

LEASE OF BUILDING
BETWEEN THE TOWN OF WHITMAN, AND
WHITMAN-HANSON REGIONAL SCHOOL DISTRICT

This lease is made this first day of June 1998, by and between the Town of WHITMAN, a municipal corporation located in Plymouth County, Massachusetts (the "Town") and the Whitman-Hanson Regional School District, a body politic incorporate located in Plymouth County, Massachusetts (the "District"), under the provisions of Massachusetts General Laws, Chapter 71, Section 14C, Chapter 46 of the Acts of 1996 and under the provisions of the Amended Agreement between the towns of Whitman and Hanson with respect to the extension of Whitman-Hanson Regional School District (the "Amended Agreement").

In consideration of Zero Dollars, other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, the Town and the District hereby agree with each other as follows:

Section I. Premises: The Town hereby demises to the District, and the District hereby leases from the Town, upon and subject to the terms, conditions, covenants and provisions hereof, the land located in the Town of Whitman, Plymouth County, Massachusetts, more particularly described as Exhibit "A" annexed hereto and made a part hereof, together with any and all improvements, appurtenances, rights, privileges and easements benefitting, belonging or pertaining thereto, and any right, title and interest of the Town in and to any land lying in the bed of any street, road or highway (opened or proposed) to the center line thereof, in front of or adjoining said land (all of the foregoing hereinafter sometimes called the "Demised Premises" and sometimes referred to as the "premises") and together with all of the Town's right, title and interest in any equipment, materials and other personal property of every nature and description, located upon the Demised Premises.

Section II. Term: The term of this lease commences on June 1, 1998. The initial term of this lease is for a period of fifty (50) years beginning on June 1, 1998, unless sooner terminated or extended as herein provided.

Section III. Rent: The rent during the initial and extended terms of this lease is Zero Dollars.

Section IV. Use of Premises: The Demised Premises may be used for any lawful school purpose. It may be used for any other purpose approved in writing by the WHRSD School Committee and the Town. The Town's approval shall not be unreasonably withheld. The Town reserves the right to use the demised buildings as emergency shelters in the event of an emergency declared under local, state or federal law.

Section V. Utility Expenses: The District shall, during the term of this lease, pay and discharge punctually, as and when the same become due and payable, all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services furnished to the Demised Premises or to the occupants thereof during the term of this lease (hereinafter called "utility expenses"), except for items covered by Section X of the Amended Agreement.

Section VI. Improvements, Repairs, Additions, Replacements:

- a) The District may, at its own cost and expense, and upon approval of the Town which shall not be unreasonably withheld, construct on any part or all of the Demised Premises, at any time and from time to time, such buildings, parking areas, driveways, walks, gardens, athletic facilities, and other similar and dissimilar improvements as the District may from time to time determine. Such construction carried out by the District shall be performed in accordance with all applicable local, state and federal laws and regulations.
- b) The District shall, at all times during the term of this lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted) all buildings and improvements at any time erected on the Demised Premises, and shall use all reasonable precaution to prevent waste, damage, or injury. The Town shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Demised Premises during the term of this lease, except as provided for in the Amended Agreement.

- c) The District may, at its option and at its own cost and expense, and upon approval of the Town which shall not be unreasonably withheld, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the Demised Premises, and the buildings and improvements now or hereafter thereon, as it may deem desirable, including the demolition of any building, the demolition of any improvement, or the demolition of any structure that now or hereafter may be situated or erected on the Demised Premises. All such work shall be performed in accordance with all applicable local, state and federal laws and regulations.
- d) Until the expiration or sooner termination of this lease, title to any building or buildings or improvements situated or erected on the Demised Premises and the building equipment and other items installed thereon and any alteration, change, or addition thereto remains solely in the District.
- e) On the last day or sooner termination of the term of this lease, the District shall quit and surrender the Demised Premises, and the buildings and permanent improvements then thereon, in good condition and repair (ordinary wear and tear excepted).
- f) The provisions of this Section VI (Improvements, Repairs, Additions, Replacements) are subject to any provisions of the Amended Agreement pertaining to the apportionment and payment of costs incurred by the District.

Section VII. Requirements of Public Authority:

- a) During the term of this lease, the District shall, at its own cost and expense, promptly observe and comply with all present and future laws, by-laws, requirements, orders, directives, rules and regulations of the Federal, State, and Town governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the term of this lease or may in the future be passed, enacted or directed, and the District shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of the District to comply with the covenants of this section.

- b) Subject to the approval of the Town, which shall not be unreasonably withheld, the District may contest by appropriate legal proceedings diligently conducted in good faith, in the name of the District, or the Town (if legally required), or both (if legally required), without cost or expense to the Town, the validity or application of any law, by-law, rule, regulation, or requirement of the nature referred to in paragraph (a) of this section and, if by the terms of any such law, by-law, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, the District may delay such compliance therewith until the final determination of such proceeding. The approval required by this subsection (b) shall not preclude the District from taking steps necessary to set forth, preserve and avoid prejudice to its position while it seeks the approval.
- c) If the Town provides the approval described in the immediately preceding subsection (b), the Town shall execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit the District so to contest the validity or application of any such law, by-law, order, rule, regulation or requirement and shall fully cooperate with the District in such contest.

Section VIII. Covenant Against Liens: If, because of any act or omission of the District, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against the town or any portion of the Demised Premises, the District shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the Town to the District of the filing thereof; and the District shall indemnify and save harmless the Town against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

Section IX. Access to Premises: The Town or the Town's agents and designees may enter upon the Demised Premises at reasonable times to examine the same; provided, however, at least twenty-four (24) hours notice is given by the Town to the District.

Section X. Assignment and Sub-letting: The District may assign, sub-lease (in whole or in part or parts), mortgage or otherwise pledge or encumber this lease (in whole or in part or parts) or any sub-lease of all or any part of the Demised Premises and may permit its sub-tenant or sub-tenants to assign, sub-lease (in whole or in part or parts), mortgage or otherwise encumber this lease or any sub-lease of all or any part of the Demised Premises, provided the Town has consented to same in writing. The Town's consent shall not be unreasonably withheld.

Section XI. Signs: The District and the District's sub-tenants shall have the right to install, maintain and replace in, on or over or in front of the Demised Premises or in any part thereof such signs and advertising matter as the District may desire, and the District shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this section, the word "sign" includes any placard, light or other advertising symbol or object, irrespective of whether the same is temporary or permanent.

Section XII. Indemnity:

- (a) the District shall indemnify and save harmless the Town from and against any and all liability, damage, penalties or judgments arising from injury to person or property sustained by anyone in and about the Demised Premises resulting from any act or acts or omission or omissions of the District, or the District's officers, agents, servants, employees, contractors, or sub-lessees. The District shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the Town or in which the town may be impleaded with others upon any such above mentioned matter, claim or claims, except as may result from the acts set forth in paragraph (b) of this section.
- (b) Except for its affirmative acts of negligence or the affirmative acts of negligence of its officers, agents, servants, employees, or contractors, the Town is not responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Demised Premises, including any damage or injury to the District or to any of the District's officers, agents, servants, employees, contractors, invitees, or sub-lessees.

Section XIII. Insurance:

- (a) The District shall provide at its expense and keep in force during the term of this lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in Massachusetts, selected by the District, and reasonably satisfactory to the Town, in the amount of at least \$500,000 with respect to injury or death to any one person and \$1,000,000 with respect to injury or death to more than one person in any one accident or other occurrence and \$1,000,000 with respect to damages to property. The District shall cause such policy or policies to include the Town as an insured. The District agrees to deliver certificates of such insurance to the Town within thirty (30) days following the Town's written request.
- (b) Beginning July 1, 1998, and during the remainder of the term of this lease, the District shall keep all buildings and improvements currently existing or subsequently erected by the District on the Demised Premises at any time insured for the benefit of the Town and the District as their respective interests may appear, against loss or damage by fire and customary extended coverage in a minimum amount necessary to avoid the effect of co-insurance provisions of the applicable policies. The Town shall, at the District's cost and expense, cooperate fully with the District in order to obtain the largest possible recovery and execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as hereinbefore provided and the Town shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by the District hereunder if the effect of such separate insurance would be to reduce the protection or payment to be made under the District's insurance.
- (c) Any insurance required to be provided by the District pursuant to this lease may be provided by blanket insurance covering the Demised Premises and other locations of the District provided such blanket insurance complies with all other requirements of this lease with respect to the insurance involved and such blanket insurance is reasonably acceptable to the Town.

(d) The District's obligations under this Section XIII are deemed met if the insurance coverage required to be maintained by the District is held in the name of the Town and the District pays its apportioned share of the cost thereof, provided the effect thereof is not to reduce the protection or the payment to be made to the District in the event of loss.

(e) The parties agree to the following provisions that shall survive the termination of this lease and that shall be applicable in the event this lease is terminated pursuant to the provisions of section XV(b): (1) All insurance monies shall be first applied to pay the entire balance of principal and interest on any mortgage or mortgage deed of trust of the District's interest in the Demised Premises; (2) the balance of such insurance monies shall be paid to the Town.

Section XIV. Waiver of Subrogation: All insurance policies carried by either party covering the Demised Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other thereof in the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

Section XV. Destruction:

(a) In the event that, at any time during the term of this lease, the buildings and improvements on the Demised Premises shall be destroyed or damaged in whole or in part by fire or other cause within the extended coverage of the fire insurance policies carried or paid for by the District in accordance with this lease, then, the District, at its own cost and expense, shall, subject to the provisions of paragraph (b) of this Section XV, cause the same to be repaired, replaced, or rebuilt within a period of time which, under all prevailing circumstances, is reasonable.

(b) In the event that, at any time during the term of this lease, any one or more of the buildings on the Demised Premises shall have been damaged or destroyed by fire or any other cause whatsoever, and that, as a result of such damage or destruction, any one or more of the sub-leases covering such buildings is terminated by the sub-tenant thereunder or by the District (each such building being hereinafter called a "damaged building"), then, notwithstanding the provisions of paragraph (a) of this Section XV or any other provisions of this lease:

1. If the aggregate ground floor area of the damaged building or damaged buildings, as the case may be, resulting from such fire or other cause shall exceed fifteen percent (15%) of the aggregate ground floor area of all buildings on the Demised Premises immediately prior to such damage or destruction or if such destruction shall occur within the last five (5) years of the initial term or any extended term thereof, the parties may agree to elect not to repair, replace or rebuild such damaged building or buildings, as the case may be, and to terminate this lease.
2. If the parties do not have the right to terminate this lease pursuant to sub-paragraph (1) or, having such right, shall not elect to terminate this lease, the District shall not be required to repair, replace or rebuild any damaged building until such time as the District shall re-sublet the same to a new sub-tenant or the prior sub-tenant, if such prior sub-tenant shall relet the said damaged building; provided, however, that the District shall so proceed with reconstruction after the expiration of eighteen months following such damage or destruction even if the damaged building shall not yet have been re-sublet.

Section XVI. Utility Easements and Highway Alignment: The District shall have the right to enter into reasonable agreements with the utility companies creating easements in favor of such companies as are required in order to service the buildings on the Demised Premises, and the Town covenants and agrees to consent thereto and to execute any and all documents, agreements, and instruments, and to take all other actions, in order to effectuate the same, subject to review and approval of the Town, which approval shall not unreasonably be withheld, all at the District's cost and expense. The Town further covenants and agrees, upon the request of the District, to convey without compensation therefor, insubstantial perimeter portions of the Demised Premises for highway or roadway purposes, to the Commonwealth of Massachusetts or any other appropriate governmental body.

Section XVII. Non-Exclusive Right to Fields:
The District shall have a non-exclusive right to use the recreational fields, athletic fields and gymnasiums situated at the Demised Premises according to the following terms and conditions:

- a) Middle School Soccer Field: use of the Middle School Soccer Field is and shall continue to be under the control of the Whitman Youth Soccer League by previous vote of the Selectmen of the Town of Whitman. Periodic use of such field by the School and/or other groups is within the sole discretion of the Whitman Youth Soccer League. The Town makes no lease to the District of any right to use such field pursuant to this Agreement. Notwithstanding any other provisions of this lease, the District is not obligated to keep or maintain the field or provide insurance for the field.
- b) Gymnasiums: The gymnasiums shall be made available to local and community groups for outside activities, including without limitation the Youth Leagues of Whitman. A good faith effort will be made by the District to make the gymnasiums available under terms, conditions, scheduling, frequency and duration of access substantially similar to that in place on June 30, 1992, but the District shall not be prevented from modifying the same, including but not limited to custodial and building fees, if it determines that it would be in the best interests of the District to do so.
- c) Athletic and Recreational Fields (excluding the Middle School Soccer Field): the Town shall control use of the athletic and recreational fields located at and appurtenant to the Demised Premises. Scheduling of such use shall be made pursuant to an informal permit procedure established and administered by the Town's Recreation Department Director. The District shall have priority in scheduling activities and uses at such fields during school hours while school is in session. Notwithstanding any other provisions of the lease, the Town agrees to keep and maintain the fields and to provide insurance for the fields.

The Town shall cause such policy or policies to include the District as an insured. The Town agrees to deliver certificates of such insurance to the District within thirty days following the District's written request.

Section XVIII. Quiet Enjoyment:

- a) The District, upon paying the sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this lease, without hindrance or molestation by the Town, its agents, officers, or employees.
- b) The town represents and warrants to the District that it has fee simple title to the Demised Premises and the power and authority to execute and deliver this lease and to carry out and perform all covenants to be performed by it hereunder.

c) If the Town is in default under this Section XVIII, the District, in addition to and all remedies it may have in law or in equity, may terminate this lease upon written notice to the Town.

Section XIX. Defaults:

a) In the event of the District's failure to perform any of the covenants, conditions and agreements herein contained on the District's part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by the District of notice in writing from the Town specifying in detail the nature of such failure, and provided the District does not cure said failure as provided in paragraph (b) of this Section XIX, then, the Town may, at its option, give to the District a notice of election to end the term of this lease upon a date specified in such notice, which date shall not be less than ten (10) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by the District of such notice from the Town, and upon the date specified in said notice, the term and estate hereby vested in the District shall cease and any and all other right, title and interest of the District hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this lease had elapsed, but the District shall continue to be liable to the Town as hereinafter provided.

Simultaneously with the sending of notice to the District, hereinabove provided for, the Town shall send a copy of such notice to any sub-lessee of the Demised Premises or portion thereof that the District may select, in writing, from time to time, and any additional persons or parties having an interest in the Demised Premises that the District may select, in writing, from time to time. The curing of any default or defaults within the above time limits by any of the aforesaid parties or combination thereof, constitutes a curing of any default or defaults hereunder with like effect as if the District had cured the same hereunder.

b) In the event that the Town gives notice of a default of such a nature that it cannot be cured within such thirty (30) day period, then such default is not deemed to continue so long as the District, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, is reasonable. No default is deemed to continue if and so long as the District is so proceeding to cure the same in good faith or is delayed in or prevented from curing the same by any specified cause in Section XXII, Force Majeure, hereof.

- c) Notwithstanding anything to the contrary contained in this Section XIX, in the event that any default or defaults of the District are cured in any manner hereinabove provided, such default or defaults are deemed never to have occurred and the District's right hereunder continues unaffected by such default or defaults.
- d) All of the provisions of this section shall apply equally to the Town in the event of the Town's failure to perform any of the covenants, conditions, and agreements contained in this lease.

Section XX. Expenses and Attorney's Fees: The District will pay all of the Town's expenses, including reasonable attorney's fees, incurred in enforcing any obligations of the District under this lease with which the District has failed to comply. The town will pay all of the District's expenses, including reasonable attorney's fees, incurred in enforcing any obligations of the Town under this lease, with which the Town has failed to comply.

Section XXI. Waivers: Failure of the Town or the District to complain of any act or omission on the part of the other party no matter how long the same may continue, is not deemed to be a waiver by said party of any of its rights hereunder. No waiver by the Town or the District at any time, express or implied, of any breach of any provision of this lease is deemed a waiver of a breach of any other provision of this lease or a consent to any subsequent breach of the same or any other provision.

Section XXII. Force Majeure: In the event that the Town or the District is delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act, or default of the other party, war or other reason beyond their control, then performance of such act is excused for the period of the delay and the period for the performance of any such act is extended for a period equivalent to the period of such delay.

Section XXIII. Notices: Every notice, approval, consent or other communication authorized or required by this lease is not effective unless the same is in writing and sent postage prepaid by United States Registered or Certified Mail, Return Receipt Requested, directed to the other party at its principal administrative address, or such other address as either party may designate by notice given from time to time in accordance with this section.

Section XXIV. Governing Law: This lease and the performance thereof is governed, interpreted, construed and regulated by the laws of the Commonwealth of Massachusetts.


Section XXV. Partial Invalidity: If any term, covenant, condition or provision of this lease or the application thereof to any person or circumstance is, at any time or to any extent, invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, is not affected thereby, and each term, covenant, condition and provision of this lease is valid and enforceable to the fullest extent permitted by law.

Section XXVI. Eminent Domain Award: Except for the District's right to relocation expenses (specifically designated as such by the court or authority having jurisdiction over the matter), the Town reserves to itself any and all rights to receive awards made for damages to the Demised Premises accruing by reason of exercise of eminent domain or by reason of anything lawfully done in pursuance of public or other authority.

Section XXVII. Entire Agreement: No oral statement or prior written matter has any force or effect. The District agrees that it is not relying on any representations or agreements other than those contained in this lease and in the Agreement establishing the Regional School District, as Amended. This Agreement is not modified or cancelled except by writing subscribed by all parties.

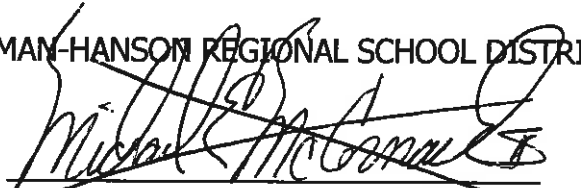
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

TOWN OF WHITMAN
By its Board of Selectmen


Christopher P. Thompson Chair
Daniel E. Holbrook

5-19-98
Date

WHITMAN-HANSON REGIONAL SCHOOL DISTRICT

~~
Chairman~~

Date

Kathleen A. Hall
Vice-Chair

5-19-98
Date

EXHIBIT "A"

The land, together with the buildings, fixtures, and equipment thereon, located in the Town of Whitman, Plymouth County, Massachusetts, known as the Conley School, Frank E. Holt School, John H. Duval, Jr. School, Whitman Middle School, and Park Ave. School, all of which premises are denominated as such on the Whitman Assessors' records.