

Schedule "A"

The form of the Agreement of Sale for the Real Estate

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") is made as of the ___ day of _____, 2009 (the "Agreement Date"), by and between **BEAR CREEK TOWNSHIP**, a municipal corporation organized under the laws of the Commonwealth of Pennsylvania as a Second Class Township with offices at 3333 Bear Creek Boulevard, Bear Creek Township, Pennsylvania 18702 (the "Township"); the (the "Seller"), and **BEAR CREEK FOUNDATION**, with offices at 1900 Bear Creek Blvd, Wilkes-Barre, PA 18702 (the "Purchaser")

WITNESSETH:

WHEREAS, Seller intends to acquire fee title to that certain parcels of land situate in Bear Creek Township by exercise of eminent domain for the purpose of making land available for a new school with recreational areas, said parcel being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Seller desires to sell the Property to Purchaser and Purchaser desires to purchase the Property from Seller upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **SALE OF PROPERTY.** Subject to the terms and conditions of this Agreement, and the Development Agreement between and among the Seller, Purchaser and the Bear Creek Community Charter School of even date herewith, Seller hereby agrees to sell, transfer and convey to Purchaser and Purchaser hereby agrees to purchase from Seller the Property.
2. **PURCHASE PRICE.** Purchaser shall pay in exchange for the Property the Purchase Price (the "Purchase Price") which shall be the sum of the Seller's cost of acquisition which shall include the estimate just compensation for the taking together with all reasonable costs associated therewith whether incurred before or after Closing (as hereafter defined) (subject to reimbursements and apportionments as contained herein).
3. **MANNER OF PAYMENT OF PURCHASE PRICE.** The Purchase Price shall be paid as follows:
 - (a) Upon written request by Seller to Purchaser, Purchaser shall, in order to assist the Seller effect its acquisition of title to the Property, make an installment payment to the Seller on account of the Purchase Price in an amount sufficient to allow Seller to obtain record title to the Property.

(b) At Closing, Purchaser shall pay to the Seller, in immediately available funds, the balance of the Purchase Price, if any, subject to reimbursements and apportionments as contained herein.

4. **THE CLOSING.** Closing shall occur within ninety (90) days following the acquisition of fee record and insurable title, or the next business day, at the offices of the Purchaser in Wilkes-Barre, Pennsylvania or any other mutually agreed upon location. The date and time for closing are of the essence of this Agreement. Transfer of title between the Seller and the Purchaser is contingent upon the Seller obtaining title, and the time (ninety (90) days) shall not begin to run unless and until title has been acquired from the property owner through the eminent domain process or otherwise.

(a) In the event that the Seller does not or cannot obtain title to the Property, the Purchaser shall be permitted to terminate this Agreement of Sale and reimburse the Seller all outstanding, agreed-upon costs and fees incurred, provided the same are at rates which are customary and usual in the industry, as a result of this transaction and Township action. Proper notice must be provided to the Seller of the intent to terminate and payment shall be made to the Seller within fifteen (15) days of the Purchaser and Charter School being provided a bill of costs.

5. **TITLE TO PROPERTY.** On the Closing Date, Seller shall convey the Property to Purchaser free and clear of all liens, encumbrances, security interests, leases and easements, other than easements, restrictions and rights-of-way of record and acceptable to Purchaser in writing. Title to the Property shall be good and marketable and such as will be insured at regular rates, without exception, by a title insurance company of Purchaser's choice licensed to do business in Pennsylvania with Buyers endorsements.

6. **ACTIONS TO BE TAKEN AT CLOSING.**

(a) On the Closing Date, Seller shall deliver to Purchaser:

(i) A special warranty deed conveying title to the Property as required by Paragraph 4 of this Agreement; and

(ii) Seller's affidavit of title;

(iii) Municipal action of the Seller authorizing the sale of the Property to Buyer;

(iv) A settlement statement signed by Seller.

(b) On the Closing Date, Purchaser shall deliver to Seller:

(i) the Purchase Price less and together with the adjustments and reimbursements herein provided:

- (ii) Buyer's resolution authorizing the purchase of the Property; and
- (iii) A settlement statement signed by Buyer.

7. **CLOSING COSTS.** All current and past due real property taxes, as applicable, shall be the responsibility of the Purchaser. All state and local real estate transfer taxes shall be paid by the Purchaser on the Closing Date (unless waived by the collecting taxing authority). Purchaser shall be solely responsible for the cost of obtaining the title report and title insurance required by this Agreement.

8. **REPRESENTATIONS AND WARRANTIES OF SELLER.** The Seller represents and warrants to Purchaser as to each of the properties to which it has title and is the subject of this Agreement, respectively, that as of the date of this Agreement and/or as of the Closing Date:

- (a) Seller will have acquired by Closing good and marketable title to the Property and such as will be insured by a reputable title insurance company licensed to do business in the Commonwealth of Pennsylvania at regular rates;
- (b) All taxes or other liabilities of Seller on or with respect to the Property which constitute or would constitute an encumbrance or lien against the Property upon transfer of title to Purchaser, will be paid and removed on the Closing Date;
- (c) Except as provided in subparagraph (b) above, Seller will hold title to the Property free and clear of all liens, encumbrances or claims;
- (d) The Property is fully and accurately described in Exhibit "A";
- (e) Seller has the absolute and sole right to sell the Property to Purchaser, without the consent or intervention of any court, agency or any other person, and has the full power and authority to make, execute and deliver this Agreement and to consummate all of the transactions contemplated by this Agreement or to the extent that any such consent or approval is required the same has been obtained;
- (f) Seller is not a party to any action or other legal proceeding nor have they received notice of any proceeding alleging a violation of any federal, state or municipal statute, ordinance, law or regulation with respect to the Property;
- (g) Consummation of the transactions contemplated by this Agreement will not violate or result in a breach of or constitute a default under any provision of any indenture, mortgage, lease, lease consent, agreement, contract, decree, instrument, order, judgment, ordinance, regulation or any other restriction of any kind or character to which Seller or the Property is subject or by which Seller or the Property is bound;

- (h) The Property is presently zoned for Agricultural uses (zoning district "A-1") and the present uses of the Property do not violate any current zoning laws or ordinances;
- (i) There are no outstanding leases or other agreements affecting the Property, and except as provided in this Agreement, there are no other persons who have claims or rights in or to the Property; and
- (j) To the actual knowledge of Seller, the Property has never been used to refine, store, produce, transfer, process, transport, generate, manufacture, treat or dispose of any contamination. Seller has no knowledge and has received no notice of any violations of any applicable federal or state environmental laws or regulations. Should contamination be discovered, and remediation is required, the Buyer shall be financially responsible for such remediation. The Seller makes no warranty as to the environmental status of the Property, and only makes the statements herein as a means of confirming that the Seller has no actual knowledge of any past or current environmental issues.

- 9. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.** Purchaser has the full power and authority to make, execute and deliver this Agreement and to consummate all of the transactions contemplated under and by the terms and provisions of this Agreement.
- 10. **BUYERS CONDITIONS PRECEDENT.** Notwithstanding any provision of this Agreement to the contrary, Buyer's obligations hereunder are expressly conditioned upon Seller's acquisition of title to the Property in the form, manner and quality set forth in this Agreement.
- 11. **RIGHTS ON DEFAULT.** In the event of a default by either party, the other shall have the right to pursue all of its rights and remedies at law or in equity, including, without limitation, specific performance. The exercise of (or failure to exercise) any one of the rights or remedies under this paragraph shall not be deemed to be in lieu of, or a waiver of, any other right or remedy contained herein.
- 12. **WAIVER OF FORMAL TENDER.** Formal tender of an executed deed and the Purchase Price is waived by the parties.
- 13. **BINDING ON SUCCESSORS.** The Agreement shall be binding upon and inure to the benefit of the respective successors, heirs and assigns of both Purchaser and Seller.
- 14. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties and there are no other terms, obligations, representations, statements or conditions, verbal or written, concerning the transaction contemplated by this Agreement. Any changes or additions to this Agreement must be made in writing and executed by both Purchaser and Seller.

15. **SURVIVAL OF WARRANTIES.** All representations, warranties and obligations of Seller in this Agreement shall survive the Closing Date.
16. **NOTICES.** All notices sent or required by this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, to the addresses of the parties on the first page of this Agreement unless an address has been changed and notice of such change has been sent as required by this Paragraph.
17. **COUNTERPARTS.** This Agreement may be simultaneously executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
18. **GOVERNING LAWS.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be duly executed the day and year first above written.

SELLER:

ATTEST/WITNESS:

BEAR CREEK TOWNSHIP

Township Secretary

Gary Zingaretti, Chair

Bonnie J. Wasilewski, Vice Chair

Ruth Ann Koval

Gary Slusser

Joseph Masi

PURCHASER:

ATTEST/WITNESS:

BEAR CREEK FOUNDATION

By: _____

**EXHIBIT A
TO AGREEMENT OF SALE**

All that certain lot, piece or parcel of land situated in Bear Creek Township, County of Luzerne, and Commonwealth of Pennsylvania more specifically bonded and described as follows:

BEGINNING at a point, said point being the most Northerly corner of Parcel No. 3 and also being located on the Easterly right-of-way line of a one hundred (100) feet wide PPL right-of-way;

THENCE from said right-of-way line South 48 degrees 13 minutes 11 seconds East a distance of 121.58 feet to an existing iron pipe, said pipe being the Westerly property corner of lands now or formerly of James W. and Joyce Smith;

THENCE along lands now or formerly of James W. and Joyce Smith South 44 degrees 48 degrees 31 minutes East a distance of 399.33 feet to an existing iron pin, said pin being the Westerly property corner of lands of Bear Creek Foundation, Inc.;

THENCE along lands of Bear Creek Foundation, Inc. South 44 degrees 44 minutes 51 seconds East a distance of 300.00 feet to an existing iron pin, said pin being the Westerly property corner of Parcel No. 11 of lands of Joan H. Riebel, Harold J. Harris, Jr., and Brian W. Harris and also being Northerly property corner of Parcel No. 13 of lands of Joan H. Riebel, Harold J. Harris, Jr. and Brian W. Harris;

THENCE along Parcel No. 13 and Parcel No. 12 of the aforementioned lands of Riebel, Harris, and Harris South 45 degrees 15 minutes 09 seconds West a distance of 200.00 feet to a point, said point being the Westerly property corner of Parcel No. 12;

THENCE along Parcel No. 12 South 50 degrees 40 minutes 51 seconds East a distance of 144.62 feet to a point;

THENCE through Parcel No. 3 and lands of Harold J. Harris, MD South 36 degrees 51 minutes 09 seconds West a distance of 1,138.88 feet to a point, said point being located on the Northerly property line of Parcel No. 14 of the aforementioned lands of Riebel, Harris, and Harris;

THENCE along Parcel No. 14 North 53 degrees 08 minutes 51 seconds West a distance of 255.00 feet to a point;

THENCE along Parcel No. 14 and Parcel No. 2 and Parcel No. 1 of the aforementioned lands of Riebel, Harris, and Harris and along lands now of formerly of Michael Sucahr South 31 degrees 30 minutes 52 seconds West a distance of 795.82 feet to a stone pile, said stone pile being located on the Northerly property line of Parcel No. 23 of the aforementioned lands of Riebel, Harris, and Harris and also being the most Easterly property corner of Parcel No. 20 of the aforementioned lands of Riebel, Harris, and Harris;

THENCE through Parcel No. 23 South 53 degrees 10 minutes 00 seconds West a distance of 375.00 feet to a point;

THENCE continuing through Parcel No. 23 and through Parcel No. 20 of the aforementioned lands of Riebel, Harris, and Harris North 44 degrees 44 minutes 51 seconds West a distance of

803.36 feet to a point, said point being along the aforementioned Easterly right-of-way line of PPL;

THENCE along the Easterly right-of-way line of PPL North 54 degrees 16 minutes 39 seconds East a distance of 381.90 to a point;

THENCE continuing along the Easterly right-of-way line of PPL North 37 degrees 53 minutes 13 seconds East a distance of 2,126.02 feet, which is the place of beginning;

CONTAINING an area of 2,128,487 sq. ft. or 48.86 acres;

BEING "Overall Parcel" as shown on plan entitled "Property Survey—Lands of Joan H. Riebel, Harold J. Harris, Jr. and Brian W. Harris; Bear Creek Township, Luzerne County, Pennsylvania", prepared by HSS Land Surveyors, Bloomsburg, PA; dated March 12, 2009;

ALSO BEING part of lands conveyed to Joan H. Riebel, Harold J. Harris, Jr., and Brian W. Harris by deed of Marion C. Alexander dated November 1, 1996 recorded in Luzerne County Deed Book 2584 Page 714.