____
[Notarial Seal]

DESIREE HYSON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 2013

DISTRICT OF COLUMBIA) ss:

I, Lottie Carpenter, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Robin-Eve Jasper, Director, Department of Real Estate Services, who is named as attorney-in-fact for the DISTRICT OF COLUMBIA, a municipal corporation, the grantor in the foregoing and attached instrument, dated as of December 31, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of the DISTRICT OF COLUMBIA, a municipal corporation, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lottie Carpenter
Notary Public

My Commission Expires: 10/31/2013
[Notarial Seal]

DISTRICT OF COLUMBIA) ss:

I, _____, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Thomas A. Carr, who is named as attorney-in-fact for MARET SCHOOL, INC., a District of Columbia non-profit corporation, the grantee in the foregoing and attached instrument, dated as of December __, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of MARET SCHOOL, INC., a District of Columbia non-profit corporation, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:_____
[Notarial Seal]

DISTRICT OF COLUMBIA) ss:

I, DESIREE HYSON, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Mary Josephine Talbott, who is named as attorney-in-fact for MARET SCHOOL, INC., a District of Columbia non-profit corporation, the grantee in the foregoing and attached instrument, dated as of December 29, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of MARET SCHOOL, INC., a District of Columbia non-profit corporation, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Desiree Hyson
Notary Public

My Commission Expires: DESIREE HYSON
[Notarial Seal] NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 2013

DISTRICT OF COLUMBIA) ss:

I, _____, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Jesus S.Aguirre, Acting Director of the DISTRICT OF COLUMBIA DEPARTMENT OF PARKS AND RECREATION, a signatory to the foregoing and attached instrument, dated as of December __, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of the DISTRICT OF COLUMBIA DEPARTMENT OF PARKS AND RECREATION, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:_____
[Notarial Seal]

DISTRICT OF COLUMBIA) ss:

I, _____, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Mary Josephine Talbott, who is named as attorney-in-fact for MARET SCHOOL, INC., a District of Columbia non-profit corporation, the grantee in the foregoing and attached instrument, dated as of December __, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of MARET SCHOOL, INC., a District of Columbia non-profit corporation, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:_____
[Notarial Seal]

DISTRICT OF COLUMBIA) ss:

I, Lotte Capt, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Jesus S.Aguirre, Acting Director of the DISTRICT OF COLUMBIA DEPARTMENT OF PARKS AND RECREATION, a signatory to the foregoing and attached instrument, dated as of December 31, 2009, personally appeared before me in the District of Columbia, and, said person being personally well known to me as the person named as attorney-in-fact in said instrument and acknowledged said instrument to be the act and deed of the DISTRICT OF COLUMBIA DEPARTMENT OF PARKS AND RECREATION, and that he/she delivered the same as such before me in the jurisdiction aforesaid.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lotte Capt
Notary Public

My Commission Expires: 10/31/2013
[Notarial Seal]

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land, situated in the District of Columbia, consisting of all of Parcel 39/53 as recorded at A & T Page 330SE among the records of the Office of the Surveyor of the District of Columbia, part of Parcel 39/72 as recorded at A & T Page 3478D among the said records, and parts of Lots 40 and 41 in Square 1299 as recorded in Book, Georgetown Squares at Page 1299 among the said records. Being more particularly described as follows:

Beginning for the same at a point in the North line of S Street North West, South 89 degrees 16' 30 degrees East, 125.76 distant from the intersection of the said line with the Easterly line of Wisconsin Avenue and proceeding:

1. North 23 degrees 09' West 155.33 feet (comp) across lots 40 and 41, square 1299 to a point, thence
2. North 66 degrees 51' East 5.00 feet to a point in the Westerly line of Parcel 39/53, thence with the Westerly line of parcel 39/53
3. North 23 degrees 09' West 229.07 feet (comp) to a point, thence
4. North 66 degrees 38' East 191.32 feet (comp) to a point (A &T Plat for Lot 1010 states this bearing as N. 66 degrees 41: East), thence
5. North 58 degrees 54' 54" East 312.68 feet to a point, thence
6. South 47 degrees 36' 45" East, 196.0 feet to a point, thence
7. South 31 degrees 058' 00" West 300.45 feet to a point thence
8. South 53 degrees 38" 30" West 231.00 feet to a point thence
9. South 24 degrees 18' 30" East 74.79 feet to a point in the Northerly lines of S Street, thence with said line
10. North 89 degrees 16' 30" West 131.10 feet (A &T for Lot 1010 states this is a bearing as North 87 degrees 12' West) to a point of commencement containing 4.15 acres of land more or less.

NOTE: At the date hereof, the above described land is designated for assessment and taxation purposes as A & T Lots 964 and 1010 of Square 1299 among the records of the Assessor of the District of Columbia.

EXHIBIT B

PROJECT SITE

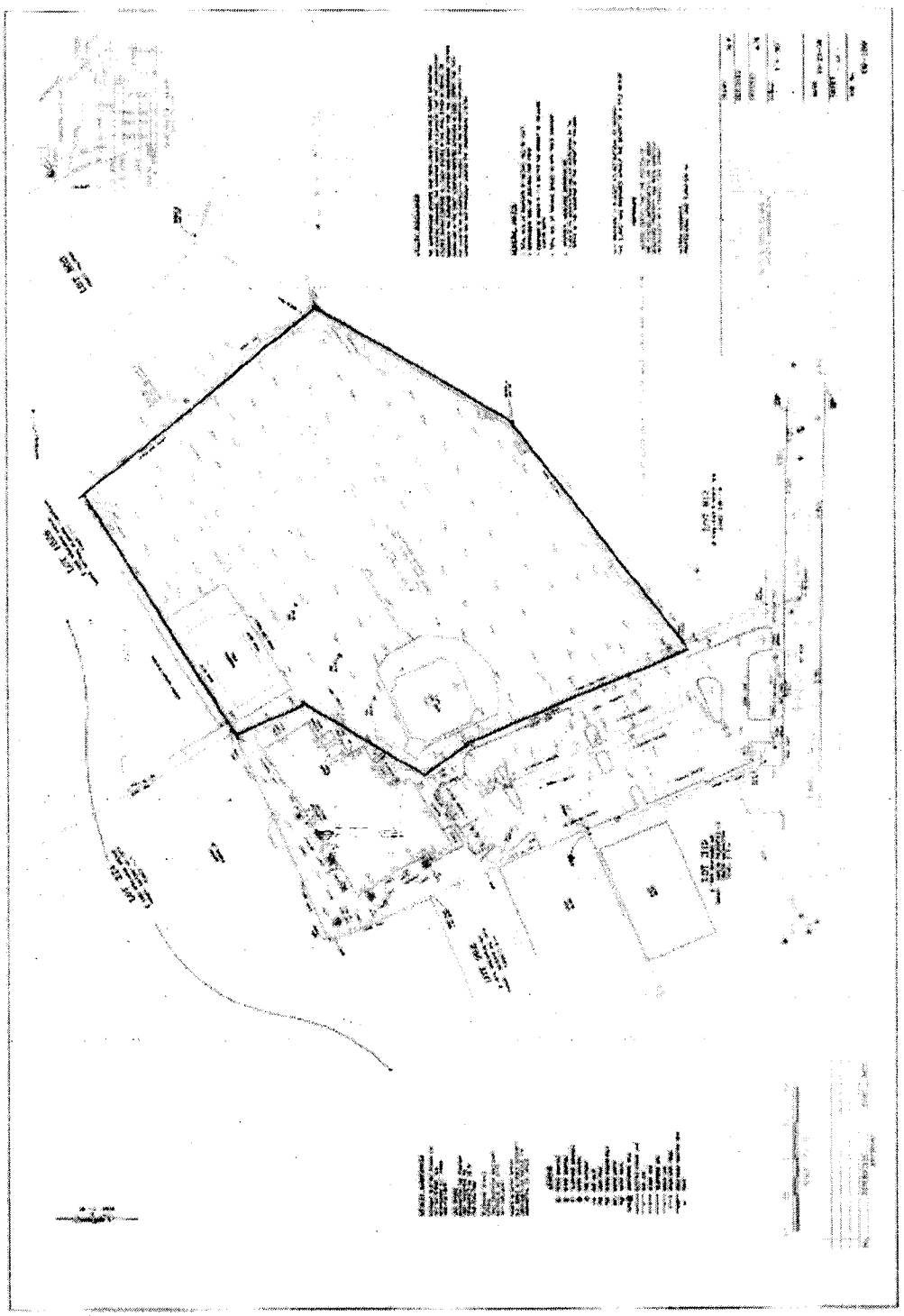


EXHIBIT C

TIMES OF GRANTEE'S EXCLUSIVE USE

Period	Days	Hours
Last two weeks of August including Labor Day Weekend	Mon - Fri, Sat & Sun	8:00 am to 4:00 pm
September (after Labor Day Weekend) through 1st week of November	M, T, Th, F	3:30 pm to 5:30 pm
September (after Labor Day Weekend) through 1st week of November	W	2:00 pm to 5:30 pm*
September through 1st week of November	Saturdays (5 games TBD by Grantee each season)	(TBD by Grantee each season at least 30 days prior to the first such game day)*
March to middle of May	M, T, Th, F	3:30 pm to 5:30 pm
March to middle of May	W	2:00 pm to 5:30 pm
March to middle of May	Sat (5 games TBD by Grantee each season)	(TBD by Grantee each season at least 30 days prior to the first such game day)*
Note: Game delays may extend hours of use		*Game days

EXHIBIT D

M EMORANDUM OF AGREEMENT

[to be attached]

MEMORANDUM OF AGREEMENT
BETWEEN
THE DISTRICT OF COLUMBIA
AND
MARET SCHOOL, INC.

I. INTRODUCTION

This Memorandum of Agreement (this "Agreement") is entered into between the District of Columbia, a municipal corporation (the "District"), and Maret School, Inc. ("Maret", collectively with the District, the "Parties" and each a "Party"). The purpose of this Agreement is to set forth the terms of the Parties' agreement with respect to Maret's serving as a District Department of Parks and Recreation ("DPR") program partner at the Facilities (defined below) by participating in the renovation and ongoing maintenance of the Facilities, as more fully set forth herein. The District's grant to Maret of certain priority rights to use the Facilities is set forth in that certain Use Easement and Maintenance Agreement (the "Easement") of even date herewith by and between the District, by and through its Department of Real Estate Services ""DRES") and Maret..

The District currently owns certain parcels of land more particularly described on Exhibit A attached hereto (the "Land") together with the improvements located thereon. Included as part of such improvements are certain fields as more particularly shown on the site plan attached hereto as Exhibit B (collectively, the "Facilities"). DPR is a component department of the District and is responsible for the management and maintenance of the Land and the improvements thereon (including the Facilities) on behalf of the District. The District hereby designates DPR as the District department to have the responsibility to administer this Agreement on behalf of the District.

II. BACKGROUND

The mission of DPR is to enhance the physical, mental, and social well being of residents and visitors by providing quality, customer-focused leisure and learning opportunities in over four hundred (400) safe parks and facilities owned by the District. These leisure and learning opportunities are amply demonstrated through the quality, diversity, and quantity of programs that are available to the citizens of the District. DPR offers a wide range of quality and diverse leisure and learning programs to citizens of the District and the many patrons visiting the area.

The District recognizes the need to look beyond traditional approaches to provide services and look to established entities to provide programs that can broaden DPR's outreach, expand its focus on holistic programming and make more efficient use of its recreation centers and parks owned by the District. The District may form partnerships to accomplish any of the goals or missions of the DPR.

Maret desires to participate in a renovation of, and maintenance program for, the Facilities, including performing and/or coordinating certain maintenance, beautification, and/or improvements of the Facilities, pursuant to the responsibilities outlined and agreed upon in this Agreement. In exchange for the foregoing services, Maret shall have the right to use the Facilities, including, without limitation, the right to use the Facilities as more particularly described in Section V.11 below and the Easement.

Each Party hereby represents and warrants to the other Party that (i) it has all requisite right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and (ii) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

III. TERM

The term of this Agreement (the "Term") shall commence on the date hereof (the "Commencement Date") and expire on June 29, 2020 (the "Expiration Date").

This Agreement shall be coterminous with the Easement, so that (i) in the event the Easement terminates or is terminated for any reason, this Agreement shall automatically terminate without further action or notice, and (ii) in the event the Term (as defined in the Easement) is extended or renewed, the Term of this Agreement shall be automatically extended or renewed for the same period of time without further action or notice.

IV. SCOPE OF SERVICES (THE "PROGRAM")

Maret shall perform, or cause to be performed, the following during the Term:

1. The renovation of the Facilities by installing an artificial turf baseball, lacrosse and soccer field and, to the extent necessary for such construction, relocate the existing swimming pool on the Land (the "Swimming Pool") to another location on the Land, as identified and agreed to by the District;

2. Submit bi-annual reports to DPR Office of Partnerships and Development to report any in-kind and financial contributions toward and investment in the Facilities made by Maret;

3. Cooperate in the evaluation of the renovation and maintenance of the Facilities as set forth on Attachment A to this Agreement;

4. Exclusively provide ordinary maintenance and repair to the Facilities to the extent commercially reasonable for use of the Facilities as a recreational field, and shall keep the Facilities in a clean and orderly condition; provided, however, that the Swimming Pool (whether or not relocated) and any other improvements to the Facilities installed by District or any other person or entity other than Maret, shall not be deemed part of the Facilities for the purposes of Maret's maintenance and repair obligations hereunder, and Maret shall have no obligation to maintain, repair or replace any of same;

5. Provide certification of liability insurance coverage as specified in Section VII hereof;

6. Continue to perform criminal background checks on all staff in accordance with Maret's internal policies and procedures;

7. Formally recognize DPR as a partner in promotional materials including (a) the acknowledgement of DPR's contributions in promotional materials and (b) the use of the DPR logo in promotional materials as it pertains to the partnership between Maret and DPR;

8. Ensure that no photographs of minors at the Facilities or depiction of their likeness at the Facilities is included in any Maret publication without first obtaining the written consent from the child's parent or legal guardian; provided, however, that the foregoing shall not apply to photographs taken during Maret's events at the Facilities; and

9. Reasonably collaborate with DPR on publicity efforts to promote the partnership, program activities and special events.

V. SPECIFIC RESPONSIBILITIES AND RIGHTS

1. Improvements and Approvals. During the Term, Maret shall construct an artificial turf athletic field that accommodates baseball, soccer and lacrosse. Maret shall submit all construction plans and designs for such field to DPR. Maret acknowledges and agrees that all changes and improvements to the Facilities pursuant to this Agreement or otherwise by Maret shall become the property of the District. Such improvements are to be completed within the time specified in Section 7(a) of the Easement. The provisions set forth on Attachment C shall apply to the renovation of the Facilities as contemplated by this Agreement.

2. Standards. Grantee agrees to abide by DPR's landscaping design standards and any other regulations, rules and policies of the District or DPR relating to District-owned facilities or property, including any subsequent reasonable changes and additions made to such standards, regulations, rules and policies; provided, however, that no such regulations, rules or policies or any changes or additions thereto shall materially reduce the rights of Maret hereunder or under the Easement (including, without limitation, Maret's rights to use the Facilities as set forth herein) or materially increase the obligations of Maret hereunder or under the Easement or materially increase the expense or costs to Maret of performing such obligations or exercising such rights.

3. Maintenance of Corporate Existence. In order to facilitate contributions to Maret, Maret agrees that during the Term Maret shall maintain (a) its corporate existence under the laws of the District of Columbia as a not-for-profit corporation and (b) its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the duration of this Agreement. The Federal Employer Identification Number of Maret is 53-0211355.

4. Community Outreach and Communication. Maret will reasonably assist DPR in posting and distributing announcements and events through Maret's website; press advisories and Maret's electronic newsletter and email messages to Maret members.

5. Financial Responsibility. Maret shall be authorized by the District to perform only those maintenance and improvement activities to the Facilities as contemplated by this Agreement and the Easement. The District shall have no responsibility or liability for any monies owed under contracts entered into by Maret.

6. Notice and Communication. Unless otherwise specified herein, any notice or communication between Maret and the District shall be provided as required in Section VI hereof.

7. Site Inspection. The District, acting through DPR, shall have the right to conduct onsite inspections at any time during the course of the progress of renovations and improvements to the Facilities carried out by Maret pursuant to this Agreement. Such inspections shall be made at reasonable times and upon reasonable advance notice to Maret. DPR shall also make an inspection no later than fifteen (15) business days following notification by Maret of the completion of any approved material renovations or improvements performed by Maret in accordance with this Agreement (including completion of the initial construction of the Facilities or any material part thereof). Maret shall forward copies of all relevant warrantees and guarantees to DPR, if any, with respect to such material renovations or improvements. Following five (5) days" advance written notice to Maret (or such shorter notice as may be possible in the event of an emergency), the District reserves the right, in its reasonable discretion, to remove any dangerous condition resulting from maintenance, improvements and/or beautifications performed by Maret and not cured or corrected by Maret following such notice. The District agrees that all improvements, equipment and other materials installed by Maret at the Facilities are intended for and shall be used at the Facilities unless otherwise agreed by Maret in writing. The District agrees not to remove any items from the Facilities installed by Maret at the Facilities which do not present a dangerous condition (and then only after the notice to Maret as provided above).

8. Acceptance of Project. Pursuant to Section 1105.6 of Title 19 of the District of Columbia Municipal Regulations, improvements made to the Facilities pursuant to this Agreement or otherwise by private persons or organizations shall become the property of the District. If required, Maret and the District shall file the appropriate District government donation documents with respect to such improvements.

9. Approvals and Review. Consistent with the spirit of cooperation embodied in this Agreement, the District agrees that the District, whether acting through DPR or any other agency or department, shall (i) use its reasonable efforts to review and approve all materials forwarded by Maret which require the District's approval hereunder in a timely and expeditious manner and to provide assurance, where requested by Maret, to ensure that the Facilities meet the District's standards for safety, and (ii) inspect completed projects on behalf of the District in a timely manner. It is understood and agreed between the parties to this Agreement that any and all construction and improvements of the Facilities (other than routine maintenance and repair), including, but not limited to, landscaping and/or installation of material improvements on the Land, must be approved by the DPR in writing, such approval not to be unreasonably withheld, conditioned or delayed. . Maret shall bear any and all costs and expenses connected in any way to obtaining all required permits and licenses.

10. Maintenance. The intent of this Agreement is to augment DPR's current responsibilities with respect to the Facilities. Neither the District nor DPR relinquishes the District's duties, responsibilities and obligations with respect to the Facilities by entering into this Agreement. Notwithstanding the foregoing, as long as no Event of Default by Maret exists under the Easement, the District agrees that during the Term Maret shall be the sole and exclusive entity responsible for

maintaining the Facilities and the District shall not take any action or perform any work with respect to the Facilities during the Term except as set forth in Section V.7.

11. Use by Maret. As more particularly set forth in the Easement, the District grants to Maret the Exclusive Use (as defined in the Easement) during the times set forth on Attachment B. From time-to-time, Maret may also seek to use the Facilities outside of the times set forth on Attachment B pursuant to DPR's regular permitting process. The District hereby agrees that the District shall take reasonable actions to prevent any interruption of the use of the Facilities by Maret as granted hereby.

VI. COMMUNICATION

The Parties agree to reasonably maintain open lines of communication at all times during the Term. Except where otherwise provided in this Agreement, all notices required by this Agreement, including, without limitation, any change in the person designated to receive notices, shall be deemed properly given if sent by certified mail (return receipt requested), hand delivery, or recognized express delivery service to the person(s) designated by the Parties to receive such notice at the address listed below or to such other address or person(s) designated by either Party from time-to-time:

For the District

Director
Office of Parks and Recreation
3149 16th Street, NW
Washington, DC 20010

For Maret:

Darwin L. Walker
Maret
3000 Cathedral Avenue, NW
Washington, DC 20008

VII. INDEMNITY AND INSURANCE

During the Term, Maret shall maintain general liability insurance, naming District as an additional insured, with respect to Maret's responsibilities at the Facilities under this Agreement and providing for limits of liability of not less than $1,000,000 for both injury to or death of a person and for property damage per occurrence. In addition, Maret agrees that each contract between Maret and a contractor for construction of the initial improvements to the Facilities and/or the maintenance of the Facilities shall require that such contractor shall maintain a policy of general liability insurance, naming District as an additional insured, with respect to such contractor's responsibilities at the Facilities under such contract and providing for limits of liability of not less than $1,000,000 for both injury to or death of a person and for property damage per occurrence. Maret agrees to provide copies of certificates of the insurance to DPR evidencing such insurance prior to (i) Maret's initial entry on the Land to this Agreement, with respect to Maret, and (ii) the commencement of any work under a contract at the Facilities, with respect to a contractor.

Maret hereby indemnifies and agrees to defend and hold the District and all its officers and agents harmless (i) from claims for personal injury, death or property damage arising from Maret's use of the Facilities or caused by the gross negligence or willful misconduct of Maret, its agents, employees, contractors, subcontractors or invitees, regardless of whether or not such injury, death or damage resulting from Maret's acts or omissions or defaults was caused in part by the District unless such cause is due to the District's gross negligence or willful misconduct (provided, however, that Maret's liability with respect to the indemnity set forth in this clause (i) shall be limited to the extent of the insurance proceeds paid by the provider(s) of the commercial general liability insurance required to be maintained by Maret pursuant to this Section); and (ii) from all claims, demands, fines, penalties, charges, orders, judgments and enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including remediation costs, attorneys' fees and defense costs, arising directly or indirectly, in whole or in part, out of (a) the presence at the Facilities of any Hazardous Substances (as hereinafter defined) placed on the Facilities by Maret, its officers, employees, agents, contractors or invitees or any spilling, leaking, pumping or other release into the environment (collectively, a "Discharge") of any Hazardous Substance on, under or from the Facilities or the Land in violation of any Environmental Laws (as hereinafter defined) caused by Maret, or (b) any activity by any third persons occupying or present at the Facilities or the Land at the request or invitation of Maret, its officers or employees regarding the handling of Hazardous Substances in the Facilities. As used in this Agreement, the term "Hazardous Substances" means any substance, material, condition, mixture or waste that is now or hereafter defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "oil," "pollutant," or "contaminant: under any provision of District, federal or other applicable law. As used in this Agreement, "Environmental Laws" means every applicable law, ordinance, regulation, judicial or administrative order or decree, permit, license, approval, authorization and similar requirement of every federal and District governmental agency or other governmental authority relating to any Hazardous Substances. Maret shall bear the risk of all loss, destruction or damage to any real or personal property constructed or placed by Maret on the Facilities and the District shall not be liable for any damage to said real or personal property of Maret for any cause whatsoever absent negligence or willful misconduct on the part of the District or its agents and employees.

VIII. ASSIGNMENT

Maret shall not assign this Agreement without the prior written consent of the District, such consent to be at the sole discretion of the District; provided, however, that any assignment of the Easement approved by the District pursuant to Section 17 of the Easement shall be deemed an approval of the assignment of this Agreement to the approved assignee of the Easement. Upon any permitted assignment of this Agreement by Maret, Maret shall have no obligations for matters arising hereunder from and after the date of such assignment, and the District shall look solely to such assignee for all such obligations arising from and after the date of such assignment, provided that such assignee agrees in writing to assume all of such obligations.

IX. MISCELLANEOUS

1. Each Party shall use reasonable efforts to not damage the property of the other Party located at or on the Facilities or other adjunct property.

2. This Agreement, including all exhibits attached hereto, and the Easement collectively represent the entire agreement between the Parties and supersede all prior agreements and understandings. This Agreement and any Park Improvement Plans may be executed in counterparts, each copy of which shall constitute an original document and all of which taken together shall constitute one single agreement between the Parties.

3. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law and the remainder of this Agreement shall remain in full force and effect.

4. Except where expressly provided as being in the discretion of a Party, where approval, acceptance, consent or similar action by either Party is required under this Agreement, such action shall not be unreasonably withheld, conditioned or delayed.

5. A delay or omission by either Party to exercise any right or power under this Agreement shall not be construed to be a waiver thereof except as otherwise provided herein. A waiver by either of the Parties of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained.

6. Any provision of this Agreement expressly identified as surviving termination or expiration of this Agreement, as well as any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement, shall continue in full force and effect following any such termination or expiration.

7. This Agreement is entered into solely between, and may be enforced only by, Maret and the District. This Agreement shall not be deemed to create any rights in third Parties, including suppliers and customers of a Party, or to create any obligations of a Party to any such third Parties.

8. This Agreement or a memorandum thereof may be recorded in the land records of the District, the cost thereof to be borne solely by the recording Party.

9. Maret shall not discriminate against any person because of race, creed, color, religion, sex, national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of business or business in furnishing or by refusing to furnish to such person or persons the use of any facility, including any and all services, privileges, accommodations and activities provided within the Facilities. Maret's noncompliance with the nondiscrimination provisions of this paragraph IX.9 shall constitute a material breach of this Agreement, and shall constitute an Event of Default hereunder if not cured within thirty (30) days after written notice by the District (which notice shall specify the nature of such default). In the event of such an Event of Default, the District may take appropriate action to enforce compliance, may terminate the Easement and this Agreement, may declare Maret ineligible for further agreements with the District or may pursue such other remedies as may be provided by law or in equity.

10. The District and Maret acknowledge and agree that the obligations of the District to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement or any subsequent agreement, amendment, or addendum, entered into pursuant to this Agreement or referenced herein to which the District is a party, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. Sections 1341, 1342, 1349, 1351, (ii) D.C. Official Code Section 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code Section 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned. The District agrees to exercise all lawful and available authority to satisfy any financial obligations of the District that may arise under this Agreement, including, without limitation, attempting to obtain the necessary appropriations and/or the reprogramming of available funds if such reprogramming is legal and necessary to satisfy the District's financial obligations, if any; however, since funds are appropriated annually by Congress on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, the District's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress. The District makes no representation or assurance that Congress will grant the authorizations and appropriations necessary for the District to perform any financial obligations under this Agreement. Nothing in this Agreement shall be construed as an attempt to create an obligation of the District in advance or in anticipation of any appropriation.

X. MODIFICATIONS

This Agreement shall not be modified or amended except as may be agreed to in writing and signed by the Parties.

[signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written below.

DISTRICT OF COLUMBIA

_____ **DATE:** 12/30/09

By: Jesus S. Aguirre, Acting Director
Department of Parks and Recreation

FOR MARET SCHOOL:

_____ **DATE:** _____

_____ **DATE:** _____

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land, situated in the District of Columbia, consisting of all of Parcel 39/53 as recorded at A & T Page 330SE among the records of the Office of the Surveyor of the District of Columbia, part of Parcel 39/72 as recorded at A & T Page 3478D among the said records, and parts of Lots 40 and 41 in Square 1299 as recorded in Book, Georgetown Squares at Page 1299 among the said records. Being more particularly described as follows:

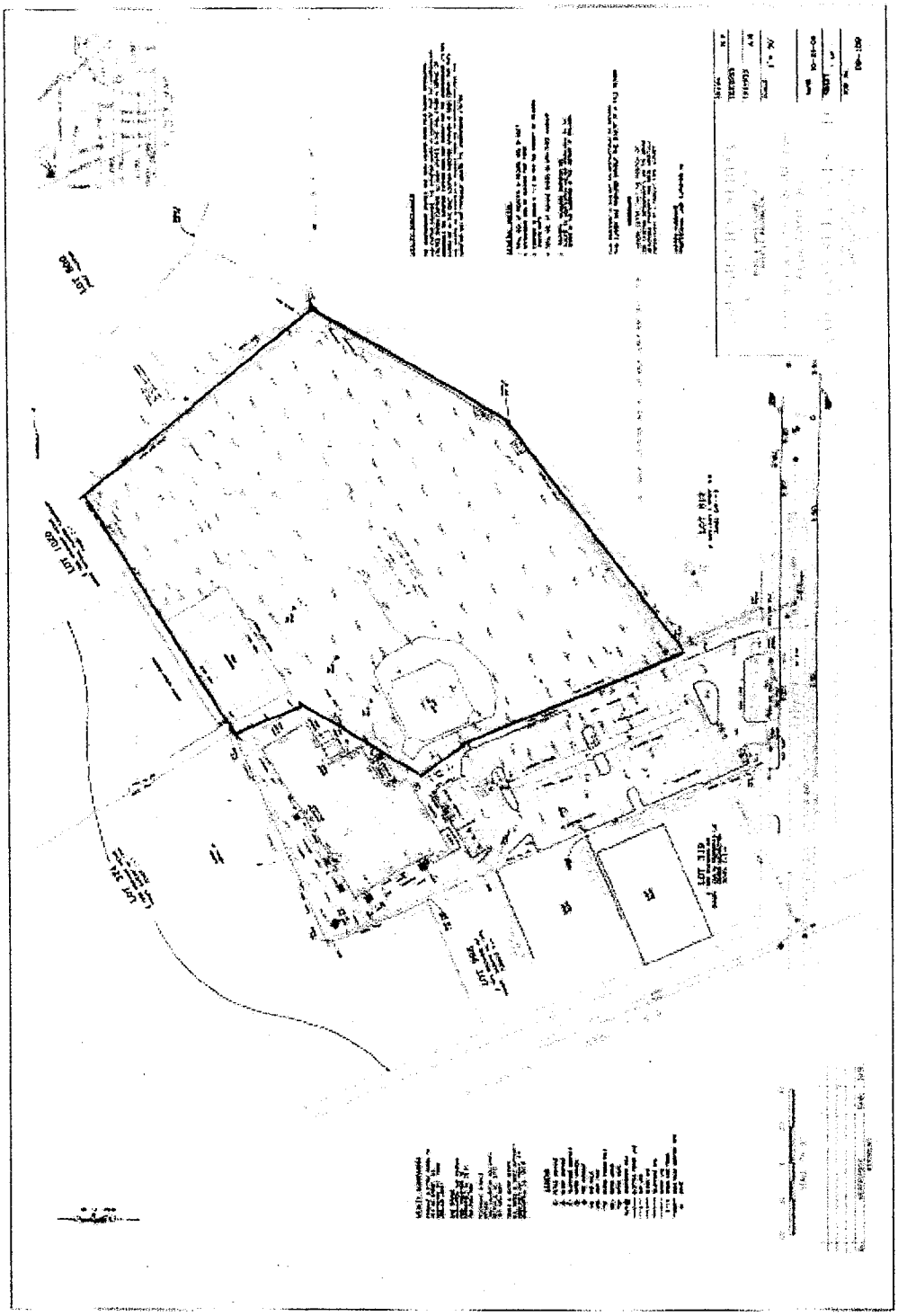
Beginning for the same at a point in the North line of S Street North West, South 89 degrees 16' 30 degrees East, 125.76 distant from the intersection of the said line with the Easterly line of Wisconsin Avenue and proceeding:

1. North 23 degrees 09' West 155.33 feet (comp) across lots 40 and 41, square 1299 to a point, thence
2. North 66 degrees 51' East 5.00 feet to a point in the Westerly line of Parcel 39/53, thence with the Westerly line of parcel 39/53
3. North 23 degrees 09' West 229.07 feet (comp) to a point, thence
4. North 66 degrees 38' East 191.32 feet (comp) to a point (A &T Plat for Lot 1010 states this bearing as N. 66 degrees 41: East), thence
5. North 58 degrees 54' 54" East 312.68 feet to a point, thence
6. South 47 degrees 36' 45" East, 196.0 feet to a point, thence
7. South 31 degrees 058' 00" West 300.45 feet to a point thence
8. South 53 degrees 38" 30" West 231.00 feet to a point thence
9. South 24 degrees 18' 30" East 74.79 feet to a point in the Northerly lines of S Street, thence with said line
10. North 89 degrees 16' 30" West 131.10 feet (A &T for Lot 1010 states this is a bearing as North 87 degrees 12' West) to a point of commencement containing 4.15 acres of land more or less.

NOTE: At the date hereof, the above described land is designated for assessment and taxation purposes as A & T Lots 964 and 1010 of Square 1299 among the records of the Assessor of the District of Columbia.

EXHIBIT B

SITE PLAN OF THE FACILITIES



ATTACHMENT A

PROGRAM EVALUATION

Maret agrees to comply with DPR's Program Evaluation Process as part of this Agreement.

Maret School agrees to the following with respect to the construction of the Facilities, the maintenance and repair of the Facilities and the Exclusive Use (collectively, the "Program") :

1) Quarterly site visits conducted by DPR staff to witness and evaluate the Program;

2) Written Annual Reports that address the following:
   a. Summary of Program progress;
   b. Goals achieved thus far over the course of the Program;
   c. Barriers or obstacles currently faced by Maret School;
   d. Goals for the next year;
   e. Any proposed changes to the Program (though not formally approved until notice of approval is provided by DPR); and

   These reports should be sent via mail to the following:

   Department of Parks and Recreation
   Director, Office of Partnerships and Development
   3149 16th Street, NW
   Washington, DC 20010

ATTACHMENT B

SCHEDULE OF USE

Period	Days	Hours
Last two weeks of August including Labor Day Weekend	Mon - Fri, Sat & Sun	8:00 am to 4:00 pm
September (after Labor Day Weekend) through 1st week of November	M, T, Th, F	3:30 pm to 5:30 pm
September (after Labor Day Weekend) through 1st week of November	W	2:00 pm to 5:30 pm*
September through 1st week of November	Saturdays (5 games TBD by Maret each season)	(TBD by Maret each season at least thirty (30) days prior to the first such game day)*
March to middle of May	M, T, Th, F	3:30 pm to 5:30 pm
March to middle of May	W	2:00 pm to 5:30 pm
March to middle of May	Sat (5 games TBD by Maret each season)	(TBD by Maret each season at least thirty (30) days prior to the first such game day)*
Note: Game delays may extend hours of use		*Game days

ATTACHMENT C

SPECIAL PROJECT CONSTRUCTION PROVISIONS

I. Project Goals and Objectives

The goal is to ensure that the Project is completed on time and meets the programmatic needs of DPR. Grantee has offered to fully fund and construct the project, affording DPR reasonable access to all Project related budget information, invoices, change orders, project progress reports, and general Project documentation.

II. Scope of Services

A. Obligations of DPR

1. Time is of the essence in making decisions; therefore, DPR agrees to make decisions in a way that does not have a negative impact on the schedule provided by Grantee for completion of the Project.
2. DPR shall serve in the role of "owner" for the Project Site and all proposed modifications to the Project Plans shall be subject to review by and prior approval of DPR, which approval shall not be unreasonably withheld, conditioned or delayed.
3. DPR will assign a single point of contact ("**Representative**") to ensure that the Project Plans are in compliance with DPR Recreation Center Specifications and DPR design guidelines. In addition, the DPR Representative will participate in meetings with Grantee during the construction of the Project, which meetings will be organized and lead by Grantee if requested by DPR.

B. Obligations of Grantee

1. Grantee will construct the Project pursuant to the Project Plans at Grantee's sole cost and expense. As part of the Project, Grantee agrees to restore the pool on site to good operating condition. This shall include but not be limited to; restoration of the pool surfaces, deck, all necessary operating equipment, and immediate surrounding areas to their intended functioning and aesthetically acceptable condition. Grantee will lead and manage construction of the Project. The completed Project will be turned over to DPR upon completion and satisfactory inspection of the completed Project (which inspection shall be made no later than fifteen (15) business days following notification by Grantee of the completion of the Project.
2. Grantee shall be responsible for coordinating commencement of construction which includes but is not limited to obtaining all Permits.

3. Grantee shall construct the Project in accordance with applicable codes and laws.
4. Grantee shall report on the construction of the Project to DPR.
5. Grantee shall provide to DPR a monthly report on the status of the Project.

C. Plans and Documents

Grantee shall make all permanent and final plans and any related warranties available to DPR upon the completion of the Project. This shall include "as built" plans reflecting the completed Project.

The following individuals are the construction contact points for each Party under this MOU:

For DPR: David Janifer
Capital Projects Officer, Office of Planning and Capital Projects
1480 Girard Street, NW
Washington, DC 20009
Office: 202.671.0363
Fax: 202.939.2550
Mobile: 202.253.0020
Email: david.janifer@dc.gov

For Grantee: Darwin L. Walker
Maret School, Inc.
3000 Cathedral Avenue, NW
Washington, DC 20008
Office: 202.939.8821
Email: dawalker@maret.org

These individuals are responsible for the management and coordination of all construction requirements for their respective agencies incorporated in this agreement. Copies of pertinent correspondence and changes or other transactions pertaining to construction issues in this agreement shall be furnished to these individuals.