

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of January \_\_\_, 2022 (the "Effective Date") by and between **TOWN OF MADISON**, a municipal corporation, organized and existing under the laws of the State of Connecticut having a usual place of business at 8 Campus Drive, Madison, Connecticut 06443, ("Seller"), and the OLM Prep Real Estate Holdings, LLC, a Connecticut limited liability company with an address of 20 Island Avenue, Madison, Connecticut 06443 ("Purchaser") (collectively, the "Parties").

### WITNESSETH:

WHEREAS, Seller owns the fee simple title to a certain parcel of land containing approximately 9.3 +/- acres having an address of 20 Island Drive located in the Town of Madison, County of New Haven and State of Connecticut as more specifically described on **Exhibit A** attached hereto and made a part hereof (the "Real Property"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Real Property and the entire Premises (as defined below), all in the manner and upon and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

**1. AGREEMENT TO SELL AND PURCHASE; DESCRIPTION OF PROPERTY.** The Seller agrees to sell and convey to the Purchaser, and the Purchaser agrees to purchase from the Seller, all in the manner and upon and subject to the terms and conditions set forth in this Agreement, the Premises, subject only to the Permitted Encumbrances (as defined in Section 2 hereof), together with the following property and/or rights adjacent or pertaining thereto:

TOGETHER ALSO with all right, title and interest of Seller, if any, in and to (i) all improvements, buildings and structures or similar items located upon the Real Property (collectively, the "Improvements"); (ii) the land in the bed of any public street, road or avenue, open or proposed, in front of or adjoining the Real Property, to the center line thereof, (iii) any rights of way, easements, appurtenances, alleys, gores and strips of land adjoining or appurtenant to the Real Property and used in conjunction therewith, (iv) all leases, contracts, leasehold interests or any other property, property right or interest pertaining and belonging to the Real Property or Improvements and presently owned by Seller that exist on the Effective Date; and (v) such other rights, interests and properties as may be specified in this Agreement to be sold, transferred, assigned or conveyed by Seller to Purchaser that are in existence on the Effective Date.

All of the above enumerated property, rights and interests to be sold pursuant to this Agreement are hereinafter sometimes collectively called the "Premises".

**2. DEED AND TITLE.** The Premises are to be conveyed to Purchaser, by a good and sufficient standard Connecticut limited warranty deed (the "Deed"), and said Deed shall convey marketable and insurable fee simple title thereto free from encumbrances, except:

(a) Provisions of existing building, zoning, and subdivision laws, restrictions and regulations of all governmental authorities having jurisdiction thereof, and all zoning variances and special exceptions of record, if any;

(b) Real Estate taxes for the current fiscal year as are not yet due and payable on the date of the delivery of the Deed;

(c) Any liens for municipal betterments assessed but not due as of the date of the Closing;

(d) All recorded covenants, conditions, easements, restrictions or reservations, including such restrictions and covenants set forth in those certain deeds from Constance W. Pignatelli to the Seller recorded in the Madison Land Records in Volume 77 at Page 571 and Volume 78 at Page 139 copies of which are attached hereto as **Exhibit B** (the "Pignatelli Deeds");

(e) Any state of facts which an accurate and up to date survey would disclose;  
and

(f) Right of first refusal in favor of Seller to purchase the Premises to be granted by Purchaser to Seller at Closing. Such right shall be limited to a period of five (5) years commencing on the Closing Date. Upon receipt of a notice from Purchaser of a bona fide offer for Purchaser to sell the Premises, Seller shall have (i) thirty (30) days to notify Purchaser of whether it will exercise such right and (ii) sixty (60) days from exercising such right to obtain all necessary municipal approvals to purchase the Premises.

The matters described in subsections (a) through (f), inclusive, the "Permitted Encumbrances."

**3. PURCHASE PRICE AND PAYMENT.** The agreed purchase price for the Premises is **TWO MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$2,300,000.00)** (the "Purchase Price"), which shall be payable as follows:

(a) Upon execution of this Agreement by Purchaser, Purchaser shall deposit the sum of FIFTYTHOUSAND AND 00/100 DOLLARS (\$50,000.00) (the "Initial Deposit") to Old Republic National Title Insurance Company (the "Escrow Agent") on the later of (i) the execution of this Agreement, and (ii) January 14, 2022, provided this Agreement has not been terminated simultaneously therewith or prior thereto.

(b) Upon receipt of the necessary town approvals to consummate the purchase of sale of the Premises, the sum of FIFTY THOUSAND AND 00/100 (\$50,000.00) (the "Second Deposit").

(c) Upon receipt of the waiver of right of first refusal in favor of Constance W. Pignatelli, her successors, heirs, and/or assigns, or confirmation that such right of first refusal is no longer of any force and/or effect from a recognized national title insurance company, the sum of ONE HUNDRED THOUSAND DOLLARS AND 00/100 (\$100,000.00) (the "Third Deposit" and collectively with the First Deposit and Second Deposit, the "Deposit").

(d) The Deposit shall be held in escrow by Escrow Agent and shall immediately be deposited into a non-interest bearing account where it shall be held until the sooner of the transfer of title to the Premises or the termination of this Agreement. The Deposit shall be applicable towards the Purchase Price at Closing (as such term is defined below) or disbursed as set forth in this Agreement. Subject to the terms hereof, the Deposit shall be non-refundable except as otherwise set forth in this Agreement.

(e) At Closing, by cash, wire transfer, bank check or certified check, in the amount of the Purchase Price less the Deposit and any applicable adjustments.

4. **NO APPRAISAL OR FINANCING CONTINGENCY.** Purchaser's obligation to purchase the Premises is not contingent on the Purchaser obtaining a satisfactory appraisal of the Premises or obtaining financing

5. **RIGHT OF FIRST REFUSAL CONTINGENCY.** Purchaser's obligation to purchase the Premises is contingent upon of the waiver of right of first refusal in favor of Constance W. Pignatelli, her successors, heirs, and/or assigns, or confirmation from a recognized national title insurance company that such right of first refusal is no longer of any force and/or effect. If such waiver and/or such confirmation is not received by Purchaser on or before the Closing, then Purchaser shall have the right to terminate this Agreement, by written notice to the Seller, received by Seller at any time prior to Closing and thereupon this Agreement shall be void with no recourse to the parties except for those provisions which expressly survive termination of this Agreement, and the Deposit shall be returned to the Purchaser.

6. **PROPERTY DOCUMENTS.**

(a) Seller has previously delivered or will make available to Purchaser certain documents relating to the Premises (collectively, the "Property Documents"). Seller makes no representations or warranties as to the truth, accuracy or completeness of the Property Documents (e.g., that the Property Documents are complete, accurate or the final version thereof). It is the parties' express understanding and agreement that the Property Documents were provided only for Purchaser's convenience in making its own examination and determination as to whether it wishes to purchase the Premises, and, in doing so, Purchaser shall rely exclusively on its own independent investigation and evaluation of every aspect of the Premises and not on any materials supplied by Seller. Purchaser expressly disclaims any intent to rely on any such materials provided to it by Seller in connection with its inspection and agrees that it shall rely solely on its own independently developed or verified information.

(b) Unless Seller specifically and expressly otherwise agrees in writing, the terms of this transaction and all information regarding the Premises of whatsoever nature made available to Purchaser by Seller or Seller's representatives or discovered by Purchaser as a result of its access to the Premises ("Proprietary Information") is confidential and shall not be disclosed to any other person except those assisting Purchaser with the transaction (or, if after the Closing, with the maintenance, operation or other use of the Premises), or Purchaser's lender, if any, and then only upon Purchaser making such person aware of the confidentiality restriction and procuring such person's agreement (which may be oral) to be bound thereby. In the event the

purchase and sale contemplated hereby fails to close for any reason whatsoever, Purchaser agrees to return to Seller, or cause to be returned to Seller all Proprietary Information. Further, Purchaser agrees not to use or allow to be used any Proprietary Information for any purpose other than to determine whether to proceed with the contemplated purchase, or if same is consummated, in connection with the operation of the Premises post-Closing. Notwithstanding any other term of this Agreement, the provisions of this Section shall survive the Closing or the termination of this Agreement.

## 7. TITLE

(a) Purchaser shall obtain a written title insurance commitment (the "Title Commitment") from a nationally recognized title insurance company of Purchaser's choosing (the "Title Insurer"). Purchaser shall have until 5:00 PM EST on January 14, 2022 (the "Title Date") to notify Seller, in writing, of the existence of any encumbrances and defects in title which are not excepted in this Agreement or which render title to the Premises not insurable by a nationally recognized title insurance company of Purchaser's choosing (the "Title Notice") other than the Permitted Encumbrances. If Purchaser fails to deliver a Title Notice to Seller on or before 5:00 P.M. EST on the Title Date, then (i) this contingency shall be deemed to be of no further force or effect and (ii) all of the matters of record as of the Title Date shown on the Title Commitment (other than Seller's Monetary Liens (as hereinafter defined), which Seller's Monetary Liens Seller shall be responsible for paying and having released of record at the Closing or arrangements have been made for the recording of the same after the Closing which are consistent with local Madison, Connecticut commercial real estate conveyancing practice, and Title Insurer has agreed to issue its Title Insurance Policy without exception for such Monetary Liens, the release of which would be recorded after the Closing) shall be deemed to be "Permitted Encumbrances" as defined above. If Purchaser delivers a Title Notice to Seller on or before 5:00 P.M. EST on the Title Date, then Seller shall have a period of up to ten Business Days (10) days following the receipt of the Title Notice (or if such tenth (10th) day following Seller's receipt of the Title Notice is not a Business Day, then on the next succeeding Business Day) (such period the "Title Cure Period") to either cure such defects (with written notice delivered to Purchaser of Seller's completion of such cure together with evidence of the same reasonably satisfactory to Purchaser and Title Insurer) or to expressly agree in writing to cure such defects on or before the Closing hereunder (any such title matter which Seller agrees to cure on or before the Closing herein called, a "Seller's Title Matter"). Seller shall have no obligation whatsoever to expend or agree to expend any funds to cure any title objection (other than the discharge of monetary liens voluntarily granted by Seller and mechanics liens encumbering the Premises relating to work performed at the Real Property at the request of Seller, all of which Seller shall be responsible for paying and having released of record at the Closing) (all of the foregoing items set forth in this sentence herein collectively, the "Seller's Monetary Liens") and Seller's Title Matters which Seller shall also be responsible for having released of record at the Closing and provide written evidence to Purchaser of such payment(s). If, within the Title Cure Period, Seller does not either cure such title objections set forth in the Title Notice (with written notice delivered to Purchaser of Seller's completion of such cure together with evidence of the same reasonably satisfactory to Purchaser and Title Insurer) and/or expressly agree in writing to cure such title defects on or before the Closing, then (x) Purchaser may thereupon elect to terminate this Agreement or (y) Purchaser may accept such title as Seller is able to convey without reduction of the Purchase Price and otherwise subject to the remaining

terms of this Agreement. If Purchaser elects to terminate this Agreement pursuant to this Section, Purchaser shall give written notice thereof to Seller and Escrow Agent on or before 5:00 P.M. EST on the tenth (10th) Business Day following the end of the Title Cure Period (or if such tenth (10th) day following the end of the Title Cure Period is not a Business Day, then on the next succeeding Business Day). Except for Seller's Monetary Liens, all matters of record as of the effective date of the Title Commitment (the "Title Commitment Effective Date") except with respect to which a timely Title Notice is given but Seller fails to undertake an express obligation to cure as provided above, excluding Seller's Monetary Liens, shall be deemed approved by Purchaser as "Permitted Encumbrances" hereunder, unless Purchaser shall terminate this Agreement as provided herein.

(b) Seller shall not voluntarily encumber the Premises between the Effective Date and Closing without Purchaser's consent (any such nonpermitted voluntary encumbrance made between the Effective Date and Closing herein called a "Voluntary Encumbrance"). Purchaser shall notify Seller in writing (the "Second Title Notice") on or before the date of Closing of any items which encumber the Real Property and which became of record after the earlier of (i) the date Purchaser delivered a Title Notice to Seller or (ii) the Title Commitment Effective Date. If Purchaser delivers a Second Title Notice to Seller, Seller shall have the right to delay the Closing for up to ten (10) Business Days to cure any objections set forth in the Second Title Notice; provided, however, Seller shall have no obligation whatsoever to cure any such encumbrances set forth in the Second Title Notice other than Voluntary Encumbrances not consented to in writing by Purchaser, any Seller's Monetary Encumbrances, and any mechanics liens encumbering the Real Property relating to work performed at the Real Property by or on behalf of the Seller (collectively, "Seller's Mechanics Liens") all of which Seller shall be obligated to cure. If at the Closing (as the same may be extended as provided for herein) Seller is unable to convey the Real Property free and clear of the title defects set forth in the Second Title Notice, then (x) Purchaser may thereupon elect to terminate this Agreement by giving written notice to Seller; (y) Purchaser may accept such title as Seller is able to convey without the reduction of the Purchase Price, subject to the remaining terms of this Agreement; or (z) if Seller is unable to convey title to the Premises as required hereby due to the existence of a Voluntary Encumbrance, any Seller's Monetary Encumbrance, any Seller's Mechanics Liens or any Seller's Title Matter, then Purchaser shall be entitled to the remedies available to Purchaser for a default by Seller.

(c) If Purchaser terminates this Agreement in accordance with this Section, then, all further rights and obligations of the parties shall cease and terminate without any further liability of either party to the other (except those obligations which are specifically provided in this Agreement to survive such termination) and the Deposit shall be returned to Purchaser.

## **8. AS-IS, WHERE IS PURCHASE.**

(a) Except as otherwise expressly provided in this Agreement, the Premises is being sold in an "AS IS, WHERE IS" condition and "WITH ALL FAULTS" as of the date of this Agreement and on a "with all defects" basis, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition (structural, environmental, mechanical or otherwise), past or present use, construction, development, lease performance, investment potential, tax ramifications or consequences, income, compliance with law, habitability, tenancies, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed. Without limiting the

generality of the foregoing and except to the extent expressly set forth in this Agreement, Purchaser acknowledges that except as may be expressly set forth herein, Seller has made no representations, warranties or covenants as to the compliance of the Premises with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances, including, without limitation, those pertaining to construction, rent control, building and health codes, land use (or permits issued in connection therewith), zoning, lead paint, urea formaldehyde, asbestos, Hazardous Substance, pollutants, contaminants, other environmental matters or any other matter. Purchaser agrees, acknowledges and represents that Purchaser is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transactions contemplated by this Agreement solely in reliance on and as a result of Purchaser's own investigations and efforts (including Seller's production of documents, Purchaser's inspection of the Premises and such other investigations, examinations and inspections as Purchaser has chosen to make or has made including, without limitation, inquiries of contracting parties, permitting parties and others in connection with the Premises) and at Purchaser's sole risk, cost and expense, including, without limitation, the risk that Purchaser's inspections and inquiries thereof and such other investigations, examinations and inspections may not reveal any or all adverse or existing conditions, aspects or attributes thereof.

(b) Purchaser acknowledges that pursuant to this Agreement, Purchaser shall be afforded a Due Diligence Period in which it shall have the opportunity for full and complete investigation, examination and inspection of the Premises and all matters associated therewith. Purchaser acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same. Subject to the terms of this Agreement, as of Closing, Purchaser shall, on behalf of itself and all those claiming by or through it, release Seller from all past, present or future claims, whether or not presently known, which could be brought by Purchaser. The release in this Section 8(b) shall survive the Closing and transfer of title and shall be binding upon Purchaser and its successors and assigns.

(c) Subject to the terms of this Agreement, as of Closing, Purchaser shall, on behalf of itself and all those claiming by or through it, irrevocably and unconditionally release Seller from all past, present or future claims, whether or not presently known, which could be brought by Purchaser and all those claiming by or through Purchaser, concerning Hazardous Materials, Releases, the Premises and all aspects and attributes thereof, specifically including, but without limitation, all claims pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and any other Environmental Laws. Notwithstanding the parties' intent that all such claims be barred, should a court of competent jurisdiction deem otherwise, this subsection and other similar provisions of this Agreement are intended by the parties to serve, and shall serve, as the overwhelming, primary factor in any equitable apportionment of damages under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any other Environmental Laws. The release described in this Section 8(c) shall survive the Closing and transfer of title and shall be binding upon Purchaser and its successors and assigns.

## **9. ENVIRONMENTAL ISSUES.**

### **(a) Definitions**

(i) “Environmental Laws” means all federal, state and local statutes, regulations, ordinances, rules, regulations and policies, all court orders and decrees and arbitration awards, and the common law, which pertain to protection of the environment, environmental matters or contamination of any type whatsoever. Environmental Laws are all laws relating to: manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Substance; air, surface water or groundwater or noise pollution; Releases (as defined below); protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; and notification requirements relating to the foregoing; including, without limiting the generality of the foregoing, any of the following: the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”); the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 et seq.; and Title 22a of the Connecticut General Statutes (“Title 22a”); as any of them may be or have been amended from time to time, together with all regulations promulgated thereunder. In the event any Environmental Law is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment.

(ii) “Hazardous Substance” means: pollutants, contaminants, pesticides, radioactive substances, solid wastes, hazardous or extremely hazardous wastes, special or dangerous wastes, toxic wastes or materials, substances, chemicals, or any other materials regulated by any Environmental Law, including without limitation any “hazardous substance” as defined in CERCLA, any solid waste or “hazardous waste” as defined in RCRA or Title 22a; “oil or petroleum”; “chemical liquids”; or “solid, liquid, or gaseous products” (as those terms are defined in Title 22a); asbestos; polychlorinated biphenyls (“PCBs”); explosives; radioactive materials; or any other substance determined by any agency with jurisdiction to pose a present or potential hazard to human health or environment.

(iii) “Release” means (i) any spill, discharge, leak, emission, escape, injection, migration, dumping, or other release or threatened release of any Hazardous Substance into, on, in, under, through, about, or over the Premises, whether or not notification or reporting to any governmental agency was or is, required, including without limitation any Release which is subject to CERCLA, or (ii) a “spill” as defined in Section 22a-452c of the Connecticut General Statutes. In the event of any conflict in meanings, “Release” shall be given its broadest meaning.

**10. CLOSING DATE.** Payment of the Purchase Price and the closing hereunder (the “Closing”) shall take place on or before April 1, 2022 (the “Closing Date”) at the offices of Murtha Cullina LLP in New Haven, Connecticut at 10:00 A.M. local time or at such other time and place as may be agreed upon in writing by Seller and Purchaser. Purchaser may elect to accelerate the Closing to any earlier date upon at least ten (10) days’ prior written notice to the Seller. Notwithstanding the foregoing, if the Closing does not occur by the Closing Date for reasons other than a default by Seller, then Seller may by notice to Purchaser terminate this Agreement in accordance with the terms of Section 15(a) of this Agreement. Notwithstanding anything contained

herein to the contrary, Purchaser shall have a one-time right to delay the Closing Date up to ten (10) days upon prior written notice to the Seller.

**11. PRIOR TO CLOSING.** Until the Closing, Seller covenants as follows:

(a) Seller shall not, without the prior written consent of Purchaser, change or attempt to the change (or consent to any change in) the zoning or other legal requirements or existing entitlements applicable to the Premises.

(b) Seller shall not execute, record or enter into any document or instrument which grants or conveys a lien, security interest or encumbrance against the Premises without the prior written consent of Purchaser, except if the same will be removed or released upon the Closing.

**12. CASUALTY / CONDEMNATION.**

(a) The risk of loss or damage to the Premises by fire or other casualty or cause beyond Seller's control (collectively, "Damage") in advance of the Closing Date shall be borne by Seller. Upon any such Damage, Purchaser, in its sole discretion, shall either (i) terminate this Agreement, in which event the Deposit shall be returned to Purchaser and the parties hereto shall have no further rights or obligations hereunder, except as otherwise provided herein, (ii) require Seller to repair such Damage within a reasonable time thereafter, not to exceed one hundred eighty (180) days or (iii) reduce the Purchase Price by an amount equivalent to the cost to repair such Damage as determined by quoted estimates from reputable contractors selected by Seller and approved by Purchaser. If Purchaser elects option (ii) or (iii), then Seller hereby reserves all rights and claims it may have against insurance companies and other third parties.

(b) If, prior to the Closing, ten percent or more of the Premises or any material access to the Premises or any part of the Premises which Purchaser believes is material to its planned use of the Premises is taken or is proposed to be taken under power of eminent domain, notice of which shall be provided to Purchaser, Purchaser may elect to terminate this Agreement by giving written notice of its election to Seller within fifteen (15) days after receiving written notice from Seller of such taking or proposed taking. If Purchaser does not give such written notice within such fifteen (15) day period, this transaction shall be consummated as set forth in this Agreement, and Seller shall assign to Purchaser the Seller's portion of any condemnation award up to the amount of the Purchase Price. If, prior to the Closing, less than ten percent (10%) of the Premises is taken or is proposed to be taken under power of eminent domain, and Purchaser deems such part of the Premises as not material to its planned use of the Premises, Purchaser shall close this transaction as set forth in this Agreement, and Seller shall reduce the Purchase Price by an amount representing the fair and equitable value of the taken property, as Seller and Purchaser shall reasonably agree.

**13. INTENTIONALLY OMITTED.**

**14. ADJUSTMENTS.**

(a) Closing Costs. Purchaser shall pay all fees and costs of the title company



and any survey, title commitment or title insurance policy obtained by Purchaser in connection with this Agreement, all recording costs and any and all costs of any survey or reports commissioned by Purchaser. Seller shall pay all transfer, conveyance, sales or use taxes relating to the transfer of the Premises. Notwithstanding anything above to the contrary, each party shall bear its own legal fees and costs arising in connection with the preparation and execution of this Agreement and consummation of the sale. The parties shall split evenly any escrow fee charged by the Escrow Agent, if the Escrow Agent is a title company. All other costs shall be allocated as is customary in commercial real estate transactions in New Haven County, Connecticut.

(b) Prorations. Personal property taxes, installment payments of special assessment liens, vault charges, sewer charges, utility charges and normally prorated operating expenses actually collected, billed or paid as of the Closing Date, if any, shall be prorated as of the Closing Date and be adjusted against the Purchase Price due at the Closing, provided that within 60 days after the Closing, Purchaser and Seller shall make a further adjustment for such taxes or charges which may have accrued or been incurred prior to the Closing Date, but not billed or paid at that date. All prorations shall be made on a 365-day calendar year basis.

(c) Taxes. General real estate taxes and special assessments relating to the Premises payable during the year in which the Closing occurs shall be prorated as of the Closing Date. If the Closing shall occur before the actual taxes and special assessments payable during such year are known, the apportionment of taxes shall be upon the basis of taxes for the Premises payable during the immediately preceding year, provided that, if the taxes and special assessments payable during the year in which the Closing occurs are thereafter determined to be more or less than the taxes payable during the preceding year (after any appeal of the assessed valuation thereof is concluded), Seller and Purchaser promptly shall adjust the proration of such taxes and special assessments and Seller or Purchaser, as the case may be, shall pay to the other within 30 days after issuance of a final bill therefor any amount required as a result of such adjustment and this covenant shall not merge with the Deed delivered hereunder but shall survive the Closing.

(d) Purpose and Intent. Except as expressly provided herein, the purpose and intent as to the provisions of prorations and apportionments set forth in this Section and elsewhere in this Agreement is that Seller shall bear all expenses of ownership and operation of the Premises accruing through midnight at the end of the day preceding the Closing and Purchaser shall bear all such expenses accruing thereafter. Any other costs or charges of closing this transaction not specifically mentioned in this Agreement shall be paid and adjusted in accordance with local custom in New Haven County, Connecticut.

## **15. DEFAULT AND DAMAGES.**

(a) The Purchaser shall be in default under this Agreement in the event that, following written notice by Seller to Purchaser and the expiration of ten (10) Business Days without cure, (i) the Purchaser shall fail to perform and comply with the agreements and conditions which are required to be performed or complied with by the Purchaser pursuant to this Agreement; or (ii) the warranties and representations contained herein of facts material to the Closing shall not be true in all material respects on the Closing. If the Purchaser shall be in default under this Agreement, the Seller shall be entitled to retain the Deposit (with any interest) as liquidated damages, and all other rights and liabilities of the parties hereto by reason of this Agreement shall

be deemed at an end except for those obligations that specifically survive a termination of this Agreement. Seller and Purchaser agree that the Deposit is a fair and reasonable amount to be retained by Seller as agreed and liquidated damages in light of Seller's removal of the Premises from the market and the costs incurred by Seller and shall not constitute a penalty or a forfeiture.

(b) If Seller shall refuse or fail to convey the Premises as herein provided for any reason other than (i) a default by Purchaser beyond any applicable grace or cure period, or (ii) any other provision of this Agreement which permits Seller to terminate this Agreement or otherwise relieves Seller of the obligation to convey the Premises, or any other reason beyond the reasonable control of Seller, Purchaser may elect either to enforce Seller's obligations to convey the Premises by an action for specific performance, or to terminate this Agreement and obtain the return of the Deposit, and neither Seller nor Purchaser shall have any further rights or obligations under this Agreement, except for those obligations that specifically survive a termination of this Agreement.

**16. REPRESENTATIONS OF SELLER.** Notwithstanding, but not in limitation of, anything contained herein, Seller hereby covenants, warrants and represents to Purchaser that:

(a) The Seller is a municipal corporation organized and existing under the laws of the State of Connecticut;

(b) The Seller has full right, power and authority to make, execute, deliver and perform this Agreement and to sell and convey the Premises in accordance with the terms and provisions of this Agreement;

(c) This Agreement when executed and delivered by Seller and Purchaser will constitute the valid and binding Agreement of the Seller; and

(d) Upon execution of this Agreement, Seller will not initiate or carry on negotiations for the sale of the Premises, except in connection with the transactions contemplated by this Agreement.

The foregoing representations and warranties made by Seller in this Section are true and correct as of the date hereof, and shall be repeated as true and correct as of the date of Closing, and such representations and warranties shall not survive the Closing. If, for any reason, Seller cannot repeat any of said representations and warranties as of the date of Closing, or if Seller is in default hereunder because of the breach of any one or more of said representations and warranties, then, notwithstanding anything herein to the contrary, Purchaser may terminate this Agreement and be entitled to the rights and remedies set forth in Section 15(b) hereof for a default under this Agreement by Seller, or may proceed with the Closing.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 16 OR ELSEWHERE IN THIS AGREEMENT, SELLER HAS NOT MADE, NOR HAS AUTHORIZED ANYONE TO MAKE, ANY WARRANTY OR REPRESENTATION AS TO ANY WRITTEN MATERIALS DELIVERED TO PURCHASER, THE PERSONS PREPARING SUCH MATERIALS, THE PRESENT OR FUTURE PHYSICAL CONDITION, DEVELOPMENT POTENTIAL, ZONING, BUILDING OR LAND USE LAW OR COMPLIANCE THEREWITH, THE OPERATION,

INCOME GENERATED BY, OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PREMISES OR ANY MATTER OR THING PERTAINING TO THIS AGREEMENT. PURCHASER EXPRESSLY ACKNOWLEDGES THAT NO SUCH WARRANTY OR REPRESENTATION HAS BEEN MADE BY SELLER OR ITS AGENTS, BROKERS OR REPRESENTATIVES, OR BY ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER, AND THAT PURCHASER IS NOT RELYING ON ANY WARRANTY OR REPRESENTATION WHATSOEVER OTHER THAN AS IS EXPRESSLY SET FORTH IN THIS SECTION 16, ELSEWHERE IN THIS AGREEMENT, OR IN ANY OF THE CLOSING DOCUMENTS ATTACHED AS EXHIBITS HERETO.

Except as specifically provided herein, Seller makes no representations or warranties as to whether the Premises contains asbestos, radon or any other Hazardous Substance or harmful or toxic substances. Further, to the extent that Seller has provided to Purchaser information from any inspection, engineering or environmental reports concerning asbestos, radon or any Hazardous Substance or harmful or toxic substances or any compliance by Seller with respect thereto, Seller makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports.

**17. REPRESENTATIONS OF PURCHASER.** Notwithstanding, but not in limitation of, anything contained herein, Purchaser hereby covenants, warrants and represents to Seller that:

(a) Purchaser is a non-stock corporation organized, validly existing and in good standing under the laws of the State of Connecticut;

(b) All necessary action has been taken by Purchaser to authorize execution, delivery, performance and payment under this Agreement;

(c) This Agreement when executed and delivered by Seller and Purchaser will constitute the valid and binding Agreement of the Purchaser; and

(d) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or state bankruptcy or insolvency laws is pending against or contemplated by Purchaser.

The foregoing representations and warranties made by Purchaser in this Section are true and correct as of the date hereof, and shall be repeated as true and correct as of the date of Closing, and such representations and warranties shall not survive the Closing. If, for any reason, Purchaser cannot repeat any of said representations and warranties as of the date of Closing, or if Purchaser is in default hereunder because of the breach of any one or more of said representations and warranties, then, notwithstanding anything herein to the contrary, Seller may terminate this Agreement and be entitled to the rights and remedies set forth in Section 15(a) hereof for a default under this Agreement by Purchaser, or may proceed with the Closing.

**18. SELLER'S CONTINGENCIES.** Seller's sale of the Premises is contingent upon Seller obtaining all approvals and other consents required for the sale of the Premises by Seller and the approval by the governing body of the Seller and/or electors of Seller as required in

accordance with State law, including but not limited to Section 8-24 of the Connecticut General Statutes, and the ordinances and charter of Seller on or before March 31, 2022 (the "Approval Deadline"). In the event that the Seller does not obtain such approvals by the Approval Deadline, the Seller shall have the right to terminate this Agreement by written notice to Purchaser, received by Purchaser at any time prior to the expiration of the Approval Deadline, and thereupon this Agreement shall be void with no recourse to the parties except those provisions which expressly survive termination of this Agreement and the Deposit shall be returned to Purchaser. If the Seller terminates this Agreement in accordance with this Section, the Seller, at Purchaser's request, will enter into an amendment to that certain lease agreement between Seller and Purchaser for the Premises for one (1) additional year at a twenty percent (20%) discount to the then current rent.

**19. BROKER.** Seller and Purchaser represent and warrant to each other that they have dealt with no broker or other real estate agent with respect to the transactions contemplated by this Agreement. Each party hereto (the "indemnifying party") agrees to indemnify, defend and hold the other harmless from any claim for a commission made by any party by virtue of dealings had with the indemnifying party, said indemnity to include attorney's fees.

**20. DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING.** At the Closing, Seller shall deliver the following documents to Purchaser, properly executed by Seller, as applicable:

- (a) Deed;
- (b) Conveyance tax returns and checks to the order of the appropriate governmental authorities in amounts sufficient to pay the real estate conveyance taxes payable upon the recording of the Deed;
- (c) Affidavits customarily required by title insurance companies in the State of Connecticut for the issuing of title insurance protecting against, *inter alia*, mechanics liens and parties in possession;
- (d) An affidavit of the Seller stating that the Seller is not a "Foreign Person" as defined in Section 1445 (B)(2) of the Internal Revenue Code of 1986, as amended; and
- (e) A certification of the Seller certifying that all representations and warranties made by the Seller in this Agreement are true and correct as of the Closing, and that all of the Seller's covenants contained in this Agreement have been complied with;
- (f) A settlement statement (the "Settlement Statement") in accordance with the terms hereof;
- (g) A copy of the resolution of Seller evidencing authorization and approval of this Agreement and the transactions contemplated herein and such evidence of Seller's power and authority as Purchaser may reasonably request; and

(h) Such other and further documents customary for commercial real estate closings as may be reasonably requested by Purchaser to effect the transactions contemplated by this Agreement.

**21. DOCUMENTS TO BE DELIVERED BY PURCHASER AT CLOSING.** At the Closing, Purchaser shall deliver the following to Seller, properly executed by Purchaser, as applicable:

- (a) the Purchase Price less the Deposit and any applicable adjustments;
- (b) all other instruments and documents to which Seller may be entitled under any provision of this Agreement;
- (c) a certification of the Purchaser certifying that all representations and warranties made by the Purchaser in this Agreement are true and correct as of the Closing, and that all of the Purchaser's covenants contained in this Agreement have been complied with;
- (d) the Settlement Statement signed by Purchaser;
- (e) a certified copy of the resolution of Purchaser evidencing authorization and approval of this Agreement and the transactions contemplated herein and such evidence of Purchaser's power and authority as Seller may reasonably require;
- (f) an agreement in form and substance reasonably acceptable to Purchaser and Seller, wherein Purchaser agrees to pay one hundred percent (100%) of the real property taxes billed by the Seller for a period of eight (8) years from the Closing Date, at a fixed assessed value of the Premises of One Million Seven Hundred and Fifty Thousand and 00/100 (\$1,750,000.00) which agreement shall be recorded on the land records and shall run with the land for such period regardless of whether the current or future owners, tenants, or licensees are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, provided, however, the Seller may terminate such agreement in the event the property is sold or developed for the purpose of residential housing;
- (g) evidence of all rent due and payable under the Purchaser's lease with the Seller for the Premises has paid in full in accordance with such lease; and
- (h) Such other and further documents customary for commercial real estate closings as may be reasonably requested by Seller to effect the transactions contemplated by this Agreement.

**22. NOTICES.** All notices permitted or required to be given hereunder (other than notices indicating the time for access to the Premises) shall be in writing and sent by e-mail or overnight courier, addressed as follows:

If to Purchaser:           OLM Prep Real Estate Holdings, LLC  
  20 Island Avenue  
  Madison, CT 06443

With Copies to: Law Offices of Russell S. Brinn, LLC  
724 Boston Post Road  
Suite 204A  
Madison, CT 06443  
Phone: 203-421-6274  
Email: rbrinn@brinnlaw.com

If to Seller: Town of Madison  
8 Campus Drive  
Madison, CT 06443  
Attn: Peggy Lyons, First Selectwoman

With a Copy to: Murtha Cullina LLP  
265 Church Street  
New Haven, Connecticut 06510  
Attention: Jodie Driscoll, Esq.  
Phone: (203) 772-7748  
E-mail: jdriscoll@murthalaw.com

or to such other address or addresses as the parties may designate from time to time by notice given in accordance with this clause. Any such notice shall be deemed given on the date of receipt or refusal, as the case may be.

**23. ASSIGNMENT.** This Agreement may not be assigned by Purchaser, without the prior written consent of Seller, which consent shall be at Seller's sole discretion, provided that Purchaser may nominate by writing(s) delivered to Seller one or more entities related to or affiliated with Purchaser to receive title to any or all of the Premises. No assignment of this Agreement shall relieve the Purchaser from any responsibilities or liabilities hereunder, and Purchaser and its assignee shall thereafter be jointly and severally liable hereunder.

**24. NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** Unless otherwise expressly herein stated to survive, or stated to survive in any document delivered at Closing (in which event the period of survival shall be as stated in such document), all representations, covenants, indemnities, conditions and agreements contained herein shall be superseded by the various documents executed and delivered at Closing and shall not survive the Closing. Except as otherwise provided for herein, Seller shall have no liability to Purchaser after Closing for any matter disclosed by Seller or learned by Purchaser prior to Closing.

**25. TIME OF THE ESSENCE.** The parties agree that time is of the essence of this Agreement and to all dates and time periods set forth herein so far as the rights and interests of the parties are concerned.

**26. WAIVER OF NOTICE AND HEARING PRIOR TO PRE-JUDGMENT REMEDY.** PURCHASER AND SELLER ACKNOWLEDGE THAT THIS AGREEMENT CONSTITUTES A COMMERCIAL TRANSACTION AND EACH HEREBY WAIVES ALL RIGHTS TO PRIOR NOTICE AND PRIOR COURT HEARING OR COURT ORDER UNDER

CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED, OR AS OTHERWISE ALLOWED BY THE LAW OF ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY AND ALL PREJUDGMENT REMEDIES EITHER PARTY MAY DESIRE TO EMPLOY TO ENFORCE ITS RIGHTS AND REMEDIES UNDER THIS AGREEMENT.

**27. WAIVER OF RIGHT TO JURY TRIAL.** PURCHASER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE, IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE PREMISES, OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN SELLER AND PURCHASER OF ANY KIND OR NATURE.

**28. MISCELLANEOUS.**

(a) Entire Agreement. This Agreement, together with the exhibits attached hereto, all of which are incorporated by reference, is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by both parties.

(b) Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(c) Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut.

(d) Successors Bound. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their successors and permitted assigns.

(e) Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

(f) Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(g) No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

(h) Counterparts and PDFs. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Facsimile and PDF copies of signatures shall be afforded the full force and effect of any original signature.

(i) Recordation. Purchaser and Seller agree not to record this Agreement or any memorandum hereof.

(j) Merger. Except as otherwise expressly provided herein, Purchaser's acceptance of the Deed shall be deemed a discharge of all of the obligations of Seller hereunder.

(k) Limitation of Liability. In any action for damages brought to enforce the obligations of Seller or Purchaser under this Agreement, the judgment or decree shall be enforceable against Seller only to the extent of its interest in the Premises, and no other property or assets of Seller shall be subject to levy, execution or lien for the satisfaction of any remedies against Seller. No shareholder, director, officer, employee or agent of or consultant to Seller or Purchaser shall be held to any personal liability hereunder, and no resort shall be had to their property or assets.

(l) Days and Dates. As used in this Agreement, "Business Day" shall be deemed to be any day other than a day on which banks in the State of Connecticut shall be permitted or required to close. If the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Connecticut, then the time of such period shall be extended to the next date which is not a Saturday, Sunday or legal holiday.

## **29. ESCROW PROVISIONS**

(a) Escrow Agent shall not be bound in any way by any other agreement or contract between Seller and Purchaser, whether or not Escrow Agent has knowledge thereof. Escrow Agent's only duties and responsibilities with respect to the Deposit shall be to hold the Deposit and other documents delivered to it as agent and to dispose of the Deposit and such documents in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Escrow Agent shall have no responsibility to protect the Deposit and shall not be responsible for any failure to demand, collect or enforce any obligation with respect to the Deposit or for any diminution in value of the Deposit from any cause, other than Escrow Agent's gross negligence or willful misconduct. Escrow Agent may, at the expense of Seller and Purchaser, consult with counsel and accountants in connection with its duties under this Agreement. Escrow Agent shall not be liable to the parties hereto for any act taken, suffered or permitted by it in good faith in accordance with the advice of counsel and accountants. Escrow Agent shall not be obligated to take any action hereunder that may, in its reasonable judgment, result in any liability to it unless Escrow Agent shall have been furnished with reasonable indemnity satisfactory in amount, form and substance to Escrow Agent.

(b) Escrow Agent is acting as a stakeholder only with respect to the Deposit. If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit or as to whom the Deposit is to be delivered, Escrow Agent shall not make any delivery, but shall hold the Deposit until receipt by Escrow Agent of an authorization in writing, signed by all the parties having an interest in the dispute, directing the disposition of the Deposit, or, in the absence of authorization, Escrow Agent shall hold the Deposit until the final determination of the rights of the parties in an appropriate proceeding. Escrow Agent shall have no responsibility to determine the authenticity or validity of any notice, instruction, instrument, document or other item delivered to it, and it shall



be fully protected in acting in accordance with any written notice, direction or instruction given to it under this Agreement and believed by it to be authentic. If written authorization is not given, or proceedings for a determination are not begun, within thirty (30) days after the date scheduled for the closing of title and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit the Deposit with a court of the State of Connecticut pending a determination. Escrow Agent shall be reimbursed for all reasonable costs and expenses of any action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements incurred in its capacity as Escrow Agent, by the party determined not to be entitled to the Deposit. Upon making delivery of the Deposit in the manner provided in this Agreement, Escrow Agent shall have no further liability hereunder. In no event shall Escrow Agent be under any duty to institute, defend or participate in any proceeding that may arise between Seller and Purchaser in connection with the Deposit.

(c) Escrow Agent may resign as escrow agent at any time upon fifteen (15) days written notice to Seller and Purchaser. Seller and Purchaser may remove Escrow Agent as escrow agent at any time upon five (5) days written notice to Escrow Agent, signed by both Seller and Purchaser. In the event of Escrow Agent's resignation or removal, Escrow Agent's only duty until a successor escrow agent is appointed shall be to hold and dispose of the Deposit, together with all interest earned thereon, and any documents delivered to Escrow Agent by Seller or Purchaser in accordance with the provisions of this Agreement existing at the time of such resignation or removal, and the Escrow Agent shall not be bound by any notices, requests, instructions, or demands received thereafter.

Any other deposits held by other parties shall immediately be forwarded to Escrow Agent to be held under the same conditions

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have duly executed this Agreement under seal as of the day and year provided for below each executing party's signature.

**SELLER:**  
TOWN OF MADISON

By: \_\_\_\_\_  
Peggy Lyons  
Its First Selectwoman

**PURCHASER:**  
OLM Prep Real Estate Holdings, LLC

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

**ESCROW AGENT:**

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

## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

Beginning at the intersection of the center line of Tuxis Brook with the monumented westerly line of Island Avenue and thence running southerly along the westerly line of Island Avenue, 280 feet, more or less, to a concrete monument marking the northerly end of a curve on the westerly line of Island Avenue; thence running westerly at right angles to the straight portion of the westerly line of Island Avenue northerly of the above mentioned curve, a distance of 117.92 feet,

to a point which is on a line which is parallel with and 150 feet perpendicularly distant to the west from the straight portion of the westerly line of Island Avenue just southerly of the above mentioned curve, and said line extended northerly; thence running southerly along said line parallel with and 150 feet distant to the west from the straight portion of the westerly line of Island Avenue just southerly of said curve, a distance of 690 feet; thence running westerly, at right angles to the last described course, 538.26 feet, more or less, to a pipe in the division line between land of the Grantor and land now or formerly of Anna L. Moffatt; thence running northerly 149.5 feet, more or less, along said land now or formerly of Anna L. Moffatt, to the center line of Tuxis brook; thence running easterly, northerly and northeasterly 370 feet, more or less, along the center line of said Tuxis brook to land now or formerly of Hart L. Scranton; thence running easterly 10.8 feet, more or less, along said land now or formerly of Hart L. Scranton; thence running northerly 43.3 feet along said land now or formerly of Hart L. Scranton to land now or formerly of Herbert S. Whedon; thence running easterly 46.4 feet along said land now or formerly of Herbert S. Whedon; thence running northerly 60 feet, more or less, along said land now or formerly of Herbert S. Whedon to the center line of said Tuxis Brook; thence running northeasterly along the center line of said Tuxis Brook 570 feet, more or less, to the point of beginning.

Said premises are more particularly described on a certain map entitled "Property of Constance W. Pignatelli to be conveyed to the Town of Madison for a Public School Site Location Madison, Conn. Scale 1" = 50'" dated Sept. 1949 (2.) and made by K. W. Leighton, Civil Engineer, on file in the Madison Town Clerk's Office.

**EXHIBIT B**

**PIGNATALLI DEEDS**