

**LEASE TO PURCHASE AGREEMENT**

**By and between**

**BETHLEHEM CENTRAL SCHOOL DISTRICT**

**and**

**COUNTY OF ALBANY  
by and through its  
SHERIFF'S DEPARTMENT**

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For the premises known as:

**Clarksville Elementary School  
58 Verda Avenue  
in the Hamlet of Clarksville  
Town of New Scotland  
Albany County, New York**

## LEASE TO PURCHASE AGREEMENT

**THIS LEASE TO PURCHASE AGREEMENT** (this “Agreement”) is made as of \_\_\_\_\_, 2017 (the “Effective Date”), by and between the **Bethlehem Central School District**, having an address of 700 Delaware Avenue, Delmar, New York 12054 (“Landlord”), and the **County of Albany**, New York by and through its Sheriff’s Department, having an address of Albany County Courthouse, Room 218, Albany, New York 12207 (“Tenant”). Individually Landlord and Tenant may be referred to herein as a “party” and, collectively, as the “parties.”

### ARTICLE 1: LEASE AND SALE OF PREMISES

1.01. For and in consideration of the Rent and the covenants, conditions, and agreements herein reserved, mentioned and contained on the part of Tenant to be paid, kept and performed, Landlord hereby leases to Tenant, and Tenant hereby accepts and hires from Landlord, the Leased Premises (as hereinafter defined), subject to the terms, conditions, and agreements herein expressed, in “**AS IS/WHERE IS**” condition with all faults and no representations expressed or implied. Upon expiration, the Lease Expiration (as hereinafter defined), for the additional consideration, covenants, and conditions contained herein, Landlord hereby agrees to sell, and Tenant hereby agrees to purchase, the Leased Premises, subject to the terms, conditions, and agreements herein expressed, in “**AS IS/WHERE IS**” condition with all faults and no representations expressed or implied.

### ARTICLE 2: TERMS AND DEFINITIONS

2.01. The following terms and definitions shall be applied uniformly throughout this Agreement:

- A. “Additional Rent” shall have the meaning set forth in Section 5.01.
- B. “Base Rent” shall have the meaning set forth in Section 4.02.
- C. “Closing” shall have the meaning set forth in Section 26.01.
- D. “Closing Statement” shall have the meaning set forth in Section 26.04.
- E. “Early Termination” shall have the meaning set forth in Section 23.01
- F. “Effective Date” shall have the meaning ascribed to that term in the first paragraph of this Agreement.
- G. “Environmental Damages” shall have the meaning set forth in Section 18.01(C).
- H. “Environmental Laws” shall have the meaning set forth in Section 18.01(B).
- I. “Excluded Areas” shall have the meaning set forth in Section 3.01.

J. “Governmental Authority” shall mean any governmental or quasi-governmental body or agency having jurisdiction over the Leased Premises or the parties hereto, including, without limitation, the State of New York, County of Albany, and Town of New Scotland.

K. “Hazardous Materials” shall have the meaning set forth in Section 18.01(A).

L. “In-Kind Services” shall have the meaning set forth in 4.03.

M. “Interest Rate” shall have the meaning set forth in Section 16.03.

N. “Lease Commencement Date” shall be the same as the Effective Date.

O. “Lease Expiration” shall have the meaning set forth in Section 24.01.

P. “Lease Expiration Date” shall mean the last day of the thirty-sixth (36th) full calendar month following the Lease Commencement Date, which shall be August 31, 2020.

Q. “Lease Year” shall mean the period of twelve (12) months beginning with the Lease Commencement Date or any anniversary thereof, unless such date shall be other than the first of a calendar month, in which event it shall begin on the first day of the first calendar month following the Lease Commencement Date.

R. “Leased Premises” shall have the meaning set forth in Section 3.01.

S. “Legal Requirements” shall have the meaning set forth in Section 11.01.

T. “Objections” shall have the meaning set forth in Section 26.05.

U. “Operating Costs” shall have the meaning set forth in Section 5.04.

V. “Permitted Use” shall mean law enforcement operations and other uses approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

W. “Proration Time” shall have the meaning set forth in Section 26.04.

X. “Purchase Price” shall have the meaning set forth in Section 25.01

Y. “Real Estate Taxes” shall have the meaning set forth in Section 5.02.

Z. “Rent” shall have the meaning set forth in Section 4.02.

AA. “Response Period” shall have the meaning set forth in Section 26.05.

BB. “Taxing Authority” shall have the meaning set forth in Section 5.02.

CC. “Term” shall have the meaning set forth in Section 4.01.

DD. "Title Commitment" shall have the meaning set forth in Section 26.05.

EE. "Title Company" shall mean \_\_\_\_\_.

### **ARTICLE 3: LEASED PREMISES**

3.01. The "Leased Premises" consist of all that certain real property, including all improvements thereon, known as Clarksville Elementary School located at 58 Verda Avenue in the Hamlet of Clarksville, Town of New Scotland, Albany County, New York. Tenant may use any portion of the vacant land of the Leased Premises as it deems necessary, consistent with the terms and conditions stated herein.

3.02. The equipment and surplus furniture owned by Landlord and presently stored in the Leased Premises shall be removed by Landlord within a reasonable time after the Lease Commencement Date, which shall be no later than September 30, 2017. Tenant may, as necessary to complete any renovations or improvements as contemplated in this Agreement, move such equipment and furniture to another location in the Leased Premises, or any other modular structure, provided that Tenant shall take care as to not damage any of Landlord's property and provided that Landlord shall have access to use and remove such property from the Leased Premises upon reasonable request.

3.03. The kitchen area of the Leased Premises shall be for the use and enjoyment of Tenant, consistent with the terms of this Agreement.

### **ARTICLE 4: TERM AND TERMINATION; RENT AND IN-KIND SERVICES**

4.01. The "Term" of this Lease shall be for a period of three (3) years commencing on the Lease Commencement Date and ending with the Lease Expiration Date. Landlord may terminate this Agreement at any time if directed by the New York State Department of Education or any applicable law, rule or regulation to do so, which shall be treated as an Early Termination, as defined in Section 23.01.

(A). In the event that Landlord is directed by the New York State Department of Education or any applicable law, rule or regulation to terminate this Agreement; prior to termination Tenant may elect to accelerate the terms of this Agreement and treat the Early Termination as a Lease Expiration for the purpose of closing and transfer of title, to the extent allowed by any such law, rule or regulation.

(1). In the event that Tenant chooses to exercise this option Tenant shall pay to Landlord, in one lump payment, the remainder of the Annual Rent due for the current Lease Year and one time annual payments due for any remaining Lease Years under the Lease Agreement.

(2). Furthermore, any additional covenants made by Tenant for the period of the lease term shall survive the Lease Expiration and remain in effect for the time prescribed in this Agreement.

4.02. During the Term, the rent (the “Base Rent”) shall be as follows:

<i><b>Lease Year</b></i>	<i><b>Annual Rent</b></i>	<i><b>Monthly Rent</b></i>
1	\$60,000.00	\$5,000.00
2	\$66,000.00	\$5,500.00
3	\$72,000.00	\$6,000.00

Tenant shall pay each monthly installment of Base Rent in advance on or before the first calendar day of each month, together with each monthly installment of Additional Rent. Monthly installments for any fractional calendar month at the beginning of the Term shall be prorated based on the actual number of days in that month. Base Rent and Additional Rent together with all other amounts payable by Tenant to Landlord under this Agreement, shall be sometimes referred to collectively as “Rent.” Tenant shall pay all Rent to Landlord at the place specified in Article 31 hereof for the giving of notice, or at such other place as to which Landlord may hereafter give notice to Tenant. If Tenant fails to make any payment of Rent within ten (10) business days after that payment is due, then Tenant shall pay a late charge of ten (10) percent of the amount of the payment per month from the date when due (unless otherwise waived, in writing, by Landlord, in its sole and absolute discretion). Such late charge shall constitute Additional Rent and shall be paid with the next monthly installment of Base Rent. Such late charge shall be in addition to, and not in lieu of, all other rights and remedies provided to Landlord in this Agreement. All Rent shall be paid to Landlord without notice, demand, counterclaim, set-off, deduction or defense, and nothing shall suspend, deter, diminish, abate or reduce any Rent except as otherwise specifically provided in this Agreement. The obligation to pay Rent shall survive expiration or termination of this Agreement to the extent such amounts have accrued or are otherwise due by Tenant under this Agreement.

4.03. During the Term, tenant shall provide the following “In-Kind Services”:

Tenant shall provide those services as defined in Section 34.03. The obligation to provide such In-Kind Services shall survive for two (2) years after closing as set forth in Section 25.03.

4.04. Tenant and Landlord agree that Tenant’s In-Kind Services provided during the Term are to be valued as follows:

<i><b>Lease Year</b></i>	<i><b>Annual Value of Services</b></i>
1	\$24,359
2	\$24,869
3	\$25,389

4.05. Upon the Lease Expiration Date, the Base Rent and In-Kind Services provided by Tenant as outlined in this Agreement during the Term shall be credited toward the Purchase Price, as set forth in Article 25.

## **ARTICLE 5: ADDITIONAL RENT**

5.01. In addition to Base Rent, Tenant shall pay “Additional Rent,” if any, which shall mean: (i) Real Estate Taxes (as hereinafter defined), (ii) Personal Property Taxes (as hereinafter defined); (iii) Operating Costs (as hereinafter defined), and (iv) all other sums of money payable by Tenant under this Agreement to Landlord other than Base Rent, if any. Unless otherwise specifically provided for herein, all Additional Rent shall be due and payable by Tenant to Landlord within ten (10) days of Tenant’s receipt of notice from Landlord that such Additional Rent is due. Any amounts not paid when due shall accrue interest at the Interest Rate. Additional Rent shall only be due and payable if Landlord pays or incurs liability or expense hereunder for which Tenant is ultimately responsible. Additional Rent shall not be included in or credited toward the Purchase Price.

5.02. “Real Estate Taxes” shall mean the real estate taxes, assessments, water/sewer rentals, levies, impositions, charges and special assessments, or payment in lieu thereof imposed on the Leased Premises during the Term, if any, including without limitation, city, town, village, county and school taxes. If, at any time during the Term, the methods of taxation prevailing on the Lease Commencement Date shall be altered, modified, or changed, in whole or in part, so that in lieu of, or as an addition to, or as a substitute for the whole or any part of the taxes, assessments, levies, impositions, charges, special assessments or payments in lieu thereof, now levied, assessed or imposed on the Leased Premises, including, without limitation (i) a tax assessment, levy, imposition or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, (ii) a tax assessment, levy, imposition of charge measured by or based in whole or in part upon the Leased Premises and imposed upon Landlord, (iii) a license fee measured by the rents payable by Tenant to Landlord, or (iv) any other governmental charges whether federal, state, city, county, or municipal, whether general or special, ordinary or extraordinary, foreseen or unforeseen, levied upon the Leased Premises, then all such taxes, assessments, levies, impositions, charges or special assessments, or the part thereof so measured or based, shall be deemed to be included within the term Real Estate Taxes for the purposes hereof. “Taxing Authority” shall mean any taxing authority which shall lawfully impose Real Estate Taxes on the Leased Premises. Tenant shall not pay Real Estate Taxes during the Term to the extent of the Landlord’s exemption therefrom, which exemption shall not include special assessments, special district charges, or ad valorem levies. Real Estate Taxes as defined herein shall not include any Real Estate Transfer Tax.

5.03. “Personal Property Taxes” shall include all taxes or charges, including sales tax, levied against any personal property or trade fixtures placed by Tenant in or about the Leased Premises, if any.

5.04. “Operating Costs” shall mean all insurance premiums incurred by the Landlord attributable to Tenant’s occupancy of the Leased Premises.

## **ARTICLE 6: POSSESSION**

6.01. Subject to the terms and conditions herein, Tenant shall continue possession of the Leased Premises on the Lease Commencement Date.

## **ARTICLE 7: SERVICES AND UTILITIES**

7.01. Tenant will arrange for the furnishing, at Tenant's sole cost and expense, of all services to be used by Tenant on the Leased Premises. Tenant shall pay for all utilities used by Tenant (or any permitted subtenants) at the Leased Premises, including, but not limited to water, sewer, gas, and electricity. Tenant shall provide and exhibit to Landlord satisfactory evidence of payment of utilities upon request from Landlord.

7.02. Tenant shall, at its sole cost and expense, maintain the Leased Premises in a clean, neat and orderly manner at all times (including by way of example, and not of limitation, janitorial and pest control services as necessary and appropriate). Tenant hereby covenants and agrees to store or dispose or keep all waste in accordance with applicable federal, State and local and Environmental Laws. In the event Tenant shall fail to comply with the provisions of Article 7 or Article 18, Landlord may, upon three (3) business days' notice (or without notice in the event of an emergency) perform same and charge Tenant, as Additional Rent, the cost thereof.

7.03 Tenant acknowledges that this Lease is intended to be a net lease. Tenant shall be responsible for arranging, at Tenant's sole cost and expense, for any and all additional services necessary or desirable for Tenant's use and occupation of the Leased Premises, for the use and occupation of any permitted subtenants of the Leased Premises, and as are necessary to keep the Leased Premises in at least substantially the same condition as on the Lease Commencement Date, except for those alterations of the Leased Premises allowed as described in Article 9 herein, and necessary to comply with Tenant's obligations under the terms and conditions of this Agreement.

7.04 Landlord shall be responsible for, at its sole cost and expense, providing the mechanical systems for the provision of reasonably adequate heat, ventilation and air conditioning for the school building located upon the Leased Premises during the Term. The cost of the fuel and/or electricity necessary to operate the equipment used by the Landlord to provide such heat, ventilation and air conditioning shall be at Tenant's sole cost and expense.

## **ARTICLE 8: USE**

8.01. During the Term, Tenant agrees to:

(A) Use the Leased Premises for the Permitted Use and for no other purpose.

(B) Use the Leased Premises in compliance with all laws, ordinances, regulations or rules applicable to the Leased Premises and all requirements of the carriers of insurance covering the school building.

(C) Not permit tobacco use of any kind on the Leased Premises in accordance with Education Law § 409(2).

(D) Not to use or occupy, and shall not permit or suffer the Leased Premises or any part thereof to be used or occupied, for any business, use or purpose which in any manner:

(1) is in violation of any present or future laws, rules, regulations or ordinances, applicable to Tenant or to the Leased Premises including, but not limited to, the New York State Education Law (See § 4.01);

(2) would violate any Certificate of Occupancy affecting the Leased Premises;

(3) would make void or voidable any insurance then in force with respect to the Leased Premises or which will make it impossible to obtain fire or any other insurance on the Leased Premises;

(4) would be likely to cause structural damage to the school building or any part thereof; or

(5) would constitute a public or private nuisance.

Failure to comply with the terms of this Article 8 shall be considered an immediate Default pursuant to Article 16 hereof. The Tenant shall, promptly after the discovery of any such prohibited use, notify Landlord and take all necessary steps to cure the default by discontinuing such use or compelling its discontinuance.

#### **ARTICLE 9: ALTERATIONS AND INSTALLATIONS**

9.01. (a) During the Term, Tenant shall not build new or expand the existing structures or surfaces located on the Leased Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. Landlord shall respond to Tenant's request to conduct any alterations or improvements contemplated in this Article 9 within 30 days of Tenant's request. All work, alterations, installations, additions and improvements shall be done at Tenant's sole expense and in such manner as Landlord may reasonably designate in the terms of its consent, as provided herein. Should the Term expire on the Lease Termination Date and a transfer of title for the Leased Premises from Landlord to Tenant occurs as stated in Articles 24 and 26 herein, Tenant shall not be required to remove any alterations and/or improvements made hereunder. In the event of Early Termination of this Agreement due to Tenant's Default, Tenant will be required, at Tenant's sole cost and expense, to remove most, if not all, of Tenant's alterations and improvements and restore the Leased Premises to their original condition, ordinary wear and tear excepted.

(b) Notwithstanding the provisions contained in Section 9.01(a), the parties hereby agree that Tenant shall be permitted to undertake the following improvements and alterations without any further consent or approval from Landlord: (1) construct a new, approximately 40' by 40' storage garage on the Leased Premises, and (2) provide new pavement for the fenced area on the side of the school building at the Leased Premises.

9.02. Tenant's work for any alterations, installations, additions and improvements requiring Landlord's consent shall be done solely in accordance with plans and specifications first approved in writing by Landlord. Landlord will not unreasonably withhold or delay its consent to requests for alterations, additions and improvements requiring its consent, and Landlord shall respond to



Tenant within 30 days of such request. Landlord's consent to an alteration or improvement shall not constitute a representation or warranty as to the efficiency or legal compliance of same.

Any such approved alterations and improvements shall be performed in accordance with the foregoing and the following provisions of this Article 9.

1. All work shall be done in a good and workmanlike manner.

2. (a) Tenant covenants and agrees to pay to the contractor, as the work progresses and in accordance with any agreement entered into by Tenant and such contractor, the entire cost of supplying the materials and performing the work shown on Tenant's approved plans and specifications, so as to prevent such liens described in Section 9.03 hereof. (b) Tenant agrees not to use any contractor which has (i) been designated by any New York State agency as ineligible to work on governmental projects for any reason; or (ii) has any past, active or pending litigation against Landlord.

3. All such alterations shall be performed in compliance with all Legal Requirements (as defined in Article 11 hereof) including, without limitation, those imposed by the Occupational Safety and Health Administration.

4. Tenant shall keep the Leased Premises free and clear of all liens for any work or material claimed to have been furnished to Tenant or to the Leased Premises on Tenant's behalf, in accordance with Section 9.03 below.

5. During the progress of the work to be done by Tenant, the work shall be subject to inspection by representatives of Landlord who, upon reasonable notice to Tenant, shall be permitted access and the opportunity to inspect, at all reasonable times, but this provision shall not in any way whatsoever create any obligation on Landlord to conduct such an inspection, or create any liability or obligation for the quality of the work so inspected.

6. Prior to commencement of any work, Tenant or Tenant's contractor shall furnish to Landlord certificates evidencing the existence of:

(a) Worker's compensation insurance covering all persons employed for such work; and

(b) Comprehensive general liability and property damage insurance naming Landlord, its designees and Tenant as additional insureds, with coverage of at least two million (\$2,000,000) dollars single limit. Such insurance shall be placed with solvent and responsible insurance companies reasonably satisfactory to Landlord and licensed to do business in the State of New York, and the policies thereof shall provide that they may not be cancelled without thirty (30) days prior written notice to Landlord, and its designees.

7. Any alterations and improvements made by or for the account of Tenant shall be deemed owned by Tenant. Tenant shall be entitled to receive any depreciation, deductions and other tax benefits related to the ownership of such alterations and additions.

9.03. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other liens for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Leased Premises. Any mechanic's lien, filed against the Leased Premises for work claimed to have been done for or materials claimed to have been furnished to Tenant shall be discharged of record by Tenant at its expense within ten (10) days after such filing, by payment, filing of the bond required by law or otherwise. If Tenant fails to pay any charge for which a mechanic's lien has been filed, and has not discharged same of record as described above, Landlord may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Tenant to Landlord, such amounts to bear interest at the Interest Rate from the date incurred by Landlord until paid. Further, failure to comply with the provisions of this Section 9.03 shall constitute a material default by Tenant under this Agreement entitling Landlord to exercise any or all of the remedies provided in this Agreement in the event of Tenant's Default.

9.04. All alterations, installations, additions and improvements made and installed by Tenant, or at Tenant's expense, upon or in the Leased Premises which are of a permanent nature and which cannot be removed without damage to the Leased Premises shall remain in the Leased Premises and, upon transfer of title of the Leased Premises on the Lease Expiration Date, such alterations, installations, additions and improvements shall become the property of Tenant. In the case of Early Termination due to Tenant's Default, and upon Landlord retaining possession of the Leased Premises upon such Early Termination as set forth in Section 27.01 herein, Tenant shall be provided with a reasonable opportunity to remove and retain said alterations, installations, additions and improvements on the condition that any damage caused to the Leased Premises due to said removal, retention, and restoration shall be at Tenant's sole expense.

9.05. In the event of Early Termination, if any alterations, installations, additions, improvements or other property which Tenant shall have the right to remove or be requested by Landlord to remove as provided herein are not removed on or prior to the Early Termination date, Landlord shall have the right to remove the property and to dispose of the same and at the sole cost and expense of Tenant. In case of any damage to the Leased Premises resulting from the removal of the property, Tenant shall repair such damage or, in default thereof, shall reimburse Landlord for Landlord's reasonable cost in repairing such damage. This obligation shall survive the Early Termination of this Agreement.

## **ARTICLE 10: REPAIRS AND MAINTENANCE**

10.01. Tenant shall, at its sole cost and expense, make all maintenance and repairs to the Leased Premises and mechanical systems (with the exception of the HVAC system), fixtures, and appurtenances therein. The Leased Premises and all mechanical systems (other than HVAC), fixtures, and appurtenances therein shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense, which repairs, restorations and replacements shall be in quality and class equal to the original work or installations. If Tenant fails to make such repairs, restoration or replacements, within thirty (30) days after Landlord's written notice requiring that such maintenance or repair be undertaken and performed to completion, the same may be made by Landlord at the expense of Tenant and such expense shall be collectible as Additional Rent and

shall be paid by Tenant within ten (10) days after delivery of the bill therefor to Tenant. No notice shall be required in any instance of immediate concern related to health, safety or potential property damage, in the exercise of Landlord's reasonable discretion.

10.02 General maintenance of the building systems will be the responsibility of the Tenant, including, but not limited to, water fountain and toilet operation, unit ventilator air filter changes and cleaning, window blind/shade repair, lamp and ballast replacement, snowplowing and sidewalk upkeep during the winter, and grounds upkeep around the immediate building. Pest control, security and card access will be maintained and monitored by the Tenant. The Tenant is also responsible for monitoring fuel oil and propane.

10.03. Notwithstanding the provisions of Section 10.01 and 10.02 hereof, Landlord is responsible for the monitoring, permitting and repair of the septic system and any repairs necessary to the roof. The master clock system, boilers, energy management system, air conditioning units, roof top HVAC units and the individual unit ventilators will be repaired and serviced by the Landlord. Inspection and preventive maintenance on the fire alarm system, fire extinguishers and kitchen suppression system will be the responsibility of the Landlord. The Landlord also will inspect and maintain the playground structures and the grass area immediately around them.

10.04. Without limiting the generality of the foregoing, the exterior walls and roof of the school building, all structural aspects such as support beams, walls, floor slabs, foundations, electric system, plumbing system, windowsill, windows are the sole responsibility of Landlord, unless damage to same is due solely to Tenant, its agents, or employees' negligence, or willful misconduct.

10.05. Tenant shall, at its sole cost and expense, maintain the grounds on the Leased Premises in neat, well-groomed condition, including, but not limited to mowing, mulching, trimming of trees, snow removal, and removal of dead and decaying shrubbery and trees as necessary and appropriate.

10.06. General custodial work will also be the responsibility of the Tenant. These include, but are not limited to: cleaning, providing restroom paper products and hand soaps and carpet and floor finishing care.

10.07. Tenant shall act, at all times, in a reasonable manner to prevent circumstances which threaten safety, health or the condition of the Leased Premises. Further, Tenant shall act to immediately and reasonably address all such circumstances to protect and preserve human safety and the Leased Premises.

## **ARTICLE 11: REQUIREMENTS OF LAW**

11.01. In addition to all requirements in Article 9 hereof, Tenant shall comply with all applicable Legal Requirements, which shall impose any violation, order or duty upon Tenant with respect to the Leased Premises, or the use or occupation thereof. "Legal Requirements" shall mean all laws, rules and regulations of any Governmental Authority having jurisdiction over the Leased Premises. Without limitation, Tenant, with respect to any alterations made by Tenant, shall comply with the requirements of (a) the Occupational Safety and Health Act (and all regulations promulgated

thereunder), and (b), the Americans with Disabilities Act (and all regulations promulgated thereunder), as the same may be amended from time-to-time (collectively, the “Act”). The Act may require, among other things, that Tenant’s alterations to the Leased Premises be designed to remove architectural barriers so that the Leased Premises will be readily accessible to people with disabilities, on the same basis, as the Leased Premises are accessible to those without such disabilities.

11.02. Notwithstanding the provisions of Section 11.01 hereof, Tenant, at its own cost and expense, in its name and/or (whenever necessary) Landlord’s name, may contest, in any manner permitted by law (including appeals to a court, or governmental department or authority having jurisdiction in the matter), the validity or the enforcement of any Legal Requirements with which Tenant is required to comply pursuant to this Agreement, and may defer compliance therewith provided that:

- (a) Such non-compliance cannot subject Landlord to criminal prosecution, fine or penalties, or subject the Leased Premises to lien or sale;
- (b) Such non-compliance shall not be in violation of any mortgage, or of any ground or underlying lease or any mortgage thereon;
- (c) Tenant shall first deliver to Landlord a surety bond issued by a surety company of recognized responsibility, or other security satisfactory to Landlord, in the exercise of its reasonable discretion, indemnifying and protecting Landlord against any loss or injury by reason of such non-compliance; and
- (d) Tenant shall promptly, diligently and continuously prosecute such contest.

11.03. Tenant shall give prompt written notice to Landlord of any violation of any Legal Requirement.

## **ARTICLE 12: INSURANCE, LOSS, REIMBURSEMENT, LIABILITY**

12.01. Tenant shall not do or permit to be done any act or thing upon the Leased Premises that will invalidate or be in conflict with New York standard fire insurance policies covering the Leased Premises, or which would increase the rate of fire insurance applicable to the Leased Premises to an amount higher than it otherwise would be; and Tenant shall neither knowingly do nor permit to be done any act or thing upon the Leased Premises which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on within the Leased Premises; but nothing in this Section 12.01 shall prevent Tenant’s Use of the Leased Premises for the purposes stated in Article 8 hereof.

12.02. If, as a result of any act or omission by Tenant or violation of this Agreement, the rate of fire insurance applicable to the Leased Premises shall be increased to an amount higher than it otherwise would be, Tenant shall reimburse Landlord for all increases of Landlord’s fire insurance premiums so caused, such reimbursement to be Additional Rent payable within ten (10) days after demand therefore by Landlord.

In any action or proceeding wherein Landlord and Tenant are parties, a schedule or “make-up” of rates for the Leased Premises issued by the body making fire insurance rates for the Leased Premises shall be presumptive evidence of the facts stated therein including the items and charges taken into consideration in fixing the fire insurance rate then applicable to the Leased Premises.

12.03. Landlord or its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Leased Premises, or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, unless any of the foregoing shall be caused by or due in whole or in part to the negligence or willful misconduct of Landlord, its agents, servants or employees.

12.04. Tenant shall reimburse Landlord for all expenses, damages or fines incurred or suffered by Landlord, by reason of any breach, violation or non-performance by Tenant, or its agents, servants or employees, of any covenant or provision of this Agreement, or by reason of damage to persons or property caused by Tenant’s occupancy of the Leased Premises.

12.05. Tenant shall give Landlord written notice in case of fire or accidents in the Leased Premises promptly after Tenant is aware of such event.

12.06. This Agreement shall be non-recourse to Landlord, and Tenant agrees to look solely to Landlord’s interest in the Leased Premises, for the satisfaction of any right or remedy of Tenant for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord, in the event of any liability by Landlord, and no other property or assets of Landlord shall be subject to levy, execution, attachment, or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to this Agreement, the relationship of Landlord and Tenant hereunder, or Tenant’s use and occupancy of the Leased Premises, or any other liability of Landlord to Tenant. Upon the sale of the Leased Premises or the assignment of Landlord’s interest in this Agreement, by Landlord, Landlord shall have no further liability or obligation hereunder.

12.07. Tenant covenants and agrees to provide at its expense on or before the Lease Commencement Date and to keep in force during the Term naming Landlord as an additional insured party the following: (i) a comprehensive general liability insurance policy or an equivalent certificate of self-insurance providing blanket contractual liability coverage protecting Landlord and Tenant against any liability whatsoever, occasioned by any occurrence on or about the Leased Premises or any appurtenances thereto. Such policy is to be written by good and solvent insurance companies licensed to do business in the State of New York satisfactory to Landlord, and shall be in such limits as Landlord may reasonably require. As of the Lease Commencement Date, Landlord requires limits of liability thereunder of not less than two million (\$2,000,000) dollars per occurrence for bodily or personal injury (including death) and in the amount of one million (\$1,000,000.00) dollars per occurrence in respect of property damage. Such insurance may be carried under a blanket policy covering the Leased Premises and other locations of Tenant, if any, provided that each such policy shall in all respects, comply with this Article and shall specify that the portion of the total coverage of such policy that is allocated to the Leased Premises is in the amounts required pursuant to this Section 12.07; (ii) comprehensive fire and hazard insurance with

extended coverage risks in an amount not less than 100% of the replacement cost for the school building and all personal property, fixtures, furniture or equipment therein (without deduction for depreciation) and will include fire, extended coverage, vandalism, malicious mischief, sprinkler leakage, boiler and machinery, terrorism coverage, windstorm, earthquake and flood insurance (if available) and a minimum of 12 months of business loss insurance. Landlord shall carry such insurance and charge the expense to Tenant pursuant to Section 5.04 hereof. Notwithstanding anything to the contrary contained in this Agreement, the carrying of insurance by Tenant in compliance with this Section shall not modify, reduce, limit or impair Tenant's obligations and liability hereunder.

12.08. Tenant agrees to include in its fire insurance policy appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Landlord and any tenant of space on the Leased Premises with respect to losses payable under such policy even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible and (ii) agree that such policy shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against Landlord for losses covered by such policy.

**12.09. Landlord does not in any way represent that the insurance herein, whether in scope of coverage or limits of coverage, is adequate or sufficient to protect Tenant's business or interests and Landlord shall not be responsible for any of Tenant's furniture, fixtures, equipment, other personal property or business damages.**

### **ARTICLE 13: DAMAGE BY FIRE OR OTHER CAUSE**

13.01. If the Leased Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Landlord and this Agreement shall continue in full force and effect except as hereinafter set forth.

13.02. If the Leased Premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Landlord and the Rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the respective usable and unusable areas of the Leased Premises.

13.03. If the Leased Premises are totally damaged or rendered wholly unusable by fire or other casualty, then the Rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the Leased Premises shall have been substantially repaired and restored by Landlord (subject to Landlord's right to elect not to restore the same as hereinafter provided).

13.04. If the Leased Premises are rendered wholly unusable (whether or not the Leased Premises are damaged in whole or in part) or if the school building shall be so damaged that Landlord shall decide to demolish it or to rebuild it, then, in any of such events, Landlord may elect to terminate this Agreement by notice to Tenant given within ninety (90) days after such casualty specifying a date for the expiration of this Agreement, which date shall not be more than sixty (60) days after the giving of such notice, and upon the date specified in such notice the Term shall expire as fully

and completely as provided for in the event of an Early Termination. Tenant shall forthwith quit, surrender and vacate the Leased Premises (without prejudice, however, to any of Landlord's rights and remedies against Tenant under this Agreement prior to such termination), and any Rent owing shall be paid by Tenant up to and including the date of such fire or other casualty.

13.05. Unless Landlord shall serve a termination notice as provided in Section 13.04 hereof, Landlord shall make the repairs and restorations under the conditions of Sections 13.02 and 13.03 hereof to the extent of insurance proceeds received by it (plus any deductible), with all reasonable expedition, subject, however, to delays due to adjustment of insurance claims, labor troubles and other unavoidable delays. After any such casualty, Tenant shall cooperate with Landlord by removing from the Leased Premises, as promptly as possible, all of Tenant's salvageable inventory and movable equipment, furniture and other property. Tenant's full liability for Rent shall resume five (5) days after notice from Landlord that the Leased Premises are substantially ready for Tenant's occupancy.

13.06. Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding any of the foregoing provisions of this Article 13, if, by reason of some action or inaction on the part of Tenant or any of its employees, agents, licensees or contractors, either (i) Landlord shall be unable to collect all of the insurance proceeds applicable to damage or destruction or (ii) the Leased Premises or the school building shall be damaged or destroyed on account of fire or other casualty then, without prejudice to any other remedy which may be available against Tenant, the abatement of Rent provided for in this Article 13 shall not be effective.

13.07. This Article 13 shall be considered an express agreement governing any case of damage to or destruction of the Leased Premises or any part thereof by fire or other casualty, and Section 227 of the Real Property Law of the State of New York (or any similar or successor provision) providing for such a contingency in the absence of such express agreement, and any other law of like import now or hereafter enacted, shall have no application in such case.

#### **ARTICLE 14: CONDEMNATION BY EMINENT DOMAIN**

14.01. In the event that the whole of the Leased Premises shall be lawfully condemned or taken in any manner for any public or quasi-public use, this Agreement and the Term and estate hereby granted shall forthwith cease and terminate as of the date of vesting of title. In the event that only a part of the Leased Premises shall be so condemned or taken, then the Base Rent under Article 4 hereof and Additional Rent under Article 5 hereof shall not be abated and this Agreement shall continue in full force and effect.

14.02. In the event of termination of this Agreement in as hereinbefore provided, this Agreement and the Term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were an Early Termination.

14.03. In the event of any condemnation or taking of all or a part of the Leased Premises, Landlord shall be entitled to receive the entire award in the condemnation proceeding, excluding any

award expressly made for the value of the estate vested by this Agreement in Tenant, which award Tenant shall be entitled to receive.

#### **ARTICLE 15: ASSIGNMENT AND SUBLETTING**

15.01. Tenant shall not assign (including, without limitation, assignment by operation of law), sublet, demise or suffer any other person to occupy or use the Leased Premises, in whole or in part, all or any part of the Leased Premises, without the prior written consent of Landlord, which may be withheld in its sole and absolute discretion. Notwithstanding the foregoing, Landlord has consented to the use of a portion of the Leased Premises not to exceed approximately Three Thousand Five Hundred Twenty (3,520) square feet by the Town of New Scotland (2,130 sq. ft for the cafetorium; 750 sq. ft for the stage; and 640 sq. ft for Room 25 AIB) for a usage fee of One Thousand Dollars (\$1,000) per month. Such usage fee shall accrue to the Tenant but any change to the area or times used or the fee paid by the Town of New Scotland shall require the written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

#### **ARTICLE 16: DEFAULT**

16.01. It shall be a Default if Tenant shall default in the payment of Base Rent or Additional Rent, or if Tenant shall default in providing the In-Kind Services required herein, and such default shall continue for fifteen (15) days after due, or if, without the consent of Landlord, as required hereunder, Tenant shall sell, assign, or (without Landlord's approval) sublet this Lease, or if default be made in the performance of any of the other covenants and agreements in this Agreement contained on the part of Tenant to be kept and performed for thirty (30) days after notice (or such longer period of time as shall be reasonably required to cure such default so long as a cure is commenced within such period and diligently prosecuted to completion thereafter), or if Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of a Governmental Authority, or if Tenant shall file or there be filed against Tenant a petition in bankruptcy or arrangement, or Tenant be adjudicated bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act and such proceeding is not stayed or dismissed within sixty (60) days thereafter, Landlord may: (a) cure such default, and any costs and expenses, plus interest at the rate set forth in Section 16.03, incurred by Landlord therefor shall be deemed Additional Rent, or (b) if Landlord so elects, at any time thereafter, terminate this Agreement, on giving to Tenant five (5) business days notice in writing of Landlord's intention so to do, and this Agreement shall expire and come to an end on the date fixed in such notice on the terms set forth for an Early Termination, or (c) by summary proceedings enter the Leased Premises and repossess the same as the former estate of Landlord and expel Tenant and those claiming under Tenant without being deemed guilty of any manner of trespass or liable to prosecution thereof and without prejudice to any other remedies which Landlord may have.

16.02. In the event that the relation of Landlord and Tenant may cease or terminate by reason of the re-entry of Landlord by summary proceedings, the Early Termination of this Agreement by Landlord, or after the abandonment of the Leased Premises by Tenant, Landlord's remedies shall be cumulative and Landlord may seek all remedies allowed by law or in equity. Tenant shall be liable for all costs incurred by Landlord in collecting any amounts and damages owing by Tenant pursuant to the provisions of this Agreement or to enforce any provision of this Agreement,



including reasonable attorneys' fees, whether or not one or more actions are commenced by Landlord.

16.03. Except as otherwise specifically provided in this Agreement, if either party is required to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting and/or defending any action or proceeding instituted by reason of any default of the other party hereunder, and such non-defaulting party shall prevail in any such action or proceeding, then the defaulting party shall promptly reimburse the non-defaulting party for such expenses incurred, together with interest accrued hereon at a fluctuating rate per annum at all times equal to the prime rate of interest (or any comparable successor rate) in effect from time-to-time as announced by Bank of America, NA (or any successor thereto) plus three (3%) percent from the date of such default until payment in full ("the "Interest Rate").

16.04. Tenant hereby waives any and all rights of redemption it may have, and further waives any counterclaims, other than compulsory counterclaims, against the Landlord, under existing or future laws.

16.05. Tenant shall be liable for any and all damages of any kind or nature arising from or as a result of Tenant's default hereunder.

#### **ARTICLE 17: ESTOPPEL CERTIFICATES**

17.01. Tenant and Landlord each agree, at any time and from time-to-time, upon not less than ten (10) business days prior notice from the other, to execute, acknowledge and deliver to Landlord or a person or entity designated in writing by the other, a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications); (b) whether or not the Term has commenced and if it has commenced, stating the dates to which the Base Rent and Additional Rent have been paid by Tenant; and (c) stating, to the best of the applicable party's knowledge, whether or not the other is in default in the performance of any covenant, agreement or condition contained in this Agreement; and (d) such other factual matters as may be reasonably requested by the applicable party to the extent such matters are true at the time. A party's failure to timely deliver to the other the estoppel certificate required herein shall constitute a default under this Agreement.

#### **ARTICLE 18: ENVIRONMENTAL PROVISIONS**

18.01. Environmental Provisions:

(A) "Hazardous Materials" means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, underground storage tanks, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), and soil vapor intrusion, as such terms are used in any Environmental Laws (excluding unused solvents, cleaning fluids and other lawful substances used in the ordinary, current operation and

maintenance of the Leased Premises, to the extent stored in accordance with all applicable Environmental Laws).

(B) “Environmental Laws” (and individually, “Environmental Law”) shall mean each and every applicable federal, State, county or municipal statute, ordinance, rule, regulation, order, code, directive or requirement applicable to Hazardous Substances, pollution, human health and safety, and the environment, together with any amendments thereto, regulations promulgated thereunder, and all substitutions thereof, and any successor legislation and regulations including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the New York State Environmental Conservation Law, and the New York State Navigation Law.

(C) “Environmental Damages” means all claims, judgments, losses, penalties, fines, liabilities, encumbrances, liens, costs, and reasonable expenses and investigation, defense or a good faith settlement resulting from violations of Environmental Laws, and including, without limitation: (i) damages for personal injury and injury to property or natural resources; (ii) reasonable fees and disbursements of attorneys, consultants, contractors, experts and laboratories; and (iii) costs of any clean up, remediation, removal, response, abatement, containment, closure, restoration, or monitoring work required by entering Environmental Laws and other costs reasonable and necessary to restore full economic use to the Leased Premises.

(D) Tenant agrees to indemnify, defend, reimburse and hold Landlord harmless against any Environmental Damages incurred by Landlord arising from Tenant’s breach of Section 18.01(E) below. The obligations of this Section 18.01(D) shall survive the termination of this Agreement.

(E) Tenant shall (i) comply with all Environmental Laws; (ii) not cause or permit any Hazardous Materials to be treated, stored, disposed of, generated or used in the Leased Premises; provided, however, that Tenant may store, use or dispose of products customarily found in offices and warehouses and used in connection with operation and maintenance of property if Tenant complies with all Environmental Laws and does not contaminant the Leased Premises, or environment; (iii) promptly after receipt, deliver to Landlord a copy of any communications concerning any past or present, actual or potential violation of Environmental Laws or liability of Landlord for Environmental Damages. Nothing herein shall obligate Tenant to remediate any pre-existing conditions related to Hazardous Materials, Environmental Laws or Environmental Damages except to the extent caused, contributed to or exacerbated by Tenant.

## **ARTICLE 19: LANDLORD’S ACCESS TO PREMISES**

19.01. During the Term, Landlord or its agents or designees shall have the right, upon reasonable notice to Tenant or any authorized employee of Tenant at the Leased Premises, to enter the Leased

Premises for any reason, including, without limitation (a) for the making of such repairs or alterations as Landlord may deem necessary for the Leased Premises or which Landlord shall have the right to make by the provisions of this Agreement; (b) to move furniture and equipment identified in Section 3.02 herein in and out of the Leased Premises; and (c) to inspect the Leased Premises for Tenant's compliance with the terms and condition of this Agreement. Landlord shall exercise reasonable diligence so as to minimize the disturbance to Tenant but nothing contained herein shall be deemed to require Landlord to perform the same on an overtime or premium pay basis.

19.02. Landlord shall provide Tenant with reasonable notice prior to entering upon the Leased Premises, except in the case of emergency, wherein Landlord may take such steps as necessary to preserve life and/or property.

## **ARTICLE 20: QUIET ENJOYMENT**

20.01. Upon payment by Tenant of the terms herein provided, and provided that this Agreement has not been terminated, Tenant shall peaceably and quietly hold and enjoy the Leased Premises, for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through, or under Landlord, subject nevertheless, to the terms and conditions of this Agreement, and the rights of the holders of any Superior Instruments.

## **ARTICLE 21: WAIVER OF JURY TRIAL AND VENUE**

**21.01. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way in connection with this Agreement, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Leased Premises, and/or other claims (except claims for personal injury or property damage), and any emergency statutory or any other statutory remedy. It is mutually agreed that a court of competent jurisdiction located in the County of Albany, State of New York, will serve as venue to resolve any and all disputes, and each party hereby consents and submits to the personal jurisdiction of such court.**

## **ARTICLE 22: INDEMNIFICATION**

22.01 Tenant shall indemnify, defend, and hold Landlord harmless from and against any claim for injury to person or property arising from Tenant's or any employee, agent, contractor, subtenant, licensee or other invitee of Tenant ("Tenant's Parties") use of the Leased Premises or from the conduct of its business or from any activity, work, or thing that may be permitted by Tenant or Tenant's Parties in or about the Leased Premises. Tenant shall also indemnify, defend, and hold Landlord harmless from and against any claim arising from any breach or default in a performance of any obligation on Tenant's part to be performed under the provisions of this Agreement, or arising from any act or omission of Tenant or Tenant's Parties and from any and all costs, reasonable attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or action or proceeding brought in any such claim.

22.02 Unless caused, in whole or in part, by its negligence or willful misconduct, Landlord shall not be liable for injury to the person of Tenant or Tenant's Parties whether the damage or injury results from conditions arising in or about the Leased Premises, the Excluded Areas, or from other sources or places, nor shall Landlord be liable for any loss, expense or damage (whether direct or indirect) that Tenant may sustain or incur by reason of any change, failure, interference, disruption, interruption, or defect in the supply or character of any utility supplied to the Leased Premises and any such defect shall not (i) constitute an actual or constructive eviction of Tenant in whole or in part; (ii) entitle Tenant to any abatement or diminution of Rent or Additional Rent; (iii) relieve or release Tenant from any of its obligations under this Agreement; or (iv) entitle Tenant to terminate this Agreement.

### **ARTICLE 23: EARLY TERMINATION**

23.01. "Early Termination" of this Agreement shall occur upon any of the events specified in this Agreement that allow for such Early Termination as provided in Sections 4.01, 13.04, 14.02, 16.01, and 26.05.

23.02. Upon Early Termination of this Agreement, title to the Leased Premises shall remain in Landlord's possession, and none of the terms and conditions provided for in Articles 24, 25, and 26 shall apply.

23.03. In the event of Early Termination of this Agreement, Tenant shall surrender the Leased Premises to Landlord as stated in Article 27.

### **ARTICLE 24: LEASE EXPIRATION**

24.01. "Lease Expiration", except in the case of Early Termination, shall occur on the Lease Expiration Date, which shall be August 31, 2020.

24.02. Upon the Lease Expiration, the parties shall proceed to Closing as provided in Article 26.

### **ARTICLE 25: PURCHASE PRICE**

25.01. The Purchase Price for the Leased Premises shall be Three Hundred Twenty-Five Thousand Dollars (\$325,000.00). The Parties agree that this purchase price is a fair and accurate representation of the value of the Leased Premises, given the considerations stated herein.

25.02. The Purchase Price shall be paid by Tenant to Landlord as follows:

(a) Credit for Rent paid during the Term shall be One Hundred Ninety-Eight Thousand Dollars (\$198,000.00).

(b) Credit for In-Kind Services provided during the Term shall be Seventy-Four Thousand Six Hundred Seventeen Dollars (\$74,617.00).

(c) Credit for Tenant's agreement to provide In-Kind Services for two (2) years following the Lease Expiration Date shall be Fifty-Two Thousand Three Hundred Eighty-Three Dollars (\$52,383.00).

25.03. The parties agree that the credit granted for Tenant's provision of In-Kind Services for two (2) years following the Lease Expiration Date is a fair and accurate representation of the value for such services. The In-Kind Services shall be apportioned as having the value of Twenty-Five Thousand Nine Hundred Twenty Dollars (\$25,920) for the first year, and Twenty-Six Thousand Four Hundred Sixty-Three Dollars (\$26,463) for the second year following the Lease Expiration Date. The In-Kind Services shall be of the same kind and provided on the same terms as the In-Kind Services provided during the Term, as described in Sections 4.03 and 34.03 herein. If Tenant ceases to provide Landlord the In-Kind Services within two years after the Lease Expiration Date, Tenant shall pay Landlord one hundred-fifty percent (150%) of the value for such services, based upon the values listed herein, prorated on a per diem basis for the time remaining in the agreed-upon period. This obligation shall survive Closing.

25.04. The parties agree that Tenant's immediate purchase of the Leased Premises will save Landlord a considerable amount in carrying costs given the average open-market time for buildings similar to the Leased Premises, and provide Landlord with a degree of certainty for its economic future. The parties agree that, based on current market conditions, the value of Tenant's immediate purchase would save Landlord approximately \$86,766, calculating the carrying costs of the Leased Premises at approximately \$31,000 per year, escalated at 2% per year and an average market time of 33 months for similar properties.

25.05. The parties agree that the above described purchase price, the values for the services provided, and the values for the credits given towards the purchase price are a fair and accurate representation of the value of such costs, credits, and/or services.

## **ARTICLE 26: CLOSING AND CONDITIONS**

26.01. The closing hereunder ("Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made in person at a location to be fixed by future mutual agreement of the Parties on or about the Lease Expiration Date (the "Closing Date").

26.02. At or before Closing, Landlord shall provide Tenant the following items:

(a) A duly executed and acknowledged Quit Claim Deed for the Leased Premises in the form attached hereto as Exhibit "A" (the "Deed"), together with a Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return, Credit Line Mortgage Certification ("Form TP-584"), and Real Property Transfer Form ("Form RP-5217");

(b) A certificate pursuant to Section 1445(b)(2) of the Internal Revenue Code, and on which Tenant is entitled to rely, that Landlord is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code in the form attached hereto as Exhibit "B"; and

(c) Two (2) duly executed counterparts of the Closing Statement.

26.03. At or before Closing, Tenant shall provide Landlord with the following:

- (a) A duly executed Form TP-584;
- (b) Documentation to establish to the Landlord's reasonable satisfaction the due authority of Tenant's acquisition of the Leased Premises and Tenant's delivery of the documents required to be delivered by Tenant pursuant to this Agreement;
- (c) Such other documents as may be agreed upon by Landlord and Tenant to consummate the purchase of the Leased Premises as contemplated by this Agreement; and
- (d) Two (2) duly executed counterparts of the Closing Statement.

26.04. The term "Proration Time" shall mean 11:59 p.m. on the date immediately preceding the Closing Date, with the effect that the Closing Date shall be a date of income and expense to Tenant. Real estate taxes for the fiscal year in which Closing occurs, if any such taxes are levied, shall be prorated on a per diem basis as of the Closing Date. Preliminary estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Landlord and submitted to Tenant for Tenant's approval prior to the Closing Date (the "Closing Statement"). The Closing Statement, once agreed upon, shall be signed by Tenant and Landlord. The preliminary proration shall be paid at Closing by Tenant to Landlord (if the preliminary prorations result in a net credit to Landlord) or by Landlord to Tenant (if the preliminary prorations result in a net credit to Tenant) by increasing or reducing the cash to be delivered by Tenant pursuant to this Agreement at the Closing.

26.05. Title

(a) Tenant shall, no later than sixty (60) business days after the Effective Date, order an owner's title insurance commitment ("Title Commitment"). Tenant shall furnish (or cause its title company to furnish) to Landlord a copy of the Title Commitment, and Tenant shall identify any items listed in the Title Commitment that it deems objectionable ("Objections"). Landlord shall, within thirty (30) days of receipt of the list of Objections identified by Tenant, notify Tenant in writing of the Objections which Landlord agrees to satisfy on or prior to the Closing, at Landlord's sole cost and expense, and of any Objections that Landlord cannot or will not satisfy; provided, however, that all Objections which can be cured with the payment of a liquidated sum of money (including, but not limited to, any mortgage(s) (unless Tenant assumes said mortgage(s)), and any mechanic's liens, judgments and unpaid taxes), shall be satisfied by Landlord at Landlord's sole cost and expense. If Landlord fails to notify Tenant within the allowed thirty (30) day period (the "Response Period") whether or not Landlord will satisfy the Objections or if Landlord notifies Tenant that it will not satisfy all of the Objections, then Tenant shall be entitled to terminate this Agreement by delivering written notice thereof to Landlord within ten (10) days following the expiration of the Response Period, or, if Tenant fails to terminate, then Tenant shall be deemed to have waived the Objections which Landlord did not expressly agree in writing to satisfy. If Tenant terminates this Agreement because of an Objection, such termination shall have the effect of an Early Termination, as set forth in Article 23.

(b) Landlord hereby covenants and agrees that between the date of this Agreement and the Closing Date, Landlord shall not convey any interest, right, or grant in the Leased Premises without Tenant's prior written consent, which consent shall not be unreasonably withheld.

26.06. Tenant shall pay (a) the costs of obtaining any survey of the Leased Premises; (b) all charges and premiums payable with respect to the Title Policy (including the cost of any title examination fees and the cost of any endorsements to the Title Policy requested by Tenant or Tenant's lender, if any), (c) any costs associated with the provisions of Section 26.05 herein, and (d) any additional costs and charges customarily charged to buyers in accordance with common escrow practices in the county in which the Leased Premises is located, other than those costs and charges specifically required to be paid by Landlord under this Agreement.

26.07. Except as provided in Section 26.06, each party hereto shall pay its own expenses incurred in connection with this Closing.

## **ARTICLE 27: SURRENDER OF POSSESSION**

27.01. In the case of Early Termination, Tenant will peaceably yield the Leased Premises to Landlord in the condition set forth in Section 9.04 hereof.

27.02. In the event that any environmental remediation is required as a result of Tenant's use, occupancy, tenancy, or possession of the Leased Premises, in addition to Tenant's costs to remediate same, Tenant shall be required to pay Rent hereunder to Landlord for the Premises until such time as such remediation is completed to the extent reasonably satisfactory to Landlord. The obligations set forth herein shall expressly survive the expiration or sooner termination of this Agreement.

27.03. On or before the Lease Commencement Date, Landlord shall take a reading of the amount of fuel (i.e. #2 fuel oil and propane) which exist in the tanks servicing the Leased Premises. In the case of Early Termination of this Agreement, Tenant shall be responsible to return the Leased Premises with the same amount of fuel present.

27.04. The Parties agree that, on or before the Commencement Date, Landlord shall begin removing its property presently stored in the Leased Premises as described in Section 3.02. Tenant may, as necessary to permit the improvements and/or alterations contemplated by this Agreement and upon notice to Landlord, move Landlord's property to a mutually agreed upon new location. Landlord shall have all such property removed from the Leased Premises by a reasonable date to be agreed upon by the Parties.

27.05. No restrictions on the Leased Premises applicable during the Term shall survive the Lease Expiration date, except as expressly set forth in this Agreement. Upon Closing, no restrictions

stated herein shall be incorporated into the deed transferring the Leased Premises, except as expressly set forth in this Agreement.

## **ARTICLE 28: HOLDOVER**

28.01. (a) The parties recognize that, in the case of an Early Termination, the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Leased Premises will be substantial, will exceed the amount of the monthly installments of the Base Rent payable hereunder, and will be impossible to measure accurately. Tenant therefore agrees that if possession of the Leased Premises is not surrendered to Landlord in the event of Early Termination of the Agreement, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord, as liquidated damages, for each month and for each portion of any month during which Tenant holds over in the Leased Premises after such Early Termination of the Agreement, a sum equal to one hundred fifty percent (150%) of the aggregate of that portion of the Base Rent (plus actual Additional Rent if any) that was payable under this Agreement during the last month of the Term of this Agreement. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Leased Premises after such Early Termination of the Agreement. The provisions of this Article shall survive after an Early Termination of this Agreement. Tenant's occupancy subsequent to an Early Termination of this Agreement, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy-at will and in no event from month-to-month or year-to-year and it shall be subject to all terms, covenants and conditions of this Agreement applicable thereto, including, without limitation, those set forth in this Article. In the event Tenant defaults or remains in possession of the Leased Premises or any part thereof after an Early Termination of the tenancy-at-will created hereby then Tenant's occupancy shall be deemed a tenancy-at-sufferance and not a tenancy-at-will. If Tenant shall holdover as aforesaid, and if Landlord shall desire to regain possession of the Leased Premises, then at any time prior to Landlord's acceptance of any Rent from Tenant for a specific time period, Landlord, at its option, may forthwith re-enter and take possession of the Leased Premises: (a) without process; and (b) by any legal process available in the Town of New Scotland, Albany County, New York.

(b) In the event Tenant fails to surrender the Leased Premises upon Early Termination of the Agreement, Tenant shall indemnify and hold Landlord harmless from all injury, loss, claims, expenses and liability, including without limitation, any claim made by any succeeding tenant and reasonable attorneys' fees. In addition, Tenant shall be liable to Landlord for any damages incurred by Landlord due to its inability to timely regain possession of the Leased Premises, including but not limited to contract damages for which Landlord might be liable to a follow-on tenant or any economic losses, court costs, expenses or other damages including reasonable attorneys' fees, incurred by Landlord due to Tenant's failure to timely surrender possession of the Leased Premises.

## **ARTICLE 29: WAIVER**

29.01. The waiver of either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Agreement, other than the failure of Tenant to pay the particular



rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver is acknowledged in writing by such party.

### **ARTICLE 30: SIGNAGE**

30.01. All signs installed by Tenant shall comply with applicable laws and shall be installed in a good workmanlike manner.

### **ARTICLE 31: NOTICES**

31.01. Any notice or communication by any party to the other required or permitted hereunder shall be in writing and shall be deemed duly served as of (a) the date it is delivered by hand or by fax (with appropriate acknowledgement of receipt), (b) three (3) business days after having been mailed by certified mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent for delivery on the next business day, shipping prepaid, by a nationally recognized overnight courier, in each case to the receiving party at the address set forth below, or at such other address as a party may designate by written notice to the other party sent in the manner set forth herein. Notices may be given on behalf of the parties by their respective legal counsel.

To Landlord: Bethlehem Central School District  
700 Delaware Avenue  
Delmar New York 12054  
Attn: Judith E. Kehoe

with a copy to: Whiteman Osterman & Hanna LLP  
One Commerce Plaza  
Albany, New York 12260  
Tel.: (518) 487-7600  
Fax: (518) 487-7777  
Attn: Robert M. Gach, Esq.

To Tenant: County of Albany  
Albany County Courthouse, Room 79  
Albany, New York 12207  
Fax: (518) 477-5564  
Attn: County Attorney

### **ARTICLE 32: REPRESENTATIONS AND WARRANTIES**

32.01. Tenant agrees that it has examined the Leased Premises and is familiar with its physical condition. Landlord does not make any representation or warranty as to the physical condition (including, without limitation, the absence of Hazardous Substances in violation of Environmental Laws), expenses, operation, maintenance, or use to which the Leased Premises may be put, or any other matter or thing affecting or related to the Leased Premises, except to the

extent specifically set forth in this Agreement. The Tenant acknowledges that no representations or warranties of any kind or nature have been made or need to be made, and that the Tenant has inspected the Leased Premises and agrees to take the Leased Premises "**AS/WHERE IS AND WITH ALL FAULTS,**" subject to the terms set forth in Section 26.05.

32.02. Upon the Lease Expiration, Tenant shall take the Leased Premises subject to all notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the municipal authorities having jurisdiction, against or affecting the Leased Premises as of the Lease Expiration Date. The Landlord shall furnish the Tenant with any authorizations requested by Tenant that may be necessary to make the searches that could disclose these matters.

32.03. The parties agree to the following representations and warranties:

(a) Other than the matters represented in any document Landlord may deliver to Tenant at the Closing, Tenant has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of Landlord or any of Landlord's agents or representatives, and Tenant acknowledges that no such representations have been made. Landlord specifically disclaims, and neither it nor any other person is making, any representation, warranty or assurance whatsoever to Tenant and no warranties or representations of any kind or character, either express or implied, are made by Landlord or relied upon by Tenant with respect to the status of title to or the maintenance, repair, condition, design or marketability of the Leased Premises, or any portion thereof, including but not limited to (a) any implied or express warranty of merchantability, (b) any implied or express warranty of fitness for a particular purpose, (c) any implied or express warranty of conformity to models or samples of materials, (d) any rights of Tenant under appropriate statutes to claim diminution of consideration, (e) any claim by Tenant for damages because of defects, whether known or unknown, with respect to the improvements or the personal property, (f) the financial condition or prospects of the Leased Premises and (g) the compliance or lack thereof of the Real Property or the Improvements with governmental regulations, and Tenant hereby waives any right to make any claim based on any of the foregoing, it being the express intention of Landlord and Tenant that, except as expressly set forth in this Agreement, the Leased Premises will be conveyed and transferred to Tenant in its present condition and state of repair, "**AS IS/WHERE IS AND WITH ALL FAULTS,**" subject to the terms set forth in Section 26.05.

(b) Tenant represents that it is a knowledgeable and experienced user of real estate, and that it is relying solely on its own expertise and that of Tenant's consultants in purchasing the Leased Premises. Tenant acknowledges and agrees that it will have or has had the opportunity to conduct such inspections, investigations and other independent examinations of the Leased Premises and related matters, including but not limited to the physical and environmental conditions thereof, and will rely upon same and not upon any statements of Landlord or of any officer, director, employee, agent or attorney of Landlord, except as set forth in this Agreement. Tenant acknowledges that all information obtained by Tenant will be obtained from a variety of sources and Landlord will not be deemed to have represented or warranted the completeness, truth or accuracy of any information heretofore or hereafter furnished to Tenant. Tenant acknowledges and agrees that upon the Lease Expiration Date, Landlord will sell and convey to Tenant, and Tenant will accept the Leased Premises, "**AS IS/ WHERE IS AND WITH ALL FAULTS.**" Tenant further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Leased Premises, by Landlord, any agent of Landlord

or any third party. Landlord is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Leased Premises furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to in this Agreement. Tenant acknowledges that the Purchase Price reflects the "as is, where is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Leased Premises, subject to the terms set forth in Section 26.05.

(c) Tenant, with Tenant's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. Tenant acknowledges and agrees that the disclaimers and other agreements set forth in this Agreement are an integral part of this Agreement, and that Landlord would not have agreed to sell the Leased Premises to Tenant for the Purchase Price without the disclaimer and other agreements set forth in this Agreement. The terms and conditions of this subsection 32.03 will expressly survive the Lease Expiration Date and will not merge with the provisions of any Closing documents.

### **ARTICLE 33: BROKERAGE FEES**

33.01. Each party covenants, represents, and warrants that such party has had no dealings or negotiations with any brokerage or agent in connection with the consummation of this Agreement, and such party agrees to hold harmless and indemnify the other party from and against any and all costs, expenses (including reasonable attorneys' fees and court costs), loss, and liability for any compensation, commissions, or charges claimed by any broker or agent, with respect to this Agreement or the negotiations thereof.

### **ARTICLE 34: ADDITIONAL UNDERSTANDINGS AND SERVICES**

34.01. The "Clifford" murals located on and at the Leased Premises must be preserved by Tenant and may not be altered, painted-over, modified or compromised in any way during the Term and after Closing. Additionally, the library shelves and circulation desk may not be altered or removed during the Term, unless otherwise agreed upon by the Parties. Additionally, Tenant agrees not to remove, alter or cover (i) the bronze plaque at the front entrance; or (ii) the "peace pole" in the front of the building; both contained within the Leased Premises at any time. The peace pole may be moved to the back of the Leased Premises as a tribute to the Leased Premises previous use as a school.

34.02. Landlord agrees to remove and dispose of the television/VCR units currently located in the classrooms of the Leased Premises. Tenant shall be permitted to use and possess the modular furniture located in the "main office" during the Term. Upon the Lease Expiration, Tenant shall be permitted to retain title to and possession of said modular furniture.

34.03. In addition to Rent and all other obligations of Tenant hereunder, Tenant hereby covenants and agrees to provide to Landlord, at no additional charge or fee, the following In-Kind Services: Two sheriffs to patrol (in two separate patrol vehicles) the perimeter of the high school, including the adjacent Transportation Facility, and the Operations & Maintenance Facility. Coverage shall, typically, be from the Tuesday evening following Memorial Day through the evening of graduation (typically the last Friday in June). The hours of coverage shall, typically, be from 10:00 pm to 6:00 am. The exact days and times of coverage shall be coordinated with the Landlord annually.

A marked sheriff's vehicle is to be used, and the sheriffs shall be in uniform, consistent with Section 4.03 herein.

34.04. Consistent with the Historical Designation of the Lease Premises, Tenant hereby covenants that it will preserve and maintain the exterior condition of the Leased Premises in its current state for at least ten (10) years after the Lease Expiration Date.

34.05. Consistent with terms mutually to be agreed upon at a later date, Tenant shall make the training/conference room of the Leased Premises available to Landlord for off-site program use (i.e. instruction for students temporarily suspended from school), with minimal modifications to the configuration of the room and related technological features. Such use by Landlord shall be at Landlord's reasonable request and at no cost to Landlord.

34.06. If, at any point after the Lease Termination Date, Tenant decides to sell the Leased Premises for any reason whatsoever, Landlord shall have the right of first refusal to make an offer to purchase the Leased Premises from Tenant, upon such terms and conditions as the Parties may mutually agree upon.

34.07. The provisions of this Article 34, with the exception of 34.01(ii), shall survive Closing.

#### **ARTICLE 35: MISCELLANEOUS**

35.01. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

35.02. Except as otherwise expressly provided in this Agreement, each covenant, agreement, obligation or other provision of this Agreement on Tenant's part to be performed shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Agreement.

35.03. Except as otherwise provided herein, whenever payment of interest is required by the terms hereof it shall be at the Interest Rate as defined in Section 16.03.

35.04. In the event that Tenant is in arrears in payment of Base Rent or Additional Rent hereunder, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Tenant agrees that Landlord may apply any payments made by Tenant to any items it sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any payments shall be credited.

35.05. The covenants, conditions and agreements contained in this Agreement shall be binding on and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this Agreement, their assigns.

35.06. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless so indicated, but each shall, wherever possible, be cumulative in addition to all other

remedies at law or in equity which either party may have arising out of an event of default of the other party.

35.07. The submission of this Agreement for examination, negotiation and signature does not constitute an offer to lease, or a reservation of, or an option for the Leased Premises. This Agreement shall not be binding and in effect until at least one counterpart, duly executed by both parties, has been delivered to Landlord and Tenant.

35.08. If any covenant, condition or provision of this Agreement, or the application thereof to any person or entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, then in each such event the remainder of this Agreement or the application of such covenant condition or provision to any other person or entity any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

35.09. The parties shall execute and deliver all documents, provide all information, and take or forbear from all such action as may be reasonably necessary or appropriate to achieve the purpose of this Agreement.

35.10. Landlord is entitled to accept, receive, and cash or deposit any payment made by Tenant on account of this Agreement in any amount whatsoever and apply the same at Landlord's option to any obligation of Tenant under this Agreement and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same. No endorsement or statement or any check or letter of Tenant shall be deemed accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Landlord's right to recover any and all amounts owed by Tenant hereunder and Landlord's right to pursue any other available remedy.

35.11. Except as otherwise provided herein, this Agreement may be modified or amended only with the prior written approval of both parties, and it may not be discharged or terminated except in writing in accordance with the terms herein provided.

35.12. Each party hereby severally represents that it has been duly authorized to execute, deliver, and perform this Agreement through its members, officers, or agents signing on its behalf.

35.13. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without giving effect to the conflict of laws provisions thereof.

35.14. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement (including all exhibits attached hereto) constitutes the entire agreement and understanding of the parties and supersedes all prior and contemporaneous proposals, agreements, and understandings, oral and written, relating to the subject matter of this Agreement. No covenant, representation, or condition not expressed in this Agreement shall affect, or be deemed to interpret, change, or restrict the express provisions hereof.

35.15. The captions in the Agreement are included for convenience only and all not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

35.16. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

35.17. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, failure of power, restrictive governmental laws or regulations, riots, terrorism, or war and the same is not the fault of the party delayed in performing work or doing acts required under the terms of the Agreement, the performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 35.17 shall not operate to excuse Tenant from payment of Base Rent, Additional Rent, or any other payments required by the terms of this Agreement.

35.18. In any instance in this Agreement where Landlord's consent is required to be "reasonable" and Landlord's consent is found by a court of competent jurisdiction to be withheld unreasonably, then Tenant's sole remedy shall be specific performance.

35.19. Tenant hereby agrees that there are no implied representations, warranties or obligations of Landlord with respect to the Leased Premises. Landlord shall not be required to furnish any services to Tenant or the Leased Premises except as expressly provided in this Agreement.

35.20. Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that this Agreement is a single indivisible contract and that delivery and acceptance of the Deed by Tenant shall be deemed full compliance by the Landlord of all the terms of this Agreement, and as a release by the Tenant of any and all terms of this Agreement, and as a release by the Tenant of any and all rights, obligations, claims, or causes of action against the Landlord. The Tenant understands that none of the provisions of this Agreement, except those which expressly state otherwise shall survive such delivery. No other promise, representation, agreement or obligation on the part of the Landlord, its agents, employees or representatives, shall be binding or survive the delivery and acceptance of the Deed, unless such promise, representation, agreement or obligation is in writing and signed by the Landlord and unless such writing expressly states that the same shall survive the delivery and acceptance of the Deed.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

BETHLEHEM CENTRAL SCHOOL DISTRICT

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By:  
Its:

COUNTY OF ALBANY, NEW YORK

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By:  
Its:

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By:  
Its:

## **EXHIBIT A**

### **Deed**