

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into as of September ____, 2023, by and between Hale Resources, LLC, a Vermont limited liability company ("**HR**"), and the Town of Bennington, Vermont (the "**Town**"). HR and the Town are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

Background

- A. Bennington High, LLC, a Vermont limited liability company ("**Benn High**") owns the real property measuring ± 2.29 acres numbered 650 Main Street, Bennington, Vermont (the "**Property**") which is improved with the former Bennington High/Middle School building measuring $\pm 100,000$ sq. ft. (the "**Building**").
- B. The Town and Benn High are parties to that certain Lease & Purchase Agreement, dated as of March 30, 2022 (as amended by that certain First Amendment to Lease & Purchase Agreement dated as of August 29, 2022, and by that certain Second Amendment to Lease & Purchase Agreement dated as of August 19, 2023, the "**Purchase Agreement**") which is attached hereto as **Exhibit A** and pursuant to which the Town has the right to lease and purchase the Property as described therein.
- C. The Purchase Agreement provides, among other terms, that (1) the Town is obligated to pay rent for the use of the Building beginning April 1, 2022, and (2) if the Town fails to terminate the Purchase Agreement on or before June 30, 2024 (the "**Termination Deadline**"), the Town is obligated to convey to Benn High certain property located at 124 Pleasant Street, Bennington, Vermont (the "**Pleasant Street Property**") no later than December 31, 2025 (the "**Transfer Deadline**") regardless whether the Town acquires the Property.
- D. The Town and HR desire to acquire the Property and redevelop the Building as a mixed-use project as depicted and described on the plans attached as **Exhibit B** hereto and made a part hereof with the following characteristics (the "**Project**"):
 - Municipal Space: $\pm 27,000$ sq. ft. leased to the Town comprised of $\pm 14,000$ sq. ft. that is initially anticipated to be subleased to and/or occupied by the Bennington Senior Center and Meals on Wheels, and a $\pm 13,000$ sq. ft. fitness center including gymnasium space, exercise/activity rooms, and locker rooms/changing rooms that is initially anticipated to be operated by the YMCA.
 - Residential Space: $\pm 70,000$ sq. ft. comprised of a mix of market rate and affordable rental housing and a childcare facility that is initially anticipated to be leased to and operated by the YMCA.
 - Office Space: $\pm 3,000$ sq. ft. that is initially anticipated to be leased to UVM Extension and to the Council on Aging.
- E. The Town and HR are parties to that certain Memorandum of Understanding, dated as of August 22, 2022 (the "**MOU**") which sets forth certain preliminary understandings between the Town and HR regarding the Project. Pursuant to the MOU, HR and the Town have performed extensive pre-development work with regard to the Project. The Town has committed \$2,000,000 of municipal American Rescue Plan Act ("**ARPA**") funding to pay a portion of Project construction costs, and HR

has identified a funding stack to pay for the balance of Project construction costs. The Town and HR are committed to working collaboratively to apply for and support grants and other funding sources identified by the Town and HR to fund the Project, and they enter into this Agreement to establish and define their ongoing efforts and responsibilities. This Agreement replaces and supersedes the MOU in its entirety.

Now therefore, in consideration of the covenants, considerations and mutual benefits set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Background Section; Continued Efforts. The Background section of this Agreement is incorporated herein by reference. HR and the Town agree to continue to use cooperative, diligent, good faith efforts to design and construct the Project, and HR agrees to continue to use diligent, good faith efforts to secure and commit the financing and funding sources necessary to develop and construct the Project, and to procure payment, performance and completion bonds for the construction of the Project. Upon procuring such bonds and securing the financing and funding sources necessary to develop and construct the Project, HR will provide the Town with written notification that it is prepared to purchase the Property and construct the Project. By October 1, 2023, the Town will post and publish public notice of the proposed conveyance of the Pleasant Street Property in the manner required by 24 V.S.A. § 1061, and the Town agrees to inform HR whether a petition signed by at least 5% of legal voters shall have been submitted within 30 days following the Town's provision of public notice objecting to the proposed conveyance and, if so, the date on which the voters will consider whether to disapprove the conveyance; in such event, the parties agree that if the proposed conveyance is disapproved by the voters, then notwithstanding any other provision of this Agreement, the Town may terminate the Purchase Agreement and this Agreement in its discretion by written notice delivered within thirty (30) days following the vote.

2. Transaction Structure. Once HR shall have satisfied the requirements established in Section 1 and notified the Town that it is prepared to purchase the Property and construct the Project, the Town will assign the Purchase Agreement to HR (or to one or more entities created by HR or its principals to acquire and develop the Property with the Project, referred to herein as "**HR Designees**") by an assignment and assumption agreement that will include the following terms: (a) HR will be required to purchase the Property and pay Benn High the cash purchase price for the Property or otherwise satisfy its obligation to pay for its purchase of the Property to the satisfaction of Benn High (such as through seller financing if agreed to by Benn High); (b) HR will be required to close on the purchase of the Property and commence construction of the Town Lease Space (defined below) on or before October 1, 2024 or risk losing the allocation of ARPA funds described in Section 5(a)(i) below¹; (c) the Town will provide and assign its title work with respect to the Property; and (d) HR agrees to indemnify and hold the Town harmless from and against any damages, expenses or liabilities associated with or arising from HR's failure to complete the Project prior to the Transfer Deadline. If HR fails to notify the Town that it is prepared to purchase the Property prior to the Termination Deadline (as such date may be extended as contemplated below), the Town may terminate the Purchase Agreement and this Agreement in its discretion.

¹ The Town must officially allocate its ARPA funds by the end of 2024, so this date provides the Town with time to pivot to another project if necessary, bearing in mind that HR will have provided its notice of intent to proceed by the June 1, 2024 Termination Deadline so it should be able to close on the purchase and commence construction by October.

3. Lease Obligations. If HR or if an HR Designee fails to close on the purchase of the Property before January 15, 2024, then from and after January 15, 2024² HR shall pay all rent due under the Purchase Agreement directly to Benn High and shall be responsible for all maintenance and insurance obligations established by the lease provisions of the Purchase Agreement, and HR agrees to indemnify and hold the Town harmless from and against any obligation or liability to make such payments or to perform such obligations from and after such date.

4. Project Financing. At the time of the financial closing and acquisition of the Property:

- a. The Town shall contribute, loan and direct the following grants and other funds to pay a portion of Project expenses:
 - i. Subject to Section 2(b), above, grant \$2,000,000 of ARPA funds³ to NeighborWorks of Western Vermont ("**NeighborWorks**") or to another designee, on the following conditions: (1) NeighborWorks or the other designee invests the funds in the Project, (2) NeighborWorks covenants and agrees, on a nonrecourse basis, to repay these funds to the Town if the Municipal Space Lease (defined below) is not extended for at least an additional 35 years beyond its initial term, (3) HR guaranties NeighborWorks' agreement to repay the Town, in form and content reasonably acceptable to the Town, to include the right for NeighborWorks to assign such guaranty to the Town, (4) NeighborWorks assigns such guaranty to the Town in form and content reasonably acceptable to the Town, and (5) upon NeighborWorks' assignment of such guaranty to the Town, the Town shall look solely to HR to fulfill the covenant and agreement to repay the Town. Documentation memorializing this provision must be executed to the Town's reasonable satisfaction before the Town makes the grant of ARPA funds to NeighborWorks or to another designee.
 - ii. Subgrant \$980,000 of Northern Borders Regional Commission ("**NBRC**") funds, if the corresponding grant to the Town is approved by NBRC, to NeighborWorks or to another designee, on the condition that NeighborWorks or the other designee invests the funds in the Project;
 - iii. Subgrant \$386,190 of Community Development Block Grant ("**CDBG**") funds, if the corresponding grant to the Town is approved by the Agency of Commerce and Community Development ("**ACCD**"), to NeighborWorks or to another designee, on the condition that NeighborWorks or the other designee invests the funds in the Project; and
 - iv. Subject to final approval from the State of Vermont and from the Town's Selectboard after a public meeting, grant \$160,000 of Town Program Income ("**TPI**") funds to NeighborWorks or to another designee, on the condition that NeighborWorks or the other designee invests the funds in the Project.

² Alternatively, the Town can keep paying rent but rent paid after 1/15/24 reduces the amount of the Town's ARPA contribution dollar for dollar. The Town does not have the ability to increase this amount.

³ See the prior footnote.

- b. HR shall contribute all other funding sources necessary to pay for all Project expenses including, without limitation, architectural, engineering, design, development, permitting, construction, furnishing, equipping, management, accounting and legal expenses except as otherwise set forth below.

5. Other Project Responsibilities. The following obligations shall commence at the time of the financial closing and acquisition of the Property:

- a. HR will construct, equip and fit-up the Project, including the Municipal Space, in accordance with a design and specifications approved in advance by the Town.
- b. The Town will furnish the Municipal Space at its expense and will, at its expense, purchase and install telephone and data equipment in the Municipal Space and all desired computer and security system equipment in the Municipal Space.
- c. Upon completion of the Project, HR will be responsible for the overall management, maintenance and repair of the Property, subject to the terms of a lease between HR and the Town for the use of the Municipal Space (the "**Municipal Space Lease**").
- d. HR recognizes that the Town intends for the services which are currently operated from the Pleasant Street Property to be operated from the Municipal Space upon completion of the Project, and that once HR shall have assumed the Town's purchase obligations under the Purchase Agreement, the Town will be obligated to convey the Pleasant Street Property to Benn High prior to the Transfer Deadline. Accordingly, time is of the essence to complete the Project prior to the Transfer Deadline in order to avoid an interruption of such services.

6. Lease Agreement. Upon acquisition of the Property by HR or by an HR Designee controlled by HR, the Town and HR, or an HR Designee controlled by HR, shall enter into the Municipal Space Lease, which shall include the following terms:

- a. The initial term will be 15 years.
- b. The Municipal Space Lease will comprehensively address (i) shared use of interior common spaces within the Building; (ii) the shared use of exterior facilities including access driveways, walkways, and parking lots; and (iii) the shared use of building systems or utility services or infrastructure, including fire alarm and suppression systems. The Town shall lease approximately 27,000 s.f. of the Building (the "**Town Leased Space**") and shall be free to sublease the Town Leased Space to Meals on Wheels and other nonprofit entities and organizations on terms to be reviewed and approved by HR, including compliance with Sec. 4.02(2)(c) of Rev. Proc. 2014-12.
- c. HR will construct, equip and fit-up the Municipal Space in accordance with a design and specifications approved in advance by the Town.
- d. The Town will furnish the Municipal Space at its expense and will, at its expense, purchase and install telephone and data equipment in the Municipal Space and all desired computer and security system equipment in the Municipal Space.

- e. The Town shall pay an annual rent of \$7.50 per sq. ft. (adjusted by CPI as of date of lease commencement) triple-net. The annual rent amount shall increase annually following lease commencement by the lesser of increases in the CPI or 3.5%.
- f. The Town shall maintain the parking areas and other outdoor spaces on the Property in good condition (i.e., snow plowing and lawn mowing/landscaping), provided that the landlord will be required to pay for all necessary capital improvements to the outdoor spaces and for all repaving or other capital repairs to or replacements of the parking areas when required.
- g. Landlord will be responsible for all capital repairs and replacements to the Building and Property, for the maintenance, repair and replacement of all building systems (including HVAC, electrical, plumbing, fire alarm, and fire suppression systems) and structural elements including the roof, and for the maintenance, repair and replacement of all exterior Building elements.
- h. Subject to the requirements of Section 7(a), the Town shall agree to all reasonable terms to conform the Municipal Space Lease to the Net Lease requirements of the Federal Historic Tax Credit and New Markets Tax Credit financing of the Project.

7. Additional Project Support. The Town and HR agree to reasonably consider additional measures to support the Project, such as a tax stabilization agreement, subject to review and approval by the Town's Selectboard.

8. Funding of Respective Development Obligations. Until such time that HR informs the Town in writing that it is no longer pursuing the Project, or the last date that the Town can terminate the Purchase Agreement without incurring the obligation to transfer the Pleasant Street Property, (a) each of the Town and HR shall continue to fund all of their respective development obligations and (b) the Town shall continue to pay the applicable rent under the Purchase Agreement, subject to Section 4, and shall not terminate the Purchase Agreement.

9. Termination. HR shall have the right to terminate this Agreement at any time prior to the date on which it provides the Town with written notice that it is prepared to purchase the Property and construct the Project, including if the Town is unsuccessful in its efforts to amend the Purchase Agreement in the manner contemplated by Section 3. The Town shall have the right to terminate this Agreement on the Termination Deadline if HR shall have failed to satisfy the requirements established in Section 1 and shall not yet have notified the Town that it is prepared to purchase the Property and construct the Project.

10. Assignment. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns, provided that HR may only assign its rights under this Agreement to an HR Designee, and any other assignment or purported assignment shall be null and void.

11. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of law rules. The Parties consent to and submit to in personam jurisdiction and venue in the State of Vermont and in the federal district courts which are located therein. The Parties assert that they have purposefully availed themselves of the benefits of the laws of the State of Vermont and waive any objection to in personam jurisdiction on the grounds of minimum contacts, waive any objection to venue, and waive any plea of forum non conveniens. This consent to and

submission to jurisdiction is with regard to any action related to this Agreement, regardless of whether the Parties' actions took place in the State of Vermont or elsewhere in the United States.

12. Severability. If any term, covenant or condition contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice any Party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof, and the Parties shall cooperate to modify the Agreement to cause it to conform to the original language of the Agreement to the extent consistent with the finding of the court.

13. Construction; Headings. The Parties waive the benefit of any rule that this Agreement is to be construed against one Party or the other. The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

14. Integration; Modification. This Agreement, together with the exhibits referenced herein and/or attached hereto, constitutes the entire agreement between the Parties, superseding any prior agreements, understandings or representations, oral or written, and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect. The Agreement can be modified only by written agreement executed by authorized representatives of each Party.

15. No Partnership. The Parties do not intend by this Agreement to create, nor shall this Agreement be deemed to create, a partnership or a joint venture among the Parties; each Party is an independent actor and entity, and nothing in this Agreement shall be deemed to make either Party an agent or partner of the other, or to give either Party the right to bind the other in any way, notwithstanding any reference to the Project as a "public-private partnership."

16. Waiver. The failure of either Party to insist on strict performance of any of the provisions of this Agreement or to exercise any right it grants will not be construed as a relinquishment of any right or a waiver of any provision of this Agreement. No waiver of any provision or right shall be valid unless it is in writing and signed by a duly authorized representative of the Party granting the waiver.

17. Incorporation by Reference. The content of the Background section to this Agreement, including without limitation the definitions set forth therein, and all exhibits hereto and the terms contained therein and the contents thereof, are incorporated into this Agreement by reference.

18. Authority. Each of the Parties warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and to thereby bind the Party on whose behalf such person, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

19. Notices. Any notices to be given pursuant to this Agreement shall be sufficient if given by a writing: deposited in the United States mails, certified mail or registered mail, return receipt requested, postage prepaid; by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender; by facsimile; or by email (provided that the electronic process used is reasonably secure and not easily susceptible to manipulation) addressed as follows:

If to the Town: Daniel Monks
Assistant Town Manager
Town of Bennington
205 South Street
Bennington, VT 05201
dmonks@benningtonvt.org

With a copy to: Jeremy Farkas, Esq.
MSK Attorneys
275 College Street
P.O. Box 4485
Burlington, VT 05406-4485
Email: jfarkas@mskvt.com

If to Owner: Hale Resources, LLC
111 South St., Suite 203
Bennington, VT, 05201
Attention: Zachary Hale
Email: zak@haleresources.com

With a copy to: Craig Miskovich, Esq.
Downs Rachlin Martin PLLC
199 Main Street
PO Box 190
Burlington, VT 05402-0190
Telephone: 802-846-8617
Email: cmiskovich@drm.com

or to such other person, address or number as the Party entitled to such notice or communication shall have specified by notice to the other Party given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by courier, the next day after being deposited with the courier, properly addressed and with prepaid; (iii) if sent by facsimile, when transmission has been electronically confirmed; and (iv) if sent by email, when transmitted as long as the sender does not receive a delivery failure notification.

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; all such counterparts may be evidenced by a facsimile, .pdf or similar reproduction methods and/or may be executed electronically using electronic signature software (e.g., DocuSign or similar software) or similar methods (each a method of "Electronic Execution"), and each facsimile or pdf or Electronic Execution shall have the same legal and binding effect as original signatures

18. Attorneys' Fees. The substantially prevailing party in any dispute arising out of or relating to this Agreement, its breach or enforcement that is resolved by a binding arbitration or by litigation shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses incurred in connection therewith.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first entered above.

HALE RESOURCES, LLC

By: _____
Name:
Title:

TOWN OF BENNINGTON

By: _____
Name:
Title:

EXHIBIT A

Lease & Purchase Agreement, dated as of March 30, 2022, as amended by that certain First Amendment to Lease & Purchase Agreement, dated as of August 29, 2022, and that certain Second Amendment to Lease & Purchase Agreement, dated as of August 19, 2023

LEASE & PURCHASE AGREEMENT

THIS AGREEMENT ("Lease"), made as of March 30, 2022, by and between Bennington High, LLC of Bennington, Vermont (referred to herein as "Lessor" in paragraphs 1–11, and "Seller" in paragraphs 12–23) and The Town of Bennington, a municipal corporation with a place of business in Bennington, Vermont (referred to herein as "Lessee" in paragraphs 1–11 and "Purchaser" in paragraphs 15–23).

WITNESSETH:

1. The Lessor, in consideration of the rental and the covenants hereinafter contained to be paid and performed by the Lessee, has let and demised and by these presents does lease and demise unto the Lessee the lands and premises located at 650 Main Street in the Town of Bennington, Vermont ("Property").

Lessor reserves, however:

- A. access to the Property to the extent necessary to carry out the obligations set forth in Paragraph 4, below, such right of access being personal to Lessor and Lessor's agents hired for the express purposes set forth in Paragraph 4; and
- B. access to the shop spaces on the north side of the new wing of the Property, from the shop space on the northeast corner of the building to the old woodworking shop, as more particularly depicted in the attached Schedule A. Such right of access shall be personal to Lessor, and shall continue until the date Lessor acquires title to the Senior Center as provided in Paragraph 2, below.

Lessor will deliver the Property to lessee free of all occupants. Under no circumstances shall any person be permitted to occupy any part of the Property as a dwelling or to sleep overnight on the Property.

TO HAVE AND TO HOLD the same to the Lessee for the period set forth in Paragraph 2, below.

2. Rental Payments and Term: In consideration whereof, the Lessee covenants and agrees to pay the Lessor monthly rent, on the first day of each month beginning April 1, 2022 ("Lease Commencement Date"), for a term ending on March 31, 2052 ("Lease Term"), as follows:

- (A) For the first five years, in an amount equal to a payment under a \$1,100,000.00 30-year note at an interest rate of 4% (\$5,252.00);
- (B) At the end of five years, and every five years thereafter the interest rate shall be adjusted at the current WSJ prime lending rate plus 1%, and the amount of the rent due shall be adjusted accordingly.

The portion of such rent payments that would represent the amount of principal paid

under such terms shall be credited to the purchase price at a closing on the Property as set forth in the Purchase Terms in Paragraphs 12–23 hereof. The rent amount is subject to adjustment as set forth in Paragraph 4.

Lessee shall have the right to terminate this Lease & Purchase Agreement at any time, for any reason, upon 90 days' notice of termination, without further obligation, except as provided in this Paragraph. If no such notice of termination has been given within 18 months of the Lease Commencement Date, Lessee shall be obligated to transfer to Lessor (and Lessor shall be obligated to accept) title to the Town of Bennington Senior Center Building located at 124 Pleasant Street, which shall be conveyed without liens and encumbrances and free of occupants. The Town shall give public notice pursuant to 24 V.S.A. § 1061 within 90 days of the Lease Commencement Date. In the event that a petition is thereafter filed pursuant to 24 V.S.A. § 1061(a)(2), and subsequently disapproved by the voters of the Town, then this Lease & Purchase Agreement shall be terminated, and neither party will have further obligation hereunder, except that the Town shall have 30 days to surrender possession of the Property.

3. Property Tax: Lessor and Lessee agree that all Bennington real property taxes, if any, shall be paid by Lessee.
4. Improvements by Lessor: Within one year of the Lease Commencement Date, Lessor shall complete all of the following improvements to the Lessee's satisfaction:
 - Repair of all windows in the building, including the windows on the west side of the old high school.
 - Install heating units and air exchange units for the gymnasium and all fitness rooms and locker rooms. Such installation shall be performed by a licensed HVAC contractor.
 - Add bathrooms to gymnasium area. Such addition shall be performed by a licensed plumber.
 - Install a new roof on fitness rooms and locker rooms behind gymnasium.

All such improvements shall be completed to specifications approved in advance by Lessee. The Parties shall assign a value to the completion of such improvements within 60 days of the Lease Commencement Date. In the event that Seller fails to make all of the improvements to Lessee's satisfaction within one year of the Lease Commencement Date, the Purchase Price shall be reduced by the value of such uncompleted improvements, and lease payments adjusted accordingly. Lessor shall not permit any liens to attach to the Property in the course of performing such improvements.

5. Improvements by Lessee. Lessee at its sole cost and expense may make capital improvements to the Property during the term of this Agreement. Lessee shall not permit any liens to attach to the Property. In the event that Lessee makes such capital improvements to the Property and in the event that the closing should not occur due to termination of this Agreement pursuant to Paragraph 2, then Lessor shall keep the capital improvements made by the Lessee at no cost to Lessor. All alterations, changes, and improvements built, constructed, or placed

on the Property by Lessee, with the exception of fixtures removable without damage to the Property and moveable personal property, shall, unless otherwise provided by written agreement between Lessor and Lessee, be the property of Lessor until such time as Lessee purchases the Property pursuant to the provisions of this Agreement, at which time all such improvements shall become the property of Lessee.

6. Assignment. Lessee may assign or sublease this lease, or any part thereof.
7. Lessor's Covenants. Lessor agrees that, in consideration of Lessee's full compliance with the terms herein and so long as Lessee remains in full compliance, Lessor forfeits the right to sell or lease the Property, or market the Property therefore, to any other party during the term of this Agreement, provided, however, that if Lessee notifies Lessor that it will not exercise its right to Purchase, Lessor may show the Property to prospective tenants or purchasers during the remaining term of Lessee's lease.

Lessor shall not permit any liens or other encumbrances to attach to the Property at any time during the lease term.

8. Insurance: Lessee shall procure and maintain in force fire, extended coverage and liability insurance on the entire Property. Lessee covenants to procure and maintain in force at all times during the term of this lease public liability insurance sufficient to satisfy and pay any judgment to the extent of Two Million Dollars (\$2,000,000.00), which may be recovered against Lessee by reason of its negligence, nonfeasance, lack of care or violation of any applicable statute, ordinance or regulation, with respect to the maintenance, condition or operation or use of the Property hereby demised, or the conduct of any business or any activities or transactions in or therefrom. The Lessee agrees to name the Lessor as an additional insured on any policy secured and to deliver to Lessor a certificate thereof in a timely manner.
9. Expenses. Throughout the lease term, Lessee shall be responsible for all utilities, plowing, lawn care, all costs of heating the Property and for repairs and maintenance of the Property and its systems, except for the repair of damage that may have been caused by Lessor. Throughout the lease term, Lessee shall be responsible for keeping the Property in good order and repair and in compliance with all federal, state, or local laws and regulations, unless non-compliance is caused by Lessor's acts or omissions.
10. Waiver: Any assent, expressed or implied, by the Lessor to any breach or failure to perform any covenant or condition herein contained, or any waiver, expressed or implied, by Lessor of any such covenant or condition, shall operate as such only in the specific instance, and shall not be construed as an assent or waiver of such covenant or condition generally or any subsequent breach thereof.
11. Miscellaneous Provisions:
 - A. Lessee shall have the right to quietly enjoy the Property during the term of this Lease without hindrance by anyone claiming by or through Lessor, except as expressly provided

in Paragraph 4, above.

- B. The titles and headings of all provisions hereof are intended to be descriptive and as a matter of convenience only, and as between a title or heading of a provision and the provision itself, in all cases the language and meaning of the provision shall govern.
- C. The covenants and conditions herein contained shall extend to and bind the respective heirs, executors, successors, assigns, and legal representatives of the Parties.
- D. This agreement is the entire understanding of the Parties and may not be changed, altered, varied, modified, discharged, or terminated orally. This Agreement may only be modified if agreed to in writing by both Parties.
- E. If any part or provision of this lease shall be rendered or declared illegal by federal or state law, the remainder shall not be invalidated.

PURCHASE TERMS

- 12. Option: Seller, in consideration of the promises herein contained, grants to Purchaser the exclusive right, option, and privilege to purchase the Property at any time during the lease term. Seller shall be obligated to convey the Property to Purchaser within thirty (30) days receipt of notice of exercise of this option, or if such option is not exercised earlier, within 30 days of the expiration of the term set forth in Paragraph 2, above.
- 13. Total Purchase Price: The Senior Center referenced in Paragraph 2, plus One Million One Hundred Thousand Dollars (\$1,100,000.00), in consideration for the real property described about in Paragraph 1, adjusted for that portion of rent payments representing principal paid during the Lease Term pursuant to Paragraph 2, above, and/or further adjusted as provided in Paragraph 4, above.
- 14. Inspection: Purchaser acknowledges that it has inspected the Property to its full satisfaction and it hereby waives its rights to any potential property inspection or financing contingencies and agrees that it is accepting the Property in its current "AS IS" condition, with any and all faults, except as provided in Paragraph 4, above.
- 15. Closing: At any mutually agreeable time during the term of this Agreement and, at the latest on or before April 30, 2052 ("Closing"). Closing and transfer of title shall be held at the office of either the Seller's or Purchaser's attorney, in Bennington County, Vermont, or such other place as the Parties agree.
- 16. Payment of Purchase Price: Payment of the Purchase Price is to be paid by wired funds, or a Vermont Attorney's trust account check.
- 17. Deed: At Closing, Seller shall deliver to Purchaser, via Vermont Warranty Deed, marketable title, free and clear of all defects and encumbrances other than easements of record which effect the Property.

18. Examination of Title: Purchaser shall cause the title to the Property to be examined and shall notify Seller in writing within ninety (90) days of full execution of this Agreement of the existence of any encumbrances or defects which are not accepted in this Contract. In such event, Seller shall have an additional thirty (30) days from the time Seller receives such notice to remove the specified encumbrances or defects. If at the expiration of (30) days from the receipt of such notice or on the date set for closing, whichever is later, Seller is unable to convey marketable title free and clear of all such encumbrances and defects, Purchaser or Seller may terminate this Contract. At their option, Purchaser nevertheless may accept such title as Seller can convey, without reduction in sale price.

Purchaser shall also have the right to update the title examination within thirty (30) days of closing to identify any aspects of marketable title that may have changed since the initial title examination was conducted.

19. Environmental: Seller shall provide to Purchaser, within 30 days of full execution of this Agreement, any and all environmental reports, studies, certificates, and any other information related to environmental issues at the Property that are in Seller's possession or control.

20. Notices: All notices herein provided for shall be in writing. Notice shall be given to Seller at 93 Fraleigh Lane, Red Hook, NY 12571. Notice shall be given to Lessor at 205 South St, Bennington, VT 05201.

21. Default of the Purchase Terms: If Seller fails to close, or is otherwise in default, Purchaser shall be entitled to pursue all legal and equitable remedies. If Purchaser fails to close, or is otherwise in default, Seller shall be entitled to pursue all other legal and equitable remedies.

22. Effect: This Contract is for the benefit of and is binding upon Seller and Purchaser, and their respective heirs, successors, administrators, executors and assigns. This Contract, together with any written, signed addenda thereto, contains the entire agreement by and between Seller and Purchaser and supersedes any and all prior agreements, written or oral. This Contract shall be governed by the laws of the State of Vermont. The Seller and Purchaser agree that in the interest of time the facsimile signatures of the Parties shall be sufficient to bind the Parties, and that this Agreement may be signed in counterpart. No change, modification, amendment, addition or deletion affecting this Contract shall be effective unless in writing and signed by Seller and Purchaser.


23. Efforts of Agents: The Parties agree that this transaction was brought about by no real estate agent or broker.

[SIGNATURES ON FOLLOWING PAGE]

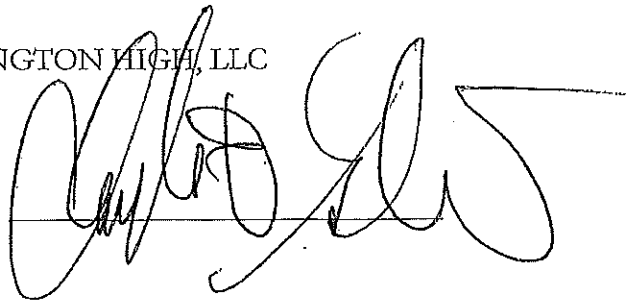
Signed at Bennington, Vermont, this 30 day of March, 2021²².

LESSOR/SELLER:

BENNINGTON HIGH, LLC

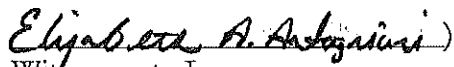

Witness as to Lessor

Signed By:



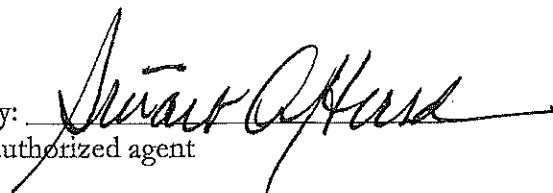
LESSEE/PURCHASER:

TOWN OF BENNINGTON

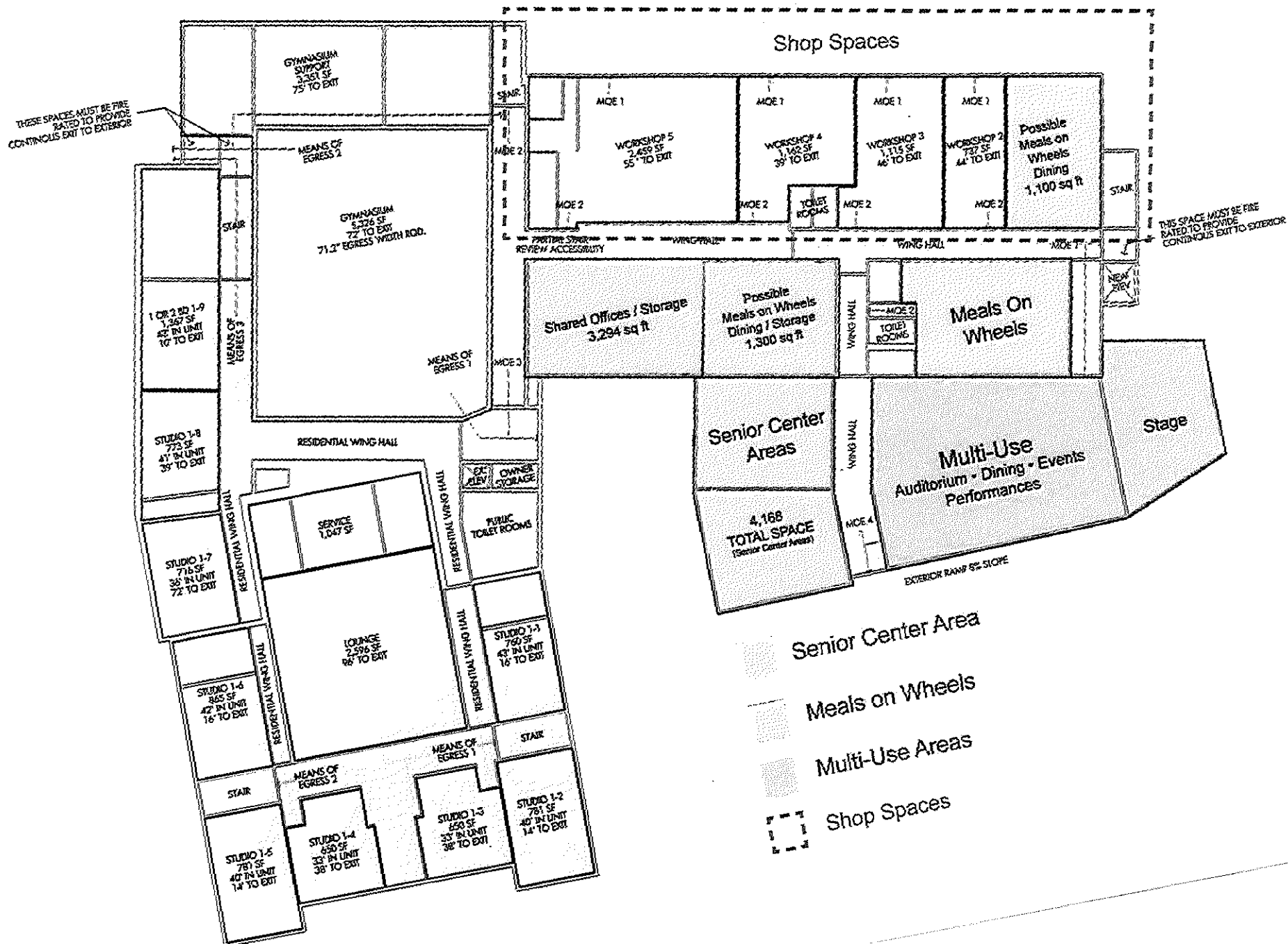

Witness as to Lessee

Signed By:

Its duly authorized agent



SCHEDULE A



FIRST AMENDMENT TO LEASE & PURCHASE AGREEMENT

This First Amendment to Lease & Purchase Agreement is made and entered into as of the ___ day of July, 2022, by and between Bennington High, LLC of Bennington, Vermont (Lessor and/or Seller) and the Town of Bennington (Lessee and/or Buyer). Lessor and Lessee are parties to a certain Lease & Purchase Agreement dated March 30, 2022 (Agreement) for the lease and subsequent purchase and sale of property identified therein as 650 Main Street, Bennington, Vermont (Property), and the transfer to Lessor of certain property identified therein as the Senior Center at 124 Pleasant Street, Bennington, Vermont.

IN CONSIDERATION of the mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. The following sentence shall be inserted into Paragraph 2 of the Agreement:

The transfer of the Senior Center Building to Lessor in accordance with this Paragraph shall occur no later than 27 months after the Lease Commencement Date.

2. Paragraph 4 of the Agreement is hereby stricken and the following inserted in lieu thereof:

4. Improvements by Lessor: Within one year of the Lease Commencement Date, Lessor shall complete all of the following improvements to the Lessee's satisfaction:

- A. Repair of all windows in the building, including the windows on the west side of the old High School, as follows:

- o 78 windows at an estimated cost of \$1,200.00 per window
- o Value for item 4(A) = \$ 93,600.00

- B. Install new roof on fitness rooms and locker rooms behind the gymnasium as follows:

- o Approx. 3,500 square feet of roof (using Google Earth measurement tools), using 30-year warranty roof and required installation at an estimated cost of \$18.50 per square foot.
- o Value of Item (4)(B) = \$ 64,750.00

- C. Gymnasium Floor Vapor Barrier and Humidity Controls as follows:

- o Complete vapor barrier protection beneath the gymnasium floor
- o Install temporary humidity controls and ventilation in the gymnasium floor crawl space to protect the newly installed floor from warping, swelling, and/or damage
- o Install temporary humidity controls and ventilation in the gymnasium to protect the newly installed floor from warping, swelling, and/or damage
- o Value of item 4(C) = \$ 85,000.00

- D. Removal of all scrap materials, junk, and debris from the building to prepare for upcoming construction (once final design is approved conduct project demolition

tasks identified in the area of the building to be renovated by the Town (30,000 sq. ft.)) as follows:

- All rooms shall be clear and broom swept.
- Once final design is complete demolition includes the removal and proper disposal of construction materials.
- Value of item 4(D) = \$156,650.00

All such improvements shall be completed to specifications approved in advance by Lessee. The Parties have assigned and agreed to the value of such improvements. In the event that Seller fails to make all of the improvements to Lessee's satisfaction within one year of the Lease Commencement Date, the Purchase Price shall be reduced by the value of such uncompleted improvements, and lease payments shall be adjusted accordingly. Lessor shall not permit any liens to attach to the Property in the course of performing such improvements.

Except as herein provided, the Agreement remains in full force and effect.

Signed at _____, Vermont, this ____ day of _____, 2022.

LESSOR/SELLER:

BENNINGTON HIGH, LLC

_____)

Witness as to Lessor

Signed By: _____

LESSEE/PURCHASER:

TOWN OF BENNINGTON

_____)

Witness as to Lessee

Signed By: _____

Its duly authorized agent

SECOND AMENDMENT TO LEASE & PURCHASE AGREEMENT

This Second Amendment to Lease & Purchase Agreement is made and entered into as of the ~~19th~~ day of August, 2023, by and between Bennington High, LLC of Bennington, Vermont (Lessor and/or Seller) and the Town of Bennington (Lessee and/or Buyer). Lessor and Lessee are parties to a certain Lease & Purchase Agreement dated March 30, 2022 (Lease) and First Amendment to Lease & Purchase Agreement dated August 29, 2022 (First Amendment) for the lease and subsequent purchase and sale of property identified therein as 650 Main Street, Bennington, Vermont (Property), and the transfer to Lessor of certain property identified therein as the Senior Center at 124 Pleasant Street, Bennington, Vermont (Senior Center).

IN CONSIDERATION of the mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. Paragraph 1 of the Lease is hereby stricken and the following inserted in lieu thereof:

1. The Lessor, in consideration of the rental and the covenants hereinafter contained to be paid and performed by the Lessee, has let and demised and by these presents does lease and demise unto the Lessee the lands and premises located at 650 Main Street in the Town of Bennington, Vermont ("Property").

Lessor will deliver the Property to lessee free of all occupants. Under no circumstances shall any person be permitted to occupy any part of the Property as a dwelling or to sleep overnight on the Property.

2. The last section of Paragraph 2 of the Lease, as amended by the First Amendment, beginning with the words "*Lessee shall have the right to terminate...*" is hereby stricken and the following inserted in lieu thereof:

Lessee shall have the right to terminate this Lease & Purchase Agreement at any time, for any reason, upon 90 days' notice of termination, without further obligation, except as provided in this Paragraph. If no such notice of termination has been given on or prior to June 30, 2024, Lessee shall be obligated to transfer to Lessor (and Lessor shall be obligated to accept) title to the Town of Bennington Senior Center Building located at 124 Pleasant Street (Senior Center), which shall be conveyed without liens and encumbrances and free of occupants. The Town shall give public notice pursuant to 24 V.S.A. § 1061 within 30 days of the execution of this Second Amendment. In the event that a petition is thereafter filed pursuant to 24 V.S.A. § 1061(a)(2), and subsequently disapproved by the voters of the Town, then the parties shall negotiate in good faith a cash payment to Lessor in lieu of the transfer of the Senior Center. If the parties fail to agree on a cash payment and/or other form(s) of compensation within 45 days after the vote, then this Lease & Purchase Agreement shall be terminated, and neither party will have further obligation hereunder, except that the Town shall have 30 days to surrender possession of the Property.

The transfer of the Senior Center to Lessor in accordance with this Paragraph shall occur no later than December 31, 2025. Upon transfer of the Property (650 Main Street) to Lessee (or its designee), the Lessee shall place a deed transferring the Senior Center to Lessor (or its

designee) in escrow with an attorney acceptable to both parties. The deed shall be released from escrow and delivered to Lessor (or its designee) upon the relocation of the Senior Center and Meals on Wheels to the Property, but in no event later than December 31, 2025.

Lessee shall maintain the Senior Center in as good or better condition as its current condition and shall maintain property insurance on the Senior Center until the Senior Center is transferred to Lessor (or its designee). All insurance proceeds received by Lessee due to real property damage to or loss of the Senior Center that is not repaired/reconstructed prior to the transfer of the Senior Center shall be paid to Lessor at the time of transfer, if such loss or damage occurs while the deed to the Senior Center is in escrow. After the transfer of the Senior Center to Lessor the assessed value of the Senior Center shall be adjusted to the then current fair market value.

3. Paragraph 4 of the Lease, as amended by the First Amendment, is hereby stricken.
4. Paragraph 13 of the Lease is hereby stricken and the following inserted in lieu thereof:

13. Total Purchase Price: The Senior Center referenced in Paragraph 2, plus One Million One Hundred Thousand Dollars (\$1,100,000.00), in consideration for the real property described in Paragraph 1, adjusted for that portion of rent payments representing principal paid during the Lease Term pursuant to Paragraph 2. Provided however, and notwithstanding anything to the contrary in the Lease, if Buyer (or its designee) exercises its option to purchase the Property on or before June 30, 2024, then the Purchase Price shall be the Senior Center referenced in Paragraph 2, plus One Million Dollars (\$1,000,000.00) and the Purchase Price shall not be adjusted for that portion of rent payments representing principal paid during the Lease Term pursuant to Paragraph 2.

Except as herein provided, the Lease remains in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

Signed at Bennington Vermont, this 19 day of August, 2023.

LESSOR/SELLER:

BENNINGTON HIGH, LLC

[Signature]

Witness as to Lessor

Signed By:

[Signature]

LESSEE/BUYER:

TOWN OF BENNINGTON

_____)

Witness as to Lessee

Signed By:

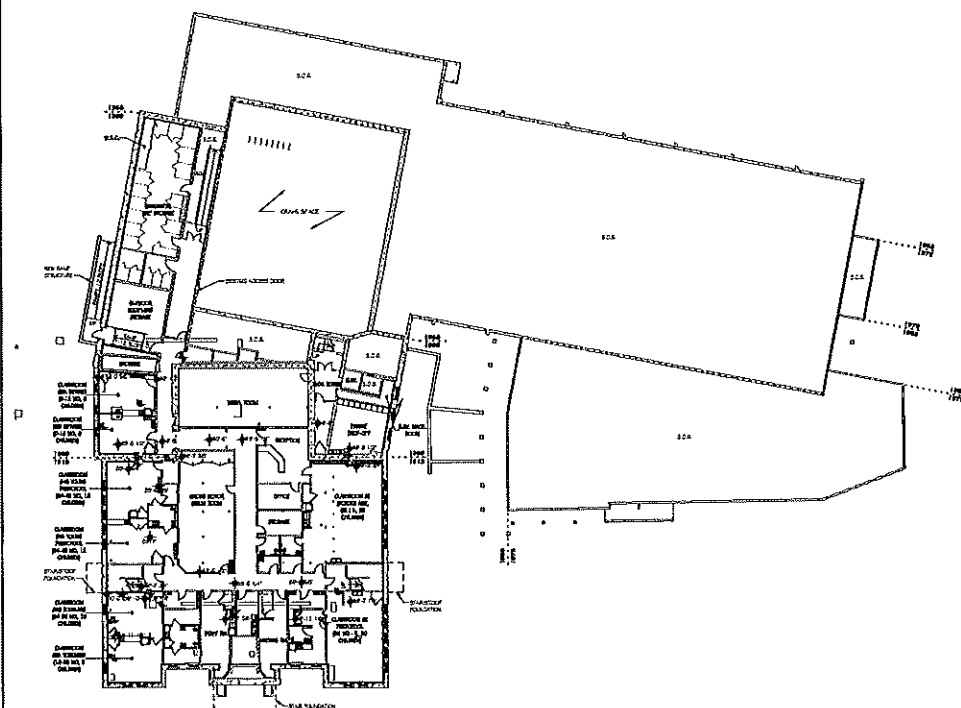
[Signature]
Its duly authorized agent

EXHIBIT B

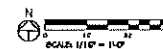
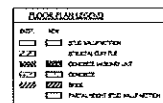
Floor Plans and Site Plan

Attached

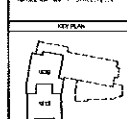
22107145.2



① OVERALL PROPOSED GROUND FLOOR PLANT
1/16" = 1'-0"



OLDSTONE ARCHITECTURE
160 DEPOT STREET
P.O. BOX 603
BENNINGTON, VERMONT 05201
(802) 753-7400



PROJECT
DENN HIGH
REDEVELOPMENT
PROJECT
HALE RESOURCES
860 MAIN ST.
BENNINGTON, VT.
05201

[illegible]

PRELIMINARY
NOT FOR CONSTRUCTION

PROJECT NUMBER	
DATE	01/26/20
DRAWN BY	TSM
CHECKED BY	JCP

OVERALL GROUND FLOOR
PLAN

G100.1

GOLDSTONE ARCHITECTURE
150 DEPOT STREET
P.O. BOX 6137
BIRMINGHAM, ALABAMA 35201
(205) 753-7488

**GA GOLDSTONE
ARCHITECTURE**

03-08-LE74-73

MSK
MECHANICAL & ELECTRICAL

MSK Engineering & Controls, Inc.
P.O. Box 776, 535 Depot Street
Birmingham, AL 35201
Are you not sure what you need?



SWE ENGINEERING
 601 Engineering Blvd.
 1000 N. 10th
 College Park, NY 10912
 845.339.3333

IN CONSULTING
 Edward
 1750 West Avenue, #75
 Birmingham, AL 35202
 (205) 966-1111
 Fax: (205) 966-1100

Floor plan of the second floor. The plan shows a large rectangular area with several smaller rectangular sections. The sections are labeled with numbers: '100' at the top left, '101' below it, '102' to the right of '101', '103' below '102', and '104' to the right of '103'. The plan is oriented with the top of the page towards the top of the image.

PROJECT
BENN HIGH REDEVELOPMENT PROJECT
HALE RESOURCES
850 MAIN ST. EDMUNTON, VT. 05801

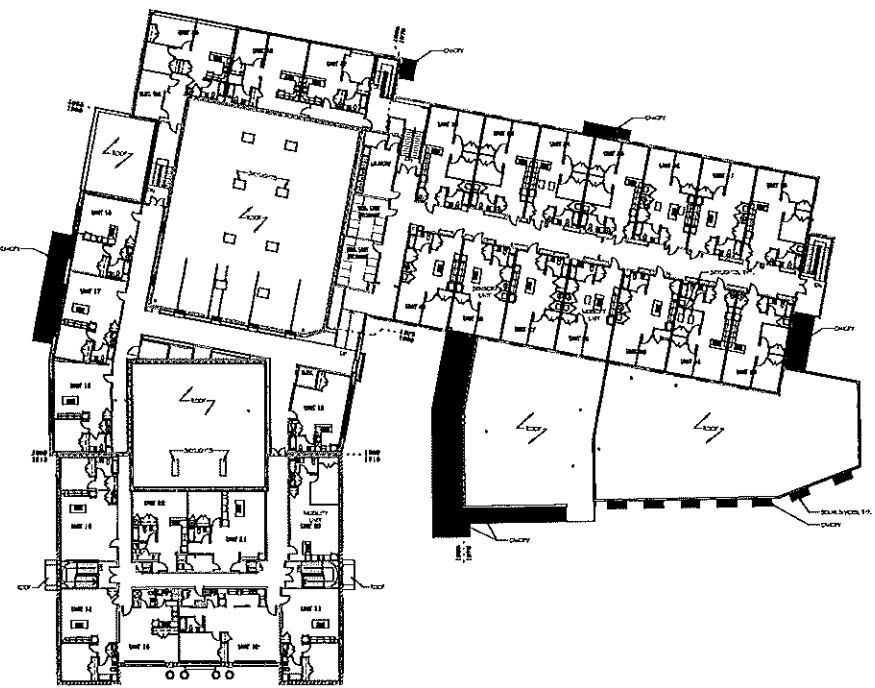
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PRELIMINARY
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DATE	FIGURE
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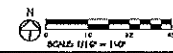
OVERALL SECOND FLOOR
PLAN

G100.3



① OVERALL PROPOSED SECOND FLOOR PLAN
1/16" = 1'-0"

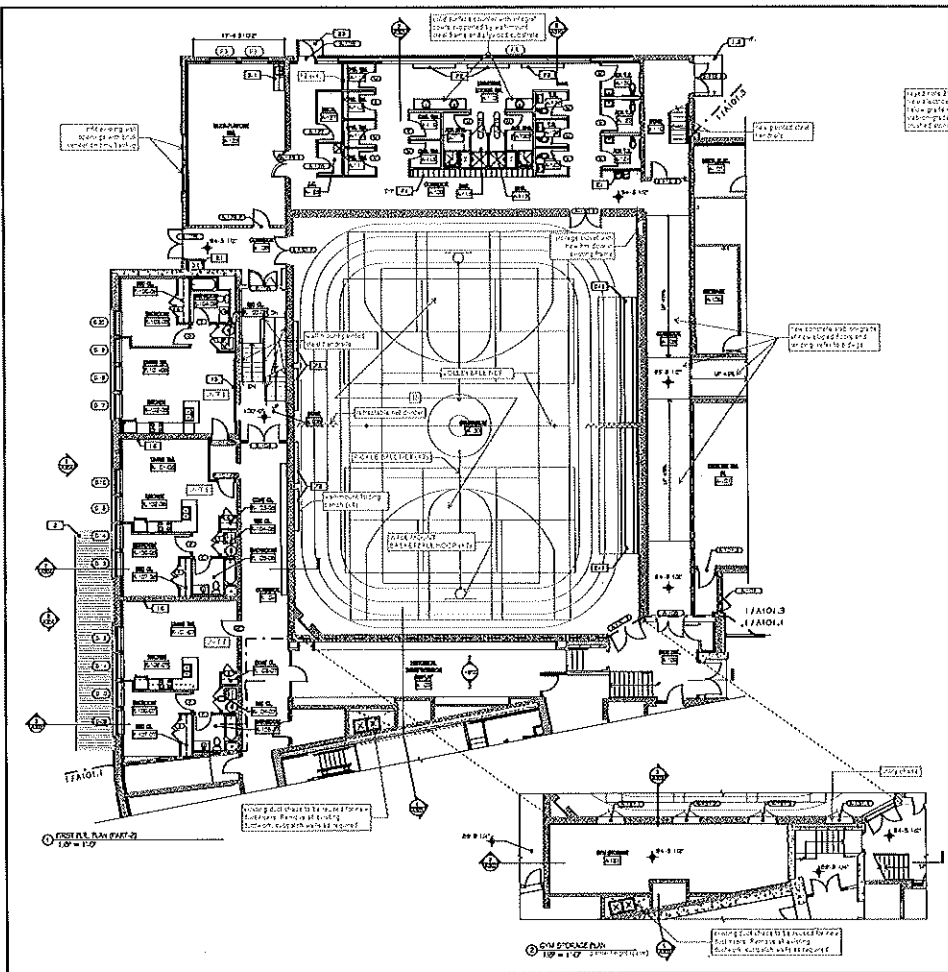
ACORN KEY LEGEND	
NAME	NEW
	 OLD INFILTRATOR
	 STUCK GUNITE
	 GROUND WOOD JAT
	 GUNITE
	 BRICK
	 NEW REPAIRS INFILTRATOR





A101.1

A101.1



NOTES:
1. SEE PLAN FOR ALL DIMENSIONS AND NOTES.
2. SEE PLAN FOR ALL DIMENSIONS AND NOTES.
3. SEE PLAN FOR ALL DIMENSIONS AND NOTES.
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FLOOR PLAN LEGEND	
1	CONCRETE TO STRUCTURE
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3	CONCRETE TO WALL
4	CONCRETE TO ROOF
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99	CONCRETE TO WALL
100	CONCRETE TO ROOF

GOLDSTONE ARCHITECTURE
150 DEPOT STREET
PO BOX 800
BENNINGTON, VERMONT 05201
(802) 753-7400

GOLDSTONE ARCHITECTURE

MSK
MSK Engineering & Design, Inc.
P.O. Box 100, Bennington, VT 05201
802-753-7400

ENGINEERING
MSK Engineering, Inc.
P.O. Box 100, Bennington, VT 05201
802-753-7400

CONSULTING
MSK Consulting, Inc.
P.O. Box 100, Bennington, VT 05201
802-753-7400

KEY PLAN

PROJECT
BENN HIGH
REDEVELOPMENT
PROJECT
HALE RESOURCES
660 MAIN ST.
BENNINGTON, VT 05201

PRELIMINARY
NOT FOR CONSTRUCTION

PROJECT NUMBER
DATE
DRAWN BY
CHECKED BY

FIRST FLOOR PLAN - PART 2

A101.2

Proposed Site Plan & Parking

NEW PLANTING SCREENING ARBORVITAE OR OTHER AFFORDABLE SPECIES

RESTORE CONNECTION TO EXISTING WALKWAY

RELOCATED TREE

NEW TENANT HALLWAY

APPROXIMATE PARKING BETWEEN SIGNS (5 STACKED VEHICLES)

ON-STREET PARKING (ADEQUATE FOR 6 VEHICLES)

SIGN (FINAL LOCATION AND DESIGN TBD)

REPAIR OR RESTORE EXISTING DRIVEWAY

PAVED PARKING AREA AND ACCESS DRIVES (FULL-DEPTH REPLACEMENT)

APPROXIMATE LOCATION OF RELOCATED UNDERGROUND PROPANE STORAGE TANK (FINAL LOCATION OF SERVICE LINES PER MFC)

ALLEY AND DRIVEWAY EXISTING PAVEMENT

RELOCATE PAVEMENT AND RE-ESTABLISH TURF WITH 4" (MIN.) TOP SOIL, SEED AND TRACT

PARKING AREA (PAVED)

RELOCATED TREE

RELOCATED TREE

PLEASANT STREET

12' MIN

INSTALL FLUSH CURB FOR POTENTIAL LOADING ACCESS

NEW PAVEMENT BANKING FOR PARKING STALLS

NEW SCREENED REFUSE AND RECYCLING ENCLOSURE (1) 8 YD DUMPSTICK (1) COMPOSTING TOTE (1) RECYCLING TOTES

NEW SCREENED REFUSE AND RECYCLING ENCLOSURE (1) 8 YD DUMPSTICK (1) COMPOSTING TOTE (1) RECYCLING TOTES

NEW SCREENED REFUSE AND RECYCLING ENCLOSURE (1) 8 YD DUMPSTICK (1) COMPOSTING TOTE (1) RECYCLING TOTES

POLE MOUNTED RAILINGS, TYPICAL AS SHOWN (SEE ARCHITECTURAL DETAILS FOR DETAILS)

PLANTING BEDS (TYPICAL AS SHOWN)

NEW TREE

CONCRETE FILLED BOLLARDS (3" x 6" DIA)

NEW CONCRETE WALKWAYS

(1) COMPOSTING AND (1) RECYCLING TOTES IN EXISTING FENCED ENCLOSURE

CONNECT TO EXISTING WALKWAY

BIKE RACK

PLAZA

PATIO

.....