

The Christian Family Montessori School Lease

At the October 20, 2015 meeting of the Vestry of Rock Creek Parish, counsel described the major substantive provisions of the Lease between the Vestry (the "Landlord") and Christian Family Montessori School (the "School") and reviewed some of the issues, concerns, and conflicts between the parties that have been discussed with respect to the School's use of facilities at St. Paul's Church Rock Creek Parish. The Lease provides for the lease of facilities generally described as the Premises, the Common Areas and the Grounds and these terms are used in this outline as defined in the Lease.

The School may extend its lease of the facilities through July 1, 2061, if the School exercises its options to do so in accordance with the Lease. It should also be noted that the Landlord has the right to terminate the Lease under certain circumstances, such as if the parties cannot reasonably agree on a new "Gross Rental Conversion" amount under Section 8.02 of the Lease, which is intended to compensate the Landlord for common area maintenance costs.

Counsel was asked to prepare a list of issues arising under the Lease that the Vestry might consider and discuss at a future meeting since the term of Lease potentially extends many years and may have long-term implications on the finances of the Vestry and the manner in which the Vestry and the congregation can use the facilities in connection with and to carry out their goals, missions and programs. In the interim, counsel drafted a letter as requested from the Vestry to the School discussing its position as to how the provisions of the Lease apply to several issues and concerns raised by the School.

- 1) The areas comprising the Premises, the Common Areas and the Grounds could be more clearly identified on the page titled "Basic Lease Information" and in Article 1 of the Lease. These defined terms are used throughout the Lease in connection with discussing the rights and obligations of the parties. However, contrary to statements within the lease, the Common Areas are not designated on any exhibit to the Lease.

The School has the right to use the Grounds identified on Exhibit A-1 but the area identified includes all areas within the bounds of St. Paul's Rock Creek property including areas used for interments and cemetery operations. The Vestry might consider identify the area on the Grounds that the School may use pursuant to the Lease.

- 2) Even though the Lease provides that the Landlord has the right to use the School Wing on Sundays for its programs, this has not occurred in part due to complaints by the School that items were taken from the classrooms or that the placement of furniture and other items in the classrooms was not the same as when the School left them.
- 3) The Lease provides for the School's use of an approximately 2,440 sft area designated as the Dining Hall on Exhibit A of the Lease. Recently enclosed areas were constructed within the Dining Hall, which are inaccessible, except by the Landlord, and cannot be used by the School. As stated during the Vestry meeting, we are of the view that limiting the School's use to less than the total usable space in the Dining Hall after completion of recent renovations is inconsistent with the provisions of the Lease and constitutes a breach.
- 4) The installation of the meters or sub-meters in the Building by the School without obtaining the Landlord's prior written consent is inconsistent with the provisions of the Lease and constitutes a breach.

- 5) There are unresolved issues concerning the procedures to follow in determining the amount of the School should pay the Landlord for utilities, particularly water and sewer charges since a significant component of the water and sewer bill relates to storm water management fees included in the bill. Our understanding is that the School, rather than the Landlord, has determined the amount paid for its water and sewer charges and the School's determinations do not include any amount related to the storm water management fees.
- 6) There are questions as to whether the School or the Landlord should bear the cost of cleaning and maintenance of bathrooms located in Common Areas, particularly when in the case of the Gallery Bathroom, the School is the principal user. Under the Lease, the Landlord is responsible for cleaning and maintaining common areas within the Building. However, the School has been asked to clean the Gallery bathroom daily Monday through Friday since it is the principal user of that bathroom. This request is inconsistent with the provisions of the Lease.
- 7) The Vestry should consider establishing a higher Gross Rental Conversion amount, which is the amount paid by the School for "its share of operating costs for the Building, Grounds and other common areas" beginning in 2016 that is based on historical operating costs. The amount should more closely reflect the actual cost of such items and the Vestry might consider including an indexing factor to annually adjust the Gross Rental Conversion amount.

The Vestry might consider increasing the Gross Rental Conversion amount to cover higher cleaning costs incurred as a result of the School's usage of bathrooms located in the Common Areas of the Building and to include a portion of the storm water management fees related to the School's use of roadways within the Grounds in common with others.
- 8) The School has requested the Landlord erect a barrier or partition near the bathroom located off the Gallery so that students and staff of the School have exclusive use of that bathroom generally from 7am to 7pm Mondays through Fridays. The request was based on concerns for the safety and well- being of the students. We are of the view that the Landlord is not obligated under the Lease to consent to the School's request since the Gallery bathroom is located in a Common Area of the Building. However, other considerations may lead the Landlord to accommodate the request.
- 9) The School takes the position that it has the right to use other bathrooms located in the Building pursuant to the Lease and has asked the Landlord to identify such bathrooms. The page of the Lease titled "Basic Lease Information" indicates the School has the right to use "bathrooms" in the School Wing, the Dining Hall and in the Common Areas of the Building as described in the Lease. However, the Lease and the exhibits to the Lease do not specifically describe or identify those "bathrooms" the School is to use. Landlord may consider designating which "bathrooms" the School may use in the Building.
- 10) Section 8.02 provides the Landlord can install separate meters for water, sewer or other utilities as any time during the term of the Lease. However as drafted, the terms of this section specifically require the Tenant to reimburse the Landlord for 50% of the costs, payable over the first 10 years of the Lease if the meters are installed during the first 10 years of the Lease as due reimbursement payments are due. The Lease does not provide for reimbursement of meter installation costs if the meters are installed after the first 10 years.
- 11) Under Section 8.03 of the Lease, the Landlord has an affirmative obligation to reconfigure and separate heating, air conditioning, ventilation, electrical, water and sewer systems in the Building.

The Landlord's failure to take establish separate systems in the Building is inconsistent with the provisions of the Lease and could be considered a breach of the Lease.

- 12) The definition of and discussion of "Program Use" in Section 1.05 of the Lease is limited to programs and activities related to activities related to Landlord's religious instruction. Specifically, these provisions could be clearer so that there is no question that the term applies to functions held in the space by other tenants, community groups, or persons using the space for special events.
- 13) Rules and Regulations concerning the tenant use of the Building are included in Exhibit C to the Lease. In paragraph 20, the Landlord reserved the right to rescind, alter, waive or add any rule or regulation at any time prescribed for the Building when the Landlord deems it necessary or desirable for the reputation, safety, character or security of the Building. The Landlord can revise the Rules and Regulations to address the protocol for responding to a security alarm.