

## **LEASE AND AGREEMENT**

Encl. #11.17  
May 30, 2013

**THIS LEASE AND AGREEMENT**, made this 30<sup>th</sup> day of May, 2013, by and between **HORSEHEADS CENTRAL SCHOOL DISTRICT**, having an address at One Raider Lane, Horseheads, New York, 14845, (Landlord), and **CHEMUNG COUNTY YMCA**, having an address at 800 W. Broad St., Horseheads, NY 14845 (Tenant).

### **WITNESSETH THAT:**

**WHEREAS** the parties hereto desire to enter into a lease and agreement affecting property located at 800 W. Broad Street, Horseheads, New York 14845 (hereinafter referred to as the Property).

**NOW, THEREFORE**, in consideration of the promises and agreements contained herein, the parties hereto agree as follows:

**1. Premises:**

Landlord leases to Tenant those premises known as twelve (12) classrooms and one (1) office designated and more fully described in Schedule "A" attached hereto and made a part hereof.

**2. Term:**

The term of this Lease and Agreement shall commence on July 1, 2013 and expiring on June 30, 2014 (the "Term"). All provisions of this Agreement shall be in full force and effect against the parties hereto during the Term, except that the amount of set forth in Paragraph 3, below, shall be \$99,982.20, payable in monthly installments of \$8,331.85 during the said Term and, the rent amount shall automatically adjust to correspond with the said Paragraph 3, below.

**3. Rent:**

At the commencement of the Term, Tenant shall pay Landlord rent for the Premises in the amount of Ninety Nine Thousand, Nine Hundred Eighty Two and 20/100ths (\$99,982.20) Dollars (the Rent), annually based on the following costs: 11,735 square foot times \$8.52/square foot, totaling \$99,982.20, all of which shall be payable in monthly installments of \$8,331.85 with payment due and owing the first of each month, and automatically increased annually as of the commencement of the Term, at a rate of 5%, including any extensions of this Lease.

**4. Option to Renew:**

Provided Tenant is not in default of this Lease and Agreement, as defined below, at the expiration of the Term, and provided that Tenant has reasonably complied with all requirements enumerated hereunder, Tenant shall be allowed one option to renew this Lease and Agreement for an additional term of one year ( the "Additional Term"), under the same provisions and with the same rights and responsibilities as set forth under this Lease and Agreement, together with any and all other subsequent written additions, exhibits, schedules, or modifications thereto, and which Lease and Agreement and subsequent modifications thereto shall be automatically extended to cover said Additional Term. Thereafter the parties may, at their option and discretion, agree to extend this Lease and Agreement for any further annual term(s) or otherwise, as the parties may subsequently agree.

5. *(Intentionally Omitted)*

6. Utilities:

Landlord shall pay the costs associated with heating, cooling, power, and lighting at no additional expense to Tenant weekdays only. Any weekend and holiday use will require an additional charge for heat, snow removal, salting, or any other additional costs incurred. Tenant agrees to employ energy conservation measures. Tenant shall bear any expense and maintenance costs for installation of separate telephone line(s), utility lines and/or computer connection(s), which installations Landlord shall reasonably allow. Rooms not presently air-conditioned are the responsibility of the Tenant for installation, maintenance, repair, and electricity costs.

7. Possession:

Landlord shall deliver possession of the Premises upon commencement of the Initial Term.

8. Cleaning Services:

Landlord agrees to provide custodial and cleaning services at no additional expense to Tenant, provided ownership of the Premises remains with the Landlord. Upon sale or transfer of the Premises by Landlord, this obligation will automatically terminate and shall become the responsibility of Tenant.

9. Use of Premises:

Tenant intends to use the premises for business operations space. Tenant must abide by Landlord's rules, regulations, environmental, health and safety policies as same may be applicable and required by Landlord or any municipality in connection with the use of the Premises by Tenant, and Tenant agrees to the same. Tenant shall be permitted use and access to the Premises between the hours of 7:00 AM and 8:00 PM on both weekdays and weekends, and Landlord agrees to provide access to Tenant during those times, however Tenant understands and agrees that during certain times, including but not specifically limited to, weekends and holidays, that Landlord will retain contractors to allow for Tenant's access, which service will incur cost to the Landlord, and which cost the Tenant hereby agrees to pay to Landlord and which rates are subject to change. Landlord shall reasonably attempt to advise Tenant of the instances in which such cost will be incurred, however failure to give such notice shall in no way operate to relieve Tenant of its responsibility to reimburse the Landlord for said expenses.

10. Access to Additional Areas:

Tenant shall be permitted reasonable use and access to additional areas located on the property of Landlord, including, but not specifically limited to: public restrooms, outdoor areas, and other public areas not rented by other tenants, provided such use by Tenant does not unreasonably preclude or substantially burden the use(s) of same by Landlord and/or other tenants on the Property. In the event that Tenant's use of said Additional Areas rises to such a level as to constitute a reasonable extensive use, i.e. a use that significantly limits use of said Additional Areas, or parts thereof, by Landlord or other tenant on the Property, then the Parties hereto agree that at such time they would, in good faith, negotiate an increase in the Rent to adequately reflect said extensive use by Tenant. Tenant agrees that, in any event,

Tenant will not interfere with the reasonable use of said Additional Areas by Landlord and other Tenants on the Property and will consent to reasonable scheduling for the use of same if required by Landlord.

**11. Repairs and Maintenance:**

Landlord shall properly maintain the structure, electrical, plumbing, heating and cooling systems on the Premises. Tenant shall maintain the Premises to keep it free of waste and in such a manner as to enable Landlord to maintain reasonable cleanup and custodial services and costs. The Landlord will be responsible for snow removal.

**12. Improvements and Alterations:**

Tenant may make, at its sole cost and expense, any minor, non-structural improvement, repair or alteration to the Premises as may be required to permit Tenant's intended use. Tenant may not make any structural or major modifications or alterations, or any modification creating a safety hazard upon the Premises. In the event Tenant makes such major alteration or modification without the prior written consent of Landlord, or any alteration or improvement constituting a health, safety or other hazard upon the Premises, Tenant shall immediately remove or repair same at its sole cost and expense. Any alterations should be limited to under \$10,000, or require an Architect's review and State Education Department's approval.

**13. Insurance:**

Tenant shall obtain and maintain throughout the Term commercial general liability insurance in such amounts as Landlord may reasonably require, but in any event having coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, covering Tenant, Landlord, and Tenant's invitees and licensees upon the Premises. Tenant is also responsible for insuring its personal property and is solely responsible for any damages incurred to same.

In addition, if Tenant shall use all or any portion of the Premises for daycare, after-school programs, or any other programs in which persons who are less than twenty-one (21) years of age shall participate, Tenant shall obtain and maintain throughout the Term, a policy of sexual abuse and molestation insurance coverage written by an insurance company reasonably acceptable to Landlord, having coverage limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

Each policy required under this Section shall be endorsed to include coverage for the defense of any legal action or proceeding against Tenant and all named additional insureds, and shall be endorsed to name Landlord as an additional insured entitled to thirty (30) days' prior written notice of any termination, revocation, cancellation, or material modification of such policy. Prior to taking possession of or commencing any use of all or any portion of the Premises, Tenant shall furnish Landlord with a certificate of insurance evidencing the coverages required by this Section. From time to time upon request of Landlord, Tenant shall furnish Landlord with a copy of the relevant policy or policies providing such coverages and with such other evidence of coverage as Landlord may require. As between Landlord and Tenant, all of Tenant's insurance coverages required under this Section shall be primary, and Landlord's insurance coverages shall be excess and noncontributory.

**14. Indemnification:**

Tenant agrees to wholly indemnify, reimburse and hold Landlord harmless from any and all liability and damages which may be incurred on the Property and/or Premises during Tenant's period of possession arising out of Tenant's use and occupancy, as may be caused or arise from the acts, or failure(s) to act, of Tenant, its clients, guests, licensees, agents and invitees.

**15. Destruction of Premises:**

In the event of destruction of the Premises by fire or other casualty, the Landlord shall make the determination as to whether the Premises are untenable in accordance with Tenant's intended use. Landlord shall be under no obligation to restore the Premises, should same be damaged beyond reasonable restoration, and upon notification of same to Tenant, all obligations between Landlord and Tenant under this Lease and Agreement shall cease. If Landlord determines that the Premises are partially tenantable, and capable of being restored, Landlord may, at its sole discretion, elect to 1) provide access to Tenant to other like portions of the property in substitution for those area(s) destroyed and maintain this Lease and Agreement in full force and effect, or 2) abate the rent, except for an amount bearing the same proportion of the total rent that the value of the remaining tenantable portion of the premises bear to the value of the whole thereof, until such time as the Premises is restored by Landlord and reoccupied by Tenant.

**16. Risk of Loss from Fire and Other Perils:**

Notwithstanding any provision of this Lease and Agreement to the contrary, neither party shall be liable for the loss or damage of the other's property caused by fire or other casualty.

**17. Assignment and Subletting:**

Tenant shall not be permitted to assign any of the obligations, rights and responsibilities contained under this Lease and Agreement to any third party without the prior written consent of Landlord. In the event Landlord agrees to any assignment, Tenant agrees to remain liable for its obligations (including payment of rent) herein to the end of the Term. Any use of the Premises by an assignee of Tenant consented to by Landlord is subject to the same use, obligations, rights and responsibilities as that of Tenant hereunder.

**18. Removal of Tenants Property:**

All furnishings, fixtures and equipment installed on the Premises at the expense of Tenant, together with improvements and alterations permitted under paragraph 12, hereunder shall remain the property of Tenant and shall be removed by Tenant at the expiration of the term, provided that Tenant, at its own cost and expense shall remove same and cause to be repaired any damage done to the Premises resulting from installation and/or removal of Tenant's property on the Premises and, at the end of the Term, Tenant shall surrender the Premises in a broom-clean condition, free from damage, normal wear and tear excepted.

**19. Condemnation:**

In the event that the whole or any part of the Premises shall be taken by any public authority or private entity under the power of eminent domain or like power, or sold under imminent threat thereof, the Term of this Lease and Agreement shall automatically accelerate and terminate as to the part of the Premises taken or sold, effective as of the date possession shall be required to be delivered. In the event of a partial taking or sale, as aforementioned, the

remaining unaffected portions of the Premises shall remain subject to the provisions of this Lease and Agreement, with Rent for the remaining duration of the Term reduced proportionately to reflect the amount of the Premises affected by such taking or sale.

**20. Inspection and Showing of the Premises:**

Tenant shall permit Landlord and its agents to enter onto the Premises at reasonable times, and upon reasonable notice, for the purposes of inspecting and repairing the Premises and ascertaining whether Tenant is in compliance with the provisions of this Lease and Agreement. Landlord may also show the Premises to prospective tenants and purchasers prior to the expiration of the term. Any such inspection or showing by Landlord shall not unreasonably interfere with the Tenant's use of the Premises.

**21. Quiet Enjoyment:**

Tenant shall be entitled to quiet enjoyment of the Premises during the term of the lease and shall conduct its activities upon the Premises so as not to interfere with the quiet enjoyment of Landlord and/or other tenants who utilize the remainder of the property upon which the Premises is located.

**22. Termination:**

Either party may properly terminate this Lease and Agreement on at least ninety (90) days notice to the other. Upon such proper notice and expiration of said notice period, this Lease and Agreement shall automatically terminate, together with all rights and responsibilities of the parties hereto, except for those responsibilities enumerated in paragraphs 11, 12 and 18, which obligations and responsibilities shall remain in full force and effect until Tenant has completely vacated the Premises and Landlord has had reasonable opportunity to inspect the Premises and notify Tenant of any damage caused to the Premises by Tenant.

**23. Default:**

Any material breach by the parties hereto of any provision of this Lease and Agreement, including, but not specifically limited to, the nonpayment of rent, violation by Tenant of its responsibilities with respect to use of Additional Areas, impermissible assignment by Tenant and any unauthorized use of the Premises by Tenant, shall constitute a default. In the event that the Landlord is successful in any claim for damages or eviction as a result of such default by Tenant, Tenant shall be responsible for all costs and fees, including reasonable attorney's fees, incurred by Landlord in enforcing this Lease and Agreement.

**24. Eviction:**

In the event of default by Tenant, the parties agree that legal relief alone shall not be sufficient, and Landlord may commence summary proceedings for the eviction of Tenant and recovery of damages, together with any other equitable or legal relief as may be just and proper, including reasonable attorney's fees.

**25. Waiver:**

The failure to exercise any rights or insist upon any provision, responsibility, covenant or condition of this Lease and Agreement shall not be construed as a waiver of such right, responsibility, obligation or future requirement of strict performance of the provisions hereunder.

**26. Amendment or Modification:**

All the terms, understandings and agreements binding upon the Landlord and Tenant are herein set forth and this Lease and Agreement shall not be amended or modified, in whole or in part, except in writing, signed by the parties hereto.

**27. Notification:**

Notices given pursuant to this Lease and Agreement shall be in writing, and shall be deemed delivered upon actual delivery or upon mailing, postage paid, to the addresses of the respective parties. The parties hereto shall notify the other of any change of address for such purpose.

**28. Law:**

This Lease and Agreement shall be interpreted and enforced under and subject to the laws of the State of New York.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease and Agreement to be executed as of the day and year first written above.

Landlord:  
**Horseheads School District**

By: \_\_\_\_\_  
Ralph Marino, Jr., Ed. D.  
Its: Superintendent of Schools

Tenant:  
**Chemung County YMCA**

By: \_\_\_\_\_  
Its:

|         |           |
|---------|-----------|
| DATE    | 1/27/11   |
| PROJECT | 1009      |
| SCALE   | AS NOTED  |
| DIN AMS | CK/D DMCD |
| NUMBER  | BS-1      |

