

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2017-19

By JIM MAXWELL Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

**AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH THE BEREA BOARD OF EDUCATION FOR THE USE OF A PORTION OF SMITH SCHOOL FOR MULTIPLE PURPOSES, INCLUDING RECREATION AND OFFICE SPACE, AND DECLARING AN EMERGENCY.**

WHEREAS, the City is in need of additional space for recreational programming, offices and other municipal functions including, but not limited to, Community Engagement; and

WHEREAS, the Berea Board of Education has offered use of a portion of Vivian L. Smith Elementary School to the City of Berea for an annual lease payment of \$1, with space to be used for municipal functions including recreation, offices and other lawful purposes.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That the Mayor is authorized to enter into a lease agreement with the Berea Board of Education for the use of a portion of Smith School for multiple purposes, including recreation and office space, in substantially the same form as attached in Exhibit "A".

**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were approved in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the use of a portion of the school is critically necessary to City departments, and usage of the gym is vital for the health, safety and well-being of Berea youth. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: April 3, 2017

ATTEST: [Signature]  
Clerk of Council

APPROVED: April 4, 2017

[Signature]  
President of Council

[Signature]  
Mayor

Approved as to Form:

[Signature]  
Director of Law

Exhibit "A"

## LEASE AGREEMENT

### CITY OF BEREA AT VIVIAN L. SMITH ELEMENTARY SCHOOL

This Lease executed this 4 day of April 2017 by and between the Board of Education of the Berea City School District, Cuyahoga County, Ohio, hereinafter referred to as the "LANDLORD" and the City of Berea, Cuyahoga County, Ohio hereinafter referred to as "TENANT".

**WHEREAS**, the Landlord is the owner of the real property hereinafter described, which presently is not currently needed by the Landlord for school purposes; and;

**WHEREAS**, the Tenant desires to lease said property for educational, civic, and recreational department needs upon the terms and conditions following:

**NOW, THEREFORE**, in consideration of the rental payments and compliance with the other terms hereinafter stipulated the Landlord lets and leases unto the Tenant.

#### ARTICLE I PREMISES

A tract of several acres fronting on Wyleswood Drive, in the City of Berea, Ohio (a legal description of which is available at the School District offices and by this reference made a part hereof) together with 42,000 square feet of the elementary school building situated thereon, known as Vivian L. Smith Elementary School (see **Exhibit "A"** attached), containing approximately twenty one (21) classrooms in addition to offices, storage areas, multi-purpose room and kitchen. The Tenant will occupy 7,148 square feet of the building the leased acreage is roughly described on the site plan, **Exhibit "B"** attached).

#### ARTICLE II USE

To be used exclusively for the Tenant for the operation of, Programs and Activities, consistent with Ohio Revised Code Section 3313.76 and 3313.77, to provide educational, civic, social or recreational meetings, programs and activities so as to promote the general welfare of the community.

It shall be the responsibility of the Tenant to effect any building modifications, equipment alterations or other changes in the building and site which are or become required by state or local laws or ordinances due to the operation of the Premises by the Tenant. The Landlord shall preapprove all plans and specifications for the alteration or modification of the leased premises.

The Tenant shall use the kitchen for the preparation of meals only if the Tenant furnishes and maintains adequate fire-suppression equipment. Further, the Tennant shall be responsible for having such equipment tested periodically, as required by the City of Berea Fire Department. The Tenant is solely responsible for the kitchen equipment. Food Service licensing shall be the sole responsibility of the Tenant.

The Tenant shall notify the landlord on forms provided by the Landlord of any and all vandalism/damage to the leased and unleased building and grounds within twenty-four (24) hours of the discovery. The Tenant shall inspect the building and grounds on a weekly basis.

The Tenant shall be solely responsible for securing all necessary permits and licenses needed because of this Agreement.

### **ARTICLE III TERM**

To have and to hold unto the Tenant for a term of three (3) years commencing April 4, 2017 and ending April 3, 2020. At the end of said term the Tenant has the option to extend the lease for a period of three (3) or five (5) years by giving written notice to the Landlord by January 1, 2020.

### **ARTICLE IV SECURITY**

A security deposit in the amount of \$5,000.00 is held by the Landlord as the security for damages to the premises by the Tenant under the terms of this Agreement and shall be drawn upon by the Landlord should the facility be found to be in disrepair. Upon the expiration of the Lease, Tenant shall return possession of the leased premises in its present condition, allowing for reasonable wear and tear. Should there be no such damage; the security deposit shall be returned to the Tenant without interest within thirty (30) days after the termination of the lease.

The Tenant shall make the Berea Police Department aware of their occupancy and scheduling.

### **ARTICLE V RENTAL**

The annual rental shall be one dollar (\$1.00).

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### **ARTICLE VI UTILITIES**

Tenant shall, at Tenant's own expense, provide the following utilities or service for the leased space (see **Exhibit "B"**): all electric, gas, water, sewer and telephone service and any other service or services furnished to the Premises thereof during the term of this Lease.

In no event shall any portion of the building be heated to less than 45 degrees Fahrenheit during the heating season.

The Landlord shall be responsible for any fees charged for trash collection by the local municipality.

### **ARTICLE VII – MAINTENANCE AND REPAIRS**

The Tenant shall keep the building, equipment and grounds in good repair and in a clean, safe and healthy condition. The Tenant shall be responsible for all maintenance of their occupied space and expenses such as those herein described, and shall cause repairs to be performed in a timely fashion. Further, any damage to the leased premises or any damage to or destruction of chattels therein used by the Tenant or caused by acts of the Tenant's employees, students, invitees, or licensees shall be repaired or replaced by the Tenant.

## **ARTICLE VII – MAINTENANCE AND REPAIRS cont.**

### Tenant Repairs (illustrations only)

- 1) Glass breakage – interior and exterior; replacement in identical type and quality and/or as required by law.
- 2) Filter, belt, thermocouple replacement; repair of leaking valves at the appliance; lubrication.
- 3) Faucet leaks, commode blockage.
- 4) Snow plowing and snow shoveling on sidewalks used by the Tenant.
- 5) Hardware repair/replacement – railings, dispensers, draperies and drapery hardware.
- 6) Ballast and lamp replacement; switch/receptacle repair.

In performing such repairs, the Tenant is to use competent, qualified repairmen. The services of the Berea City School District's Maintenance Department may, if available, be utilized for such repairs provided that the Tenant reimburses the Landlord for the total cost of services to affect such repairs.

The Landlord shall be responsible for major and non-routine maintenance expenses such as those herein described and shall cause repairs to be performed in a timely fashion. As such, the Landlord may have free access to the Premises at all reasonable times for the purpose of examining the same or to make any alterations or repairs to the building that the Landlord may deem necessary.

### Landlord Repairs (illustrations only)

- 1) Roof Repairs, Replacement
- 2) Ceiling tile repair.
- 3) Major repairs to the heating system, including such things as replacement of heat exchangers, hot water tanks, etc.
- 4) Leaking valves which are not at the appliance.
- 5) Repair of underground lines; gas lines, water lines.
- 6) Lock maintenance; repair of door hardware.
- 7) All other structural repairs and improvements.

The Tenant, in executing this lease, recognizes that the Vivian L. Smith building is not in A-1 condition. The Tenant has examined and knows the condition of said premises and agrees that no representations as to the conditions or repair thereof have been made by the Landlord and accepts the Premises in an "as-is" condition. Every effort will be made by the Landlord to correct problems for which it is responsible. Such things as relighting pilots, resetting breakers, etc., are the day to day responsibility of the Tenant.

## **ARTICLE VIII CUSTODIAL SERVICES**

The Tenant shall, at its own expense throughout the term of this lease, furnish custodial services to the leased premises to such extent and of such quality as to maintain said premises in a condition substantially comparable to that of the Berea City School District, and shall cause the heating equipment therein to be operated by or under the supervision of a competent knowledgeable person acceptable to the Landlord.

Upon execution of this lease, the names of custodial personnel to be used by the Tenant and the working times of said personnel are to be provided to the Landlord, the City Police and Fire Department attached in a separate letter. The Tenant shall advise the Landlord of any changes in custodial personnel throughout the term of this lease.

## **ARTICLE IX TAXES AND ASSESSMENTS**

The Landlord shall discharge all taxes and assessments upon the leased premises, if any.

## **ARTICLE X CASUALTY LOSS OR DAMAGE**

If the leased premises, without fault on the Tenant's part be destroyed, or so damaged by the elements or other cause as to be unfit for occupancy and cannot be reasonably restored or repaired within ninety (90) days from such happening, the lease shall terminate and each party be released from any further obligation hereunder. If such destruction or damage can reasonably be restored or repaired within ninety (90) days, in the sole determination of the Landlord then this lease shall not terminate, but the Landlord shall, with all reasonable speed, restore and repair the destruction or damage within said ninety day period; and, if during such period the Tenant shall be deprived of the occupancy and use of any portion of the premises, a proportionate allowance shall be made to the Tenant from the rent corresponding to the time during which, and the premises of which, the Tenant shall be so deprived.

## **ARTICLE XI ALTERATIONS**

The Tenant shall make no alterations, additions or improvements in or upon the leased premises without the prior written consent from the Landlord which consent will not be unreasonably withheld. The Tenant shall be responsible for any and all alteration needed to meet the requirements of the Americans with Disabilities Act.

## **ARTICLE XII ASSIGNMENT OR SUBLETTING**

The Tenant shall not assign this lease, nor sublet, nor allow use by any other organization, except that the Longbrooke Homeowner's Association, upon presentation of a valid certificate of insurance to the Landlord and Tenant, may hold their annual meeting and events at no cost. Similarly, the Tenant shall not use the facilities or grounds for any purposes other than stated herein. The Tenant agrees to routinely consult and discuss the Tenant's specific usage of the premises with the Longbrooke Homeowner's Association.

### **ARTICLE XIII INSURANCE – OTHER**

The Landlord shall be responsible for obtaining and maintaining Commercial and Industry insurance appropriate for Public School Buildings against risk of loss by fire and other casualties, including acts of wanton destruction, on the building and the contents owned by the Berea Board of Education. Tenant further agrees to and shall designate the Berea Board of Education as "Additional Insured" under that policy.

A binder stating such coverage shall be attached to this lease agreement and shall be attached prior to Landlord's execution of this lease. Said policies shall not be cancelled or modified without at least thirty (30) days prior written notice to the Landlord.

The Tenant shall be solely responsible for any loss to the Tenant's property caused by fire, theft, vandalism, or acts of God.

The Landlord shall not be liable for any loss or inconvenience suffered by the Tenant as a result of fire, theft, vandalism or malicious mischief, or other casualty causing damage to, or destruction of, the Leased Premises.

### **ARTICLE XIV LIABILITY/NOTICE**

~~The Tenant shall be responsible for any and all claims and liabilities for personal injury or property damage suffered on the leased premises, including playgrounds, parking area, driveways and sidewalks, arising from acts of the Tenant, its employees, agents, students, invitees and licensees, or otherwise. The Tenant shall indemnify and hold the Landlord, its individual members, employees and agents in both their official and individual capacities harmless from any such liabilities, claims and costs and expenses (including but not limited to attorney fees), demands, actions or causes of action for any injury, damage, or loss to persons, including death, or any injury, damage or loss of property whatsoever, arising out of or resulting from, caused by, occurring during or in any way related to any action or failure to act, negligence, or other misconduct in occupation or other use of the premises in accordance with the terms and conditions of this Agreement or in connection therewith, arising from the sole and exclusive acts of the Tenant, its employees, agents, students invitees and licensees or otherwise.~~

The Tenant shall acquire and maintain at its expense during the term of this lease Liability insurance that is industry appropriate for Public School buildings in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) for aggregate liability coverage with a company licensed to do business in the State of Ohio and shall designate the Berea Board of Education, its officers and employees as "Additional Insured" under that policy.

A binder stating such coverage shall be attached to this lease agreement and shall be attached prior to Landlord's execution of this lease. Said policies shall not be cancelled or modified without at least thirty (30) days prior written notice to the Landlord.

The Tenant shall notify the City of Berea of its plan to occupy Vivian L. Smith Elementary School and shall be responsible for obtaining any occupancy permit and for any other permits or licenses required.

**ARTICLE XV SIGNS**

No signs shall be displayed on the leased premises without the prior written consent of the City of Berea and of the Landlord, which shall not be unreasonably withheld.

**ARTICLE XVI MANNER OF OCCUPANCY**

The Tenant will use and occupy the leased premises in a careful, safe and proper manner, will not use or permit its use in any way that will increase the rate of insurance thereon, nor will use the leased premises for any purpose other than that hereinabove set forth.

**ARTICLE XVII DEFAULT**

If there be a default for a period of thirty (30) days in the payment of the rental hereinabove provided or in the fulfillment of any of the other conditions of this lease to be fulfilled by the Tenant, or in any waste be committed or unnecessary damage done to the leased premises, the Landlord may forthwith cancel this lease and recover all rents and damages accrued and accruing hereunder or arising from violations hereof. Neither acceptance of rent nor any other ~~act or omission of the Landlord at any time and after the happening of any event authorizing the~~ cancellation of this lease by the Landlord shall operate as a waiver of any past or future violation, breach or failure to keep and perform the conditions hereto by the Tenant nor preclude the Landlord from exercising any right, option or remedy which it may have under the terms thereof.

To any and all payments due to the Landlord and not received within thirty (30) days after notice to the Tenant is sent, there shall be an additional one (1%) percent monthly handling charge added to the unpaid balance.

No failure of either party to exercise any power reserved to it by this Lease or to insist upon strict compliance by the other party with any obligation or condition hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand strict compliance with any of the terms of this Lease. Waiver by either party of any particular default shall not affect or impair either party's right to exercise any or all of its rights and powers herein, nor shall that constitute a waiver by that party of any right hereunder, or of its right upon any subsequent breach or default to terminate this Lease prior to the expiration of its term.

**ARTICLE XVIII STRIKES OR OTHER UNUSUAL CIRCUMSTANCES**

The Landlord and the Tenant shall not be liable for any failure to perform the services or other conditions to be fulfilled by it by reason of strikes, acts of God, or acts of governmental authorities.

**ARTICLE XIX QUIET ENJOYMENT AND CANCELLATION RIGHT**

The Landlord covenants and agrees that if the Tenant shall perform all its covenants and agreements herein, it shall at all times during the term hereof or any renewal have peaceable and quiet enjoyment and possession of the leased premises without any manner of let or hindrance from the Landlord or persons lawfully claiming through or under it; provided, however, that the Landlord, upon six (6) months' notice in writing to the Tenant, shall have the right to cancel this lease and repossess the leased premises when it determines that said premises are needed for the Berea City School District public school purposes, or any other purposes deemed in the best interest of the Berea City School District, whereupon each party shall be released from any and all further obligations hereunder.

**ARTICLE XX NOTICES**

All notices, requests or demands required or appropriate hereunder shall be hand delivered or sent by U.S. Certified Mail to the following addresses: To the Landlord, 390 Fair Street, Berea, Ohio 44017; to the Tenant, 11 Berea Commons, Berea, Ohio 44017, or given when enclosed in properly addressed, sealed envelope and deposited, postage prepaid, in a post office or box regularly maintained by the United States Government.

**ARTICLE XXI SUCCESSORS AND ASSIGNS**

Subject to the provisions of Item XVII above, this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**ARTICLE XXII ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement may be modified or amended in writing, if the writing is signed by the authorized representatives of the parties obligated under the amendment or their respective successors in interest.



IN WITNESS HEREOF this lease has been duly executed by the parties the day and year first above stated in Cuyahoga County, Ohio.

FOR THE BOARD OF EDUCATION  
of the  
BEREA CITY SCHOOL DISTRICT

THE CITY OF BEREA

BY: \_\_\_\_\_  
Its President Date

BY: \_\_\_\_\_  
Its Mayor Date

BY: \_\_\_\_\_  
Its Treasurer Date

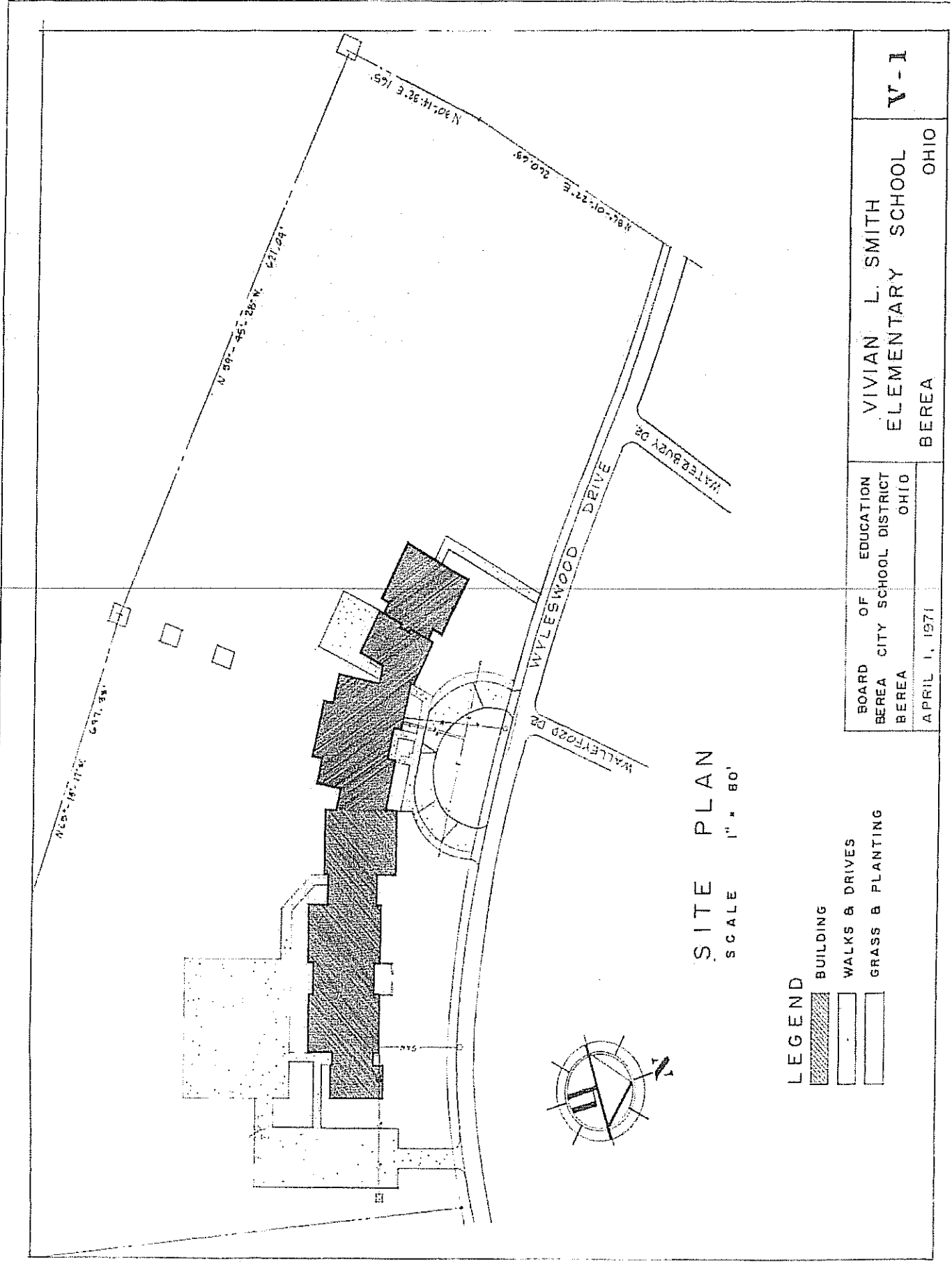
Before me, a Notary Public in and for said County and State, personally appeared the above Board of Education of the Berea City School District by Ana Chapman, Its President, and by Ryan Ghizzoni, Its Treasurer, who severally acknowledged the execution of the foregoing Lease Agreement to be the free act and deed of said Board and their free act and deed individually and as such officers.

In Testimony Whereof, I hereunto subscribe my name and affix my official seal the day and year last aforesaid.




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Notary Public

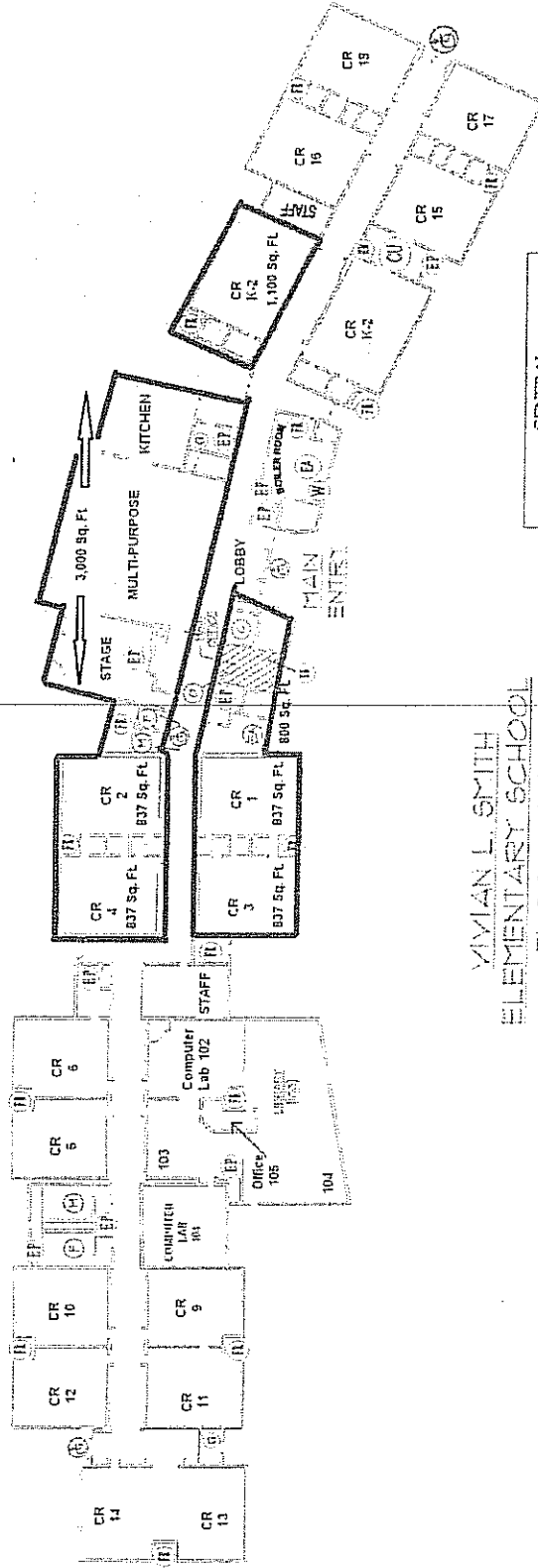
EXHIBIT A



SITE PLAN  
SCALE 1" = 80'

- LEGEND
-  BUILDING
  -  WALKS & DRIVES
  -  GRASS & PLANTING

BOARD OF BEREA CITY SCHOOL DISTRICT BEREA	EDUCATION DISTRICT OHIO	VIVIAN L. SMITH ELEMENTARY SCHOOL BEREA	V-1 OHIO
APRIL 1, 1971			



VIVIAN L. SMITH  
ELEMENTARY SCHOOL  
FLOOR PLAN

VIVIAN L. SMITH ELEMENTARY  
535 WILSONWOOD DR.  
SERENA, OHIO

GENERAL LOCATION LEGEND

- (E) ELEVATOR
- (M) MALE REST ROOM
- (F) FEMALE REST ROOM
- (O) OFFICE
- (C) CLERIC
- (CU) CUSTODIAN
- (H) HANDICAP
- (EP) ELECTRICAL PANEL
- (EM) EMERGENCY ACTION MAP