

# Appendix D

## TOWN OF PEPPERELL, MASSACHUSETTS

### LEASE AGREEMENT

#### For the NISSITISSIT MIDDLE SCHOOL

**THIS AGREEMENT**, executed as of the fourteenth day of November, 2020 by the Town of Pepperell, a Massachusetts municipality with offices at One Main Street, Pepperell, Massachusetts, 01463 (hereinafter the “LESSOR”) acting through the duly elected Pepperell Select Board (hereinafter the “BOARD”); and the North Middlesex Regional School District, existing under Chapter 71 of the Massachusetts General Laws and having its principal place of business at 66 Brookline Street, Pepperell, Massachusetts, 01463, (hereinafter the “LESSEE”) acting through its Regional District School Committee (the “COMMITTEE”).

**WHEREAS**, the LESSOR is owner of the facility known as the Nissitissit Middle School (the “Premises”) located at 33 Chace Avenue, in the Town of Pepperell, Massachusetts; and

**WHEREAS**, the LESSEE is currently using the Premises as, and it is the intention of the LESSOR that the LESSEE may continue to use the Premises as, a school building in connection with the terms of the Sixth Amended North Middlesex Regional School District Agreement (the “Regional Agreement”); and

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

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

#### 1. TERM

The LESSOR does hereby lease to the LESSEE the Premises, as defined herein, for a term of twenty (20) years from the first of October 2019 to September 30, 2029 (“Term”). Any extensions of the Term, as provided for herein, shall be included within the meaning of “Term” of the lease, as used herein .

#### 2. LEASED PREMISES

The leased Premises are the campus area known as the Nissitissit Middle School. The Premises are located at 33 Chace Avenue, in the Town of Pepperell, Massachusetts shown on the Attachment, specifically being the land and buildings in the Town of Pepperell as follows: Parcel Identification Number 22-4-1 in the Assessors’ records of the Town of Pepperell consisting of approximately 77.9 acres and the buildings thereon.

**3. RENT**

In accordance with the terms of the Regional Agreement, LESSEE shall pay no rent for its use and occupancy of the Premises.

**4. USE OF THE LEASED PREMISES**

The said Premises at all times during the term of this Lease shall be under the exclusive control of the LESSEE, who shall be responsible for operating and maintaining the Premises and keeping them in good repair, so that the LESSOR shall not be liable for any injury to persons, including death, or damage to property, including the Premises, occasioned by failure to keep the Premises in good repair or for any such injury or damage done or occasioned by or from plumbing, gas, water, steam or other pipes or sewerage, or from any such injury or damage occasioned by water, steam or ice being upon or coming through the roof, sky-lights or otherwise, or from any other cause whatsoever. LESSEE hereby indemnifies and holds the LESSOR harmless from and against any claims, losses or damage, including reasonable attorney's fees, arising out of such injury or damage and/or the LESSEE's failure to comply with its obligations under this paragraph.

The LESSEE shall have the exclusive use and control of the Premises during the term of the Lease.

LESSEE shall be solely responsible for any and all costs relating to the operation of the leased Premises including, but not limited to, completion of or modifications to the leased Premises to suit LESSEE 's operation, the costs of equipment, materials, supplies, repairs, taxes, licensing fees, attorney's fees, housekeeping supplies, insurances, office supplies, sanitation supplies, telephone and Internet service and printing costs.

LESSOR shall not be liable for any injury to persons, including death, or damage to property, including the Premises, occasioned by failure to keep the Premises in good repair or for any such injury or damage done or occasioned by or from plumbing, gas, water, steam or other pipes or sewerage, or from any such injury or damage occasioned by water, steam or ice being upon or coming through the roof, sky-lights or otherwise, or from any other cause whatsoever. LESSEE hereby indemnifies and holds the LESSOR harmless from and against any claims, losses or damage, including reasonable attorney's fees, arising out of such injury or damage and/or the LESSEE'S failure to comply with its obligations under this paragraph.

**5. IMPROVEMENTS**

LESSEE shall have the absolute right to insure, repair, improve, alter, remodel, or modernize in its discretion and at its own expense the said buildings on the Premises or any part thereof as specifically provided in the Regional Agreement. All repairs and improvements must conform with the Town of Pepperell By-Laws, Massachusetts State Building Codes, and all zoning requirements, including sections pertaining to building permits and applicable permit fees.

## 6. ROUTINE MAINTENANCE.

The LESSEE shall provide, at its own expense, continuous routine maintenance and keep in good repair, in such a manner as to be safe for use at all times, all of the Premises, including the following:

LESSEE shall, at its own expense, provide continuous routine maintenance and repair services as needed to maintain the Premises and property thereon in good condition.

## 7. UTILITIES/HVAC

The LESSEE shall pay all charges for gas, electricity, telephone, water and sewer service, and any and all other utilities used on said Premises; and shall keep the said Premises in such repair as at the commencement of said Term, reasonable wear and tear only excepted, and will promptly replace all glass thereof broken during the said Term by other of the same size and quality.

The LESSEE agrees to pay all costs of all utilities and HVAC systems for and serving the Premises, including and not limited to heat, water, sewer, electricity, telephone and cable television services, promptly when due.

## 8. INSURANCE

The Lessee shall continue to insure the Premises against loss by fire and other perils, as well as maintain general liability coverage, under its policies of insurance for all buildings owned or occupied by the LESSEE. A copy of a certificate of insurance, indicating the coverage required hereunder, shall be forwarded to Lessor annually.

*The Lessee shall hold the Lessor harmless from and against all liability, from whatever cause, arising out of any occurrence on the Premises or from use of the Premises during the Term of this Lease and any use or occupancy by Lessee in connection therewith.*

### **Subrogation**

The LESSOR and LESSEE hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either party's property, to the extent that such loss or damage is covered by an insurance policy required to be in effect at the time of such loss or damage (or, in the event either party elects to self-insure, paid from any reserve or fund maintained for such purpose). Each party shall obtain any special endorsements, if required by its insurer, whereby the insurer waives its rights of subrogation against the other party. The provisions of this clause shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible.

LESSEE and any construction or other vendor of LESSEE performing work at the Premises must furnish the LESSOR with a signed agreement and valid certificate of insurance before entering the Premises.

## **9. ENCUMBRANCES**

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

## **10. COMPLIANCE WITH LAWS**

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

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

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

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

## **11. FIRE, CASUALTY, EMINENT DOMAIN**

Should a substantial portion of the Premises or of the buildings thereon be substantially damaged by fire or other casualty, the LESSOR may elect to terminate this Lease. When such fire, casualty, or taking renders the Premises substantially unsuitable for their intended use, a just and proportionate abatement of rent, if any, shall be made, and the LESSEE may elect to terminate this Lease if:

- The LESSOR fails to give written notice within thirty (30) days of intention to restore Premises; or the fails to restore the Premises to a condition substantially suitable for their intended use within one hundred twenty (120) days of said fire, casualty, or taking.

The LESSOR reserves and the LESSEE grants to the LESSOR all rights which the LESSEE may have for damages or injury to the Premises for any taking by eminent domain, except for damage to the LESSEE's fixtures, personal property, equipment, or loss of business.

## **12. DEFAULT OR BREACH**

Each of the following events shall constitute a default or breach of the lease by LESSEE:

If LESSEE, or any successor or assignee of LESSEE while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for benefit of creditors.

If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against LESSEE, or if a receiver or trustee shall be appointed of all or substantially all of the property of LESSEE, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment.

If LESSEE shall fail to pay LESSOR any rent or additional rent when due and fails to pay LESSOR within fourteen (14) days of written notice, such past due rent, additional rent, interest, and the reasonable expenses of LESSOR occasioned by LESSEE 's breach.

If LESSEE shall fail to perform or comply with any of the conditions of this lease and if the nonperformance shall continue for a period of fourteen (14) days after notice thereof by the LESSOR to LESSEE.

If LESSEE shall vacate or abandon the Premises.

## **13. EFFECT OF DEFAULT/TERMINATION OF LEASE**

Upon termination of this Lease, for any cause, the LESSEE shall have the rights, free from all interference by or on behalf of LESSOR, to remove all personal property, including tools, machinery, apparatus and equipment of whatever description and kind that it may have placed or erected, or caused to be placed or erected on said premises before or during the term of this Lease, it being agreed and understood by and between the parties hereto that the ownership of any of such property above-described shall not be affected by being placed or erected on or affixed to the said Premises. Personal property shall not include fixtures which have been permanently installed on or in the Premises such as heating, air conditioning, plumbing, and lighting equipment and appurtenances.

## **14. QUIET ENJOYMENT**

The LESSOR covenants that in consideration of the mutual promises contained herein the LESSEE shall and may peaceably and quietly have, hold and enjoy the Premises and any personal property, fixtures or equipment contained therein during the said Term.

## **15. EXTENSION OF LEASE TERM**

This Lease may be renewed and extended for an additional term of ten (10) years under terms and conditions to be negotiated by the parties, provided the LESSEE gives written notice to the

effect, sent by certified mail return receipt requested, to the LESSOR, no later than nine (9) months prior to the end of the then current Term.

The LESSEE expressly reserves the right to terminate this Lease or any extension or renewal thereof by giving written notice to that effect sent by registered mail to the said Select Board no later than six (6) months prior to the anticipated date.

**16. NOTICES**

Any notice from the LESSOR to the LESSEE relating to the Premises or to the occupancy thereof, shall be deemed duly served if left at 66 Brookline Street, Pepperell, MA 01463 addressed to the LESSEE or, if mailed to the LESSEE at the Premises by registered or certified mail, return receipt requested, postage prepaid. Any notice from the LESSEE to the LESSOR relating to the leased Premises or to the occupancy thereof, shall be deemed duly served, if mailed to the Town of Pepperell by registered or certified mail, return receipt requested, postage prepaid, addressed to the Pepperell Select Board, One Main Street, Pepperell, MA 01463. Notice may also be sent to such other address as either party may specify to the other by notice given as provided herein.

**17. SEVERABILITY**

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

**18. CONSTRUCTION OF LEASE**

This lease shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

**19. MODIFICATION OF LEASE**

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

*Signatures on next page*

Executed in quadruplicate as a sealed instrument as of the fourteenth day of November, 2020.

**Town of Pepperell Select Board**

**North Middlesex Regional School  
District**

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

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

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

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

Print name:

Title:

**The Town of Pepperell**

**Approved as to Form**

BY: \_\_\_\_\_  
Town Counsel

