TOWN OF BERLIN, MASSACHUSETTS

LEASE AGREEMENT

FOR THE BERLIN MEMORIAL SCHOOL

THIS LEASE AGREEMENT (this "Lease") is executed as of the ____ day of _____, 2024 (the "Effective Date") by and between the **Town of Berlin**, a Massachusetts municipality with offices at 23 Linden Street, Berlin, Massachusetts, 01503, acting through the duly elected Berlin Select Board (the "LESSOR"); and the **Berlin-Boylston Regional School District**, existing under Chapter 71 of the Massachusetts General Laws and having its principal place of business at 215 Main Street, Boylston, Massachusetts, 01505, acting through its Regional District School Committee (the "LESSEE").

WHEREAS, the LESSOR is owner of the land located at 34 South Street in the Town of Berlin, Massachusetts, together with the building thereon, known as "Berlin Memorial School" (the "Building"), and other improvements thereon, which property is identified by the Town of Berlin Assessor's Office as Parcel Identification Number 10.0/ 17/ 0, consisting of approximately 36.81 acres (collectively, the "Property");

WHEREAS, the LESSEE is currently using the portion of the Property shown on the plan attached hereto as **Exhibit A** (the "Premises"), and it is the intention of the LESSOR that the LESSEE may continue to use the Premises as a school facility under the terms of the Berlin-Boylston Regional School District Agreement (the "Regional Agreement"); and

WHEREAS, the LESSEE desires to lease the Premises for continued use as a school facility.

NOW, THEREFORE, in consideration of the respective promises and mutual agreements made by the parties hereto hereinafter set forth, the LESSOR and LESSEE (the "parties") agree as follows:

1. TERM; EXTENSION

The LESSOR does hereby lease to the LESSEE the Premises, as defined herein, for an initial term of twenty (20) years commencing on _____, 2024 (the "Commencement Date") and terminating on the day immediately preceding the 20th anniversary of the Commencement Date (the "Initial Term" and, as the same may be extended, the "Term"). Each "Lease Year" shall be a twelve (12)-month period commencing on the Commencement Date and on each anniversary thereof during the Term.

This Lease may be renewed and extended for an additional term of no more than twenty (20) years (the "Extension Term") at the option of the LESSEE, upon written notice delivered to LESSOR no later than sixty (60) days prior to the expiration of the Initial Term, and provided that no Event of Default (as defined herein) exists on the date of such notice or on the commencement of the Extension Term.

2. CONDITION OF THE PREMISES

The Premises are delivered to LESSEE, and the LESSEE accepts the Premises, in their present condition, "AS IS," it being agreed that LESSEE has had an opportunity to examine and inspect the Premises in all respects, that LESSOR has made no representations or warranties of any kind with respect thereto, and that LESSOR, except as required by law or as provided herein, shall have no obligation to undertake any repairs, improvements or other work to the Premises. The LESSEE shall have the right to use all furnishings and/or personal property located on the Premises for the uses permitted hereunder.

3. RENT

In accordance with the terms of the Regional Agreement, LESSEE shall pay to the LESSOR rent in the amount of one dollar ($1.00) each fiscal year, commencing on the Commencement Date.

4. USE OF THE LEASED PREMISES

Except as otherwise provided herein, the LESSEE shall have the exclusive use and control of the Premises at all times during the Term. Notwithstanding the foregoing, in accordance with the Regional Agreement, the LESSOR shall have shared use of the Building for Town of Berlin events and/or Town of Berlin sanctioned events that do not interfere with school usage (collectively, "Town Events"), including but not limited to the use of the gymnasium and/or café by the LESSOR or its designees or licensees, provided that priority shall always be given to school events. The LESSOR shall be responsible for all costs associated with Town Events (including but not limited to costs of utilities reasonably attributable to such use and any maintenance costs arising from such use) and shall be entitled to collect all fees associated with Town Events. Such designees and licensees shall not be subject to policies or fees of the LESSEE but shall at all times comply with the rules, regulations, and policies of the LESSOR regarding the use of the LESSOR's property. Without limiting the foregoing obligations of the LESSOR concerning Town Events, the LESSOR expressly acknowledges and agrees that if the LESSOR elects to use any portion of the Building for a Town Event, the LESSOR shall comply with all Building use policies and fees imposed by the LESSEE.

Except as expressly provided otherwise herein, LESSEE shall be solely responsible for any and all costs relating to the operation of the Premises, including, but not limited to, completion of or modifications to the Premises to suit LESSEE's operation, the costs of equipment, materials, supplies, repairs, licensing fees, attorney's fees, janitorial supplies, insurances, office supplies, sanitation supplies, telephone and internet service and printing costs.

5. INDEMNIFICATION

LESSEE acknowledges and agrees that the LESSOR shall not be liable for any injury to persons, including death, or damage to property, including the Premises, occasioned by LESSEE's failure to maintain the Premises in the condition required hereunder, including, without limitation, for any injury or damage done or occasioned by or from plumbing, gas, water, steam or other pipes or sewerage, or from any such injury or damage occasioned by water, steam or ice being upon or coming through the roof, sky-lights or otherwise, or from any other cause whatsoever. ~~LESSEE hereby defends, indemnifies.~~ To the extent permitted by law, LESSEE hereby defends, indemnifies, and holds the LESSOR harmless from and against any claims, losses or damage,

including reasonable attorneys' fees, arising out or relating to of such injury or damage and/or the LESSEE's failure to comply with its obligations under this Lease.

LESSOR acknowledges and agrees that the LESSEE shall not be liable for any injury to persons, including death, or damage to property, including the Premises, occasioned by LESSOR's failure to maintain the Premises in the condition required hereunder. To the extent permitted by law, LESSOR hereby defends, indemnifies, and holds the LESSEE harmless from and against any claims, losses or damage, including reasonable attorneys' fees, arising out or relating to of such injury or damage and/or the LESSOR's failure to comply with its obligations under this Lease.

6. ROUTINE MAINTENANCE AND REPAIRS

In accordance with the Regional Agreement, the LESSEE shall be responsible, at its cost and expense, for performing routine maintenance (other than the Grounds Maintenance, as defined herein) and repairs to the Premises, the cost of which is equal to or less than five thousand dollars ($5,000) per repair (a "District Item"). Subject to the monetary cap on a District Item, the scope of District Items includes the following: (a) maintaining the kitchen in the Building in compliance with the local Board of Health code, (b) maintaining Building systems including pellet and oil-fired boilers, domestic water, waste water, storm water, and electric in reliable condition for their intended use and inspecting the same on an annual basis, (c) performing annual preventative maintenance and semi-annual testing of the generator, (d) maintaining plumbing and plumbing fixtures, lighting, and windows and glass in clean condition and good repair, (e) providing trash removal, and (f) performing routine and preventative HVAC maintenance.

LESSOR shall, at its sole cost and expense, provide mowing, landscaping and snow removal services to the outdoor driveways and parking areas of the Premises (collectively, the "Grounds Maintenance").

7. ASSESSED ITEMS AND CAPITAL ITEMS

In the event that maintenance of or repair to the Premises becomes necessary during the Term, the cost of which is greater than five thousand dollars ($5,000) but which is not a Capital Item as defined below (an "Assessed Item"), then LESSEE shall notify LESSOR of such Assessed Item and provide LESSOR with an opportunity to inspect and review the conditions necessitating the Assessed Item (except in the case of an emergency, in which case LESSEE shall provide LESSOR with as much notice as possible under the circumstances before performing the necessary work). Except in the case of emergencies, before performing the Assessed Item LESSEE shall obtain LESSOR's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. LESSEE shall perform any approved Assessed Item in compliance with the provisions of this Lease. LESSEE shall be responsible for the first $5,000 of the cost of the Assessed Item and the balance of the cost shall be assessed to LESSOR pursuant to Section V(E)(2)(d)(i) of the Regional Agreement.

At least sixty (60) days prior to each anniversary of the Commencement Date, LESSEE shall notify LESSOR of any Assessed Items that are likely to arise during the succeeding Lease Year, as well as any major repairs or replacements at the Premises, the cost of which can be amortized under generally accepted accounting principles (each a "Capital Item"). LESSOR and LESSEE agree to

work together in good faith to schedule periodic walk-throughs of the Premises at mutually agreeable times to evaluate pending and potential Capital Items and Assessed Items. LESSEE and the LESSOR shall use good faith efforts to reach an agreement on the Capital Items that are necessary to maintain the Premises in the condition required herein and the estimated cost thereof. Before performing work on any Capital Item, LESSEE shall obtain LESSOR's prior written approval.

Upon obtaining the prior written approval of ~~LESSEE~~ LESSOR, which approval shall not be unreasonably withheld, conditioned, or delayed, LESSEE shall perform any and all work associated with the Capital Item and the cost of the Capital Item shall be assessed to LESSOR pursuant to Section V(D)(2) of the Regional Agreement. If the need to perform a Capital Item is time-sensitive, LESSOR agrees to promptly meet with LESSEE to review the Capital Item. LESSEE shall obtain and maintain Builder's Risk insurance in connection with the Capital Item naming LESSOR as an additional insured. LESSOR shall have the benefit of all warranties accruing to LESSEE by reason of performance of a Capital Item.

8. IMPROVEMENTS OR ALTERATIONS

Subject to the provisions of Section 7, LESSEE shall not perform any alterations or improvements to the Premises ("Alterations") without LESSOR's prior approval, which shall not be unreasonably withheld, conditioned, or delayed. For avoidance of doubt, the provisions of this Section 8 shall not apply to the LESSEE's trade fixtures, furniture, equipment, or other personal property, which LESSEE may place in and remove from the Premises from time to time throughout Term in LESSEE's sole discretion.

9. WORK REQUIREMENTS

All work performed by LESSOR or LESSEE pursuant to this Lease must be procured in accordance with applicable laws and must conform with the Town of Berlin By-Laws, Massachusetts State Building Codes, and all zoning requirements, including sections pertaining to building permits and applicable permit fees.

10. UTILITIES

The LESSEE shall promptly pay all charges for gas, electricity, telephone, water and sewer service, internet, and any and all other utilities used on the Premises, whether said charges are billed to LESSEE or the LESSOR.

11. LESSOR'S ACCESS

The LESSOR shall be allowed to conduct an annual walk-through of the Premises and enter the Premises to perform repairs, maintenance, and replacements as required herein, at reasonable times, upon reasonable prior notice to LESSEE, and subject to LESSEE's reasonable security measures.

12. INSURANCE

The LESSEE shall continue to insure the Premises against loss by fire and other perils in an amount equal to 100% of the replacement value thereof and reasonably satisfactory with the LESSOR, as under its policies of insurance for all buildings occupied by the LESSEE, and general liability insurance in the amount of one million dollars ($1,000,000) per person for personal injury or property damages, two million dollars ($2,000,000) for personal injury or property damage per occurrence, and umbrella liability insurance for five million dollars ($5,000,000). The LESSEE shall name the LESSOR as an additional insured on all insurance policies relative to the Premises. A copy of a certificate of insurance, indicating the coverage required hereunder, shall be forwarded to LESSOR annually and at such other times as LESSOR may request. The LESSOR shall have the right to alter the kinds and types of insurance and/or the amount of coverage during the Term, but no more than every three (3) years, if the kinds and amounts of insurance in the region by responsible owners of school facilities are being altered.

13. ENCUMBRANCES

The LESSEE shall not mortgage or otherwise allow any portion of the Premises to be encumbered or subjected to a lien.

14. COMPLIANCE WITH LAWS

The LESSEE, at LESSEE's sole cost, shall (i) conduct its operations hereunder in strict compliance with all laws, bylaws, ordinances, rules and regulations of all federal, state, regional and local authorities as from time-to-time are applicable, including the Town of Berlin Use of Town Sign Board Policy attached hereto as **Exhibit B**, (ii) procure and pay for all licenses, certificates and permits necessary for the conduct of its operations or construction hereunder, and (iii) pay all charges assessed under federal, state, regional and local statutes, bylaws, ordinances, rules and regulations insofar as they are applicable.

The LESSEE acknowledges that no trade or occupation shall be conducted in the Premises, or any use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any state, federal, or regional law or any municipal bylaw or ordinance in force in the Town of Berlin.

The LESSEE shall observe all occupancy capacity requirements as governed by state and local regulations, including the State Building Code and so-called "Title V" regulations of the Massachusetts Department of Environmental Protection, 310 C.M.R. 15.00 et. seq.

Notwithstanding anything in the preceding paragraphs to the contrary, should any conflict arise as to the permitted total capacity for the Premises under any federal, state, regional or municipal law, ordinance or regulation, LESSEE shall comply with the lowest capacity permitted under the aforementioned laws, ordinances, bylaws and regulations.

15. FIRE, CASUALTY, EMINENT DOMAIN

Should a substantial portion of the Premises or of the Building be substantially damaged by fire or other casualty, or if a substantial portion of the Premises be taken by eminent domain or by deed in lieu thereof, the LESSEE may elect to terminate this Lease. If LESSEE does not exercise its right to terminate this Lease, LESSEE shall be responsible for restoring the Premises if such substantial damage was caused by an event subject to the insurance coverage required to be

maintained by LESSEE herein. The LESSOR reserves and the LESSEE grants to the LESSOR all rights which the LESSEE may have for damages or injury to the Premises for any taking by eminent domain, except for damage to the LESSEE's fixtures, personal property, equipment. LESSEE shall be required to submit a claim to its insurer and take all necessary steps to secure insurance coverage and payment for any loss incurred as a result of fire or casualty, and any such payment shall be used to cover the cost of repairs. LESSEE shall be responsible for payment of any costs incurred to cover any deductible or retention under such insurance policy.

16. DEFAULT OR BREACH

Each of the following events shall constitute a default or breach of this Lease by LESSEE (an "Event of Default"):

(a) If LESSEE, or any successor or assignee of LESSEE while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for benefit of creditors, or if involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against LESSEE, or if a receiver or trustee shall be appointed of all or substantially all of the property of LESSEE, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment; or

(b) If LESSEE shall fail to pay LESSOR any rent or any other sums due to LESSOR hereunder when due and such failure is not cured by LESSEE within thirty (30) days following receipt of written notice from LESSOR; or

(c) If LESSEE shall fail to perform or comply with any of the conditions of this Lease and such failure is not cured within thirty (30) days following receipt of written notice from LESSOR or such longer period of time as may be reasonably necessary under the circumstances, provided that LESSEE has commenced the cure within the thirty (30)-day period and thereafter diligently pursues such cure.

17. EFFECT OF DEFAULT/TERMINATION OF LEASE; SURRENDER

In an Event of Default under this Lease beyond any applicable cure period, LESSOR shall have the right, among other remedies, to terminate this Lease by giving LESSEE at least thirty (30) days' written notice thereof, provided that if LESSEE cures such Event of Default within such additional thirty (30)-day period, then the termination notice shall be null and void and this Lease shall continue in full force and effect. LESSOR shall also have the right, to be exercised in its sole and absolute discretion, to cure any Event of Default, whereupon LESSEE shall reimburse LESSOR for the actual cost thereof within thirty (30) days from receiving an invoice from LESSOR therefor.

Upon the termination of this Lease, the LESSEE shall vacate the Premises promptly and surrender the Premises in the condition required herein. LESSEE shall have the rights to remove all of LESSEE's personal property, including tools, machinery, apparatus and equipment of whatever description and kind that LESSEE may have placed or erected, or caused to be placed or erected

on the Premises before or during the Term, provided that LESSEE repairs any damage caused to the Premises by the removal, LESSEE restores the Premises to substantially the same condition they were in as of the Effective Date, and LESSEE removes said personal property no later than thirty (30) days following said termination. Any property remaining on the Premises after said thirty (30) day period shall belong to and be the property of LESSOR. Personal property shall not include fixtures, which have been permanently installed on or in the Premises such as heating, air conditioning, plumbing, mechanical and/or life safety systems, and lighting equipment and appurtenances.

A list of fixed property belonging to the LESSEE on the Premises is attached hereto as **Exhibit C**.

18. QUIET ENJOYMENT

The LESSOR covenants that so long as LESSEE remains in compliance with the terms of this Lease, LESSEE shall and may peaceably and quietly have, hold and enjoy the Premises free from interference.

19. NOTICES

Any notice from relating to this Lease and/or the Premises shall be deemed duly served if mailed by registered or certified mail, return receipt requested, postage prepaid, or recognized overnight courier, addressed as follows:

If to LESSEE: Berlin-Boylston Regional School District
215 Main Street
Boylston, MA 01505
Attn: Superintendent

If to LESSOR: Berlin Select Board
23 Linden Street
Berlin, MA 01503
Attn: _____

Notice may also be sent to such other address as either party may specify to the other by notice given as provided herein.

20. NOTICE OF LEASE

LESSOR agrees to execute simultaneously with the execution of this Lease, and LESSEE may thereafter record with the Worcester District Registry of Deeds at its expense, a Notice of Lease in the form attached hereto as **Exhibit D**.

21. SEVERABILITY

If any provisions of this Lease shall to any extent be held invalid or unenforceable, the remainder of this Lease shall not be deemed affected thereby, provided that the remainder still gives to each party the benefit of its bargain hereunder.

22. CONSTRUCTION OF LEASE

This Lease shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and all disputes relating to this Lease shall be brought in the county in which the Premises are located.

23. MODIFICATION OF LEASE

This instrument, including attachments, contains the entire agreement between the parties and supersedes all prior or contemporaneous oral or written agreements, and it may not be amended or modified except in a writing signed by all parties.

Signatures on next page

Executed as a sealed instrument as of the _____ day of _____, 2024.

TOWN OF BERLIN Select Board

BY: _____
Chair

BY: _____
Vice Chair

BY: _____
Clerk

Berlin-Boylston Regional School District

BY: _____
Print name:

Title:

Approved as to Form

BY: _____
Town Counsel

EXHIBIT A

THE PREMISES

EXHIBIT B

USE OF TOWN SIGN BOARD POLICY

Purpose
The purpose of this policy is to ensure proper use of Town owned sign boards.

Background
According to the Massachusetts Office of the Inspector General, public equipment, resources and assets are public property and should be used for public purposes only. These items are under the jurisdiction of each local government and are meant for government use. Management is responsible for ensuring that these resources are property managed.

Policy
Town sign boards are to be used for official governmental business conducted by the Town of Berlin. Examples of allowable uses include:

- Traffic information (example: road closures and detour information)
- Town of Berlin government and school sponsored events, including those sponsored by Town of Berlin boards and committees.
- Town of Berlin government and school announcements (example: town meeting information, election information, building closures, etc.)

Town sign boards are not to be used for non-municipal messaging including requests from nonprofits, for profits, religious organizations, sports groups, non-municipal organizations, etc.

All messages must be approved by the Town Administrator or his/her designee prior to being displayed.

Adopted by the Berlin Select Board on November 20, 2023

EXHIBIT C

LESSEE FIXED PROPERTY

EXHIBIT D

FORM OF NOTICE OF LEASE

[Begins on following page]

Property address: 34 South Street, Berlin, Massachusetts

NOTICE OF LEASE

Marginal Reference Requested to Book [ ], Page [ ]

Notice is hereby given that **Town of Berlin**, a Massachusetts municipality with offices at 23 Linden Street, Berlin, Massachusetts, 01503, acting through the duly elected Berlin Select Board (the "Lessor"); and the **Berlin-Boylston Regional School District**, existing under Chapter 71 of the Massachusetts General Laws and having its principal place of business at 215 Main Street, Boylston, Massachusetts, 01505, acting through its Regional District School Committee ("Lessee"), have executed a Lease as follows:

Date of Lease: January ____, 2024.

Description of Premises: A portion of the real property located at 34 South Street, Berlin, Massachusetts, as more particularly described in the Lease.

Term: Twenty (20) years, beginning on the date of the Lease.

Options to Extend: Tenant has one (1) option to extend the Term for a period of up to (20) additional years.

[SIGNATURE PAGE FOLLOWS]

Executed as a sealed instrument this _____ day of January, 2024.

LANDLORD:

Town of Berlin
acting through the duly elected Berlin Select Board

By:_____
Name:
Title:
Duly Authorized

TENANT:

Berlin-Boylston Regional School District
acting through its Regional District School Committee

By:_____
Name:
Title:
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

County of _____

On this ____ day of _____, 2024, before me, the undersigned notary public, _____, as _____ of the Town of Berlin Select Board, personally appeared, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that ___ signed it voluntarily for its stated purpose as the voluntary act of the Town of Berlin.

_____

Notary Public

Printed Name:_____

My Commission Expires:_____

[Seal]

COMMONWEALTH OF MASSACHUSETTS

County of _____

On this ____ day of _____, 2024, before me, the undersigned notary public, _____, as _____ of Regional District School Committee for the Berlin-Boylston Regional School District, personally appeared, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that ____ signed it voluntarily for its stated purpose as the voluntary act of Berlin-Boylston Regional School District.

_____
Notary Public

Printed Name:_____

My Commission Expires:_____

[Seal]