

# Superintendent's Dashboard

February 9, 2018

- We continue to advertise for three math teachers at the high school and an ESL teacher.
- I have attached several documents for your review to include a draft lease for the district office, a resolution to lease the space, a resolution to lease modular units and a resolution to sell Florentine-Hendrick. All four will be on the February 13 agenda.

I will ask the Board to consider approving these resolutions/agreements at our meeting on February 13.

- We have submitted addendums to SED regarding the \$30.5 million project and are awaiting final approvals. Plans (minus addendums) will be available to contractors from February 8 with bids being opened March 8. We will be recommending bids for approval at our March 13<sup>th</sup> meeting.
- I met with Assemblyman Oaks and Senator Helming in Albany this week. We discussed the proposed 1.3% increase for NRW and the negative impact that would have on our programs. We also discussed the past 3 years and the elimination of the GEA for the suburban schools at the expense of the poorest districts. Both were supportive and agreed that the current proposal did not need the needs of many of their constituents.

We have been meeting with administrators developing our 2018-19 budget priorities. Bob will be compiling and presenting budget information during the next several months as per his budget calendar.

- Jay Roscoup will be presenting information to the Board regarding county-wide trends in schools. His focus will be trauma informed care and behaviors. He will be sharing data from county schools. Jay will also be presenting to the Rural Schools Association at an upcoming conference.
- I received a grievance from the NRWTA regarding an extracurricular appointment. A staff member applied for the position and I rejected the request. A non-staff member was then appointed to fill the vacancy. I have attached all of the information to this email for your review. Please safeguard the information as it is confidential and should not be shared. I anticipate that the union will appeal to the Board some time in February. My opinion is clearly stated in my last response.

- On February 12 at 12:00 PM we will be allowing staff to tour the district offices to get an idea of what the new space looks like and have input into organizing the space (we have a good notion but maybe someone will have better ideas).

If you would like to join us please do. Also, please let me know if you plan to attend.

- We have taken 4 snow days to this point and have one remaining. We have a professional development day scheduled for March that we may convert into an instructional day. I will seek the Board's input when a plan is developed.

If you have any questions or concerns, please contact Cinda or me. Also, if you email Cinda or me a questions or request for information, please copy the entire Board as other members may have the same question.

Enjoy your weekend.

#### **UPCOMING EVENTS:**

2-13-18	BOE Meeting, 6:00 PM
2-19-23-18	Winter Break
2-27-18	BOE Meeting, 6:00 PM

At a meeting of the Board of Education of the North Rose-Wolcott Central School District, Wolcott, New York, duly held on the \_\_\_<sup>th</sup> day of, February, 2018:

Present:

Absent:

\_\_\_\_\_ presented the following resolution and moved it be adopted:

**RESOLUTION TO AUTHORIZE AND DIRECT THE SALE OF THE FLORENTINE-HENDRICK BUILDING AS EXCESS PROPERTY OF THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT ON THE BEST TERMS REASONABLY OBTAINABLE AND ALL ACTION NECESSARY TO FACILITATE THE SOLICITATION OF OFFERS TO PURCHASE SAID BUILDING FOR CONSIDERATION BY THE BOARD OF EDUCATION.**

**WHEREAS**, the Board of Education of the North Rose-Wolcott Central School District has determined that the Florentine-Hendrick Building (hereafter, the “Building”) is surplus property of the North Rose-Wolcott Central School District, given that it has been closed and has not been used for instructional purposes for the past several years and the District has determined that it cannot use the building for any purpose without substantial renovation and improvement, the cost of which, as estimated by the Board of Education’s architects, is cost prohibitive, considering the amount of such costs, the useful life of the Building, and the limited purposes for which the District could use the Building; and

**WHEREAS**, during the past several years, the District has been required to expend substantial sums to maintain the Building in order to prevent its waste and deterioration, and the

cost of such maintenance is reasonably expected to increase substantially over succeeding years;  
and

**WHEREAS**, the Board of Education has determined that the North Rose-Wolcott Central School District will have no practical use for the Building in future years;

**THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT** that it hereby resolves to sell the Florentine-Hendrick Building on the best terms reasonably obtainable, relative to its market value as determined by real estate appraisal reports received by the Board from accredited real estate appraisers;

**BE IT FURTHER RESOLVED**, that the Board authorizes and directs its Superintendent of Schools to employ, under terms customary in this locale, real estate brokers, agents, or other professionals, as the Superintendent deems reasonable and helpful, to assist in soliciting offers to purchase the Building over such period of time as the Superintendent deems reasonable, taking into account the advice of real estate brokers, agents, or others hired to assist in such effort, and to present to the Board of Education all offers to purchase the Building the District or its agents have received for consideration by the Board of Education and selection or other action; and

**BE IT FURTHER RESOLVED** that this resolution shall take effect immediately.

The Motion having been duly seconded by \_\_\_\_\_, it was adopted and the following votes were cast:

AYES

NAYS

ABSENT

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WAYNE )

I, the undersigned Clerk of the North Rose-Wolcott Central School District, hereby certify as follows:

1. A Meeting of the Board of Education of the North Rose-Wolcott Central School District, Wolcott, New York, was held on February \_\_, 2018, and Minutes of said meeting have been duly recorded in the Minute Book kept by me in accordance with the law for the purpose of recording the minutes of meetings of said Board.

2. I have compared the attached Extract with said Minutes so recorded and said Extract is a true copy of said Minutes and of the whole thereof insofar as said Minutes relative to matters referred to in said Extracts.

3. Said Minutes correctly state the time when said Meeting was convened and the place where such Meeting was held and the members of said Board who attended said Meeting.

4. Public Notice of the time and place of said Meeting was duly given to the public and the news media in accordance with the Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, and that the members of said Board had due notice of said Meeting and that the Meeting was in all respects duly held and a quorum was present and acted throughout.

IN WITNESS WHEREOF, I have hereto set my hand and have hereunto affixed the corporate seal of the Central School District this \_\_th day of February, 2018.

\_\_\_\_\_  
District Clerk

[Seal]

**North Rose Wolcott Teachers' Association  
Grievance**

DEC 18 2017

BY: \_\_\_\_\_

Grievant(s):	NRWTA
Stage of Grievance:	1 – Written
Principal or Immediate Supervisor:	Superintendent, Mr. Vigliotti
Date of Filing:	December 15, 2017
Description of Grievance. The District violated the agreement when ...	An individual outside of the NRWTA unit was Bard approved as a volunteer for a paid co-curricular position, which an NRWTA unit member previously applied for and was denied.
1. Date, time, and place of violation:	December 12, 2017, BOE meeting
2. The article, section, and/or paragraph of the agreement being grieved:	Article XXXII Extra Pay (D.3.aa Interact Club)
3. The District official responsible for causing the alleged grievance:	Superintendent
4. Other pertinent details:	
5. Redress sought:	Full compensation for any and all stipends related to said position that could have and/or would have been payed had appointment of the unit member been made. Any and all other remedies as deemed appropriate.
Signature of Grievant(s)	NRWTA Date: 12/15/17
Signature of NRWTA Grievance Chairperson	Kelly Cole Date: 12/15/17
Signature of District Recipient	Date:

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), is made as of the \_\_\_\_\_, 2018 (the "Effective Date"), by and between **Huron Evergreen LLC**, a New York Limited Liability Company with a mailing address at 5800 Lake Bluff Road, North Rose, New York 14516 ("Landlord"), and **North Rose-Wolcott Central School District**, with a mailing address at 11631 Salter-Colvin Road, Wolcott, New York 14590 ("Tenant").

### WITNESSETH:

In consideration of the mutual covenants and conditions contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property described herein in accordance with the following terms and conditions:

1. DEMISED PREMISES. The demised premises ("Demised Premises" or "Premises") consist of that certain space located in the Landlord's building ("Building") located at 6168-6188 West Port Bay Road, in the Town of Wolcott, County of Wayne and State of New York with the Premises having the same dimensions substantially as shown on "**Exhibit A**" attached hereto and made a part hereof; the Tenant shall also have a right of nonexclusive use of the Common Areas (defined in Section 36 below) in common with the Landlord and other tenants of the Building, subject to the Landlord's right to modification and changes of the configuration and location thereof. For purposes of computing the Rent and any other charges payable under this Lease, the Demised Premises shall be deemed to currently contain 7,771 square feet and the Building shall be deemed to currently contain 77,280 square feet.

2. TERM. The initial term of this Lease ("Initial Term") shall be for a term of twenty-eight (28) months and shall commence on March 1, 2018 (the "Commencement Date"), provided, however, if the Commissioner of Education has not approved this Lease prior to such date pursuant to Section 44 hereof, Tenant may not have possession of the Premises until the Commissioner of Education has approved this Lease in writing. Unless terminated sooner in accordance with the provisions hereof, the Initial Term shall expire on June 30, 2020. References in this Lease to the "Term" shall mean the Initial Term of this Lease and any applicable Renewal Term provided herein and as defined below. Landlord shall not be liable for failing to deliver the Demised Premises to Tenant on the Commencement Date; however, Tenant shall not be required to pay Rent until the Demised Premises is delivered to Tenant, which shall be Tenant's sole remedy for late delivery, and the Term shall not be extended. Upon prior reasonable notice from Tenant to Landlord, Tenant shall be granted access to the Premises, at Landlord's convenience and during normal working hours, -as of the Effective Date for purposes of space planning.

3. RENEWALS. Provided that the Tenant is not in default under this Lease at the end of the Initial Term or anytime in the previous twelve (12) months, and provided further that Tenant gives Landlord at least one hundred twenty (120) days prior written notice prior to the end of the Initial Term, and thirty (30) days prior written notice prior to the end of each one-month Renewal Term (as hereinafter defined), this Lease may be renewed by Tenant, subject to Landlord's consent, which may be withheld in its sole discretion, for twelve (12) additional terms of one (1) month each (each, and collectively, the "Renewal Term), which first Renewal Term shall immediately follow and commence upon expiration of the Initial Term, and each succeeding one-month Renewal Term shall immediately follow the expiration of the immediately prior one-month Renewal Term. All of the same terms and conditions as set forth in this Lease shall apply during the Renewal Term, except that no additional renewal term shall be applicable following the expiration of the Renewal Term.

4. RENT. Beginning on the Commencement Date Tenant shall pay to Landlord annual

Base Rent (“Base Rent”) of Thirty-Six Thousand and 00/100 Dollars (\$36,000.00), with said Base Rent to be paid in equal monthly installments, for the Tenant’s convenience, of Three Thousand and 00/100 Dollars (\$3,000.00) per month on the first day of each month at the offices of Landlord or such other place as Landlord may designate, without any abatement, setoff or deduction whatsoever. In the event the Initial Term of this Lease commences on a day other than the first day of the month, a pro-rated rental payment for the balance of said month shall be due on the Commencement Date. Any payment required to be made by the Tenant under the provisions of this Lease other than payments of Base Rent shall be designated herein as “Additional Rent”, and shall be paid without any abatement, setoff or deduction whatsoever. The Base Rent and Additional Rent due from Tenant to Landlord hereunder are collectively referred to as “Rent”.

5. Intentionally omitted.

6. ADDITIONAL RENT. As Additional Rent, Tenant does hereby further agree to pay all repairs and maintenance attributable to the Demised Premises necessitated by Tenant’s use of the Demised Premises, together with its proportional share of all CAM expenses relating to the Common Areas (as hereinafter defined) in the Building as set forth in Sections 36 and 37 herein, the Late Payment Fee in Section 8 herein, and any other payment required herein.

7. UTILITIES. Landlord shall make utilities available to Tenant as may be reasonably required by Tenant. Beginning on the Commencement Date (or anytime thereafter if utilities become separately metered), Tenant agrees to make all arrangements for supply of and to timely pay all charges for separately metered gas, electricity, water usage and other separately metered utilities consumed in and on the Premises directly to the applicable utility provider. For all water payments, Landlord will internally separately meter the water to the Premises and Tenant shall pay monthly to Landlord as Additional Rent all water invoices for the Premises within ten (10) days after an invoice therefor is delivered by Landlord to Tenant pursuant to Section 47 below. For gas, electric and any other utilities that are not separately metered, Tenant shall pay monthly to Landlord as Additional Rent the Landlord’s utility expenses in each month of the ~~lease term to the extent they exceed the Landlord’s 12-month average utility expenses during the Base Year (as hereinafter defined).~~ ~~[OR: the Landlord’s utility expenses in each month of the lease term]~~ Term to the extent they exceed the Landlord’s utility expenses in the corresponding month of the Base Year (as hereinafter defined). The “Base Year” shall be the calendar year 2017. Tenant shall be responsible for installing its own security system and the maintenance and payments for such security system. Irrespective of the foregoing, if the Landlord shall lease additional space in the Building that was not occupied in 2017, other than the Premises, Landlord shall equitably allocate the increase in gas, electric and any other utilities between Tenant and new tenant(s) to reflect the space used, type of use, and other relevant circumstances.

8. LATE PAYMENT FEE. In the event Tenant fails to make any Rent payment to Landlord in the full amount due within five (5) calendar days after the date when the same is due and payable, Tenant agrees to pay a late fee of five percent (5%) of the unpaid portion of said Rent, for that month, and for each subsequent month or portion thereof (but not to exceed 24%) until paid in full. Such late fee may be assessed by Landlord to cover the additional administrative expenses in processing late payments and shall be immediately due and payable to the Landlord. In no event shall this provision be deemed to grant Tenant any grace period or extension of time to pay any Rent as required hereunder, nor shall it prohibit or bar Landlord from exercising any of its rights hereunder.

9. USE OF DEMISED PREMISES. Tenant shall use and occupy the Demised Premises solely for the office space (the “Intended Use”) and for no other purpose whatsoever. The Tenant shall keep the Premises open for business during the standard school district operating hours throughout the Term of the Lease, excepting only (i) any limited period(s) of time as reasonably necessary for the



Tenant to make improvements or renovations to the Premises, and (ii) pursuant to Section 20 below, during repairs following damage by fire or other cause.

10. Intentionally omitted.

11. DELIVERY OF PREMISES. Tenant shall take the Premises “as is” and shall be responsible for performing any improvements that it desires at Tenant’s sole expense, subject to Section 12 below and subject to Landlord’s prior written approval of Tenant’s plans within ten (10) days of receipt thereof, which approval shall not be unreasonably withheld.

12. LANDLORD’S WORK. Landlord shall “touch-up” paint and install new carpeting at the Leased Premises, determined in Landlord’s sole discretion (collectively, “Landlord’s Work”). Landlord’s Work shall be performed at Landlord’s sole cost and expense, in a first class and workmanlike manner and pursuant to and in compliance with all applicable laws and buildings codes.

13. ALTERATIONS. Tenant shall make no alterations, installations, additions or improvements in or to the Demised Premises without Landlord’s prior written consent, which may be given or denied in Landlord’s sole and absolute discretion. Tenant shall provide Landlord with prior written notice of such contemplated work and the particulars thereof for Landlord’s records. For any alterations, installations, or improvements that require issuance of a building permit and exceed or are likely to exceed \$~~105~~0,000 in cost, Tenant, at its sole expense, shall submit to Landlord plans and specifications prepared by a licensed architect (if needed for such alteration) at the time consent is sought. All alterations, additions or improvements shall be performed in accordance with the provisions of this Lease, in accordance with all applicable insurance requirements, in accordance with all drawings and specifications provided to and approved by Landlord, in accordance with all warranties in effect with respect to all or any portion of the Building, in conformance with all applicable laws, in accordance with all necessary governmental approvals and permits (which Tenant shall obtain at its sole expense) and in a good and workmanlike manner, and diligently prosecuted to completion. Any work performed by Tenant shall be subject to Landlord’s inspection and reasonable approval after completion to determine whether the same complies with the requirements of this Lease, and Tenant shall promptly remedy any defective or reasonably disapproved work upon written notice of same from Landlord. Tenant shall use a qualified, licensed contractor to perform any alterations, additions, or improvements to the Demised Premises. If (with Landlord’s consent) the Tenant expands the square feet available to the Tenant, the provisions of Section 1, the Rent, and Tenant’s Pro Rata Share shall be adjusted to reflect the additional leasable square footage. In the event the roof of the Building is penetrated, compromised, or is otherwise damaged as a result of Tenant’s installation or use of its equipment, solar panels or otherwise (hereinafter, “Tenant Caused Roof Damage”), Tenant shall, at its sole cost and expense, cause the entire roof located directly above the Demised Premises to be replaced by a qualified roofer approved by the Landlord. At the end of the Term of this Lease, the Tenant shall remove all installations that it has made to the roof and shall replace the entire roof located above the Demised Premises.

If any mechanic's lien is filed against the Demised Premises in connection with any improvement of the Demised Premises by Tenant, it shall be discharged by Tenant, at Tenant's expense, within fifteen (15) days after written request by Landlord. In the event of Tenant's failure to discharge or otherwise remove said lien within said period, Landlord may take such steps and incur such expenses as may be required to discharge or otherwise remove said lien, and the cost thereof shall be payable by Tenant as Additional Rent hereunder within fifteen (15) days after Landlord provides Tenant with a statement therefor.

All constructions, additions and improvements, whether temporary or permanent, made and maintained in or on the Demised Premises, either by the Tenant or Landlord, shall be the sole

property of the Landlord from the time of construction or installation, and shall not be removed or damaged by Tenant, nor shall the Tenant claim any compensation therefor. It is understood and agreed that any movable furniture, personal property, signs (including but not limited to signs on the exterior façade of the Building), trade fixtures, and trade furnishings placed upon the Demised Premises by the Tenant are to remain the property of the Tenant and shall be removed by Tenant from the Demised Premises promptly at the expiration or earlier termination of the Initial Term, or any applicable Renewal Term; Tenant, at its own cost and expense, shall repair any damage, including but not limited to discoloration of the exterior façade due to removal of exterior signs, caused by such removal. Any such furniture, fixtures and trade furnishings, or any inventory or other personal property of Tenant or any other party, not removed at the termination or earlier expiration of the Lease, shall be deemed abandoned and immediately become the property of Landlord. Notwithstanding the foregoing, Landlord may charge Tenant for the cost of removal of such property and making required repairs and the charge therefor shall be payable by Tenant as Additional Rent hereunder and shall be paid by Tenant within fifteen (15) days after Landlord provides Tenant with a statement therefor. There shall be no charge by Landlord for review of plans or any inspections that Landlord deems necessary with regard to Tenant's alterations. Tenant shall have the right to select the contractor, subcontractor, engineer and/or architect of its choice to perform its alterations so long as the same are qualified and licensed. However, any and all costs incurred with respect to said alteration shall be borne by the Tenant. Further, in regard to any and all contractors and/or subcontractors performing construction, additions and/or improvements to the Demised Premises, the Tenant shall provide to Landlord evidence of adequate liability insurance (including but not limited to Labor Law section 240/241 coverage), workers' compensation for all workers and all other required insurance.

14. REPAIRS. Except in the event of an insured loss as set forth in Sections 20 and 25, Landlord, at its sole cost and expense, shall make all repairs to exterior walls, foundation and other structural portions of the Demised Premises (unless such damage is caused by the Tenant, Tenant's employees, contractors, agents, or invitees, in which event the Tenant shall make said repairs). Landlord shall be responsible for repairing costs of constructive defects in the Building and areas outside of the Building (but not including Tenant improvements or Tenant alterations). In addition, Landlord shall make all repairs to the roof (except in the event of Tenant Caused Roof Damage), and to the plumbing and electrical systems of the Demised Premises' exterior, but said costs and expenses shall be included in the CAM (as defined in Section 37 below). Notwithstanding the foregoing, Landlord shall not be liable for the performance or cost of any repairs needed to the Demised Premises that are a result of damage caused by another tenant in the Building.

Tenant shall take good care of the Demised Premises and all fixtures and appurtenances contained therein, together with the Premises windows and all plate glass, doors, lighting fixtures, HVAC unit(s), hot water tank, plumbing, sewage and drainage systems, and system(s) servicing the Demised Premises and all of Tenant's exterior signage provided in Section 16; Tenant shall, at its sole cost and expense, make all maintenance, repairs, and replacement thereto or thereof as needed to preserve all of the same in good working order and condition. Tenant shall remove all ice and snow from the entry and sidewalk in front of the Demised Premises, including the application of salt and other de-icing materials. In the event Tenant fails to perform any such maintenance or repairs within a reasonable time after notice from Landlord, the same may be made by Landlord at Tenant's expense and the cost thereof shall constitute Additional Rent, and shall be paid by Tenant within fifteen (15) days after rendition of a statement therefor by Landlord. Tenant shall not injure, overload, deface or otherwise harm the Premises or the Common Areas. Tenant shall not install antennae or equipment on the roof without Landlord's prior written consent, which shall be granted in Landlord's sole discretion.

15. INTERFERENCE WITH OTHER TENANTS. Tenant shall not: (i) create any nuisance, nor permit the emission of any objectionable sound, sewage, drainage, or odor from the Premises, nor place or permit any radio, television, loudspeaker, sound amplifier or any phonograph or

any other device, outside the Premises or any place where sound may be heard outside the Premises, (ii) conduct or allow upon the Premises any business which is contrary to law or the terms of this Lease, (iii) install or operate communications dishes, antennae or other telecommunications equipment, unless approved in writing by Landlord, (iv) sell or display merchandise on, or otherwise obstruct, the Common Areas, or (v) park or permit parking or standing of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other portion of the Common Areas. In the event that Landlord permits Tenant to install or operate communications dishes, antennae, or other telecommunications equipment at the Demised Premises, then Tenant shall operate its equipment within the technical parameters specified by its manufacturer and/or as defined by the FCC, and Tenant shall not use any portion of the Building in any way which causes radio frequency and/or electrical interference with any equipment of another tenant or licensee operated prior in time to the interfering equipment. In the event of any such interference by Tenant, Tenant shall terminate the interference. In the event the interference is not terminated by Tenant within five (5) business days of notice, then Landlord shall have the right to terminate this Lease upon written notice to Tenant, unless such condition cannot be reasonably corrected within said five (5) day period and Tenant is using its best efforts to correct the condition creating the interference.

16. SIGNAGE. Any and all signage maintained by Tenant (including signage on the Building's exterior) shall comply with all municipal rules and regulations, shall be subject to municipal approval, shall be located at such places as shall be designated by Landlord and shall be preapproved by the Landlord.

17. REQUIREMENTS OF LAW. Tenant shall comply with all laws, orders and regulations of Federal, State, County and municipal authorities as to its use of the Demised Premises, and shall not at any time use or occupy the Demised Premises in violation of such laws, orders and regulations or any certificate of occupancy or equivalent issued for the Demised Premises or any other space within the Building. Tenant shall not do, or permit to be done, any act within or upon the Demised Premises which (i) invalidates or increases the premiums for any fire insurance policies covering the Building, fixtures or property therein, (ii) any act within or upon the Demised Premises which might subject Landlord to any liability for injury to any person or persons or damage to property by reason of any business or operation being carried on within or upon said Demised Premises, and shall not bring to or keep anything therein, except as now or hereafter permitted by the fire department(s) servicing the Building, the Board of Fire Underwriters or other authority having jurisdiction. Except as provided in Section 18 below, for any Tenant improvements to the Demised Premises or any improvements necessitated by the specific use of the Demised Premises by Tenant, Tenant shall not be responsible for making capital improvements to the Premises in order to comply with any regulation or law. This ~~lease~~Lease agreement shall be void and unenforceable if entered into in violation of Gen. Municipal Law § 801 or Education Law § 410.

18. COMPLIANCE. Landlord represents that the Premises, as of the Commencement Date, shall be in compliance with all codes and regulations pursuant to any federal, state or local government law regulation including the provisions of the Americans for Disabilities Act of 1992. After Tenant's occupancy, Tenant shall bear responsibility for and ensure compliance within the Demised Premises with all codes and regulations pursuant to any federal, state or local government law or regulation including the provisions of the Americans for Disabilities Act of 1992. Landlord shall bear responsibility for all compliance costs beyond Tenant's Demised Premises.

19. SUBORDINATION/ESTOPPEL CERTIFICATE. This Lease is subject and subordinate to all existing or future mortgages given by the Landlord which may now or hereafter affect the Building, and all renewals, modifications, consolidations, replacements and extensions thereof. While this clause shall be self-operative and automatic, Tenant agrees to execute, within ten (10) business days following written request by Landlord or any said mortgagee, a further

subordination non-disturbance agreement in form satisfactory to Landlord or its mortgagee, in their sole discretion. In addition, within ten (10) business days following written request by Landlord or any such mortgagee, Tenant agrees to execute an estoppel certificate requested by the Landlord or said mortgagee in a form satisfactory to Landlord or its mortgagee, in their sole discretion. Tenant shall provide said subordination non-disturbance agreement and estoppel certificate without charge.

20. DESTRUCTION BY FIRE OR OTHER CAUSE. If the Demised Premises shall suffer minor damage by fire or other cause, the damages shall be repaired by the Landlord as promptly as reasonably possible. Tenant shall maintain such business interruption insurance as it shall believe applicable to cover any damages that it incurs as a result of a loss of all or any portion of the Demised Premises until repairs are complete. Rent shall be paid during such time period.

If the Demised Premises or the Building shall be totally or significantly damaged or rendered significantly untenable by fire or other cause, then in such event the Landlord may, at its option, either terminate this Lease or elect to have the damaged Premises repaired or rebuilt. The Landlord shall notify the Tenant as to its election within sixty (60) days after the casualty in question. If the Landlord elects to terminate this Lease, then the same shall terminate ten (10) days after such notice is given and the Tenant shall immediately vacate the Demised Premises and surrender the same to the Landlord, paying Rent and all other charges hereunder to the time that the Tenant vacates at Landlord's direction. In said event, all proceeds from any casualty insurance policy, except coverage for the Tenant's property, shall be payable to Landlord or its designee. If the Landlord does not elect to terminate this Lease, the Landlord shall repair and/or rebuild the Demised Premises with reasonable promptness to the same condition as existed before the date of such casualty, subject to any delay from insurance claim adjustment and causes beyond its reasonable control, with the Initial Term or Renewal Term of the Lease, as applicable, to continue without interruption and to remain in full force and effect. Except if the damage to the Premises or Building is caused by Tenant, its employees, or agents, Tenant shall have no obligation to pay rent, additional rent, CAM charges or other charges during the time the Premises are unavailable because of damage by fire or other causes. Tenant hereby expressly waives the provisions of Section 227 of the Real Property Law and agrees that the foregoing provisions of this Article shall govern and control in lieu thereof.

21. EMINENT DOMAIN. If the whole or any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, the Term of this Lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim by reason of this Lease, nor any claim to any part of the award made in such proceeding except for damages to or the taking of its nonremovable fixtures and equipment, relocation or moving allowances or the like, which claim may only be made against the condemning authority.

22. SUBLETTING AND ASSIGNMENT. Tenant shall have no right, at any time, to sublease or assign all or any portion of the Premises to another person or entity without Landlord's prior written consent, to be given at Landlord's sole discretion. If Landlord consents to an assignment or sublease, then all applicable rights of the Tenant under this Lease shall inure to the benefit of the sublease/assignee, but all obligations herein shall remain a joint obligation of the Tenant and the subtenant/assignee, each jointly and severally liable. Further, any sublease shall terminate on the expiration or earlier termination of this Lease.

Irrespective of the foregoing, the use limitations set forth in Section 9 above shall be applicable to any subtenant and assignee and shall include all use limitations existing at the time of the execution of this Lease, as well as any and all use limitations that may exist at the time of the commencement of said sublease or assignment. Further, the subtenant or assignee shall only use the Demised Premises for the Intended Use.

In the event that Landlord shall permit a sublease, such permitted sublease will be null and void unless it complies with the terms of this Lease and provides that: (i) the sublease is subject and subordinate to this Lease and that if there is any conflict or inconsistency between the sublease and this Lease, this Lease will prevail; (ii) the subtenant agrees to be bound by all of the terms of the Lease except as otherwise provided in the sublease approved by Landlord; (iii) Landlord may enforce all the provisions of the sublease, including the collection of Rent; (iv) the sublease may not be modified without Landlord's prior written consent and any modification without this consent shall be null and void; (v) if this Lease is terminated or Landlord re-enters or repossesses the Premises, Landlord may, at its option, take over all of Tenant's right, title and interest as sublessor and, at Landlord's option, the subtenant shall attorn to Landlord, but Landlord shall not be (x) liable for any previous act or omission of Tenant under the sublease, (y) subject to any existing defense or offset against Tenant, or (z) bound by any previous modification of the sublease made without Landlord's prior written consent or by any prepayment of more than one month's rent; and (vi) the sublease is ineffective until Landlord gives its written consent thereto if consent is required under the terms of this Lease.

Tenant shall reimburse Landlord for all of Landlord's third-party, out-of-pocket, reasonable review costs and expenses incurred by Landlord in connection with any proposed transfer requiring Landlord's consent.

23. HOLDOVER. In the event that the Tenant herein shall holdover following the expiration or termination of the Initial Term, or any applicable Renewal Term, Base Rent for each month following the expiration or termination of the Lease shall be at 120% of the monthly Base Rent incurred in the rental month immediately prior to expiration or termination. If the Tenant holds over beyond the third month immediately following the expiration or termination of the Initial Term, or any applicable Renewal Term, the monthly Base Rent, beginning on the fourth month of Tenant's holdover, shall increase to 150% of the monthly Base Rent for the months Tenant continues to occupy the Demised Premises. The foregoing shall not constitute a lease extension or consent to extend, but shall solely constitute an agreement between the parties as to the fair rental value of the Premises in the event that the Tenant holds over, and such Base Rent shall be paid in accordance with the provisions set forth in Section 4 above. Under no circumstances shall any holdover by Tenant create a new tenancy or lease that can be assumed and/or assigned under 11 U.S.C. § 365.

24. Intentionally omitted.

25. INSURANCE.

(a) Tenant, at its sole expense, shall carry property damage insurance for all of Tenant's personal property and equipment and for all leasehold improvements which are made by Tenant to the Premises. Tenant shall also carry at its sole expense general commercial liability insurance and contractual liability insurance insuring Tenant and Landlord against liability for any and all claims for injuries to or death of persons or damage to property occurring in or about the Demised Premises or Common Areas arising out of the use or occupancy thereof, and also insuring the indemnity from Tenant to Landlord contained in Section 13. The limits of liability under such insurance shall at all times be in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury or property damage per occurrence, and not less than Three Million Dollars (\$3,000,000.00) annual aggregate. All policies of such insurance shall provide that the Landlord shall receive at least thirty (30) days prior written notice of the cancellation thereof and shall name Landlord as an additional insured. Such insurance shall be written with a company or companies authorized to engage in the business of general liability insurance in the State of New York, and prior to any work, repairs, alterations or other construction on the Premises by or on behalf of Tenant, Tenant shall cause to be delivered to Landlord customary insurance certificates evidencing such insurance and naming the Landlord as an additional insured. In the event Tenant fails to so furnish evidence of such policies, Landlord may obtain the same and pay the premiums thereon, which shall be deemed Additional Rent

to be paid by Tenant to Landlord within ten (10) days upon demand.

(b) Landlord agrees to insure the Premises against loss or damage by any peril covered by a standard broad form “all risk” insurance policy in an amount equal to the full replacement cost of the Premises and liability coverage in such coverage amounts as the Landlord shall determine. Said coverage shall provide for protection for claims under Labor Law Section 240 and 241.

(c) Prior to entry by any contractor or subcontractor in or onto the Premises for the performance of work thereon at the request of Tenant, Tenant shall procure from each such contractor or subcontractor evidence of general liability insurance covering any such work and construction with minimum limits of liability equivalent to those set forth above, and naming Tenant and Landlord as additional insureds, such insurance to cover, without limitation thereto, any liability, claims or causes of action or damages relating to or arising out of New York Labor Law Article 10, and insure all risks under New York’s scaffolding law.

(d) The Landlord and Tenant herein each expressly waives any and all rights of recovery by way of subrogation against each other in connection with any casualty damage covered by any insurance policies noted hereinbefore so long as said policy is in effect and in good standing at the time of loss. . The terms of this Section shall include the Landlord and Tenant as well as its officers, employees, agents and representatives of such other party for loss or damage to such waiving party or its property or the property of others under its control arising from any cause insured against by any insurance policy in force (whether or not described herein) carried by such waiving party in lieu thereof, and each party shall cause each insurance policy contained by it to provide that insurance company waives all right of recovery by way of subrogation against each party in connection with any damage covered by any policy.

(e) All insurance policies required to be carried herein shall be issued by insurance companies which have a “general policyholders rating” of at least A-VI as set forth in the most recent issue of Best’s Insurance Guide. Proceeds shall be utilized for the repair or replacement of the Building unless the provisions of Section 20 shall be applicable.

(f) All insurance policies required to be carried by Tenant herein shall contain a provision providing a ten (10) day nonpayment notice to Landlord and a thirty (30) day cancellation notice to Landlord.

26. INDEMNIFICATION. Except as otherwise expressly provided in this Lease and for any claims for injury which are to be defended and indemnified by insurance required herein, Tenant shall and hereby does indemnify, hold harmless and defend Landlord and Landlord’s members, managers, partners, officers, employees, agents, mortgagees, affiliates and property managers, and their respective officers, members, managers, partners, directors, shareholders, employees and agents from and against any and all real or alleged claims, lawsuits, actions, demands, damages, penalties, costs, expenses and liability whatsoever, including reasonable attorneys’ fees and costs, to the extent arising out of (i) the possession, use, maintenance, control or occupancy of the Premises or the Common Areas during the Term, except to the extent caused by the gross negligence, willful misconduct, breach of this Lease or violation of applicable laws by Landlord or another tenant or other party, (ii) the negligence of Tenant, anyone claiming under Tenant or any of their respective employees, agents, representatives, contractors and/or subcontractors, (iii) any work or activity in or about the Premises by Tenant, anyone claiming under Tenant or any of their respective agents, employees, contractors and/or subcontractors, (iv) the filing or potential filing of any mechanic’s or materialmen’s lien or other proceeding (including, without limitation, any lis pendens) against the Premises or the Building in connection with any such work or activity, or (v) a breach of this Lease by Tenant. The obligations of this Section shall survive the expiration or earlier termination of the Lease.

27. TENANT'S RISK OF LOSS. All property kept, stored or maintained by Tenant on the Premises shall, except as set forth herein, be so kept, stored or maintained at the sole risk of Tenant. Landlord shall not be liable, and Tenant waives all claims against Landlord, for damages resulting to Tenant's property from fire or other casualty, whether or not insured against, including, without limitation, burst, stopped or leaking sewers, pipes, conduits, or plumbing fixtures, or for interruption of any utility services, or from any failure of or defect in the heating ventilation and air conditioning system or any electric line, circuit, or facility or any other type of improvement or service on or furnished to the Premises, or from theft, explosion, falling plaster, steam, water or rain or from any other patent or latent cause whatsoever or resulting from any accident in, on or about the Premises or Building, except for damages resulting in whole or in part from Landlord's or its agents' gross negligence or willful misconduct. Any such storage shall take place inside the Demised Premises unless permitted to be stored outside of Demised Premises by law.

28. ACCESS TO PREMISES. Landlord or Landlord's agents shall have the right to enter the Demised Premises at all times upon reasonable advance notice: (a) to examine the same, (b) to show same to prospective purchasers or prospective mortgagees of the Demised Premises or the Building, (c) to show the same to any prospective tenants of the Premises during the last six (6) months of the Term of this Lease, (d) and for the purpose of making such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable, and (e) for maintenance of the main hub for power and IT infrastructure servicing the Building, which is located within the Premises. It is agreed that the Landlord may at any time post "For Rent", "Space Available", or similar signs adjacent to the Premises within the last six (6) months of the then-existing Term. If Tenant shall not be personally present to open and permit entry into the Demised Premises at any time when entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by use of a master key, or, in the event of an emergency, may forcibly enter the Premises without rendering Landlord or Landlord's agent liable therefor and without in any manner affecting the obligations and covenants of this Lease, (provided, however, that Landlord and Landlord's agents shall accord reasonable care to Tenant's property during any such entry). In the event of an emergency, Landlord need not provide advance notice of entry to Tenant.

29. BANKRUPTCY.

(a) If at any time during the Term hereby demised, there shall be filed by or against Tenant in any Court pursuant to any statute either of the United States or of any State a petition of bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property (hereinafter a "Bankruptcy Event") and, within sixty (60) days thereof, Tenant fails to secure a discharge thereof, or if Tenant makes an assignment for the benefit of creditors, Landlord may cancel and terminate this Lease in which event neither Tenant nor any person claiming through or under Tenant by virtue of any statute or of an order of any Court shall be entitled to possession or to remain in possession of the Demised Premises but shall forthwith quit and surrender the Demised Premises. Landlord and Tenant agree that because Landlord's damages would be uncertain and difficult to calculate if a Bankruptcy Event were to occur, Landlord, in addition to the other rights and remedies Landlord has by virtue of any provision herein, or by virtue of any statute or rule of law, may retain as liquidated damages any rent, security deposit, or monies received by it from Tenant or others on behalf of Tenant.

(b) Notwithstanding any other provision herein to the contrary, the parties stipulate and agree that in the event of the termination of this Lease pursuant to the above subsection (a), Landlord shall recover from Tenant, as and for liquidated damages, an amount equal to the Rent set forth herein for the unexpired portion of the Term demised reduced by all Rent collected for the Demised Premises for the same period after adjusting said collected rent by the cost to Landlord for eviction fees, real estate broker fees, attorneys' fees, Tenant concessions, remodeling costs any other

out of pocket expenses incurred or to be incurred by the Landlord. If the Demised Premises, or any part thereof, be re-let by Landlord for the unexpired Term of said Lease, or any part thereof, the rentals so received, less all costs of re-letting, shall be credited against such liquidated damages as provided for in subsection (a) above.

(c) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as Rent, shall constitute “rent” for purposes of 11 U.S.C. § 503(b)(6).

(d) Landlord reserves the right in connection with any assignment of this Lease to contest the assignment if in Landlord’s commercially reasonable judgment the permitted use thereunder is not compatible with the tenant mix in the Building, the assignee is not a permitted tenant of the Building pursuant to any ~~than~~ existing lease for space within the Building or pursuant to any then recorded restrictions regarding tenants of the Building, or said adequate assurance of future performance does not otherwise comply with 11 U.S.C. § 365(a)(3).

(e) Pursuant to 11 U.S.C. § 365(d)(4), Tenant shall have until the earlier of: (1) 120 days after the date of the order for relief, unless extended for ninety (90) days upon proper motion for cause or (2) the date of the entry of an order confirming a plan, to assume or reject this Lease. In the event that this Lease is not timely assumed in accordance with these provisions, Tenant hereby unconditionally and irrevocably agrees that the Landlord is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Landlord to take possession of the Premises and enforce its other rights under this Lease, or at law and in equity in accordance with New York State law. Tenant hereby consents to the immediate lifting, without notice, demand or other action, of such automatic stay and agreed that it shall not, in any manner, contest or otherwise delay any motion filed by Landlord for relief from the automatic stay. Landlord’s enforcement of this stay waiver is subject to the approval of the Bankruptcy court in which the Tenant’s case is then pending.

(f) The term “Tenant” as used in this Lease included the Tenant named on Page 1 of this Lease and also any trustee, debtor in possession, receiver, custodian, or other similar officer.

30. DEFAULT; REMEDIES.

(a) Tenant Defaults. The occurrence of any of the following (each an “Event of Default”) shall constitute a material breach by Tenant pursuant to this Lease:

- i) Tenant’s failure to pay any Rent, including Additional Rent, within ten (10) days of when due;
- ii) Tenant’s failure to pay any other charges when due under this Lease, where such failure continues for ten (10) days after Tenant receives written notice from Landlord that such payment is due;
- iii) violation of the use provisions set forth in Section 9 of this Lease following three (3) days prior notice;
- iv) assignment or subletting without Landlord’s consent as provided in Section 22;
- v) encumbering any driveways, sidewalks or other Common Areas, after a notice to cure, under subsection 30(a)(vi) below, including by merchandise sales, or otherwise carrying out a business use within the Common Areas without Landlord’s prior written consent after a notice to cure, under subsection 30(a)(vi) below;
- vi) Tenant’s failure to observe or perform any other covenant, term or condition of this Lease where such failure continues for ten (10) days after Tenant receives written notice thereof from Landlord; provided that if such failure cannot reasonably be cured within such ten (10) day period, Tenant shall not be in default hereunder so long as Tenant commences such cure



within such ten (10) day period and thereafter diligently prosecutes such cure to completion;

vii) Tenant shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts;

viii) the making by Tenant of this Lease of any general assignment or general arrangement for the benefit of creditors, or a Bankruptcy Event (unless, in the case of a petition filed against Tenant or any personal guarantor of this Lease, the petition is dismissed within sixty (60) days or any order of relief against Tenant or any personal guarantor is not stayed fully within thirty (30) days after the entry thereof), or the attachment, execution or judicial seizure of all or substantially all of Tenant's or any personal guarantor's assets or of Tenant's interest in this Lease, unless discharged within sixty (60) days; or

ix) Tenant shall take any corporate action to authorize any of the actions set forth in (viii) or (ix) above.

(b) Landlord's Remedies. Upon any Event of Default by Tenant pursuant to subsection 30(a) above, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to:

i) terminate this Lease and all rights of Tenant hereunder by giving at least five (5) days written notice of such intention to terminate, whereupon all Base Rent for the remainder of the current Lease year and any Additional Rent then due shall become immediately due and payable to Landlord; or

ii) have this Lease continue in effect for so long as Landlord does not terminate this Lease and Tenant's right to possession of the Premises continues, in which event Landlord shall have the right to enforce all of Landlord's rights and remedies under this Lease including the right to recover Rent, Additional Rent and other charges payable by Tenant under this Lease as they become due under this Lease; or

iii) without terminating this Lease, cure, pay or discharge any breach or violation hereof which amount so expended plus interest at 12% per annum shall be added to the next monthly incremental payment of Rent, and treated in the same manner as Additional Rent hereunder; or

iv) without terminating this Lease, pursuant to summary dispossession or other legal proceedings, enter into and upon the Premises or any part thereof, repossess the same as of its former estate, and expel Tenant, and those claiming an interest by, through or under Tenant, and remove any personalty left by Tenant (or anyone claiming by, through, or under Tenant) without being deemed guilty of any manner of trespass or conversation, and without prejudice to any remedies which might otherwise be used for arrearages of Rent or other breach(es) hereunder, make such alterations and repairs as may be necessary in order to re-let the Premises, and re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; or

v) to commence an action for money damages that have accrued to that date without prejudice to any sub-agreement action for damages accrued for sub-agreement periods.

In the event Landlord exercises option ii) or iv) in section 30(b) above, Landlord and Tenant agree that because Landlord's damages would be uncertain and difficult to calculate Landlord shall be entitled to recover from Tenant, as and for liquidated damages, an amount equal to the Rent set forth herein for the unexpired portion of the Term demised reduced by all rent collected for the Demised Premises for the same period after adjusting said collected rent by the cost to Landlord for eviction fees, real estate broker fees, Tenant concessions, remodeling costs any other out of pocket expenses incurred or to be incurred by the Landlord. To effectuate the foregoing, Landlord shall be permitted to bring actions from time to time to reduce to judgment all damages permitted herein. If Landlord elects to repossess the Premises due to an Event of Default as aforesaid, then Tenant shall (a) remain liable for all Rent and other obligations accruing up to the date of such repossession and (b) be

liable to Landlord for all reasonable costs actually incurred in connection with the repossession and re-letting of the Premises (including, without limitation, reasonable attorney and brokerage fees).

31. CURE BY LANDLORD. If Tenant shall breach any term or covenant in this Lease, Landlord may immediately or at any time thereafter and without notice perform Tenant's obligation for the Tenant's account if such breach constitutes a dangerous condition, a violation of law, or would result in a lien on the Premises, Building or land on which the Building is situate, and if Landlord makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred (together with interest and costs thereon) shall be paid by Tenant to Landlord as Additional Rent within ten (10) business days of rendition of any bill or statement to Tenant therefor.

32. NO REPRESENTATIONS BY LANDLORD. Landlord or Landlord's agents have made no representations or promises with respect to the Demised Premises or the Common Areas except as herein expressly set forth. The taking possession of the Demised Premises by Tenant shall be conclusive evidence that Tenant accepts the same "as is" and agrees that the Demised Premises and Common Areas were in good and satisfactory condition at the time such possession was taken.

33. END OF TERM. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all of its movable personal property. Tenant's obligation to observe and perform this covenant and to pay all items of Additional Rent required for a full or partial calendar year as required hereunder shall survive the expiration or other termination of the Term of this Lease. In the event Tenant fails to quit and surrender the Demised Premises to Landlord upon the expiration or other termination of this Lease, the Base Rent shall be as set forth in Section 23 herein.

34. QUIET ENJOYMENT. Landlord covenants and agrees with Tenant that upon Tenant paying the Rent and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably enjoy the Premises hereby demised subject nevertheless, to the terms and conditions of this Lease.

35. TRASH AND GARBAGE REMOVAL. Tenant shall keep the Demised Premises in a clean, sanitary, and orderly condition. Tenant shall also properly store all rubbish out of view and within the Premises, and then provide for removal of all such rubbish, in containers of Tenant at the sole expense of Tenant. In the event of violation of this provision, Landlord, in addition to all other rights and remedies, shall have the right immediately and without notice to remove any such trash cans, bins, garbage, debris or other materials of any type or nature and dispose of the same, all at the Tenant's expense, which expense Tenant shall reimburse to Landlord in full as Additional Rent and shall be paid by Tenant within fifteen (15) days after rendition of a statement therefor by Landlord.

36. COMMON AREAS. Common areas (hereinafter "Common Areas") shall include all sidewalks, parking areas, access driveways, common entryways and hallways, and such other areas within the Building as may be furnished by Landlord and designated for the benefit of the tenants of the Building, and their respective employees, guests and invitees. All Common Areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce all reasonable rules and regulations with respect to such areas and facilities and the use thereof for the best interests of all tenants, including but not limited to regulations concerning deliveries. Landlord shall perform, or arrange for the performance or furnishing of all repair, maintenance and replacement of the Common Areas at the Landlord's cost and expense, but which expense shall be included within the CAM as defined in Section 37 below. Landlord shall

have the right:

- (a) To reasonably restrict parking by Tenant, its agents, customers or employees;
- (b) To reduce the size of the parking area, provided it provides adequate parking for Tenant's employees and visitors;
- (c) To do any act reasonably necessary in connection with the Common Areas;
- (d) To construct additional structures or improvements within the Building which may be located in the Common Areas;
- (e) To change to any extent whatsoever the configuration and/or location of all entrances, doorways, sidewalks, curb cuts, driveways, parking areas, or other exterior portions or areas of the Common Areas, or the location of the Common Areas after consultation with Tenant; and
- (f) To make changes, additions, deletions, alterations and improvements in the Common Areas.

Landlord shall have such rights at all times without any such actions constituting an actual or constructive eviction or any breach of any obligation of Landlord under this Lease, and without incurring any liability to Tenant therefor, so long as vehicular and pedestrian access to the Demised Premises are not prevented thereby.

37. COMMON AREA MAINTENANCE AND INSURANCE.

A. Beginning on the Commencement Date, Tenant agrees to pay as Additional Rent, Tenant's Pro Rata Share (as defined below) of all expenses for repair, maintenance and operation of the Common Areas ("Common Area Maintenance" or "CAM"), which expenses shall include, but not be limited to, the cost of: general maintenance, cleaning and repairs (including janitorial services) in and on the Common Areas; exterior Building and window maintenance, repairs and cleaning; exterior lighting; ice and snow removal from the Common Areas, including the application of salt and other de-icing materials; to the driveway and parking lot (not to the sidewalks, which are not Common Areas); landscaping; all other services necessary in operating the Building and Common Areas (including but not limited to all expenditures by Landlord for maintenance, repair and replacement of plumbing and electrical systems and components which service the entire Building, as distinct from the Premises or any other tenant space in the Building, and including such plumbing and electrical systems and components which service the entire Building but are located in space leased to Tenant or other tenants, or in space available for lease); all service contracts including contracts to maintain HVAC, heating, or other mechanical units for the Common Areas; and all expenses for repair, repaving, striping and maintaining all parking areas and drives.

B. Tenant's Pro Rata Share (as defined below) of the CAM shall be paid within ten (10) days after an invoice therefor is delivered by Landlord to Tenant pursuant to Section 47 below.

38. Intentionally omitted.

39. TENANT'S PRO RATA SHARE. Tenant's "Pro Rata Share" shall be a fraction, the numerator of which is the deemed number of square feet of the Demised Premises (as may be increased pursuant to Section 13) and the denominator of which is the total number of square feet (excluding Common Areas) within the Building. Tenant's Pro Rata Share as of the Commencement Date is 10.06%.

40. RULES AND REGULATIONS. Tenant and Tenant's employees and agents shall observe faithfully and comply strictly with such rules and regulations as Landlord may from time to time reasonably adopt. Notice of all rules or regulations shall be provided to Tenant by written notice from Landlord.

41. ENVIRONMENTAL REQUIREMENTS Tenant warrants and covenants that Tenant

shall not, and shall not allow, the installation, use, generation, manufacture, storage or disposal of, in or about the Demised Premises or the Building any "Hazardous Materials" as defined herein (except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of the Demised Premises, all of which shall be used in accordance with applicable laws, statutes, regulations and ordinances then in effect). Tenant hereby agrees to protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, penalties, fines, costs (including but not limited to costs associated with the remediation to the Demised Premises or the Building), damages and expenses, including but not limited to, costs and expenses which Landlord is obligated to incur, costs of defending civil enforcement actions, costs of participating in regulatory proceedings, or any other civil or administrative action, including without limitation, reasonable attorneys' and expert fees and disbursements, arising out of the Tenant's installation, use, generation, manufacture, storage, release or disposal of any Hazardous Materials in or about the Premises or the Building except as provided herein. "Hazardous Materials" shall mean, without limitation, any flammables, explosives, radioactive materials, asbestos, formaldehyde foam insulation, polychlorinated biphenyls, methane, hazardous materials, petroleum, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law or any other currently applicable state or federal environmental law and the regulations promulgated thereunder. Tenant shall not be responsible for any contributions toward environmental remediation of any type, including the cost of investigating, removal, remediation, restoration and/or abatement of any Hazardous Materials, including, but not limited to asbestos, unless any of the aforementioned costs are incurred in environmental remediation of a condition caused by Tenant, or its agents, employees, or contractors. Landlord warrants and covenants to Tenant that to its knowledge, Landlord has not used, generated, stored, or disposed of any Hazardous Materials at the Building.

42. SECURITY DEPOSIT. Tenant shall pay to Landlord upon the execution of this Lease the sum of \$3,000.00, which the parties agree shall be held as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. It is agreed that in the event Tenant defaults in respect of any of the terms, provisions or conditions of this Lease, including, but not limited to the payment of any Rent, Landlord may at its option use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Rent or any sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including but not limited to, any damages or deficiency in connection with the re-letting of the Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. In the event that Tenant shall faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security shall be returned to Tenant, without interest, after the date fixed as the end of the Lease and within a reasonable time after delivery of entire possession of the Demised Premises to Landlord.

43. BROKERS. Each party represents and warrants that it has not had any dealing with any realtor, broker, or agent, in connection with the negotiation of this Lease. Each party shall indemnify and hold the other harmless from any cost, expense or liability for any compensation, commission, or charges claimed by any realtor, broker, or agent with whom it has dealt.

44. FORCE MAJEURE. If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, retraction by any governmental authority of any required permit, failure of power, restrictive laws, riots, insurrection, war, fire, inclement weather or other casualty or other reason of a similar or

dissimilar nature beyond the reasonable control of the party delayed, financial inability excepted (each, a “Force Majeure Event”) subject to any limitations expressly set forth elsewhere in this Lease, performance of such act shall be excused for the period of delay caused by the Force Majeure Event and the period for the performance of such act shall be extended for an equivalent period (including delays caused by damage and destruction caused by such Force Majeure Event). Delays or failures to perform resulting from lack of funds or which can be cured by the payment of money shall not be Force Majeure Events. This Lease Agreement shall be contingent on the approval of the New York State Commissioner of Education, as required under Education Law § 403-b and/or 8 N.Y.C.R.R. § 155.8.

45. **NO WAIVER.** No provision of this Lease shall have been deemed to have been waived by Landlord, unless such waiver is given in writing and signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than any Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent. No waiver of any breach of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of any of the same or other covenants, agreements, restrictions or conditions hereof. Acceptance of Rent shall not be deemed a waiver of any breach.

46. **WAIVER OF TRIAL BY JURY.** **It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other for any matters whatsoever arising out of or in any way connected with this Lease.**

47. **NOTICE.** Any notice, demand, request, approval, consent or other communication or instrument which is, or is required to be, given under this Lease shall be in writing. Except as may otherwise be provided in this Lease, any notice shall be deemed sufficiently given upon the earlier of receipt or refusal of delivery if delivered personally, or upon receipt or refusal if delivered by a nationally recognized overnight courier to the party and at the address of the party set forth in this Lease or at such other address as either party hereto shall designate from time to time in writing, or three (3) days following due posting of said written notice sent by certified mail, return-receipt requested. Any notices to be sent to the parties shall be addressed to the addresses set forth on the first page of this Lease or any other address that either party may designate in writing to the other by notice as required herein.

48. **INTERPRETATION.** For purposes hereof:

(a) If more than one person or entity is set forth as Tenant herein, then the obligations imposed under this Lease upon the Tenant shall be joint and several.

(b) This Lease shall be governed by the provisions hereof and by the laws of the State of New York without giving respect to principles of conflicts of law.

(c) The parties hereby stipulate and agree that the venue for any action brought to enforce or interpret the rights and obligations of the parties herein shall be commenced ~~in the Supreme Court, Wayne County~~ either in the Town Court in which the Building is located (if the Town has jurisdiction over the Tenant and if Landlord desires to commence an action for summary proceeding in such Town Court), in the event of an action for summary proceeding, or the Supreme Court, Wayne County.

49. **ENTIRE AGREEMENT.** It is understood and agreed by the parties hereto that this Lease and exhibits hereto contain the entire understanding between the parties hereto and supersede any prior understandings, memoranda or other written or oral agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral

or written, between the parties relating to the subject matter of this Lease that are not fully expressed herein or therein.

50. PROVISIONS BINDING, ETC. The conditions, covenants and agreements contained in this Lease to be kept and performed by the parties hereto shall be binding upon and inure to the benefit of said respective parties, their legal representatives, successors and assigns. This Section shall not be construed to permit any assignment or subletting, unless otherwise permitted in this Lease. The term "Landlord" as used in this lease means only the then current owner of the Building, so that in the event of any sale or sales of the Premises or any portion thereof, any prior Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord contained herein, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser at any such sale, that the purchaser of the Building has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

51. HEADINGS. Captions of the sections or parts of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

52. AMENDMENTS. This Lease may not be modified except by a writing signed by both parties.

53. COUNTERPARTS. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The parties may execute and electronically deliver copies of this Lease and/or counterpart signature pages, which electronic copies shall be equally as effective as delivery of originally-executed counterparts.

54. INVALIDITY. In case any provisions of this Lease shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provision of this Lease shall be in any way affected thereby.

55. SURVIVAL OF TERMS. The representations, warranties and covenants of this Lease shall survive the expiration or earlier termination of this Lease.

56. FAIR MEANING. This Lease shall be construed according to its fair meaning, the language used shall be deemed the language chosen by the parties hereto to express their mutual intent, and no presumption or rule of strict construction will be applied against any party hereto.

57. ATTORNEYS' FEES. If Landlord incurs attorneys' fees to enforce any provision of this Lease, Tenant shall be liable for all disbursements, court costs and reasonable attorneys' fees incurred, regardless of whether or not an action is commenced.

IN WITNESS WHEREOF, Landlord and Tenant have respectively caused this Lease to be executed by their duly authorized representatives as of the day and year first above written.

LANDLORD:

Huron Evergreen LLC

By: \_\_\_\_\_

Name: Scott Marshall

Title: Managing Member

TENANT:

North Rose-Wolcott  
Central School District

By: \_\_\_\_\_

Name: Stephan Vigliotti, Sr.

Title: Superintendent of Schools

**EXHIBIT A**

**Dimensions of Demised Premises**



At a meeting of the Board of Education of the North Rose-Wolcott Central School District, Wolcott, New York, duly held on the 27<sup>th</sup> day of February, 2018:

Present:

Absent:

\_\_\_\_\_ presented the following resolution and moved it be adopted:

**RESOLUTION TO APPROVE A PROPOSED LEASE AGREEMENT THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT AND HURON ENVIRONMENTAL LLC FOR THE LEASE OF OFFICE SPACE AT 6168-6188 WEST PORT BAY ROAD, WOLCOTT, NEW YORK FOR USE AS THE OFFICES OF THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT FROM MARCH 1, 2018 TO JUNE 30, 2020 DURING THE DISTRICT'S CAPITAL IMPROVEMENT PROJECT.**

**WHEREAS**, the North Rose-Wolcott Central School District will commence a capital improvement project in the spring of 2018, which is anticipated to continue until approximately June 30, 2020, which includes the renovation and alteration of the District's schools and instructional space, which will require the use of the District's administrative offices as instructional space during the project and the relocation of the District's administrative offices; and

**WHEREAS**, the North Rose-Wolcott Central School District Board of Education has directed its administrative officers to research the availability of acceptable lease space for use as the School District's administrative offices during the capital project and generally available lease rates in the local market for commercial office lease space, and has determined that its administrative officers have undertaken a diligent effort in this regard and determined that acceptable lease space which satisfies the needs of the School District for its administrative offices in the local commercial real estate market is very limited; and

**WHEREAS**, after due consideration of information presented to the Board of Education of the North Rose-Wolcott Central School District, it has determined that the lease space offered to the School District by the Huron Environmental, LLC at 6168-6188 West Port Bay Road, Wolcott, New York, as described in Exhibit A to the annexed lease agreement, meets the needs of the North Rose-Wolcott Central School District for its administrative offices and the terms negotiated by the School District's administrative officers and counsel, as set forth in the annexed lease agreement, are reasonable and commensurate with lease terms and rental rates for Class A and Class B commercial office lease space in the local market; and

**WHEREAS**, the Board of Education of the North Rose-Wolcott Central School District has determined that said lease space is unlikely to remain available for any significant period of time and it is the most amenable to the needs of the School District for its administrative offices,

**THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT** that it hereby approves the lease agreement annexed to this resolution, finding it to be in the best financial and other interests of the North Rose-Wolcott Central School District for the reasons specified above and it, therefore, authorizes its Superintendent of Schools to enter into said lease agreement and such other related action as is necessary to provide the School District with access to the above-referenced lease space by March 1, 2018 or as soon thereafter as reasonably possible; and

**BE IT FURTHER RESOLVED**, that this resolution takes effect immediately upon its adoption.

The Motion having been duly seconded by \_\_\_\_\_, it was adopted  
and the following votes were cast:

AYES

NAYS

ABSENT



At a meeting of the Board of Education of the North Rose-Wolcott Central School District, Wolcott, New York, duly held on the 13<sup>th</sup> day of February, 2018:

Present:

Absent:

\_\_\_\_\_ presented the following resolution and moved it be adopted:

**RESOLUTION TO APPROVE A LEASE AGREEMENT WITH MOBILE MODULAR MANAGEMENT CORPORATION FOR THE LEASE OF MOBILE MODULAR UNITS TO TEMPORARILY PROVIDE THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT WITH INSTRUCTIONAL SPACE DURING ITS CAPITAL PROJECT WHICH IS SCHEDULED TO COMMENCE ON OR ABOUT MARCH 1, 2018 AND TO BE COMPLETED ON OR ABOUT JUNE 1, 2020, PURSUANT TO THE TERMS AND CONDITIONS STATED IN THE ANNEXED LEASE AGREEMENT.**

**WHEREAS**, the voters of the North Rose-Wolcott Central School District approved a capital project for the renovation and alteration of the schools of the School District, which is scheduled to commence on or about March 1, 2018 and to be completed on or about June 1, 2020 (“Capital Project”), during which the School District will be unable to utilize significant portions of its instructional space; and

**WHEREAS**, based on information provided to the Board of Education by its design professionals and School District officials, the Board of Education has determined that the School District will temporarily require additional instructional space during the Capital Project and such space is unavailable within the School District, but can be obtained on the School District’s grounds through the lease of mobile modular units that will provide students and personnel with safe, comfortable, and up-to-date instructional space which complies with the Education Law and the regulations of the New York State Commissioner of Education; and

**WHEREAS**, the Board of Education directed officials of the North Rose-Wolcott Central School District and its architects to investigate available options for the lease of mobile modular units during the Capital Project, and has been advised that a lease agreement offered by Mobile Modular Management Corporation (“MMMC”) through the cooperative purchasing network (“Lease Agreement”), pursuant to which MMMC was found to be the lowest responsible bidder in a competitive bidding process which substantially comports with General Municipal Law § 103 and is available to the School District pursuant to General Municipal Law § 103(16), will provide the School District with the lease of the required mobile modular units on terms that are consistent with or better than those generally available for the lease of such units; and

**WHEREAS**, based on the information provided to the Board of Education by officials of the North Rose-Wolcott Central School District and its architects, the Board of Education has determined that the Lease Agreement (a copy of which is attached to this resolution) is in the best financial interests of the North Rose-Wolcott Central School District and the best interests of its students, personnel, and community. To wit: it will provide the School District with state-of-the-art mobile modular units that will provide the School District with the instructional space it requires during the Capital Project, which complies with the requirements of the Education Law and the regulations of the New York State Commissioner of Education and will provide School District students and personnel with safe, comfortable, well-lit, and technology capable instructional space on reasonable terms for the duration of the capital project; and

**WHEREAS**, voters of the North Rose-Wolcott Central School District were advised of the School District’s need to lease mobile modular units to provide the School District with instructional space during the Capital Project, the characteristics of the mobile modular units provided under the Lease Agreement, and the cost of leasing these units during the Capital

Project in numerous public meetings, newsletters, and other written materials about the Capital Project prior to their approval of it;

THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE NORTH ROSE-WOLCOTT CENTRAL SCHOOL DISTRICT that it hereby finds the Lease Agreement to be in the best financial interest of the North Rose-Wolcott Central School District for the above-stated reasons, and it authorizes and approves the Lease Agreement and authorizes its Superintendent of Schools to execute it on its behalf and take such other and additional action as may be required to effectuate the lease of the mobile modular units specified in the Lease Agreement and facilitate the School District's access to and use of those units in conformance with applicable law;

BE IT FURTHER RESOLVED, that this resolution takes effect immediately upon its adoption.

The Motion having been duly seconded by \_\_\_\_\_, it was adopted and the following votes were cast:

AYES

NAYS

ABSENT

