

**LEASE**

This **Agreement of Lease** ("Lease") is made as of ~~6<sup>th</sup>~~ day of ~~September~~ ~~2008~~, ~~2018~~, by and between the **TOWN OF CHILMARK**, with a mailing address of c/o Timothy Carroll, Town Hall, 401 Middle Road, P.O. Box 119, Chilmark, Massachusetts 02535-0119 ("Lessor"), and ~~FRIENDS OF THE CHILMARK PRESCHOOL~~, with a mailing address ~~of e/o Alicia Knight, President, P.O. Box 425, Chilmark, Massachusetts 02535~~ ("Lessee").

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1. **Premises.** Lessor owns the real property and improvements thereon located at 8 State Road, Chilmark, Massachusetts, which is known as the Chilmark Elementary School (the "School"). Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the one classroom, approximately 900 square feet in area, known as the "Spanish/PE/Extra Instruction" classroom located on the west side of the school including the private bathroom (the "Classroom"), together with the right to use such common areas of the School as are necessary for access to the Classroom (main foyer, hallways, ~~shared restrooms~~) and as are necessary to engage in outdoor activities on the School playground (together with the Classroom, the "Premises"). The Classroom is more specifically identified on the map of the School attached hereto as Exhibit "A". Other than as specifically set forth herein, Lessee shall have no right to use any other rooms or portions of the School, but may do so at the sole discretion of the principal/Head of the School.

**Comment [TC1]:** Actual title

2. **Term.** The initial term of the Lease shall ~~be for a term ten (10) months to~~ commence on ~~September 6<sup>th</sup>, 2008~~ ~~August 25, 2018~~ and to end on June ~~30<sup>th</sup>, 2009~~ ~~30, 2019~~. (the "Lease Period"). ~~At the end of the~~ ~~The Lease Period, the Classroom may be changed to another Classroom in the sole discretion~~ renewed for up to five additional one-year Lease Periods (August 25<sup>th</sup> until June 30<sup>th</sup> of each year) by mutual agreement of the Board of Selectmen ~~Lessor and with the approval of the principal~~ Lessee,

**Comment [TC2]:** Tim - I suggest that you consider a three year term and six renewals = a max of 21 years

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3. **Rent.** Lessee shall pay to Lessor rent ~~during the Probationary Period and each additional Lease Period~~ of ~~One Dollar~~ ~~and No cents~~ (~~\$1.00~~) for each Lease Period. Payment shall be by made by Lessee prior to the commencement of each Lease Period.

**Comment [TC3]:** Leave blank until we hear from the proposals

**Comment [TC4]:** Leave blank same

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4. **Utilities and Supplies.** Lessee shall promptly pay, on the execution of this Lease, one thousand (\$1,000) Dollars, made payable to the Up Island Regional School District-Chilmark School, to cover utility costs for use of the Classroom. The Chilmark Principal shall have exclusive control of this payment once received. The Lessee shall also, at the commencement of the Lease, deposit an additional one thousand (\$1,000) Dollars in a jointly held escrow fund to cover utility costs that exceed the initial payment. The Lessee will provide its own school supplies for the children enrolled in the program. ~~The Town has added a telephone extension so that the Lessee may directly receive telephone messages. The Lessee~~

**Comment [TC5]:** This was an artificial construct created after the proposal was chosen. Shouldn't this be the rent? It could still be paid directly to the Chilmark School for use at the Head of School's discretion.

~~will be responsible for the monthly cost of this telephone line.~~ The Lessee will not use the services of the School secretary. All provisions of water, sewer, electricity, heat, telephone and other utilities shall be subject to interruption due to any accident, to the making of repairs, alterations or improvements, to labor difficulties, service or supplies from the sources from which they are usually obtained for the School, or to any cause beyond Lessor's control to the extent Lessor shall be obligated to be involved with the provision of said utilities.

5. **Use.** Lessee shall use and occupy the Premises only for the conduct of a preschool program as specified in its "Proposal to Develop and Operate a Preschool at the Chilmark School" (the "~~proposal~~**Proposal**"), dated ~~November, 2004,~~ which was submitted in response to the Request For Proposal advertised by the Town. The proposal is incorporated herein as Exhibit "B". The program must be taught by staff that is state certified. The use of the Premises is limited to those identified in the Proposal for children ages 2.9 through 5 years of age and between the hours of 8:00 a.m. and 3:00 p.m. The maximum number of children to be enrolled in the program is eighteen (18). The Lessee shall provide a sufficient number of certified teachers and/or assistants so that the student to teacher ratio complies at all times with applicable law. No trade, occupation, or other activity shall be carried on, in, or about the Premises, or any use made thereof, which shall be offensive or contrary to the laws of the Commonwealth or any ordinance or by-law for the time being in force in the Town of Chilmark, or injurious to any person, or persons or property. Lessee shall not conduct any activity which would be a violation of the Massachusetts conflict of interest statute (M.G.L.-c. ~~62C, §49A268A~~). Lessee shall in no way represent or imply that its pre-school is affiliated with or endorsed by Lessor, the School, or the Up Island School District.

6. **Lessee's Insurance.** Lessee shall procure, keep in force, maintain, and pay for the following insurance against claims for injuries or losses to persons or property that are alleged to have arisen in connection with activities of the Lessee, and any of its agents, representatives, subcontractors or employees: (a) Broad form Commercial General Liability coverage naming Lessor as additional insured, written on a "per occurrence" basis with an aggregate cap of \$3,000,000: \$1,000,000, Combined Single Limit (C.S.L.). Such insurance shall be obtained from an insurer qualified to do business in Massachusetts and in good standing therein insuring Lessor as well as Lessee, as their interests shall appear, against injury to persons or damage to property as provided. Lessee shall deposit with Lessor certificates for such insurance at or prior to the commencement of the term and thereafter within thirty (30) days prior to the expiration of any such policies. All such policies shall provide that they shall not be cancelled without at least ten (10) days prior written notice to each insured named therein.

**Comment [TC6]:** Seeking MIIA review of the insurance language from our pool

7. **Tax Compliance.** Lessee shall deliver to Lessor prior to the execution of this Lease a certification of tax compliance in accordance with M.G.L. c. 62C, §49A.

8. **Maintenance.** Lessee shall maintain and keep all and singular the interior of the Premises and all fixtures therein in as good repair, order and condition as the same are in at the commencement of this Lease, or may be put in during the continuance hereof, reasonable

wear and tear or damage by fire or other unavoidable casualty not caused by the lessee only excepted, acknowledging that the Premises are now in good order. In the event that Lessee does not so repair any damage as soon as reasonably possible after such damage has occurred, Lessor shall have the right, but not the obligation, to repair such damage and demand immediate payment from Lessee for the cost of such repair or replacement. The removal of snow and ice from the sidewalks bordering upon the Premises shall be the obligation of Lessee, and said removal shall be done in a manner which is consistent with the safety of the public.

**Comment [TC7]:** This might not be legal but should we ask?

9. **Access to Premises.** Lessor and Lessor's agents shall have the right to enter the Premises at all reasonable times to examine the same and to make repairs thereto (and in the case of emergency at any time without notice).

10. **Lessee's Property.** It is understood and agreed that any goods or other property owned or otherwise possessed by Lessee, and stored, displayed, or otherwise maintained by Lessee at the Premises shall be kept there at Lessee's sole risk and without any liability whatsoever on the part of the Lessor for any loss or damage thereto. If the whole or any part of said property shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes or other pipes, by theft or from any other cause, no part of said loss is to be charged to or borne by Lessor. It shall be Lessee's obligation to provide any insurance for such property.

11. **Alterations - Additions.** The Lessee shall not make structural or non-structural alterations or additions to the Premises without the prior written consent of Lessor, which may be given or withheld for any or no reason, in Lessor's sole discretion.

12. **Subordination.** This Lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter, a lien or liens on the Premises and the Lessee shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage.

13. **Right to Terminate.** This Lease is subject to the express condition that, if Lessee shall neglect or fail to pay the rent, or any installment thereof, within ~~five (5)~~ **(10)** days after having been notified by Lessor that the rent has not been so paid, or shall fail to perform or to observe any of the other terms, covenants or conditions contained in this Lease, within ten (10) days after notification of such failure by Lessor, or if the estate hereby created shall be taken on execution or by other process of law, or if Lessee shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of Lessee's property or the property of said other entity for the benefit of creditors, then, and in any of the said cases (notwithstanding any license or any former breach of a covenant or waiver of the benefit hereof or consent in a former instance), or at the election of Lessor, this Lease shall terminate, and Lessor lawfully may, immediately or at any time thereafter, and without demand or notice, enter into and upon the Premises, or any part thereof, in the name of the whole and repossess the same as of its former

estate and expel the Lessee and those claiming through or under Lessee and remove Lessee's effects, without prejudice to any remedies which might otherwise be used.

**Comment [TC8]:** The town needs to consider the need to terminate in the situation that the town requires the space for students. Perhaps limiting to 3 year terms is enough protection given the time frames that a need would resent itself.

14. **Lessee's Failure to Perform.**

(a) If Lessee shall at any time fail to take out, pay for, maintain or deliver any of the insurance policies provided for in this Lease, or shall fail to make any other payment, or perform any other act on its part to be made or performed under this Lease, then Lessor, after ten (10) days notice to Lessee, except when other notice is expressly provided for in this Lease (or without notice in case of an emergency), and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease, may (but shall be under no obligation to):

- (1) Take out, pay for and maintain any of the insurance policies provided for in this Lease; or
- (2) Make any other payments or perform or cause to be performed any act on Lessee's part to be made or performed as in this Lease provided;

and may enter upon the Premises for any such purpose, and take all such action thereon as may be necessary therefor.

(b) All sums so paid by Lessor and all costs and expenses incurred by Lessee in connection with the performance of any such act, together with interest thereon at the rate of fourteen (14) per cent per annum or such lesser rate as may at the time be the maximum rate permitted by law, from the respective date of Lessor's making of such payment or incurring of each such cost and expense, shall be paid by Lessee to Lessor on demand as if the same were additional rent hereunder (and non-payment of which shall have the consequences as non-payment of rent).

15. **Assignment and Subletting.** Lessee shall not assign or sublet the whole or any part of the Premises without the prior written consent of Lessor, which may be given or withheld for any or no reason, in Lessor's sole discretion.

16. **Destruction by Casualty.** If the Premises are damaged or destroyed by storm, fire, lightning, earthquake or other casualty, to such an extent that the Premises are not usable by Lessee for the conduct of its business in substantially the same manner as it was conducted immediately prior to such damage or destruction, either Lessor or Lessee may terminate this Lease immediately. Lessee hereby irrevocably transfers, sets over and assigns to Lessor all Lessee's rights in and to the insurance proceeds payable on account of damage or destruction to the Premises.

17. **Notice.** Any and all notices given or required to be given hereunder shall

be in writing and delivered in hand or by certified or registered mail, postage prepaid, addressed to the parties at the addresses set forth for each of them in the first paragraph of this Lease. Any and all notices shall be deemed to have been given when delivered in hand or when deposited in the mail as noted above.

18. **Surrender.** The Lessee shall at the expiration or other termination of this Lease remove all Lessee's goods and effects from the Premises within ten (10) days of said termination or expiration. Lessee shall deliver to the Lessor the Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Premises, in the same condition as they were at the commencement of the term of this Lease, or as they were put in during the term hereof, reasonable wear and tear and damage by fire or other unavoidable casualty not caused by the lessee only excepted, within ten (10) days of said termination or expiration. In the event of the Lessee's failure to remove any of Lessee's property from the Premises, Lessor is hereby authorized, without liability to Lessee for loss or damage thereto, and at the sole risk of Lessee to remove and store any of the property at Lessee's expense, or to retain same under Lessor's control or to sell at public or private sale, without notice any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

**Comment [TC9]:** This might not be legal but should we ask?

19. **Quiet Enjoyment.** Lessor covenants and agrees with Lessee that, upon Lessee's paying the rent and observing and performing all the terms, conditions, and covenants on Lessee's part to be observed and performed, Lessee may peaceably and quietly enjoy the Premises, subject, nevertheless, to the terms and conditions of this Lease.

20. **Indemnification and Liability.** Lessee agrees at all times during the term of this Lease and for such further time as Lessee occupies the Classroom, to assume exclusive control of the Classroom and all tort liabilities incident to the control or leasing thereof. The Lessee, to the maximum extent permitted by law, shall defend, indemnify and save harmless Lessor, its officers, agents, volunteers, and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs and expenses, and damage to Lessor's real or personal property (including reasonable attorneys' fees), that may arise out of or in connection with Lessee's lease or use of the Premises or the School ~~for any damage to Lessor's real or personal property that occurs in conjunction with the Lease or the use of the Premises or the School by Lessee~~, unless the damage is caused by Lessor's ~~grossact, omission, fault~~, negligence or ~~willful~~ misconduct.

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21. **Payment of Lessor's Cost of Enforcement.** Lessee agrees to pay on Lessor's demand all of Lessor's expenses, including reasonable attorney's fees, incurred in enforcing any obligation of Lessee under this Lease.

22. **Construction.** In construing this Lease, feminine or masculine pronouns shall be substituted for those of neuter form and vice versa, and the plural for singular and singular for plural in any place where the context may require.

23. **Governing Law and Severability.** This Lease shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In the event any provision of this Lease shall be determined to be invalid or unenforceable under applicable law, such provision, shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Lease shall be construed as if such provision had never been made part hereof.

24. **Headings.** The headings used herein are used only for convenience of reference and are not to be considered a part of this Lease or to be used in determining the intent of the parties hereto.

25. **Binding Effect.** This Lease shall be binding upon and inure to the benefit of all administrators, executors, personal representatives, heirs, successors and permitted assigns, including all permitted sub-tenants, of the parties hereto.

26. **Authorization.** Lessee shall give Lessor copies of its organizational documents and evidence, such as resolutions, satisfactory to Lessor, demonstrating the authority of those persons signing this Lease on behalf of Lessee, to bind Lessee.

27. **Entire Agreement.** This Lease, including any attachments hereto, constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by individuals duly authorized to contract on behalf of Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, as of the day and year first written above.

LESSOR:

**TOWN OF CHILMARK**

Witness \_\_\_\_\_ ~~Frank Fenner~~ James Malkin, Selectman

~~Witness \_\_\_\_\_~~ ~~J. Riggs Parker, Selectman~~

Witness \_\_\_\_\_ Warren Doty, Selectman

~~Witness \_\_\_\_\_~~ ~~William Rossi, Selectman~~

LESSEE:

~~**THE FRIENDS OF THE CHILMARK  
PRESCHOOL**~~

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

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