



# TOWN OF FREEPORT, MAINE

OB #4 SOULE SCHOOL

Town Manager's Office  
30 Main Street  
Freeport, ME 04032

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## MEMORANDUM

TO: Freeport Town Council  
FROM: Peter Joseph, Town Manager  
DATE: 12/16/21  
RE: Soule School Lease

The Town currently leases a portion of the Soule School property (99 South Freeport Road) to L'Ecole Francaise du Maine, a non-profit corporation which runs the French-language private school at that location. The lease in question runs until 2025. A copy of that lease is attached for your informational purposes. A few years ago, the owners of the school approached the Town Council to request a long term (100 year) lease extension for the property, which would allow L'Ecole Francaise to renew their educational accreditation with the French Ministry of Education, and effectively operate permanently in South Freeport. A combination of issues that needed to be addressed on the property prior to lease renewal, and then the disruption of the COVID-19 pandemic forced their request to be placed "on hold" until the current time.

There is a lease proposal that was developed by the school which has been reviewed by the Town's Attorney, however there are a few small details on that proposal that I am still working to resolve with our Attorney before forwarding to the Council for consideration. I hope to have that completed at the beginning of next week so that Councilors will receive it prior to the 12/21/21 meeting.

The intent of the discussion surrounding the item on the 12/21/21 Town Council agenda is to allow the current Council to be able to familiarize themselves with the school's request, as well as potentially hear from the school owners. An executive session has been placed on the agenda in case there is the need to discuss the potential terms of the proposed lease extension in private with Town staff.

**SOULE SCHOOL LEASE**

*February 17, 2005 WLB @*

LEASE made this ~~February 9, 2005~~, by and between the Town of Freeport, a municipal corporation located in Cumberland County, Maine with a mailing address of 30 Main Street, Freeport, Maine 04032 ("Landlord") and *L'Ecole Française du MAINE; 40 Main Street*  
~~Doten's Properties, Inc., 175 South Freeport Road, Freeport, Maine 04032~~

*WLB*

**WITNESSETH:**

1. Premises Located: Landlord does hereby Lease to Tenant, and Tenant does hereby Lease from Landlord, the land and building located in South Freeport, Maine, commonly known as the George C. Soule School. The land area enclosed in red lines is more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises").
2. Term: The term of this Lease shall be twenty (20) years, from July 1, 2005 to June 30, 2025.
3. Rent: Tenant covenants and agrees to pay annual rent in the amount shown below.

From July 1, 2005 to June 30, 2006	<u>\$8,181.00</u>
From July 1, 2006 to June 30, 2007	<u>\$12,905.00</u>

One half of the total yearly rent shall be paid on or before September 1 of each year with the second half due on or before March 1 of each year.

Rent shall be adjusted annually to reflect the real estate taxes the property would pay if it were privately owned. In no event shall the annual charge be reduced from the previous year's amount. Or not increase more than 3% per year.

4. Tenant's Covenants: Tenant acknowledges by entry thereupon that said Premises are to be brought into good and satisfactory order, repair and condition and covenants the following:
  - a. To pay, when due and without offset or deduction, all rent and other charges set forth herein; all charges for telephone and other communication systems used at, and supplied to, the Premises, and all charges for electricity, gas, heat and air conditioning or other utilities supplied to the Premises.
  - b. Except as specifically herein otherwise provided, Tenant agrees that from and after the date that possession of the Premises is delivered to Tenant, and until the end of the term of this Lease, Tenant will keep neat and clean and maintain in good order, condition and repair (reasonable wear and tear and casualty damage excepted): all interior and exterior structural and nonstructural portions of the Premises including, but not limited to; all plumbing and sewage facilities located entirely within the Premises; lamping (lamps, ballasts, bulbs, etc.); fixtures; interior and exterior walls; floors; ceiling; signs (including exterior signs where permitted); roof; windows; and all wiring electrical systems, interior building appliances, heating, air conditioning and ventilation systems and equipment to the extent such systems, appliances and equipment are located entirely within or on the premises. The Tenant also agrees to be responsible,

- at its expense, for the removal of snow, mowing and maintenance of landscaping.
- c. If Tenant refuses or neglects to repair the Premises as required hereunder to the reasonable satisfaction of Landlord within 30 days after written notice from Landlord, or if additional time is required to complete such repairs, as soon as reasonably possible, Landlord may, at its option, make such repairs, and in doing so shall not unreasonably interfere with Tenant's business, but shall not be liable to Tenant for any loss or damage to Tenant's business by reason thereof and, upon completion, Tenant shall pay Landlord's reasonable costs for making such repairs. At the termination of this Lease, Tenant shall peaceably yield up said Premises and all additions, alteration, fixtures and improvements which may be installed by Tenant upon the Premises and which in any manner are attached to the floors, walls or ceilings, including without limitation any linoleum or other floor covering which may be cemented or otherwise affixed to the floor, in good order, repair and condition (subject to reasonable wear and tear and casualty damage), first removing all personal property, and leaving the Premises clean and tenantable. If Landlord in writing permits Tenant to leave any such goods and chattels at the Premises, and the Tenant does so, Tenant shall have no further claims and rights in such goods and chattels as against the Landlord or those claiming by, through under the Landlord. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.
  - d. Not to injure or deface said Premises or building; not to permit on said Premises any auction sale, nuisance, objectionable noise or odor, not to permit the use of said Premises for any purpose other than set forth herein or any use thereof which is improper, offensive, contrary to law or ordinance, or liable to invalidate or increase the premiums for any insurance on the building or its contents or liable to render necessary any alterations or additions to the building (other than those agreed to in writing by Landlord). Tenant may not use or store in the Premises any chemicals or substances deemed to be hazardous under federal, state or local laws or regulations, except in compliance with such laws and regulations. Heating oil and propane fuel are exempt. Upon termination of this Lease, Tenant will, at its expense, remove all Hazardous Materials from the Premises and comply with all applicable state, local and federal laws, including local zoning regulations, as the same may be amended from time to time.
  - e. To conform to all reasonable rules and security regulations now or hereinafter made by Landlord for the care and use of said Premises, the building, its facilities and approaches, provided the same are uniformly applied to all tenants of the building.
  - f. Not to assign this Lease nor make any sublease at any time without the Landlord's prior written consent. Written consent or denial must occur within 30 days of the receipt of written request.
  - g. Not to make any alternations or additions without written permission from Landlord, which shall not be unreasonably withheld, nor to permit the making of any holes in any part of said building, nor to paint or place any signs, awnings aerals or flagpoles or the like, visible from outside of the said Premises, that is, from outdoors or from any corridor or other common area in the building.
  - h. Upon failure of the tenant, the landlord may enter the Premises to install, maintain, use, repair and replace pipes, ducts, wires, meters and any other equipment, machinery, apparatus and

fixtures in said Premises to serve said Premises and to serve other property owned by Landlord. This work will be performed at Tenant's expense.

- i. To save Landlord harmless and indemnified from any injury, loss, claim or damage to any person or property while on the Premises during operating hours.
- j. To insure Tenant and Landlord, as their interest appear, with comprehensive general liability insurance including Broad Form Comprehensive General Liability coverage on the Premises, in such amounts and with such companies and against such risks as the Landlord shall reasonably require and approve but in amounts no less than one million dollars (\$1,000,000) combined single limit with a reasonable deductible. Further, said policy shall not be cancelable by the insuring insurance company upon less than thirty (30) days prior written notice to Landlord.
- k. To hold all the property of Tenant, including fixtures, furniture, equipment and the like of the Tenant, or of any other owner situated at the Premises, at Tenant's own risk, to maintain such property in good working order and to pay any and all costs, charges and expenses in connection with its operation and maintenance, and to pay when due all taxes assessed during the term of this Lease against any personal property of any kind owned or placed in, upon or about said Premises by Tenant.
- l. To permit Landlord or its agents to examine the premises at any reasonable time with a twenty-four hour notice given, or time emergency access is needed, during the Lease term and, if Landlord shall so elect, to make any repairs or additions (structural or otherwise) Landlord may deem necessary and, at Tenant's expense to remove any alterations, additions, signs, awning or flagpoles, or the like, not consented to in writing; and to show the Premises to prospective purchases and mortgages; to show the Premises to prospective tenants during the six (6) months preceding the expiration of this Lease.
- m. To pay Landlord's expenses, including reasonable attorney's fees, incurred in enforcing any obligation of this Lease which has not been complied with by lessee.
- n. Not to suffer or permit any lien of any nature or description to be placed against the building, the premises or any portion thereof, attaching by reason of the conduct of the Tenant and to immediately pay and remove the same; this provision shall not be interpreted as meaning that the Tenant has any authority or power to permit any lien of any nature or description to attach to or be placed upon the Landlord's title or interest in the building, the Premises, or any portion thereof.
- o. To keep the premises equipped with all safety appliances required by law or any public authority.
- p. That the rights and remedies to which the Landlord may be entitled under the terms of this Lease are cumulative and are not intended to be exclusive of any other rights and remedies to which the Landlord may be properly entitled in case of any breach or threatened breach by Tenant of any portion of the Lease.
- q. That acceptance by Landlord of a lesser sum than the gross rent, or other fees or charges then due shall not be deemed to be other than on account of the earliest installment of such rent or other fees or charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other payments be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease. The delivery of keys to any employee thereof shall not

operate as a termination of this Lease or a surrender of the premises.

- r. That without limitation of anything elsewhere herein contained, the landlord may,
  - (i) retain and use in appropriate instances keys to all doors within and into the premises and to change the locks to the premises if Landlord deems it advisable. No lock shall be changed by Tenant without the prior written consent of landlord;
  - (ii) enter upon the Premises and exercise any and all of the Landlord's rights without being deemed guilty of an eviction, trespass or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.
- s. Tenant agrees to make repairs and improvements to the building, to the satisfaction of the Landlord, based on the attached schedule and timetable. Exhibit B.

5. Damage or Destruction by Fire, Eminent Domain or Casualty: In the event that a substantial portion of the Premises or any part thereof shall be taken by eminent domain or shall be so damaged or destroyed by fire or unavoidable casualty that the Premises are thereby rendered untenable, then Landlord may terminate this Lease upon written notice to the Tenant and the rent and the cost of building improvements outlined in the attached schedule shall be prorated as of the date of such termination. Proration amounts shall be determined by the Landlord at a rate of 5% per year..

6. Default and Landlord's Remedies: It is covenanted and agreed that if Tenant shall neglect or fail to perform or observe any of the covenants, terms, provisions or conditions contained in this Lease and on its part to be performed or observed within thirty (30) days after receipt of written notice of default, (except for payment of Base Rent or other monetary charges and except for default of Tenant's insurance requirement, for both of which there will be only a five (5) day cure period), or if the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant's property by a court of competent jurisdiction, Landlord shall be entitled to all remedies available to Landlord at law and/or equity, including, without limitation, the remedy of forcible entry and detainer. Tenant covenants that in case of such termination, the rental payments shall accelerate and tenant shall forthwith pay to Landlord as damages a sum equal to the amount of rent and other payments called for hereunder for the remainder of the term thereof subject to the Landlord's obligation to make reasonable attempts to mitigate loss of rent and other damages. In addition, Tenant agrees to pay to Landlord, as damages for any above described breach, all costs of reletting the Premises including real estate commissions and costs of renovating the Premises to suit the new tenant.

7. Notice: Written notice from Landlord to the Tenant shall be deemed to have been given if mailed by certified mail to the Tenant at the address set forth hereinabove, or delivered personally to the door of the Premises. All notices to the Landlord and rent shall be sent to Landlord's address as hereinabove set forth.

8. Parking: Tenant acknowledges and agrees that no parking for use by the Tenant shall occur off the leased premises. Landlord shall permit Tenant to utilize parking on the Premises for its employees and visitors during normal operating hours and for other related functions and events. At all

other times the parking areas on the Premises shall be available to the public as Landlord may permit from time to time.

9. Use of Premises: Landlord acknowledges and agrees that Tenant will use the Premises to operate a ~~Day Care~~<sup>School and</sup> ~~or~~ <sup>Preschool</sup>. Tenant agrees to allow the playgrounds on the Premises to be used by the Town and community at reasonable times for use not inconsistent with Tenant's uses.

10. Termination: This Lease may be terminated for cause by either party upon one year's written notice.

11. Use of School Name: ~~Except to indicate the First Step Educational Day Care, Inc. new location,~~ Tenant shall not use the name "George C. Soule School" or any variant thereof in the operation or promotion of its school, nor shall Tenant in any way represent or create the impression that its school is sponsored by or affiliated with the Town of Freeport or the Freeport School Department. WLS

12. Holdover: If Tenant remains in possession of the Premises after the expiration of the term of this Lease, such possession shall be as a month-to-month tenancy, the provision of this Lease, except for Minimum Rent, shall be applicable. If Landlord and Tenant are negotiating an extension or renewal in good faith, the Minimum Rent shall continue at the same rate required by the Lease for the prior month for a period not to exceed one month; thereafter, Minimum Rent shall be increased to one and one half (1 ½) times the then-current Minimum Rent for the period just preceding such termination. Landlord and Tenant may terminate any such month-to-month tenancy by giving the other party thirty (30) days prior written notice.

13. Miscellaneous Provisions: (a) Waiver. Failure on the part of the Landlord to complain of any action or non-action on the part of the Tenant, no matter how long the same may continue, shall never be deemed to be a waiver by Landlord of any of its rights hereunder. Further, no waiver at any time of the other provisions hereof, and that a waiver at any time of any of the provision hereof shall not be construed as a waiver at Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. The acceptance by either Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

b) Invalidity of Particular Provisions. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

c) Governing Law. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine.

d) Recording. Tenant agrees not to record this Lease, but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and satisfactory to Landlord's and Tenant's attorney. In no

event shall such memorandum set forth the rental or other charges payable by Tenant under this Lease and any other such memorandum shall expressly state that it is executed pursuant to the provision contained in this Lease and is not intended to vary the terms and conditions of hereof.

- e) Paragraph Headings. The paragraph headings throughout this instrument are for the 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 meaning of the provision of this Lease.
- f) Tenant Defined – Use of Pronoun. The word “Tenant” shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provision of this Lease apply in the plural number where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
- g) Entire Agreement. This Lease encompasses the entire agreement between the parties. It supersedes all prior agreements or understandings. In entering into this Lease, the parties are not relying on any agreement, understanding, or representation not contained herein. This Lease may only be amended only by a writing signed by both parties hereto.
- h) Performance of Covenants. Landlord and Tenant covenant and agree that each will perform all agreements and observe all covenants herein expressed on its part to be performed and observed and that each will promptly comply with such notices from the other. If tenant or Landlord shall not comply with any such notice to the satisfaction of the other, prior to the date on which such non-compliance would constitute an event of default, in addition to, and not in lieu or in limitation of any other remedy which may have pursuant to this Lease, at law or in equity, Landlord and Tenant may, but shall not be obliged to, enter upon the Leased Premises and do the things specified in said notice. Landlord and Tenant shall have no liability to the other for any loss or damage resulting in any way from such action and the non performing party agrees to pay, upon demand, any expense incurred by the other in taking such action. Notwithstanding the foregoing, Landlord’s or Tenant’s performance of any or all of the other covenants shall not release the defaulting party from liability for non-performance.
- i) Interpretation. Whenever in this Lease provision is made for the doing of any act by any party, it is understood and agreed that said act shall be done by such party at its own cost and expense, unless a contrary intent is expressed. All measurements of leaseable space shall be from the

exterior of the outside wall to the exterior of the outside wall as well as land depicted on Exhibit A.

- 14. When Lease Becomes Binding. Only the Town Manager or Landlord shall have authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the execution and delivery hereof by both Landlord and Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof. All rights, obligations and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, trustees, receivers, legal representatives, successors and assigns of the said parties; and if there shall be more than one tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee, legal representative, trustee, receiver, legatee or other personal representative of Tenant unless the assignment to such party has been approved by Landlord in writing.
- 15. Limitation of Liability. Tenant agrees to look solely to Landlord's interest in the Premises and any applicable insurance coverage for recovery of any judgment from Landlord.
- 16. Zoning. Tenant agrees not to request changes to or in current zoning during the term of this lease.
- 17. Building Permit Issuance. Both parties agree that a building permit will not be issued by the Landlord until <sup>L'Ecole Francaise du Maine</sup> ~~Doten's Construction Inc.~~ has provided Letters of Credit satisfactory to the Landlord. *WLB*

**WITNESS** the execution hereof, under seal, in any number of counterpart copies, each of which counterpart copies shall be deemed an original for all purposes, as of the day and year first written above.

**WITNESS:**

Judith Hawley

**THE TOWN OF FREEPORT MAINE  
(LANDLORD)**

By: *Dale C. Olmstead, Jr.*  
Dale C. Olmstead, Jr. Town Manager

*6/8/05*

Witness:

*John Fernald*

\_\_\_\_\_  
*WLB*

WILLY LEBIHAN

By: President L'Ecole Francaise du Mai

02/17/2005





**EXHIBIT A**

**"SILVER BULLETS"  
RECYCLING**

**School & Daycare**

**Town Developed Parking Lot  
and Open Space**

**Conservation / Park**

**The Future of the  
Soule School Property  
Option #3  
Committee Recommended Option  
Updated: 02/22/2005**

**SOUTH FREEPORT ROAD**

**PARK STREET SF**

**TOWN ACCESS**

