

LEASE AGREEMENT For Instructional Space

This agreement made between the Vestal Central School District (Lessor), 201 Main Street, Vestal, NY 13850, and the Broome Tioga BOCES (BOCES), 435 Glenwood Road, Binghamton, NY 13905.

1. **Purpose:** BOCES agrees to lease from the Lessor 2 classrooms located at Tioga Hills Elementary School, 1 classroom at Glenwood Elementary School, 1 classroom at Vestal Middle School and 1 classroom at Vestal High School, all commonly known as the Oaktree Special Education Class. BOCES shall also have the non-exclusive use of all hallways, bathrooms and other common areas within the aforementioned buildings necessary for BOCES staff and students' use. This lease does not include the provision of any equipment, furniture or materials, all of which BOCES is solely responsible for providing, maintaining, repairing and/or replacing at its own cost and expense. The property is leased for educational program purposes. The Lessor hereby certifies that the property is in compliance with 8 NYCRR 155.4.
2. **Term:** This lease shall commence July 1, 2018 and end on June 30, 2019.
3. **Lease Payments:** The rental for the term of the lease shall be \$73,820.00, and is due and owing as of the signing of this lease. However, for the convenience of the BOCES, the rent may be paid in 2 installments of \$36,910.00, due and payable on January 1, 2019 and May 1, 2019.
4. **Building Access:** BOCES staff will be provided with badges to gain access to the above-mentioned schools and buildings. The badges are programmed to allow access only during those hours when the Lessor's staff is permitted to access the schools and buildings. BOCES students are only permitted to access the schools and buildings during those times that Lessor's students are permitted access. If Lessor has a scheduled or unscheduled school or building closure, then BOCES staff and students will not be allowed to enter or access said school and/or building.
5. **Landlord Services:** BOCES rental payments shall include electric, heat, custodial services, general maintenance and snow removal. BOCES shall contract for, in its own name, and shall pay for all telephone, cable, telecommunications or similar services that it uses or consumes.
6. **Executory Clause:** This lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the lease, and no liability on account thereof shall be incurred by BOCES beyond the amount of such monies. This lease is not a general obligation of BOCES. Neither the full faith nor credit of BOCES is pledged to the payment of any amounts due or to become due under the lease. The monies to be paid to Lessor shall be derived from payments received from component school districts. It is understood that neither this lease nor any representation of any public employer or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of this lease.
7. **Approval by the Commissioner of Education:** This lease shall not be enforceable against BOCES unless it shall have been approved in writing by the Commissioner of Education. BOCES will provide Lessor with a copy of such approval prior to the commencement of the lease term.

8. **Property Leased for Special Education Service:** Any property leased for the special education program purposes of the BOCES must first be approved by the Commissioner of Education as prescribed in 8 NYCRR155.16(c)(3).
9. **Insurance:** Each party shall carry liability insurance in the amount of \$100,000/\$300,000 for personal injury and \$100,000 for property damage, naming the other party as an additional insured on a primary, non-contributory basis.
10. **Indemnification:** Each party agrees (as applicable, the "Indemnitor") to indemnify, defend and hold the other party (the "Indemnitee") harmless from and against any and all claims, liability, damages, costs, fees, actions and/or suits arising from or relating to the Indemnitor's actions and/or inactions under or pursuant to the Indemnitor's covenants, duties and/or obligations under the Lease, including, but not limited to, fees, costs and reasonable attorney's fees.
11. **Cancellation of Lease:** Nothing in this Lease shall prevent either party from canceling the lease upon (a) a substantial increase or decrease in pupil enrollment of the respective parties; (b) a substantial change in the needs and requirements of either party with respect to the premises; or (c) any change that substantially affects the needs and requirements of either party or the community in which they are located.
12. **Termination of Lease:** Lessor may terminate this Lease if (a) BOCES defaults in paying any rent or additional charges and such default continues for thirty (30) days after such payment is due, (b) BOCES defaults in performing any other covenant or obligations under the Lease and such default is not cured within thirty (30) days after written notice to cure.
13. **Return of Premises:** Upon the Lease's termination, BOCES shall return the premises in the same condition as it was granted, less ordinary wear and tear.
14. **Student Supervision:** It shall be the sole responsibility and obligation of BOCES to provide all necessary and required supervision of students attending the BOCES programs consistent with state and federal laws while on the demised premises and/or any parking area, and to provide and enforce any rules, regulations or policies necessary to ensure safe and orderly conduct by BOCES students consistent with state and federal laws. BOCES agrees to assume full responsibility for the proper operation of its programs and to employ sufficient qualified staff members to assist in that operation. BOCES further agrees that its staff and students will follow all the Lessor's policies, procedures and regulations when on the leased premises. If BOCES or its staff and/or students fail to follow any of the foregoing, including Lessor's policies, procedures and regulations, then Lessor shall have the authority, in its sole discretion, after appropriate due process, to prohibit said person from entering on the leased premises.
15. **Alterations or Improvements:** BOCES shall not make any alterations or improvements to the demised premises or parking area without Lessor's prior written consent.
16. **Quiet Enjoyment:** BOCES, upon payment of the rent and performance of all the terms of the lease, shall at all times during the lease term, peaceably and quietly enjoy the leased premises without any disturbance from Lessor or any other person claiming through it.. It is understood, however, that Lessor shall have the right to conduct its normal educational and maintenance operations on the premises.
17. **Entire Agreement:** This lease contains the entire agreement between the parties. Any subsequent agreement shall be in writing and duly signed by authorized representatives of

both Landlord and Tenant. The parties acknowledge that no officer, employee, agent or representative of Lessor or BOCES has authority to make any oral statement modifying, adding to or changing the terms or conditions of this lease.

18. **Severability:** If any term or provision of this lease or its application to any person or circumstances to any extend invalid or unenforceable, the remainder of this lease, or the application of such term or provision to person or circumstance other than those as to which it is held invalid or unenforceable, should not be affected thereby, and each term and provision shall be valid and enforced to the fullest extent permitted by law.

12. **Miscellaneous:**

- a. **Governing Law:** This lease shall be governed by, construed, and enforced in accordance with the laws of New York State.
- b. **No Assignment:** Except for a BOCES merger, BOCES shall not, whether voluntary, involuntary or by operation of law, assign or encumber all or any part of this lease, sublet all or any part of the leased premises, or permit any other person to occupy the same without Lessor's prior written consent, which may be unreasonably withheld.
- c. **Notices:** Any notice, request, demand, approval, consent or other communication which the Lessor or BOCES is required or permitted to give to the other party shall be in writing and mailed to Lessor at the address specified at the beginning of this lease or to BOCES at the leased premises, or to such other address that either party has designated by notice to the other. Such notice shall be deemed mailed when it is deposited in the United States mail, postage prepaid, by certified mail, return receipt requested.
- d. **Grammatical Usage:** In construing this lease, feminine or neuter pronoun shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context to requires.
- e. **Tenant's Obligations:** Any reference to any act, omission, failure to perform, fault, neglect, default or violation of BOCES shall include those of BOCES, its servants, employees, agents, contractors, consultants, clients, customers, guests, invitees or other visitors, or other persons on the property at the request of, with their permission of, or for the purpose of conducting or transacting any business with, BOCES.
- f. **Binding Effect:** All covenants, promises, representations and agreements contained in this lease shall be binding upon, apply and endure to the benefit of Lessor and BOCES, their legal representatives, successors, and permitted assigns. Each term and provision hereof to be performed by BOCES shall be construed to be both an independent covenant and a condition. The reference contained to BOCES successors and assigns is not intended to constitute consent to assignment by BOCES, but is referenced only to those instances in which Lessor may have given written consent to a particular assignment.
- g. **Additional Instruments:** The parties shall executed and deliver all instruments necessary to carry out any agreement, term, condition, or assurance in this lease whenever necessary and request for such instrument is made.

- h. Waiver:** No failure by either party to insist upon the strict performance of any term or condition of this Lease, or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach, term or condition. No term or condition of this Lease, and not breach thereof, may be waived, altered or modified except in a written instrument executed by the party waiving such term, condition or breach. No waiver of any breach shall affect or alter any term or condition of this Lease, and each such term or condition shall continue in full force and effect with respect to any other existing or subsequent breach thereof. The exercise of one or more rights or remedies shall not be taken to exclude or waive the right to exercise any other. All rights and remedies may be exercised and enforced concurrently or in and whenever and as often as the enforcing party deems desirable.
- i. Relationship of Parties:** Nothing contained in this lease shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture, or any other relationship between BOCES, except that of Lessor and BOCES.
- i. Captions:** The titles of the sections and paragraphs in this lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meeting of the provision thereof.
- j. Duplicate Counterparts:** This instrument may be executed in one or more counterparts, each of which shall be an original, and all of which shall constitute on and the same instrument.
- k. Savings Clause:** Notwithstanding any other provision, each and every provision required to be inserted herein shall be deemed to be inserted and this lease shall be read and enforced as if such provision were included herein.

WHEREFORE, the parties have signed this document as of the dates set next to their respective names.

Dated: _____

Lessor, Vestal Central School District

Dated: _ _____

Lessee: Broome Tioga BOCES