

LEASE AGREEMENT

between

HOMER CENTRAL SCHOOL DISTRICT  
80 South West Road, Homer, New York

and

BOARD OF COOPERATIVE EDUCATIONAL SERVICES  
FOR THE SOLE SUPERVISORY DISTRICT OF ONONDAGA,  
CORTLAND AND MADISON COUNTIES

September 18, 2014

## LEASE AGREEMENT

This sets forth a Lease Agreement ("Lease") made as of September 18, 2014, by and between HOMER CENTRAL SCHOOL DISTRICT, 80 South West Road, Homer, New York 13077 (the "Landlord"), and BOARD OF COOPERATIVE EDUCATIONAL SERVICES FOR THE SOLE SUPERVISORY DISTRICT OF ONONDAGA, CORTLAND AND MADISON COUNTIES, a sole supervisory district of the State of New York, organized under the New York Education Law with its office at 6820 Thompson Road, Syracuse, New York (the "Tenant").

### SECTION 1 - PREMISES.

(a) Landlord is the holder of the fee simple title to the land, building, and other improvements known as the Hartnett Elementary School located on Academy Street, Truxton, New York as more particularly described on Exhibit A attached hereto (the "Premises"). Landlord hereby leases to Tenant and Tenant hereby takes from Landlord the Premises.

(b) The Premises shall also consist of certain community spaces, including but not limited to, the gymnasium, cafeteria, fitness center, outdoor athletic fields, and playground (the "Community Space"). Landlord expressly reserves the right to permit third parties to utilize the Community Space, subject to final approval by Tenant, except for the fitness center and athletic fields which shall be open to community members from the hours of 4:30 p.m. until 9:00 p.m., and the playground, which shall be open to community members at all times when Tenant's school is not in session. Tenant agrees to allow such use by third parties, with specific times and uses to be approved by Tenant in each case. Tenant agrees that its consent will not be unreasonably withheld or delayed. Except for negligent acts or omissions of Tenant and Tenant's agents, employees, and invitees, Landlord agrees to indemnify and save Tenant

harmless from any and all liability arising during the lease term and out of any use, occupation, operating, possession or control by Landlord of the Community Space. At all other times, Tenant shall be able to utilize the Community Space without interference from third parties.

SECTION 2 - TERM AND RENT.

(a) The term of this Lease shall be ten (10) years to commence on the date the Premises are ready for occupancy by Tenant in accordance with Section 3 of this Lease (the "Term Commencement Date"). If the Term Commencement Date is a date other than the first day of a month, the term shall expire at the end of the day ten (10) years from the last day of the month in which the Term Commencement Date occurred. If the Term Commencement Date is the first day of a month, the term shall expire at the end of the day ten (10) years from the last day of the preceding month. Promptly following the Term Commencement Date, Landlord and Tenant shall enter into a written agreement confirming the commencement and expiration dates of the term. The term "Lease Year" shall mean a consecutive period of twelve (12) calendar months after the completion of Landlord's Work, as defined in Section 3 of this Lease.

(b) Tenant shall pay Landlord annual rent in the amount of Two Hundred Five Thousand One Hundred Nine and 00/100 Dollars (\$205,109.00) for each Lease Year in monthly installments in advance on the first day of each month throughout the term in the amount of Seventeen Thousand Ninety Two and 41/100 Dollars (\$17,092.41).

(c) Landlord shall have the option, at any time during the term hereof, upon not less than twelve (12) months prior written notice to the Tenant, to terminate the Lease in the event that there is: (i) substantial increase or decrease in student enrollment; (ii) a substantial change in the needs and requirements of Landlord with respect to facilities; (iii) or other change which substantially affects the needs or requirements of Landlord or community surrounding the

Premises. In the event Landlord terminates this Lease pursuant to this Paragraph, Landlord shall pay to Tenant \$94,629 for each Lease Year that has elapsed prior to the termination and a proration of that amount for the Lease Year in which the termination takes place.

SECTION 3 - IMPROVEMENT OF PREMISES.

(a) Promptly following the execution and delivery of this Lease, Landlord, at Landlord's sole cost and expense, shall improve the Premises for Tenant's occupancy in accordance with the plans and specifications to be agreed upon by Landlord and Tenant (the "Landlord's Work"). If Landlord and Tenant do not agree on the Landlord's Work by January 1, 2015, either party may terminate this Lease. Tenant shall have the right to (i) review and approve any change orders relating to Landlord's Work, and (ii) attend all design and construction meetings relating to Landlord's Work. Landlord will be responsible for obtaining all permits and approvals for Landlord's Work and will be responsible for obtaining a certificate of occupancy upon completion, if applicable. The Premises shall be deemed ready for occupancy by Tenant on the date Landlord substantially completes Landlord's Work, as evidenced by a certificate of substantial completion issued by the Landlord's architect, or the issuance of a certificate of occupancy. As a part of the scope of Landlord's Work to be agreed upon between Landlord and Tenant, Landlord will prepare a time schedule for the commencement and completion of Landlord's Work.

(b) Absent events of force majeure as described in Section 23 of this Lease, Landlord shall substantially complete Landlord's Work prior to August 1, 2016. If Landlord's Work is not substantially completed by August 1, 2016, following completion of Landlord's Work, Tenant shall receive one (1) day of abated rent for each day Landlord's Work remained incomplete after August 1, 2016.

(c) Tenant shall not make any improvements or additions in or to the Premises costing more than Five Thousand Dollars (\$5,000) in each instance without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. Tenant shall so remove any such alterations and repair any damage to the Premises caused by such removal and shall restore the Premises to substantially the same condition as existed prior to the Term Commencement Date upon surrender of possession in accordance with Section 8 of this Lease. This covenant shall survive the expiration or termination of this Lease.

SECTION 4 - USE.

Tenant may use the Premises solely for Tenant's lawful purposes.

SECTION 5 - UPKEEP OF PREMISES; ALTERATIONS BY LANDLORD.

(a) Landlord, at its expense, shall keep and maintain the Premises, including the roof, exterior walls, existing interior walls, structural floor slabs, columns, building equipment (including, without limitation, sanitary, electrical, heating, air conditioning, or other systems), the parking lot and driveways in good condition and repair and shall replace any of the building mechanicals which become inoperable and shall promptly make all necessary structural repairs to the Premises, unless such repairs or replacements are necessitated by the negligent acts or omissions of Tenant, its agents, employees, contractors, guests or invitees, in which case Tenant shall be solely responsible for said repairs or replacements.

(b) Tenant shall keep the interior Premises in the condition that exists on the Term Commencement Date with the understanding that reasonable use and wear is excepted.

SECTION 6 - SERVICES AND UTILITIES.

(a) Throughout the term of this Lease and subject to the terms and conditions of a separate utilities agreement to be entered into and negotiated in good faith by the parties,

Landlord covenants, at its sole cost and expense, to furnish the following services for the Premises and the building:

- (i) Electrical energy for lighting and for the operation of all equipment used by Tenant; and
- (ii) Heat and air-conditioning (to the extent window air conditioning units are present in the building on the Term Commencement Date).

If the cost to Landlord of the above services exceeds \$20,000.00 in any Lease Year, Tenant shall reimburse Landlord for the excess within twenty one (21) days after Landlord submits proper documentation of the expenses to Tenant. If the cost to Landlord is less than \$20,000.00 in any Lease Year, Tenant shall be given credit for the under amount against the next monthly payment of rent that will become due. Landlord shall promptly submit documentation of this information to Tenant following the end of each Lease Year.

(b) Subject to the terms and conditions of a separate operations, maintenance, and custodial services agreement to be entered into and negotiated in good faith by the parties, Landlord shall provide all operations, maintenance and custodial services to the Premises as Tenant may require.

(c) Subject to the terms and conditions of a separate food service agreement to be entered into and negotiated in good faith by the parties, Landlord shall provide food service programs consistent with those food service programs provided to other Homer Central School District facilities to the Premises as Tenant may require at no cost to Tenant, and/or Landlord.

#### SECTION 7 - LANDLORD'S RIGHT TO ACCESS.

Tenant shall permit Landlord, or its authorized representatives, upon twenty four (24) hours prior notice to Tenant (except in the case of an emergency), to enter the Premises during

usual business hours (or at any time for the purpose of making emergency repairs) for the purposes of inspection, making repairs to the Premises, or showing the Premises to prospective purchasers or tenants.

SECTION 8 - SURRENDER OF POSSESSION.

Tenant covenants, at the expiration or other termination of the term, to remove its property, equipment, machinery, trade fixtures and effects from the Premises and to surrender the Premises and all keys, locks and other fixtures connected therewith to Landlord, in good repair, order and condition, with the understanding that ordinary wear and tear is excepted. Tenant also covenants, at the expiration or other termination of the term, to remove any alterations it made to the Premises in accordance with Section 3(c) of the Lease and repair any damage to the Premises caused by such removal and to restore the Premises to substantially the same condition as existed prior to the Term Commencement Date. These covenants shall survive the expiration or termination of this Lease.

SECTION 9 - DAMAGE TO PREMISES BY FIRE.

If the Premises are damaged by fire or other casualty and said fire or casualty is not caused by or arises out of the negligent acts of Tenant, its agents, employees, contractors, guests or invitees, Landlord shall diligently and as soon as practicable after such damage occurs (taking into account the time necessary to effectuate a satisfactory settlement with Landlord's insurance company) repair the damage at its own expense. However, if the Premises are damaged by fire or other casualty to an extent that the damage cannot be substantially repaired within one hundred eighty (180) days from the date the damage occurs, either party shall have the right, in lieu of repairing the damage, to terminate this Lease with a fifteen (15) day prior written notice of termination to the other party.

SECTION 10 - CONDEMNATION.

(a) This Lease shall be terminated in the event of a condemnation of the Premises or any part thereof necessary to Tenant's use or occupation by any competent authority under right of eminent domain for any public or quasi public use or purpose. The annual rent and additional rent payable hereunder for expenses not yet incurred by Landlord shall be abated to the date of the termination.

(b) In case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord, and Tenant assigns to Landlord all its right, title and interest in and to any award. Tenant, however, shall be entitled to claim, prove and receive in the condemnation proceeding the awards as may be allowed for fixtures and other equipment installed by it, and relocation and moving expenses, provided that the awards shall be made by the Court in addition to the award made by the Court to the Landlord as compensation for the land and improvements or part taken.

SECTION 11 - LIMITATION OF LANDLORD'S LIABILITY.

(a) Landlord shall not be liable to Tenant for any loss, damage or expense of any kind resulting from, and no claim shall be made by Tenant against Landlord for: (i) any injury or damage to person or property occurring in, on or about the Premises; (ii) the theft, loss or destruction of any personal property contained in the Premises or of any automobile parked in any parking areas designated by Landlord for parking; (iii) fire or other casualty; (iv) any overflow or leakage upon or into the Premises of water, rain, snow, steam, gas or electricity, or any breakage or bursting of pipes, conduits or other plumbing fixtures or appliances.

(b) The exculpatory provisions in Section 11(a) shall not apply to loss, damage or expense resulting from the willful or negligent act of Landlord or its employees or

agents. All references to Tenant in Section 11(a) shall be deemed to include Tenant's employees, agents and other persons claiming the right to be in the Premises under or through Tenant.

(c) The obligations of Landlord under this Lease shall not constitute personal obligations of Landlord, or its agents, employees, directors or officers, and Tenant shall look to the Premises, and to no other assets of Landlord, for the satisfaction of any liability of Landlord with respect to this Lease, and shall not seek recourse against Landlord's agents, employees, directors or officers, or any of their personal assets for such satisfaction.

#### SECTION 12 - INDEMNIFICATION.

Tenant covenants to indemnify and save harmless the Landlord from and against any and all liability, damages, expenses, fees, penalties, actions, causes of actions, suits, costs, claims or judgments arising from injury to person or property during the term of this Lease caused wholly or in part by any act or acts, omission or commissions of Tenant, its agents, employees, contractors, customers, guests and/or invitees. Tenant shall and will, at its sole cost and expense, defend with counsel reasonably acceptable to Landlord, any and all suits or actions that may be brought against Landlord or in which Landlord may be impleaded with others upon any above-mentioned claim or claims.

#### SECTION 13 - DEFAULT BY TENANT.

(a) Landlord shall have the right to give Tenant a notice that Landlord intends to terminate this Lease upon the happening of any one or more of the following events (hereinafter each referred to as an "Event of Default"): (i) Tenant shall fail punctually to pay any monthly installment of the rent, additional rent or any other amount or charge payable by Tenant under this Lease and the failure shall continue for more than ten (10) days after written notice thereof; (ii) Tenant shall neglect or fail to perform or observe any of the other agreements,

covenants or conditions contained in this Lease to be performed or observed by Tenant and the failure shall continue for more than thirty (30) days after notice thereof except that if said Event of Default cannot be cured by Tenant within this thirty (30) day period, no Event of Default shall occur if Tenant begins to cure the neglect or failure within the thirty (30) day period and diligently proceeds to cure the neglect or failure to completion; (iii) Tenant shall be adjudicated a bankrupt, or make a general assignment for the benefit of creditors; (iv) Tenant shall vacate or abandon the Premises; (v) Tenant's leasehold estate shall be taken upon an execution, attachment or other process of law; or (vi) a receiver or trustee is not discharged within ninety (90) days after his appointment, or at any time thereafter while any Event of Default continues. The specified termination date shall not be less than five (5) days after the date of the giving of the notice and this Lease shall then expire on the date so specified as if that date had been originally fixed as the expiration date of the term of this Lease.

(b) If this Lease shall be terminated in the manner provided above or by summary proceedings or otherwise, Landlord, or its duly authorized agent, may, immediately or at any time thereafter, without the necessity of giving any further notice, re-enter and resume possession of the Premises, without prejudice to any remedies for arrears of rent or for damages for breach of this Lease. No re-entry by Landlord and no acceptance by Landlord of the keys to the Premises shall be deemed an acceptance of a surrender of this Lease.

#### SECTION 14 - LANDLORD'S RIGHTS TO DAMAGES.

(a) If Landlord terminates this Lease by reason of the occurrence of an Event of Default, Landlord may relet the Premises for a term or terms which shall not be limited to the duration of the unexpired term of this Lease, and at a rental or rentals and upon other terms and conditions as Landlord may deem advisable.

(b) Tenant shall pay to Landlord, as damages, the sum of (i) the monthly installments of annual rent and all other amounts and charges which would otherwise be payable by Tenant under this Lease until the end of what would have been the original expiration date as set forth in this Lease, and (ii) the costs and expenses incurred by Landlord in recovering possession of the Premises, less the net proceeds received by Landlord from any reletting of the Premises after deducting all of Landlord's costs and expenses in connection with the reletting.

SECTION 15 - INSURANCE AND SUBROGATION.

(a) Landlord shall carry a property insurance policy on the Premises in an amount equal to the full replacement cost of the Premises, which insurance shall include coverage for the boilers. Tenant shall carry, at its own expense, insurance in the following type and amount:

- (i) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
- (ii) umbrella insurance with coverage of at least \$5,000,000 per occurrence and in the aggregate.

(b) All of Tenant's required insurance shall be obtained from insurance companies licensed to do business in the state of New York naming Landlord as an "additional insured". Coverage for Tenant's property shall include any improvements or alterations at the Premises. Evidence of Tenant's insurance coverage shall be furnished to Landlord prior to Tenant's occupancy of the Premises. Landlord hereby waives any right of recovery from Tenant if the Premises are damaged or destroyed by fire or any other peril included in the property form of insurance during the term of this Lease, unless said damage or destruction is caused by or arises out of the negligent acts of Tenant, its agents, employees, contractors, guests or invitees.

Tenant hereby waives any right of recovery from Landlord if the improvements in the Premises made by Tenant or Tenant's personal property therein is damaged or destroyed by fire or any other peril included in the property form of insurance during the term of this Lease, unless said damage or destruction is caused by or arises out of the negligent acts of Landlord, its agents, employees, contractors, guests or invitees.

(c) Each of the parties shall have a waiver of subrogation clause attached to, and made a part of, its insurance policy or policies in the following or equivalent form:

WAIVER OF SUBROGATION CLAUSE

This insurance shall not be invalid should the insured waive in writing, prior to a loss, all rights of recovery against any party for a loss occurring to the property described herein. Notice is hereby accepted that the insured has agreed in writing, prior to a loss, to waive any and all of its rights of recovery from (the Landlord or the Tenant as the case may be).

(d) Each party shall, upon written request, provide the other with a certificate of insurance evidencing the insurance coverage required by this Lease.

SECTION 16 - HOLDING OVER.

(a) If Tenant shall not immediately surrender possession of the Premises at the expiration of the term, Tenant shall become a tenant from month to month, provided rent shall be paid to and accepted by Landlord in the beginning of each month, at the rent payable immediately prior to the termination of this Lease. Unless and until Landlord accepts the rent from Tenant, Landlord shall continue to be entitled to retake or recover possession of the Premises in the manner provided by this Lease upon the occurrence of an Event of Default, and Tenant shall be liable to Landlord for any loss or damage it may sustain by reason of Tenant's

failure to surrender possession of the Premises immediately upon the expiration of the term of this Lease.

(b) If Tenant fails to surrender possession of the Premises immediately upon the expiration of the term hereof, Tenant agrees that all its obligations and all of Landlord's rights applicable during the term of this Lease shall be equally applicable during the period of subsequent occupancy, whether or not a month to month tenancy shall have been created.

SECTION 17 - WAIVER OF JURY TRIAL.

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises or any claim of injury or damage.

SECTION 18 - WAIVER.

No failure by Landlord to insist upon the strict performance of any covenant, agreement, term, or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or additional rent during the continuance of such breach shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by the Tenant, and no breach thereof shall be waiver, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Further, no endorsement or statement on any check or in any letter accompanying any check or

payment of rent shall ever be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of rent then due or to pursue any remedy available under this Lease, at law, or in equity.

SECTION 19 - QUIET ENJOYMENT.

Landlord covenants and agrees that upon Tenant paying the rent and additional rent, and performing all of the covenants and conditions on Tenant's part to be observed and performed, the Tenant shall and may peaceably and quietly have, hold and enjoy the Premises hereby demised without disturbance by Landlord, its successors and/or assigns, for the term aforesaid.

SECTION 20 - GOVERNING LAW; VENUE.

This Lease shall be construed and enforced in accordance with the laws of the State of New York. If any provision of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of this Lease shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law. Any judicial proceeding regarding this Lease shall be commenced in Cortland County, New York, or the United States District Court for the Northern District of New York, which shall be the exclusive venues for any such proceedings.

SECTION 21 - NOTICES.

All notices required or permitted to be given under this Lease shall be in writing and deemed to have been duly given if personally served or sent by certified or registered mail, return receipt requested, postage prepaid or via nationally recognized overnight courier, (i) to Landlord, at 80 South West Road, Homer, New York 13077, or (ii) to Tenant, at 6820 Thompson Road, Syracuse, New York, Attn: Assistant Superintendent for Administration. Service shall be complete when the notice is received by the addressee.

SECTION 22 – CONTINGENCIES.

(a) The parties' obligations under this Lease shall be contingent upon (i) Landlord receiving approval by referendum from its voters for a capital project including Landlord's Work; (ii) New York State Department of Education approving the capital project needed to complete Landlord's Work; and (iii) the approval of this Lease in writing by the New York State Education Department. If any of these approvals are not received by September 1, 2015, either party may terminate this Lease.

(b) Notwithstanding the foregoing, this Lease shall at all times be contingent upon sufficient enrollment to support the proposed New Tech Regional High School operated by Tenant on the Premises, as determined by Tenant in good faith. If Tenant determines that there is not sufficient enrollment to support the proposed New Tech Regional High School operated by Tenant on the Premises, which determination shall be supported by enrollment figures and a financial analysis of the cost of this Lease based on final requests for Tenant's services received from its component Districts no later than May 1 of each year, Tenant may terminate this Lease effective the following September 1.

SECTION 23 - FORCE MAJEURE.

In the event Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act required by this Lease by reason of strikes, lockouts, inability to produce labor or materials, failure of power, fire or casualty, acts of God, riots, insurrection, war or other reason of like nature beyond the reasonable control of Landlord or Tenant, as the case may be, then performance of the acts shall be excused for the period of delay and the period for the performance of the act shall be extended for a period equivalent to the period of the delay.

SECTION 24 – ASSIGNMENT.

The Tenant may not assign or sublet all or a portion of its rights to the Premises under this Lease without the prior written consent of the Landlord, which consent shall not be unreasonably conditioned, withheld or delayed.

SECTION 25 - MISCELLANEOUS.

(a) All covenants in this Lease which are binding upon Tenant shall be construed to be equally applicable to and binding upon Tenant's agents, employees and others claiming the right to be in the Premises through or under Tenant.

(b) This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Upon execution and delivery hereof, this Lease shall constitute the entire agreement between the Landlord and Tenant for the Premises. This Lease cannot be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

(d) This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. For all purposes, a facsimile or other electronic version (e.g., a pdf) of this executed Lease is deemed an original.

[Signature Page Follows]

Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD

HOMER CENTRAL SCHOOL DISTRICT

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

Name:

Title:

TENANT

BOARD OF COOPERATIVE EDUCATIONAL  
SERVICES, ONONDAGA, CORTLAND AND  
MADISON COUNTIES

By: Deborah B. Ayers

Name: Deborah B. Ayers

Title: Assistant Superintendent for Administration

Exhibit A

See aerial picture of Premises annexed hereto.

[NOTE: Picture should be outlined or cross-hatched to indicate the Premises.]