

**SELLERSBURG TOWN COUNCIL MEETING MINUTES
316 E UTICA STREET | SELLERSBURG, IN 47172
MAY 28, 2024**

CALL TO ORDER

President Brad Amos called the meeting to order at 6:00 p.m.

ROLL CALL OF MEMBERS:

Present: President Brad Amos, Vice President Terry Langford, Second Vice-President Scott McVoy, Member Randy Mobley, Member Matt Czarnecki, Town Manager Charlie Smith, Town Attorney Jacob Elder and Clerk Treasurer Michelle Miller.

PRAYER AND PLEDGE OF ALLEGIANCE

MOTION TO ADOPT THE AGENDA AS PRESENTED:

M|S|V: McVoy | Langford | 5-aye, 0-nay, motion approved.

APPROVAL OF MINUTES:

M|S|V: McVoy | Langford | 5-aye, 0-nay, motion approved.

APPROVAL OF ALLOWANCE CLAIMS:

M|S|V: Czarnecki | Mobley | 5-aye, 0-nay, motion approved.

ORDINANCES & RESOLUTIONS:

**2024-R-003 TRANSFERRING CERTAIN PROPERTIES WITH A GOVERNMENTAL UNIT
(SILVER CREEK SCHOOL CORPORATION):**

M|S|V: Czarnecki | Langford | 5-aye, 0-nay, motion approved.

PUBLIC COMMENT:

Jason Hardsaw, 441 N. New Albany, reference Ordinance 2024-R-003.

NEW BUSINESS:

1. CLARK COUNTY WARNING SIRENS | GAVAN HEBNER:

Mr. Hebner requests funding commitment for two new sirens in the amount of \$40,000.00 (\$20,000 per siren):

M|S|V: McVoy | Czarnecki | 5-aye, 0-nay, motion approved.

**2. HNTB INDIANA INC; INFRASTRUCTURE SOLUTIONS NOISE STUDY |
\$15,000.00 | TOWN MANAGER CHARLIE SMITH :**

M|S|V: Czarnecki | Langford | 5-aye, 0-nay, motion approved.

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3. REQUEST TO USE RAINY DAY TO PAY INVOICES FOR THE MOSLEY PARK PROJECT | \$48,508.79 | TOWN MANAGER/PARKS SUPERINTENDENT CHARLIE SMITH :

Mr. Smith requests permission to pay invoices from All American \$39,868.79 and River Hills \$8,640.00 from Rainy Day with 50% (\$24,254.39) being reimbursed from the IFLWC Grant.

M|S|V: McVoy | Czarnecki | 5-aye, 0-nay, motion approved.

PUBLIC COMMENT:

Charlie Pierce, 9108 Highway 60 reference the Noise Study

Jason Hardsaw, 441 N. New Albany referece questions on a few claims that were processed.

RECEIPT OF STAFF REPORTS:

TOWN MANAGER, CHARLIE SMITH: Gives various updates/information.

TOWN ENGINEER, JACOBI, TOOMBS & LANZ: Mike Harris presents project status report

ADJOURNMENT:

MSV: Czarnecki | Mobley | 5-aye, 0-nay, motion approved.

Time adjourned: 7:00 p.m.

Minutes approved this 10th day of JUNE, 2024

Brad J. Amos, Council Member

Matt Czarnecki, Council Member

Scott McVoy, Council Member

Terry Langford, Council Member

Randall Mobley, Council Member

Attest: Michelle D. Miller, Clerk Treasurer

TOWN OF SELLERSBURG
REGULAR TOWN COUNCIL MEETING
316 E. UTICA STREET SELLERSBURG, INDIANA 47172

Agenda for
May 28, 2024 at 6:00 p.m.

CALL TO ORDER AND ROLL CALL OF MEMBERS:

PRAYER:

PLEDGE OF ALLEGIANCE: All Present.

MOTION TO AMEND/ADOPT THE AGENDA AS PRESENTED:

APPROVAL OF MINUTES:

Approval of minutes as submitted by the Clerk-Treasurer.

APPROVAL OF ALLOWANCE CLAIMS:

COMMENTS FROM PUBLIC ON AGENDA ITEMS (time limit of 5 minutes per person):

ORDINANCES AND RESOLUTIONS:

1. RESOLUTION: 2024 – R – 003: A Resolution Transferring Certain Properties with a Governmental Unit.

UNFINISHED BUSINESS:

NEW BUSINESS:

1. Clark County Warning Sirens | Gavan Hebner
2. HNTB Indiana, Inc.; Infrastructure Solutions | Noise Study | Charlie Smith
3. Park Invoices | Charlie Smith

NEW BUSINESS:

GENERAL COMMENTS FROM THE PUBLIC (limited to 15 minutes total):

RECEIPT OF STAFF REPORTS:

Charlie Smith, Town Manager
Chief Russ Whelan
Mike Harris (Jacobi, Toombs, & Lanz)
Jacob "Jake" Elder, Town Attorney

COMMENTS FROM COUNCIL MEMBERSHIP (Good of the order):

Randall Mobley, District 2
Terry Langford, District 4
Brad J. Amos, District 3
Scott McVoy, District 1
Matthew Czarnecki, At-Large
Michelle Miller, Clerk-Treasurer

ADJOURN:

RESOLUTION OF THE BOARD OF SCHOOL TRUSTEES OF THE SILVER CREEK SCHOOL CORPORATION, CLARK COUNTY, INDIANA, REGARDING TRANSFER OF REAL ESTATE AT 206 N NEW ALBANY STREET, SELLERSBURG, INDIANA 47172

WHEREAS, the Silver Creek School Corporation (the “School Corporation”) is the owner of real property located at 206 N New Albany Street, Sellersburg, Indiana 47172 consisting of Parcel Nos. 17-00002-007-0, 17-00002-053-0, 17-00008-052-0, and 17-00008-051-0 (the “SCSC Property”) and structures not used by the School Corporation for classroom instruction;

WHEREAS, the Town of Sellersburg (“Town”) is the owner of real property located at _____ consisting of Parcel Nos. _____ (“Town Property”);

WHEREAS, the School Corporation has expressed its willingness to transfer the ownership of the SCSC Property as more specifically depicted in the Purchase Agreement, attached hereto as Exhibit A and incorporated by reference herein in exchange for the Town Property on the terms contained herein; and

WHEREAS, the transfer and exchange of real property shall be on the terms of the Purchase Agreement attached hereto;

WHEREAS, Ind. Code § 36-1-11-8 authorizes the transfer of property between governmental entities upon terms and conditions agreed upon by the entities, as evidenced by the adoption of a substantially identical resolution by the governing body of each entity; and

WHEREAS, the School Corporation has been informed that the Town will approve a resolution substantially identical to this Resolution.

NOW THEREFORE, BE IT RESOLVED, by the Board of School Trustees of the Silver Creek School Corporation (“Board of School Trustees”) as follows:

SECTION 1. The foregoing Recitals are incorporated herein by this reference.

SECTION 2. Pursuant to the provisions of Ind. Code § 36-1-11-8, the Board of School Trustees hereby approves the transfer of the SCSC Property in accordance with the terms of the Purchase Agreement, in substantially the same form as Exhibit A.

SECTION 3. The transfer of the SCSC Property to the Town shall be by Limited Warranty Deed, the form of which is attached as an exhibit to the Purchase Agreement in exchange for a transfer to the School Corporation of the Town Property by Limited Warranty Deed pursuant to the Purchase Agreement.

SECTION 4. Prior to its acquisition, the Town and SCSC shall have a ninety (90) day due diligence period in which to conduct all due diligence activities necessary for its acceptance of the Property.

SECTION 5. The Board of School Trustees hereby authorizes, empowers, and directs the Superintendent to direct the completion of all due diligence activities provided for in the Purchase Agreement and to proceed to close the transfer of the Property in the event such due diligence results are acceptable in the view of the Superintendent, as advised by the School Corporation's legal counsel.

SECTION 6. The Board of School Trustees further authorizes, empowers and directs the Superintendent to take all actions necessary to complete the transfer of the SCSC and Town Property in accordance with the Agreement and this Resolution and to execute all documents and receive the purchase price required in connection with the transfer of the SCSC and Town Property, including the assignment of leases and execution of leases, pursuant to this Resolution, and to take all other lawful action necessary to complete the transfer of the SCSC and Town Property as contemplated herein, with such revisions to the foregoing or attached documents as are acceptable to the Superintendent as evidenced by her signature upon such documents.

SECTION 7. This Resolution is effective immediately upon its passage.

THIS RESOLUTION adopted this _____ day of May, 2024 by at least a majority vote of the entire Board in a public meeting.

Joseph C. Rountree
President
Board of School Trustees

Christina Franklin
Secretary
Board of School Trustees

4775898.2

**EXHIBIT A TO RESOLUTION OF THE BOARD OF SCHOOL TRUSTEES OF
THE SILVER CREEK SCHOOL CORPORATION, CLARK COUNTY,
INDIANA, REGARDING TRANSFER OF A PORTION OF REAL ESTATE AT
206 N NEW ALBANY STREET, SELLERSBURG, INDIANA 47172**

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “**Agreement**”) is made as of the ___ day of _____, 2024 (the “**Effective Date**”) by and between **THE SILVER CREEK SCHOOL CORPORATION**, an Indiana public school corporation, which is a subdivision of the State of Indiana (“**Seller**”), and **THE TOWN OF SELLERSBURG** (“**Buyer**”).

RECITALS

Seller desires to exchange property with Buyer, and Buyer desires to exchange property with Seller, the real property (as defined below), subject to and in accordance with the terms, conditions and other provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the meanings set forth in this Section 1 for all purposes under this Agreement:

1.1. Closing. The consummation of the transactions described herein as more fully described in Section 4 below.

1.2. Closing Date. The date mutually agreed to by Seller and Buyer following expiration of the Due Diligence Expiration Date, but no later than fifteen (15) days following the Due Diligence Expiration Date.

1.3. Due Diligence Expiration Date. The date that is ninety (90) days from the Effective Date stated in the preamble above.

1.4. Due Diligence Period. The period commencing on the Effective Date (or earlier if Buyer has previously entered on, or conducted investigations concerning, the Property) and continuing until the Due Diligence Expiration Date.

1.5. Earnest Money. Defined in Section 2.2 below.

1.6. Obligations Surviving Termination. Buyer’s obligations under Sections 3.2, and 15.12, and Buyer’s and Seller’s obligations under Sections 10 and 14.3.

1.7. SCSC Property. That certain real estate located in Clark County, Indiana commonly known as 206 New Albany Street, Sellersburg, Indiana and consists of Parcel Nos. 10-17-11-100-727.000-031 and 10-17-11-100-729.000-031. The SCSC Property, consisting of approximately 2.42 acres, which is depicted on Exhibit A attached hereto. “Property” shall not be interpreted to include “school building” or “building” as used by Indiana Code Ch. 20-26-7.1 as it was not used by the School Corporation for classroom instruction.

1.8. Town Property. That certain real estate located in Clark County, Indiana commonly known as _____, Sellersburg, Indiana and consists of Parcel Nos. _____, which is depicted on Exhibit B attached hereto.

1.9. Title Company. [INSERT TITLE COMPANY CONTACT].

2. AGREEMENT TO SELL AND EXCHANGE

2.1. Agreement to Sell and Exchange. Seller agrees to transfer to Buyer the SCSC Property in exchange for Buyer agreeing to transfer Town Property to SCSC together with a lease by which the Town shall continue leasing the Town Property from SCSC as depicted in Exhibit D to this Agreement and incorporation by reference herein, subject to and in accordance with the terms, conditions and provisions hereof.

2.2. Payment of Purchase Price. Besides the exchange of property, there is no exchange of funds under this Purchase Agreement for the transfer of title in any property.

3. SELLER'S DELIVERIES; CONDITIONS PRECEDENT

3.1. Seller's Deliveries. Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties, either expressed or implied, and shall have no liability with respect to the accuracy or completeness of any reports, records, or other documentation or information relating to the Property provided to Buyer, and Buyer shall make its own independent inquiry regarding the economic feasibility, physical condition and legal status of the Property during the Due Diligence Period.

3.2. Inspections and Access. Buyer and its representatives shall be permitted to enter upon the Real Property at any reasonable time and from time to time during the Due Diligence Period to examine, inspect and investigate the Property (collectively, the "**Inspections**"), subject to the terms, conditions and limitations set forth in this Section 3.2.

(a) All of the Inspections shall be conducted at the expense of Buyer without contribution from Seller of any kind or amount.

(b) Buyer shall have a right to enter upon the Property for the purpose of conducting the Inspections and for no other purpose, and provided that in each such instance: (i) Buyer notifies Seller of such Inspections not less than 48 hours prior to such entry; and (ii) Buyer is in full compliance with all of the terms of this Agreement. At Seller's election, a representative of Seller shall be present during any entry by Buyer or its representatives upon the Property for conducting said Inspections. Buyer shall take all necessary actions to insure that neither it nor any of its representatives shall interfere with the ongoing operations occurring at the Property during the course of performing any such Inspections, and in no event shall Buyer or any persons acting on Buyer's behalf be permitted to (i) enter any buildings on the Property or (ii) carry on any activities on the Property while school is in session, each without the prior written consent of Seller. Buyer shall not cause or permit any mechanics' liens, materialmen's liens or other liens to be filed against the Property as a result of the Inspections.

(c) Buyer shall have the right to conduct any inspections, studies or tests that Buyer deems appropriate in determining the condition of the Property; provided, however, Buyer shall not be permitted to perform any Phase II environmental assessments or any tests that require the physical alteration of the Property (including, without limitation, borings or samplings), without the prior written consent of Seller in each instance.

(d) Buyer agrees to indemnify, defend and hold Seller and its partners, members, employees and other agents and representatives (collectively, the “**Indemnified Parties**”) harmless from and against any and all claims, losses, damages, costs and expenses including, without limitation, reasonable attorneys fees’ and court costs, suffered or incurred by any of the Indemnified Parties arising out of or in connection with the activities of Buyer (or Buyer’s employees, consultants, contractors or other agents) on or about the Property, including, without limitation, mechanics’ liens, damage to the Property and injury to persons or property resulting from such activities. Without limiting the foregoing, in the event that the Property is damaged, disturbed or altered in any way as a result of such activities, Buyer shall promptly restore the Property to its condition existing prior to the commencement of such activities. Furthermore, Buyer agrees to maintain and cause all of its contractors and other representatives conducting any Inspections to maintain and have in effect workers’ compensation insurance, with statutory limits of coverage, and commercial general liability insurance and limits of not less than Three Million Dollars (\$3,000,000), combined single limit, for personal injury, including bodily injury and death, and property damage. Such insurance shall name Seller and Seller’s designees as additional insured parties. Buyer shall deliver to Seller, prior to commencing any Inspections, a certificate evidencing that the insurance required hereunder is in full force and effect.

(e) Buyer agrees to deliver to Seller complete copies of any written studies, reports, tests results or similar documents pertaining to the Property prepared by any third party for Buyer promptly upon Seller’s request. Seller shall have no right to rely upon any document prepared by, or for, Buyer and Buyer’s deliver of said documents shall not create any liability to Buyer for Seller’s use or reliance thereon.

(f) Buyer shall have until the Due Diligence Expiration Date in which to conduct its due diligence investigations and analysis of the Property and of all information pertaining to the Property to determine whether the Property is acceptable to Buyer. If, during the Due Diligence Period, Buyer becomes aware of any problem or defect in the Property or other aspect of the Property which Buyer determines makes the Property unsuitable to Buyer, Buyer may, as its sole and exclusive right and remedy, terminate this Agreement by giving written notice of termination to Seller on or before the Due Diligence Expiration Date. If Buyer does not give such notice of termination on or before the Due Diligence Expiration Date, then this Agreement shall continue and the Earnest Money shall thereafter be non-refundable to Buyer except as a result of the termination of this Agreement pursuant to Section **Error! Unknown switch argument.** In the event of such termination, the Earnest Money shall be returned to Buyer and neither party shall have any further obligations to the other party hereunder, except for the Obligations Surviving Termination.

3.3. Title and Survey.

(a) Promptly following the Effective Date, Buyer shall order a commitment for an owner's policy of title insurance covering the Property issued by the Title Company (the "**Title Commitment**") and deliver such Title Commitment to Seller promptly upon receipt. Buyer shall, at Buyer's sole cost, within ten (10) days of the Effective Date order an ALTA survey of the Property (the "**Survey**"), which shall be certified to both parties, and otherwise in form and substance reasonably acceptable to both parties. Buyer shall have until the date that is sixty (60) days after the Effective Date (the "**Title/Survey Review Date**"), for examination of the Title Commitment and Survey and the making of any objections thereto, said objections to be made in writing and delivered to Seller on or before the Title/Survey Review Date. Buyer shall be deemed to have accepted all exceptions to the Title Commitment and the form and substance of the Survey, except only for matters expressly objected to in a written notice delivered to Seller on or before the Title/Survey Review Date. If any objections to the Title Commitment or Survey are properly made on or before the Title/Survey Review Date, Seller shall have the right, but not the obligation (except with respect to any mortgage lien, construction lien or other lien or encumbrance granted or created by Seller, which may be discharged by payment of a specified or ascertainable amount of money, on the Property entered into by Seller), on or before the date that is fifteen (15) days after the Title/Survey Review Date (the "**Seller Cure Date**"), to cure such objections (by removal or by endorsement or other method reasonably acceptable to Buyer) or to agree in writing to cure same prior to Closing. If the Seller does not cure said objections by Seller Cure Date (or agree to cure said objection by Closing), then Seller shall be deemed to have rejected Buyer's request to cure. If the objections are not so cured by Seller (or agreed to be cured by Seller) and Buyer has not agreed to waive the applicable objections, then Buyer may, at its option, and as its sole and exclusive right and remedy, terminate this Agreement by written notice thereof delivered to Seller on or before the date that is five (5) days after the Seller Cure Date. If Buyer does not give such notice of termination on or before the date that is five (5) days after the Seller Cure Date, Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.3(a), and this Agreement shall continue in full force and effect. In such event, all objections to the Title Commitment and Survey made by Buyer and not agreed to be cured by Seller shall be deemed waived by Buyer and Buyer shall accept title to the Property subject thereto. In the event Buyer timely exercises its right to terminate pursuant to this Section 3.3(a), the Earnest Money shall be returned to Buyer and neither party shall have any further obligations to the other party hereunder, except for the Obligations Surviving Termination.

(b) Buyer may, within five (5) days after learning of same, or the Closing Date, whichever occurs first, notify Seller in writing of any objections to any title exceptions added to the Title Commitment (which do not relate to or arise out of actions by the Buyer) first arising between the Title/Survey Review Date and the Closing Date (such being referred to as "**Gap Objections**"). With respect to any Gap Objections, if Seller does not elect to cure any Gap Objections, Buyer shall have the option to terminate this Agreement (which option must be exercised within five (5) days after receipt of Seller's response to any Gap Objections, or the Closing Date, whichever occurs first), in which event the Earnest Money shall be returned to Buyer and neither party shall have any further obligations to the other party hereunder, except for the Obligations Surviving Termination. If Seller elects to attempt to cure any such Gap Objections, the Closing Date shall be automatically extended by a reasonable additional time to effect such a cure, but in no event shall the extension exceed thirty (30) days.

3.4. Approval Of Governing Bodies. During the Approval Period, both Buyer and Seller shall have obtained the approval of their governing bodies to the terms and conditions of this transaction, subject to the satisfaction of all conditions precedent included herein.

4. CLOSING

4.1. Time and Place. The Closing shall be held on the Closing Date in escrow through Title Company. The parties agree to complete all arrangements for Closing prior to the Closing Date so that all requirements for Closing are in place by the end of the day prior to the Closing Date.

4.2. Deliveries. At Closing Seller and Buyer shall execute and deliver the following items:

(a) Seller shall execute and deliver to Buyer the following:

(i) a deed to the SCSC Property in the form of **Exhibit C** attached hereto;

(ii) a non-foreign transferor certification pursuant to Section 1445 of the Internal Revenue Code; and

(iii) a vendor's certificate in form sufficient to permit the Title Company to delete the so-called 'standard' exceptions (excepting any exception requiring a survey for deletion).

(b) Buyer shall execute and deliver to Seller the following:

(i) a deed to the Town Property in the form of **Exhibit C** attached hereto;

(c) Seller and Buyer shall jointly execute and deliver the following:

(i) a closing statement describing all proration and other applicable credits;

(ii) an Indiana sales disclosure form;

(iii) an assignment of the Growing Minds Lease from the SCSC to the Town in the form of **Exhibit D**;

(iv) a lease of the Town Property, with the SCSC as lessor and Town as lessee, in the form of **Exhibit E**;

(v) other documents reasonably necessary to consummate the transactions contemplated by this Agreement.

4.3. Closing Instructions to Title Company. The Closing shall be facilitated through an escrow established with the Title Company, using closing escrow instructions consistent with this

Agreement. Notwithstanding the use of an escrow, the Closing shall be completed (with the escrow closed out) on the Closing Date, including the concurrent delivery of all required documents.

5. PRORATIONS

5.1. Generally. All items of income and expense applicable to the Property shall be paid, prorated or adjusted as of the close of business on the day prior to the Closing Date. For purposes of calculating the prorations provided for in this Agreement, Buyer shall be deemed to be the owner of the Property on the Closing Date and shall receive the benefit of any income and have the liability of any expenses attributable to the Closing Date.

5.2. Real Estate Taxes and Assessments. Each of the parties anticipates that it will be exempt from any obligation to pay real estate taxes or any special assessments applicable to the Property and therefor, the parties agree that there shall be no need to prorate and such taxes or assessments. If this proves incorrect, then the parties shall prorate such taxes and assessment as of the date of Closing in a manner customary for real estate transactions in Sellersburg, Indiana.

5.3. Prorations. Any operating expenses of the Property shall be payable by Seller and Buyer in accordance with the parties' respective periods of ownership so that Seller pays all expenses attributable to the period prior to the Closing Date and Buyer pays all Taxes and expenses attributable to the period on or after the Closing Date. If either party receives a bill for expenses for which the other party is obligated, such other party shall pay such bill promptly after receipt thereof. If Seller has prepaid any expenses as of the Closing Date, Buyer shall reimburse Seller at Closing for the portion thereof attributable to the period from and after the Closing Date. If the current year's assessments for Taxes are not available, then Taxes will be prorated based on the most recent tax bill for the Property and this shall be a final settlement.

6. SELLER'S REPRESENTATIONS AND WARRANTIES

6.1. List of Representations and Warranties. Seller hereby represents and warrants to Buyer the following matters, but only to the extent such matters are applicable to Seller or the Property:

(a) Authority. Seller has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Seller's opinion is that the proposed transfer of the Property is excluded from Ind. Code Ch. 20-26-7.1.

(b) Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note, or other evidence of indebtedness or any agreement to which Seller is a party.

(c) Leases. Seller and Growing Minds Preschool, LLC, an Indiana limited company ("Growing Minds") have entered into a lease and lease amendment for 8 classrooms located at the Property ("Growing Minds Lease"). The Growing Minds Lease expires on May 31, 2025. Seller has provided Buyer with a copy of the Growing Minds Lease. As a condition of this Agreement, Buyer hereby agrees to accept the terms of the Growing Minds Lease and be bound

by the terms of the Growing Minds Lease and execute the assignment of the Growing Minds Lease as depicted in Exhibit D to this Agreement and incorporated by reference herein. Notwithstanding the Growing Minds Lease, Seller has not entered into any leases or other occupancy agreements demising any portion of the Property that will continue after Closing, other than matters of record.

(d) Violations of Laws. Seller has not received any written notice that the Property is currently in violation of any applicable federal, state, or local environmental or other safety laws or regulations.

(e) Litigation. No demands, claims, or litigation, including but not limited to condemnation, eminent domain, or similar proceedings, has been served upon Seller with respect to the Property that remains outstanding, and, to Seller's knowledge, no such demands, claims or litigation have been threatened in writing.

(f) To the best of Seller's knowledge, there are no "Hazardous Materials" (as defined in Section 7.3) located on the Property.

6.2. Modifications to Representations and Warranties. The representations and warranties of Seller set forth in this Agreement shall be deemed remade as of Closing, provided that Seller may give Buyer on or before the Closing Date one or more notices of modification to such representations and warranties (each a "**Statement of Modifications**"), and such representations and warranties shall be deemed to remade as of Closing as modified by any Statement of Modifications. If Seller gives a Statement of Modifications to Buyer within five (5) days of the Closing Date, Buyer shall have five (5) days thereafter to exercise its termination right under Section 6.4 and the Closing Date shall be delayed accordingly.

6.3. Definition of Knowledge. As used in this Section 6 or other provisions of this Agreement, the term "**to Seller's knowledge**" or any other reference to the knowledge of Seller shall mean and apply to the actual knowledge of Angela Britain-Smith, Director of Operations-(the "**Seller Knowledge Individual**"), and not to any other persons or entities, (b) shall mean the actual (and not implied or constructive) knowledge of such individual, without any duty on such individual to conduct any investigation or inquiry of any kind, and (c) shall not apply to or be construed to apply to information or material which may be in the possession of Seller generally or incidentally, but which is not actually known to the Seller Knowledge Individual. Similarly, any reference to any written notice, claim, litigation, filing or other correspondence or transmittal to Seller set forth herein shall be limited to refer to only those actually received by or known to the Seller Knowledge Individual in the limited manner provided in clauses (a) - (c) above. Under no circumstances shall the Seller Knowledge Individual have any personal obligations or liabilities under this Agreement or otherwise.

6.4. Limitations Concerning Buyer's Knowledge and Third Party Protection. Notwithstanding anything contained in this Agreement to the contrary, all of the representations, warranties and certifications (collectively, the "**Representations**") which are made by Seller and set forth herein or in any of the documents or instruments required to be delivered by Seller hereunder, shall be subject to the following conditions and limitations: (a) there shall be no liability on the part of Seller for any breach of a Representation arising from any matter or circumstance of which Buyer had knowledge at Closing (including matters and circumstances

described in any Statement of Modifications); (b) in the event that prior to the time of Closing, during the course of Buyer's inspections, studies, tests and investigations conducted pursuant to Section 3.2 hereof, or through other sources (including any Statement of Modifications), Buyer gains knowledge of a fact or circumstance which, by its nature, indicates that a Representation was or has become untrue or inaccurate, and such fact or circumstance was not intentionally withheld from Buyer by Seller with the intent to defraud Buyer, then Buyer shall not have the right to bring any lawsuit or other legal action against Seller, nor pursue any other remedies against Seller, as a result of the breach of the Representation caused thereby, but Buyer's sole and exclusive right and remedy shall be to terminate this Agreement, in which event the Earnest Money shall be returned to Buyer and neither party shall have any further obligations to the other party hereunder, except for the Obligations Surviving Termination; provided, however, that such right of termination shall not be available for breaches of Representations that have no material impact of the value of the Property; and (c) to the extent that Buyer receives or obtains estoppel certificates, insurance policies, guarantees, warranties or other items from third parties (collectively, "**Third-Party Protections**") which provide a claim, cause of action, defense or other protection for Buyer with respect to liability for which Buyer may have a right of recourse against Seller hereunder, Buyer agrees to pursue its rights with respect to such Third-Party Protections prior to pursuing any rights against Seller hereunder, and to pursue its rights against Seller only to the extent that such Third-Party Protections do not protect Buyer against such liability. Without limiting Section 15.6 or any other provision hereof, the parties hereto expressly acknowledge and agree that none of Seller's representations, warranties or covenants herein may be relied on by the Title Company, whether by subrogation or otherwise.

6.5. Other Limitations. Notwithstanding anything to the contrary set forth in this Agreement or in any other agreement or document delivered in connection herewith: (a) Seller shall have no liability whatsoever to Buyer for a breach of any representation, warranty, covenant, agreement or other requirement or provision hereof or thereof, unless the valid claims for all such breaches against Seller collectively aggregate more than the Liability Floor, in which event the full amount of such valid claims shall be actionable up to, but not in excess of, the Liability Cap in the aggregate for all liability; and (b) Seller shall not have any liability whatsoever to Buyer for a breach of any representation, warranty, covenant, agreement or other requirement or provision hereof or of any other agreement or document delivered in connection herewith, unless written notice containing a description of the specific nature of such breach shall have been given by Buyer to Seller within six (6) months after the Closing Date, and an action shall have been commenced by Buyer against Seller within two (2) months after such notice is provided to Seller. In no event shall Seller be liable for any incidental, consequential or punitive damages or for any damages in excess of the Liability Cap. For purposes of the foregoing: (A) "**Liability Floor**" shall mean Five Thousand and No/100 Dollars (\$5,000.00), and (B) "**Liability Cap**" shall mean Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

7. PURCHASE AS IS

7.1. AS IS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT OR EXPRESSLY SET FORTH IN ANY DOCUMENTS DELIVERED BY SELLER TO BUYER AT CLOSING, BUYER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT BUYER IS PURCHASING THE PROPERTY IN ITS "AS-IS, WHERE IS" CONDITION "WITH ALL

FAULTS" AS OF THE CLOSING DATE AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT OR EXPRESSLY SET FORTH IN ANY DOCUMENTS DELIVERED BY SELLER TO BUYER AT CLOSING, SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, (H) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY OR ANY OTHER ENVIRONMENTAL MATTER OR CONDITION OF THE PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY CONTAINED IN THIS AGREEMENT OR EXPRESSLY SET FORTH IN ANY DOCUMENTS DELIVERED BY SELLER TO BUYER AT CLOSING, ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT BUYER IS A SOPHISTICATED AND EXPERIENCED BUYER OF PROPERTIES SUCH AS THE PROPERTY AND HAS BEEN DULY REPRESENTED BY COUNSEL IN CONNECTION WITH THE NEGOTIATION OF THIS AGREEMENT. SELLER HAS MADE NO AGREEMENT WITH BUYER TO ALTER, REPAIR OR IMPROVE ANY OF THE PROPERTY AS PART OF THIS TRANSACTION.

7.2. Release of Seller. Buyer acknowledges that it will have the opportunity to inspect the Property during the Due Diligence Period, and during such period, observe its physical

characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Buyer deems necessary, and by Closing this transaction, Buyer shall be deemed to FOREVER RELEASE AND DISCHARGE Seller from all duties, obligations, responsibility and liability pertaining to the Property in any way, including but not limited to condition, valuation, salability, financability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property), including without limitation liabilities under CERCLA, EXCEPT that this paragraph shall not be construed to release, discharge, or waive any claims against Seller relating to the breach of any representation or warranty made by Seller in this Agreement or the documents delivered at Closing (collectively, the “**Excluded Claims**”). Further by Closing this transaction, Buyer will be deemed to have WAIVED any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, with the exception of the Excluded Claims. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

7.3. Certain Definitions. For purposes hereof, (a) the term “**CERCLA** “ means the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing Hazardous Materials as in effect on the date of this Agreement, together with its implementing regulations and guidelines as of the date of this Agreement; and (b) the term “**Hazardous Materials**” means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any applicable law, as currently in effect as of the date of this Agreement (ii) petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) friable asbestos, (vi) flammable explosives, (vii) infectious materials or (viii) radioactive materials.

7.4. Survival. The terms and conditions of this Article 7 shall expressly survive the Closing, not merge with the provisions of any closing documents and shall be deemed incorporated into the Deed. Buyer acknowledges and agrees that the releases, waivers and disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer in exchange for the Town Property without the releases, waivers and disclaimers and other agreements set forth above.

8. BUYER’S REPRESENTATIONS AND WARRANTIES

Buyer hereby represents and warrants to Seller as follows:

8.1. Authority. Buyer has the legal power, right and authority to enter into this Agreement and, at Closing, shall have the legal power, right and authority to consummate the transactions contemplated hereby.

8.2. Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note, or other evidence of indebtedness or any agreement to which Buyer is a party.

8.3. Patriot Act. Buyer represents, warrants and covenants that neither Buyer nor any of its respective partners, officers, directors, members or shareholders (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (“OFAC”) pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the “Order”) and all applicable provisions of Title III of the USA Patriot Act (Public Law No. 107-56 (October 26, 2001)); (ii) is listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (iii) is listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (iv) is listed on any list or qualification of “Designated Nationals” as defined in the Cuban Assets Control Regulations 31 C.F.R. Part 515; (v) is listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to the Order, the rules and regulations of OFAC (including without limitation the Trading with the Enemy Act, 50 U.S.C. App. 1-44; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06; the unrepealed provision of the Iraq Sanctions Act, Publ.L. No. 101-513; the United Nations Participation Act, 22 U.S.C. § 2349 aa-9; The Cuban Democracy Act, 22 U.S.C. §§ 60-01-10; The Cuban Liberty and Democratic Solidarity Act, 18.U.S.C. §§ 2332d and 233; and The Foreign Narcotic Kingpin Designation Act, Publ. L. No. 106-120 and 107-108, all as may be amended from time to time); or any other applicable requirements contained in any enabling legislation or other Executive Orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “Orders”); (vi) is engaged in activities prohibited in the Orders; or (vii) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes or in connection with the Bank Secrecy Act (31 U.S.C. §§ 5311 et. seq.).

The representations and warranties of Buyer set forth in this Agreement shall be deemed remade as of Closing, and said representations and warranties as so remade shall survive the Closing without limitation on duration.

9. CLOSING COSTS

Seller shall pay the following expenses incurred in connection with the transactions described herein: (i) costs to obtain the standard ALTA owner’s title policy, (ii) Seller’s legal fees and expenses, (iii) unless otherwise provided herein, all other closing costs customarily paid for by sellers of commercial real property in Indiana, and (iv) unless otherwise provided herein, one-half of any other closing costs not customarily charged solely to either buyers or sellers of commercial real property in Indiana. Buyer shall pay the following expenses incurred in

connection with the transactions described herein: (a) the costs to obtain any and all endorsements to the standard ALTA owner's title policy (provided that the issuance of any of same will not be a condition to Closing in any respect), (b) the costs to obtain a lender's policy of title insurance, if any, and all endorsements thereto, (c) the costs of the Survey, (d) any and all costs and expenses of consultants, engineers and other professionals engaged by Buyer in connection with its due diligence, (e) Buyer's legal fees and expenses, (f) unless otherwise provided herein, all other closing costs customarily paid for by Buyers of commercial real property in Indiana, and (g) unless otherwise provided herein, one-half of any other closing costs not customarily charged solely to either buyers or sellers of commercial real property in Indiana.

10. BROKERAGE COMMISSIONS

Buyer and Seller each represents and warrants that it has not dealt with any broker, agent, finder or similar party in connection with the transaction contemplated by this Agreement, and each of Buyer and Seller hereby indemnifies, defends and holds harmless the other from any liability, cost or expense (including, without limitation, reasonable attorneys' fees and costs of enforcement of the foregoing indemnity, whether arising in any underlying action or in the enforcement of this right of indemnification) arising out of the falsity of the foregoing representation by such party. The provisions of this Section 10 shall survive the Closing or any earlier termination of this Agreement.

11. NOTICE

All notices, demands and communications (a "Notice") under this Agreement shall be delivered or sent by: (a) hand delivery, (b) certified mail, postage prepaid, return receipt requested, or (c) nationally recognized overnight carrier, delivered to the address of the intended recipient set forth below or to such other address as either party may designate by notice pursuant to this Article.

Notices to Seller: Silver Creek School Corporation
601 Renz Avenue
Sellersburg, IN 47172
Attention: Dr. Todd Balmer

With a copy to: Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Attention: Jonathan L. Mayes

Notices to Buyer: Town of Sellersburg
316 E Utica St,
Sellersburg, Indiana 47172
Attention: Charlie Smith

With a copy to:

Notices shall be deemed given: (i) on the date delivered, if sent by hand delivery; (ii) one business day after delivery to the overnight carrier, if sent by nationally recognized overnight carrier; or

(iii) three (3) business days after being mailed, if sent by certified mail, postage prepaid, return receipt requested. Notices may be sent by counsel for a party and such shall be deemed notice by the party so represented. Notices shall be deemed served as set forth above, even if such notices are rejected or delivery refused by the intended recipient.

12. CONDEMNATION

If all or any material part of the Property is taken by eminent domain or if a legal proceeding seeking such taking by eminent domain is filed prior to the Closing Date by a governmental entity other than Buyer, then Buyer may, as its sole and exclusive right and remedy, terminate this Agreement by notice to Seller given on or before the earlier of (a) twenty (20) days after such taking or (b) the Closing Date, and, in the event of such termination, neither party shall have any further obligation under this Agreement, except for the Obligations Surviving Termination. If Buyer is not entitled to or does not elect to so terminate, the Closing shall take place as herein provided. If Buyer is taking the SCSC Property by eminent domain, this Agreement shall be construed as a settlement of an action under Indiana Code § 20-25-4-10 and Indiana Code article 32-24.

13. OPERATIONS PRIOR TO CLOSING OR TERMINATION

13.1. Seller's Covenants. Seller covenants and agrees with Buyer that except as otherwise provided in this Agreement or as may be necessary to consummate the transactions contemplated herein, after the date hereof until the Closing or termination of this Agreement, Seller shall conduct its business involving the Property as follows:

(a) Seller shall refrain from transferring title to any of the Property or creating on the Property any easements or mortgages which will survive Closing.

(b) Without the prior written consent of Buyer, Seller shall refrain from entering into or amending any contracts or other agreements pertaining to the Property, other than contracts or other agreements entered into in the ordinary course of business and which are cancelable by the owner of the Property without penalty upon not more than thirty (30) days' notice.

(c) Seller shall not solicit or enter into any discussions or negotiations with any person other than Buyer regarding sale, lease or other disposition of all or any part of the Property, provided, however that the foregoing shall not restrict or limit in any manner Seller's right to take any such actions with respect to the Retained Property.

(d) Seller shall not subject the Property to any additional encumbrances.

(e) Seller shall refrain from committing any waste or creating any public, private or attractive nuisance upon the Property.

14. DEFAULTS AND REMEDIES

14.1. Seller Defaults. In the event that Seller, on or prior to the Closing Date, shall default in the performance of its obligations hereunder, Buyer, as its sole and exclusive remedy, may either

(a) seek specific performance of Seller's obligations hereunder, provided that any suit for specific performance must be brought within thirty (30) days after Seller's default, failing which, Buyer shall be deemed to have waived its right to specific performance to the maximum extent permitted by law, or (b) terminate this Agreement and receive a refund of the Earnest Money, whereupon neither party shall have any further obligation to the other party hereunder. Seller shall not be liable to Buyer for any punitive, speculative or consequential damages. The provisions of this Section shall not limit Buyer's or Seller's right to pursue and recover on a claim with respect to any of the Obligations Surviving Termination. As a condition precedent to any suit for specific performance, Buyer must have tendered all of its deliveries on or before the Closing Date. Buyer hereby waives any other rights or remedies, including, without limitation, the right to seek money damages, except as expressly provided in this section. Buyer agrees not to file a lis pendens or other similar notice against the Property at any time or for any reason, except only in connection with, and after the filing of, a suit for specific performance.

14.2. Buyer Defaults. In the event that Buyer, on or prior to the Closing Date, shall default in the performance of its obligations under this Agreement, then Seller, as its sole and exclusive remedy, may terminate this Agreement by notifying Buyer thereof and receive and retain the Earnest Money as liquidated damages, provided that this provision shall not limit Seller's or Buyer's rights to pursue and recover on a claim with respect to any of the Obligations Surviving Termination. Seller's use of the Property for educational use (and use of any existing buildings on the Property for classroom instruction) shall continue without interruption. Buyer shall not be liable to Seller for punitive, speculative or consequential damages. In the event Seller is entitled to the Earnest Money as liquidated damages, and to the extent Seller has not already received such funds, such funds shall be immediately paid to Seller by the Title Company upon receipt of written notice from Seller that Buyer has defaulted under this Agreement, and Buyer agrees to take all such actions and execute and deliver all such documents necessary or appropriate to effect such payment.

15. MISCELLANEOUS

15.1. Entire Agreement; Amendments. This Agreement, together with the exhibits attached hereto, constitute the entire agreement of the parties hereto regarding the purchase and sale of the Property, and all prior agreements, understandings, representations and statements, oral or written, including any so-called term sheets and letters of intent, are hereby merged herein and superseded hereby. This Agreement may only be amended or modified by an instrument in writing, signed by the party or parties intended to be bound thereby.

15.2. TIME OF THE ESSENCE. ALL PARTIES HERETO AGREE THAT TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE PARTIES' RESPECTIVE OBLIGATIONS TO CLOSE ON THE CLOSING DATE.

15.3. Counterpart/Electronic Delivery. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Furthermore, executed counterparts of this Agreement may be delivered by facsimile or other reliable electronic means (including emails of pdf documents), and such facsimile or other electronic transmission shall be valid and binding for all purposes when transmitted to and actually received by the other party.

15.4. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State in which the Property is located and for all purposes shall be governed by and interpreted in accordance with the laws of such State without reference to conflicts of law principles or rules.

15.5. Recordation. Buyer shall not record this Agreement or a memorandum or other notice thereof in any public office or records without the express written consent of Seller except as may be required by law in connection with the filing of a suit for specific performance permitted by this Agreement. A breach by Buyer of this covenant shall constitute a material default by Buyer under this Agreement.

15.6. Assignment; Third Party Beneficiaries. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may be withheld for any reason or no reason in Seller's sole discretion; provided, however, that, upon five (5) business days' prior written notice to Seller, Buyer, at Closing, may assign this Agreement to any entity owned or controlled by Buyer. In the event of an assignment to such entity, such entity shall take title to all of the Property, and Buyer shall be jointly and severally liable for Buyer's obligations hereunder. Subject to the previous sentence, this Agreement shall inure to the benefit of and be binding on and enforceable against the parties hereto and their respective successors and assigns. This Agreement is intended for the benefit of Buyer and Seller, and except as provided in the indemnity granted by Buyer under Section 3.2, with respect to the Indemnified Parties described therein and Section 6(c) with respect to the Growing Minds Lease, no other person or entity shall be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against Buyer or Seller.

15.7. Section Headings. The Section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

15.8. Severability. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

15.9. Waiver of Trial by Jury. Seller and Buyer, to the extent they may legally do so, hereby expressly waive any right to trial by jury of any claim, demand, action, cause of action or proceeding arising under or with respect to this Agreement, or in any way connected with, or related to, or incidental to, the dealings of the parties hereto with respect to this Agreement or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and irrespective of whether sounding in contract, tort, or otherwise. To the extent they may legally do so, Seller and Buyer hereby agree that any such claim, demand, action, cause of action or proceeding shall be decided by a court trial without a jury and that any party hereto may file an original counterpart or a copy of this Section with any court as written evidence of the consent of the other party or parties hereto to waiver of its or their right to trial by jury.

15.10. Exculpation of Related Parties. Notwithstanding anything to the contrary contained in this Agreement or in any of the documents executed pursuant to this Agreement (this Agreement and said documents being hereinafter collectively referred to as the "**Documents**") or provided under or required by law, the Documents shall not be binding on the direct or indirect shareholders,

directors, managers, beneficiaries, or any other equity holders of Seller or Buyer, or any of their respective employees, advisors, representatives or other agents or affiliates, but shall only be binding on Seller and Buyer and their respective assets, subject to the other limitations set forth herein.

15.11. Independent Counsel; Interpretation. Buyer and Seller each acknowledge that: (a) they have been represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of arms length negotiations between the parties hereto and the advice and assistance of their respective counsel. Notwithstanding any rule of law to the contrary: (i) the fact that this Agreement was prepared by Seller's counsel as a matter of convenience shall have no import or significance, and any uncertainty or ambiguity in this Agreement shall not be construed against Seller because Seller's counsel prepared this Agreement; and (ii) no deletions from prior drafts of this Agreement shall be construed to create the opposite intent of the deleted provisions.

15.12. No Waiver. No covenant, term or condition of this Agreement, other than as expressly set forth herein, shall be deemed to have been waived by Seller or Buyer unless such waiver is in writing and executed by Seller or Buyer, as the case may be.

15.13. Survival. The Obligations Surviving Termination shall survive any termination of this Agreement. Except as otherwise expressly provided herein, no conditions and no representations, warranties, covenants, agreements or other obligations of Seller in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

15.14. Single Unified Transaction. Notwithstanding anything else set forth herein that might appear to be to the contrary, under no circumstances whatsoever may either Seller or Buyer compel the other to consummate the transactions described herein with respect to less than all of the Property. The parties mutually acknowledge and agree that this Agreement is not intended to have any conditions or other provisions that would permit either party to partially terminate this Agreement with respect to only part of the Property. Accordingly, either all of the Property or none of the Property must be transferred at the Closing.

15.15. No Partnership. Nothing contained herein shall be deemed or construed to constitute Buyer as a partner, joint venturer, coprincipal or associate of Seller, or of any person claiming by, through or under Seller, in the conduct of their respective businesses.

SIGNATURE PAGE TO PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the Effective Date.

BUYER:

TOWN OF SELLERSBURG

By: _____
Printed: Charlie Smith
Title: Town Manager

SELLER:

THE SILVER CREEK SCHOOL CORPORATION,
an Indiana public school corporation, which is a
subdivision of the State of Indiana

By: _____
Printed: _____
Title: _____

By: _____
Printed: _____
Title: _____

EXHIBIT A
DEPICTION OF SCSC PROPERTY

EXHIBIT B
DEPICTION OF TOWN PROPERTY

EXHIBIT C
FORM OF DEED

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH that _____ (“Grantor”), for and in consideration of TEN AND 00/100 DOLLARS and other good and valuable consideration, hereby BARGAINS, SELLS and TRANSFERS to _____ (“Grantee”), the following described real estate located in _____ County, Indiana (the “Real Estate”):

[INSERT LEGAL DESCRIPTION]

Subject to (1) all real estate taxes and assessments due and payable after the date hereof, which Grantee by its acceptance hereof agrees to pay, (2) all easements, covenants, conditions, restrictions and other matters of record, (3) all matters that would be disclosed by an accurate survey and inspection of the Real Estate, and (4) all existing laws and other governmental requirements. Except for matters set forth above, Grantor covenants with Grantee to warrant and defend title to the Real Estate against the lawful claims of all persons claiming by, through or under Grantor, but against none other.

EXHIBIT D

ASSIGNMENT OF GROWNING MINDS LEASE

THIS ASSIGNMENT OF LEASE (as the same may be amended or modified, this “Assignment”), is executed to be effective as of the ___th day of May, 2024 by (a) Growing Minds Preschool, LLC, an Indiana limited liability company, whose mailing address is 206 North New Albany St, Sellersburg, Indiana 47172 (hereinafter referred to as “Assignor 1”), (b) Silver Creek School Corporation, whose mailing address is 601 Renz Avenue, Indiana 47172 (hereinafter referred to as “Assignor 2” and “Assignor” shall hereinafter refer to Assignor 1 and Assignor 2, individually and collectively, as the context requires), in favor of the Town of Sellersburg, Indiana, an Indiana political subdivision (hereinafter referred to as “Town”). The obligations of Assignor hereunder shall be joint and several.

RECITALS:

A. Assignor 1 and Assignor 2 have entered into a Lease Agreement dated May 24, 2022 (the “Lease”) with respect to a building located at 206 North New Albany St, Sellersburg, Indiana 47172.

B. Assignor 2 is transferring title to the real property located at 206 North New Albany St, Sellersburg, Indiana 47172 (“Premises”) to the Town pursuant to a Purchase Agreement.

C. Pursuant to the Purchase Agreement, the Town agrees to accept assignment of the Lease with Assignor 1.

NOW THEREFORE, in consideration of the foregoing, Assignor and Town hereby agrees as follows:

1. **ASSIGNMENT.** Assignor hereby grants, transfers and assigns to Town all of the right, title, interest, duties and obligations, whether now owned or hereafter acquired, of Assignor in and to all of the following:

1.1. All leases, subleases and agreements for the leasing, use or occupancy of the Premises now or hereafter entered into whether oral or written, and all amendments, renewals and extensions thereof (all such leases and agreements being hereinafter collectively referred to as the “Leases” and individually as a “Lease”);

1.2. All guarantees of the obligations of any tenant under a Lease;

1.3. The immediate and continuing right to collect and receive all rents, income, issues, payments, security deposits and profits arising out of, payable from or collected from any Lease or out of the Premises or any part thereof, including without limitation all monies owed under any Lease for services, materials, leasehold improvements or otherwise furnished or installed pursuant to any Lease and further including without limitation all rents, income, payments and profits arising from the operation of any business and all fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities on the Premises (funds obtained as such rents, income, profits, fees, charges, accounts or other payments and held in any reserve, account or credit balance shall retain the character of such rents, income, profits, fees, charges, accounts or other payments) (such rents, income, payments, profits, fees, charges and accounts are collectively hereinafter referred to as the “Rents”);

1.4. The right to proceeds payable to Assignor pursuant to any purchase option or right of first refusal on the part of any tenant under any Lease;

1.5. The right to proceeds payable to Assignor pursuant to any right of early termination or cancellation of any Lease;

1.6. All other payments derived from any Lease including but not limited to claims for the recovery of damages done to the Premises or for the abatement of any nuisance existing thereon, claims for damages resulting from default under said Leases whether resulting from acts of insolvency or acts of bankruptcy or otherwise, all payments made or pursuant to the termination of any Leases or a settlement of the obligations of any tenant under any Lease, and all payments for the waiver of any obligation under any Lease;

1.7. All rights in and to any proceeds of insurance payable to Assignor and damages or awards resulting from an authority exercising the rights of eminent domain with respect to the Premises;

1.8. Any award or damages payable to Assignor pursuant to any bankruptcy, liquidation, dissolution, insolvency, or similar proceeding affecting any tenant under any Lease;

1.9. Any payments made to Assignor in lieu of rent;

1.10. All security deposits paid by any tenant under a Lease;

1.11. All letters of credit issued, and all other collateral granted, as security for the obligations of any tenant arising under or in connection with a Lease;

1.12. All rights and remedies of Assignor to take any action or enforce any remedy with respect to the Leases; and

1.13. All rights of Assignor to amend, modify, terminate or in any way alter the Leases.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

Assignor 1:

GROWING MINDS PRESCHOOL, LLC,
AN INDIANA LIMITED LIABILITY COMPANY

By: _____

Printed: _____

Title: _____

Assignor 2:
SILVER CREEK SCHOOL CORPORATION,
AN INDIANA SCHOOL CORPORATION

By: _____

Printed: _____

Title: _____

Town:
TOWN OF SELLERSBURG,
AN INDIANA POLITICAL SUBDIVISION

By: _____

Printed: _____

Title: _____

EXHIBIT E

LEASE OF TOWN PROPERTY

LEASE

THIS LEASE, made as of the ___ day of May, 2024, by and between the Silver Creek School Corporation (“**Landlord**”), and the Town of Sellersburg, Indiana (“**Tenant**”), each being an Indiana political subdivision.

WITNESSETH:

In consideration of the mutual covenants and agreements contained herein, Landlord and Tenant agree as follows:

1. **Leased Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the certain parcel of real estate located at _____, Sellersburg, Indiana identified as Parcel No. _____ which is more particularly identified on Exhibit A attached hereto and incorporated herein by this reference (the “**Real Estate**”) together with the structures located thereon (“**Improvements**”). The Real Estate and the Improvements are collectively referred to herein as the “**Leased Premises.**” For the avoidance of doubt and notwithstanding anything to the contrary in this Lease, the parties acknowledge and agree that Landlord owns all of the Improvements.

2. **Lease Term and Holding Over.**

(a) **Lease Term.** The term of this Lease (the “**Lease Term**”) shall be for a period of ten (10) years commencing on May ___, 2024 (the “**Commencement Date**”), and ending at 11:59 p.m. on May ___, 2034 (the “**Expiration Date**”), unless this Lease shall be sooner terminated by Landlord or Tenant, or the Commencement Date and Expiration Date adjusted as provided in this Lease. Upon written request by Tenant, Landlord shall consider in good faith a reasonable extension of the Lease Term, provided, however that Tenant shall not request any such extension more frequently than once during a three (3) year period and provided further, however that Landlord shall be under no obligation to agree to any extension.

(b) **Holdover Possession.** If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease, Tenant shall be a tenant at sufferance with Base Rent (as defined below) due and payable hereunder to be increased to an amount equal to 150% of the Base Rent in effect when expiration or termination of this Lease occurs, and otherwise upon the same terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month-to-month (or other periodic) tenancy. In the event a month-to-month (or other periodic) tenancy is created by operation of law, either party shall have the right to terminate such tenancy upon thirty (30) days’ prior written notice to the other, whether or not said notice is given on the rent paying date. This Section 2(b) shall in no way constitute consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord’s remedies in such event, including, without limitation, Landlord’s

right to recover from Tenant any consequential or punitive damages resulting from a holdover by Tenant after the expiration or earlier termination of this Lease.

3. **Rent.**

(a) **Payment of Base Rent.** The Base Rent payable hereunder shall be paid on a “triple net” basis without abatement, deduction or offset. It is the intent of the parties, except as is otherwise provided in this Lease, that, from and after the Commencement Date, Tenant shall pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against, or in connection with the Leased Premises. All such costs, charges, insurance premiums, taxes, utilities, expenses and assessments covering the Leased Premises shall be prorated upon the Commencement Date and upon the expiration or earlier termination of the Lease Term. To the extent actual costs, charges, insurance premiums, taxes, utilities, expenses and assessments covering the Leased Premises are not known on the date of commencement or termination of this Lease, such amounts shall be estimated by Landlord in good faith. Tenant agrees to defend, indemnify and hold harmless Landlord against such costs, expenses and obligations that first arise and are due and payable during or are otherwise attributable to the Lease Term. The terms and provisions of this Section 3(a) shall survive the expiration or earlier termination of this Lease.

4. **Construction.** Tenant acknowledges and agrees that it has had an opportunity to inspect the Leased Premises and that Tenant accepts the Leased Premises in its “AS IS” condition without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no obligations with respect thereto, including, without limitation, obligations to make any improvements or provide any allowances for improvements to be constructed by Tenant and that except as may be permitted pursuant to Section 7(a) below, Tenant shall not be permitted to make any improvements to the Leased Premises. Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that Landlord may at any time make improvements to the Leased Premises as it determines in its sole and absolute discretion.

5. **Operating Expenses and Taxes.**

(a) **Operating Expenses.** Tenant shall reimburse and pay Landlord an amount equal to any and all Operating Expenses incurred by Landlord during or with respect to the Lease Term. Such amounts shall be due and payable by Tenant within thirty (30) days of invoice by Landlord. Payments for any fractional calendar month shall be prorated based upon the number of days for which payment is owed. The term “**Operating Expenses**” means all costs and expenses incurred by Landlord with respect to this Lease and the Leased Premises; including, without limitation, any Real Estate Taxes (as defined below), insurance premiums and deductibles that are paid by Landlord, and costs of any maintenance, repairs or replacements performed by Landlord under this Lease.

(b) **Real Estate Taxes and Assessments.** The term “**Real Estate Taxes**” shall mean: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Real Estate, any Improvements, all fixtures taxable as real property and all future improvements and fixtures or any alterations or additions constructed pursuant to Section 7, below (collectively the “**Taxable Real**

Property”); (ii) any tax on the Landlord’s right to receive, or the receipt of, rent or income from the Taxable Real Property or against Landlord’s business of leasing the Taxable Real Property (excluding Landlord’s federal or state income, franchise, inheritance or estate taxes); (iii) any tax, assessment or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Taxable Real Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Taxable Real Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord’s interest in the Taxable Real Property; and (v) any charge or fee replacing any tax previously included within the definition of Real Estate Tax. In this regard, Real Estate Taxes shall include all charges levied, assessed or imposed, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied or imposed upon, or which become a lien upon, the Taxable Real Property, or any part of the Taxable Real Property, or upon this Lease, and are due and payable during or are otherwise attributable to the Lease Term, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be levied, assessed or imposed, or become a lien upon the Taxable Real Property, or any part of the Taxable Real Property, or upon this Lease, and become due and payable during or are otherwise attributable to the Lease Term. Tenant shall pay and discharge when due all Real Estate Taxes levied, assessed, imposed, or due and payable during or otherwise attributable to the Lease Term on, against, or with respect to the Taxable Real Property, and Tenant shall pay all late charges, interest and penalties if any Real Estate Taxes are not paid or discharged when required hereunder. Within ten (10) days after any installment or payment of such Real Estate Taxes is due, Tenant shall deliver to Landlord satisfactory evidence that the installment or payment has been paid and discharged in full. Notwithstanding the foregoing, Landlord and Tenant anticipate that the Real Estate will be exempt from real property taxes and shall cooperate with one another to file any required applications for property tax exemption and agree to take such lawful steps as are reasonably necessary to secure any applicable exemptions, provided, however that the foregoing shall not require Landlord to take any action or steps beyond what it customarily does with respect to its other real property.

(c) Tenant shall cause any Real Estate Taxes levied, assessed, imposed or due and payable or otherwise attributable to the Lease Term on, against, or with respect to the Leased Premises to be paid and shall provide evidence of such payment to Landlord, no less than ten (10) days prior to the due and payable. The obligations of Tenant hereunder with respect to the payment of such Real Estate Taxes levied, assessed, imposed or due and payable during or otherwise attributable to the final calendar year of the Lease Term shall survive the expiration of the Lease Term or earlier termination of this Lease.

(d) Other Taxes and Assessments. Tenant shall pay and discharge, as and when assessed: (i) all taxes, levies, and charges imposed on, against, or with respect to the conduct of its business operations in, on, or from the Leased Premises; and (ii) all taxes, levies, and charges imposed on, against, or with respect to its trade fixtures, equipment, inventory, and other personal property in, on, or about the Leased Premises. In addition to the foregoing, Tenant shall pay an amount equal to any sales or use tax on all amounts classified as Base Rent or Additional Rent which may be now or hereafter imposed by any lawful governmental authority. Tenant also shall pay and discharge, as and when assessed, all assessments levied or assessed or due and payable during the Lease Term on, against, or with respect to the Leased Premises pursuant to any applicable easements or any declaration of covenants, conditions or restrictions (individually or

collectively, the “**Declaration**”) encumbering the Real Estate and/or Leased Premises (“**Declaration Assessments**”), and Tenant shall pay all late charges, interest, and costs of collection under any such Declaration if any installment or payment of Declaration Assessments is not paid or discharged when required hereunder. Within ten (10) days after any installment or payment of such Declaration Assessments is due, Tenant shall deliver to Landlord satisfactory evidence that the installment or payment has been paid and discharged in full. The obligations of Tenant hereunder with respect to the payment of such Declaration Assessments levied during the final calendar year of the Lease Term shall survive the termination of this Lease. In the event any Real Estate Taxes or Declaration Assessments are assessed against the Leased Premises as part of a larger parcel, then Landlord shall allocate a fair and equitable amount of such assessments to the Leased Premises.

6. **Use of Leased Premises.** The Leased Premises shall be occupied and used solely for the operation of the Tenant for the benefit of the community, that are organized by Tenant and in which Tenant participates, and ancillary uses related thereto to the extent permitted by applicable law during the Lease Term (collectively, the “**Permitted Use**”). Tenant shall not be permitted to use the Leased Premises for any use other than the Permitted Use. Tenant covenants and agrees that the Leased Premises shall not be used for any treatment, storage or disposal of or otherwise contaminated by any Hazardous Substances (as hereinafter defined); provided, however, that Tenant shall be entitled to store and use such Hazardous Substances on the Leased Premises which are incidental to and necessary for the operation of Tenant’s business so long as Tenant complies with all local, state and federal laws, statutes, ordinances, rules, and regulations applicable to such storage or use, and Tenant further covenants and agrees that:

(a) Tenant shall not permit any waste, damage or nuisance in, on or about the Leased Premises, or use or permit the use of the Leased Premises for any unlawful purpose;

(b) Tenant shall conduct its business and keep the Leased Premises safe, clean and in compliance with all guidelines, rules and regulations of the health, fire, building, environmental and other offices and governmental agencies having jurisdiction over Tenant’s business and/or the Leased Premises, and shall comply with all laws, ordinances, rules, regulations, orders and decrees of any governmental entity or personnel now or hereafter affecting or relating to the Leased Premises or the use thereof (including, without limitation, all applicable zoning ordinances);

(c) Tenant shall not dump or otherwise dispose of on the Leased Premises any chemicals, metals, garbage, trash or other industrial by-products and incidentals to Tenant’s business and all waste removal facilities shall use proper, leak-proof and fireproof containers and no foreign substance of any kind shall be placed on or near the Leased Premises and the expense of any breakage, stoppage, contamination, spillage or damage resulting from a violation of this provision shall be borne by Tenant;

(d) Tenant shall comply with and shall use its best efforts to cause its agents, employees, volunteers, customers, invitees, licensees and concessionaires to comply with any Declaration, all recorded instruments encumbering the Real Estate and all reasonable rules, regulations, and policies established by Landlord from time to time, including without limitation Landlord’s guidelines and policies for facility usage.

(e) Tenant shall indemnify, defend and hold harmless Landlord, and any party affiliated with Landlord, from and against any and all claims, judgments, liabilities, losses, costs, and expenses arising from, or in connection with: (i) any escape, storage, usage, or spillage of any Hazardous Substances by Tenant (or its employees, volunteers, agents, contractors, invitees, or licensees) in, on, or about the Leased Premises; or (ii) any transportation of any Hazardous Substances to or from the Leased Premises by Tenant (or its employees, volunteers, agents, contractors, invitees, or licensees), whether or not such storage, usage, or transportation constitutes a failure of Tenant fully to observe or perform its obligations under this Lease. The claims, judgments, liabilities, losses, costs, and expenses from and against which Tenant has agreed to indemnify, defend and hold harmless Landlord, and any party affiliated with Landlord, under this Subsection shall include the following: (i) any obligation or liability of Tenant or Landlord under any law, ordinance, rule, regulation, order or decree to remove any Hazardous Substance, or contaminated soil or groundwater, from the Leased Premises, “clean up” any contamination of the soil or the groundwater in, on, or under the Leased Premises, or perform any remediation of or for the Leased Premises; (ii) all charges, fines, or penalties imposed by governmental authority or under any law, ordinance, rule, regulation, order or decree governing Hazardous Substances; and (iii) all claims by, and liabilities to, any third party; and

(f) Tenant shall give written notice to Landlord of any violation, claim, judgment, liability, loss, cost or expense that may give rise to Tenant’s indemnity obligations under Section 6(e) above, promptly upon discovery or knowledge thereof. Tenant shall defend Landlord with counsel selected by Landlord.

The term “**Hazardous Substances**” means (i) any “hazardous wastes” as defined under RCRA, (ii) any “hazardous substances” as defined under CERCLA, (iii) any toxic pollutants as defined under the Clean Water Act, (iv) any hazardous air pollutants as defined under the Clean Air Act, (v) any hazardous chemicals as defined under TSCA, (vi) any hazardous substances as defined under EPCRA, (vii) radioactive materials covered by the Atomic Energy Act, (viii) similar wastes, substances, pollutants, chemicals regulated under analogous state and local laws, (ix) asbestos, (x) polychlorinated biphenyls, (xi) petroleum and petroleum products or synthetic fuels or any fraction thereof, (xii) any substance the presence of which on the property in question is prohibited under any applicable environmental law; (xiii) substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” “hazardous wastes,” “oil,” “regulated substances,” “restricted hazardous wastes,” “special wastes” or words of similar import under any applicable state or local statutes, ordinances and/or regulations; and (xiv) any other substance which under any applicable environmental law requires remediation or special handling or notification of or reporting to any federal, state or local governmental entity in its generation, use, handling, collection, treatment, storage, recycling, treatment, transportation, recovery, removal, discharge or disposal.

Tenant’s indemnification obligations under this Section 6 shall survive the expiration or earlier termination of this Lease.

7. Condition, Alterations and Additions.

(a) Tenant Alterations. Tenant, at its cost and expense, may install at the Leased Premises such personal property as Tenant determines to be necessary or appropriate to

conduct its business. Tenant shall make no alterations, improvements or additions of or to any part of the Leased Premises (including without limitation installation of any signage), without the prior written consent of Landlord. All improvements, alterations and additions to the Leased Premises, excepting only Tenant's unattached personal property, shall become the sole property of Landlord upon the expiration of the Lease Term or earlier termination of this Lease; provided, that Landlord shall have the right to require Tenant to remove any such alteration, improvement or addition upon the expiration of the Lease Term or earlier termination of this Lease, in which event, Tenant shall repair any and all damage to the Leased Premises resulting from such removal and shall surrender the part of the Leased Premises altered or improved in as good a condition as on the date that Tenant accepts the Leased Premises as set forth above.

8. **Utilities.** From and after the Commencement Date, Tenant shall procure and pay the cost of, directly to the appropriate utility service supplier, all natural gas, heat, light, power, sewer service, telephone, cable, water, refuse disposal and other utilities and services supplied to the Leased Premises, including without limitation, any connection and servicing fees, permit fees, inspection fees, and fees to reserve utility capacity. In the event any such charges are not paid by Tenant at the time when the same are payable, Landlord may, but shall not be obligated to, pay the same and charge Tenant the cost thereof, which charge shall be payable by Tenant as Additional Rent upon Landlord's written demand. It is understood and agreed that Landlord shall be under no obligation to furnish any utilities to the Leased Premises and shall not be liable for any interruption or failure in the supply of any such utilities to the Leased Premises, unless such interruption is caused by the gross negligence or willful misconduct of Landlord, its employees or agents. If any equipment installed by Tenant requires additional utility facilities, the costs of installing such additional facilities shall be borne by Tenant.

9. **Maintenance and Repairs.**

(a) **General.** Tenant shall, at its sole cost and expense, be responsible for the following with respect to the Leased Premises: (i) all necessary repairs and replacements to the structural and non-structural elements of any Improvements including, and not limited to, all fences, pools, the foundations, exterior and load-bearing walls (including painting), floor slabs, and the roofs, routine maintenance and upkeep of such Improvements; (ii) a program of grass cutting, landscape maintenance, grounds maintenance and clean-up; (iii) a program of preventive maintenance and repair of the mechanical, electrical and plumbing systems and equipment, utility systems, fire suppression system, and the heating, ventilation, and air-conditioning systems serving the Leased Premises; (iv) [intentionally omitted]; (v) ice and snow removal for all driveways, parking lots, private drive lanes and sidewalks owned by Landlord and serving the Leased Premises to the extent Tenant determines necessary; and (vi) such other maintenance and repairs consistent with Landlord's standard practices and requirements on its properties. In addition, Tenant shall be responsible for any and all repairs, replacements, maintenance and other care of its equipment, fixtures, furniture and other personal property. Tenant shall perform its obligations hereunder in a manner so as to keep the Leased Premises and all such other items in good order, condition and repair and in a manner safe for use by its employees, volunteers, customers, invitees public.

(b) **Special Requirements.** In furtherance of Tenant's maintenance and repair obligations set forth above, Tenant hereby acknowledges and agrees that Tenant shall also be

responsible, at Tenant's sole cost and expense, for maintenance and repairs specially required for baseball/softball fields in order to keep such fields in good, safe, and operational order. Tenant acknowledges that such obligations shall include, without limitation, the following with respect to all of the baseball/softball fields, (i) rebuilding batter boxes as needed, but no less often than yearly, (ii) rebuilding pitchers mounds as needed, but no less often than yearly; (iii) completing applications of field conditioner for the entirety of the Leased Premises once a year; (iv) completing applications of additional chemical application treatments (herbicide and fertilizer) three (3) times a year inside the ballfield fences; and (v) aeration and seeding services to the entirety of the Leased Premises. Notwithstanding the foregoing, if Tenant reasonably determines that compliance with any of the foregoing specified maintenance and repair specifications are not necessary and might cause harm to the Leased Premises, Tenant shall notify Landlord of such determination and if Landlord does not object to such determination, Tenant may thereafter act in accordance with such determination.

(c) Landlord Obligations. Tenant acknowledges and agrees that Landlord shall have no obligations with respect to maintenance and repair of the Leased Premises or any other facilities pursuant to this Lease, provided, however that nothing herein shall prohibit Landlord from performing such additional maintenance, repairs and treatments as Landlord determines necessary.

10. Assignment and Subletting.

(a) Requirements of Landlord's Consent. Tenant shall not assign this Lease or any interest therein, without Landlord's prior written consent (which may be granted or withheld in Landlord's sole discretion). Tenant shall not sublet the whole or any part of the Leased Premises or permit any other persons, including concessionaires or licensees, to operate in, on or from, or occupy the same for any purposes without Landlord's prior written consent. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the requirement for such consent to any subsequent assignment or subletting. Upon any assignment of this Lease or subletting of all or part of the Leased Premises, Tenant shall not be relieved of liability for the payment of the Rent or for the timely observance and performance of all of the terms, covenants and conditions of this Lease on Tenant's part to be performed or observed and any Guarantor (as defined below) shall not be relieved of liability under any Guaranty (as defined below) executed pursuant hereto. In the event that Tenant desires to permit any third parties to use individual baseball/softball fields (including, without limitation, use by other organizations for game and practices), Tenant shall submit a written request to Landlord and Tenant and the applicable third party shall comply with Landlord's guidelines and policies for facility usage, including, without limitation, compliance with applicable insurance requirements, submission and completion of applicable documentation and payment of any applicable fees and costs). Tenant acknowledges and agrees that Landlord shall be entitled to any and all fees and revenues from any and all usage of all or any part of the Leased Premises by any third parties, and to the extent Tenant receives any such revenues, Tenant shall immediately remit the same to Landlord.

(b) Assignment by Operation of Law. Any transfer of this Lease by operation of law and any change in control, merger, consolidation, liquidation or transfer of all or substantially all of the assets of Tenant shall constitute an assignment for purposes of this Lease.

(c) Documentation. No assignment of this Lease by Tenant or subletting of all or any portion of the Leased Premises shall be effective unless and until Tenant shall deliver to Landlord an agreement, in form and substance reasonably satisfactory to Landlord, pursuant to which (i) in the case of an assignment, such assignee assumes and agrees to be bound by all of the provisions of this Lease and confirming the assignee's agreement to accept and be bound by all of the Tenant's obligations under this Lease; and (ii) in the case of a sublease, such subtenant acknowledges that its sublease is subject and subordinate to this Lease and agrees to be bound by the Lease.

(d) Default. In the event of a default by Tenant, Tenant shall not have the right to request that Landlord consent to an assignment, sublet or other transfer of this Lease until such time as said default is cured to Landlord's satisfaction.

(e) Assignment by Landlord. Landlord may assign its rights under this Lease in connection with any sale or conveyance of all or any portion of its interest in the Leased Premises. In the event of a sale or conveyance of the Landlord's interest in the Leased Premises, from and after the date of such transfer, the obligations and duties of the Tenant, excluding such obligations or duties that occurred prior to the assignment, shall be owed to the new landlord and Tenant shall attorn to the purchaser and recognize such purchaser as Landlord under this Lease.

11. Access to Leased Premises. Tenant shall permit Landlord and its agents to enter upon the Leased Premises at all reasonable times to inspect and examine the Leased Premises and to show the Leased Premises to prospective purchasers, mortgagees and tenants. Except in the event of an emergency, Landlord agrees to comply with Tenant's reasonable security requirements for accessing the Leased Premises. Tenant shall permit Landlord and its agents to enter upon the Leased Premises at reasonable times and upon reasonable notice (except in the event of an emergency) to make such repairs (including the bringing of materials that may be required therefor into or upon the Leased Premises) as Landlord may reasonably deem necessary without any such act constituting any eviction of Tenant in whole or in part, without Base Rent in any manner abating while such repairs are being made by reason of loss or interruption of Tenant's business in the Leased Premises, and without responsibility for any loss or damage to Tenant's business or property. Landlord's foregoing right of entry shall not be construed to impose upon Landlord any obligation or liability whatsoever for the maintenance or repair of the Leased Premises except as expressly provided in this Lease.

12. Insurance and Indemnification.

(a) [Intentionally omitted]

(b) Real Property Insurance. The parties acknowledge and agree that Landlord currently insures the Improvements pursuant to a blanket "property in the open" policy or endorsement and that no specific value is assigned under the applicable policy of insurance to the Improvements. Landlord shall insure the Improvements in such manner as Landlord determines and Tenant shall have no obligation to procure such insurance or reimburse Landlord for the cost thereof.

(c) Liability Insurance: At all times during the Lease Term or any earlier occupancy of all or any portion of the Leased Premises, Tenant shall maintain in full force and effect a commercial general liability insurance policy for the Leased Premises with coverage limits of at least \$1,000,000 per occurrence for bodily injury to, or death of, any persons and \$2,000,000 in the aggregate, including without limitation, terrorism and providing for "excess" or "umbrella" liability coverage of at least \$10,000,000.00. The commercial general liability policy shall be issued on an ISO form CG 00 01, or such other form that is acceptable to Landlord. At all times during the Lease Term or any earlier occupancy of all or any portion of the Leased Premises, if Tenant owns, rents, operates, borrows, or hires any automobiles or other vehicles for use on public roads or otherwise in connection with its operations on the Leased Premises, Tenant shall also maintain a Business Auto Policy issued on an occurrence basis with minimum limits of coverage that are not less than \$1,000,000 per accident. The Business Auto Policy shall be written on the current ISO edition of ISO CA 00 01 or equivalent form. This insurance shall be primary and non-contributory, i.e., with respect to a loss covered by Tenant's policy, the proceeds of such policy must be exhausted before Landlord or Landlord's liability insurer would be liable for any payment due to such loss.

(d) Insurance on Tenant's Property. All of Tenant's trade fixtures, equipment, merchandise and other personal property shall be kept at Tenant's sole risk and expense, and Tenant, at Tenant's expense, shall maintain in full force and effect throughout the Lease Term "Special Form" property insurance on its trade fixtures, equipment, merchandise and other personal property in or upon the Leased Premises and all alterations, additions and improvements to the Leased Premises made by Tenant for their full insurable value on a replacement cost basis, if obtainable, and if not obtainable, for the full amount of the estimated cash value for such property.

(e) Worker's Compensation. Tenant shall comply with the provisions of the workmen's compensation law and shall insure its liability thereunder.

(f) General Insurance Provisions. All insurance policies required to be maintained by Tenant pursuant to this Section 12 will name Landlord and Landlord's mortgagee, if any, as additional insureds and as loss payees. In furtherance of the foregoing, the commercial general liability insurance policy maintained pursuant to Section 12(c) above shall be endorsed with an ISO CG 20 11 04 13 additional insured endorsement, or such other endorsement as may be approved by Landlord (which shall not include any language excluding coverage for the acts or omissions of the additional insured). For each type of insurance which Tenant is required to maintain under this Lease, Tenant shall furnish to Landlord an endorsed copy of such insurance policy together with all endorsements showing that each such type of insurance is in full force and effect and may not be amended or cancelled (or materially changed) without thirty (30) days prior written notice to Landlord. If Tenant fails to deliver any policy, evidence of insurance or renewal to Landlord required under this Lease within ten (10) days of written notice from the Landlord, or if any such policy is canceled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance, together with interest thereon from the date of such payment, at the Default Rate, within fifteen (15) days after receipt of a statement that indicates the cost of such insurance. Tenant agrees that the payment by Landlord of any such premium shall not be deemed to waive or release the default in the payment thereof by Tenant, or the right of the Landlord to take such

action as may be permissible hereunder, as is the case of default in the payment of Rent. Tenant shall maintain all insurance required under this Lease with companies reasonably satisfactory to Landlord who are licensed to do business in the State of Indiana and who hold a "Financial Strength Rating" of no less than "Excellent" (A or A- Rating) as set forth in the most current issue of "Best Key Rating Guide". Except as otherwise provided herein, Tenant shall pay all premiums for the insurance policies described in this Section 12 no later than the due date. In the event of a loss or claim covered by a policy to which Landlord or Landlord's mortgagee is an additional insured, Tenant shall also be liable for the payment of any deductible amount under any insurance policies maintained pursuant to this Section 12. Tenant shall not do or permit anything to be done which invalidates any such insurance policies. No deductible under each policy maintained by Tenant hereunder shall exceed \$5,000.00, without the prior written approval of Landlord. If the forms of policies, endorsements, certificates or evidence of insurance required by this Section are superseded or discontinued, Landlord will have the right to require other equivalent forms. Subject to the waiver of subrogation set forth in Section 12(g) below, the amount and coverage of insurance maintained hereunder shall not limit either party's liability nor relieve either party of any other obligation under this Lease.

(g) Waiver of Subrogation. Each of the parties hereto hereby waives and releases any and all rights of recovery which it might have against the other for any business interruption, liability, loss or damage, whether or not caused by any alleged negligence of the other party, its agents, licensees or invitees, to the extent that such business interruption, liability, loss or damage is covered by any insurance required to be maintained under this Lease. Each policy of insurance required under this Lease shall contain an endorsement to such effect. The foregoing will not, however, release or discharge any party hereunder for or from any liability to the extent of the amount of the deductible feature under the applicable insurance policy, to the extent that the covered loss was caused by that party's own negligence or willful misconduct. In furtherance of the foregoing, the commercial general liability insurance policy maintained pursuant to Section 12(c) above shall be endorsed with an ISO CG 29 88 10 93 Waiver of Transfer of Rights of Recovery Against Others Endorsement, or such other endorsement as may be approved by Landlord.

(h) Tenant's Waiver of Claims. All property kept or stored in, upon or about the Leased Premises by Tenant shall be so kept or stored at the sole risk of Tenant; and Tenant shall hold Landlord harmless from any claims, costs or expenses, arising out of damage thereto. Landlord shall not be liable for, and Tenant waives all claims against Landlord for, any injuries, damages (including, but not limited to, indirect, special or consequential damages) or losses of or to such property or otherwise, sustained by Tenant and not covered by insurance.

(i) Indemnification; Responsibility for Damages.

(i) Tenant assumes all risks and responsibilities for accidents, injuries or damages to person or property and agrees to indemnify, defend and hold harmless Landlord from any and all claims, liabilities, losses, costs and expenses arising from or in connection with (i) the condition of those portions of the Leased Premises which Tenant is obligated to maintain or any other failure by Tenant to perform any covenant required to be performed by Tenant under this Lease, (ii) use or control of the Leased Premises, (iii) the conduct of Tenant's business from the Leased Premises, or (iv) any other act or omission or the negligence or intentional misconduct of Tenant, or Tenant's officers,

directors, employees, volunteers, contractors, invitees or agents. Tenant shall be liable to Landlord for any damages to the Leased Premises and for any act done by Tenant or any person coming on the Leased Premises by the license or invitation of Tenant, express or implied (except Landlord, its agents or employees).

(ii) Landlord agrees to indemnify, defend and hold harmless Tenant from any and all claims, liabilities, losses, costs and expenses arising from or in connection with (i) the failure by Landlord to perform any covenant required to be performed by Landlord under this Lease, (ii) the gross negligence or intentional misconduct of Landlord, or Landlord's officers, directors, employees, contractors, invitees (excluding Tenant and parties acting under Tenant) or agents, or (iii) the acts or omissions of Landlord or Landlord's officers, directors, employees, contractors, invitees (excluding Tenant and parties acting under Tenant) or agents at the Leased Premises during any period that pursuant to Section 25 below, Landlord is exercising exclusive control with respect to the Leased Premises.

(iii) Nothing contained in this Section 12(i) shall limit (or be deemed to limit) the waivers contained in Section 12(g) above. In the event of any conflict between the provisions of Section 12(g) above and this Section 12(i), the provisions of Section 12(g) shall prevail. This Section 12(g) shall survive the expiration or earlier termination of this Lease.

13. **Fire and Other Casualty.** In the event of damage to, or total or partial destruction of, any Improvements by fire or other casualty ("**Casualty Damage**"), Tenant shall cause the prompt and diligent repair and replacement of the Improvements and the Leased Premises as soon as reasonably possible so that it is in substantially the same condition as existed prior to the Casualty Damage. To the extent that as a result of the Casualty Damage, insurance proceeds are payable to Landlord under any property insurance maintained by Landlord pursuant to Section 12(b) above, Landlord shall make such proceeds available to Tenant as necessary to complete the restoration hereunder, provided, however that in no event shall Landlord be obligated to incur any out-of-pocket costs hereunder. Notwithstanding the foregoing provision of this Section, in the event: (a) the portions of the Leased Premises to be restored by Tenant are so damaged or destroyed that they cannot be restored within nine (9) months after the date of the damage or destruction, (b) Tenant does not undertake to commence restoration of the Leased Premises within one hundred fifty (150) days after the date of such damage or destruction, (c) the insurance proceeds (reduced by any application thereof by Landlord's mortgagee to its mortgage debt) are insufficient for restoration of the Leased Premises and Tenant does not undertake to commence such restoration within one hundred fifty (150) days after the date of such damage or destruction, or (d) applicable law does not permit the restoration of the Leased Premises to substantially the same condition as at the commencement of the Lease Term; then Landlord may, after one hundred fifty (150) days following the damage or destruction, terminate and cancel this Lease upon fifteen (15) days written notice to Tenant, and all obligations hereunder except those due or mature shall thereupon cease and terminate. If substantial Casualty Damage occurs during the last year of the Lease Term, then Landlord or Tenant, at their respective option, may terminate this Lease upon ninety (90) days' written notice to the other party, and all obligations hereunder, except those due or mature, shall cease and terminate. Base Rent shall be abated proportionately for each day that the Leased Premises or any part thereof is unusable by reason of any such Casualty Damage.

14. **Eminent Domain.** In the event that all or a substantial part of the Leased Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain, unless by Tenant, or that in lieu thereof all or a substantial part of the Leased Premises is sold to a public or quasi-public body under threat of condemnation, and such taking, condemnation or sale renders the Leased Premises unsuitable for Tenant's operations thereon, this Lease shall, at the option of either party, terminate on the date possession of all or such part of the Leased Premises is transferred to the condemning authority. All Base Rent shall be paid up to the date of termination; and all compensation awarded or paid for the taking or sale in lieu thereof shall belong to and be the sole property of Landlord; provided, however, Landlord shall not be entitled to any award made to the Tenant for loss of business or cost of removal or relocation of stock and personal property. In the event that less than a substantial part of the Leased Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain, or that in lieu thereof a less than substantial part of the Leased Premises is sold to a public or quasi-public body under threat of condemnation, then the Base Rent will be equitably adjusted to reflect the portion of the Leased Premises that has been taken or condemned.

15. **Default and Remedies.**

(a) **Events of Default.** Each of the following shall be deemed a default by Tenant:

(i) Tenant's failure to pay Base Rent or any other sums, charges or payments required to be paid by Tenant to Landlord under this Lease as herein provided when due;

(ii) Tenant's failure to perform any other term, condition or covenant of this Lease to be observed by Tenant;

(iii) Tenant shall fail to execute any instrument of subordination or attornment or any estoppel certificate in accordance with Section 17 of this Lease within the time periods set forth in Section 17 following Landlord's request for the same in accordance such Section;

(iv) Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease;

(v) The sale of Tenant's leasehold interest hereunder pursuant to execution;

(vi) Tenant becomes insolvent;

(vii) The adjudication of Tenant as a bankrupt;

(viii) The making by Tenant of a general assignment for the benefit of creditors;

(ix) The appointment of a receiver in equity for Tenant's property if such appointment is not vacated or satisfied within thirty (30) days from the date of such appointment;

(x) The appointment of a trustee or receiver for Tenant or other bankruptcy proceeding if such appointment is not vacated or set aside within thirty (30) days from the date of such appointment;

(xi) Tenant's filing of a voluntary petition in bankruptcy or for reorganization or arrangement; or

(xii) Tenant's filing of an answer admitting bankruptcy or agreeing to reorganization or arrangement.

(b) Landlord's Right Upon Tenant's Default. In the event of any default provided in the foregoing Section 15(a)(i) and the continuance of such a default for five (5) days (except that the five (5) day grace period shall not be applicable if Tenant fails to pay Base Rent or any other sums, charges or payments required to be paid by Tenant to Landlord under this Lease as herein provided, when due on two (2) or more occasions during any twelve (12) month period during the Lease Term), or in the event of any default provided in Section 15(a)(ii) and the continuance of such default for thirty (30) days following written notice from Landlord to Tenant (except in the event such default is of a nature as not to be reasonably susceptible to cure within said thirty (30) day period, in which case the period of cure shall be extended so long as Tenant commences its efforts to cure within said thirty (30) day period and thereafter diligently pursues the same to completion) or in the event of any other default provided in foregoing Section 15(a) without any demand or notice, Landlord may:

(i) elect to terminate this Lease;

(ii) in the event that Tenant has failed to perform any of its covenants under this Lease other than a covenant to pay Base Rent, perform the covenant or covenants of Tenant which are in default (entering upon the Leased Premises for such purpose, if necessary); and Landlord's performance of any such covenant shall not be construed as a waiver of Tenant's default or of any other right or remedy of Landlord in respect of such default, nor as a waiver of any covenant, term or condition of this Lease;

(iii) immediately re-enter upon the Leased Premises, remove all persons and property therefrom, and store such property in a public warehouse or elsewhere at the sole cost and for the account of Tenant, all without service of notice or resort to legal process, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and without such re-entry being deemed to terminate this Lease; and/or

(iv) pursue all other rights and remedies to which Landlord may be entitled hereunder, at law or in equity.

(c) Re-Letting. In the event Landlord re-enters upon the Leased Premises as provided in Section 15(b)(iii) above, or takes possession of the Leased Premises pursuant to legal

proceedings or pursuant to any notice provided for by law, Landlord may either terminate this Lease, or from time to time without terminating this Lease, make alterations and repairs for the purpose of re-letting the Leased Premises and re-let the Leased Premises or any part thereof for such term or terms (which may extend beyond the Lease Term) at such rental and upon such other terms and conditions as Landlord reasonably deems advisable. If Landlord fails to re-let the Leased Premises, Tenant shall pay to Landlord the Base Rent and Additional Rent reserved in this Lease for the balance of the Lease Term as those amounts become due in accordance with the terms of this Lease. Upon each re-letting, all rentals received from such re-letting shall be applied: first to payment of costs of such alterations and repairs; second, to the payment of Base Rent, Additional Rent and any other indebtedness due and unpaid hereunder; and the remainder, if any, shall be held by Landlord and applied in payment of future Base Rent and Additional Rent as it becomes due and payable hereunder. If the rentals received from such re-letting are less than amounts to be paid hereunder by Tenant, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid at such time as Base Rent and Additional Rent would be due and payable hereunder. No re-entry or taking of possession by Landlord of the Leased Premises shall be construed as an election to terminate this Lease unless a written notice of termination is given to Tenant. Notwithstanding any re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for Tenant's previous default.

(d) Damages Upon Termination. In the event that Landlord at any time terminates this Lease for any default by Tenant, in addition to any other remedies Landlord may have, Landlord may recover from Tenant all damages Landlord may incur by reason of such default, including costs of recovering the Leased Premises, making alterations and repairs for the purpose of re-letting, and the value at the time of such termination of the excess, if any, of the amount of Base Rent and charge equivalent to Base Rent reserved in this Lease for the remainder of the Lease Term over then reasonable rental value of the Leased Premises for the remainder of the Lease Term less any reasonably anticipated vacancy period. All such amounts shall be immediately due and payable from Tenant to Landlord.

(e) Default Indemnification. Upon any default by Tenant hereunder, Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, judgments, liabilities, losses, costs, and expenses incurred by Landlord and arising from, or in connection with, a default by Tenant under this Lease or exercising Landlord's rights and remedies with respect to such default.

(f) Landlord Default and Remedies. Except as otherwise provided in this Lease, Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from Tenant to Landlord, or such longer period as may be reasonably required to complete such cure so long as Landlord has commenced curing that default within that thirty (30) day period, and thereafter, diligently pursues such cure to completion. Tenant shall not have the right to set-off against any Base Rent or Additional Rent any damages which Tenant may purport to have sustained by reason of Landlord's failure to perform any of the terms, covenants or conditions contained in this Lease on its part to be performed. If Landlord is in default under this Lease, Tenant's sole right and remedy shall be to recover a money judgment against Landlord, and Tenant's rights to recovery shall be limited to the Landlord's right, title and interest in and to the Leased Premises as more particularly set forth herein.

16. **Surrender.** Upon the expiration of the Lease Term or earlier termination of this Lease, Tenant shall quit and surrender to Landlord the Leased Premises, broom clean and in good order, condition and repair and otherwise in the condition and in a state of repair consistent with the requirements specified in Section 9 above, ordinary wear and tear and acts of Casualty Damage which Landlord is obligated to repair or replace excepted; provided, that Tenant shall remove its personal property and any property affixed to the Leased Premises or improvements, additions or alterations to the Leased Premises which Landlord directs Tenant to remove and repair any damage to the Leased Premises caused by such removal. If Tenant shall fail to remove any property or improvements, additions or alterations that it is obligated to remove, Landlord may cause all or any item of such property or improvements, additions or alteration to be removed at Tenant's expense. Tenant hereby agrees to pay all costs and expenses of any removal and of the repair of any damage to the Leased Premises caused by such removal. On the expiration or earlier termination of this Lease, Tenant shall, in addition to the foregoing, deliver to Landlord all keys and combinations to locks, safes and vaults. Any and all property remaining on the Leased Premises after the expiration of the Lease Term or earlier termination of this Lease shall, at the option of Landlord, become the property of Landlord and Landlord may dispose of and/or remove any such property without any liability whatsoever to Tenant. Tenant's obligation to observe and perform these covenants shall survive the expiration of the Lease Term or earlier termination of this Lease.

17. **Subordination and Estoppel.**

(a) **Subordination.** This Lease is and shall be expressly subject and subordinate at all times to the lien of any present or future mortgage encumbering fee title to the Leased Premises. If any such mortgage be foreclosed, upon request of the mortgagee or beneficiary ("**Landlord's Mortgage**"), as the case may be, Tenant will attorn to the purchaser at the foreclosure sale. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment; provided, however, that subordination of this Lease to any present or future mortgage shall be conditioned upon the mortgagee, beneficiary, or purchaser at foreclosure, as the case may be agreeing that Tenant's occupancy of the Leased Premises and other rights under this Lease shall not be disturbed by reason of the foreclosure of such mortgage, as the case may be, so long as Tenant is not in default under this Lease. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost, any instrument that Landlord deems reasonably necessary or desirable to confirm the subordination of this Lease.

(b) **Estoppel.** Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost to Landlord, an estoppel certificate in such form as Landlord may reasonably request certifying (a) that this Lease is in full force and effect and unmodified or stating the nature of any modification, (b) the date to which rent has been paid, (c) that there are not, to Tenant's knowledge, any uncured defaults or specifying such defaults if any are claimed, and (d) any other matters or state of facts reasonably required respecting the Lease. Such estoppel may be relied upon by Landlord and by any purchaser or mortgagee of the Leased Premises.

18. **Covenant of Quiet Enjoyment.** Landlord agrees that if Tenant performs all the covenants and agreements herein provided to be performed by Tenant, Tenant shall, at all times

during the Lease Term, have the peaceable and quiet enjoyment of possession of the Leased Premises without any manner of hindrance from Landlord or any persons claiming under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

19. **Mechanic's Liens.** Tenant shall not suffer or give cause for the filing of any mechanic's lien or other lien or encumbrance against the Leased Premises. In the event any mechanic's lien or other lien or encumbrance is filed against the Leased Premises or any part thereof for work claimed to have been done for, or material claimed to have been furnished to, the Tenant, Tenant shall cause such mechanic's lien or other lien or encumbrance to be discharged of record within thirty (30) days after filing by bonding or as provided or required by law or in any other lawful manner or shall provide evidence that the lien or encumbrance is being contested by proceedings adequate to prevent foreclosure of the lien or encumbrance, together with satisfactory indemnity (in an amount not less than one hundred fifty percent (150%) of the claimed lien or encumbrance) to Landlord within thirty (30) days after the filing thereof. Tenant shall indemnify, defend and hold harmless Landlord from all claims, judgments, liabilities, losses, costs, and expenses incurred by Landlord as a result of, or in connection with, any such mechanic's lien or other lien or encumbrance. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant, nor as giving Tenant the right or authority to contract for, authorize, or permit the performance of any work or the furnishing of any materials that would permit the attaching of a mechanic's lien or other lien or encumbrance.

20. **Notices.** Unless otherwise specifically provided in this Lease or by law, all notices or other communications required or permitted by this Lease or by law shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or sent for overnight delivery by a nationally recognized courier such as Federal Express, addressed to the other party as follows:

Landlord: Silver Creek School Corporation
601 Renz Avenue
Sellersburg, IN 47172
Attention: Dr. Todd Balmer

With a copy to:

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Attention: Jonathan L. Mayes

Tenant: Town of Sellersburg
316 E Utica St,
Sellersburg, Indiana 47172
Attention: Charlie Smith

Any party may change its address for notice from time to time by serving notice on the other party as provided above. The date of service of any notice served by mail shall be the date upon which such notice is deposited in a post office of the United States Postal Service.

21. **Miscellaneous Provisions.**

(a) **Memorandum of Lease.** The parties hereto shall not record this Lease, but each party shall execute upon request of the other a “memorandum of lease” suitable for recording. All costs and expenses associated with preparing, executing, and recording a “memorandum of lease” shall be borne by the party requesting execution of such document, and such party shall pay any documentary transfer tax or other special tax or assessment associated with, or triggered by, such recording.

(b) **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating between the parties hereto the relationship of principal and agent, partnership, joint venture, or any relationship other than the relationship of landlord and tenant.

(c) **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Base Rent, Additional Rent or other amount due hereunder shall be deemed to be other than on account of the Base Rent, Additional Rent or other amount first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Base Rent, Additional Rent or other amount shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Base Rent, Additional Rent or other amount or to pursue any other right or remedy.

(d) **Severability.** The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions, and this Lease shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

(e) **Authority.** Each person executing this Lease represents and warrants that he or she has been duly authorized to execute and deliver this Lease by the entity for which he or she is signing, and this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

(f) **Waivers.** No waiver of any covenant or condition or the breach of any covenant or condition of this Lease shall be deemed to constitute a waiver of any subsequent breach of such covenant or condition or justify or authorize a non-observance upon any occasion of such covenant or condition or any other covenant or condition. The acceptance of Base Rent, Additional Rent or any other payment or amount by Landlord at any time when Tenant is in default of any covenant or condition shall not be construed as a waiver of such default or Landlord’s right to terminate this Lease on account of such default.

(g) **Remedies Cumulative.** Subject to the limitations set forth in Section 15(f) above, the remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them

shall be construed as exclusive of any other of any remedy provided by law or in equity. The exercise of any one such right or remedy by the Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

(h) Severability. The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions, and this Lease shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

(i) Benefit of Persons Affected. Subject to the provisions of Section 10, this Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of Landlord and Tenant except as otherwise expressly provided herein.

(j) Construction. Whenever in this Lease a singular word is used, it shall also include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days. All indemnities set forth herein shall survive the expiration or earlier termination of this Lease. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business days are specified. Notwithstanding anything to the contrary anything set forth herein, if Landlord is delayed in observing or performing any of its covenants hereunder or satisfying any condition or requirement hereunder as the result of an act or omission of Tenant or any other cause which is not within the reasonable control of Landlord including, without limitation, inclement weather, earthquakes, floods, tornados, hurricanes, tropical storms, acts of God, acts of civil or military authorities, riots, insurrections, acts of government, acts of any public enemy, the unavailability of materials, equipment, services or labor, fires, explosions, strikes, failure of transportation, and utility or energy shortages or acts or omissions of public utility providers ("**Force Majeure**"), then such completion, correction, observation, performance, or satisfaction shall be excused for the period of days that such completion, correction, observation, performance, or satisfaction is delayed or prevented, and the dates and deadlines for completion, observation, performance, and satisfaction set forth herein, as applicable, shall be extended for the same period.

(k) Entire Agreement; Amendments. This instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such parties are merged into and expressed in this instrument, and any and all prior agreements between such parties are hereby cancelled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

(l) Landlord's Consent. If Landlord breaches any obligation of reasonableness, then the sole remedy of Tenant shall be an action for specific performance or injunction to enforce the obligation, and Tenant shall not be entitled to any monetary damages for, or in connection with, a breach of such obligation, unless the breach is willful or in bad faith, in which event Tenant shall be entitled to all remedies at law or in equity.

(m) Attorneys' Fees. In the event that any proceeding or litigation is commenced by either party to enforce the terms of this Lease, then the prevailing party shall be entitled to an award of its reasonable attorneys' fees and court costs incurred in connection with such proceeding or litigation.

(n) Financial Statements. [Intentionally omitted.]

(o) Governing Law. This Lease shall be governed by and construed in accordance with the internal laws of the State of Indiana.

(p) Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original; but all of such counterparts shall together constitute but one and the same instrument.

(q) Indemnification for Leasing Commissions. The parties hereby represent and warrant that there was no real estate broker involved in the negotiation and execution of this Lease and that no party is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Lease. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto.

(r) Anti-Terrorism Certification. Landlord and Tenant each represents and warrants that; (i) it is not listed on the Special Designated Nationals and Blocked Persons list as maintained and updated by the United States Treasury Department Office of Foreign Asset Control, (ii) it is not an entity with whom Anti-Terrorism Laws (as hereinafter defined) would prohibit one from doing business, (iii) it will not violate Anti-Terrorism Laws, and (iv) it is not and will not do business with any person or entity that would violate Anti-Terrorism Laws. Landlord and Tenant each covenants that it shall indemnify, hold harmless and defend the other party from and against any and all claims, losses, damages, costs and expenses arising out of or in any way relating to the violation of any Anti-Terrorism Laws regardless of whether such violation constitutes a breach of the representations, warranties, covenants and agreements set forth in this Section including, but not limited to: (a) claims of third parties (including governmental agencies) for damages, penalties, response costs, or other relief; and (b) any and all expenses or obligations incurred at, before and after any trial or appeal therefrom, including without limitation, reasonable attorneys' fees and other expenses. "**Anti-Terrorism Laws**" for purposes hereof, shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA Patriot Act"), (b) Executive Order No. 13224: Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001, (c) the International Emergency Economic Power Act, 50 U.S.C. § 1701 *et. seq.*, and (d) any other legal requirements relating to money laundering or terrorism.

22. Security Deposit. [Intentionally omitted]

23. Limitation of Liability. The term "Landlord" as used in this Lease, as far as the covenants and agreements of Landlord in this Lease are concerned, shall be construed to mean only the holder or holders of Landlord's interest in this Lease at the time in question. In the event

of any transfer of Landlord's interest under this Lease or in the Leased Premises, then the Landlord herein named (and in case of any subsequent transfer, then transferor) shall be automatically freed and relieved, as to occurrences after the date of such transfer, from all duties and obligations relating to the performance of any covenants or agreements on the part of Landlord to be performed or observed after such transfer. Notwithstanding anything to the contrary provided in this Lease, no officer, official, director, partner, agent, trustee, beneficiary, or employee of Landlord shall be personally liable for the performance or nonperformance of any agreement, covenant or obligation of Landlord hereunder, and Tenant's remedies shall not include a personal money judgment against Landlord or against any of the foregoing persons. Tenant's sole and exclusive remedy at law or in equity shall be to proceed against and foreclose the interest and title of Landlord (or such successor in interest) in and to the Leased Premises (and the proceeds from the sale of such interest and title as to any liability for a default not cured or satisfied in full) for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord (or by such successor in interest) of any of Landlord's obligations hereunder.

24. Option to Terminate. Landlord and Tenant shall each have the right to terminate this Lease at any time (the "**Termination Option**"), upon and subject to the following terms, conditions and limitations:

(a) Written notice must be given at least twelve (12) months prior to the effective date of the termination (the "**Termination Date**"), as specified in such notice;

(b) If Landlord is exercising the Termination Option hereunder and the Termination Date is prior to expiration of the initial Lease Term, Landlord shall pay Tenant a termination fee ("**Termination Fee**") in an amount equal to \$1,338.65;

(c) Without limiting the foregoing, any obligations and liabilities of Tenant accruing under this Lease with respect to the Leased Premises prior to the Termination Date shall survive the Termination Date and any such exercise of the Termination Option, as shall any provisions of the Lease that are expressly stated in the Lease to survive its expiration or sooner termination; and

(d) If the Termination Option is exercised, Tenant shall surrender full and complete possession of the Leased Premises to Landlord on or before the Termination Date in accordance with the requirements of this Lease.

25. Landlord Right to Use of Leased Premises. Notwithstanding anything to the contrary in this Lease, Landlord reserves the right to use certain portions of the Leased Premises as follows: at all times during the Lease Term, Landlord shall be permitted to store its equipment within any storage facilities included as part of the Improvements consistent with its historical practices. Tenant and Landlord shall work together in good faith and reasonably cooperate with one another so as to allow such use by Landlord.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO LEASE

IN WITNESS WHEREOF, the parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

LANDLORD:

SILVER CREEK SCHOOL CORPORATION

By: _____

Printed: _____

Title: _____

TENANT:

TOWN OF SELLERSBURG, INDIANA, an
Indiana political subdivision

By: _____

Printed: _____

Title: _____

This instrument was prepared by: Jonathan L. Mayes, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law Jonathan L. Mayes, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204.

The mailing address to which statements should be mailed under Indiana Code 6-1.1-22-8.1 is 601 Renz Avenue, Sellersburg, IN 47172.

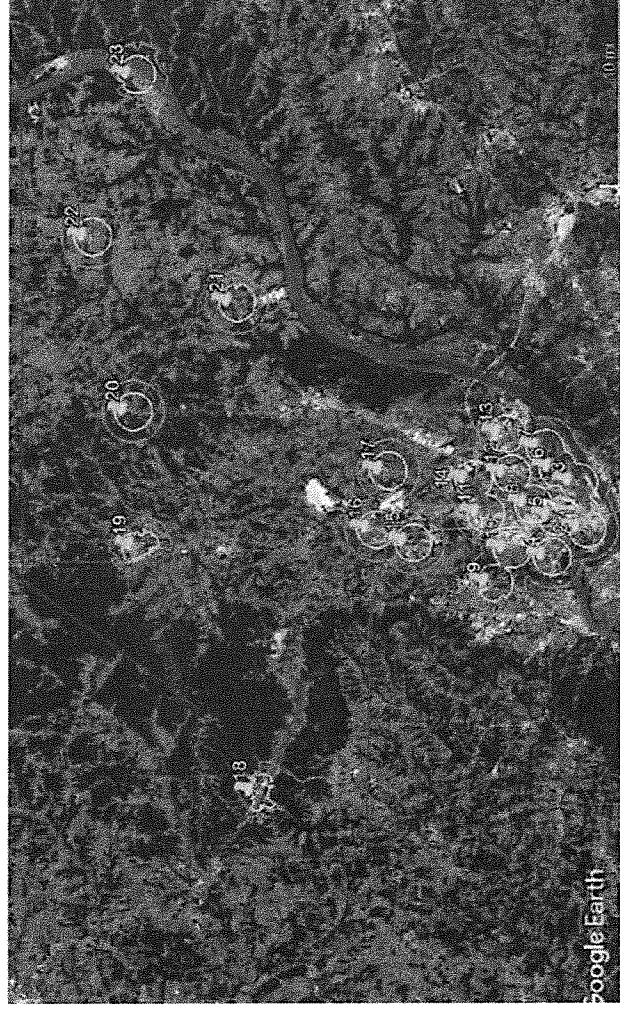
LIST OF EXHIBITS

Exhibit A – Depiction of Real Estate

EXHIBIT A

Real Estate

Outdoor Warning Siren System

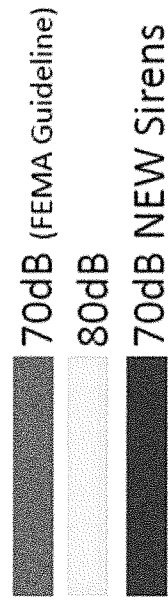


Current Outdoor Warning Siren Coverage

- Outdoor warning sirens are used to alert citizens and visitors that are outside of incoming tornado warned storms, civil defense and homeland security alerts.
- There are currently 24 sirens in Clark County. These are tested the first Saturday of every month at noon unless there is inclement weather, or the temperature is below 32 degrees.
- Clark County Emergency Management does not utilize the siren system to issue an "All Clear". Any siren activation is meant to prompt immediate action! The siren system is ONE of many tools we use to warn those in Clark County of emergency situations.

Outdoor Warning Siren System- Sellersburg

**GREEN IS EXISTING SIRENS
& RANGE**



Outdoor Warning Siren System

The sirens are automatically activated when a Tornado Warning is issued by the National Weather Service.

Each siren site has an alerting radius of 1.21 miles or 4.62 square miles (shown with green & blue circle on map)

HNTB Indiana, Inc.
Infrastructure Solutions

111 Monument Circle
Suite 1200
Indianapolis, IN 46204-5178

Telephone (317) 636-4682
Facsimile (317) 917-5211
www.hntb.com

May 10, 2024

HNTB

Mr. Charlie Smith
Town Manager of Sellersburg
316 East Utica Street
Sellersburg, IN 47172

Re: Sellersburg Noise Study HNTB
Project Number: Pending

Dear Mr. Smith:

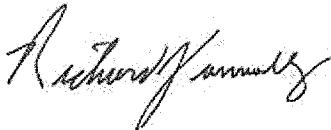
We hereby submit our proposal to complete a noise study for the Town of Sellersburg. Our proposal is based on information provided during a call with the Town Manager on April 19, 2024. Our proposal includes the following items:

1. Project and Scope Description
2. Preliminary Schedule
3. Fee Justification

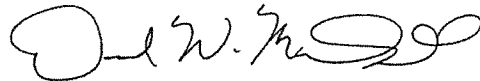
We appreciate the opportunity to work with you on this study. If you have questions or need additional information, please contact me at 317-627-5311 or rconnolly@hntb.com.

Sincerely,

HNTB Indiana, Inc.



Rich Connolly
Project Manager



Dave McDougall, P.E.
Senior Vice President

Sellersburg Noise Study

PROJECT SCHEDULE

Take Noise Measurements	Within 4 weeks from Notice to Proceed
Develop Summary Memo	Within 2 weeks from taking noise measurements

Sellersburg Noise Study

Noise Study Scope Description

This study involves recording noise levels from an industrial development near residential areas in Sellersburg, Indiana. The Town has received complaints about noise due to truck traffic which frequents the area 24-hours per day. This study will record baseline noise information to inform discussions with the development property owner about noise.

Task 1 Noise Study

Objective

The objective of this task is to complete noise measurements and summarize the results in a memo.

Deliverables

The deliverable includes 2 24-hour periods of noise recordings and a memo summarizing the results. The memo will include recommendations for future study or analysis.

Activity

- Manage project deliverables, schedule, and invoices
- Coordination with the Town of Sellersburg
- Develop plan for noise measurements (including locations, dates, timeframes)
- Take noise measurements
- Develop memo summarizing results

Assumptions

- Noise measurements will be taken over 2 24-hour periods.
- Noise measurements will be taken from public right-of-way or secure location with landowner permission.
- No interference with noise measurement equipment or unusual noise conditions will occur that would require additional noise measurements.
- Noise Meter rental will include simultaneous audio recording.
- Two staff will be onsite during setup and removal on noise monitoring equipment.

FEE JUSTIFICATION

PROJECT NO.: TBD
 DESCRIPTION: Sellersburg Noise Study

ITEM	HNTB	HNTB	HNTB	HNTB
Task 1	Noise Study	\$ 15,000		

SUBTOTALS \$ 15,000 \$ - \$ - \$ -

Hourly Rates Subtotal \$ 15,000
 Unit Rates Subtotal \$ -
 Hourly Rates Subtotal \$ -

GRAND TOTAL \$ 15,000

Task 1 Noise Study

PROJECT NO.: TBD
 DESCRIPTION: Sellersburg Noise Study
 DES. NO.: N/A

DESCRIPTION	No. of Sheets	PERSON HOURS BY CLASSIFICATION										TOTAL HOURS / TASK	TOTAL DOLLARS				
		10 Office Leader	9 Group Director / National Practice Consultant	8 Sr Project Manager	7 Section Manager	6 Project Manager	5 Senior Planner	4 Project Analyst	3 Planner	2 Project Coordinator	1 Intern						
Noise Study																	
Project Management			1		4	4											9
Coordination with Sellersburg					4	4											6
Develop noise measurement plan	4				4	4											6
Take noise measurements					16	16											38
Develop memo	4				4	4											12
TOTAL - HOURS:		0	1	0	32	32	0	0	0	0	2	2	34	2	0	71	
LABOR RATES PER HOUR		\$350.00	\$300.00	\$275.00	\$250.00	\$225.00	\$175.00	\$150.00	\$125.00	\$100.00	\$75.00	\$50.00	\$25.00	\$200.00	\$75.00		
TOTAL DIRECT SALARY COST		\$0.00	\$300.00	\$0.00	\$8,000.00	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$300.00	\$150.00	\$4,250.00	\$200.00	\$0.00		\$13,050.00

DIRECT EXPENSES

Mileage	1	Trips x	800	Mi./Trip x	\$0.67	(to Project Site)											\$536.00
Noise Meter Rental	1		1		\$605.00												\$605.00
Meals	1	Persons x	4	Days x	\$69.00	/ Day											\$276.00
Hotel	1	Persons x	3	Nights x	\$160.00	/ Night											\$480.00
Prints	1	Sets x	200	Sheets	\$0.12												\$24.00
TOTAL DIRECT EXPENSE COST																	\$1,921.00

TOTAL FEE \$15,000.00

