



Berks Encore Final

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E-Signature Summary

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Aug 14, 2020 05:34:00 -8:00 [9CC31231ED59] [75.97.120.13]
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Aug 13, 2020 13:29:14 -8:00 [90F76E85754E] [108.52.118.147]
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AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (“Lease”) is entered into as of the 17th day of August, 2020 (the “Effective Date”) by and between **DANIEL BOONE AREA SCHOOL DISTRICT**, a school district organized and existing under the laws of the Commonwealth of Pennsylvania with an address of 501 Chestnut Street, Birdsboro, PA 19508 (“Landlord”), and **BERKS ENCORE, INC.**, a Pennsylvania non-profit corporation, with an address of 40 North Ninth Street, Reading, PA 19601 (“Tenant”).

WITNESSETH

In consideration of the mutual promises set forth herein, and intending to be legally bound hereby, Landlord and Tenant hereto covenant and agree as follows:

1. Leased Premises. Landlord does hereby lease to Tenant, and Tenant hereby leases from Landlord, the following described property for the Term (defined hereinafter) and upon the terms, covenants, conditions and provisions set forth herein:

A portion of that certain parcel of ground with improvements thereon erected, commonly referred to as the Amity Primary Center (“Amity Primary Center”), located at 2144 Weavertown Road in Amity Township, Pennsylvania (the “Leased Premises”). The Leased Premises shall consist of approximately 4,123.5-square feet of internal space of the building (“Building”) on the aforementioned parcel of ground, including reasonable and necessary parking at the Amity Primary Center, as highlighted on Exhibit “A”, a copy of which is attached hereto and made a part of hereof. Tenant shall use the entrance into the Leased Premises as depicted on Exhibit “A.” The Leased Premises does not include the Tenant’s right to use the cafeteria (including kitchen located therein) at the Building, as the cafeteria (including kitchen located therein) at the Building is currently leased to River Rock Academy, a tenant at the Building. Tenant may use the cafeteria if and only if Tenant obtains the necessary approval from River Rock Academy (or other tenant occupying the cafeteria at the time) and River Rock Academy (or other tenant occupying the cafeteria at the time) obtains all necessary consents from Landlord. Landlord makes no representations or warranties as to whether Tenant will be able to obtain the necessary approval to use the cafeteria (including kitchen located therein) at the Building. Landlord retains the authority to occupy or lease any area of the Amity Primary Center, including the ground and improvements, that is not included as part of the Leased Premises or as otherwise provided for herein. Throughout the Term hereof, title to the Leased Premises, and, except as expressly provided to the contrary herein, any alterations, improvements, changes or additions thereto, shall remain solely in Landlord.

2. Term.

The term of this Lease (the “Initial Term”) shall be for five (5) years, (following a two week period for set up starting August 17, 2020 through August 31, 2020) commencing on September 1, 2020 (the “Commencement Date”) and ending on August 31, 2025, subject to the provisions herein. Provided Tenant is not in default under any of the terms and provisions herein contained, commencing on the day following the expiration of the Initial Term, which expires August 31,



2025, this Lease will automatically renew for a term of one (1) year, unless either Landlord or Tenant gives the other party not less than sixty (60) days prior written notice of non-renewal, for any reason or no reason at all, on the same terms and conditions as the Initial Term, with a maximum of three (3) such one-year renewals (“Renewal Term”), provided however, that the Fixed Minimum Rent shall increase for each year of the Renewal Term at the same percentage as stated in Section 4.(a)(ii) of this Lease. To clarify the foregoing, the final Renewal Term, if all three (3) renewals are used, would expire August 31, 2028. The Initial Term and Renewal Term are individually and collectively referred to hereinafter as the “Term.”

Notwithstanding anything contained herein to the contrary, Landlord shall have the right to terminate this Lease (a “Termination Right”) by delivering to Tenant a written notice (“Termination Notice”) of Landlord’s intent to exercise its Termination Right on or before December 31 of each calendar year of the Term, and said termination shall be effective as of June 30 of the following year (“Termination Date”) of the Term. (By way of example, if Landlord provides a Termination Notice to Tenant on or before December 31, 2021, the Termination Date would be June 30, 2022. By way of further example, if Landlord provides a Termination Notice to Tenant on or before December 31, 2022, the Termination Date would be June 30, 2023, and so on.) If Landlord exercises the Termination Right, Tenant shall vacate the Leased Premises and deliver possession thereof to Landlord in accordance with all provisions of this Lease applicable to the surrendering of the Leased Premises to Landlord on or before the Termination Date.

3. Intentionally omitted.

4. Rent.

(a) In consideration of this Lease, Tenant covenants and agrees to provide to Landlord as rent for the use of the Lease Premises as follows:

(i) Tenant shall pay to Landlord the fixed minimum rent, without prior notice or demand and without abatement deduction or setoff unless otherwise provided herein, as set forth below in equal monthly installments, in advance, on or before the first day of each month. Tenant shall pay to Landlord a guaranteed Minimum Rent for each of the following periods during the Term of this Lease, as follows:

Time Period	Annual Fixed Minimum Rent	Monthly Fixed Minimum Rent
August 17, 2020 through August 31, 2020 (set up period)		\$997.65
September 1, 2020 through August 31, 2021	\$24,741.00	\$2,061.75

(ii) Beginning on the first September 1 following the Commencement Date and on the same date each year thereafter during the entire Term (the “Adjustment Dates”), Fixed Minimum



Rent will be increased (but not decreased) by the greater of (i) 3% or (ii) the percentage increase in the CPI (defined below) as set forth below. The percentage increase in the CPI for each Adjustment Date will be determined as follows: a fraction, the denominator of which is the CPI for the calendar month which is fifteen (15) months prior to the Adjustment Date ("Old CPI") and the numerator of which is the increase in the CPI occurring from the Old CPI to the CPI for the calendar month which is three (3) months prior to the Adjustment Date.

"CPI" means the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-84=100), All Items, published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics changes the base period (now 1982-84=100), the new index numbers will be substituted for the old index numbers in making the calculations provided for in this Section 4. If the CPI is discontinued or revised, such other index with which it is replaced will be used to obtain substantially the same result as would be obtained if there had been no such discontinuation or revision. If there is no such other index, the parties will accept comparable statistics on the purchasing power of the consumer dollar as published at the time of such discontinuation by a responsible financial periodical of nationally recognized authority.

(iii) Tenant shall pay to the Landlord, at the address specified hereunder, without prior notice or demand and without abatement deduction or setoff unless otherwise provided herein, the fixed minimum rent and additional rent as provided in this Lease. All payments under this Lease to be made by Tenant to Landlord shall be made payable to and mailed or personally delivered to Landlord at the following address:

Daniel Boone Area School District
Attention: Chief Financial Officer
501 Chestnut Street
Birdsboro, PA 19508.

Landlord may designate another place for payments under this Lease to be made by Tenant to Landlord by providing notice to Tenant in writing."

5. Security Deposit. Tenant shall remit to Landlord a security deposit in the amount of Two Thousand Dollars (\$2,000.00) prior to the Commencement Date; said security deposit will be retained in a non-interest bearing escrow account held by the Landlord and may be used at the reasonable discretion of the Landlord for cleaning of the Leased Premises or repairs of damages upon termination of the Lease, as determined by the Landlord, in its sole discretion. Any portion of the security deposit that is not applied to cleaning or repairs shall be returned to Tenant, at such forwarding address provided by the same, within thirty (30) days of the date of vacation of the Leased Premises by the Tenant.

6. Major Repairs. The Landlord retains the right to immediately terminate the Lease should the Building require a major repair with a cost in excess of the sum of Twenty-Five Thousand Dollars (\$25,000.00) (unless Tenant agrees, in its sole discretion, to pay for the cost of such repair in excess of Twenty-Five Thousand Dollars (\$25,000.00) and the Tenant reserves the right to immediately terminate the Lease should the Landlord elect to not make major repairs necessary to maintain the functionality of the Building for Tenant's intended use. The Landlord



and Tenant may negotiate the funding of any major repairs that are required to continue the use of the Leased Premises by Tenant.

7. Use of Leased Premises. Tenant shall occupy the Leased Premises throughout the Term and use the same for the operation of Tenant's senior recreation center, in conformity with all applicable laws, rules, regulations and ordinances (including without limitation zoning ordinances), and for no other purpose. Tenant's use of the Leased Premises must not interfere with other tenants at the Building. The Building shall be a "smoke-free" building and smoking is hereby prohibited anywhere within the Building or within fifty (50) feet of the Building (except for designated external smoking areas as shall be first approved by Landlord in its sole discretion). Tenant shall not use the entrances or hallways for any purpose other than the intended purpose of facilitating pedestrian traffic. Tenant shall not block any portion of an entrance or a hallway. Landlord makes no representations, warranties or assurances that Tenant's intended use of the Leased Premises for the operation of Tenant's senior recreation center would be an allowable, permitted continued use under applicable ordinances and Landlord encourages Tenant to consult with Amity Township and other governmental officials to confirm zoning and other applicable laws and restrictions. Tenant shall obtain at its sole cost and expense all necessary governmental approvals, permits, licenses, certificates, etc. for its intended use of the Leased Premises. Tenant agrees that its use of the Leased Premises will be limited to weekdays from 7 a.m. to 4 p.m., unless otherwise approved by Landlord in writing; such approval of Landlord shall not be unreasonably withheld.

8. Impositions.

(a) As used in this Lease, the term "Impositions" refers to any and all taxes, assessments and all charges, imposts or burdens of whatsoever kind and nature, which are applicable to the Leased Premises, occupancy of the Leased Premises or the Term of this Lease, and which are assessed or imposed by any federal, state or municipal government or public authority, or under any law, ordinance or regulation thereof, including, without limitation, all county, township and school real estate taxes, "roll-back" taxes and sewer and water authority charges, as well as any and all business privilege taxes, net profits taxes and any other similar related taxes imposed upon Landlord and its operation of the Leased Premises or the Leased Premises itself. Such Impositions shall be additional rent under this Lease. Tenant covenants and agrees to pay promptly when due all Impositions unless otherwise provided herein. The amount of the Impositions owed by Tenant to Landlord shall be limited to fifteen percent (15%) of the total of such taxes imposed on the Landlord in connection with its leasing of the Amity Primary Center to Tenant and other tenants.

(b) Although the Leased Premises is presently exempt from real estate taxation, if the character of such exemption is changed or otherwise altered by the Berks County Board of Assessment Appeals as a result of this Lease or for any other reason, Tenant shall be responsible for the payment of all such Impositions levied by the County of Berks, Amity Township and Daniel Boone Area School District upon the Commencement Date and throughout the Term hereof. Tenant agrees to pay as additional rent all Real Estate Taxes (as defined herein) that may be levied or assessed by any lawful authority against the Amity Primary Center as the result of this Lease and the Tenant's occupancy of the Leased Premises.



The term "Real Estate Taxes" shall include, without limitation, all real estate taxes and charges of every kind and nature whatsoever, general or special, extraordinary as well as ordinary, which are or shall be charged, levied, assessed or imposed by any lawful taxing authority against the Amity Primary Center. Landlord shall promptly forward to Tenant all bills received by Landlord for taxes that Tenant is required by the provisions of this Lease to pay, and which shall be assessed or levied against Landlord. Tenant shall promptly, within thirty (30) days after receipt of said bill from Landlord, pay the amount specified in said bill to Landlord. Tenant agrees, however, that any failure on the part of Landlord to submit to Tenant bills received by Landlord for taxes shall not be deemed a waiver, abrogation or limitation of Tenant's obligation to pay all taxes imposed as above provided.

9. Insurance.

(a) Tenant, at its sole cost and expense, shall, during the entire Term, procure, pay for and keep in full force and effect: (i) commercial general liability insurance with respect to the operations of Tenant in, on, or about the Leased Premises, in which the limits of liability shall not be less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and death or against loss or damage to the Building; (ii) workmen's compensation coverage as required by law; and (iii) with respect to alterations, improvements and the like permitted to be made by Tenant hereunder, contingent liability and builder's risk insurance, in amounts satisfactory to Landlord in its reasonable discretion. The insurance required under Section 9(a)(i) above shall name Landlord as an additional insured. The policy required under Section 9(a)(iii) above shall name Landlord as loss payees as its interests may appear.

(b) Landlord, at its sole cost and expense, shall, during the entire Term, procure, pay for and keep in full force and effect insurance against loss or damage to the Building and the improvements by fire and such other casualties as may be included within fire and extended coverage insurance or all-risk insurance, including, without limitation, coverage for vandalism and malicious mischief.

(c) The company or companies writing any insurance that Tenant is required to maintain pursuant to Section 9(a) above, as well as the form of such insurance, shall at all times be subject to Landlord's reasonable approval and shall be licensed to do business in the Commonwealth of Pennsylvania. Each such policy or a certificate thereof, shall be deposited with Landlord by Tenant promptly upon the Commencement Date hereof, and within thirty (30) days prior to the commencement of each renewal term of such policies. Each insurance policy maintained pursuant to this Section 9 shall include a provision whereby the coverage provided by such policy shall not be cancelled or changed without at least thirty (30) days prior written notice to Landlord if reasonably possible. If Tenant shall fail to perform any of its obligations under this Section 9, Landlord may perform the same and the cost of same shall be deemed additional rent and shall be payable upon Landlord's demand.

(d) Each of the parties hereto hereby releases the other, to the extent of the releasing party's insurance coverage, from any and all liability for any loss or damage covered by such insurance which may be inflicted upon the property of such party even if such loss or damage shall be brought about by the fault or negligence of the other party, its agents or



employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance shall contain a clause to the effect that this release shall not affect said policy or the right of the insured to recover thereunder. If any policy does not permit such a waiver, and if the party to benefit therefrom requests that such a waiver be obtained, the other party agrees to obtain an endorsement to its insurance policies permitting such waiver of subrogation if it is available.

10. Repairs, Replacements and Maintenance. Landlord shall make any and all necessary major repairs and replacements subject to the provisions of Section 6 of this Lease in and to the Leased Premises including, without limitation: (a) the roof, the roof membrane, foundation, floor slab, exterior walls, and all structural parts of the Building, (b) all electrical, gas, water and sewer, plumbing and heating, air conditioning and ventilation systems serving the Leased Premises, and (c) the improvements. Subject to payment by Tenant as provided for herein, Landlord shall also be responsible for all snow removal and necessary general maintenance of grounds, including necessary cutting of grass. It is agreed by the parties that Landlord's snow removal obligation shall only be on each of Tenant's regularly scheduled days of operation. Except only for the items specified in the preceding sentences in this Section 10, Tenant shall perform all other necessary routine maintenance of the Leased Premises at its sole cost and expense, and shall, at its sole cost and expense, keep the Leased Premises in a neat, orderly and good condition, ordinary wear and tear excepted; and keep the Leased Premises free of rubbish except to the extent otherwise agreed herein. Tenant shall keep the Leased Premises reasonably clean at all times and empty the trash on a daily basis. Notwithstanding the foregoing, Tenant acknowledges and agrees that the Leased Premises are leased to Tenant subject to certain pre-existing agreements and licenses granting various community sports organizations limited rights to use the fields and gymnasium of the Amity Primary Center. Also, Landlord and Tenant hereby agree that Tenant shall be permitted and required to perform daily cleaning of the Leased Premises and daily securing of the Leased Premises. Tenant shall give prompt written notice to Landlord of any of the following of which Tenant shall have knowledge: (i) any accident in or about the Leased Premises, (ii) any fire in the Leased Premises, (iii) any damage to or defects in the Leased Premises, including fixtures, equipment and appurtenances constituting a part thereof, for the repair of which Landlord is responsible, and (iv) any damage to or defects in any parts or appurtenances of the Building's sanitary, electrical, heating, ventilating, air conditioning and other systems located in or passing through the Leased Premises or any part thereof. Tenant at Tenant's sole cost and expense shall repair all damage to the Leased Premises, Building and Amity Primary Center caused by Tenant or its invitees, employees, agents or representatives; keep the same in good order and repair as they now are, reasonable wear and tear and damage by accidental fire or other casualty or incident not occurring through negligence or intentional act of Tenant or its , invitees, employees, agents or representatives excepted. Notwithstanding anything contained herein to the contrary, Tenant shall pay Landlord as additional rent a sum equal to 15.0% of Landlord's costs for all snow removal and necessary general maintenance of grounds, including necessary cutting of grass, at the Amity Primary Center. Tenant shall promptly, within thirty (30) days after receipt of said bill from Landlord identifying the Tenant's share of the cost for all snow removal and necessary general maintenance of grounds, including necessary cutting of grass, at the Amity Primary



Center, pay the amount specified in said bill to Landlord as additional rent.

11. Utilities. Landlord shall be responsible for Tenant's portion of the Building's utility costs, including gas, water, electricity and sewer, to the extent that Tenant's utility use is reasonable. Tenant is responsible at its sole cost and expense for telephone, facsimile, cable, internet service and infrastructure equipment. Tenant is permitted to utilize the existing infrastructure cabling and wiring without alteration.

12. Governmental Regulations. Tenant shall, at its sole cost and expense, throughout the Term of this Lease comply with (a) all applicable laws, ordinances, notices, orders, rules, regulations or requirements of any federal, state or municipal government, public authority or agency relating to the Leased Premises or to the use or manner of use thereof including, without limitation, the ADA (hereinafter defined), and (b) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Leased Premises. For purposes hereof, "ADA" shall mean, collectively, the "Americans with Disabilities Act of 1990" (as amended from time to time) and any and all rules and regulations promulgated thereunder. Tenant shall also comply with all of Landlord's rules, regulations and policies. If the cost and expense to Tenant to comply with this Section 12 requires the Tenant to expend a verifiable sum in excess of Twenty-Five Thousand Dollars (\$25,000.00) (unless Landlord agrees, in its sole discretion, to pay for the cost of work in excess of Twenty-Five Thousand Dollars (\$25,000.00), Tenant retains the right to terminate the Lease upon sixty (60) days' written notice to Landlord.

13. Signs. Tenant may, at its sole cost and expense, and subject to the prior written approval of Landlord, not to be unreasonably withheld, install Tenant's standard signage within the interior and upon the exterior of the Leased Premises, provided such signs are installed and maintained in accordance with all applicable laws and such signs do not interfere with any signs of other tenants at the Building.

14. Alterations, Additions; Trade Fixtures.

(a) Tenant may not make or permit to be made any cosmetic, non-structural or structural alterations, improvements or additions of any kind to the Leased Premises (including, without limitation, the installation of security cameras or a card access system or the alteration to the overhead announcement/phone system and any network, phone or cable wiring) without on each occasion first presenting to Landlord plans and specifications therefor and obtaining Landlord's prior written consent thereto, which consent shall not be unreasonably withheld by Landlord. If Landlord shall consent to any such proposed alterations, improvements or additions, then Tenant shall make the proposed alterations, improvements and additions at Tenant's sole cost and expense including, without limitation, the cost of any electrical system or other modifications to existing systems necessary for any such alterations, improvements and additions to function properly, provided that: (i) Tenant obtains and supplies to Landlord copies of any and all necessary permits; (ii) such alterations and improvements do not impair the structural strength of the Building or any other improvements located thereon or reduce the value of the Amity Primary Center; (iii) Tenant



performs such alterations, improvements and additions in a good and workmanlike manner and in accordance with all applicable laws; (iv) Tenant causes its contractors and subcontractors to maintain such amounts and types of insurance as Landlord may reasonably require; and (v) Tenant shall take or cause to be taken all steps that are required by Section 15 hereof and that are required or permitted by law in order to avoid the imposition of any mechanic's, laborer's or materialman's liens upon the Amity Primary Center. Except for those alterations, additions, improvements or changes which Landlord designates in writing to Tenant shall remain the property of Tenant throughout the Term of this Lease and be removed by Tenant, at Tenant's sole cost and expense, upon the expiration or earlier termination hereof, all alterations, additions, improvements or changes made by Tenant shall immediately become the property of Landlord and shall remain upon the Leased Premises upon the expiration or earlier termination of this Lease.

(b) Tenant agrees that it has entered into this Lease on the express understanding that the Leased Premises are leased "AS IS."

(c) Subject to the provisions of Section 14(a) hereof, all trade fixtures, furniture, furnishings, signs and non-structural alterations, improvements and additions to the Leased Premises, which are owned or constructed, installed or otherwise made by Tenant shall be the property of Tenant throughout the Term of this Lease and shall be removed by Tenant, at Tenant's sole cost and expense, following the expiration or earlier termination of this Lease. In the event any such fixtures, furniture, furnishings, signs or non-structural alterations, improvements and additions are removed by Tenant, Tenant shall repair and restore any damage to the Leased Premises caused by the removal thereof.

15. Liens.

(a) Tenant will not suffer or permit any contractor's, subcontractor's or supplier's lien (a "Construction Lien") to be filed against the Leased Premises or any part of the Amity Primary Center by reason of work, labor services or materials supplied or claimed to have been supplied to Tenant; and if any Construction Lien shall at any time be filed against the Leased Premises or any part of the Amity Primary Center, Tenant, within twenty (20) days after notice of the filing thereof, shall cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such Construction Lien to be discharged within the period aforesaid, then in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge it either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Landlord, plus all of Landlord's reasonable and actual costs and expenses associated therewith (including, without limitation, reasonable attorneys' fees), shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand with interest from the date of advance by Landlord at the rate of six percent (6.00%) per annum.

(b) Nothing in this Lease, or in any consent to the making of alterations or improvements shall be deemed or construed in any way as constituting authorization by Landlord for the making of any alterations or additions by Tenant within the meaning of 49 P.S.



§§ 1101-1902, as amended, or under the Contractor and Subcontractor Payment Act (73 P.S. § 501 et seq.) or any amendment thereof, or constituting a request by Landlord, express or implied, to any contractor, subcontractor or supplier for the performance of any labor or the furnishing of any materials for the use or benefit of Landlord.

16. Landlord's Right of Entry. Tenant shall, throughout the Term hereof, permit Landlord and Landlord's agents, employees and authorized representatives to enter the Leased Premises from time to time and after, except in the case of emergency, providing advanced notice of at least twenty-four (24) hours to Tenant of Landlord's intent to enter the Leased Premises for the purpose of (a) inspecting the same, or (b) exhibiting the Leased Premises to prospective purchasers or lenders, and, during the last year of the Term hereof, to any prospective Tenants; provided, however, that Landlord shall use commercially reasonable efforts to minimize disruption to Tenant's operations at the Leased Premises.

17. Damage by Fire or Other Casualty. If, during the Term, the Leased Premises are so damaged by fire or other casualty that, in Landlord's opinion, the Leased Premises are rendered unfit for occupancy, Landlord shall have the right to terminate this Lease by giving written notice to Tenant within thirty (30) days after the occurrence of such damage, such termination to be effective as of the date of the occurrence of such damage. In such case, Tenant shall pay the rent and additional rent apportioned to the date of such termination and Landlord may enter upon and repossess the Leased Premises without further notice. If Landlord does not elect to terminate this Lease, Landlord will repair the Leased Premises and Landlord may enter and repossess the Leased Premises for that purpose with advanced written notice provided to Tenant of Landlord's intent to repossess and repair damages to Leased Premises. Tenant shall have the option to terminate the Lease without penalty if Landlord and Tenant cannot agree upon a reasonable timeframe for reparation of damages to the Leased Premises. During such period as Tenant is deprived of the use of the Leased Premises, the rent shall be abated in proportion to the number of square feet of the Leased Premises rendered untenable. If the damage is such that the Leased Premises are not rendered unfit for occupancy, Landlord will repair whatever portion, if any, of the Leased Premises may have been damaged, Tenant will continue in possession, and the rent and additional rent will not be apportioned or abated.

18. Indemnification of Landlord. Except to the extent caused by Landlord's gross negligence or intentional misconduct, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, actions, damages, liabilities and expenses (including, without limitation, reasonable fees and costs of attorneys, investigators and experts) (i) in connection with loss of life, personal injury or damage to property caused to any person in or about the Leased Premises or Amity Primary Center, except Tenant shall have no liability or indemnification obligation with respect to agreements and licenses for use of the Leased Premises entered into with Landlord such as those referenced in Section 10, (ii) arising out of the occupancy or use by Tenant of the Leased Premises or any part thereof, (iii) occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees or invitees, or (iv) arising out of or relating to any breach by Tenant of any of the terms or conditions of this Lease. This Section 18 shall survive the expiration or any earlier termination of this Lease.



19. Intentionally omitted.

20. Condemnation.

(a) If more than twenty-five percent (25%) of the floor area of the Leased Premises is taken or condemned for a public or quasi-public use (a sale in lieu of condemnation to be deemed a taking or condemnation for purposes of this Lease), this Lease shall, at either party's option, terminate as of the date title to the condemned real estate vests in the condemnor, and the rent and additional rent herein reserved shall be apportioned and paid in full by Tenant to Landlord to that date and all rent prepaid for any period beyond that date shall forthwith be repaid by Landlord to Tenant and neither party shall thereafter have any liability hereunder.

(b) If less than twenty-five percent (25%) of the floor area of the Leased Premises is taken or if neither Landlord nor Tenant have elected to terminate this Lease pursuant to the preceding sentence, Landlord shall do such work as may be reasonably necessary to restore the portion of the Leased Premises not taken to tenantable condition for Tenant's uses, but shall not be required to expend more than the net award Landlord reasonably expects to be available for restoration of the Leased Premises. If Landlord determines that the damages available for restoration of the Leased Premises will not be sufficient to pay the cost of restoration, or if the condemnation damage award is required to be applied on account of any mortgage which encumbers any part of the Leased Premises, Landlord may terminate this Lease by giving Tenant thirty (30) days prior notice specifying the termination date.

(c) If this Lease is not terminated after any such taking or condemnation, the rent and the additional rent shall be equitably reduced in proportion to the area of the Leased Premises which has been taken for the balance of the Term.

(d) If a part or all of the Leased Premises shall be taken or condemned, all compensation awarded upon such condemnation or taking shall go to Landlord and Tenant shall have no claim thereto other than Tenant's damages associated with moving, storage and relocation and other similar damages afforded to tenants, generally, under applicable law; and Tenant hereby expressly waives, relinquishes and releases to Landlord any claim for damages or other compensation to which Tenant might otherwise be entitled because of any such taking or limitation of the leasehold estate hereby created, and irrevocably assigns and transfers to Landlord any right to compensation of all or a part of the Leased Premises or the leasehold estate.

21. Subordination. This Lease and Tenant's rights hereunder shall be subject and subordinate at all times in lien and priority to any current or future mortgage or other security documents given by the Landlord and affecting the Leased Premises, and to all renewals, modifications, consolidations and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however, that the Landlord shall use commercially reasonable efforts to obtain a Subordination, Non-Disturbance and Attornment Agreement (an "SNDA") from the holder of all such mortgages, providing generally that the



mortgagee or any purchaser at the foreclosure of the mortgage will not disturb Tenant's possession of the Leased Premises and that Tenant will attorn to such mortgagee or purchaser at foreclosure as Landlord under the terms and conditions of this Lease upon receiving written notice that such party has succeeded to the interest of Landlord under this Lease. In confirmation of such subordination, Tenant shall join with any such mortgagee and execute promptly (and, in any event, within ten (10) days after receipt of a written request therefor) an SNDA. Tenant's obligation to join with any mortgagee in the execution of an SNDA shall be applicable with respect to all present and future mortgages to which Landlord requests Tenant's execution of an SNDA. Notwithstanding the foregoing, any mortgagee may at any time subordinate its mortgage to this Lease, without Tenant's consent, by giving notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution and delivery, and in that event such mortgagee shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution and delivery of the mortgage and had been assigned to such mortgagee.

22. Quiet Enjoyment. Tenant, upon paying the rent, additional rent and other charges herein provided for, and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Leased Premises during the Term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

23. Assignment and Subletting. Tenant shall not have the right to assign, mortgage or pledge this Lease, or sublet the Leased Premises or any part thereof, or permit any other person to occupy the Leased Premises or any part thereof, without the prior written consent of Landlord (to be granted or withheld in Landlord's sole discretion).

24. Curing Tenant's Defaults. If Tenant shall be in default in the performance of any of its obligations hereunder, Landlord, without any obligation to do so, in addition to any other rights it may have in law or equity, may elect to cure such default on behalf of Tenant after written notice (except in the case of emergency, in which event no notice shall be required) to Tenant. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in curing such default, including, without limitation, sums spent on Impositions, insurance premiums, utilities and repairs, attorneys' fees and costs, plus interest thereon at the rate of six percent (6.00%) per annum from the respective dates of Landlord's making the payments and incurring such costs, which sums and costs together with interest thereon shall be deemed additional rent payable promptly upon being billed therefor.

25. Surrender. Upon the expiration of this Lease or upon the earlier termination of this Lease, Tenant shall promptly yield, clean and neat, and in the same condition, order and repair in which they are required to be kept throughout the Term hereof, the Leased Premises and all improvements, alterations and additions thereto, subject to Section 14(a) hereof, ordinary wear and tear, and damage by casualty or condemnation excepted. Anything to the contrary notwithstanding, any holding over by Tenant without Landlord's prior written consent shall constitute an Event of Default hereunder and shall be subject to all the remedies set forth in Section 26 hereof. In the event Tenant holds over after the expiration or earlier termination of the Term hereof, Tenant shall be deemed a Tenant at sufferance under the terms and conditions



of this Lease, except Tenant shall pay to Landlord rent equal to twice (200%) the rent payable during the Lease year immediately preceding the expiration or termination of this Lease.

26. Defaults; Remedies.

(a) **Defaults.** It shall be an event of default (an “Event of Default”):

(i) If Tenant does not pay in full when due and without demand any rent and all other charges or payments due under the terms of this Lease and such default shall continue for a period of ten (10) days after the date of written notice from Landlord to Tenant specifying such default (provided, however, that Landlord shall not be required to give such notice more than twice in any twelve (12) month period); or

(ii) If Tenant vacates or abandons the Leased Premises or removes or attempts to remove Tenant’s goods or property therefrom other than in the ordinary course of business without having first paid to Landlord in full all charges, other charges that may have become due as well as all which will become due thereafter; or

(iii) If Tenant violates the terms of this Lease; or

(iv) If Tenant becomes insolvent or bankrupt in any sense or makes an assignment for the benefit of creditors or offers a composition or settlement to creditors, or if a petition in bankruptcy or for reorganization or for an arrangement with creditors under any federal or state law is filed by or against Tenant, or a bill in equity or other proceeding for the appointment of a receiver, trustee, liquidator, custodian, conservator or similar official for any of Tenant’s assets is commenced, or if any of the real or personal property of Tenant shall be levied upon by any sheriff, marshal or constable; provided, however, that any proceeding brought by anyone other than the parties to this Lease under any bankruptcy, reorganization arrangement, insolvency, readjustment, receivership or similar law shall not constitute a default until such proceeding, decree, judgment or order has continued unstayed for more than thirty (30) consecutive days; or

(v) If Tenant violates or fails to perform or otherwise breaches any other agreement, term, covenant or condition herein contained and such default shall continue for a period of twenty (20) days after the date of written notice from Landlord to Tenant specifying the nature of such default; provided, however, if the default cannot reasonably be cured within such 20-day period it shall not be an Event of Default if Tenant commences to cure such default within such 20-day period and diligently and in good faith proceeds to cure such default to completion, provided such cure shall be completed within sixty (60) days after the date of the aforesaid notice from Landlord to Tenant.

(b) **Remedies.**

(i) If any such Event of Default occurs (regardless of the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms or this Lease), Landlord at any time thereafter may exercise any one or more of the



following remedies:

A. **Termination of Lease.** Landlord may terminate this Lease, without any right by Tenant to reinstate its rights by payment of rent due or other performance of the terms and conditions. Upon such termination, Tenant shall immediately surrender possession of the Leased Premises to Landlord, and Landlord shall immediately become entitled to receive from Tenant, as liquidated, agreed, final damages, an amount equal to the difference between the aggregate of all rentals reserved for the balance of the Term, and the fair rental value of the Leased Premises for that period, determined as of the date of such termination.

B. **Relet.** With or without terminating this Lease, as Landlord may elect, Landlord may (but shall be under no obligation to) re-enter and repossess the Leased Premises, or any part thereof, and lease it to any other person upon such terms as Landlord shall deem reasonable, for a term within or beyond the Term of this Lease; provided, that Tenant, shall remain liable for (a) all rent, additional rent and other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination or repossession, less (b) the net proceeds, if any, of any reletting effected for the account of Tenant after deducting from such proceeds all of Landlord's expenses in connection with such reletting (including without limitation, all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees and expenses, employees' expenses, reasonable alteration costs, and expenses of preparation for such reletting). If the Leased Premises are at the time of default sublet or leased by Tenant to others, Landlord may, as Tenant's agent, collect rents due from any subtenant or other Tenant and apply such rents to the rent and other amounts due hereunder without in any way affecting Tenant's obligations to Landlord under this Lease. Such agency, being given for security, is declared to be irrevocable.

(c) **Late Payments.** If any payment required to be made by Tenant to Landlord under this Lease shall not have been received by Landlord by 5:00 pm local time on the tenth (10th) day after the date such payment is due, then (i) in addition to such payments, and in order to partially compensate Landlord for the extra expense incurred in the handling of overdue payments, Tenant shall pay Landlord a late fee equal to the greater of (A) five percent (5.00%) of such overdue payment, or (B) Two Hundred Fifty and 00/100 Dollars (\$250), and (ii) such overdue payment shall bear interest, from the date such overdue payment was due until it is paid, the rate of six percent (6.00%) per annum (or, if lower, the highest legal rate). The late fee and interest set forth in this Section 25(c) shall not affect any other right or remedy available to Landlord as a result of a failure by Tenant to make any payment as required under this Lease.

(d) **Non-Waiver.** No waiver by Landlord of any breach by Tenant of any of Tenant's obligations, agreements or covenants herein shall be a waiver of any subsequent breach or of any obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of any rights and remedies with respect to such or any subsequent breach.

(e) **Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy provided herein or by law, but each shall be cumulative and in addition to every other right or remedy



given herein or now or hereafter existing at law or in equity or by statute.

27. Condition of Title and of Leased Premises. Tenant represents to Landlord that the Leased Premises, the title thereto, the zoning thereof, the street or streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and sub-surface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant, and Tenant accepts them in the “AS IS” condition or state in which they now are, or any of them now is, without relying on any representation, covenant or warranty, express or implied, in fact or in law, by Landlord and without recourse to Landlord, as to the title thereto, the encumbrances thereon, the appurtenances thereto, the nature, condition or usability thereof or the use or uses to which the Leased Premises may be put.

28. Environmental Laws.

(a) Tenant shall neither violate any Environmental Laws (defined hereafter) regarding the transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Materials (defined hereafter) in, on or about the Leased Premises, or any part thereof, nor permit any of its agents, employees, contractors, licensees or invitees to engage in such activities in, on or about the Leased Premises in violation of Environmental Laws. Tenant shall, at its sole cost and expense, during the Term of this Lease comply with all Environmental Laws relating to or affecting the Leased Premises.

(b) The term “Hazardous Materials” for purposes of this Section 28 shall mean any chemical, substance, material, or waste, or component thereof, whether in a solid, liquid or gaseous state, which is now or hereafter listed, defined, or regulated as a hazardous or toxic chemical, substance, material, or waste, or component thereof, by any federal, state, or local governing or regulatory body having jurisdiction, or which would trigger any employee or community “right-to-know” requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of any material safety data sheet, issued by the manufacturer therefor, written information concerning the removal, transportation, and disposal of the same, and such other information as the requesting party may reasonably require or as may be required by any law, including, without limitation (a) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. as amended from time to time, and regulations promulgated thereunder; (b) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., as amended from time to time, and regulations promulgated thereunder; (c) Federal Water Pollution Control Act/Clean Water Act, 33 U.S.C. 1251 et seq.; (d) Clean Air Act, 42 U.S.C. 7401 et seq.; (e) Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; and (f) the Hazardous Materials Transportation Act, 49 U.S.C. 5101 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws; and in any revised or successor code thereto. The term “Environmental Laws” shall mean all federal, state and municipal environmental laws and all promulgated regulations affecting the Leased Premises, including but not limited to any new or amended legislation and all regulations promulgated thereunder.

(c) Tenant shall indemnify, defend and hold harmless Landlord, its officers, employees and agents, and any successors to Landlord’s interest in the Leased Premises, and



such successor's officers, employees and agents, from and against any and all claims (whether such claims be governmental or private, under any theory of law or equity), actions, losses, liabilities, damages and expenses directly or indirectly arising out of Tenant's transportation, use, storage, maintenance, generation, manufacture, handling, disposal, release or discharge of Hazardous Materials in, on or about the Leased Premises, and including, without limitation, the cost of any required or necessary repair, remediation, cleanup, or detoxification and the preparation of any closure or other required plans, legal and environmental consultant's fees and costs incurred in connection therewith.

(d) This Section 28 shall survive the expiration or earlier termination of this Lease.

29. Interpretation; Miscellaneous.

(a) The captions in this Lease are for convenience only and are not a part of this Lease and do not in any way define, limit, describe or amplify the terms and provisions of this Lease or the scope or intent thereof.

(b) This Lease represents the entire agreement between the parties hereto and there are no collateral or oral agreements or understandings between Landlord and Tenant with respect to the Leased Premises.

(c) This Lease shall not be modified in any manner except by an instrument in writing executed by the parties.

(d) This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall inure to the benefit of and be binding upon Tenant, its successors and permitted assigns. Landlord is permitted to assign this Lease without having to obtain Tenant's approval.

(e) Each writing or plan referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

(f) This Lease shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

(g) This Lease and the parties' obligations hereunder are expressly contingent upon approval of this Lease by the Pennsylvania Department of Education, to the extent such approval is required by law.

(h) The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision of this Lease.

(i) Tenant hereby represents and warrants that it has full power and authority to execute and deliver this Lease and to perform its obligations hereunder and thereunder.



(j) This Lease may be signed in any number of counterparts which, when taken together, shall constitute one and the same document. The parties further agree that any facsimile or electronic signature shall be deemed to have been fully delivered and shall be as effective as an original signature and shall be equally binding as though delivered directly by hand to each other.

(k) Any prevention, delay or stoppage which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, a national or Commonwealth of Pennsylvania emergency, disease, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance by such party for a period equal to the duration of such prevention, delay or stoppage, except where such performance is the payment of Minimum Rent and additional rent and other charges to be paid by Tenant pursuant to the provisions of this Lease.

30. Definitions.

(a) The word "Landlord" is used herein to include the Landlord named above as well as its successors and assigns, each of whom shall have the same rights, remedies, powers, authorities and privileges as it would have had it originally signed this Lease as Landlord. Any such person, whether or not named herein, shall have no liability hereunder after it ceases to hold title to the Leased Premises except for obligations which may have theretofore accrued. Neither Landlord nor any principal of Landlord, whether disclosed or undisclosed, shall have any personal liability with respect to any of the provisions of this Lease or the Leased Premises, and if Landlord is in breach or default with respect to Landlord's obligations under this Lease or otherwise, Tenant shall look solely to the equity of Landlord in the Leased Premises for the satisfaction of Tenant's remedies.

(b) The word "Tenant" is used herein to include the Tenant named above as well as its successors and permitted assigns, each of which shall be under the same obligations, liabilities and disabilities and each of which shall have the same rights, privileges and powers as it would have possessed had it originally signed this Lease as Tenant. Each and every of the persons named above as Tenant shall be bound formally and severally by the terms, covenants and agreements contained herein.

31. Notices. All notices, demands, requests, consents, certificates and waivers (referred to collectively in this Section 31 as "Notices") required or permitted hereunder from either party to the other shall be in writing and be given by (a) personal delivery, (b) United States certified mail, return receipt requested, postage prepaid, or (c) reputable overnight courier service, such as FedEx or UPS, charges prepaid, addressed as follows:

If to Landlord:

Daniel Boone Area School District
Attention: Chief Financial Officer



501 Chestnut Street
Birdsboro, PA 19508

With a copy to: **Fox Rothschild LLP**
Attention: Brian Subers, Esquire
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001

If to Tenant: **Berks Encore, Inc.**
Attention: LuAnn Oatman
40 North Ninth Street
Reading, PA 19601.

Either party may at any time, in the manner set forth for giving Notices to the other, specify a different address to which Notices to it shall be sent. Notices personally delivered shall be deemed given when received. Notices sent certified mail shall be deemed given two (2) business days after mailing. Notices sent by overnight courier service shall be deemed given one (1) business day after deposit with the courier. Notices may be given on behalf of the parties by their respective counsel.

32. Estoppel Certificates. At any time and from time to time, within ten (10) days after Landlord shall request the same, Tenant will execute, acknowledge and deliver to Landlord and to such mortgagee or other party as may be designated by Landlord, a certificate in such form requested by Landlord and containing such matters relating to this Lease or the status of performance of obligations of the parties hereunder as may be reasonably requested by Landlord. In the event that Tenant fails to provide such certificate within ten (10) days after request by Landlord therefor, Tenant shall be deemed to have approved the contents of any such certificate submitted to Tenant by Landlord as it relates to rent amounts only and Landlord is hereby authorized to so certify.

33. Broker's Commission. Landlord and Tenant each represent and warrant to the other that no broker, finder or agent has been retained or employed by it in connection with this Lease, and that no brokers' or finders' fees or commissions are or will be owed by it to any person in connection with this Lease by reason of any agreement or understanding between it and any third party. Landlord and Tenant, as applicable, shall indemnify the other against, and hold the other harmless from, all liability arising from the breach by such indemnifying party of the foregoing representation and warranty, and shall defend the other in the event claims related thereto are asserted against the other.

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34. Waiver of Trial by Jury. Each party to this Lease agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto or any successor or assign of any party hereto or with respect to this Lease or which in any way relates, directly or indirectly, to the Leased Premises or any event, transaction, or occurrence arising out of or in any way in connection with the Leased Premises, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. TENANT ACKNOWLEDGES AND AGREES THAT THIS SECTION 34 IS A SPECIFIC AND MATERIAL ASPECT TO THIS LEASE BETWEEN THE PARTIES AND THAT LANDLORD WOULD NOT LEASE THE LEASED PREMISES TO THE TENANT IF THIS WAIVER OF JURY TRIAL SECTION WERE NOT A PART OF THIS LEASE.

IN WITNESS WHEREOF, and in consideration of the mutual entry into this Lease and for other good and valuable consideration, and intending to be legally bound, each party hereto has caused this Lease to be duly executed as of the date and year first above written.

**TENANT:
BERKS ENCORE, INC.**

By: LuAnn Oatman
Signed on 2020/08/14 04:46:26 -8:00
Name: LuAnn Oatman
Title:

**LANDLORD:
DANIEL BOONE AREA SCHOOL DISTRICT**

By: Julia M. Olafson
Signed on 2020/08/14 06:34:00 -8:00
Board President

Attest: Bucky Scott
Signed on 2020/08/13 13:29:14 -8:00
Board Secretary



EXHIBIT "A"

Exhibit A

APC - First Floor

Berk's Encore

