

LEASE

This Agreement of Lease ("Lease") is made this ____ day of _____, 2024, by and between the **TOWN OF CHILMARK**, a Massachusetts municipal body politic, acting by and through its **SELECT BOARD**, with an address of _____, _____ (the "Town"), and the **UP-ISLAND REGIONAL SCHOOL DISTRICT**, with an address of 8 State Road, P.O. Box 60, Chilmark, MA 02535 (the "School District"), the **MARTHA'S VINEYARD OFFICE OF THE SUPERINTENDENT OF SCHOOLS**, 4 Pine Street, Vineyard Haven, MA 02568 ("Superintendent"), and _____, with an address of _____ (the "Lessee"). The Town and the School District may together be referred to herein as the "Lessor".

1. Premises. Lessor hereby demises and leases to Lessee and Lessee hereby takes and hires from Lessor, a portion of the land and improvements located thereon owned by Lessor and located at 8 State Road, shown approximately as Chilmark Assessors Map 30, Parcel 95, Town of Chilmark, County of Dukes County, Massachusetts, said portion being shown as "_____" on the plan dated _____, attached hereto as Exhibit A and incorporated herein ("Parcel ____" and the "Plan"). Parcel ____ may be referred to herein as the "Premises". Included in the Lease is the right to use the area shown on the Plan as Parking and Access ("Parking and Access Area"), as set forth below.
2. Term. The term of this Lease shall begin on _____, 2024 (the "Term Commencement Date"), and end on _____, 2054 (the "Term Expiration"). All provisions of this Lease shall apply during the entire term of this Lease (collectively the "Term") except as specifically set forth herein.
3. Rent.
 - (a) Lessee shall pay to Lessor rent ("Rent") during the Term as set forth in Exhibit B attached hereto and incorporated herein. **ATTACH EXHIBIT B SETTING FORTH RENT PAYMENTS.**
 - (b) All Rent and other payments required to be made by Lessee to Lessor under this Lease shall be paid without demand or off-set, by check made payable to the "Town of Chilmark", and delivered to the Lessor at the address set forth above, or at such other place as Lessor may from time to time direct by written notice to Lessee.
 - (c) If Lessee fails to pay Rent when due and payable, then, without notice of such failure by Lessor, a late charge of three (3%) percent of the amount due may be assessed and interest at a rate of twenty (20%) percent per annum (or the highest rate provided by law, whichever is lower) shall accrue from the applicable due date thereafter until paid in full.

4. Utilities. Lessee shall be solely responsible at Lessee's sole cost and expense for any and all work necessary to provide utility service to the Premises, provided that Lessee shall obtain any and all required approvals from any and all utility companies and government boards or entities for such work; Lessee shall tie into and use the existing septic system and public water supply used by the Chilmark School, if possible; Lessee shall give prior written notice to Lessor of any and all work to be performed to tie into the existing septic system and public water system, and shall obtain Lessor's prior written consent to the same, which consent shall not be unreasonably withheld. Lessee shall pay directly to the service providers thereof, for electricity, heat, telephone, water, sewer/wastewater service, and all other utilities provided to the Premises, provided that if Lessee ties into the existing septic system and well, Lessee shall pay for any and all service, pumping and repairs, as applicable, proportionately, based on the square footage of the building constructed on the Premises compared to the square footage of the Chilmark School. In the event Lessee fails to make such payments, Lessor may, but shall not be obligated to, make such payments on Lessee's behalf. In such event, such sums shall be included in Rent and subject to all provisions concerning Rent contained in this Lease, including Paragraph 3 hereof.
5. Taxes. Lessor shall pay all real and personal property taxes and all betterment assessments assessed against the Premises. Lessee shall be responsible for all sales, meals, use or other taxes payable in connection with, or related to, Lessee's use of the Premises.
6. Condition of Premises. The Premises are delivered to Lessee, and Lessee accepts the Premises, in their present condition, "AS IS", "WHERE IS" and with "ALL DEFECTS", without recourse to the Lessor of any kind or for any reason whatsoever. Lessee acknowledges and agrees that Lessor has made no representation, warranty or covenant of any kind whatsoever with respect thereto, and that Lessor shall have no obligation to maintain, do any work on, or make any improvements to or provide utilities to the Premises.
7. Use. Lessee shall use and occupy the Premises only for the conduct of a preschool program as specified in its proposal submitted in response the Request for Proposals advertised by the Town, which proposal is entitled, "_____" and is attached hereto as Exhibit B and incorporated herein (the "Proposal"), and as specified in the Description of Use of Premises and Parking and Access Area, attached as Exhibit C ("Exhibit C Description") (**ATTACH DESCRIPTION OF USE OF PREMISES AND PARKING AND ACCESS AREA, AND USE BY THE CHILMARK TOWN AFFAIRS COUNCIL FOR A SUMMER PRE-SCHOOL PROGRAM AS PART OF THE SUMMER COMMUNITY CENTER, AS PROPOSED BY LESSEE IN RESPONSE TO THE RFP AND AS AGREED BY THE PARTIES.**). The program must be taught by staff that is state certified. The use of the Premises is limited to those

identified in the Proposal for children ages ____ through 5 years of age and between the hours of ____ a.m. and ____ p.m. The maximum number of children to be enrolled in the program is eighteen (18). The Lessee shall provide a sufficient number of certified teachers and/or assistants so that the student to teacher ratio complies at all times with applicable law. No trade, occupation, or other activity shall be carried on, in or about the Premises, or any use made thereof, which shall be offensive or contrary to the laws of the Commonwealth or any ordinance or by-law for the time being in force in the Town of Chilmark, or injurious to any person, or persons or property. Lessee shall not conduct any activity which would be a violation of the Massachusetts conflict of interest statute (M.G.L. c. 62C, § 49A). Lessee shall in no way represent or imply that its pre-school is affiliated with or endorsed by Lessor, the Chilmark School or the Up-Island School District. Lessee shall be entitled to use the Parking and Access Area for parking for three (3) teachers, and for non-exclusive use of the pick-up and drop-off areas by parents accessing the preschool, as further set forth in the Exhibit C Description and as agreed by the parties. Lessee shall cause the Premises to be maintained and used in conformity with all federal, state and local zoning, health, environmental and other applicable laws, by-laws, rules and regulations at all times during the Term of this Lease, including but not limited to the conflict of interest law set forth in M.G.L. c. 268A. Lessee shall be responsible for the use of the Premises by anyone using the same with Lessee's consent.

9. Alterations - Additions.

- (a) Lessee shall use good faith and diligent efforts to obtain, at its sole cost and expense, all permits, approvals and other authorizations, from any and all federal, state and local authorities or entities having jurisdiction, which may include but not be limited to the Zoning Board of Appeals, Building Inspector, Planning Board, Martha's Vineyard Commission, required for the work described in Exhibit D attached hereto and incorporated herein (the "Approvals") (**ATTACH WORK PROPOSED BY LESSEE IN RESPONSE TO THE RFP AND AS AGREED BY THE PARTIES.**). Lessee shall use good faith and diligent efforts to resolve favorably any and all appeals of said Approvals. If, despite such good faith and diligent efforts, Lessee fails to obtain the Approvals or any Approvals are appealed and revoked or terminated as a result of said appeal, Lessee or Lessor may terminate this Lease by giving written notice to the other, in which event Lessee shall promptly deliver to Lessor all plans, drawings, specifications, applications and other materials prepared by and for Lessee in relation to the Approvals, together with consent from the parties that prepared said plans, drawings, specifications, applications and other materials to the release and use of the same, and, upon receipt of the same. Lessee acknowledges and agrees that Lessor shall have no liability to Lessee in relation to the failure to obtain the Approvals or for any costs, expenses or liabilities in any way related to the Approvals.

- (b) Upon the issuance of all Approvals, and expiration of any and all appeal periods or favorable resolution of any and all appeals taken, and in compliance with all laws, by-laws, rules and regulations governing the timing of construction at the Premises, Lessee shall promptly begin the work authorized by the Approvals. Lessee shall, at its sole cost and expense, cause to be performed all of the work authorized by and set forth in the Approvals in a good and workmanlike manner, in compliance with all Approvals and any and all other applicable federal, state and local laws, by-laws, rules, regulations and other applicable authority, and Lessee shall cause to be obtained and performed any and all required inspections, certificates of compliance and all other required approvals (together, the "Work"). Lessee shall pursue completion of the Work with all due diligence. Lessee and its agents, employees, contractors, shall have the right to use such portions of the property abutting the Premises and owned by Lessor as Lessor may agree and as reasonably necessary to cause the Work to be performed, provided that Lessee shall comply with all laws, by-laws, rules, regulations and other applicable authority, and that Lessee shall return any areas that are disturbed to substantially the same condition they were in prior to Lessee's use. Lessee shall take all reasonable measures to safeguard the public, and protect and minimize disturbance to abutting properties, during the Work.
 - (c) The Lessee shall not make or allow any other alterations or additions to the Premises at any time, unless the Lessor consents thereto in writing, which consent shall be in Lessor's sole discretion. All such allowed alterations shall be at Lessee's sole cost and expense, shall be in a good and workmanlike manner and in quality at least equal to the condition of the Premises upon completion of the Work, and shall be in conformance with and any and all federal, state and local laws, by-laws, rules, regulations and other applicable authority.
 - (d) Any and all alterations and additions made to the Premises at any time, including but not limited to those made during the Work, shall become the property of Lessor at the expiration or sooner termination of this Lease, unless otherwise agreed in writing by Lessor.
11. Delay. In the event that Lessee is unable to use the Premises or perform the Work due to the fault of Lessor, other than related to obtaining the Approvals or responding to appeals of the same, the Term of the Lease shall be suspended during such time by agreement of Lessor and Lessee; and shall begin again when Lessee is able to use the Premises or perform the Work, as the case may be, upon written notice from Lessor to Lessee or from Lessee to Lessor.
12. Maintenance and Repairs. Lessee shall, at its sole cost and expense, maintain repair and replace, as necessary, all portions of the Premises in a neat, attractive, safe, good and workmanlike manner, and in compliance with all federal, state and local laws, by-laws,

rules, regulations, the Approvals, and other applicable authority, including but not limited to all landscaping; all mechanical and utility systems servicing the Premises, including electrical, plumbing, heating and air-conditioning, if applicable; all structural and exterior portions of the Premises; and all non-structural elements, interior elements, and fixtures and trade fixtures now located or to be placed in or on the Premises, reasonable wear and tear or damage by fire or other unavoidable casualty excepted. Lessee shall not commit or allow others to commit waste to the Premises, or to create any nuisances or offensive use of the Premises. If Lessee or Lessee's agents, employees, representatives, sub-lessees or invitees damage the Premises or property of Lessor, Lessee shall promptly restore any such property disturbed at its sole cost and expense. Lessee shall be responsible at Lessee's sole cost and expense for removal of trash, waste, snow and ice from the Premises.

13. Liens. Lessee shall not permit any mechanics' liens, or similar liens to remain upon the Premises for labor and materials furnished to Lessee or any sub-lessee, or claimed to have been furnished to Lessee or any sub-lessee, in connection with the Work or any other work of any character performed or claimed to have been performed at the direction of Lessee or any sub-lessee, and Lessee shall cause forthwith any such lien to be released of record or sufficiently bonded in Lessor's reasonable judgment, all without cost to Lessor. Lessee agrees to indemnify, defend and hold harmless Lessor from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom.
14. Lessee's Insurance.
 - (a) Lessee shall procure, maintain in full force and effect throughout the Term of the Lease the following insurance policies, and Lessee shall comply with the terms and conditions of all such policies, at Lessee's sole cost and expense, unless otherwise agreed by Lessor in writing:
 - a. commercial general liability insurance against all claims and demands for injury to or death of persons or damage to property which may be claimed to have occurred on the Premises, in amounts which shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate limit, and Two Million Dollars (\$2,000,000.00) products-completed operations aggregate limit, without any so-called employee exclusion or the like and on an occurrence basis, or otherwise in the broadest and most comprehensive form then generally available from time to time. The policy shall include: blanket contractual liability insurance for all written contracts; coverage for products and completed operations liability and independent contractor's liability; and Completed Operations coverage for the duration and at least three (3) years after completion of the Work and any other permitted construction

or alteration of any portion of the Premises by Lessee. The policy shall not contain exclusions for property damage from perils of explosion, collapse or damage to underground utilities. Such insurance may be maintained on by Lessee under a so-called "blanket policy" covering the Premises as well as other premises of Lessee, provided that Lessee shall furnish Lessor with evidence satisfactory to Lessor of the existence of such blanket policy and that such blanket policy specifically includes the Premises and that the aforesaid minimum limits apply to each occurrence covered by such blanket policy and afford the same protection as would be provided under an individual policy meeting the requirements hereof.

- b. Automobile liability insurance for owned automobiles and trucks, non-owned automobiles and trucks, and/or rented automobiles and trucks, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury per accident, and Five Hundred Thousand Dollars (\$500,000.00) for property damage per accident, or One Million Dollars (\$1,000,000.00) combined single limit per accident.
 - c. Workers Compensation in the minimum amount required by applicable law.
 - d. Excess/umbrella liability in the minimum amount of Three Million Dollars (\$3,000,000.00) aggregate over all casualty and liability insurance required by this Lease.
 - e. Lessee shall ensure that all people and entities performing any portion of the Work, or any other work to be performed on the Premises as allowed under this Lease, are licensed to perform such work and have workers' compensation insurance in the minimum amount required by applicable law, and general liability insurance and any other insurance of types and in amounts customarily obtained for such work on the island of Martha's Vineyard, naming Lessee and Lessor as their respective interests may appear.
 - f. Lessee and/or sub-lessee's shall be solely responsible to insure Lessee's and sub-lessee's personal property at the Premises; Lessor shall have no liability for any personal property.
- (b) The insurance required by above shall be placed with insurers authorized to do business in Massachusetts and having an A or better financial rating from a recognized insurance accreditation institution. Such insurance shall provide that it shall not be amended or canceled with respect to the additional insureds or certificate holders without thirty (30) days' prior written notice to each of them.

Lessee shall provide Lessor with certificates evidencing such insurance prior to the Term Commencement Date, on the anniversary date of the Term Commencement Date, and as reasonably requested by Lessor from time to time.

- (c) All insurance policies required above shall name Lessor as an additional insured on a primary basis to the extent allowed by applicable law, and all certificates evidencing such insurance shall list Lessor as an additional insured.
- (d) Lessor shall have right to require Lessee, with reasonable prior notice, to increase the limits above if, during the term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises by responsible owners and tenants are more or less generally increased, it being the intention of this sentence to require Lessee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Premises.
- (e) Lessee shall obtain a waiver of subrogation clause in all insurance policies carried by Lessee covering the Premises, including but not limited to the insurance required to be carried in this Paragraph 14, expressly waiving any right on the part of the insurer against the Lessor.

15. Other Insurance Provisions.

- (a) During the Work or any other permitted construction or alteration of any portion of the Premises by Lessee ("Construction"), Lessor shall procure and keep in force all risk builder's risk insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Lessor may reasonably require, including coverage for natural disasters, with insurers authorized to do business in Massachusetts and having an A or better financial rating from a recognized insurance accreditation institution, provided that Lessee shall pay all premiums and other costs of said insurance and that Lessee shall provide any and all information, documents and materials required to procure the same. Lessee shall not perform any of the Construction before paying said premiums and other costs and obtaining from Lessor written confirmation that Lessor has procured said insurance. Lessor shall deliver to Lessee, if requested by Lessee, a certificate evidencing such insurance and a complete copy of the policy. If additional premiums or costs for such insurance arise during the Construction, or if additional information, documents or materials is required to maintain said insurance in place, Lessor shall notify Lessee and Lessee shall promptly pay said premiums and costs and/or provide said information, documents or materials, as the case may be.
- (b) Lessor shall procure, keep in force and maintain throughout the Term, except

during Construction when there is an all risk builder's risk policy in place as set forth above, with insurers authorized to do business in Massachusetts and having an A or better financial rating from a recognized insurance accreditation institution, commercial property insurance on the Premises, including improvements and alterations constructed by Lessee on the Premises. Lessee shall promptly reimburse Lessor for all premiums and other costs of said commercial property insurance.

- (b) Lessee shall not permit any use of the Premises which will make voidable any insurance on the Premises or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or any similar body succeeding to its power.
- (b) All claims, causes of action and rights of recovery for any damage to or destruction of property which shall occur on or about the Premises which result from any of the perils insured under any and all policies of insurance maintained by Lessor or Lessee are waived by each party as against the other party, and the employees, contractors, servants and agents thereof, regardless of cause, including the negligence of the other party and its respective employees, contractors, servants and agents, but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.
- (c) Lessee waives all rights it may have against Lessor for damages covered by any of the insurance required above. This waiver shall apply even if the insurance maintained by Lessee is self-insurance or is subject to deductible or a self-insured retention.
- (d) All insurance of Lessee shall be primary before any insurance or self-insurance, including deductibles, maintained or provided by Lessor, and shall not call on Lessor's insurance for contribution.
- (e) Lessee's failure to obtain, procure and maintain the required insurance, or to otherwise comply with the requirements of Lessee related to insurance as set forth herein, shall constitute a material breach of this Lease under which Lessor may in its sole discretion take immediate and unilateral action to suspend Lessee's rights to operate pursuant to this Lease until said breach is corrected and/or to exercise such other rights and remedies available to Lessor.
- (f) Lessee may but is not obligated to obtain business interruption insurance, service interruption insurance or any other insurance Lessee wishes to have. Lessee acknowledges and agrees that Lessor shall have no liability to Lessee for any interruption of business or utility service.

16. Access to Premises. Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times and with reasonable prior notice to Lessee to examine or inspect the same. In the event of emergency, Lessor may enter the Premises without prior notice to Lessee, provided that Lessor has made reasonable efforts under the circumstances to give notice.
17. Lessee's Property. It is understood and agreed that any and all personal property owned or otherwise possessed by Lessee or any sub-lessees, and used, kept, stored, or otherwise maintained at the Premises shall be kept there at Lessee's sole risk and without any liability whatsoever on the part of Lessor for any loss or damage thereto. It shall be Lessee's obligation to provide any insurance for such property. In the event that all or any part of said property is damaged or destroyed by fire, water or otherwise or by the leaking or bursting of water pipes, steam pipes or other causes in or on the Premises, or by theft or for any other cause, no part of any such loss shall be charged to Lessor or borne by Lessor.
18. Default by Lessee. In the event that:
- (a) The Lessee shall default in the payment of any installment of Rent or other sum herein specified and such default shall continue for thirty (30) days after written notice thereof; or
 - (b) Lessee fails to perform or observe any other covenant, agreement, or obligation to be performed by Lessee under this Lease and such failure is not cured within thirty (30) days after written notice from Lessor, provided, however, that if such failure is of such a nature that Lessee cannot reasonably remedy the same within such thirty (30) day period, no such failure will be deemed to exist if Lessee commences to cure the default within such thirty (30) period and thereafter prosecutes the same to completion with reasonable diligence (but in no event later than sixty (60) days from the date of the notice from Lessor); or
 - (c) The Lessee shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made by Lessee of its property for the benefit of creditors; or
 - (g) Abandonment of the Premises by Lessee; or
 - (h) An assignment, mortgage or conveyance or other encumbrance of this Lease or of all or any portion of the Premises except as expressly permitted under this Lease;

Then in any such event the Lessor shall have the right, without further demand or notice, in addition to and not exclusive of any other remedy Lessor may have at law and in equity, to notify Lessee that this Lease is terminated, effective not less

than fifteen (15) days after the giving of such notice (the "Termination Date"), in which event, upon the Termination Date, Lessee shall immediately pay to Lessor all accrued but unpaid Rent and other amounts due under this Lease, and all amounts necessary to compensate Lessor for losses proximately caused by Lessee's failure to perform its obligations under the Lease, including reasonable attorney's fees; Lessee shall promptly deliver to Lessor all plans, drawings, specifications, applications and other materials prepared by or for Lessee in relation to the Approvals, the Work and any other alterations or additions made to the Premises during the term of this Lease, together with consent from the parties that prepared said plans, drawings, specifications, applications and other materials to the release and use of the same by Lessor; and Lessee shall immediately surrender the Premises and all additions and alterations made thereto as a result of the Work and of any other work authorized under this Lease; and Lessor, without further demand or notice, may re-enter the Premises and remove Lessee's remaining property therefrom without being liable for any damages therefor; and Lessor may, but shall not be obligated to, re-let the Premises. In no event shall actions taken by Lessor pursuant to this provision in any way limit Lessor's right to recover any damages caused by Lessee's breach of this Lease.

19. Default by Lessor. In the event that Lessor fails to perform or observe any covenant, agreement, or obligation to be performed by Lessor under this Lease and such failure is not cured within thirty (30) days after written notice from Lessee, provided, however, that if such failure is of such a nature that Lessor cannot reasonably remedy the same within such thirty (30) day period, no such failure will be deemed to exist if Lessor commences to cure the default within such thirty (30) period and thereafter prosecutes the same to completion with reasonable diligence (but in no event later than sixty (60) days from the date of the notice from Lessor); then Lessee shall have the right to terminate this Lease and shall have the right to pursue any and remedies available to it at law and in equity.
20. Mutual Termination. This Lease may be terminated at any time by the mutual written consent of Lessee and Lessor. In the event of termination by mutual consent, the parties shall prorate Rent due hereunder as of the date of said termination.
21. Destruction by Casualty.
 - (a) If the Premises are partially damaged or destroyed by storm, fire, lightning, earthquake or other casualty, but are still satisfactory for Lessee's continued use, in substantially the same manner as it was immediately prior to such damage or destruction, and in the event such damage or destruction is of a kind insured by Lessee or Lessor, the Rent hereunder shall be adjusted (and if necessary refunded to Lessee) to take into account the diminution in value to any of Lessee's use as results from such damage or destruction. Said rental adjustment shall apply until the damage is repaired or the destroyed areas are restored.

- (b) If the damage or destruction is so extensive as to render the Premises not suitable for Lessee's use, this Lease shall terminate thirty (30) days after the date of such damage or destruction, unless within said thirty (30) days, Lessor, by notice to Lessee, informs Lessee of its intention to repair or restore the Premises, and actually commences repair or restoration to render the said Premises tenable, or unless otherwise agreed by Lessor and Lessee. During the period of such repairs or restoration, the Rent hereunder shall be abated in its entirety, and Lessee shall receive a pro-rata refund of all Rent paid in advance hereunder, except to the extent Lessee is able to use the Premises, in which event the Rent shall be adjusted to reflect such use.
 - (c) The net amount of any insurance proceeds recovered by reason of the damage or destruction of any portion of the Premises by storm, fire, lightning, earthquake or other casualty covered by insurance, other than any insurance obtained by Lessee for Lessee's personal property, business interruption or service interruption, in excess of the reasonable cost of adjusting the insurance claim and collecting the insurance proceeds, shall be applied toward the reasonable cost of restoration of the Premises at Lessor's election.
- 22. Indemnity by Lessee. To the fullest extent allowed by law, Lessee shall indemnify, hold harmless and defend Lessor against any and all claims, liabilities, damages and other expenses, including reasonably attorneys' fees, which may be imposed upon, incurred by, or asserted against Lessor by reason of, related to, or arising out of: (a) any act, omission, or negligence of Lessee or sub-lessees, or by either's agents, employees, suppliers, invitees, and contractors; (b) failure on the part of Lessee or any sub-lessee to perform or comply with any covenant required to be performed or complied with by Lessee or sub-lessees under this Lease; or (c) any death or injury to person or loss of or damage to property sustained or occurring on the Premises during the Term of this Lease on account of or based upon the act, omission, fault, negligence or misconduct of any person whomsoever other than Lessor. To the fullest extent permitted by law, Lessee agrees to use and occupy the Premises at Lessee's own risk. The provisions of this clause shall survive the termination or expiration of this Lease.
- 23. Subletting. Lessee may sublet the whole or any part of the Premises only after obtaining the prior written consent of Lessor, which consent shall be given or denied in Lessor's sole discretion.
- 24. Assignment. Notwithstanding anything to the contrary contained elsewhere in this Lease, Lessee may assign, mortgage, convey or otherwise encumber Lessee's interest in the Premises or Lessee's rights under this Lease ("Assignment"), only for the purpose of obtaining sufficient funds to cause to be performed on the Premises the Work or any future work authorized pursuant to this Lease or to otherwise perform under this Lease,

and only after obtaining the prior written consent of Lessor, which consent shall be given or denied in Lessor's sole discretion, and which consent may be conditioned on the execution of a consent as Lessor may require in Lessor's sole discretion. Any Assignment without Lessor's prior written consent shall be null and void and shall, at Lessor's option, constitute an event of default allowing Lessor to terminate this Lease pursuant to the terms of this Lease. Notwithstanding the foregoing, in the event of any such Assignment, Lessee shall remain liable to Lessor for the payment of all Rent and for the full performance of the covenants and conditions of this Lease.

25. Surrender. The Lessee shall at the expiration or other termination of this Lease remove all of Lessee's and sub-Lessee's furniture, furnishings, goods and other personal property ("Personal Property") from the Premises, and Lessee shall deliver to the Lessor the Premises, including but not limited to all improvements, alterations and additions made to or upon the Premises during the Term, in the same condition as they were put during the Term hereof as a result of the Work and of any other work authorized under this Lease, reasonable wear and tear and damage by fire or other unavoidable casualty or from the elements excepted, and in broom clean condition, and free and clear of all liens and monetary encumbrances. Lessee acknowledges and agrees that all portions of the Premises, including all improvements, fixtures, alterations and additions, are and shall be the property of Lessor and shall not be removed by Lessee at the expiration or other termination of this Lease. In the event that Lessee fails to remove its Personal Property from the Premises at the expiration or other termination of this Lease, Lessor is hereby authorized, without liability to Lessee for loss or damage thereto, and at the sole risk of Lessee, to remove and store any of the Personal Property at Lessee's expense, or to retain the same under Lessor's control, or to sell the same at public or private sale without notice and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such Personal Property.
26. Change of Law and Early Termination by the Town. Notwithstanding anything to the contrary contained elsewhere in this Lease, in the event that the Town, the School District and/or the Superintendent determine in their reasonable discretion that they are required by applicable law during the Term to provide preschool or other pre-kindergarten education, Lessor shall have the right, but not the obligation, to terminate this Lease and to purchase the buildings constructed on the Premises by Lessee ("Buildings") for the actual cost of the Buildings less the actual depreciation of the Buildings, or at a price agreed to by the parties. At the request of Lessor, Lessee shall allow Lessor to view Lessee's tax returns to assist in determining said figures. If the actual cost of the Buildings or depreciation cannot reasonably be determined, Lessor shall have the right to purchase the Buildings at the fair market value of said Buildings, said fair market value to be determined by an appraiser chosen by Lessor, who shall be a qualified member of the American Institute of Real Estate Appraisers, or any successor of such institute, or if such organization or successor shall no longer be in existence, a recognized national association of institute of land appraisers. If Lessor terminates the Lease under this

provision but does not purchase the Buildings, Lessee shall have the right, but not the obligation, to remove the Buildings from the Premises, in which event Lessee shall leave the Premises in a safe, neat and attractive condition, in compliance with all applicable laws. In all events, Lessee shall deliver the Premises free and clear of all liens and monetary encumbrances.

27. Notice. Any and all notices given or required to be given hereunder shall be in writing and delivered by hand or sent by certified or registered mail, postage prepaid, addressed to the parties as follows (or to such other address as may be substituted by written notice):

To Lessee: **ADD INFORMATION FOR LESSEE**

with a copy to: **ADD INFORMATION IF APPLICABLE**

To Lessor: Select Board
Chilmark Town Hall

Up-Island Regional School District
8 State Road
P.O. Box 60
Chilmark, MA 02535

Martha's Vineyard Office of the Superintendent
of Schools
4 Pine Street
Vineyard Haven, MA 02568

with a copy to: Reynolds, Rappaport, Kaplan & Hackney, LLC
106 Cooke Street
P.O. Box 2540
Edgartown, MA 02539
Attn: Ronald H. Rappaport, Esq.

Any and all notices shall be deemed to have been given when delivered by hand or when deposited in the mail as noted above.

28. Condemnation. If the Premises shall be taken by eminent domain, or for public or quasi

public use, so as to render the Premises untenable or unfit for the purposes for which Lessee is using the Premises, this Lease shall terminate on the date when title vests pursuant to such taking, and the Rent and additional rent shall be apportioned as of said date. Lessee shall not be entitled to any part of the award or any payment in lieu thereof; excepting that Lessee shall be entitled to any separate award rendered for trade fixtures installed by Lessee at its own cost and expense and which are not part of the realty. In the event that the Premises are not rendered untenable in their entirety, this Lease shall remain in effect and Rent shall be abated or suspended to reflect the nature and extent of such taking.

29. Construction. In construing this Lease, feminine or masculine pronouns may be substituted for those of neuter form and vice versa, and the plural for singular and singular for plural in any place where the context may require.
30. Governing Law and Severability. This Lease shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In the event any provision of this Lease shall be determined to be invalid or unenforceable under applicable law, such provision, shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Lease shall be construed as if such provision had never been made part hereof.
31. Headings. The headings used herein are used only for convenience of reference and are not to be considered a part of this Lease or to be used in determining the intent of the parties hereto.
32. Binding Effect. This Lease shall be binding upon and inure to the benefit of all administrators, executors, personal representatives, heirs, successors and permitted assigns, including all permitted sub-tenants, of the parties hereto.
33. Remedies Cumulative. Any and all rights of the parties under this Lease and at law and in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two (2) or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.
34. Waivers. Any consent or permission by Lessor or Lessee to any act or omission which otherwise would be a breach of any covenant or condition herein, or any waiver by Lessor or Lessee of any such breach shall not in any way be held or constitute to operate so as to impair the continuing obligation of any covenant or condition herein, or otherwise operate to permit similar acts or omissions.
35. Notice of Lease. Lessee shall execute and acknowledge and deliver to Lessor, upon execution of this Lease, the Notice of Lease attached hereto as Exhibit F and incorporated herewith, which Lessee acknowledges will be recorded in the Dukes County Registry of

Deeds with a copy of this Lease attached.

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

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

LESSOR:

LESSEE:

TOWN OF CHILMARK:

_____:

By its Select Board:

_____, Chairperson

UP-ISLAND REGIONAL SCHOOL DISTRICT:

MARTHA'S VINEYARD OFFICE
OF THE SUPERINTENDENT OF SCHOOLS

EXHIBIT A

(Plan)

EXHIBIT B

(ATTACH PROPOSAL)

EXHIBIT C

(ATTACH DESCRIPTION OF USE OF PREMISES
AND PARKING AND ACCESS AREA
AND USE BY THE CHILMARK TOWN AFFAIRS COUNCIL
FOR A SUMMER PRE-SCHOOL PROGRAM
AS PART OF THE SUMMER COMMUNITY CENTER)

EXHIBIT D

(ATTACH SUMMARY OF WORK)

EXHIBIT E

(Notice of Lease)

4701-020\Preschool - Lease to attach to RFP 12.22.23.doc