

PROPERTY LEASE AGREEMENT

THIS AGREEMENT ("**Lease**" or "**Agreement**"), is entered into as of the 24th day of August 2021 by and between the

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION, a public entity of the State of New Jersey, having its principal place of business at 834 Leonardville Road, Leonardo, New Jersey 07737 (the "**Lessor**"); and the

TOWNSHIP OF MIDDLETOWN, a municipal corporation of the State of New Jersey, having its principal place of business at 1 Kings Highway, Middletown, New Jersey 07748 (the "**Lessee**");

Hereinafter each a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

WHEREAS, Lessor is the owner of certain real property in the Lincroft section of the Township of Middletown (the "**Township**"), located at 730 Newman Springs Road and designated as Block 1062, Lot 17 on the official tax map of the Township (the "**Property**"); and

WHEREAS, Lessee has identified publicly beneficial uses for the Property and wishes to enter into an agreement for the lease, use and occupancy of said Property; and

WHEREAS, Lessor, in accordance with N.J.S.A. 18A:20-8.2(a), by entering into this Agreement, determines and resolves that the Property is not necessary for school purposes; and

WHEREAS, N.J.S.A. 18A:20-8.2(a)(2) and N.J.S.A. 40A:12-15 authorize Lessor and Lessee, respectively, to enter into this Lease Agreement with regard to the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Property**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, real property located at 730 Newman Springs Road and designated as Block 1062, Lot 17 on the official tax map of the Township.

2. Use of Property.

- 2.1. Lessee shall be permitted to use the Property for any purpose authorized by N.J.S.A. 40A:12-15, however, it is the parties' understanding and intention that Lessee will principally use the Property as municipal offices.
- 2.2. Lessee may not use the Property for any other purpose without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed.
- 2.3. The parties agree and covenant that the Property will not be used for the installation or operation of telecommunications towers or similar equipment.
- 2.4. Lessor shall be allowed and granted access to the Property at reasonable times, accompanied by Lessee's representative, to examine and inspect the Property for safety reasons, to ensure that Lessee's covenants are being met, and to inspect the Property so long as it does not interfere with the use by Lessee.

3. Improvements and Maintenance.

- 3.1. Lessor shall be solely responsible for all costs and applications and approvals associated with the removal and remediation, if deemed necessary, of the existing oil tank and related equipment and fixtures on the Property.
- 3.2. Lessor shall have no responsibility or obligation to provide any Heating, Ventilation and Air Conditioning ("**HVAC**") systems or equipment, including the repair, replacement, maintenance or installation of any such systems.
- 3.3. Lessee shall have the right to use any HVAC systems, fixtures and equipment existing in the Property during the term of this Agreement, subject to the payment of utility costs as set forth herein.
- 3.4. Lessee shall have the authority to install any HVAC systems and equipment that it deems appropriate, including temporary units and/or fixtures, subject to prior consultation with Lessor. Lessee shall be solely responsible for all costs, as well as any applications, approvals and inspections with regard to such systems.
- 3.5. All other improvements to the Property shall be at Lessee's expense, unless otherwise expressly provided herein.

- 3.6. Lessee shall provide or contract for routine maintenance of the Property, including the building, grounds and parking areas, at its sole expense. Lessor shall have no responsibility for the condition or maintenance of the property during the term of this agreement.
- 3.7. Lessee shall be solely responsible for any and all utility costs and expenses, including without limitation all electrical, cable, water, sewer, natural gas, oil and/or other utilities to the Property, throughout the term of this agreement.
- 3.8. Lessee shall be solely responsible for the removal of garbage, recyclables and debris from the Property throughout the term of this agreement.

4. **Other Governmental Licenses and Approvals; Construction**

- 4.1. All other approvals not addressed in paragraph 3, above, which may be required by any Federal, State, or local authorities, including without limitation engineering, soil borings, and other environmental onsite testing which may be required to permit any alteration, construction or installations on the Property shall be the sole responsibility and expense of Lessee. Lessor shall cooperate with Lessee to the degree necessary in its efforts to obtain any and all such permits.
- 4.2. Lessee shall not commence any construction on the Property without written notice to, discussion with and the approval of Lessor, which shall not be unreasonably withheld

5. **Commencement of Lease; Initial Term; Renewal Terms.**

- 5.1. This Lease Agreement shall commence upon both parties' execution of the Lease Agreement ("**Lease Commencement Date**"). The initial term shall be five (5) years following the Commencement Date.
- 5.2. Pursuant to N.J.S.A. 18A:20-8.2(b), any lease in excess of five (5) years must be approved by the Commissioner of Education. At the time of executing the initial Lease, the Lessor shall make application to the Commissioner of Education for approval of an extension to the lease term beyond the initial five-year period. Should the parties agree and prior approval is received, an extension up to four (4) five (5) year renewal options ("**Renewal Options**"), or a maximum of twenty-five (25) years, is the extension time period. Lessor shall provide Lessee with a copy of the Commissioner of Education's written approval of the extended lease term if and when received.

6. **Rent.**

- 6.1. Annual rent to be paid by Lessee to Lessor throughout the term of this agreement shall be the sum of one dollar (\$1.00).
- 6.2. Rental payments shall be made in full, not later than January 31 of each calendar year during which this agreement is in effect.
- 6.3. The initial rental payment shall be made prior to the commencement of this agreement and Lessee's assumption of control of the Property.
- 6.4. In the event that Lessee is in default of the terms of this Lease Agreement, including without limitation the responsibilities set forth in paragraph 3, above, and Lessor is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorneys' fees and costs in instituting, prosecuting or defending any action to enforce Lessor's rights under this Lease, the sums so paid by Lessor shall be deemed to be additional rental payment(s) and shall be paid by Lessee to Lessor within thirty (30) days following receipt of notice from Lessor, which notice shall include documentation of the respective expenses sent to Lessee.

7. Title and Quiet Possession.

Lessor represents and agrees that: it is the owner of the Property; it has the right to enter into this Lease; the person signing this Lease has the authority to sign; Lessee is entitled to access to the Property at all times for purposed of maintaining, operating, and improving the Facility and to the quiet possession of the Property throughout the term of the Lease, so long as Lessee is not in default hereunder.

8. Taxes.

During the term of this Agreement, Lessee shall pay as additional rent any documented personal or real property taxes that may be levied against the Property. Lessor shall provide evidence of any such taxes and/or assessments.

9. No Assignment.

Lessee shall not have the right to assign this Lease or sub-let the Property without the Lessor's express consent. In the event that Lessee identifies a possible assignment of the Property for public use consistent with paragraph 2, above, the parties shall meet to jointly consider such assignment/use, and Lessor's approval shall not be unreasonably withheld if the terms of such assignment are otherwise consistent with this Agreement and permitted by

the Law

10. Insurance.

- 10.1. Lessee, for the duration of this Lease, shall obtain at its own expense all required insurance. Nothing contained in these insurance requirements is to be construed as limiting the extent of Lessee's responsibility for payment of damages resulting from its operations under the Lease. Lessor, its employees, officers, as their interests may appear, agents and consultants, shall each be named as an additional insured on all policies, except for Workers' Compensation and Employer's liability insurance coverage, and shall be clearly shown as such in the Certificate(s) of Insurance required below.
- 10.2. Lessee agrees that, unless specifically permitted by Lessor to obtain alternate or substitute types or limits of insurance, Lessee will at all times during the term of this Lease, maintain and pay for the following types of insurance:
 - 10.2.1. Workers' Compensation and Employer's Liability Coverage in accordance with the Laws of the State of New Jersey.
 - 10.2.2. Commercial General Liability Insurance with minimum limits of \$2,000,000 per occurrence combined single limit for bodily injury and property.
 - 10.2.3. Automobile Liability Insurance covering the use of all owned, non-owned, hired or leased automobiles with limits of liability of not less than \$2,000,000 combined single limit for bodily injury and property damage.
 - 10.2.4. Umbrella Liability Insurance with limits of not less than \$4,000,000 per occurrence combined single limit for bodily injury and property damage in excess of the commercial general liability and comprehensive automobile limits.
 - 10.2.5. Contractual Liability Insurance must be included in the Comprehensive General Liability Insurance described above insuring the Indemnification Clause specified hereinafter, subject to standard policy provisions and exclusions.
- 10.3. The foregoing policy limits may be increased by Lessor as reasonably required for any Renewal Term, based on inflation and market conditions.

- 10.4. Such insurance shall be issued by a company or companies licensed to do business in the State of New Jersey who are Best's Rated A- (A Minus) or better. If by the terms of Lessee's insurance, mandatory deductibles are required, Lessee shall be responsible for the payment of said deductibles.
- 10.5. Certificate(s) of insurance evidencing the coverage required above must be filed with Lessor prior to the Lease Commencement Date.
- 10.6. Lessee's insurance, and the Certificate of Insurance provided to Lessor, will provide for a minimum of thirty (30) days' written notice to Lessor of policy cancellation or material change.
- 10.7. Lessee may comply with the foregoing requirements via self-insurance, upon provision of written proof of same.

11. Indemnification.

- 11.1. Lessee shall hold harmless, indemnify and defend Lessor, and each of its officers, employees, consultants and agents, from any and all liability, claims, losses or damage resulting from the use and occupancy of the Property, including without limitation claims arising from the condition of the Property's building(s) and grounds, except for claims arising from intentional acts of the Lessor, its employees, agents or independent Contractors.
- 11.2. The Lessor agrees to indemnify and hold Lessee harmless from any and all claims arising out of the intentional acts of Lessor, its employees, agents, or independent contractors in, on or about the Property outside of the Property, except for claims arising from the negligence or intentional acts of Lessee, its employees, agents or independent contractors.

12. Termination.

- 12.1. This Lease may be terminated by Lessee, without penalty or further liability to Lessor, upon the following:
 - 12.1.1. On 45 days written notice to Lessor if Lessee is unable to obtain or maintain any government approvals required to be obtained or maintained by Lessee to conduct its operations at the Property through no fault of Lessee.

12.1.2. By either party upon one (1) year's written notice to the other at any time.

13. Remedies Cumulative.

Any remedy herein conferred upon or reserved to Lessor or Lessee shall be cumulative to and in addition to every other remedy now or hereafter existing at law or in equity.

14. Acceptance of Premises.

By taking possession of the Property, Lessee accepts the premises in the condition existing as of the time of the assumption of possession. Lessor provides the Property "as-is," and makes no representation or warranty whatsoever with respect to the condition of the Property except as expressly set forth herein. Lessor shall not be liable for any latent defect in the Property.

15. Environmental.

- 15.1. Except as provided above, Lessor has no knowledge or reasonable cause to believe or suspect that any condition exists at or related to the Property that poses a significant hazard to human health or the environment or that there has been any release of any Hazardous Material in, on or over the Property in violation of any Environmental Law.
- 15.2. Lessee shall have ninety (90) days from the execution of this Agreement to perform any due diligence.
- 15.3. Lessee shall not use, or permit its agents, employees, contractors, subtenants, licensees or invitees to use the Property or Property or any portion thereof for the purpose of treating, producing, handling, transferring, processing, transporting, disposing, using or storing Hazardous Materials in violation of any applicable statutes, rules or regulations.
- 15.4. Lessee shall not cause or permit to exist, as a result of an action or omission by Lessee or its agents, employees, contractors, subtenants, licensees or invitees, a release of any Hazardous Material in, on or over the Property in violation of any Environmental Law.
- 15.5. Notwithstanding any provision herein to the contrary, Lessee shall not be liable for any environmental condition or release of Hazardous Material that was existing on the Property prior to the Commencement

Date of this Lease Agreement.

16. Notices.

Any written notice provided for herein shall be given in writing and shall be deemed validly given if delivered by personal delivery, overnight air carrier service or certified or registered U.S. Mail, postage pre-paid, return receipt requested, addressed as follows:

Lessor: Business Administrator
Middletown Township Board of Education
834 Leonardville Road
Leonardo, New Jersey 07737

Lessee: Township Administrator
Township of Middletown
1 Kings Highway
Middletown, New Jersey 07748

Notice shall be deemed effective upon delivery if given personally or by certified or registered mail, or by confirmed overnight carrier. The person to whom and the place to which notices are delivered may be changed from time to time by written notice to the other party.

17. Governing Law.

This agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey.

18. Covenants Binding on Successors and Assigns.

This agreement shall extend to and bind the successors, heirs and personal representatives of the parties hereto.

19. Entire Agreement.

19.1. This Agreement represents the entire agreement between the parties hereto, and no other verbal or oral agreements, promises or understandings shall be binding upon either the Lessor or Lessee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Lease Agreement shall be void and ineffective unless set forth in writing duly executed by both Parties.

19.2. If there exists any discrepancy, dispute or conflict between the terms of

this Lease Agreement and any other document, the provisions of this Lease Agreement shall be deemed controlling.

20. Non-Waiver.

Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this agreement or to exercise any of its rights hereunder shall not waive such rights, but the parties shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Lessor after a breach of this agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

21. Severability.

The provisions of this agreement are severable. If a court of competent jurisdiction rules that any provision of this agreement is invalid or unenforceable, such provision shall be replaced by another provision which is valid and enforceable and most closely approximates and gives effect to the intent of the invalid or unenforceable provision. Furthermore, such ruling shall not affect the validity or enforceability of any other provision of this agreement.

22. Authority to Enter into Agreement.

Lessor represents, covenants and warrants that it has the full authority to enter into and execute this Agreement. Lessee represents, covenants and warrants that it has full authority to enter into and execute this Agreement.

23. Lessee's Right to Mortgage Leasehold.

23.1. Lessee may not, without Lessor's prior written consent, mortgage this Lease Agreement and/or Lessee's leasehold interest. Construction and equipment may be financed by Lessee.

23.2. Lessee shall not suffer or permit any contractor, workman or creditor lien to attach or be filed against the Property. In the event any such lien is filed against the Property, Lessee shall cause said lien to be removed within ten (10) days. Lessee shall be permitted to submit a bond for an outstanding lien and may extend the time period for resolving a lien provided a written request is made by the Lessee and approval is granted by the Lessor.

24. Recording of Memorandum of Lease.

Lessor and Lessee agree that at the request of either party, a memorandum of this Lease Agreement may be recorded in the Office of the Clerk of Monmouth County in a form which is acceptable to both Lessor and Lessee.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

ATTEST:

**MIDDLETOWN TOWNSHIP
BOARD OF EDUCATION, LESSOR**

Joan Minnuies
President Middletown Township BOE

Amy Doherty, CPA
School Business Administrator/Board
Secretary

ATTEST:

TOWNSHIP OF MIDDLETOWN, LESSEE

Heidi R. Brunt, RMC
Municipal Clerk

Anthony S. Perry
Mayor

221303359v1