

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 Chris Gilbert, 93 Fraleigh Lane, Red Hook, NY 12571. Notice shall be given to Lessor at Town of Bennington, 205 South Street, 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 _____, Vermont, this ____ day of _____, 2021.

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

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:
 - 78 windows at an estimated cost of \$1,200.00 per window
 - Value for item 4(A) = \$ 93,600.00
- B. Install new roof on fitness rooms and locker rooms behind the gymnasium as follows:
 - 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.
 - Value of Item (4)(B) = \$ 64,750.00
- C. Gymnasium Floor Vapor Barrier and Humidity Controls as follows:
 - Complete vapor barrier protection beneath the gymnasium floor
 - Install temporary humidity controls and ventilation in the gymnasium floor crawl space to protect the newly installed floor from warping, swelling, and/or damage
 - Install temporary humidity controls and ventilation in the gymnasium to protect the newly installed floor from warping, swelling, and/or damage
 - 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 _____, 2021.

LESSOR/SELLER:

BENNINGTON HIGH, LLC

_____)

Signed By: _____

Witness as to Lessor

LESSEE/PURCHASER:

TOWN OF BENNINGTON

_____)

Signed By: _____

Witness as to Lessee

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 ____ 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 _____, Vermont, this ____ day of _____, 2023.

LESSOR/SELLER:

BENNINGTON HIGH, LLC

_____)

Signed By: _____

Witness as to Lessor

LESSEE/BUYER:

TOWN OF BENNINGTON

_____)

Signed By: _____

Witness as to Lessee

Its duly authorized agent