

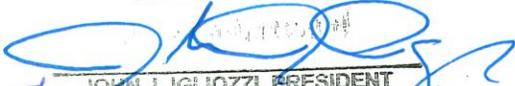
RESOLUTION OF THE CITY COUNCIL

No. 436

Approved December 21, 2022

RESOLVED, That His Honor, the Mayor, is hereby authorized to execute a Parking Lot Lease Agreement with Saint Anthony's Church Corporation, Rhode Island for a term of ten (10) years for shared use of a parking lot located at 541 Plainfield Street in the City of Providence to provide an area for teacher and staff parking and student drop-off and pick-up for the Spaziano Elementary School located at 35 Merino Street, as required by the approved development plans for said school, and to provide a staging area for materials and equipment during the demolition and construction at the adjacent Spaziano Elementary School.

IN CITY COUNCIL
DEC 15 2022
READ AND PASSED


JOHN J. IGLIOZZI, PRESIDENT

Tina L. Mastrosimone
ACTING CLERK

I HEREBY APPROVE.



Mayor
Date: 12/21/22

PARKING LOT LEASE AGREEMENT

This Parking Lot Lease Agreement (this “**Lease**”) is made and entered into on this 1st day of January, 2023 (the “**Effective Date**”) by and between Saint Anthony’s Church Corporation, Rhode Island, a Rhode Island corporation with a principal office address of 549 Plainfield Street, Providence, RI 02909 (the “**Landlord**”), and City of Providence, Rhode Island, a municipal corporation with an address of 25 Dorrance Street, Providence, Rhode Island 02903 (the “**Tenant**”). Collectively, Landlord and Tenant shall hereinafter be referred to as the “**Parties**” and, individually, as a “**Party**”.

WITNESSETH:

WHEREAS, Tenant owns the former Frank D. Spaziano Elementary School annex building located at 35 Merino Street a/k/a 240 Laban Street, Providence, RI 02909 (“**Spaziano Elementary**”). The parcel of real property upon which Spaziano Elementary sits is identified by the Providence Tax Assessor’s office as Lot 595 on Plat 107, and is referred to herein as the “**Spaziano Elementary Parcel**”; and

WHEREAS, Landlord owns and operates the Church of Saint Anthony located at 541 Plainfield Street, Providence, RI 02909 (“**Saint Anthony’s**”). The parcel of real property upon which Saint Anthony’s sits is identified by the Providence Tax Assessor’s office as Lot 596 on Plat 107, and is referred to herein as the “**Saint Anthony’s Parcel**”. The Saint Anthony’s Parcel is adjacent and next to the Spaziano Elementary Parcel; and

WHEREAS, Tenant is in the process of demolishing the existing Spaziano Elementary and replacing it with a new public school in connection with its city-wide school rehabilitation program, and is in need of additional parking to serve the Spaziano Elementary Parcel; and

WHEREAS, Tenant’s ability to demolish and replace the Spaziano Elementary requires approvals by various bodies and individuals of the State of Rhode Island and of the City of Providence, Rhode Island (the “**City**”), including, without limitation, the Rhode Island Department of Education (“**RIDE**”), RIDE’s Council on Elementary and Secondary Education, the City’s Board of Contract and Supply, the Providence City Council, and the City’s Mayor and Solicitor; and

WHEREAS, surplus parking exists upon the Saint Anthony’s Parcel in the form of a parking lot situated between the Spaziano Elementary and Saint Anthony’s (the “**Parking Lot**”); and

WHEREAS, Landlord desires to lease the Parking Lot to Tenant, and Tenant desires to lease the same from Landlord, all upon the terms, conditions and provisions set forth herein, including, but not limited to, Landlord’s reservation of parking rights, as set forth more particularly herein.

NOW, THEREFORE, in consideration of the rents to be paid by Tenant hereunder and the covenants and agreements to be performed and observed respectively by the Landlord and Tenant, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

Landlord does hereby lease to the Tenant and Tenant does hereby lease and take from the Landlord that certain premises outlined on **Exhibit A** hereto and consisting of the Parking Lot (the "**Premises**"), which Premises is a portion of that certain real property owned by the Landlord, known as and located at 541 Plainfield Street, Providence, RI 02909, all as more fully set forth in this Lease. The Premises is more fully described and as outlined on Exhibit A attached hereto and incorporated herein.

Notwithstanding the foregoing, Landlord hereby reserves for itself and for its Landlord Users (hereinafter defined) the right to use the Premises for parking at times and from time to time throughout the term hereof in connection with celebrations of church mass at Saint Anthony's, in connection with church events and programming, and for general use by church personnel, agents, and visitors and guests, as needed, in connection with maintenance and operation of the church. Further, the Landlord reserves the right for itself and its Landlord Users to share the use of the Parking Lot in common with Tenant for periods during which events are held at Saint Anthony's, such as funerals and other services. For purposes of this Lease, a "**Landlord User**" (collectively, "**Landlord Users**") is a parishioner or other attendant of a celebration of church mass or other event at Saint Anthony's, an employee, agent, representative, or volunteer of the church, or a visitor or guest of the church.

(1). PERMITTED USE; IMPROVEMENTS. (a) Tenant (and Tenant's users, including, without limitation, Tenant's agents, employees, contractors, subcontractors, vendors and consultants, and staff, visitors, and parents, guardians and others dropping off and/or picking up one (1) or more students (collectively, the "**Tenant Users**")) shall use the Premises for vehicular parking and for ancillary and associated purposes. For the avoidance of any doubt, said ancillary and associated purposes shall be limited to the temporary storage of material and equipment set forth in Section 1(c) below, and shall not include any activity morally offensive to the Roman Catholic Church as reasonably interpreted by the Roman Catholic Bishop of Providence nor any use or activity inconsistent with the established teachings and doctrines of the Roman Catholic Church as the same are reasonably interpreted by the then-incumbent Roman Catholic Bishop of Providence. Tenant agrees that upon two (2) days' notice from Landlord, the Tenant will cease or cause the cessation of any such offensive use suffered or permitted. Failure to so cease such offensive use shall be deemed an immediate default hereof. Landlord may pursue any and all remedies at law or in equity to enforce this Section 1, including but not limited to, immediate injunctive relief. Upon receiving prior written consent of Landlord, which shall not be unreasonably withheld, Tenant may construct at the Premises, and may maintain, repair and replace from time to time, reasonable improvements consistent with such permitted use, including, by way of example and not limitation, a parking surface of asphalt or other material; line striping and other markings; indications and signage; drains and other drainage improvements; landscaping and screening; and any and all utilities necessary for Tenant's use (collectively, the "**Premises Improvements**").

(b) If requested in writing by Landlord, Tenant shall remove the Premises Improvements from the Premises at the expiration of the term and will at such time yield up the Premises to Landlord in substantially its condition as existed upon the Commencement Date, wear and tear and damages from casualty excepted.

(c) In addition to the uses and purposes set forth in Section 1(a) above, Tenant and the Tenant Users may utilize the Premises for the temporary storage of materials and equipment in connection with demolition of the old Spaziano Elementary and construction of the new Spaziano Elementary upon the Spaziano Elementary Parcel.

(2). TERM. This Lease will be for a term of ten (10) years.

(3). COMMENCEMENT. The term and Tenant's obligation to pay Rent (hereinafter defined) will commence upon the Effective Date (the "**Commencement Date**").

(4). RENT. Commencing on the Commencement Date, Tenant shall pay to Landlord annual rent in the amount of Eighteen Thousand and 00/100 Dollars (\$18,000.00) ("**Rent**"), which Rent shall be payable in twelve (12) equal monthly installments of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) each, payable in advance and due on the first (1st) day of each month throughout the term. Rent for any portion of the term which is less than one (1) month will be pro-rated and payable based upon the actual number of days in such month.

(5.) PERMITS & APPROVALS. Tenant shall be responsible for obtaining all permits, approvals and authorizations necessary for the construction, installation, use and operation of the Premises Improvements at the Premises (collectively, "**Permits and Approvals**"). Landlord agrees to assist Tenant in procuring the same from time to time, which assistance may include, but is not necessarily limited to, executing applications for various Permits and Approvals.

(6). UTILITIES; TAXES. Tenant may contract in its own name with utility companies for the provision of various utilities to the Premises, and Tenant shall bear the costs thereof throughout the term. Tenant shall pay all personal property taxes assessed upon the Premises Improvements or any part thereof for the duration of the term. Tenant shall also be responsible for all real property taxes assessed against the Parking Lot portion of the Saint Anthony's Parcel throughout the term hereof. Landlord shall at all times remain liable for all other real estate taxes assessed upon the Saint Anthony's Parcel.

(7.) MAINTENANCE; SNOW REMOVAL. Tenant will be responsible for maintaining the Premises and the Premises Improvements, including the removal of snow and ice therefrom, for periods during which public school is in session at the Spaziano Elementary and the Parking Lot is being used by Tenant or its Tenant Users.

(8.) CASUALTY; TAKING. If the whole or any part of the Premises or the Premises Improvements shall be taken by eminent domain or other condemnation proceeding by a public authority or shall be damaged by fire or other casualty, Tenant may choose to terminate this Lease upon written notice to Landlord. If Tenant does not choose to terminate this Lease upon such occurrence, this Lease shall remain in full force and effect. If Tenant chooses to keep this Lease in full force and effect following a taking that reduces the size of the Premises, the parties hereto shall (i) amend the definition of "Premises" to account for any reduction in the size thereof, and (ii) equitably reduce the Rent by a percentage equal to the square footage of the portion of the Premises taken divided by the total square footage of the Premises immediately prior to the taking.

(9.) QUIET ENJOYMENT; NON-DISTURBANCE. Landlord represents, warrants, and agrees that Tenant shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Landlord or any party claiming by, through or under Landlord, except with respect to shared use of the Parking Lot by Landlord Users as set forth herein. If the Premises (or title thereto) or any portion thereof is at any time (including, without limitation, on the Effective Date) encumbered by a mortgage, deed of trust, security arrangement, lien or other encumbrances of any nature (each, an “**Encumbrance**”), Landlord will obtain for Tenant’s benefit an agreement from the mortgagee or other holder of such Encumbrance providing that such party shall, in the event it forecloses or takes other enforcement action with respect to such Encumbrance, at all times recognize Tenant as lessee of the Premises, and further providing that so long as Tenant is not in default under this Lease beyond all applicable notice and cure periods Tenant may remain in possession of the Premises under the terms of this Lease notwithstanding any foreclosure or other enforcement action with respect to an Encumbrance.

(10.) MEMORANDUM OF LEASE. Upon execution of this Lease, the parties hereto shall execute a recordable Memorandum of Lease in substantially the form and containing substantially the substance as set forth in **Exhibit B** attached hereto and incorporated herein, which either party hereto may record in the land evidence records for the City.

(11.) ASSIGNMENT; SUBLETTING. Tenant may freely assign this Lease and/or sublet the Premises or any part thereof to one (1) or more third parties.

(12.) LANDLORD’S REPRESENTATIONS AND WARRANTIES. As a material inducement for Tenant to enter into this Lease, Landlord hereby represents and warrants to Tenant that:

- (a) Landlord owns fee title to the Premises free and clear from any Encumbrances;
- (b) this Lease is legal, valid, and binding upon Landlord in accordance with its terms;
- (c) Landlord has the full power, capacity, authority and legal right to execute and deliver this Lease in accordance with its terms;
- (d) there exists no contract, agreement or understanding, nor any suit, claim or proceeding that in any way would or does preclude, limit or have an adverse effect upon Landlord’s ability to enter into this Lease or perform the covenants contained herein;
- (e) the person or entity executing this Lease on behalf of Landlord has the full right and authority to do so, and no prior consents, votes, approvals or the like are required; and
- (f) Landlord has no knowledge of any Environmental Condition (hereinafter defined) existing at the Premises or the Saint Anthony’s Parcel, nor does Landlord have any knowledge of any violation of any Environmental Law (hereinafter defined) with respect to the Premises or the Saint Anthony’s Parcel. For purposes of this Lease, an “**Environmental Law**” is any law, statute, rule, order, regulation, code, ordinance, requirement or the like that governs any substance(s) or material(s) which is or can be

dangerous or harmful to health and/or the environment (each, a “**Hazardous Material**”). For purposes of this Lease, an “**Environmental Condition**” is any spill, discharge, release or other presence (or threatened or possible spill, discharge, release or other presence) at any time of any Hazardous Material.

The representations and warranties made by Landlord in and in connection with this Lease shall survive the expiration or earlier termination of this Lease.

(13.) INDEMNIFICATION. Except as specifically provided in this Section 13, Tenant shall indemnify, defend, and hold harmless the Landlord, its affiliates, directors, officers, shareholders, members, managers, representatives, agents, employees, contractors, and its Landlord Users (collectively, the “**Landlord Parties**”) from and against any and all liabilities, obligations, judgments, losses, demands, causes of action, costs, damages or claims of any kind or nature, and attorney’s fees, of all kinds (each, a “**Claim**”; collectively, “**Claims**”), to the extent such Claims are related in any way to Tenant’s lease of the Premises or the use thereof or damage thereto by Tenant or any agent, representative, employee, contractor, or guest of Tenant (collectively, the “**Tenant Parties**”) or any representative, agent, user, visitor, or guest of any adjacent property owned, leased or operated by Tenant. Notwithstanding the foregoing, Landlord shall indemnify, defend and hold harmless the Tenant and its employees, agents and representatives from and against any and all Claims, to the extent the same are caused by either (i) a material breach of this Lease by Landlord that continues beyond the expiration of all applicable notice and cure periods; (ii) the gross negligence or willful misconduct of Landlord or any of its agents, employees, vendors, or contractors; (iii) the negligence of Landlord’s authorized Landlord Users occurring during a period of Landlord’s shared use of the Premises and occurring in furtherance of said user’s use or authorization to use or visit the Premises at Landlord’s specific or implied invitation; or (iv) the presence of any Hazardous Material and/or any Environmental Condition at or about the Premises or the Saint Anthony’s Parcel that occurred prior to the Commencement Date or which is otherwise attributable to Landlord. The obligations of the Parties set forth in this Section 13 shall survive the expiration or earlier termination of this Lease.

(14.) INSURANCE.

The Tenant represents and warrants that it is self-insured for personal injury and property damage, and that it intends to remain so self-insured throughout the term hereof. Landlord acknowledges and agrees that, notwithstanding anything to the contrary contained herein, at all times during which Tenant is self-insured, Landlord must submit any claim, demand or other request for relief to the claims procedure(s) established and maintained, from time to time, by the City of Providence, and that such claims procedure(s) shall govern and control. If at any time during the term hereof the Tenant becomes no longer self-insured, Tenant shall obtain and thereafter maintain (until such time as Tenant shall again self-insure, if at all) the following insurance coverage from a third-party insurer:

- a. Liability Insurance. Liability insurance covering (i) Tenant’s liability with respect to any construction that Tenant may perform in connection with the Premises; and (ii) Tenant’s liability for occupation, maintenance, and use of the Premises. Such insurance shall provide limits of not less than \$2,000,000.00 per occurrence combined single limit, bodily injury/property damage. Such general liability policy shall name Landlord

as an “additional insured” on a primary and non-contributing basis. Such insurance shall by specific endorsement be deemed to be primary insurance to any similar insurance that Landlord may obtain for its own benefits, which shall be excess or secondary but not contributing insurance. In addition, such general liability policy shall not contain exclusions for liability assumed under contract or for liability imposed by reason of statute or law;

- b. Property Insurance. “All-risk” property insurance covering the Premises against loss or damage resulting from insurable loss. Such insurance shall be on a 100% replacement cost basis, adjusted at least annually to account for increases in the replacement cost (the “**Property Policy**”). Notwithstanding anything to the contrary contained in this Lease, Landlord acknowledges and agrees that the Property Policy shall contain a “loss payable” clause which provides for payment of all proceeds under the Property Policy to Tenant. Such Property Policy shall name the Landlord as an “additional insured” on a primary and non-contributory basis; and
- c. Worker’s Compensation Insurance. Worker’s Compensation Insurance with statutory limits covering all of Tenant’s employees working on or using the Premises for work-related purposes.

Certificates of insurance and the insurance policies required to be maintained by Tenant hereunder shall contain a provision that not less than thirty (30) days’ advance notice will be given in writing to Landlord prior to cancellation, reduction, termination, or material alteration of said policies of insurance.

(15.) DEFAULT; TERMINATION. (a) Tenant shall be in default of this Lease if Tenant fails to fully and timely comply with any material provision of this Lease, including Tenant’s obligation to pay Rent, and such failure continues for more than ninety (90) days after Tenant’s receipt of a written notice of such default from Landlord. Notwithstanding the foregoing, Tenant shall not be in default of this Lease if Tenant has commenced to cure the failure to perform prior to the expiration of said ninety (90) day period and thereafter continues in good faith to pursue performance of the same.

(b) Landlord shall be in default of this Lease if Landlord fails to fully and timely comply with any material provision of this Lease and such failure continues for more than thirty (30) days after Landlord’s receipt of a written notice of such default from Tenant. Notwithstanding the foregoing, Landlord shall not be in default of this Lease if Landlord has commenced to cure the failure to perform prior to the expiration of said thirty (30) day period and thereafter continues in good faith to pursue performance of the same.

(c) If either party is in default of this Lease beyond all applicable notice and cure periods, the other party may terminate this Lease. Upon termination due to a party default or for any other reason, this Lease shall be of no further force or effect and the parties hereto shall have no further obligation to each other under or pursuant to this Lease except for obligations and liabilities that accrue prior to the termination date and except for other provisions of this Lease that survive the expiration or earlier termination hereof.

(16.) DISPUTES; VENUE & JURISDICTION. Landlord and Tenant hereby irrevocably agree that any and all legal proceedings related to this Lease or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated, filed, tried and maintained in the State Court located in Providence County, Rhode Island. Landlord and Tenant each expressly and irrevocably (i) waive any right otherwise provided by any applicable law or legal rule or principle to remove the matter to any other state or federal venue, (ii) consent to the jurisdiction of such state courts in any such legal proceeding, (iii) waive any objection such party may have to the laying of the jurisdiction of any such legal proceeding, and (iv) waives its right to a trial by jury.

(17.) TERMINATION FOR CONVENIENCE. Tenant may terminate this Lease for convenience at any time throughout the term hereof should Tenant determine in good faith that it is in the best interest of the City to do so.

(18.) PUBLIC RECORDS. SUBJECT TO ALL LEGAL REQUIREMENTS, INCLUDING THOSE ARISING UNDER THE FREEDOM OF INFORMATION ACT AND SIMILAR STATE LAWS, TENANT WILL USE REASONABLE EFFORTS TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION PROVIDED BY THE LANDLORD TO TENANT PURSUANT TO THE TERMS OF THIS LEASE AND WHICH ARE NOT, TO TENANT'S KNOWLEDGE, OTHERWISE IN THE PUBLIC DOMAIN OR OBTAINED FROM THIRD PARTY SOURCES ON A NON-CONFIDENTIAL BASIS; PROVIDED, HOWEVER, THAT THE FOREGOING WILL NOT RESTRICT TENANT FROM MAKING ANY DISCLOSURE OF SUCH INFORMATION AS TENANT DEEMS NECESSARY OR DESIRABLE TO PROVIDE TO ITS ELECTED OFFICIALS, EMPLOYEES, LEGAL, FINANCIAL AND OTHER PROFESSIONAL ADVISORS OR TO COMPLY WITH ANY APPLICABLE LEGAL REQUIREMENTS, PROVIDED THAT TENANT WILL IN EACH CASE ENDEAVOR TO INFORM THE PARTY TO WHICH SUCH DISCLOSURE IS MADE THAT SUCH INFORMATION IS CONFIDENTIAL AND OF THE CONFIDENTIALITY PROVISIONS OF THIS LEASE. IN THE EVENT THAT TENANT IS REQUIRED BY SUBPOENA, COURT ORDER OR OTHER SIMILAR PROCESS TO DISCLOSE SUCH INFORMATION OR IF TENANT RECEIVES ANY WRITTEN PUBLIC RECORDS REQUEST SEEKING DISCLOSURE OF THE MATERIALS DESCRIBED IN THIS SECTION, TENANT WILL, PRIOR TO COMPLYING WITH SUCH SUBPOENA, COURT ORDER OR SIMILAR PROCESS OR PUBLIC RECORDS REQUEST, PROVIDE THE LANDLORD WITH WRITTEN NOTICE (UNLESS TENANT IS PREVENTED FROM DOING SO UNDER THE SUBPOENA, COURT ORDER OR SIMILAR PROCESS) SO THAT LANDLORD WILL HAVE AN OPPORTUNITY TO SEEK, AT LANDLORD'S SOLE COST AND EXPENSE, A PROTECTIVE ORDER OR OTHER APPROPRIATE REMEDY. IF LANDLORD DOES NOT OBTAIN A PROTECTIVE ORDER OR OTHER REMEDY TO PRECLUDE THE DISCLOSURE OF THE REQUESTED MATERIALS, LANDLORD ACKNOWLEDGES THAT TENANT MAY DISCLOSE SUCH REQUESTED MATERIALS AS AND TO THE EXTENT REQUIRED BY ANY SUCH SUBPOENA, COURT ORDER, SIMILAR PROCESS OR PUBLIC RECORDS REQUEST AS ADVISED BY TENANT'S LEGAL COUNSEL AND THE GOVERNMENTAL OR JUDICIAL AUTHORITY REQUIRING SUCH COMPLIANCE. LANDLORD FURTHER ACKNOWLEDGES THAT TENANT MAY, GIVEN THE

DEADLINES AND RESPONSE REQUIREMENTS UNDER PUBLIC RECORDS REQUESTS, BE OBLIGED TO DISCLOSE THE REQUESTED MATERIALS EVEN THOUGH LANDLORD IS ATTEMPTING AT SUCH TIME TO OBTAIN A PROTECTIVE ORDER OR OTHER APPROPRIATE REMEDY TO PREVENT THE DISCLOSURE OF SUCH INFORMATION. THIS SECTION 18 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

(19.) SEVERABILITY. If any clause, provision, section or subsection of this Lease shall be ruled invalid by any court of competent jurisdiction, then the parties hereto shall: (i) promptly negotiate a substitute for such clause, provision, section or subsection which shall, to the greatest extent legally permissible, effectuate the intent of the parties hereto in the invalid clause, provision, section or subsection; (ii) if necessary or desirable to accomplish subsection 19(i) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Lease; and (iii) negotiate such changes, in substitution for or addition to the remaining provisions of this Lease as may be necessary in addition to and in conjunction with subsections 19(i) and 19(ii) above to effect the intent of the parties hereto in the invalid provision. The invalidity of such clause, provision, section or subsection shall not affect any of the remaining provisions hereof, and this Lease shall be construed and enforced as if such invalid portion did not exist.

(20.) GOVERNING LAW. This Lease is entered into in the State of Rhode Island and shall be governed and construed in accordance with the laws thereof giving regard to the conflicts-of-laws principles of said State.

(21.) EFFECT OF DRAFTING. Notwithstanding any law or legal principle to the contrary, no provision of this Lease shall be interpreted more loosely or more stringently vis-à-vis a particular party hereto due to the fact that such party did or did not draft this Lease or the provision(s) in question.

(22.) BINDING EFFECT; RELATIONSHIP OF PARTIES. This Lease is binding upon and inures to the benefit of the Landlord and Tenant and their respective successors and assigns. The relationship of Landlord and Tenant is that of arms' length contracting parties only, and no joint venture or other association between such parties is established by this Lease. There are no third party beneficiaries of this Lease whatsoever.

(23.) CAPTIONS; HEADINGS. The various section headings and captions used throughout this Lease are inserted only as a matter of convenience and are not nor shall they be deemed a part of this Lease for purposes of interpreting the provisions hereof.

(24.) NOTICE. When Landlord or Tenant desire or are required to give notice to the other under or in connection with this Lease, such notice shall be in writing and sent by US Mail, postage prepaid, addressed to the party for whom it is intended and at the address last specified by such party in accordance with the provisions of this Section 24. Unless and until a party changes the same in accordance with the provisions of this Section 24, notices hereunder shall be addressed as follows:

If to Tenant,

City of Providence
Department of Public Property
Attn: Director of Public Property
25 Dorrance Street
Providence, RI 02903

with a copy to

West Group Law PLLC
Attn: Steven A. Torres, Esq.
4 Richmond Square, Suite 350
Providence, RI 02906

If to Landlord,

Saint Anthony's Church Corporation, Rhode Island
Attn: Rev. Gildardo Suarez
549 Plainfield Street
Providence, RI 02909

with a copy to

Partridge, Snow & Hahn LLP
Attn: Eugene G. Bernardo II
40 Westminster Street, Suite 110
Providence, RI 02903

(25.) REMEDIES CUMULATIVE; NO WAIVER. The rights and remedies provided by this Lease are cumulative, are in addition to rights and remedies available at law and in equity, and, except as may be expressly set forth to the contrary in this Lease, the use of any one right or remedy by any party shall not preclude or waive such party's right to use any or all other remedies. Except as may be otherwise expressly set forth herein, no action or failure to act by the Landlord or Tenant shall constitute a waiver of a right or duty afforded such party under this Lease.

(26.) FORCE MAJEURE. Neither party hereto shall be liable for any failure or delay in performance of its obligations under this Lease directly or indirectly arising out of or caused by circumstances beyond such party's reasonable control, including, without limitation, acts of God, natural disasters, wars or civil or military disturbances, acts of terrorism, strikes, epidemic or pandemic, labor disputes, or the inability to obtain labor, material, equipment or transportation; provided, however, that the parties shall use reasonable efforts to ameliorate the effects of any such failure or delay.

(27.) FURTHER ASSURANCES. The parties hereto will do all acts and things and shall make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out and perform the provisions of this Lease.

(28.) INCORPORATION; INTEGRATION; AMENDMENT. (a) All provisions required to be included in this Lease by applicable law are hereby incorporated into this Lease as if fully set forth herein. The foregoing preamble and recitals to this Lease are an integral part hereof and are incorporated into this Lease as if fully set forth herein.

(b) This Lease represents the entire and integrated agreement between the Landlord and Tenant and supersedes all prior negotiations, representations and agreements, written and oral, with respect to the subject matter hereof.

(c) The provisions of this Lease may only be amended, changed or modified by written instrument fully executed by both Landlord and Tenant.

Intending to be legally bound, Landlord and Tenant have executed this Lease as of the Effective Date.

LANDLORD:

Saint Anthony's Church Corporation,
Rhode Island

By: Rev. Gilardo Suarez
Name: Reverend Gilardo Suarez
Its: Director and Treasurer

TENANT:

City of Providence, Rhode Island

By: Jorge Elorza
Name: Jorge Elorza
Title: Mayor

APPROVED AS TO FORM AND
CORRECTNESS:

By: Jeffrey Dana
Name: Jeffrey Dana, Esq.
Title: City Solicitor

EXHIBIT A
The Premises



MEMORANDUM AND NOTICE OF LEASE

(In accordance with Section 34-11-1 of the Rhode Island General Laws)

This Memorandum and Notice of Lease (this "Memorandum") is entered into this 1st day of January, 2023 by and between the hereinafter defined Landlord and Tenant in connection with that certain Parking Lot Lease Agreement dated the 1st day of January, 2023 (the "Lease") for the hereinafter described Premises. Capitalized terms used, but not defined, herein have the meaning ascribed to them in the Lease, which is incorporated herein by reference.

(1.) **Lease:** That certain Parking Lot Lease Agreement dated the 1st day of January, 2023 by and between the hereinafter defined Landlord and Tenant, as lessor and lessee, respectively, for the hereinafter described Premises.

(2.) **Landlord:** Saint Anthony's Church Corporation, Rhode Island, a Rhode Island corporation.

(3.) **Tenant:** City of Providence, Rhode Island, a municipal corporation.

(4.) **Premises:** That certain premises outlined on **Exhibit A** to this Memorandum and consisting of the Parking Lot (as defined in the Lease), which Premises is a portion of that certain real property owned by the Landlord known as and located at 541 Plainfield Street, Providence, RI 02909, all as more fully set forth in the Lease. The Premises is more fully described and is outlined on **Exhibit A** attached hereto and incorporated herein.

(4.1) **Landlord's Reservation of Rights:** As set forth more particularly in the Lease, Landlord has reserved for Landlord and its Landlord Users (as that term is defined in the Lease) the right to use the Premises for parking at times and from time to time throughout the Term hereof in connection with celebrations of church mass at Saint Anthony's, in connection with church events and programming, and for general use by church personnel, agents, and visitors and guests, as needed, in connection with maintenance and operation of the church. Further, the Landlord reserves the right for itself and its Landlord Users to share the use of the Parking Lot in common with Tenant for periods during which events are held at Saint Anthony's, such as funerals and other services.

(5.) **Lease Term:** Ten (10) years commencing on the 1st day of January, 2023.

(6.) This Memorandum is entered into pursuant to the provisions of the Lease and is not intended to modify the Lease. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall govern and control in all instances.

(7.) This Memorandum is entered into in the State of Rhode Island and shall be governed and construed in accordance with the laws thereof giving regard to the conflicts-of-laws principles of said State.

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SIGNATURES AND ACKNOWLEDGEMENTS TO FOLLOW.]

Intending to be legally bound, Landlord and Tenant have executed this Memorandum as of the date first written above.

LANDLORD:

Saint Anthony's Church Corporation, Rhode Island

By: Rev. Gilardo Suarez
Name: Reverend Gilardo Suarez
Its: Director and Treasurer

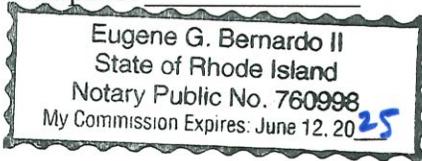
STATE OF RHODE ISLAND
COUNTY OF Providence

In Providence on this 27th day of December, 2022 before me personally appeared Reverend Gilardo Suarez, Director and Treasurer of Saint Anthony's Church Corporation, Rhode Island, a Rhode Island corporation, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged that he executed said instrument voluntarily for its stated purpose, and he acknowledged said instrument by him so executed as his free act and deed and the fee act and deed of said corporation.

Eugene G. Bernardo II
Notary Public
My Commission Expires:

TENANT:

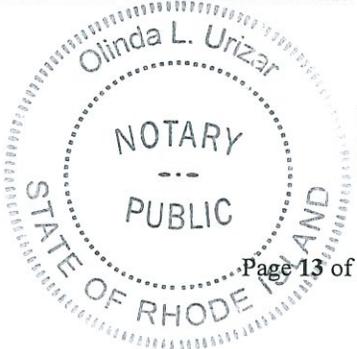
City of Providence, Rhode Island
By: Jorge Elorza
Name: Jorge Elorza
Title: Mayor



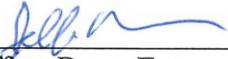
STATE OF RHODE ISLAND
COUNTY OF Providence

In Providence on this 3rd day of November, 2022 before me personally appeared Jorge Elorza, Mayor of the City of Providence, Rhode Island, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged that he executed said instrument voluntarily for its stated purpose, and he acknowledged said instrument by him so executed as his free act and deed and the fee act and deed of said City.

Olinda L. Urizar
Notary Public
My Commission Expires: 8/3/2024



APPROVED AS TO FORM AND CORRECTNESS:

By: 
Name: Jeffrey Dana, Esq.
Title: City Solicitor

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In PROVIDENCE on this 25TH day of OCTOBER, 2022 before me personally appeared Jeffrey Dana, Esq., City Solicitor for the City of Providence, Rhode Island, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged that he executed said instrument voluntarily for its stated purpose, and he acknowledged said instrument by him so executed as his free act and deed and the fee act and deed of the Solicitor's Office of said City.


Notary Public
My Commission Expires: 2/1/25

WENDY A. BROWN
Notary Public, State of Rhode Island
ID # 754573

EXHIBIT A
TO MEMORANDUM AND NOTICE OF LEASE

The Premises





City Plan Commission
Jorge O. Elorza, Mayor

**Decision of the City Plan Commission granting Preliminary and Final Plan Approval for Major Land Development Project 22-022 UDR at 35 Merino Street (AP 107 Lot 595)
July 1, 2022**

Owner and Applicant: City of Providence

The City Plan Commission (CPC) voted to approve the Preliminary Plan for the subject land development project consisting of construction of a school building at a meeting on June 21, 2022 and delegated final plan approval to Department of Planning and Development (DPD) staff. The DPD hereby approves the plan based on the findings of fact and conditions of approval noted below.

Project Overview

The lot measures approximately 35,665 SF and is occupied by a former school annex building in the R-2 zone. It fronts on Merino and Laban Streets. The applicant is proposing to construct a new pre-K-5 school that will be three stories and 42' tall with the first floor located over 50% below grade. A total of 79,447 SF of gross floor area will be created within the building. The site will be developed in tandem with 249 Laban Street (AP 107 lot 111), north of the subject lot which will provide green space, bicycle parking and accessible parking. Pursuant to Unified Development Review (UDR), the CPC granted variances from parking, lot coverage and rear yard setback requirements at the master plan stage.

Findings and Discussion — Dimensional Variance

The CPC granted dimensional relief from the following at the master plan stage:

- Maximum building coverage where 45% is permitted but 87% is proposed.
- Total maximum impervious surface coverage where 65% is permitted but 91% is proposed.
- Minimum rear setback where 25 feet are required but 2.9 feet is proposed.
- Parking for 26 spaces

Section 1902 of the zoning ordinance requires that the CPC find evidence of the following standards in order to grant a variance:

1. *That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in Rhode Island General Laws §45-24-30(16).*

The CPC found the subject property to be unique as it is zoned R-2, which is intended for two-family dwellings but it has been used as a school. Per the applicant, the building's proposed layout and design are necessary to

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meet the programming needs outlined in State and City requirements. The CPC found that the relief requested is not influenced by the character of the surrounding area but by the unique character of the proposed building, which is intended for an educational use in a residential zone where the building will be located on lot 595 with lot 111 providing open space. Given the dimensional requirements of the use, relief from the parking requirement is required as parking cannot be provided on the lot.

- 2. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.*

Based on their review of the plan, the CPC found that the hardship encountered by the applicant stemmed from the need to operate a school building that meets contemporary educational standards. As this is a public facility, the CPC found that the relief requested is not for financial gain.

- 3. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan.*

The relief requested is required to operate a school, which is what the site has been used as in the past. Therefore, the CPC found that a negative effect on neighborhood character is not expected due to the proposed use. The building will exceed the allowable impervious coverage and building coverage limits. Per the applicant, the excess coverage is necessary to allow for all programming within one building and allow for lot 111 to be used as green, open space. The CPC found that provision of open space would have a positive effect on the neighborhood's character.

The rear yard setback maintained by the building abuts a parking area and not a building, which minimizes the effect on neighboring property. The CPC found that the previous use of the site and the building's design will not result in a negative effect on the neighborhood's character or surrounding property.

Parking is proposed to be provided through spaces leased on lot 596 which is owned by a church, on an area that is already paved. As discussed, parking cannot be provided on lot 595 due to the building's programming requirements. The applicant could provide parking on lot 111, but that would necessitate additional paving which the CPC found could have a negative effect on neighborhood character by adding impervious surface and parking close to residences.

- 4. That the relief to be granted is the least relief necessary.*

Based on submitted plans, the CPC found that the relief requested is the least necessary to locate educational facilities within a single building and allow for green space on a separate lot.

- 5. In addition, the City Plan Commission, as part of unified development review, requires that evidence be entered into the record of the proceedings showing that in granting a dimensional variance, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted will amount to more than a mere inconvenience.*

Based on a review of plans and the applicant's presentation, the CPC found that denial of relief could result in more than a mere inconvenience as it would require the applicant to locate facilities in different buildings across the street and reduce the amount of greenspace on lot 111, which could have a negative effect on students and the surrounding neighborhood.

Action—Dimensional Variance

Upon a motion by Commissioner Potter seconded by Commissioner Quezada, the CPC voted to grant the requested dimensional relief for maximum building coverage, total maximum impervious coverage, parking and the rear yard setback requirement.

The CPC voted as follows:

Aye: C. Potter, M. Quezada, H. Bilodeau, N. Sanchez, N. Verdi

In granting final plan approval, the relief is hereby approved.

Findings of Fact – Land Development Project

In reviewing the final plan, the DPD has adopted the CPC's findings from the preliminary plan stage which were made in accordance with section 806 of the CPCs development review regulations, and made findings where necessary:

1. Consistency with Providence Tomorrow: The Comprehensive Plan - The subject property is located in an area that the future land use map of Providence Tomorrow: The Comprehensive Plan intends for low density residential development. The plan describes this area as one intended for one to two family dwellings. As schools are permitted by right in residential zones, the CPC found that the development would conform to the comprehensive plan and objective CS-1 of the comprehensive plan which encourages development and provision of public educational facilities in the City.

2. Compliance with Zoning Ordinance

The CPC made the following findings:

Use: Elementary Educational facilities are permitted by right in the zone.

Dimension and parking: The first floor of the building known as the garden level with storage space and a gymnasium will be located over 50% below grade and is therefore not counted as a story. Classrooms and office space will be provided in the three levels above the garden level, resulting in a height of 42' and three stories which is within the 45' height limit of the zone. The building will be set close to the front, rear and side lot lines, covering over 87% of the lot. The exterior will be composed of a brick veneer, cementitious panels, aluminum trim and glass with ample transparency provided on the ground floor and upper stories.

Mechanical equipment will be located on the roof and garden level with the transformer located at the northeast corner of lot 595. The CPC found that the development complies with the dimensional requirements of the R-2 zone based on the CPC granting relief for lot coverage and setbacks at the master plan stage.

Landscaping: With a lot area of 35,665 SF, approximately 10,700 SF of canopy coverage is required. The applicant will meet some, but not all of that requirement on the subject lot. According to the landscape plan, the majority of the canopy coverage requirement will be met by making offsite plantings on lot 111. A total of 16 trees will be planted and almost the entire area of the lot 111, which is currently paved, will be composed of pervious coverage. Per the applicant, the lot will be used as open space by the school and also open to the public. The City Forester will need to sign off on the landscaping plan prior to issuance of the building permits for the school.

Parking and Traffic Management: Bus pickup and drop off areas will be located in front of the building on Laban Street. A total of 26 parking spaces are needed to meet the requirement of one space per three employees

with 78 employees expected. The project is in conformance with the ordinance as the CPC granted relief from the parking requirement at the master plan stage.

Three bicycle spaces are required per classroom, for a total of 84 spaces, but 42 will be provided on lot 111. The project is in conformance with the bicycle parking requirement as the CPC granted a dimensional adjustment for the 50% reduction at the master plan stage.

A memo providing a traffic safety assessment and recommendation for the site indicated that operation of a 680-student school will result in 442 vehicle trips during the morning peak hour and 231 vehicle trips during the evening peak. Two hundred feet of Laban Street is expected to be gated to contain school buses when boarding students to prevent student movement onto the street. The gated area will also be striped to distinguish between vehicle and pedestrian areas. Vehicle drop off and pickup areas will be provided along Merino Street and Eastwood Ave. Reversal of the one-way operation on Eastwood Ave has been proposed to allow for drop off on the north side of the lot. As pedestrian activity is expected to increase, sidewalks will be ADA compliant in addition to provision of bike racks. The CPC found that no adverse traffic impacts are expected.

Lighting: The CPC found that the submitted lighting plan meets the requirements of the ordinance with light transmittance from wall packs on the building façade not exceeding 1 footcandle at the lot lines. Submitted cut sheets show that the light fixtures will be shielded and cut off as required by the ordinance.

Waiver from submission of state approvals: The applicant requested a waiver from submission of state approvals at the preliminary plan stage, particularly from the RIDEM and NBC, and is requesting that they be submitted when applying for building permits. The CPC granted the waiver, finding that it was required and in the interest of good planning practice as the approval periods for state bodies may vary. Granting the waiver would allow the applicant to proceed with the development process.

3. Environmental Impact

A stormwater management and sediment and erosion control plan were included with the submission. The CPC found that no negative environmental impacts are expected as the applicant is expected to conform to all applicable environmental regulations.

4. Buildable Lot

The CPC found that there are no physical constraints that impact development of this property as it meets the dimensional requirements of the R-2 zone.

5. Street Access

The CPC found that physical access to the site is provided from Merino and Laban Streets.

ACTION

Preliminary Plan

Upon a motion by Commissioner Potter, seconded by Commissioner Sanchez, the CPC voted to approve the preliminary plan, finding it to be in conformance with the zoning ordinance and comprehensive plan based on their findings. In accordance with the action, the plan was approved subject to the following conditions:

1. The CPC granted the waiver from submission of all state approvals subject to the condition that the applicant submit the approvals when applying for building permits.
2. The landscaping plan shall be subject to the City Forester's approval.
3. Final plan approval was delegated to DPD staff.

In accordance with their action, The CPC voted as follows:

Aye: C. Potter, N. Sanchez, M. Cordero, N. Verdi

Nay: H. Bilodeau

ACTION

Final Plan

Based on the foregoing discussion and finding that the applicant has fulfilled the conditions of preliminary plan approval, the DPD hereby approves the final plan.

The applicant shall submit the City Forester's approval and State approvals when applying for building permits.



Robert E. Azar, AICP
Administrative Officer

In accordance with Rhode Island General Laws Section 45-23-63, this decision must be recorded in the land evidence records within twenty (20) days after the CPC's vote. In addition, in accordance with Rhode Island General Laws Section 45-23-67, this decision shall be posted in the office of the City Clerk for a period of 20 days. Any appeals to this decision must be immediately transmitted to the DPD. If no appeals are filed, this letter may be removed by the City Clerk 20 days after it has been posted.

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Providence
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Document Num: 2022325290
John A Murphys
Recorder of Deeds