

**NORTH BRANCH INDEPENDENT SCHOOL DISTRICT NO. 138  
NORTH BRANCH AREA EDUCATION CENTER, LARGE GYM  
38705 GRAND AVENUE  
NORTH BRANCH, MN 55056  
SPECIAL SCHOOL BOARD MEETING  
AUGUST 27, 2020  
5:30 PM**

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Approval of Agenda
- V. Superintendent's Update
- VI. New Business
  - A. Consider Second Reading of Policy 503-NB - Attendance Policy
  - B. Consider Second Reading of Policy 506-NB - Student Discipline
  - C. Consider Lease Agreement to Lease Space at Shops at Gateway North to Provide Space to Assure Staff and Student Safety
- VII. Adjournment

# Superintendent Update



**NORTH BRANCH**  
**AREA PUBLIC SCHOOLS**  
**Inspire Dreams, Build Integrity, Instill Hope**

Better Together  
Superintendent Sara Paul  
August 27, 2020



# Safety Contingency Planning



# Safety Contingency Planning

- Conditional Use Permit
- Lease Agreement



# Amplifying Student Voice



# Student Voice

- Setting up Contingency Spaces
- Social Media Narratives

**NORTH BRANCH AREA PUBLIC SCHOOLS**  
Inspire Dreams, Build Integrity, Instill Hope

**Uniquely you!**

*I'm so happy that our school gave choices, so I can go back to school and see my friends for my last year of high school!*

- Derrick

[www.isd138.org/returntolearn](http://www.isd138.org/returntolearn)

**NORTH BRANCH AREA PUBLIC SCHOOLS**  
Inspire Dreams, Build Integrity, Instill Hope

**The place with space!**

*Distance learning was a challenge. I do way better at school, so I'm super excited to have the opportunity to come back to my high school!*

- Quinn

[www.isd138.org/returntolearn](http://www.isd138.org/returntolearn)

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**NORTH BRANCH AREA PUBLIC SCHOOLS**  
Inspire Dreams, Build Integrity, Instill Hope

**The Place With Space!**

*I am excited to return to school to learn from my teachers and be with my friends.*

- Julia

[www.isd138.org/returntolearn](http://www.isd138.org/returntolearn)

**NORTH BRANCH AREA PUBLIC SCHOOLS**  
Inspire Dreams, Build Integrity, Instill Hope

**Uniquely you!**

*I chose Distance Learning Academy because I travel for sports and began to miss learning opportunities. With the remote option I can take my classes with me wherever I go!*

- Paige

[www.isd138.org/returntolearn](http://www.isd138.org/returntolearn)



# Ongoing Community Engagement



# Ongoing Engagement

- “Ask the Superintendent” Virtual Sessions
- New Teacher Trainings
- Welcoming Back our Staff

*Remember the importance of kindness in times of uncertainty.*

# STUDENTS

## Attendance Policy

503-NB

### I. PURPOSE

- A. The school board believes that regular school attendance is directly related to success in academic work, benefits students socially, provides opportunities for important communications between teachers and students, and establishes regular habits of dependability important to the future of the student. The purpose of this policy is to encourage regular school attendance. It is intended to be positive and not punitive.
- B. This policy also recognizes that class attendance is a joint responsibility to be shared by the student, parent or guardian, teacher and administrators. This policy will assist students in attending class.

### II. GENERAL STATEMENT OF POLICY

#### A. Responsibilities

##### 1. Student's Responsibility

It is the student's right to be in school. It is also the student's responsibility to attend all assigned classes and study halls every day that school is in session and to be aware of and follow the correct procedures when absent from an assigned class or study hall. Finally, it is the student's responsibility to request any missed assignments due to an absence.

##### 2. Parent or Guardian's Responsibility

It is the responsibility of the student's parent or guardian to ensure the student is attending school, to inform the school in the event of a student absence, and to work cooperatively with the school and the student to solve any attendance problems that may arise.

##### 3. Teacher's Responsibility

It is the teacher's responsibility to take daily attendance and to maintain accurate attendance records in each assigned class and study hall. It is also the teacher's responsibility to be familiar with all procedures governing attendance and to apply these procedures uniformly. It is also the teacher's responsibility to provide any student who has been absent with any missed assignments upon request. Finally, it is the teacher's responsibility to work cooperatively with the student's parent or guardian and the student to solve any attendance problems that may arise.

##### 4. Administrator's Responsibility

- a. It is the administrator's responsibility to require students to attend all assigned classes and study halls. It is also the administrator's responsibility to be familiar with all procedures governing attendance and to apply these procedures uniformly to all students, to maintain

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#### North Branch Independent School District No. 138: District Policy 503-NB

**Adopted:** November 11, 1997

**Reviewed:** June 10, 1999, June 8, 2000, June 14, 2001 (MSBA Model Policy reviewed March 2009), July 11, 2013

**Number Changed from 5113 to 503:** June 8, 2000

**Revised:** June 8, 2000, June 26, 2001, May 13, 2004, April 2008, May 2009, July 11, 2013, July 10, 2014, May 12, 2016

**Effective:** September 2009, July 11, 2013, July 10, 2014, May 12, 2016

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# STUDENTS

## Attendance Policy

503-NB

accurate records on student attendance, and to prepare a list of the previous day's absences stating the status of each. Finally, it is the administrator's responsibility to inform the student's parent or guardian of the student's attendance and to work cooperatively with them and the student to solve attendance problems.

- b. In accordance with the Minnesota Compulsory Instruction Law, Minn. Stat. § 120A.22, the students of the school district are REQUIRED to attend all assigned classes and/or study halls every day school is in session, unless the student has been excused by the school board from attendance because the student has already completed state and school district standards required to graduate from high school, has withdrawn, or has a valid excuse for absence.

### B. Attendance Procedures

The superintendent shall develop procedures to implement the policy for district schools and keep the school board informed of any changes in these procedures.

#### 1. Excused Absences

- a. To be considered an excused absence, the student's parent or legal guardian will verify within two days of the absence, in writing or by phone, the reason for the student's absence from school. The school district reserves the right to request documentation for any excused absence. A note from a physician or a licensed mental health professional stating that the student cannot attend school is a valid excuse.
- b. The following reasons shall be sufficient to constitute excused absences:
  - (1) Illness. (Documentation from a medical provider may be required.)
  - (2) Serious illness or injury in the student's immediate family.
  - (3) A death or funeral in the student's immediate family or of a close friend or relative.
  - (4) Medical, dental or orthodontic treatment, or counseling appointment.
  - (5) Court appearances occasioned by family or personal action.
  - (6) Religious instruction not to exceed three hours in any week.
  - (7) Physical emergency conditions such as fire, flood, storm, etc.
  - (8) Official school field trip or other school-sponsored outing.

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## Attendance Policy

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- (9) Removal of a student pursuant to a suspension. Suspensions are to be handled as excused absences and students will be permitted to complete make-up work.
- (10) Family emergencies
- (11) Active duty in any military branch of the United States
- (12) Family member on military leave
- (13) Observance of a religious or cultural holiday
- (14) Successfully appealed absences
- (15) A student's condition that requires ongoing treatment for a mental health diagnosis.

### c. Consequences of Excused Absences

- (1) Students whose absences are excused are required to make up all assignments missed or to complete alternative assignments as deemed appropriate by the classroom teacher. The student is responsible for contacting teachers to initiate makeup work.
- (2) Work missed because of absence must be made up ~~within 2 days from the date of the student's return to school. Any work not completed within this period shall result in "no credit" for the missed assignment. However,~~ The building principal or the classroom teacher ~~will~~ may extend the time allowed for completion of make-up work in the case of an extended illness or other extenuating circumstances.

## 2. Unexcused Absences

### a. The following are examples of absences which will not be excused:

- (1) Truancy. An absence by a student which was not approved by the parent and/or the school district.
- (2) Any absence in which the student failed to comply with any reporting requirements of the school district's attendance procedures.
- (3) Work at home/Needed at home.
- (4) Work at a business, except under a school-sponsored work release program.
- (5) Vacations with family.

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## Attendance Policy

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- (6) Personal trips to schools or colleges.
- (7) Absences resulting from cumulated unexcused tardies. Three unexcused tardies equal one unexcused absence.
- (8) Any other absence not included under the attendance procedures set out in this policy. For Example: Hunting, Fishing, 4-H, Rodeo, etc.

b. Consequences **Protocols** for Unexcused Absences

- (1) Absences resulting from official suspension will be handled in accordance with the Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40-121A.56.
- (2) Days during which a student is suspended from school shall not be counted in a student's total cumulated unexcused absences.
- (3) In cases of recurring unexcused absences, the administration may also request the county attorney to file a petition with the juvenile court, pursuant to Minnesota statutes.
- (4) ~~Students with unexcused absences shall be subject to discipline in the following manner:~~
  - ~~(a) With the exception of truancy absences, work missed on a day marked unexcused may be turned in the day after the student returns to school. Work completed on the day of truancy that represents work from multiple days (tests, group projects, long term projects) will be accepted.~~
  - ~~(b) After the 3<sup>rd</sup> cumulated unexcused absence in a trimester, a student's parent or guardian will be notified by mail that his or her child is nearing a total of 5 unexcused absences and that, after the 5th unexcused absence, students in grades 9-12 shall have their grade reduced by one increment for each unexcused absence thereafter.~~
  - ~~(c) After such notification, the student or his or her parent or guardian may, within a reasonable time, request a conference with school officials regarding the student's absences and the prescribed discipline. The notification will offer the student's parent or guardian an opportunity to request such a conference.~~
  - ~~(d) For high school students in grades 9-12 on the 6th cumulative unexcused absence in a trimester the teacher will reduce the student's letter grade by one increment in consultation with the building administrator. The grade will be reduced one increment for each unexcused absence thereafter (i.e. A- to B+). The administration may impose the loss of academic credit in the class or classes from which the student has been absent. However, prior to loss of credit, an administrative contact must be made with~~

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# STUDENTS

## Attendance Policy

503-NB

~~the student and parent and the parent must be provided an opportunity to have an administrative conference if desired.~~

- ~~(e) Students may be assigned detention or suspended from school for truancy.~~
- ~~(f) If the result of a grade reduction or loss of credit has the effect of an expulsion, the school district will follow the procedures set forth in the Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40-121A.56.~~
- ~~(g) A student may appeal the grade reduction process if the student feels that he/she has a valid reason (i.e. unforeseeable extenuating circumstance) for the absence. An Appeals Committee will review and make a decision on the appeal.~~

### C. Tardiness

1. Definition: Students are expected to be in their assigned area at designated times. Failure to do so constitutes tardiness. A student will be marked tardy if they arrive to class within ten minutes of the bell. Students that are more than ten minutes late will be marked absent.
2. Procedures for Reporting Tardiness
  - a. Students tardy at the start of school must report to the school office or classroom for an admission slip.
  - b. Tardiness between periods will be handled by the teacher.
3. Excused Tardiness

Valid excuses for tardiness are:

- a. Illness.
- b. Serious illness in the student's immediate family.
- c. A death or funeral in the student's immediate family or of a close friend or relative.
- d. Medical, dental, orthodontic, or mental health treatment.
- e. Court appearances occasioned by family or personal action.
- f. Physical emergency conditions such as fire, flood, storm, etc.

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# STUDENTS

## Attendance Policy

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- g. Any tardiness for which the student has been excused in writing by an administrator or faculty member.
4. Unexcused Tardiness
  - a. An unexcused tardiness is failing to be in an assigned area at the designated time class period commences without a valid excuse.
  - b. Consequences of tardiness may include detention after 3 unexcused tardies. In addition, for students ages 12 through 17, ~~grades 9-12~~, 3 unexcused tardies are equivalent to one unexcused absence. Three late to school unexcused tardies for students ages 11 and under ~~grades K-8~~ are the equivalent to one unexcused absence.
- D. Participation in Extracurricular Activities and School-Sponsored On-the-Job Training Programs
  1. This policy applies to all students involved in any extracurricular activity scheduled either during or outside the school day and any school-sponsored on-the-job training programs.
  2. School-initiated absences will be accepted and participation permitted.
  3. A student may not participate in any activity or program if he or she has an unexcused absence from any class during the day.
  4. If a student is suspended from any class he or she may not participate in any activity or program that day.
  5. If a student is absent from school due to medical reasons, he or she must present a physician's statement or a statement from the student's parent or guardian clearing the student for participation that day. The note must be presented to the coach or advisor before the student participates in the activity or program.

### III. DISSEMINATION OF POLICY

Copies of this policy shall be made available to all students and parents at the commencement of each school year. This policy shall also be available upon request in each principal's office.

### IV. REQUIRED REPORTING

#### A. Continuing Truant

Minn. Stat. § 260A.02 provides that a continuing truant is a student who is subject to the compulsory instruction requirements of Minn. Stat. § 120A.22 and is absent from instruction in a school, as defined

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# STUDENTS

## Attendance Policy

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in Minn. Stat. § 120A.05, without valid excuse within a single school year.

1. Three days if the child is in elementary school; or
2. Three or more class periods on three days if the child is in middle school or high school.

### B. Reporting Responsibility

When a student is initially classified as a continuing truant, Minn. Stat. § 260A.03 provides that the school attendance officer or other designated school official shall notify the student's parent or legal guardian, by first class mail or other reasonable means, of the following:

1. That the child is truant;
2. That the parent or guardian should notify the school if there is a valid excuse for the child's absences;
3. That the parent or guardian is obligated to compel the attendance of the child at school pursuant to Minn. Stat. § 120A.22 and parents or guardians who fail to meet this obligation may be subject to prosecution under Minn. Stat. § 120A.34;
4. That this notification serves as the notification required by Minn. Stat. § 120A.34;
5. That alternative educational programs and services may be available in the child's enrolling or resident district;
6. That the parent or guardian has the right to meet with appropriate school personnel to discuss solutions to the child's truancy;
7. That if the child continues to be truant, the parent and child may be subject to juvenile court proceedings under Minn. Stat. Ch. 260;
8. That if the child is subject to juvenile court proceedings, the child may be subject to suspension, restriction, or delay of the child's driving privilege pursuant to Minn. Stat. § 260C.201; and
9. That it is recommended that the parent or guardian accompany the child to school and attend classes with the child for one day.

### C. Habitual Truant

1. A habitual truant is a child under the age of 17 years who is absent from attendance at school without lawful excuse for seven school days per school year if the child is in elementary school or

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# STUDENTS

## Attendance Policy

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for one or more class periods on seven school days per school year if the child is in middle school or high school, or a child who is 17 years of age who is absent from attendance at school without lawful excuse for one or more class periods on seven school days per school year and who has not lawfully withdrawn from school.

2. A school district attendance officer shall refer a habitual truant child and the child's parent or legal guardian to appropriate services and procedures, under Minn. Stat. Ch. 260A.

### Legal References:

Minn. Stat. § 120A.05 (Definitions)  
Minn. Stat. § 120A.22 (Compulsory Instruction)  
Minn. Stat. § 120A.24 (Reporting)  
Minn. Stat. § 120A.26 (Enforcement and Prosecution)  
Minn. Stat. § 120A.34 (Violations; Penalties)  
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 260A.02 (Definitions)  
Minn. Stat. § 260A.03 (Notice to Parent or Guardian When Child is a Continuing Truant)  
Minn. Stat. § 260C.007, Subd. 19 (Habitual Truant Defined)  
Minn. Stat. § 260C.201 (Dispositions; Children in Need of Protection or Services or Neglected and in Foster Care)  
*Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975)  
*Slocum v. Holton Board of Education*, 429 N.W.2d 607 (Mich. App. Ct. 1988)  
*Campbell v. Board of Education of New Milford*, 475 A.2d 289 (Conn. 1984)  
*Hamer v. Board of Education of Township High School District No. 113*, 66 Ill. App.3d 7, 383 N.E.2d 231 (1978)  
*Gutierrez v. School District R-1*, 585 P.2d 935 (Co. Ct. App. 1978)  
*Knight v. Board of Education*, 38 Ill. App. 3d 603, 348 N.E.2d 299 (1976)  
*Dorsey v. Bale*, 521 S.W.2d 76 (Ky. 1975)

### Cross References:

NB Policy 506 (Student Discipline)

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#### North Branch Independent School District No. 138: District Policy 503-NB

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# STUDENTS

## Student Discipline

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### I. PURPOSE

~~The purpose of this policy is to ensure that students are aware of and comply with the school district's expectations for student conduct. Such compliance will enhance the school district's ability to maintain discipline and ensure that there is no interference with the educational process. The school district will take appropriate disciplinary action when students fail to adhere to the Code of Student Conduct established by this policy.~~

North Branch Area Public Schools recognizes that appropriate school behavior is critical to academic success and sustaining a safe and caring learning community. It is also the intention of this policy to ensure a safe and orderly learning environment for all students and a safe working environment for staff. Effective teaching of school appropriate behavior is the responsibility of the adults in every school. Effective school discipline includes the establishment of high standards of behavior, school cultures of respect and acceptance, instruction in appropriate behavior, time for students to learn appropriate behavior, and fair and proportionate consequences for failure to meet behavior expectations. Students share in the responsibility to uphold and respect the high standards of school behavior that contribute to the ability of all to learn. Effective discipline maximizes the amount of student and staff time and attention spent on teaching and learning and minimizes the amount of student and staff time and attention directed toward behavior that disrupts the learning process. The District looks to parents/guardians and families to partner in the teaching, learning and supporting of appropriate school behavior to maximize the academic success of their students. Effective discipline considers the age and development of the student in framing the instruction in appropriate behavior and the consequences for misbehavior. Effective discipline is educational, not punitive. Effective discipline includes building relationships, repair of harm and restoring relationships and restorative practices to re-engage students in their learning community. This discipline policy is adopted in accordance with and subject to the Minnesota Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40 through 121A.56.

### II. GENERAL STATEMENT OF POLICY

The school board recognizes that individual responsibility and mutual respect are essential components of the educational process. The school board further recognizes that nurturing the maturity of each student is of primary importance and is closely linked with the balance that must be maintained between authority and self-discipline as the individual progresses from a child's dependence on authority to the more mature behavior of self-control.

All students are entitled to learn and develop in a setting which promotes respect of self, others, and property. Proper positive discipline can only result from an environment which provides options and stresses student self-direction, decision-making, and responsibility. Schools can function effectively only with internal discipline based on mutual understanding of rights and responsibilities.

Students must conduct themselves in an appropriate manner that maintains a climate in which learning

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#### North Branch Independent School District No. 138: Policy #506-NB

**Adopted:** February 12, 1998

**Replaced:** Policy #5144 Student Discipline Policy (Student); Policy # 5114 Suspension-Expulsion-Age of Majority (Student); and Policy #5115 Detention (Student)

**Revised:** May 5, 2003, June 10, 2004, September 8, 2011, July 10, 2014, March 10, 2016, June 8, 2017, December 13, 2018

**Effective:** June 10, 2004, September 8, 2011, July 10, 2014, March 10, 2016, June 8, 2017, December 13, 2018

# STUDENTS

## Student Discipline

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can take place. Overall decorum affects student attitudes and influences student behavior. Proper student conduct is necessary to facilitate the education process and to create an atmosphere conducive to high student achievement.

Although this policy emphasizes the development of self-discipline, it is recognized that there are instances when it will be necessary to administer disciplinary measures. The position of the school district is that a fair and equitable district-wide student discipline policy will contribute to the quality of the student's educational experience. This discipline policy is adopted in accordance with and subject to the Minnesota Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40-121A.56.

In view of the foregoing and in accordance with Minn. Stat. § 121A.55, the school board, with the participation of school district administrators, teachers, employees, students, parents, community members, and such other individuals and organizations as appropriate, has developed this policy which governs student conduct and applies to all students of the school district.

### III. AREAS OF RESPONSIBILITY

- A. The School Board. The school board holds all school personnel responsible for the maintenance of order within the school district and supports all personnel acting within the framework of this discipline policy.
- B. Superintendent. The superintendent shall establish guidelines and directives to carry out this policy, hold all school personnel, students, and parents responsible for conforming to this policy, and support all school personnel performing their duties within the framework of this policy. The superintendent shall also establish guidelines and directives for using the services of appropriate agencies for assisting students and parents. Any guidelines or directives established to implement this policy shall be submitted to the school board for approval and shall be attached as an addendum to this policy.
- C. Principal. The school principal is given the responsibility and authority to formulate building rules and regulations necessary to enforce this policy, subject to final school board approval. The principal shall give direction and support to all school personnel performing their duties within the framework of this policy. The principal shall consult with parents of students conducting themselves in a manner contrary to the policy. The principal shall also involve other professional employees in the disposition of behavior referrals and shall make use of those agencies appropriate for assisting students and parents. A principal, in exercising his or her lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.
- D. Teachers. All teachers shall be responsible for providing a well-planned teaching/learning environment and shall have primary responsibility for student conduct, with appropriate

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#### North Branch Independent School District No. 138: Policy #506-NB

**Adopted:** February 12, 1998

**Replaced:** Policy #5144 Student Discipline Policy (Student); Policy # 5114 Suspension-Expulsion-Age of Majority (Student); and Policy #5115 Detention (Student)

**Revised:** May 5, 2003, June 10, 2004, September 8, 2011, July 10, 2014, March 10, 2016, June 8, 2017, December 13, 2018

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# STUDENTS

## Student Discipline

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assistance from the administration. All teachers shall enforce the Code of Student Conduct. In exercising the teacher's lawful authority, a teacher may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

- E. Other School District Personnel. All school district personnel shall be responsible for contributing to the atmosphere of mutual respect within the school. Their responsibilities relating to student behavior shall be as authorized and directed by the superintendent. A school employee, school bus driver, or other agent of a school district, in exercising his or her lawful authority, may use reasonable force when it is necessary under the circumstances to restrain a student or prevent bodily harm or death to another.
- F. Parents or Legal Guardians. Parents and guardians shall be held responsible for the behavior of their children as determined by law and community practice. They are expected to cooperate with school authorities and to participate regarding the behavior of their children.
- G. Students. All students shall be held individually responsible for their behavior and for knowing and obeying the Code of Student Conduct and this policy.
- H. Community Members. Members of the community are expected to contribute to the establishment of an atmosphere in which rights and duties are effectively acknowledged and fulfilled.

#### IV. STUDENT RIGHTS

All students have the right to an education and the right to learn.

#### V. STUDENT RESPONSIBILITIES

All students have the responsibility:

- A. For their behavior and for knowing and obeying all school rules, regulations, policies, and procedures;
- B. To attend school daily, except when excused, and to be on time to all classes and other school functions;
- C. To pursue and attempt to complete the courses of study prescribed by the state and local school authorities;
- D. To make necessary arrangements for making up work when absent from school;

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# STUDENTS

## Student Discipline

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- E. To assist the school staff in maintaining a safe school for all students;
- F. To be aware of all school rules, regulations, policies, and procedures, including those in this policy, and to conduct themselves in accord with them;
- G. To assume that until a rule or policy is waived, altered, or repealed, it is in full force and effect;
- H. To be aware of and comply with federal, state, and local laws;
- I. To volunteer information in disciplinary cases should they have any knowledge relating to such cases and to cooperate with school staff as appropriate;
- J. To respect and maintain the school's property and the property of others;
- K. To dress and groom in a manner which meets standards of safety and health and common standards of decency and which is consistent with applicable school district policy;
- L. To avoid inaccuracies in student newspapers or publications and refrain from indecent or obscene language;
- M. To conduct themselves in an appropriate physical or verbal manner; and
- N. To recognize and respect the rights of others.

## VI. CODE OF STUDENT CONDUCT

- A. The following are examples of unacceptable behavior subject to disciplinary action by the school district. These examples are not intended to be an exclusive list. Any student who engages in any of these activities shall be disciplined in accordance with this policy. This policy applies to all school buildings, school grounds, and school property or property immediately adjacent to school grounds; school-sponsored activities or trips; school bus stops; school buses, school vehicles, school contracted vehicles, or any other vehicles approved for school district purposes; the area of entrance or departure from school premises or events; and all school-related functions, school-sponsored activities, events, or trips. School district property also may mean a student's walking route to or from school for purposes of attending school or school-related functions, activities, or events. While prohibiting unacceptable behavior subject to disciplinary action at these locations and events, the school district does not represent that it will provide supervision or assume liability at these locations and events. This policy also applies to any student whose conduct at any time or in any place interferes with or obstructs the mission or operations of the school district or the safety or welfare of the student, other students, or employees.

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### North Branch Independent School District No. 138: Policy #506-NB

**Adopted:** February 12, 1998

**Replaced:** Policy #5144 Student Discipline Policy (Student); Policy # 5114 Suspension-Expulsion-Age of Majority (Student); and Policy #5115 Detention (Student)

**Revised:** May 5, 2003, June 10, 2004, September 8, 2011, July 10, 2014, March 10, 2016, June 8, 2017, December 13, 2018

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1. Violations against property including, but not limited to, damage to or destruction of school property or the property of others, failure to compensate for damage or destruction of such property, arson, breaking and entering, theft, robbery, possession of stolen property, extortion, trespassing, unauthorized usage, or vandalism;
2. The use of profanity or obscene language, or the possession of obscene materials;
3. Gambling, including, but not limited to, playing a game of chance for stakes;
4. Violation of the school district's Hazing Prohibition Policy;
5. Attendance problems including, but not limited to, truancy, absenteeism, tardiness, skipping classes, or leaving school grounds without permission;
6. Violation of the school district's Student Attendance Policy;
7. Opposition to authority using physical force or violence;
8. Using, possessing, or distributing tobacco, tobacco-related devices, electronic cigarettes, or tobacco paraphernalia in violation of the school district's Tobacco-Free Environment Policy;
9. Using, possessing, distributing, intending to distribute, making a request to another person for (solicitation), or being under the influence of alcohol or other intoxicating substances or look-alike substances;
10. Using, possessing, distributing, intending to distribute, making a request to another person for (solicitation), or being under the influence of narcotics, drugs, or other controlled substances, or look-alike substances, except as prescribed by a physician, including one student sharing prescription medication with another student;
11. Using, possessing, or distributing items or articles that are illegal or harmful to persons or property including, but not limited to, drug paraphernalia;
12. Using, possessing, or distributing weapons, or look-alike weapons or other dangerous objects;
13. Violation of the school district's Weapons Policy;
14. Violation of the school district's Violence Prevention Policy;

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15. Possession of ammunition including, but not limited to, bullets or other projectiles designed to be used in or as a weapon;
16. Possession, use, or distribution of explosives or any compound or mixture, the primary or common purpose or intended use of which is to function as an explosive;
17. Possession, use, or distribution of fireworks or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation;
18. Using an ignition device, including a butane or disposable lighter or matches, inside an educational building and under circumstances where there is a risk of fire, except where the device is used in a manner authorized by the school;
19. Violation of any local, state, or federal law as appropriate;
20. Acts disruptive of the educational process, including, but not limited to, disobedience, disruptive or disrespectful behavior, defiance of authority, cheating, insolence, insubordination, failure to identify oneself, improper activation of fire alarms, or bomb threats;
21. Violation of the school district's Internet Acceptable Use and Safety Policy;
22. Possession of nuisance devices or objects which cause distractions and may facilitate cheating including, but not limited to, pagers, radios, and phones, including picture phones;
23. Violation of school bus or transportation rules or the school district's Student Transportation Safety Policy;
24. Violation of parking or school traffic rules and regulations, including, but not limited to, driving on school property in such a manner as to endanger persons or property;
25. Violation of directives or guidelines relating to lockers or improperly gaining access to a school locker;
26. Violation of the school district's Search of Student Lockers, Desks, Personal Possessions, and Student's Person Policy;
27. Violation of the school district's Student Use and Parking of Motor Vehicles; Patrols,

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- Inspections, and Searches Policy;
28. Possession or distribution of slanderous, libelous, or pornographic materials;
  29. Violation of the school district' Bullying Prohibition Policy;
  30. Student attire or personal grooming which creates a danger to health or safety or creates a disruption to the educational process, including clothing which bears a message which is lewd, vulgar, or obscene, apparel promoting products or activities that are illegal for use by minors, or clothing containing objectionable emblems, signs, words, objects, or pictures communicating a message that is racist, sexist, or otherwise derogatory to a protected minority group or which connotes gang membership;
  31. Criminal activity;
  32. Falsification of any records, documents, notes, or signatures;
  33. Tampering with, changing, or altering records or documents of the school district by any method including, but not limited to, computer access or other electronic means;
  34. Scholastic dishonesty which includes, but is not limited to, cheating on a school assignment or test, plagiarism, or collusion, including the use of picture phones or other technology to accomplish this end;
  35. Impertinent or disrespectful words, symbols, acronyms, or language, whether oral or written, related to teachers or other school district personnel;
  36. Violation of the school district's Harassment and Violence Policy;
  37. Actions, including fighting or any other assaultive behavior, which causes or could cause injury to the student or other persons or which otherwise endangers the health, safety, or welfare of teachers, students, other school district personnel, or other persons;
  38. Committing an act which inflicts great bodily harm upon another person, even though accidental or a result of poor judgment;
  39. Violations against persons, including, but not limited to, assault or threatened assault, fighting, harassment, interference or obstruction, attack with a weapon, or look-alike weapon, sexual assault, illegal or inappropriate sexual conduct, or indecent exposure;

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40. Verbal assaults or verbally abusive behavior including, but not limited to, use of words, symbols, acronyms, or language, whether oral or written, that are discriminatory, abusive, obscene, threatening, intimidating, degrading to other people, or threatening to school property;
41. Physical or verbal threats including, but not limited to, the staging or reporting of dangerous or hazardous situations that do not exist;
42. Inappropriate, abusive, threatening, or demeaning actions based on race, color, creed, religion, sex, marital status, status with regard to public assistance, disability, national origin, or sexual orientation;
43. Violation of the school district's Distribution of Nonschool-Sponsored Materials on School Premises by Students and Employees Policy;
44. Violation of the school district's one-to-one device rules and regulations;
45. Violation of school rules, regulations, policies, or procedures, including, but not limited to, those policies specifically enumerated in this policy;
46. Other acts, as determined by the school district, which are disruptive of the educational process or dangerous or detrimental to the student or other students, school district personnel or surrounding persons, or which violate the rights of others or which damage or endanger the property of the school, or which otherwise interferes with or obstruct the mission or operations of the school district or the safety or welfare of students or employees.

### VII. DISCIPLINARY ACTION OPTIONS

The general policy of the school district is to utilize progressive discipline to the extent reasonable and appropriate based upon the specific facts and circumstances of student misconduct. The specific form of discipline chosen in a particular case is solely within the discretion of the school district. At a minimum, violation of school district rules, regulations, policies, or procedures will result in discussion of the violation and a verbal warning. The school district shall, however, impose more severe disciplinary sanctions for any violation, including exclusion or expulsion, if warranted by the student's misconduct, as determined by the school district. Disciplinary action may include, but is not limited to, one or more of the following:

- A. Student conference with teacher, principal, counselor, or other school district personnel, and verbal warning;
- B. Confiscation by school district personnel and/or by law enforcement of any item, article, object,

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or thing, prohibited by, or used in the violation of, any school district policy, rule, regulation, procedure, or state or federal law. If confiscated by the school district, the confiscated item, article, object, or thing will be released only to the parent/guardian following the completion of any investigation or disciplinary action instituted or taken related to the violation.

- C. Parent contact;
- D. Parent conference;
- E. Removal from class;
- F. In-school suspension;
- G. Suspension from extracurricular activities;
- H. Detention or restriction of privileges;
- I. Loss of school privileges;
- J. In-school monitoring or revised class schedule;
- K. Referral to in-school support services;
- L. Referral to community resources or outside agency services;
- M. Financial restitution;
- N. Referral to police, other law enforcement agencies, or other appropriate authorities;
- O. A request for a petition to be filed in district court for juvenile delinquency adjudication;
- P. Out-of-school suspension under the Pupil Fair Dismissal Act;
- Q. Preparation of an admission or readmission plan;
- R. Expulsion under the Pupil Fair Dismissal Act;
- S. Exclusion under the Pupil Fair Dismissal Act; and/or
- T. Other disciplinary action as deemed appropriate by the school district.

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### VIII. REMOVAL OF STUDENTS FROM CLASS

- A. The teacher of record shall have the general control and government of the classroom. Teachers have the responsibility of attempting to modify disruptive student behavior by such means as conferring with the student, using positive reinforcement, assigning detention or other consequences, or contacting the student's parents. When such measures fail, or when the teacher determines it is otherwise appropriate based upon the student's conduct, the teacher shall have the authority to remove the student from class pursuant to the procedures established by this discipline policy. "Removal from class" and "removal" mean any actions taken by a teacher, principal, or other school district employee to prohibit a student from attending a class or activity period for a period of time not to exceed five (5) days, pursuant to this discipline policy.

Grounds for removal from class shall include any of the following:

1. Willful conduct that significantly disrupts the rights of others to an education, including conduct that interferes with a teacher's ability to teach or communicate effectively with students in a class or with the ability of other students to learn;
2. Willful conduct that endangers surrounding persons, including school district employees, the student or other students, or the property of the school;
3. Willful violation of any school rules, regulations, policies or procedures, including the Code of Student Conduct in this policy; or
4. Other conduct, which in the discretion of the teacher or administration, requires removal of the student from class.

Such removal shall be for at least one (1) activity period or class period of instruction for a given course of study and shall not exceed five (5) such periods.

A student must be removed from class immediately if the student engages in assault or violent behavior. "Assault" is an act done with intent to cause fear in another of immediate bodily harm or death; or the intentional infliction of, or attempt to inflict, bodily harm upon another. The removal from class shall be for a period of time deemed appropriate by the principal, in consultation with the teacher.

- B. If a student is removed from class more than ten (10) times in a school year, the school district shall notify the parent or guardian of the student's tenth removal from class and make reasonable attempts to convene a meeting with the student's parent or guardian to discuss the problem that is causing the student to be removed from class.

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- C. Procedures for Removal of a Student From a Class
1. The teacher or staff member will inform the student of expected behavior and allow the student a reasonable amount of time to correct his/her behavior. The teacher or staff member will determine if the student behavior requires removal of the student from class. If determined necessary, the student will be asked to leave the classroom by the teacher or staff member.
  2. If the student refuses to follow a teacher or staff member's direction to leave the classroom, the office will be notified and the principal or designee will respond.
  3. Details of the incident requiring removal from class will be provided to the principal or designee by the teacher or staff member initiating the removal as soon as possible following the occurrence.
- D. Responsibility for and Custody of a Student Removed From Class
1. Each building in the school district will have a designated space that students will be directed to upon removal from class.
  2. The teacher or staff member removing the student from class will make a decision as to whether or not the student needs to be accompanied.
  3. Each building will have a discipline plan providing information as to the procedure the student follows while out of the class, and designation of who has control over and responsibility for a student after removal from class
- E. Procedures for Return of a Student to a Class From Which the Student Was Removed
1. Following a conference with the principal or his/her designee, the student will return to class based on the readmission plan developed by the principal or designee during the conference with the student.
- F. Procedures for Notification
1. Students and parents will be notified of rule violations and resulting disciplinary action through any of the following methods: a conference with the student, a phone call, a letter, an email, a copy of the referral form, or a conference with the parent, at the discretion of the principal or designee as appropriate for the severity of the infraction.

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- G. Disabled Students; Special Provisions
1. Procedures for students with disabilities will be determined by the IEP teams and will follow current IDEA rules and regulations, including due process.
- H. Procedures for Detecting and Addressing Chemical Abuse Problems of Students While on School Premises.
1. Establishment of a chemical abuse preassessment team pursuant to Minn. Stat. § 121A.26; and
  2. Establishment of teacher reporting procedures to the chemical abuse preassessment team pursuant to Minn. Stat. § 121A.29.
- I. Procedures for Immediate and Appropriate Interventions Tied to Violations of the Code of Student Conduct
- The principal or his/her designee has discretion in assigning appropriate consequences to students for violations of the code of student conduct, considering such things as the severity of the infraction and the student's previous history of violations of the code of conduct.
- J. Any Procedures Determined Appropriate for Encouraging Early Involvement of Parents or Guardians in Attempts to Improve a Student's Behavior
- Parents will be notified of infractions of the student code of conduct that result in the student being referred to the principal or his/her designee. Each building will maintain adequate records of documented behaviors and interventions for each student.
- K. Any Procedures Determined Appropriate for Encouraging Early Detection of Behavioral Problems
- Each building will have a Student Assistance Team that will be designed to promote early intervention practices in the classroom and school when staff and/or parents have indicated a concern.

## IX. DISMISSAL

- A. "Dismissal" means the denial of the current educational program to any student, including exclusion, expulsion and suspension. Dismissal does not include removal from class.

The school district shall not deny due process or equal protection of the law to any student

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involved in a dismissal proceeding which may result in suspension, exclusion or expulsion.

The school district shall not dismiss any student without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property.

B. Violations leading to suspension, based upon severity, may also be grounds for actions leading to expulsion, and/or exclusion. A student may be dismissed on any of the following grounds:

1. Willful violation of any reasonable school board regulation, including those found in this policy;
2. Willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
3. Willful conduct that endangers the student or other students, or surrounding persons, including school district employees, or property of the school.

C. Suspension Procedures

1. "Suspension" means an action by the school administration, under rules promulgated by the School Board, prohibiting a student from attending school for a period of no more than ten (10) school days; provided, however, if a suspension is longer than five (5) school days, the suspending administrator shall provide the superintendent with a reason for the longer term of suspension. This definition does not apply to dismissal for one (1) school day or less where a student with a disability does not receive regular or special education instruction during that dismissal period.
2. If a student's total days of removal from school exceed ten (10) cumulative days in a school year, the school district shall make reasonable attempts to convene a meeting with the student and the student's parent or guardian before subsequently removing the student from school and, with the permission of the parent or guardian, arrange for a mental health screening for the student at the parent or guardian's expense. The purpose of this meeting is to attempt to determine the pupil's need for assessment or other services or whether the parent or guardian should have the student assessed or diagnosed to determine whether the student needs treatment for a mental health disorder.
3. Each suspension action may include a readmission plan. The plan shall include, where

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appropriate, a provision for implementing alternative educational services upon readmission which must not be used to extend the current suspension. A readmission plan must not obligate a parent or guardian to provide psychotropic drugs to their student as a condition of readmission. School administration must not use the refusal of a parent or guardian to consent to the administration of psychotropic drugs to their student or to consent to a psychiatric evaluation, screening, or examination of the student as a ground, by itself, to prohibit the student from attending class or participating in a school-related activity, or as a basis of a charge of child abuse, child neglect, or medical or educational neglect. The school administration may not impose consecutive suspensions against the same student for the same course of conduct, or incident of misconduct, except where the student will create an immediate and substantial danger to self or to surrounding persons or property or where the school district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of fifteen (15) days.

4. A child with a disability may be suspended. When a child with a disability has been suspended for more than five (5) consecutive days or ten (10) cumulative school days in the same year, and that suspension does not involve a recommendation for expulsion or exclusion or other change in placement under federal law, relevant members of the child's IEP team, including at least one of the child's teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child's IEP. That meeting must occur as soon as possible, but no more than ten (10) days after the sixth (6<sup>th</sup>) consecutive day of suspension or the tenth (10<sup>th</sup>) cumulative day of suspension has elapsed.
5. The school administration shall implement alternative educational services when the suspension exceeds five (5) days. Alternative educational services may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessments, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center under Minn. Stat. § 123A.05 selected to allow the pupil to progress toward meeting graduation standards under Minn. Stat. § 120B.02, although in a different setting.
6. The school administration shall not suspend a student from school without an informal administrative conference with the student. The informal administrative conference shall take place before the suspension, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following

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the suspension. At the informal administrative conference, a school administrator shall notify the student of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the student may present the student's version of the facts. A separate administrative conference is required for each period of suspension.

7. After school administration notifies a student of the grounds for suspension, school administration may, instead of imposing the suspension, do one or more of the following:
  - a. strongly encourage a parent or guardian of the student to attend school with the student for one day;
  - b. assign the student to attend school on Saturday as supervised by the principal or the principal's designee; and
  - c. petition the juvenile court that the student is in need of services under Minn. Stat. Ch. 260C. (NB change)
8. A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the Minnesota Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40-121A.56, shall be personally served upon the student at or before the time the suspension is to take effect, and upon the student's parent or guardian by mail within forty-eight (48) hours of the conference.
9. The school administration shall make reasonable efforts to notify the student's parent or guardian of the suspension by telephone as soon as possible following suspension.
10. In the event a student is suspended without an informal administrative conference on the grounds that the student will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the student and the student's parent or guardian within forty-eight (48) hours of the suspension. Service by mail shall be complete upon mailing.
11. Notwithstanding the foregoing provisions, the student may be suspended pending the school board's decision in an expulsion or exclusion proceeding, provided that alternative educational services are implemented to the extent that suspension exceeds five (5) days.

D. Expulsion and Exclusion Procedures

1. "Expulsion" means a school board action to prohibit an enrolled student from further

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- attendance for up to twelve (12) months from the date the student is expelled. The authority to expel rests with the school board.
2. "Exclusion" means an action taken by the school board to prevent enrollment or re-enrollment of a student for a period that shall not extend beyond the school year. The authority to exclude rests with the school board.
  3. All expulsion and exclusion proceedings will be held pursuant to and in accordance with the provisions of the Minnesota Pupil Fair Dismissal Act, Minn. Stat. §§121A.40-121A.56.
  4. No expulsion or exclusion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the student and parent or guardian.
  5. The student and parent or guardian shall be provided written notice of the school district's intent to initiate expulsion or exclusion proceedings. This notice shall be served upon the student and his or her parent or guardian personally or by mail, and shall contain a complete statement of the facts; a list of the witnesses and a description of their testimony; state the date, time and place of hearing; be accompanied by a copy of the Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40-121A.56; describe alternative educational services accorded the student in an attempt to avoid the expulsion proceedings; and inform the student and parent or guardian of their right to: (1) have a representative of the student's own choosing, including legal counsel at the hearing; (2) examine the student's records before the hearing; (3) present evidence; and (4) confront and cross-examine witnesses. The school district shall advise the student's parent or guardian that free or low-cost legal assistance may be available and that a legal assistance resource list is available from the Minnesota Department of Education (MDE).
  6. The hearing shall be scheduled within ten (10) days of the service of the written notice unless an extension, not to exceed five (5) days, is requested for good cause by the school district, student, parent, or guardian.
  7. All hearings shall be held at a time and place reasonably convenient to the student, parent, or guardian and shall be closed, unless the student, parent, or guardian requests an open hearing.
  8. The school district shall record the hearing proceedings at district expense, and a party may obtain a transcript at its own expense.

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9. The student shall have a right to a representative of the student's own choosing, including legal counsel, at the student's sole expense. The school district shall advise the student's parent or guardian that free or low-cost legal assistance may be available and that a legal assistance resource list is available from MDE. The school board may appoint an attorney to represent the school district in any proceeding.
10. If the student designates a representative other than the parent or guardian, the representative must have a written authorization from the student and the parent or guardian providing them with access to and/or copies of the student's records.
11. All expulsion or exclusion hearings shall take place before and be conducted by an independent hearing officer designated by the school district. The hearing shall be conducted in a fair and impartial manner. Testimony shall be given under oath and the hearing officer shall have the power to issue subpoenas and administer oaths.
12. At a reasonable time prior to the hearing, the student, parent or guardian, or authorized representative shall be given access to all school district records pertaining to the student, including any tests or reports upon which the proposed dismissal action may be based.
13. The student, parent or guardian, or authorized representative, shall have the right to compel the presence of any school district employee or agent or any other person who may have evidence upon which the proposed dismissal action may be based, and to confront and cross-examine any witnesses testifying for the school district.
14. The student, parent or guardian, or authorized representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.
15. The student cannot be compelled to testify in the dismissal proceedings.
16. The hearing officer shall prepare findings and a recommendation based solely upon substantial evidence presented at the hearing, which must be made to the school board and served upon the parties within two (2) days after the close of the hearing.
17. The school board shall base its decision upon the findings and recommendation of the hearing officer and shall render its decision at a meeting held within five (5) days after receiving the findings and recommendation. The school board may provide the parties with the opportunity to present exceptions and comments to the hearing officer's findings and recommendation provided that neither party presents any evidence not admitted at

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**North Branch Independent School District No. 138: Policy #506-NB**

**Adopted:** February 12, 1998

**Replaced:** Policy #5144 Student Discipline Policy (Student); Policy # 5114 Suspension-Expulsion-Age of Majority (Student); and Policy #5115 Detention (Student)

**Revised:** May 5, 2003, June 10, 2004, September 8, 2011, July 10, 2014, March 10, 2016, June 8, 2017, December 13, 2018

**Effective:** June 10, 2004, September 8, 2011, July 10, 2014, March 10, 2016, June 8, 2017, December 13, 2018

# STUDENTS

## Student Discipline

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the hearing. The decision by the school board must be based on the record, must be in writing, and must state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the Commissioner of Education (Commissioner) of the basis and reason for the decision.

18. A party to an expulsion or exclusion decision made by the school board may appeal the decision to the Commissioner within twenty-one (21) calendar days of school board action pursuant to Minn. Stat. § 121A.49. The decision of the school board shall be implemented during the appeal to the Commissioner.
19. The school district shall report any suspension, expulsion or exclusion action taken to the appropriate public service agency, when the student is under the supervision of such agency.
20. The school district must report, through the MDE electronic reporting system, each expulsion or exclusion within thirty (30) days of the effective date of the action to the Commissioner. This report must include a statement of alternative educational services given the student and the reason for, the effective date, and the duration of the exclusion or expulsion. The report must also include the student's age, grade, gender, race, and special education status. The dismissal report must include state student identification numbers of affected students.
21. Whenever a student fails to return to school within ten (10) school days of the termination of dismissal, a school administrator shall inform the student and his/her parent or guardian by mail of the student's right to attend and to be reinstated in the school district.

### X. ADMISSION OR READMISSION PLAN

A school administrator shall prepare and enforce an admission or readmission plan for any student who is excluded or expelled from school. The plan may include measures to improve the student's behavior, including completing a character education program consistent with Minn. Stat. § 120B.232, Subd. 1, and require parental involvement in the admission or readmission process, and may indicate the consequences to the student of not improving the student's behavior. The readmission plan must not obligate parents to provide a sympathomimetic medication for their child as a condition of readmission.

### XI. NOTIFICATION OF POLICY VIOLATIONS

Notification of any violation of this policy and resulting disciplinary action shall be as provided herein, or as otherwise provided by the Pupil Fair Dismissal Act or other applicable law. The teacher, principal or other school district official may provide additional notification as deemed appropriate.

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#### North Branch Independent School District No. 138: Policy #506-NB

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# STUDENTS

## Student Discipline

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In addition, the school district must report, through the MDE electronic reporting system, each physical assault of a school district employee by a student within thirty (30) days of the assault. This report must include a statement of the alternative educational services or other sanction, intervention, or resolution given to the student in response to the assault and the reason for, the effective date, and the duration of the exclusion or expulsion or other sanction, intervention, or resolution. The report must also include the student's age, grade, gender, race, and special education status.

### XII. STUDENT DISCIPLINE RECORDS

The policy of the school district is that complete and accurate student discipline records be maintained. The collection, dissemination, and maintenance of student discipline records shall be consistent with applicable school district policies and federal and state law, including the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13.

### XIII. DISABLED STUDENTS

Students who are currently identified as eligible under the IDEA or Section 504 will be subject to the provisions of this policy, unless the student's IEP or 504 plan specifies a necessary modification.

Before initiating an expulsion or exclusion of a student with a disability, relevant members of the child's IEP team and the child's parent shall, consistent with federal law, conduct a manifestation determination and determine whether the child's behavior was (i) caused by or had a direct and substantial relationship to the child's disability and (ii) whether the child's conduct was a direct result of a failure to implement the child's IEP. If the student's educational program is appropriate and the behavior is not a manifestation of the student's disability, the school district will proceed with discipline – up to and including expulsion – as if the student did not have a disability, unless the student's educational program provides otherwise. If the team determines that the behavior subject to discipline is a manifestation of the student's disability, the team shall conduct a functional behavioral assessment and implement a behavioral intervention plan for such student provided that the school district had not conducted such assessment prior to the manifestation determination before the behavior that resulted in a change of placement. Where a behavioral intervention plan previously has been developed, the team will review the behavioral intervention plan and modify it as necessary to address the behavior.

When a student who has an IEP is excluded or expelled for misbehavior that is not a manifestation of the student's disability, the school district shall continue to provide special education and related services during the period of expulsion or exclusion.

### XIV. OPEN ENROLLED STUDENTS

The school district may terminate the enrollment of a nonresident student enrolled under an Enrollment Option Program (Minn. Stat. § 124D.03) or Enrollment in Nonresident District (Minn. Stat. § 124D.08) at

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# STUDENTS

## Student Discipline

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the end of a school year if the student meets the definition of a habitual truant, the student has been provided appropriate services for truancy (Minn. Stat. Ch. 260A), and the student's case has been referred to juvenile court. The school district may also terminate the enrollment of a nonresident student over the age of seventeen (17) enrolled under an Enrollment Options Program if the student is absent without lawful excuse for one or more periods on fifteen (15) school days and has not lawfully withdrawn from school.

### XV. DISTRIBUTION OF POLICY

The school district will notify students and parents of the existence and contents of this policy in such manner as it deems appropriate. Copies of this discipline policy shall be made available to all students and parents at the commencement of each school year and to all new students and parents upon enrollment. This policy shall also be available upon request in each principal's office.

### XVI. REVIEW OF POLICY

The principal and representatives of parents, students and staff in each school building shall confer at least annually to review this discipline policy, determine if the policy is working as intended, and to assess whether the discipline policy has been enforced. Any recommended changes shall be submitted to the superintendent for consideration by the school board, which shall conduct an annual review of this policy.

*Language from the St. Cloud Area Schools Discipline Policy was replicated in drafting this purpose statement.*

**Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. § 120B.02 (Educational Expectations for Minnesota Students)  
Minn. Stat. § 120B.232 (Character Development Education)  
Minn. Stat. § 121A.26 (School Preassessment Teams)  
Minn. Stat. § 121A.29 (Reporting; Chemical Abuse)  
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 121A.575 (Alternatives to Pupil Suspension)  
Minn. Stat. § 121A.582 (Reasonable Force)  
Minn. Stat. §§ 121A.60-121A.61 (Removal From Class)  
Minn. Stat. § 122A.42 (General Control of Schools)  
Minn. Stat. § 123A.05 (Area Learning Center Organization)  
Minn. Stat. § 124D.03 (Enrollment Options Program)  
Minn. Stat. § 124D.08 (Enrollment in Nonresident District)  
Minn. Stat. Ch. 125A (Students With Disabilities)  
Minn. Stat. Ch. 260A (Truancy)  
Minn. Stat. Ch. 260C (Juvenile Court Act)  
20 U.S.C. §§ 1400-1487 (Individuals with Disabilities Education Improvement Act of

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# STUDENTS

## Student Discipline

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2004)

29 U.S.C. § 794 *et seq.* (Rehabilitation Act of 1973, § 504)

34 C.F.R. § 300.530(e)(1) (Manifestation Determination)

### **Cross References:**

NB Policy 413 (Harassment and Violence)

NB Policy 501 (School Weapons)

NB Policy 502 (Search of Student Lockers, Desks, Personal Possessions, and Student's Person)

NB Policy 503 (Student Attendance)

NB Policy 505 (Distribution of Nonschool-Sponsored Materials on School Premises by Students and Employees)

NB Policy 514 (Bullying Prohibition Policy)

NB Policy 524 (Internet Acceptable Use and Safety Policy)

NB Policy 525 (Violence Prevention)

NB Policy 526 (Hazing Prohibition)

NB Policy 527 (Student Use and Parking of Motor Vehicles; Patrols, Inspections, and Searches)

NB Policy 610 (Field Trips)

NB Policy 709 (Student Transportation Safety Policy)

NB Policy 711 (Video Recording on School Buses)

NB Policy 712 (Video Surveillance Other Than on Buses)

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**LEASE**

**FOR**

**SHOPS AT GATEWAY NORTH**

**CGCMT 2006-C5 TANGER DRIVE, LLC,  
AS LANDLORD**

**AND**

**INDEPENDENT SCHOOL DISTRICT NO. 138 (NORTH BRANCH),  
AS TENANT**

**The submission of this document for examination does not constitute an option or offer to lease space. This document shall have no binding effect on the parties unless executed by the Landlord and the executed copy is delivered to the Tenant.**

**LEASE**

This Lease (this “Lease”) is made this \_\_\_\_\_ day of August, 2020 by and between **CGCMT 2006-C5 TANGER DRIVE, LLC**, a Delaware limited liability company (“Landlord”), and INDEPENDENT SCHOOL DISTRICT NO. 138 (NORTH BRANCH), a political subdivision of the State of Minnesota (“Tenant”).

**1. BASIC LEASE PROVISIONS:**

- 1.1 Shopping Center Name: Shops at Gateway North  
Address: 38550 Tanger Drive  
 North Branch, Minnesota 55056  
 The Shopping Center is more particularly described in Schedule 1.
- 1.2 Units/Suite Nos.: 103, 105, 106, 107, 108, and 109
- 1.3 Premises: 30,550 square feet of Net Rentable Area (defined below) as reflected on the site plan attached hereto as **Schedule 2** (the “Site Plan”).
- 1.4 Tenant’s Percentage Share: Intentionally omitted.
- 1.5 Commencement Date: The date that Landlord delivers possession of the Premises to Tenant.
- 1.6 Rent Commencement Date: September 1, 2020.
- 1.7 Expiration Date: June 30, 2021.
- 1.8 Security Deposit: \$28,004.17. (See Paragraph 23).
- 1.9 Base Rent:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
<u>Lease Year</u>		
09/01/20 – 06/30/21	\$280,041.67*	\$28,004.17

\* The amount of Annual Base Rent for 09/01/20 – 06/30/21 is prorated to account for the partial year.

- 1.10 Operating Expense Rent: Intentionally omitted.

- 1.11 Base Year: Intentionally omitted.
- 1.12 Percentage Rent: Intentionally omitted.
- 1.13 Trade Name(s): North Branch Area Public Schools – ISD 138. (See **Paragraph 7.4**).
- 1.14 Guarantor(s): Intentionally omitted.
- 1.15 Address for payment of rent and notices:

Landlord:  
 For Rent:  
 CGCMT 2006-C5 TANGER DRIVE,  
 LLC  
 c/o ProEquity Asset Management  
 600 Congress Avenue, Suite 1400  
 Austin, Texas 78701  
 Attn: Property Manager

Tenant:  
 INDEPENDENT SCHOOL  
 DISTRICT NO. 138 (NORTH  
 BRANCH)  
 Attn: Superintendent of Schools  
 38705 Grand Avenue, North Branch,  
 MN 55056

For Notices:  
 CGCMT 2006-C5 TANGER DRIVE,  
 LLC  
 c/o ProEquity Asset Management  
 4980 Hillside Circle, Suite A  
 El Dorado Hills, California 95762

With a copy of Notices only (not Rent  
 payments) to:  
 CGCMT 2006-C5 TANGER DRIVE,  
 LLC  
 c/o LNR Partners, LLC  
 1601 Washington Avenue, Suite 700  
 Miami Beach, Florida 33139  
 Attn: Director of Real Estate  
 Fax: (305) 695-5379

- 1.16 Broker: Landlord’s Broker is ProEquity Asset Management Corporation (“Landlord’s Broker”). Landlord’s Broker has engaged Christianson & Company Commercial Real Estate Services, LLC (“Christianson & Company”) with respect to this transaction pursuant to a separate written agreement between Landlord’s Broker and Christianson & Company. (See **Paragraph 39**).
- 1.17 Permitted Use: Tenant shall use the Premises solely for a public school for elementary and secondary education (grades Kindergarten through Grade 12), and

incidental ancillary uses, but subject to the restrictions set forth in this Lease, including the restrictions set forth in **Paragraph 7.2** of this Lease.

1.18 Minimum Hours of Operation: Intentionally omitted.

1.19 Minimum Hours of Illumination (of Exterior Windows of the Premises):

Monday - Friday: 9:00 a.m. – 5:00 p.m.

Saturday: Intentionally omitted.

Sunday: Intentionally omitted.

1.20 Renewal Option(s): Intentionally omitted.

1.21 Base Rent for Renewal Term: Intentionally omitted.

2. **DEFINITIONS**: Unless the context otherwise specifies or requires, the following terms will have the meanings set forth below:

2.1 Common Areas. All areas and facilities outside the Premises and within the exterior boundaries of the Shopping Center that are not leased to other tenants and that are provided and designated by Landlord, in its sole discretion from time to time, for the general use and convenience of Tenant and other tenants of the Shopping Center and their authorized representatives, employees, invitees and the general public. Common Areas include, but are not limited to, areas within and outside of the buildings in the Shopping Center, such as pedestrian walkways, patios, landscaped areas, sidewalks, service corridors, elevators, restrooms, stairways, decorative walls, plazas, mall throughways, loading areas, parking areas and roads.

2.2 Gross Sales. Intentionally omitted.

2.3 Lease Year. The first Lease Year shall be the period from the Commencement Date through June 30, 2021 (the "Expiration Date").

2.4 Net Rentable Area. All floor area within the Premises measured at floor level from the midpoint of all demising walls to the exterior surface of all exterior walls and exterior glass separating the Premises from the Common Areas (without deduction for columns or projections necessary to the Shopping Center or Premises).

2.5 Operating Expenses. Intentionally omitted.

2.6 Ready for Occupancy. Intentionally omitted.

2.7 Taxes. Intentionally omitted.

- 2.8 Environmental Law. shall mean any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).
- 2.9 Hazardous Substance. shall mean any substance, material or waste which is or becomes designated, classified or regulated as being “toxic” or “hazardous” or a “pollutant”, which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products, or which becomes hazardous to the health and welfare of any occupants in the Shopping Center.
- 2.10 Legal Requirements. shall mean any and all statutes, ordinances and requirements of all local, municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and/or the Shopping Center occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans With Disabilities Act, as amended from time to time.
- 2.11 Schedules: shall mean the Schedules attached hereto and incorporated herein by reference. This Lease contains the following Schedules:

- Schedule 1** Legal Description of Shopping Center
- Schedule 2** Site Plan
- Schedule 3** Construction Rider
- Schedule 4** Intentionally Omitted
- Schedule 5** Tenant Acceptance Letter
- Schedule 6** Rules and Regulations
- Schedule 7** Prohibited Uses
- Schedule 7A** Additional Prohibited Uses
- Schedule 8** Intentionally Omitted
- Schedule 9** Sign Criteria
- Schedule 10** Intentionally Omitted
- Schedule 11** Intentionally Omitted

- 2.12 Term. shall mean the period that shall commence on the Commencement Date and end on the Expiration Date, unless sooner terminated as provided herein or extended pursuant to the terms of this Lease.

3. **PREMISES:**

- 3.1 Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and subject to the agreements, covenants, conditions and provisions set forth in this Lease, to which Landlord and Tenant hereby

mutually agree, the Premises. The parties hereby stipulate the number of square feet of Net Rentable Area in the Premises and both parties waive the right either may have to remeasure the same. Upon occupancy of the Premises by Tenant, Tenant shall promptly execute and deliver to Landlord the Tenant Acceptance Letter attached hereto as **Schedule 5**. Tenant agrees to accept the Premises in its “AS-IS” condition and acknowledges that no representations with respect to the condition of the Premises have been made by Landlord. Notwithstanding the foregoing, Landlord represents and warrants that the heating, ventilation and air-conditioning systems serving the Premises shall be in good and working order as of the Commencement Date.

- 3.2 Shopping Center. The Premises are a part of the Shopping Center. Landlord may increase, reduce or change the number, dimensions or locations of the walks, buildings, mall areas, parking and other Common Areas and other improvements located in the Shopping Center in any manner that Landlord, in its sole discretion, shall deem proper, upon no less than 5 business days’ written notice to Tenant. . Without limiting the generality of the foregoing, Landlord reserves the right to, in its sole discretion, at all times, and from time to time throughout the Term, without incurring any liability to Tenant and without it constituting an eviction: (a) install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Shopping Center, (b) add additional tenants, retail shops, buildings, parking facilities anywhere in the Shopping Center (as may be expanded in accordance with this subparagraph), (c) to renovate the Shopping Center (such renovation shall include, but not be limited to, the right to erect scaffolding, alter the configuration of all interior and exterior portions of the Common Areas); (d) change the size and layout of the Shopping Center; (e) build and/or demolish structures and buildings, expand and/or alter the parking facilities, relocate existing buildings and structures; and (f) and install or move columns, pipes, and utility lines. Landlord shall not unreasonably disrupt Tenant’s business during such renovation, except in the case of an emergency. Once Landlord commences any such renovation, Landlord shall diligently pursue such renovation to completion.

Furthermore, Landlord shall have the right to change the Shopping Center’s name without notice, to change the Shopping Center’s street address upon ninety (90) days’ prior notice, to grant to any person or entity the exclusive right to conduct any business or render any service in or to the Shopping Center, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose set forth in **Paragraph 1.17**, to retain at all times master keys or passkeys to the Premises, and to place such signs, notices or displays as Landlord reasonably deems necessary or desirable upon the roof and exterior of the Shopping Center.

- 3.3 Relocation of Tenant. Intentionally omitted.

4. **COMMON AREAS:**

- 4.1 Tenant's Right to Use Common Areas. Landlord grants Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas with others who are entitled to use the Common Areas subject to Landlord's rights as set forth in this Lease.
- 4.2 Landlord's Control. In addition to the rights Landlord maintains concerning the Shopping Center described in **Paragraph 3.2**, Landlord has the right to: (a) establish and enforce reasonable rules and regulations applicable to tenants of the Shopping Center concerning the maintenance, management, use and operation of the Common Areas, the initial rules and regulations are attached to the Lease as **Schedule 6**; (b) close, if necessary, any of the Common Areas to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas; (c) close temporarily any of the Common Areas for maintenance purposes or for health and safety purposes (e.g. bomb threat, hurricane); and (d) select a person, firm or corporation, which may be an entity related to Landlord, to maintain and operate any of the Common Areas. Notwithstanding the provisions of this Paragraph, in exercising its rights hereunder, Landlord shall at all times provide Tenant with a means of reasonable and legally compliant access to and from the Premises. If Landlord is required to make any installation in the Common Areas of the Shopping Center pursuant to the Americans with Disabilities Act (the "ADA") and other federal and state disability laws, or local building or fire codes, Landlord shall make such installations. In the event that Landlord is required to make such installations or construct any improvements in the Common Areas to comply with any Legal Requirements, including the ADA or other federal and state disability laws, because of Tenant's specific use (as opposed to a general retail use) or because of improvements performed by Tenant, then Landlord will perform such improvements and Tenant shall reimburse Landlord for all costs (excluding professional fees, including attorneys' fees) incurred by Landlord associated with performing such improvements within thirty (30) days after receipt of a written invoice therefore.

5. **BASE RENT:**

- 5.1 Base Rent. Tenant will pay to Landlord as Rent for the use and occupancy of the Premises at the times and in the manner provided below, Base Rent in the amount specified in **Paragraph 1.9** payable in U.S. funds, in advance, starting on the Rent Commencement Date and on or before the first day of each and every successive calendar month thereafter during the Term, without demand, setoff or deduction, except as otherwise set forth in this Lease. The obligation of Tenant to pay all Rent and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder

constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise.

- 5.2 Percentage Rent. Intentionally omitted.
  - 5.3 Monthly Statements. Intentionally omitted.
  - 5.4 Books and Records/Audit Rights. Intentionally omitted.
  - 5.5 Retention of Records/Cost of Audit. Intentionally omitted.
  - 5.6 Yearly Statement/Adjustment. Intentionally omitted.
  - 5.7 Additional Rent. All sums of money as shall become due and payable by Tenant to Landlord under this Lease other than Base Rent shall be “Additional Rent” which Tenant shall be obligated to pay. Landlord shall have the same remedies for default in the payment of Additional Rent as are available to Landlord in the case of a default in the payment of Base Rent. Base Rent, Additional Rent and all other sums payable by Tenant to Landlord hereunder shall be collectively referred to herein as “Rent.”
  - 5.8 Tenant’s Efforts. Intentionally omitted.
  - 5.9 Taxes Payable by Tenant. Intentionally omitted.
  - 5.10 Late Fee / Default Interest. Any installment of Rent not paid when due and payable shall bear interest at twelve percent (12%) per annum from the date due until paid and shall be subject to a late charge in the amount equal to five percent (5%) of the amount due. No late fee, default interest or the like chargeable by Landlord hereunder shall exceed those charges permitted by the applicable Legal Requirements. Notwithstanding the foregoing, Landlord agrees that Tenant shall not be required to pay the late charge for the first late payment for any Lease Year without written notice from Landlord and Tenant’s failure to pay the applicable installment of Rent within five (5) business days after such notice.
  - 5.11 First Month’s Rent. The Base Rent installment due for the first full calendar month after the Rent Commencement Date and the Security Deposit shall be delivered to Landlord by Tenant with the delivery of this Lease to Landlord for execution.
6. **OPERATING EXPENSES:** Intentionally omitted.
7. **USE OF PREMISES:**

7.1 Quiet Enjoyment. Tenant shall, and may peacefully have, hold, and enjoy the Premises, subject to the other terms hereof, provided that Tenant timely pays the Rent within any applicable notice and grace period, and timely performs all of Tenant's covenants and agreements herein contained. This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only with respect to breaches occurring during its or their respective periods of ownership of Landlord's interest hereunder. In the event of any breach by Landlord of this covenant, Tenant may, by written notice given to Landlord within thirty (30) days after any such breach have occurred, and Landlord fails to cure such breach within thirty (30) days after receipt of such notice of breach (or such additional time as may be reasonably necessary provided Landlord commences to cure such breach within such thirty (30) day period after Landlord's receipt of such notice), Tenant may pursue any remedies available to Tenant at law or in equity, subject to the terms and conditions of this Lease.

7.2 Use Restrictions. Tenant will use and occupy the Premises for the Permitted Use specified in **Paragraph 1.17** and for no other use or purpose. The Permitted Use shall be primarily to provide on-site classroom instruction for public school students in grades Kindergarten through 12<sup>th</sup> Grade. In addition, Tenant may conduct on-site educational classes for adults in the Premises from 5:00 PM to 9:00 PM. In no event shall Tenant use the Premises for any of the uses set forth on **Schedule 7** or in **Schedule 7A**. Tenant shall comply with the Rules and Regulations set forth in **Schedule 6** hereto. Furthermore, Tenant shall not suffer or permit the Premises or any part of them to be used in any manner, or suffer or permit anything to be done in or brought into or kept in the Premises, which would in any way: (a) violate any Legal Requirements; (b) cause injury to the Shopping Center or any part thereof; (c) constitute a public or private nuisance; (d) alter the appearance of the exterior of the Shopping Center or of any portion of the interior other than the Premises pursuant to the provisions of this Lease; (e) involve the use, generation, storage or disposal of Hazardous Substances, or (f) use any portion of the Premises for purposes which will increase the existing rate of insurance upon the Shopping Center, or cause cancellation of insurance policies covering the Shopping Center. If Landlord's rates increase because of Tenant's activities and Tenant fails to terminate such activities within a period of ten (10) days after Landlord's written notice thereof to Tenant, Tenant shall pay the difference to Landlord within ten (10) days after receipt of notice from Landlord.

Landlord has the right, upon five (5) business days prior written notice to Tenant, to designate traffic patterns or other related protocols related to the drop-off and pick-up of Tenant's customers, students, and invitees, including, without limitation, drop-off and pick-up of Tenant's customers, students, and invitees by school buses or vans. Tenant shall not suffer or permit any employees, contractors, agents, customers, students or invitees of the Premises to use any

portion of the Common Areas for loitering or any recreational activities, including, but not limited to, recess and general play.

In addition Tenant agrees to use and maintain the Premises in compliance with all applicable Legal Requirements from time to time in force which shall affect (i) Tenant's use of the Premises, ((ii) the manner or conduct of Tenant's business or operation of Tenant's installations, equipment or other property therein, (iii) any cause or condition created by or at the instance of Tenant, and Tenant shall pay all the costs, expenses, fines, penalties and damages which may be imposed upon Landlord by reason of or arising out of Tenant's failure to fully and promptly comply with and observe such laws or which Landlord may incur as a result of Tenant's breach of the above covenants. Tenant shall give prompt notice to Landlord of any notice Tenant receives of the violation of any Legal Requirements with respect to the Premises or the use or occupancy thereof. If Landlord shall be required under this Lease or pursuant to any Legal Requirements to take measures to comply with such Legal Requirements affecting the Premises, Landlord may, at Landlord's option, elect to terminate this Lease by giving not less than thirty (30) business days' notice thereof to Tenant unless Tenant shall give evidence satisfactory to Landlord within fifteen (15) business days after the giving by Landlord of such notice of termination, that Tenant has commenced steps reasonably calculated to comply with Laws and Regulations at Tenant's sole cost and expense.

7.3 Continuous Operation. Intentionally omitted.

7.4 Trade Name; Tenant's Name. Tenant shall have the right to change its trade name under this Lease from time to time and at any time to any trade name used by substantially all of Tenant's locations in the United States. With prior written consent by Tenant, Landlord shall have the right to refer to Tenant's trade name in any marketing or advertising programs or special promotions for the Shopping Center.

7.5 Prohibited Uses. In addition, and not by way of limitation of the restrictions on Tenant's use of the Premises set forth herein, Tenant shall not use or permit the use of the Premises in any manner that violates any of the uses listed on **Schedule 7** labeled "Prohibited Uses" applicable to the Shopping Center. In addition, Tenant shall not use or permit the use of the Premises in any manner that violates any exclusive use or other prohibited use that applies to the Shopping Center. In no event shall Tenant use the Premises as a banquet hall, auditorium, or other place of public assembly.

## 8. **PARKING:**

8.1 Tenant's Parking Rights. Within the Common Areas, Landlord will provide parking areas with necessary access for the non-exclusive use by Tenant and its

students, parents, employees and invitees. In no event shall Tenant utilize the parking areas for the overnight parking or extended parking in excess of 1 hour of school buses or vans.

8.2 Landlord's Control Over Parking. In the event Landlord designates certain areas for parking by Tenant's employees and students, Tenant shall cause Tenant's employees and students to park their cars only in such areas specifically designated for that purpose by Landlord. In the event that Landlord receives any complaints from other tenants or occupants of the Shopping Center regarding traffic flow through the Common Areas or the availability of parking at the Shopping Center during high traffic times, Landlord may institute reasonable rules or regulations, as necessary, to operate the Shopping Center or to ensure the quiet enjoyment of other tenants. Tenant will not park or permit the parking of any vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. Landlord shall have the right, in Landlord's sole discretion, to designate parking spaces for the exclusive use of a particular tenant or particular tenants. Landlord will have the right to institute reasonable procedures and/or methods to enforce the terms of this Paragraph.

8.3 Parking Ratio. Intentionally omitted.

## 9. SIGNS

9.1 Exterior Signage. Subject to Tenant: (i) complying with all applicable Legal Requirements and all other rules and regulations that apply to the Shopping Center, (ii) obtaining all necessary approvals, permits and consents from the applicable governmental authorities, and (iii) obtaining Landlord's prior reasonable approval to the plans and specifications, Tenant shall have the right to install one (1) sign on the exterior of the front side of the Premises ("Exterior Signage") as of the Commencement Date. The cost of design, fabrication, installation, removal and governmental approvals (collectively, "Signage Costs") for the Exterior Signage shall be at Tenant's sole cost and expense. Landlord may upon Landlord's request review and approve the plans and specifications for the Exterior Signage prior to submission to any governmental authority and shall also have the right to approve any changes to the plans and specifications. The Exterior Signage shall not create any structural issues for the Shopping Center and shall be of a design, color scheme and type consistent with the appearance of the Shopping Center as determined by Landlord and all signs, decorations and advertising media shall conform to the sign criteria attached as **Schedule 9**. Landlord may designate a uniform type of sign for the Shopping Center to be installed and paid for by Tenant. Landlord shall reasonably cooperate with Tenant in connection with Tenant obtaining any necessary permits, approvals and consents for the Exterior Signage; however, Tenant shall reimburse Landlord for any reasonable costs incurred by Landlord in connection with such cooperation

(except professional fees, including attorneys' fees). Tenant shall be responsible for maintaining, repairing and insuring the Exterior Signage throughout the Term and any extension thereof. Tenant shall, at its sole cost and expense, also be responsible for removing the Exterior Signage upon termination of the Term and restoring any damage caused by the removal of the same, except for ordinary wear and tear. If Tenant fails to timely remove the Exterior Signage, Landlord shall have the right, but not the obligation to remove the same, restore any damage caused thereby, and charge Tenant, as Additional Rent hereunder.

9.2 Exterior. In addition, Tenant shall not, without Landlord's prior written consent make any changes to or paint the store front; or install any exterior lighting, decorations or paintings; or erect or install any other signs, banners, window or door lettering, placards, decorations or advertising media of any type visible from the exterior or interior of the Premises. All signs, decorations and advertising media shall conform to the sign criteria attached as **Schedule 9**. Landlord may designate a uniform type of sign for the Shopping Center to be installed and paid for by Tenant. For all Tenant signs, at the end of the Term or upon termination of Tenant's right to possess the Premises, or upon the removal or alteration of a sign for any reason, Tenant shall repair, and/or paint, the building fascia surface where signs are attached.

9.3 Pylon Sign. Tenant shall have the right to place, at Tenant's sole cost and expense, signage identifying Tenant on a panel of the Shopping Center pylon sign existing as of the date of this Lease in a location to be determined by Landlord, in Landlord's sole discretion. The design, color scheme, and general appearance of such panel signage shall be subject to Landlord's prior written approval. On the last day of the Term hereof or on any earlier termination, Tenant shall, at Tenant's sole cost and expense, remove Tenant's panel from the pylon sign.

## 10. ASSIGNMENT AND SUBLETTING; ENCUMBRANCE

10.1 Prohibition. Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord, which consent shall not be unreasonably withheld, provided Tenant is not in default under the Lease at the time of such request. The parties agree that it shall be reasonable for Landlord, among other things to withhold consent if (i) Landlord is not satisfied with the financial condition, identity, reputation or business character of the proposed assignee or sublessee, (ii) if Landlord or its agents have shown any space in the Shopping Center to or attempted to negotiate lease terms with such proposed assignee or sublessee regarding other available space in the Shopping Center within the preceding six months, or (iii) if such proposed assignee or the sublessee desires to change the Permitted Use or if the intended use would violate the list of Prohibited Uses set forth on **Schedule 7** attached hereto or any other exclusive uses or prohibited uses that apply to the Shopping Center. Any change in the

majority ownership, interest or control of Tenant, if Tenant is a corporation, partnership, limited liability company or other similar type entity, shall constitute an assignment for purposes of this Paragraph. Notwithstanding any consent by Landlord, Tenant shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment, contemporaneously with the granting of Landlord's consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant. No usage of the Premises different from the Permitted Use shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease.

10.2 Consent Process. If Tenant requests Landlord's consent to an assignment of this Lease or subletting of all or part of the Premises, Landlord may, at its option: (i) approve such sublease or assignment (subject to Paragraph 10.1 above regarding liability under this Lease); (ii) negotiate directly with the proposed subtenant or assignee and, in the event Landlord is able to reach agreement with such proposed subtenant or assignee, upon execution of a lease with such subtenant or assignee, terminate this Lease (in part or in whole, as appropriate) upon thirty (30) days' notice; (iii) recapture the Premises or applicable portion thereof, as appropriate, from Tenant and terminate this Lease (in part or in whole, as appropriate) upon thirty (30) days' notice in which case Landlord shall be permitted to lease the Premises to any third party; or (iv) if Landlord should fail to notify Tenant in writing of its decision within a thirty (30) day period after Landlord is notified in writing of the proposed assignment or sublease, Landlord shall be deemed to have refused to consent to such assignment or subleasing, and to have elected to keep this Lease in full force and effect.

10.3 No Profit. Intentionally omitted.

## 11. MAINTENANCE, REPAIRS, ALTERATIONS:

11.1 Tenant's Obligations. At Tenant's sole cost, Tenant will comply with all applicable Legal Requirements. Except for the representations set forth in **Paragraph 3.1**, Tenant has agreed to accept the Premises in its "AS IS" condition without any representation or warranty of any kind. Tenant shall, at its own expense and at all times, perform all necessary maintenance and repairs to the Premises (except as otherwise set forth in **Paragraph 11.5**) in order to maintain the Premises in good and safe condition, including plate glass, electrical wiring, plumbing and HVAC installations and any other systems or equipment upon the

Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. As part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm which is fully licensed to repair air conditioning units in the State in which the Shopping Center is located. Prior to the Commencement Date and annually thereafter, Tenant shall deliver to Landlord a copy of the air conditioning maintenance contract. Such air conditioning maintenance firm shall (i) regularly service the air conditioning unit(s), changing belts, filters and other parts as required, (ii) perform emergency and extraordinary repairs on the air conditioning units, and (iii) keep a detailed record of all services performed at the Premises and prepare a yearly report to be furnished to Landlord promptly at the end of each calendar year.

- 11.2 Limitations. Schedule 3 sets forth the terms and conditions related to the Tenant Improvements. Tenant may not make any improvements or alterations to the Premises without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant may make any improvements or alterations to the Premises if they are nonstructural, do not affect any building system, cost less than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (in the aggregate), cannot be seen from the exterior of the Premises, and otherwise comply with all Legal Requirements and the following provisions of this Paragraph. Prior to the commencement of any repair, improvement, or alteration, including any initial leasehold improvements, Tenant shall give Landlord at least two (2) business days written notice in order that Landlord may post appropriate notices to avoid any liability for liens. All repairs, improvements or alterations will be made by a licensed and insured contractor and performed in a good and workmanlike manner. All materials used shall be of a quality deemed by Tenant to be comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved by Landlord.

Tenant will not place or suffer to be placed or maintained on the exterior of the Premises or in any part of the Shopping Center any sign, advertising matter or any other thing of any kind, and will not place or maintain any decoration, letter or advertising matter on the glass of any window or door of the Premises or interior sign visible from outside the Premises without first obtaining Landlord's prior written approval. Tenant will, at its sole cost and expense, maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times.

Tenant will not paint or decorate any part of the exterior of the Premises, or any part of the interior of the Premises visible from the exterior thereof, without first obtaining Landlord's written approval. All articles, and the arrangement, style, color and general appearance of any window displays, in the interior of the Premises, advertising matter, signs, and store fixtures, shall be in keeping with the

character and standards of the improvements within the Shopping Center, as reasonably determined by Landlord. Landlord reserves the right to require Tenant to correct any nonconformity at Tenant's sole cost.

- 11.3 Liens. Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Shopping Center free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of Landlord in the Premises and the Shopping Center shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. To the extent permitted by law, Tenant will indemnify, defend and hold harmless Landlord from and against any and all costs and liabilities (including attorneys' fees and expenses) and any and all construction, mechanic's, materialman's, laborer's or supplier's liens arising out of or pertaining to any improvements or construction done by Tenant. All persons and entities contracting or otherwise dealing with Tenant relative to the Premises or the Shopping Center are hereby placed on notice of the provisions of this Paragraph, and Tenant shall further notify in writing such persons or entities of the provisions of this Paragraph prior to commencement of any Tenant work in the Premises. If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Shopping Center in connection with any such Tenant work, Tenant shall, within ten (10) days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment, by posting of any bond as permitted by law, or by other means permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within ten (10) days after receipt of notice from Landlord, Landlord shall have the right, but not the obligation, to discharge such lien on behalf of Tenant and all costs and expenses incurred by Landlord associated with the discharge of the lien, including, without limitation, attorneys' fees, shall constitute Additional Rent hereunder and shall be immediately due and payable by Tenant.
- 11.4 Surrender of Premises. On the last day of the Term hereof or on any earlier termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, ordinary wear, tear and casualty excepted, and clear and free of debris. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Any of Tenant's property remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant, and Landlord, in addition to all other rights and remedies it may have, shall have the right to keep in place and use all of such property in the Premises and/or remove any or all of such property from the Premises, which may then be disposed of, or stored at the cost of and for the account of Tenant. Landlord shall not be responsible for the

care or safekeeping of any such property and Tenant waives any claim against Landlord relating thereto. The provisions of this subparagraph shall survive the expiration or earlier termination of this Lease.

- 11.5 Landlord Repairs. Landlord will maintain the roof, foundations, and exterior walls of the Premises and utility lines (other than those exclusively serving the Premises) outside the exterior walls of the Premises, the Common Areas and parking facilities. Notwithstanding the foregoing, if any such repair is required by reason of Tenant's failure to comply with any of Tenant's obligations in this Lease or the negligence of Tenant or any of Tenant's agents, concessionaires, officers, employees, licensees, customers, or the result of Tenant's acts or the installation of its equipment and property, Tenant shall, at its expense, promptly make such repairs. Tenant shall promptly give Landlord written notice of any damage to the Premises requiring repair by Landlord. Except as expressly set out in this Lease, Landlord shall have no obligation to repair, maintain, alter, replace, or modify the Premises or any part thereof, or any plumbing, heating, electrical, air conditioning, or other mechanical installation therein, or serving same. Tenant hereby grants to Landlord such licenses and easements in and over the Premises or any portion or portions thereof as shall be reasonably appropriate for the installation or maintenance of mains, conduits, pipes, or other facilities to serve the Shopping Center or any part thereof. Landlord will have the right to enter the Premises at any reasonable time, upon at least 24 hours notice to Tenant, to inspect the condition thereof, to make necessary repairs or improvements. Landlord warrants and represents that the HVAC system is in good working order and condition. Landlord shall be responsible for keeping, maintaining, repairing and replacing if necessary the foundation, footings, exterior walls, columns, slabs, and structural portions of the roof of the building in which the Premises are located, as well as the load-bearing floors, load-bearing walls, other load-bearing elements and other structural portions of said building, and all plumbing, sewage, gas, electric, telephone and other utility facilities outside of the exterior wall of the Premises, in good condition and repair. Landlord shall promptly commence and diligently prosecute such maintenance, repair or replacement, and Tenant shall give access to the Premises to Landlord for that purpose. Landlord shall use its commercially reasonable efforts to minimize interference with Tenant's possession and business in the Premises while performing any maintenance, repair or replacement under this Lease.
- 11.6 Trash. Tenant shall keep any garbage, trash, rubbish or other refuse in containers (safe from rodents and other vermin) within the interior of the Premises, and shall deposit such trash, on a daily basis, in trash receptacle or receptacles to be provided by Tenant pursuant to Landlord's specifications in a location to be approved by Landlord, hereinafter collectively referred to as the "trash receptacles". Tenant, at Tenant's sole expense, shall arrange for the collection of trash (and recycling, if any) from the trash receptacles. In addition, Tenant shall

comply with all applicable laws, ordinances, regulations and rules regarding recycling of trash, including any rules and regulations of Landlord with respect thereto.

12. **ENTRY AND INSPECTION:** Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times upon as least 24 hours prior verbal notice for the purpose of inspecting the same, performing any services required of Landlord hereunder and showing the Premises to potential and existing mortgagees and purchasers and prospective tenants of other space in the Shopping Center. Notwithstanding the foregoing, Landlord is not required to give notice to Tenant if Landlord must enter the Premises because of an emergency.

13. **INDEMNIFICATION:**

13.1 Indemnity. To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, losses, damages, costs and expenses (including attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of Tenant's negligent acts or omissions, or relating to Tenant's breach or default under this Lease, Tenant's use or occupancy of the Premises, or caused by the negligence of Tenant or its agents, employees or invitees, unless caused by the negligence of Landlord, its employees, contractors, agents or representatives. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all claims, demands, losses, damages, costs and expenses (including attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of Landlord's negligent acts or omissions, or relating to Landlord's breach or default under this Lease, or caused by the negligence of Landlord or its agents or employees, unless caused by the negligence of Tenant, its employees, contractors, agents or representatives. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease.

13.2 Release. Landlord and Tenant, for themselves and their respective heirs, legal representatives, successors and assigns, do hereby fully and forever release, remise, acquit and discharge the other party and its respective partners, managers, members, officers, directors, employees, agents, attorneys, affiliates, subsidiaries, parents, heirs, legal representatives, successors and assigns, and each of them, of and from any and all special, consequential, and punitive damages related to this Lease. The provisions of this **Paragraph 13.2** shall survive the termination of this Lease.

14. **TENANT'S INSURANCE:** At all times during the term of this Lease, Tenant shall, at its sole expense, procure and maintain the following types of insurance coverage:

- 14.1 Commercial General Liability. Commercial general liability insurance, including bodily injury and property damage liability, products and completed operations, personal and advertising injury liability, and fire damage liability against any and all damages and liability, including attorneys' fees and expenses, on account of or arising out of injuries to or the death of any person or damage to property, however occasioned, in, on or about the Premises in amounts not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate, and \$100,000 fire damage liability;
- 14.2 Plate Glass. Insurance on all plate or tempered glass in or enclosing the Premises, for the replacement cost of such glass;
- 14.3 Personal Property. Insurance on an "all risks" basis covering one hundred percent (100%) of the replacement cost value of property at the Premises, including, without limitation, leasehold improvements, trade fixtures, merchandise, furnishings, equipment, goods and inventory;
- 14.4 Boiler & Machinery. Where applicable, insurance covering central heating, air conditioning and ventilating systems, refrigeration equipment, machinery and electrical equipment, boilers and other high pressure piping and machinery, and other similar apparatus installed in the Premises, including business income loss;
- 14.5 Business Interruption. Business interruption insurance for a period of not less than twelve (12) months from the date of fire or casualty;
- 14.6 Employer's Liability/Workers' Compensation. Employer's liability insurance with limits not less than \$500,000, and workers' compensation insurance providing statutory state benefits for all persons employed by Tenant in connection with the Premises as required by applicable law;
- 14.7 Sprinkler Leakage. Intentionally omitted; and
- 14.8 Other Insurance. Intentionally omitted.
- 14.9 Form of Insurance/Companies. All insurance provided for in **Paragraph 14** hereof shall be in a form satisfactory to Landlord and carried with insurance companies reasonably acceptable to Landlord that are licensed or authorized to do business in the State in which the Shopping Center is located, are in good standing with the Department of Insurance in the State in which the Shopping Center is located and have a current rating issued by A.M. Best Company of not less than A-:VII, and/or whose claim paying ability is rated no lower than A by Standard & Poor's Ratings Service and A2 by Moody's Investors Service. Insurance coverage shall be written as primary policy coverage and not contributing with or excess of any coverage, which Landlord may carry, and LNR Partners, LLC, Landlord, and Landlord's managing agent shall be named as

Additional Insureds with respect to Commercial General Liability and Automobile Liability, including any Umbrella or Excess policies. Tenant shall furnish Landlord at the inception of this Lease (i) a Certificate of Insurance evidencing that all such insurance is in effect and that Landlord will be given at least thirty (30) days prior written notice of cancellation or non-renewal, and (ii) proof that premiums have been paid by Tenant. Not later than fifteen (15) days prior to the expiration of any insurance policy, evidence of renewals or replacements of such policy shall be delivered to Landlord, together with proof of payment of the associated premiums. In the event Tenant shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, Landlord may, but shall not be obligated to, procure such insurance on behalf of Tenant and the cost thereof shall be payable to Landlord as Additional Rent within ten (10) days following written demand therefor.

- 14.10 Subrogation and Waiver. Notwithstanding anything in this Lease to the contrary, neither Landlord nor Tenant shall be liable to the other for, and each expressly waives claims against the other for, loss arising out of damage or destruction of the Premises the Shopping Center, or other property, personal property or contents therein if such damage or destruction is caused by a peril included within an insurance policy required to be maintained by each respective party under this Lease. Such absence of liability shall exist whether or not the damage or destruction is caused by the negligence of Landlord or Tenant, or their respective officers, employees, agents or customers. It is the intention and agreement of Landlord and Tenant that each party shall look to its insurer for reimbursement of any such loss, and the insurer involved shall have no subrogation rights against the other party. Each party shall advise its insurance company of this release and such policy shall, if necessary, contain a waiver of any right of subrogation by the insurer against the other party. The terms of this Section shall survive the expiration or earlier termination of the Lease.

## **15. LANDLORD'S INSURANCE**

- 15.1 All Risk. Landlord (or its principals naming Landlord as an additional insured) shall maintain fire and extended coverage insurance on the Shopping Center and the Premises (which may include vandalism and malicious mischief coverage) and such endorsements as Landlord may require or is otherwise reasonably consistent with other similarly situated shopping centers) in an amount not less than the full replacement value thereof (which may be exclusive of foundations), or in such amounts as any mortgagee of Landlord shall require, with such deductibles as shall be determined by Landlord from time to time. Landlord (or its principals naming Landlord as an additional insured) reserves the right to self-insure the Shopping Center. Landlord (or its principals naming Landlord as an additional insured) also reserves the right to provide the insurance required

hereunder as part of a blanket policy. Payments for losses related to all insurance obtained by Landlord in connection with the Shopping Center shall be made solely to Landlord or Landlord's mortgagee as their interests shall appear.

15.2 Liability. Landlord shall maintain a policy or policies of commercial general liability insurance with respect to the Common Areas and the activities thereon in such amounts as Landlord or any mortgagee of Landlord may require.

15.3 Other. Landlord may purchase insurance for windstorm, flood, plate glass, sign, automobile, sinkhole, business income, rent loss, liquor liability, terrorism, earthquake and such other insurance which Landlord or any mortgagee of Landlord may require in their sole discretion and with such deductibles as Landlord may desire. Landlord may hereafter raise or lower such coverage in such amounts as may from time to time be prudent to Landlord within its sole discretion or as Landlord's mortgagee may require.

## 16. UTILITIES AND SERVICES:

16.1 Standards. Landlord will provide, at points in or near the Premises, the facilities necessary to enable Tenant to obtain for the Premises water, electricity, telephone and sanitary sewer service. If Tenant desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities provided by Landlord, such installation shall be subject to Landlord's prior written approval of Tenant's plans and specifications therefor. If Landlord approves such installation and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

Tenant agrees that it shall be responsible for the payment of all utilities, including water, gas, electricity, heat and other services charged or directly attributable to the Premises that are separately metered. If any such services or utilities are not separately metered to the Premises, Tenant shall pay to Landlord its allocable share of the combined costs, expenses and charges, provided that Tenant's allocable share is supported by documentation evidencing such costs, expenses and charges.

16.2 Temporary Interruption. If any utility service to the Premises required to be provided by Landlord is interrupted due solely to Landlord's negligence, Tenant is unable to use and occupy the Premises due to such interruption, and such interruption continues for three (3) business days after Tenant gives written notice thereof to Landlord, then the Base Rent due under the Lease shall be abated for the period commencing immediately after said third business day and ending when the interrupted utility service is restored.

- 16.3 Security. Landlord shall have no obligation to provide any security whatsoever for the Premises, the Shopping Center and/or Tenant's business therein. Tenant does hereby acknowledge and agree that it shall provide and be solely responsible for its own security, at Tenant's sole cost and expense, as may be required for the operation of Tenant's business within the Premises and Landlord shall have no liability to Tenant and its employees, agents or invitees for losses due to theft or burglary, or for damages done by unauthorized persons in the Premises, any parking facility, or the Shopping Center, or for any injury, trauma or other harm to any person, and neither shall Landlord be required to insure against any such losses. Tenant shall be responsible for all repairs and replacements of damage and/or destruction of the Premises necessitated by burglary or attempted burglary, or any other illegal or forcible entry into the Premises. Notwithstanding the foregoing, Tenant acknowledges and agrees Landlord may, but will not be required to, adopt and provide security services for the Shopping Center from time to time. Tenant shall cooperate fully in any efforts of Landlord to maintain security in the Shopping Center and shall follow all rules and regulations promulgated by Landlord with respect thereto. However, any security services that are voluntarily undertaken by Landlord may be changed or discontinued from time to time in Landlord's sole and absolute discretion, without liability to any Tenant and its employees, agents or invitees. Tenant or any of its employees, agents or invitees waive any claims it may have against Landlord arising out of any security services provided by Landlord, or the inadequacy or absence thereof, specifically including Landlord's negligence with respect to the providing or failure to provide such services.
- 16.4 Release of Landlord. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining, adjacent to or connecting with the Premises or any other part of the Shopping Center, or otherwise, or for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, and water, gas, sewer or steam pipes or from theft or burglary. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises and to use such other portions of the Shopping Center as Tenant is herein given the right to use, at Tenant's own risk.
17. **CONDEMNATION:** If the whole or substantially the whole of the Shopping Center or Premises should be taken for any public or quasi-public use, by right of eminent domain or otherwise or should be sold in lieu of condemnation, then this Lease shall terminate as of the date when physical possession of the Shopping Center and/or Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Shopping Center or the Premises is thus taken or sold, Landlord (whether or not the Premises are affected thereby) may, at its option, terminate this Lease by giving written

notice thereof to Tenant; in which event this Lease shall terminate as of the date when physical possession of such portion of the Shopping Center or the Premises is taken by condemning authority. If this Lease is not terminated upon any such taking or sale, and if the Premises are affected, the Base Rent payable hereunder shall be diminished by an equitable amount, and Landlord shall, to the extent Landlord deems feasible, restore the Shopping Center and, if affected, the Premises to substantially their former condition, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Shopping Center, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for such taking. All amounts awarded upon a taking of any part or all of the Shopping Center or Premises shall belong to Landlord, and Tenant shall not be entitled to and expressly waives all claim to any such compensation, provided however, Tenant shall be entitled to retain any sum awarded to it for its trade fixtures or moving expenses, provided that such Tenant award shall not reduce Landlord's award.

18. **TRADE FIXTURES:** Any and all improvements made to the Premises during the Term hereof shall, unless Landlord requests their removal, belong to the Landlord without compensation, allowance or credit to Tenant, except trade fixtures of the Tenant which can be removed without defacing the Premises or any portion of the Shopping Center.

19. **DESTRUCTION OF PREMISES:**

19.1 Termination or Repair. If the damage or destruction occurs to the extent of ten percent (10%) or more of the Premises, either Landlord or Tenant may elect to terminate this Lease by giving at least fifteen (15) days written notice of said election to the other party, such notice to be given within thirty (30) days after the date of such damage or destruction. In case the Shopping Center shall be so damaged that substantial alteration or reconstruction of the Shopping Center shall, in Landlord's sole opinion, be required (whether or not the Premises shall have been damaged by such casualty), or in the event any mortgagee of Landlord's interest in the Shopping Center should require that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt, or in the event of any material uninsured loss to the Shopping Center, Landlord may, at its option, terminate this Lease by notifying Tenant in writing of such termination within ninety (90) days after the date of such casualty. If Landlord does not elect to terminate this Lease, Landlord shall commence and proceed with reasonable diligence to restore the Shopping Center and to restore the Premises to the condition in which the Premises existed as of the Commencement Date; except that Landlord's obligation to restore shall not require Landlord to spend for such work an amount in excess of the insurance proceeds actually received by Landlord as a result of the casualty. Tenant shall be entitled to an abatement of rent from the date of the damage or destruction until the Premises, or any damaged or destroyed portion thereof, are repaired and restored. If the damage to the Premises has not been repaired and the Premises or portion thereof made

ready for Tenant's use within one hundred twenty (120) days after the date of the damage or destruction, then Tenant shall have the right and option to terminate this Lease by giving written notice to Landlord at any time within fifteen (15) days after the end of such 120-day period.

19.2 Abatement of Rent. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such casualty damage or the repair thereof; except that, subject to the previous provisions of this Lease and of the next sentence, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unfit for occupancy and Tenant fails to open for business in the Premises or damaged portion thereof. If the Premises or any other portion of the Shopping Center is damaged by fire or other casualty resulting from the fault or negligence of Tenant or any of Tenant's agents, contractors, employees, or invitees, the Rent hereunder shall not be diminished during the repair of such damage, and, additionally, Tenant shall be liable to Landlord for the cost of the repair and restoration of the Shopping Center caused thereby to the extent such cost and expense is not covered by insurance proceeds.

19.3 Last Year of Term. Intentionally omitted.

20. **HAZARDOUS SUBSTANCES:**

20.1 Tenant's Responsibilities. At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Shopping Center by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord, except for the routine cleaning supplies that may be deemed Hazardous Substances, provided such Hazardous Substances are stored, used and removed in compliance with all Legal Requirements and Environmental Laws. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the Term of the Lease, Tenant will cause all Hazardous Substances placed on, under or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or

the Shopping Center, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interests with respect thereto.

20.2 Indemnification. If the Premises or the Shopping Center become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance, and Tenant shall, to the extent permitted by law, indemnify, defend and hold harmless Landlord from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Shopping Center or the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees and expenses, consultant fees and expert fees) arising during or after the Term of this Lease and arising as a result of such contamination, release or discharge. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. This provision of this Paragraph shall survive termination of this Lease.

21. **EVENTS OF DEFAULT:** If one or more of the following events ("Event of Default") occurs, such occurrence constitutes a breach of this Lease by Tenant:

21.1 Abandonment/Vacation. Tenant abandons or vacates the Premises or removes furniture, fixtures or personal property from the Premises, except in the normal course of business or as a result of a default by Landlord under the Lease or otherwise permitted by the Lease; or

21.2 Rent. Tenant fails to pay any monthly Base Rent as and when the same becomes due and payable, and such failure continues for more than five (5) business days after Landlord gives notice thereof to Tenant; or

21.3 Other Sums. Tenant fails to pay any Additional Rent, other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than fifteen (15) days after Landlord gives written notice thereof to Tenant; or

21.4 Other Provisions. Tenant fails to perform or observe any other agreement, covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is due (or immediately if the failure involves a hazardous condition), and such failure continues for more than

fifteen (15) days after Landlord gives written notice thereof to Tenant, or if the default does not involve a hazardous condition and cannot be reasonably cured within said fifteen (15) day period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default within said 15 day period or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default, provided such cure does not take more than forty-five (45) days in the aggregate; or

21.5 Insolvency. Intentionally omitted.

21.6 Receiver. Intentionally omitted.

21.7 Attachments. Intentionally omitted.

21.8 Assignment/Sublease: Tenant assigns this Lease or subleases all or any portion of the Premises in violation with the terms and conditions of **Paragraph 10**.

21.9 Default by Landlord. If Landlord defaults in the payment or performance of any obligation of Landlord under the Lease, Tenant may give thirty (30) days' notice of that default to Landlord (except in case of emergency, in which case only notice that is reasonable under the circumstances, if any, is required), and if Landlord fails to cure the default within the applicable period, or if the default cannot be reasonably cured within said thirty (30) day period and Landlord fails promptly to commence the curing of such default within said thirty (30) day period, Tenant may pursue any remedies available to Tenant at law or in equity subject to the terms of the Lease.

## 22. **REMEDIES OF LANDLORD UPON DEFAULT:**

22.1 Termination. Upon the occurrence of an Event of Default under this Lease by Tenant, Landlord may, at its option, terminate the Lease and repossess the Premises pursuant to the laws of the State in which the Shopping Center is located and recover from Tenant as damages:

- (a) the unpaid Rent and other amounts due at the time of termination;
- (b) intentionally omitted; and
- (c) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering the Premises.

22.2 Landlord's Options. Landlord may, in the alternative:

- (a) continue this Lease in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under the Lease, including the right to recover the Rent as it becomes due under the Lease; or
- (b) terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State in which the Shopping Center is located in which event Landlord may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Shopping Center is located), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord. For purpose of such reletting Landlord is authorized by Tenant to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient, at Tenant's expense. Tenant shall also be responsible for Rent for the period that the Premises are vacant and all costs of re-letting, including, without limitation, brokerage commissions and attorneys' fees. Tenant shall be liable for any deficiency of such rental below the Rent and all other payments herein provided for the unexpired balance of the Term of this Lease. If said breach of the Lease continues, Landlord may, at any time thereafter, elect to terminate the Lease; or
- (c) exercise any and all other rights and remedies available to Landlord at law or in equity.

23. **SECURITY DEPOSIT:** The Security Deposit set forth in **Paragraph 1.8** shall secure the performance of the Tenant's obligations hereunder. Landlord may, but shall not be obligated to, apply all or portions of the Security Deposit on account of Tenant's obligations hereunder. Provided Tenant is not in default, any balance remaining upon the expiration of the Term, shall be returned to Tenant within a reasonable time. Tenant shall not have the right to apply the Security Deposit in payment of the last month's rent. No interest shall be paid by Landlord on the Security Deposit. In the event of a sale of the Shopping Center, Landlord shall transfer the Security Deposit to the purchaser, upon such transfer Landlord shall have no further liability with respect thereto, and Tenant agrees to look solely to such purchaser for the return of the Security Deposit. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be commingled with other funds of Landlord.

24. **LIEN FOR RENT:** Intentionally omitted.

25. **LIMITATION ON LANDLORD'S PERSONAL LIABILITY:** Tenant specifically agrees to look solely to Landlord's interest in the Shopping Center for the recovery of any judgment from Landlord, it being agreed that Landlord (and any officers, shareholders, partners, members, managers, directors or employees, affiliates, subsidiaries or parents of Landlord) shall never be personally liable for any such

judgment. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Shopping Center and/or Premises referred to herein, and in such event and upon such transfer, Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations.

26. **ATTORNEYS' FEES:** If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys' fees at all tribunal levels (including allocated costs of Landlord's in-house attorney), incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court handling the proceeding and will be included in and as a part of such judgment.
27. **WAIVER:** No failure of Landlord to enforce any term hereof shall be deemed to be a waiver. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement contained herein or to exercise any option, right, power, or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. No payment by Tenant or receipt by Landlord of a lesser amount than the applicable Rent payment due under this Lease shall be deemed to be other than on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.
28. **SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The inadvertent failure to attach any exhibit (or schedule or addendum) described in this Lease to the fully executed version hereof shall not render this Lease invalid, incomplete, or ineffective in any way. Upon notice from one party to the other, Landlord and Tenant shall cooperate in good faith to provide any missing information regarding such missing exhibit, and shall both append the missing exhibit to their respective fully executed original of the Lease.

29. **NOTICES:** All notices or other communications required or permitted hereunder must be in writing, and be (i) personally delivered (including by means of professional messenger service), (ii) sent by overnight courier, with request for next business day delivery, or (iii) sent by registered or certified U.S. mail, postage prepaid, return receipt requested, to the addresses set forth in **Paragraph 1**. All notices sent by U.S. mail will be deemed received three (3) days after the date of mailing.
30. **HOLDING OVER:** Any holding over after the expiration or termination of this Lease shall be construed as a tenancy at sufferance at a rental of 125% of the Base Rent for the month of the Lease Term preceding the month in which the expiration or termination occurred. In the event Tenant shall be or become a holdover tenant, Tenant shall also, to the extent permitted by law, indemnify Landlord against all claims for damages against Landlord as a result of Tenant's possession of the Premises, including, without limitation, claims for damages by any tenant to whom Landlord may have leased the Premises, or any portion thereof, for a term commencing after the expiration or termination of this Lease.
31. **TIME:** Time is of the essence with respect to the obligations of any party under this Lease.
32. **HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the assigns and successors in interest of Landlord and is binding upon and inures to the benefit of Tenant and Tenant's heirs and successors and, to the extent assignment may be approved by Landlord hereunder, Tenant's assigns. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed. Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary except rights contained herein for the benefit of a mortgagee of Landlord.
33. **SUBORDINATION:** This Lease is and shall always be subject and subordinate to the lien of any mortgages which are now or shall at any future time be placed upon the Shopping Center, the Premises or Landlord's rights hereunder, and to any renewals, extensions, modifications or consolidations of any such mortgage. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument that Landlord may reasonably request.
34. **ESTOPPEL CERTIFICATE; FINANCIAL STATEMENTS:**
- 34.1 Content. Tenant shall at any time upon not less than twenty (20) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any

security deposit, and the date to which the Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises. At Landlord's option, Tenant's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Tenant: (A) that this Lease is in full force and effect, without modification, except as may be represented by Landlord; (B) that there are no uncured defaults in Landlord's performance; and (C) that not more than one month's Rent has been paid in advance or such failure may be considered by Landlord as a default by Tenant under this Lease. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises.

34.2 Financial Statements. Intentionally omitted.

35. **AUTHORIZATION:**

35.1 Tenant. Tenant represents and warrants that: (i) there are no proceedings pending or, to the knowledge of Tenant, threatened before any court or administrative agency that would materially adversely affect the ability of Tenant to enter into this Lease or the validity or enforceability of this Lease; (ii) there is no provision of any existing mortgage, indenture, contract or agreement binding on Tenant which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (iii) if Tenant is a corporation, limited liability company, partnership or other legal entity, the person executing this Lease on behalf of Tenant represents and warrants that this Lease has been authorized and approved by the appropriate officers, members, managers, partners, beneficiaries, shareholders or other beneficial owner(s) of Tenant as may be required by law; (iv) Tenant is in good standing, qualified to do business in the State in which the Shopping Center is located; and (v) Tenant has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease, in the manner and upon the terms contained herein, with no other person needing to join in the execution hereof in order for this Lease to be binding on Tenant.

35.2 Landlord. Landlord represents and warrants to Tenant that Landlord has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease, in the manner and upon the terms contained herein, and to grant the estate herein demised.

36. **JOINT AND SEVERAL LIABILITY:** Intentionally omitted.

37. **FORCE MAJEURE:** Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by cause or

causes beyond Landlord's absolute control which shall include, without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums or controls, fire or other casualty, inability to obtain any material, services or financing or Acts of God.

38. **RECORDING:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of Landlord, which may be withheld in Landlord's sole discretion.
39. **BROKERS:** Landlord and Tenant each represent and warrant one to the other that except for the Brokers set forth in **Paragraph 1.16**, neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. To the extent permitted by law, Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense or liability with respect to any claims for commissions, finder's fees or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord shall be responsible for paying any commission due Landlord's Broker in connection with this transaction pursuant to a separate written agreement between Landlord and Landlord's Broker. Landlord's Broker shall be responsible for any payment due to Christianson & Company pursuant to a separate written agreement between Landlord's Broker and Christianson & Company.
40. **ENTIRE AGREEMENT:** The foregoing, together with all Exhibits and Schedules attached hereto, constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.
41. **GOVERNING LAW:** This Lease shall be construed in accordance with the laws of the State of Minnesota. Exclusive venue in any legal proceeding related to or arising out of this Lease shall be in Chisago County, State of Minnesota and Landlord submits to personal jurisdiction and venue in such forum.
42. **EFFECT OF DELIVERY OF THIS LEASE: LANDLORD HAS DELIVERED A COPY OF THIS LEASE TO TENANT FOR TENANT'S REVIEW ONLY, AND THE DELIVERY HEREOF DOES NOT CONSTITUTE AN OFFER TO TENANT OR OPTION TO LEASE. THIS LEASE SHALL NOT BE EFFECTIVE UNTIL A FULLY EXECUTED COPY OF THIS LEASE HAS BEEN DELIVERED TO BOTH LANDLORD AND TENANT.**
43. **WAIVER OF THE RIGHT TO TRIAL BY JURY: LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT LANDLORD OR TENANT MAY HERINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE OR THE LEASED PREMISES WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE**

44. **BANKRUPTCY:** Intentionally omitted.
45. **SURVIVAL:** Anything contained in this Lease to the contrary notwithstanding, the expiration or earlier termination of the Term of the Lease, whether by lapse of time or otherwise, shall not relieve either the Landlord or the Tenant from their respective obligations accruing prior to the expiration or termination of the Term, all of which shall survive the same, whether or not same is expressly stated in the particular paragraph of this Lease, including, without limitation, Tenant's obligations with respect to: (a) the payment of Rent; (b) any provisions of this Lease with respect to indemnities of Landlord made by Tenant; and (c) the removal of all property of Tenant required to be removed hereunder and the repair of all damage to the Premises caused by such removal at the expiration or termination of this Lease to the extent required hereunder.
46. **COUNTERPARTS:** This Lease may be executed in any number of counterparts, which when taken together shall constitute one complete document.
47. **CONFIDENTIALITY:** Tenant agrees, on behalf of Tenant and Tenant's employees, agents, contractors, consultants, partners, affiliates, assignees and subtenants, not to disclose the terms of this Lease or the results of any audit of Landlord's books and records under this Lease to any third party except (i) legal counsel to Tenant, (ii) any assignee of Tenant's interest in this Lease or any subtenant of Tenant relative to the Premises (or any portion thereof), (iii) as required by applicable law or by subpoena or other similar legal process, or (iv) for financial reporting purposes. Notwithstanding the foregoing, Landlord acknowledges that Tenant is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. Consequently, all data created, collected, received, stored, used, maintained or disseminated under this Agreement is subject to the requirements of Minnesota Statutes Chapter 13, including, but not limited to Section 13.05, subdivision 11.
48. **DAYS:** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.
49. **OFAC REPRESENTATION:** For purposes hereof, "List" shall mean the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, and "OFAC" shall mean the Office of Foreign Assets Control, Department of the Treasury. Each party represents and warrants to the other that (i) each Person owning a ten percent (10%) or greater interest in such party is (A) not currently identified on the List, and (B) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States and (ii) each party has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. Each party shall comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or

hereafter in effect and shall use reasonable efforts to notify the other in writing if any of the forgoing representations, warranties or covenants are no longer true or have been breached or if such party has a reasonable basis to believe that they may no longer be true or have been breached. In addition, at the request of a party, the other party shall provide such information as may be requested by the requesting to determine the other party's compliance with the terms hereof.

- 50. **DISCLAIMERS:** Intentionally omitted.
- 51. **GUARANTOR:** Intentionally omitted.
- 52. **PROMOTIONAL PROGRAM:** Intentionally omitted.
- 53. **RENEWAL OPTION:** Intentionally omitted.
- 54. **EXCLUSIVE USE:** Intentionally omitted.
- 55. **EXPANSION OPTION:** Intentionally omitted.
- 56. **RIGHT OF FIRST REFUSAL:** Intentionally omitted.
- 57. **ROOF IMPROVEMENTS; SATELLITE DISH:** Intentionally omitted.
- 58. **OPTION SPACE:** Provided that (i) Landlord has not given Tenant a notice of default during the immediately preceding twelve (12) months, (ii) there then exists no Event of Default by Tenant under the Lease nor any event that with the giving of notice and/or the passage of time would constitute an Event of Default, and (iii) Tenant is the sole tenant under the Lease and the sole occupant of the Premises, then Tenant shall have the one (1) time right of first offer ("Right of First Offer") to lease any space that is immediately contiguous to the Premises (the "Option Space"), subject to the terms of this **Paragraph 58**. Prior to leasing the Option Space to any unrelated third party (a "Prospective Tenant"), Landlord shall provide Tenant with written notice of the rental rate and other terms upon which Landlord is willing to lease the Option Space to Tenant ("Landlord's Notice"). Tenant shall have five (5) days following receipt of Landlord's Notice to respond in writing to Landlord to commit to lease the Option Space upon the terms and conditions set forth in Landlord's Notice. In the event Tenant timely responds in writing to Landlord and elects to lease the Option Space as herein provided, an amendment to this Lease shall be prepared and executed by the parties incorporating the terms set forth in Landlord's Notice with respect to the Option Space. Tenant shall have five (5) days to execute the amendment, thus exercising the Right of First Offer. In the event Tenant fails to respond timely or elects not to lease the Option Space as herein provided, Landlord shall have the right to lease the Option Space to any Prospective Tenant on any terms and conditions. Notwithstanding any provision herein to the contrary, the Right of First Offer is (A) a one-time right of first offer to lease the Option Space the first time after the date of this Lease that Landlord desires to lease the Option Space to a Prospective Tenant, (B)

personal to Tenant, and (C) non-transferrable to any assignee or sublessee or other party. In addition, Tenant's rights pursuant to this **Paragraph 58** are subject to the rights of any other party to lease the Option Space as of the date of this Lease.

*[Signatures Appear on Following Page]*

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

**“LANDLORD”**

CGCMT 2006-C5 TANGER DRIVE, LLC, a Delaware limited liability company

By: U.S. Bank National Association, as Trustee for the Registered Holders of Citigroup Commercial Mortgage Trust 2006-C5, Commercial Mortgage Pass-Through Certificates, Series 2006-C5, its sole member

By: LNR PARTNERS, LLC, a Florida limited liability company, its Attorney-in-Fact under that certain Limited Power of Attorney dated December 3, 2014

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“TENANT”**

INDEPENDENT SCHOOL DISTRICT NO. 138 (NORTH BRANCH), a political subdivision of the State of Minnesota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Board Chair

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk

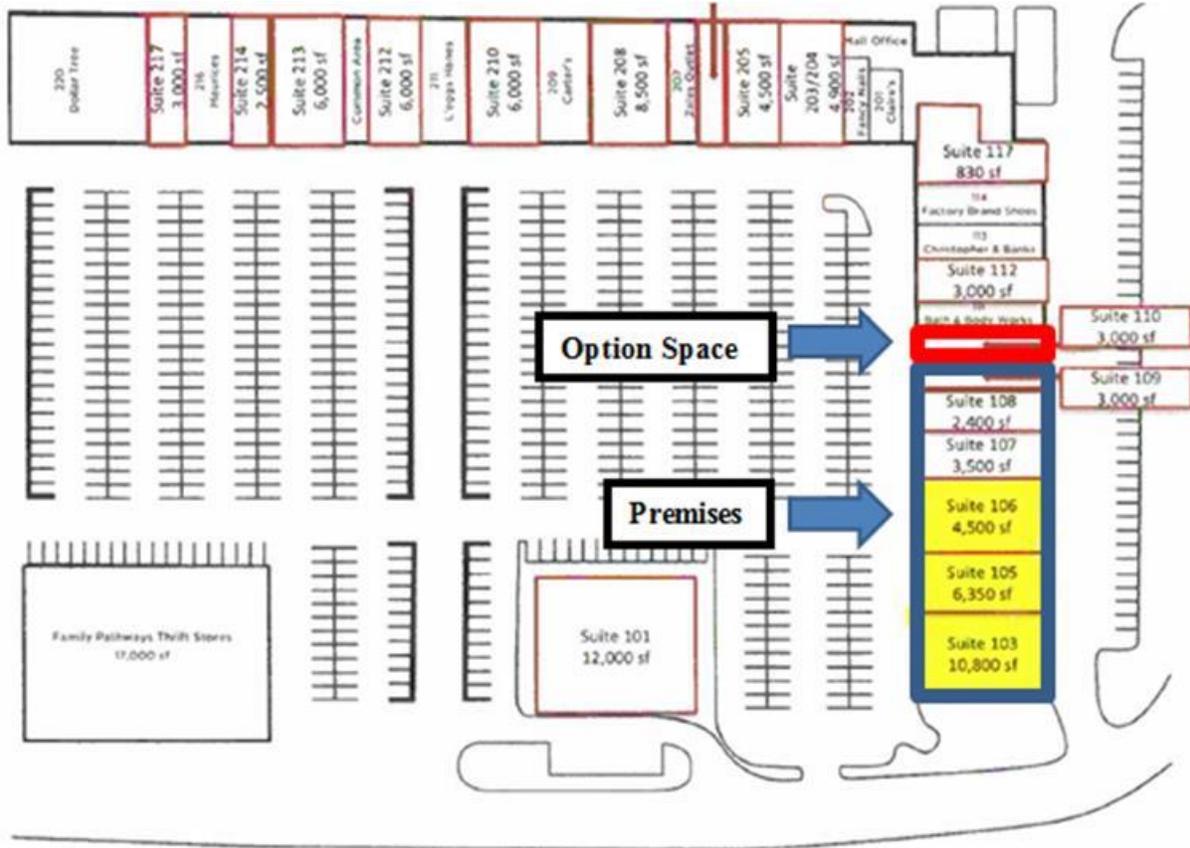
**SCHEDULE 1**

**LEGAL DESCRIPTION**

The real property located in the City of North Branch, Chisago County, State of Minnesota, described as Lot 1, Block 2, TANGER CENTER, according to the plat thereof recorded on December 30, 1996, and on file in the Office of the Chisago County Recorder, Chisago County, Minnesota, as Document No. 291545.

**SCHEDULE 2**

**SITE PLAN**



### SCHEDULE 3

#### CONSTRUCTION RIDER

THIS CONSTRUCTION RIDER (“Construction Rider”) is attached to and made a part of that certain Lease (the “Lease”) dated August \_\_\_\_, 2020 by and between **CGCMT 2006-C5 TANGER DRIVE, LLC**, a Delaware limited liability company (“Landlord”), and **INDEPENDENT SCHOOL DISTRICT NO. 138 (NORTH BRANCH)**, a political subdivision of the State of Minnesota (“Tenant”).

All capitalized terms used in this Construction Rider which are defined in the Lease shall have the same respective meanings as given in the Lease.

I. Construction of Landlord’s Work. Intentionally omitted.

II. Construction of Tenant Improvements. Tenant, at Tenant’s sole expense, shall be solely responsible for construction of all leasehold improvements in the Premises, which shall be subject to Landlord’s prior written approval (the “Tenant Improvements”). The Tenant Improvements shall include the following work:

- **Door Hardware.** The door hardware in the Premises needs to be brought up to standards for fire code and school safety. The existing door hardware will need to be replaced.
- **Carpet.** Carpet needs to be tightened in all necessary spaces to assure safety and eliminate trip hazards.
- **Plumbing.** Minor plumbing changes need to be made in order to assure compliance with code. All plans and specifications related to such plumbing work shall be subject to Landlord’s prior written approval.
- **Electrical.** The Gap (shop #103) needs to have electrical outlets added. There are not sufficient outlets to accommodate our needs in the space. All plans and specifications related to such electrical work shall be subject to Landlord’s prior written approval.

Tenant shall enter into a contract with contractors for all Tenant Improvements. The contractors shall (i) abide by the Landlord’s rules and regulations, a copy of which is attached to the Lease as Schedule 6; (ii) carry insurance covering Landlord as an insured party with such coverages and in such amounts as Landlord may then require and with carriers reasonably acceptable to Landlord to insure Landlord against liability for injury, death or damage for the Tenant Improvements done by the contractors; and (iii) be subject to Landlord’s prior written approval, which shall not be unreasonably withheld. To the extent permitted by law, Tenant shall indemnify and hold harmless Landlord from and against all liability, cost, expense and damages incurred as a result of Tenant’s or its contractors’ presence in the Premises or in connection with the Tenant Improvements, except that the foregoing indemnity shall not cover any amount

arising from the gross negligence or willful misconduct of Landlord or its agents. All Tenant Improvements shall be performed lien-free, in accordance with all laws and regulations, and in a good and workmanlike manner.

**SCHEDULE 4**  
**INTENTIONALLY OMITTED**

**SCHEDULE 5**

**TENANT ACCEPTANCE LETTER**

This declaration is hereby attached to and made part of the Lease dated \_\_\_\_\_ entered into by and between \_\_\_\_\_, as Landlord, and \_\_\_\_\_, as Tenant.

1. The undersigned, as Tenant, hereby confirms as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the following:
2. Tenant has accepted possession of the Premises on \_\_\_\_\_, \_\_\_\_\_ and is currently able to occupy the same.
3. The Commencement Date as defined in the Lease is \_\_\_\_\_, \_\_\_\_\_.
4. The Rent Commencement Date, as defined in the Lease, is \_\_\_\_\_.
5. The Expiration Date of the Lease is \_\_\_\_\_.
6. All alterations and improvements required to be performed by Landlord pursuant to the terms of the Lease to prepare the entire Premises for Tenant's initial occupancy have been satisfactorily completed, except for the following:  
  
\_\_\_\_\_
7. As of the date hereof, Landlord has fulfilled all of its obligations under the Lease.
8. The Lease is in full force and effect and has not been modified, altered, or amended, except pursuant to any instruments described above, if any.
9. There are no offsets or credits against Base Rent or Additional Rent, nor has any Base Rent or Additional Rent been prepaid except as provided pursuant to the Terms of the Lease.
10. Tenant has no notice of any prior assignment, hypothecation, or pledge of the Lease or any Rent due under the Lease.

TENANT:

\_\_\_\_\_

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE 6

### RULES AND REGULATIONS

1. In the event of any conflict between the terms of these rules and regulations and the express provisions of the Lease, the express, applicable provisions of the Lease shall control. Landlord reserves the right, without the approval of Tenant, to rescind, add to and amend any rules or regulations, to add new reasonable rules or regulations and to waive any rules or regulations with respect to any tenant or tenants. Tenant shall provide a copy of these rules and regulations to each of its employees to facilitate compliance with these standards.

2. The sidewalks, walks, plaza entries, corridors, ramps, staircases and elevators of the Shopping Center shall not be obstructed, and shall not be used by Tenant, or the employees, agents, servants, visitors or invitees of Tenant, for any purpose other than ingress and egress to and from the Premises. No skateboards, roller skates, roller blades or similar items shall be used in or about the Shopping Center.

3. No freight, furniture or other large or bulky merchandise or equipment of any description will be received into the Shopping Center or carried into the elevators, if any, except in such a manner, during such hours and using such elevators and passageways as may be approved or designated by Landlord, and then only upon having been scheduled in advance. Any hand trucks, carryalls, or similar equipment used for the delivery or receipt of merchandise or equipment shall be equipped with rubber tires, side guards and such other safeguards as Landlord shall reasonably require. Although Landlord or its personnel may participate or assist in the supervision of such movement, Tenant assumes financial responsibility for all risks as to damage to articles moved and injury to persons or public engaged or not engaged in such movement, including any equipment, property or personnel of Landlord damaged or injured in connection with carrying out this service for Tenant.

4. Landlord shall have the right to prescribe the weight, position and manner of installation of safes or other heavy equipment which shall, if considered necessary by Landlord, be installed in a manner which shall insure satisfactory weight distribution. All damage done to the Shopping Center by reason of a safe or any other article of Tenant's equipment being on the Premises shall be repaired at the expense of Tenant. The time, routing and manner of moving safes or other heavy equipment shall be subject to prior approval by Landlord.

5. Only persons authorized by Landlord will be permitted to furnish newspapers, ice, drinking water, towels, barbering, shoe shining, janitorial services, floor polishing and other similar services and concessions in the Shopping Center, and only at hours and under regulations fixed by Landlord.

6. Tenant, or the employees, agents, servants, visitors or invitees of Tenant, shall not at any time place, leave or discard any rubbish, paper, articles or object of any kind whatsoever outside the doors of the Premises or in the corridors or passageways of the Shopping Center.

7. Tenant shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Premises or Shopping Center, except in and at such places as may be designated by Landlord and consented to by Landlord in writing. Any such sign, placard, advertisement, picture, notice or lettering so placed without such consent may be removed by Landlord without notice to and at the expense of Tenant. All lettering and graphics on doors and windows shall conform to the building standard prescribed by Landlord.

8. Tenant shall not place, or cause or allow to be placed, any satellite dish, communications equipment, computer or microwave receiving equipment, antennae or other similar equipment about or on the exterior of the Premises or Shopping Center. Any such equipment so placed may be removed by Landlord without notice to and at the expense of Tenant.

9. Canvassing, soliciting or peddling in the Shopping Center is prohibited and Tenant shall cooperate reasonably to prevent same.

10. Landlord shall have the right to exclude any person from the Shopping Center, and any person in the Shopping Center will be subject to identification by employees and agents of Landlord. If Tenant desires additional security service for the Premises, Tenant shall have the right (with advance written consent of Landlord) to obtain such additional service at Tenant's sole cost and expense. Tenant shall keep doors to unattended areas locked and shall otherwise exercise reasonable precautions to protect property from theft, loss or damage. Landlord shall not be responsible for the theft, loss or damage of any property or for any error with regard to the exclusion from or admission to the Shopping Center of any person. In case of invasion, mob, riot or public incitement, the Landlord reserves the right to prevent access to the Shopping Center during the continuance of same by taking measures for the safety of the tenants and protection of the Shopping Center and property or persons therein.

11. Only workmen employed, designated or approved by Landlord may be employed for repairs, installations, alterations, painting, material moving and other similar work that may be done in or on the Shopping Center.

12. Tenant shall not bring or permit to be brought or kept in or on the Premises or Shopping Center any flammable, combustible, corrosive, caustic, poisonous, or explosive substance, or firearms, or cause or permit any odors to permeate in or emanate from the Premises, or permit or suffer the Shopping Center to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Shopping Center by reason of light, radiation, magnetism, noise, odors and/or vibrations.

13. Tenant shall not mark, paint, drill into, or in any way deface any part of the Shopping Center or the Premises. No boring, driving of nails or screws, cutting or stringing of wires shall

be permitted, except with the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall not install any resilient tile or similar floor covering in the Premises, except with the prior approval of Landlord, which approval shall not be unreasonably withheld or delayed.

14. No additional locks or bolts of any kind shall be placed on any door in the Premises and no lock on any door therein shall be changed or altered in any respect. Tenant shall not make duplicate keys. All keys shall be returned to Landlord upon the termination of this Lease and Tenant shall give to Landlord the explanations of the combinations of all safes, vaults and combination locks remaining with the Premises. Landlord may at all times keep a pass key to the Premises. All entrance doors to the Premises shall be left closed at all times and left locked when the Premises are not in use.

15. Tenant shall give immediate notice to Landlord in case of known theft, unauthorized solicitation or accident in the Premises or in the Shopping Center, or of known defects therein or in any fixtures or equipment, or of any known emergency in the Shopping Center.

16. Tenant shall not use the Premises or permit the Premises to be used for photographic, multilith or multigraph reproductions, except in connection with its own business and not as a service for others without Landlord's prior written permission.

17. No animals or birds shall be brought or kept in or about the Shopping Center, with the exception of guide dogs accompanying visually handicapped persons.

18. No awnings, draperies, shutters or other interior or exterior window coverings that are visible from the exterior of the Premises may be installed by Tenant without Landlord's prior written consent.

19. Tenant shall not place, install or operate within the Premises or any other part of the Shopping Center any engine, stove, or machinery, or conduct mechanical operations therein, without the written consent of Landlord.

20. No portion of the Premises or any other part of the Shopping Center shall at any time be used or occupied as sleeping or lodging quarters.

21. Tenant shall at all times keep the Premises neat and orderly.

22. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expenses of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Tenant who (or whose employees or invitees) shall have caused such damage.

23. All tenant modifications resulting from alterations or physical additions in or to the Premises must conform to all applicable building and fire codes. Tenant shall obtain written

approval from the management office prior to commencement of any such modifications and shall deliver as built plans to the management office upon completion.

24. Tenant agrees to place all indoor potted plants requiring water within a container capable of collecting any water overflow, such containers to be approved and/or supplied by Landlord, at Tenant's sole expense. Tenant agrees to use caution so that indoor plants do not damage or soil the Premises.

25. Tenant shall not park (and shall insure that Tenant's employees, agents, and invitees do not park) in any reserved parking space other than those reserved parking spaces, if any, specifically assigned to Tenant. Any vehicle improperly parked, or parked in any unauthorized parking area in the Shopping Center, shall be towed at the vehicle owner's expense and without further or additional notice.

26. Persons using the parking areas do so at their own risk. Landlord specifically disclaims all liability, except when caused solely by its gross negligence or willful misconduct, for any personal injury incurred by users of the parking areas, their agents, employees, family, friends, guests or invitees, or as a result of damage to, theft of, or destruction of any vehicle or any contents thereof, as a result of the operation or parking of vehicles in the parking areas.

**SCHEDULE 7**  
**PROHIBITED USES**

Prohibited Uses

No portion of the Premises shall be operated, in whole or in part as (i) a sales office or showroom for automobiles or other vehicles or boats, (ii) a “package” liquor store or an establishment serving alcoholic beverages for on premises consumption (other than in connection with a restaurant), (iii) a funeral parlor or other death industry related business or any medical industry related facility, (iv) a massage parlor or “strip” club or establishment featuring nude or semi nude live entertainment (but excluding Massage Envy and similar concepts), (v) a discotheque, dance studio or dance hall, (vi) a bingo hall, gambling casino or establishment, (vii) a skating rink, (viii) an offtrack betting establishment, (ix) an adult book or adult video store or peep show (live or otherwise) or store selling or exhibiting pornographic materials or exhibiting or offering x rated, not rated and/or “adult only” inventory for display, sale or rental, (x) a so-called “flea market”, “second hand”, “used goods” or “surplus” store, (xi) a gun range or gun shop or other establishment selling fire arms or ammunition, (xii) junkyard or stockyard, (xiii) a coin operated laundry, central laundry or an on site dry cleaning plant or facility, (xiv) store selling drug or “head shop” paraphernalia (as opposed to a typical drug store such as CVS or Walgreens), (xv) a facility offering tattoo or body piercing (other than ear), (xvi) warehouse or storage facility (“mini”, “self” or otherwise), (xvii) industrial or manufacturing facility, (xviii) fireworks store, (xix) a gymnasium, karate, health spa or exercise studio or similar type business if the Premises is greater than 5,000 square feet, or (xx) any business or use which emits offensive odors, fumes, dust or vapors, is a public or private nuisance, emits loud noise or sounds which are objectionable, creates fire, explosive or other hazard, or creates risk of environmental damage.

## SCHEDULE 7A

### ADDITIONAL PROHIBITED USES

The Premises shall not be used for the following additional prohibited uses:

#### EXHIBIT F

##### Prohibited Uses

Any one of the following uses:

- (a) a bar, pub, nightclub, music hall, and disco in which less than fifty percent (50%) of its space or revenue is devoted to and derived from food service (except breweries and wineries shall be permitted);
- (b) a bowling alley;
- (c) a billiard or bingo parlor;
- (d) a flea market, auction house, or pawn shop;
- (e) a massage parlor (except for concepts such as Massage Envy);
- (f) a lingerie bar, go-go bar or other similar establishment;
- (g) a funeral home;
- (h) a facility for the sale or display of pornographic material (as determined by community standards for the area in which the Shopping Center is located);
- (i) a facility for the sale of paraphernalia for the use with illicit drugs;
- (j) a marijuana dispensary;
- (k) a facility for any use which is illegal purposes;
- (l) an off-track betting parlor;
- (m) a carnival, amusement park, or circus (except children's entertainment facilities shall be permitted);
- (n) a gas station, car wash or on-site auto repair shop, car rental agency, or body shop;
- (o) a facility for the sale of new or used motor vehicles, trailers, or mobile homes;
- (p) a skating rink;
- (q) an arcade, pinball or computer game room provided that retail facilities in the Shopping Center may operate no more than six (6) such electronic games incidentally to their primary operations);
- (r) non-retail uses except for offices and storage facilities incidental to a primary retail operation; provided however, Landlord shall be permitted to allow non-retail uses in spaces smaller than 10,000 square feet in the Shopping Center; for purposes of this Lease, "retail uses" shall include

service retail tenants commonly found in shopping centers (such as hair salons, nail salons, day spas, massage salons such as Massage Envy, dance studios, fitness centers, tutoring centers, etc.), restaurants (on-site and off-site consumption), banks, and offices commonly found in shopping centers (such as law offices, dentist offices, orthodontist offices, other medical offices, insurance offices, financial advisor offices, and tax preparation offices, etc.);

- (s) a banquet hall, auditorium or other place of public assembly;
- (t) intentionally omitted;
- (u) a gymnasium, health club, exercise, or dance studio that occupies more than 7,500 square feet;
- (v) Intentionally omitted;
- (w) a theater of any kind; or
- (x) a hotel or residential facility.

\*Restrictions set forth in clauses (b), (q), (r), (u), (w) and (x) shall not apply to the building of the Shopping Center in which Bath and Body Works and Gap are located.

**SCHEDULE 8**  
**INTENTIONALLY OMITTED**

## **SCHEDULE 9**

### **SIGN CRITERIA**

1. All signs must comply with the ordinances of the County of Chisago, Minnesota.
2. All shopfront signs will be designed, fabricated, installed and maintained at Tenant's expense. Tenant shall submit engineered shop drawings of all external signs, designating dimensions, methods of fabrication and type of material, to Landlord for approval prior to manufacture and installation.
3. The location of the sign on Tenant's shopfront shall be designated by Landlord.
4. Only Tenant's approved store name or business and/or logo may appear on the shopfront. No advertising slogans, brand names or product names will be permitted.
5. The size of shopfront sign must be in proportion to the available shopfront area, and the horizontal dimension shall not exceed 2/3rd the width of the shopfront.
6. All bolts, fasteners and clips shall be stainless steel and concealed from public view. All standoff brackets shall be mounted so as not to be visible to the public.
7. Box signs are prohibited.
8. The names, stamps or decal of sign manufacturers or installers shall not be visible to the public.
9. Interior exit signs shall be installed as required by code, and shall not be visible from the exterior of the Premises.
10. A sign shall not be placed on transparent materials such as plexiglass if the background surfaces or objects within the Premises detract from the legibility of the sign.
11. All interior signs facing the shopfront shall be subject to Landlord's approval.
12. No neon, moving rotating flashing, noise-making or odor-producing signs are permitted. All elements of a sign must have the same lighting intensity.

**SCHEDULE 10**  
**INTENTIONALLY OMITTED**

**SCHEDULE 11**  
**INTENTIONALLY OMITTED**

**STATE OF MINNESOTA**

**COUNTY OF CHISAGO**

**CITY OF NORTH BRANCH**

**CITY COUNCIL RESOLUTION NO. 055-20-CC**

**RESOLUTION APPROVING A CONDITIONAL USE PERMIT (CUP) FOR THE NORTH BRANCH SCHOOL DISTRICT TO ALLOW FOR THE OPERATION OF ALL THE EDUCATIONAL, BUSINESS USES, ACTIVITIES, ATHLETICS, PROGRAMMING, SERVICES, EVENTS, AND OTHER USES AT LOT 1, BLOCK 2, TANGER CENTER PER CITY CODE.**

WHEREAS, North Branch Area Public Schools, has submitted a request for all the educational, business uses, activities, athletics, programming, services, events, and other uses on the property per City Code on the their premises; and,

WHEREAS, the property is described as: Lot 1, Block 2, Tanger Center

Property Address: 38500 Tanger Drive in North Branch, MN 55056

Tax Parcel No. 11.01029.02;

and,

WHEREAS, the Planning Commission held a public hearing on August 25, 2020 to consider the requested the conditional use permit request; and,

WHEREAS, the Planning Commission reviewed the staff report and recommended approval of the conditional use permit request; and,

WHEREAS, the City Council has reviewed the staff report and have found that the proposed Conditional Use Permit to allow for all the educational, business uses, activities, athletics, programming, services, events, and other uses on the property per City Code meets the requirements outlined in the City Code and not burden adjacent property owners.

**NOW THEREFORE, BE IT RESOLVED BY THE NORTH BRANCH, MINNESOTA CITY COUNCIL:**

That the City Council hereby approves the attached Conditional Use Permit for North Branch Area Public Schools, has submitted a request for all the educational, business uses, activities, athletics, programming, services, events, and other uses on the property per City Code on the their property.

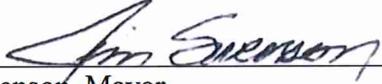
[insert copy of CUP]

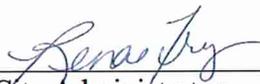
**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Brian Voss, Councilmember  
**SECONDER:** Kelly Neider, Councilmember / Acting Mayor  
**AYES:** Jim Swenson, Kelly Neider, Joel McPherson, Brian Voss  
**ABSENT:** Kathy Blomquist

Passed and adopted this 25th day of August 2020

CITY OF NORTH BRANCH



BY:   
Jim Swenson, Mayor

ATTEST:   
Renae Fry, City Administrator

CITY OF NORTH BRANCH  
CONDITIONAL USE PERMIT  
CUP 01-20

**In the matter of the Application of:** North Branch Public Schools

**for the following uses:**

- a. Academic programming focused on students in grades K-12 (or any reconfiguration of grades in the building), including special education programs, gifted and talented programs. May include college and technical classes for students in grades 9-12 or in partnership with postsecondary institutions.
- b. Community education programming, including classes, basic adult education.
- c. School Board activities, including meetings, public hearings, candidate forums, and events. The board may hold a special meetings at the location.
- d. New organizational and operational programs, activities, services, events, and uses that are consistent with any of the above (a-c).
- e. A meeting space for students and families that choose Distance Learning option. This location will have internet access to meet, work and collaborate.
- f. The applicant shall comply with all state building codes, including, but not limited to the state fire code, applicable to an education use of the premises.

**on property owned by:** North Branch Public Schools

A notice of the time, place and purpose of the public hearing of the above-entitled matter was published in the POST REVIEW, the official legal newspaper for the City of North Branch, on August 13, 2020.

The above-entitled matter came on to be heard before the Planning Commission on August 25, 2020, on a petition for a conditional use pursuant to the North Branch Zoning Ordinance, for the following described real property:

Lot 1, Block 2, Tanger Center

Property Address: 38500 Tanger Drive

Tax Parcel No. 11.01029.02

The Planning Commission, at its special meeting on August 25, 2020 forwarded its recommendation to the City Council.

At its regular meeting on August 25, 2020 the City Council received the recommendation of the Planning Commission, and then, based upon it's consideration of the files and proceedings therein, decided that:

**CONDITIONAL USE PERMIT PC 01-20 IS HEREBY APPROVED UPON THE BASIS OF THE FINDINGS AND SUBJECT TO THE CONDITIONS AS SET FORTH BELOW.**

**Findings from the August 25, 2020 Planning Commission minutes and August 25, 2020 City Council meeting for the North Branch Area Public Schools Conditional Use Permit for all the educational, business uses, activities, athletics, programming, services, events, and other uses on the property per City Code on the their premises:**

1. The applicant is currently using properties owned by the school for educational institution, including but limited to - offering academic programming and curriculum for grades of pre-K thru 12; college level courses, transportation, community education programming of all types; school board activities, meeting, organizational and operational programs and meeting space.
2. The applicant, due to the pandemic and the subsequent restrictions placed on them by a variety of State agencies, need additional space to teach as many kids in person as possible as they cannot educate all kids in person in their current structures and still meet pandemic rules.
3. The applicant is planning that the use will be short-term and will end when the restrictions are eliminated or reduced by State agencies.
4. The property owner plans to continue to use the other portion of their property for retail businesses.
5. The property and use are planned for within the City's Comprehensive Plan.
6. Municipal utilities will not be affected as the uses are already in existence.
7. The parking for the uses have been reviewed in the past and meet City requirements.

**Conditions from the August 7, 2018 Planning Commission minutes and August 28, 2018 City Council meeting for the North Branch Area Public Schools Conditional Use Permit for all the educational, business uses, activities, athletics, programming, services, events, and other uses on the property per City Code on the their premises PC18-002:**

1. Temporary structures, such as a portable classroom, are not allowed unless established as a condition of the Conditional Use Permit and such structures must meet applicable building code, may need to meet design standards and may only be in use for a period of less than

- one year. The addition of temporary structures will require the re-opening of the Conditional Use Permit.
2. The applicant shall comply with all state building codes, including, but not limited to the state fire code, applicable to an education use of the premises.
  3. Any new lighted areas established after the date of this permit shall be approved prior to development and shall be placed in such a way that they do not infringe upon the rights of adjacent property owners.
  4. No unsafe, uncomfortable, or offensive vibrations, noises, visual effects, odors, or air pollutants shall be allowed to radiate across lot lines. Noises associated with outdoor athletic events do not violate this condition.
  5. Off-Street Parking requirements shall be as required by code.
  6. The applicant must abide by all local, State and Federal laws that apply.
  7. Any other education related uses conducted from this property, other than what has been conditionally approved, requires the re-opening of the public hearing.
  8. The Conditional Use Permit, once issued, may be revoked upon a finding by the City Council that the property and/or use is not in compliance with the conditions for approval for such use, following notice and hearing.

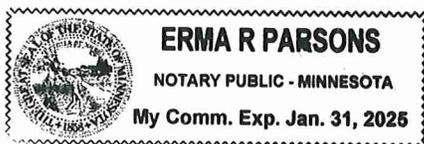
STATE OF MINNESOTA )  
 ) ss.  
 COUNTY OF CHISAGO )

I, Renae Fry, City Administrator, do hereby certify that I have compared the foregoing Conditional Use Permit with original record thereof preserved in my office, and have found the same to be a true and correct transcript of the whole thereof. In testimony whereof, I have hereunto subscribed my hand at North Branch, Minnesota, in the County of Chisago, this 26<sup>th</sup> day of August, 2020.

  
 Renae Fry, City Administrator

STATE OF MINNESOTA )  
 ) ss.  
 COUNTY OF CHISAGO )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of August 25, 2020, by Renae Fry, City Administer, on behalf of the City of North Branch, a municipal corporation, under the laws of the State of Minnesota.



  
 Notary Public

THIS INSTRUMENT DRAFTED BY:

City of North Branch  
6408 Elm Street, PO Box 910  
North Branch, MN 55056-0910  
Telephone: 651-674-8113  
Fax: 651-674-8262