

(vi) To the best of Seller's knowledge, the execution and delivery of this Contract and the performance by Seller of its obligations hereunder do not and will not conflict with or violate any provision of the certificate of incorporation or bylaws of Seller, or any law, rule, judgment, regulation, order, writ, injunction or decree of any court or governmental or quasi-governmental entity with jurisdiction over the Premises or Seller, including, without limitation, the United States of America, the State of New York or any political subdivision of either of the foregoing, or any decision or ruling of any arbitrator to which Seller is a party or by which Seller or the Premises are bound or affected;

(vii) To the best of Seller's knowledge, no action, approval, consent or authorization by or filing with any governmental or quasi-governmental agency, commission, board, bureau or instrumentality or any other person or entity is necessary or required as to Seller in order to constitute this Contract as a valid and binding obligation of Seller, enforceable in accordance with its terms, or to authorize or permit the performance by Seller of its obligations hereunder except, however, that Seller shall obtain prior to the Closing Date Seller's Court Approvals; and

(viii) To the best of Seller's knowledge but without making or having made any independent investigation except with respect to asbestos, the Premises as presently used and occupied by Seller are in compliance with federal, state and local laws, statutes, ordinances and regulations, all court or administrative orders or decrees and all private agreements with respect to all radioactive or toxic materials and all materials requiring special handling in its collection, storage, treatment and disposal, including, without limitation, asbestos. The representations and warranties contained in this Paragraph 22(A)(viii) shall not apply to any materials used in the normal and ordinary course of the operation of a school on the Premises. Purchaser acknowledges that a Rehabilitation might cause the representation and warranty contained in this subparagraph to become incorrect, but Seller shall have no liability should the representation and warranty made in this subparagraph prove incorrect on account of a Rehabilitation.

(B) Purchaser represents and warrants to Seller as of the date hereof that:

(i) To the best of Purchaser's knowledge, no action, suit, claim, investigation or proceeding, whether legal or administrative or in mediation or arbitration, is pending or, to the extent of the present knowledge of Purchaser,

threatened, at law or in equity or admiralty, against Purchaser before or by any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, and there are no judgments, decrees or orders entered on a suit or proceeding against Purchaser, an adverse decision in which might, or which judgment, decree or order does, adversely affect Purchaser's ability to perform or Seller's rights under this Contract, or which seeks to restrain, prohibit, invalidate, set aside, rescind, prevent or make unlawful this Contract or the carrying out of this Contract or the transactions contemplated hereby; and

(ii) To the best of Purchaser's knowledge, the execution and delivery of this Contract and the performance by Purchaser of its obligations hereunder do not and will not conflict with or violate any law, rule, judgment, regulation, order, writ, injunction or decree of any court or governmental or quasi-governmental entity with jurisdiction over Purchaser, including, without limitation, the United States of America, the State of New York or any political subdivision of either of the foregoing, or any decision or ruling of any arbitrator to which Purchaser is a party or by which Purchaser is bound or affected.

23. Seller agrees that:

(i) Seller will do, execute, acknowledge and deliver all and every such further acts, transfers and assurances as Purchaser shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto Purchaser the Premises and rights hereby conveyed or assigned or intended now or hereafter so to be, or to which Seller may be or may hereafter become bound to convey or assign to Purchaser, or for carrying out the intention or facilitating the performance of the terms of this Contract, or for the Closing. The provisions of this subparagraph 23(i) shall survive the closing of title hereunder.

(ii) Seller will pay New York State Real Property Transfer Gains Tax, New York City Real Property Transfer Gains Tax, and New York City Transfer Tax, if applicable, and the cost of documentary stamps and other recording costs with respect to the Deed. Purchaser will pay all other taxes, costs and expenses incidental to the transactions contemplated by this Contract (excepting Seller's attorneys' fees and disbursements), including, but not limited to, the cost of title insurance and surveys with respect to the Premises, and Purchaser shall, in the event of termination of this Contract, at Seller's expense, and upon Seller's request, assign to Seller

all of its right, title and interest in and to Purchaser's commitment for title insurance and any surveys of the Premises.

(iii) Seller will pay and discharge, from time to time when the same shall become due and payable through the date of delivery of the deed, all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Premises or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, use or possession thereof. If any tax, assessment, levy, or other fees are due in installments, Seller will pay only the installments due through and including the date of delivery of the deed to Purchaser. Seller will deliver to Purchaser receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other governmental charges imposed upon or assessed against the Premises or the revenues, rents, issues, income or profits thereof. The provisions of this subparagraph 23(iii) shall survive the closing of title hereunder.

(iv) Seller will pay, from time to time when the same shall become due, or shall provide a bond with respect to, all claims and demands of mechanics, materialmen, laborers, and others with respect to services or materials furnished at or to the Premises through and including the Closing Date which, if unpaid, might result in, or permit the creation of, a lien on the Premises or any part thereof. The provisions of this subparagraph 23(iv) shall survive the closing of title hereunder.

(v) Seller shall comply with all of the following provisions with regard to insurance and related matters at Seller's sole cost and expense:

(a) Seller will maintain until the date of delivery of the deed a policy of fire and extended coverage insurance with respect to the Premises for the benefit of Purchaser with coverage in an amount not less than \$3,365,000.

(b) If the Premises are located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area, Seller will maintain until the Closing Date the existing policy of flood insurance presently in effect with respect to the Premises.

(c) Seller will maintain until the date of delivery of the deed insurance against liability for bodily

injury to, death of, or damage to the property of, any person with respect to the Premises, under the policy of general comprehensive public liability insurance presently in effect with respect to the Premises.

(d) All insurance required by this Contract shall be fully paid for by Seller and losses thereunder shall be payable to Seller and Purchaser, as their interests may appear. With respect to the insurance required by subparagraph 23(v)(a) above, such policy shall include an endorsement that provides in substance that the acts of Seller will not invalidate the policy against Purchaser. Seller shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this subparagraph 23(v), unless Purchaser is included thereon as a named insured with loss payable to Seller and Purchaser as their interests may appear, and such policy includes an endorsement of the character aforedescribed. Seller shall immediately notify Purchaser whenever any such separate insurance is taken out and shall promptly deliver to Purchaser proper certificates evidencing the policy or policies of such insurance.

(e) Proper certificates evidencing the insurance required by this Contract shall be delivered to Purchaser by no later than July 15, 1988. Seller shall give Purchaser prompt notice of any loss covered by such insurance. At least thirty days prior to the expiration or termination of any such policy, except the one(s) expiring on or about June 30, 1988, Seller shall deliver to Purchaser renewals thereof or replacement therefor or proper certificates thereof, together with evidence that the required payment of all or a portion of the premiums for such renewal or replacement policies have been paid. Each such policy and any renewal or replacement policies shall provide that no cancellation, non-renewal or termination shall be effective, as against Purchaser unless Purchaser has received at least thirty days' prior written notice thereof from the insurer.

(vi) The improvements on the Premises shall not be removed, demolished or altered in any material respect without the prior written consent of Purchaser.

(vii) Seller will not execute any lease (which term shall also include subleases) of all or any portion of the Premises, or permit the occupancy of all or any part of the same except by Seller.

(viii) Commencing as of the date hereof and through the date of closing of title hereunder, Seller shall:

(a) not grant, sell or convey any interest in the Premises, including easements, rights-of-way or liens, to any person, corporation, public or private, governmental body or political subdivision, without the prior written consent of Purchaser (except that (i) Purchaser agrees not to unreasonably withhold its consent to the grant, sale or conveyance of utility or similar easements that do not adversely affect Purchaser's intended use of the Premises, and (ii) Seller may mortgage the Premises to secure obligations that do not exceed Ten Million Dollars (\$10,000,000.00) in the aggregate); and

(b) maintain the improvements located on the Premises in good condition, subject to reasonable wear and tear and natural deterioration.

24. The obligation of Purchaser to proceed to the Closing is subject to the fulfillment of the following conditions, except to the extent that any of such conditions may be waived by Purchaser:

(i) Title to the Premises shall be acceptable to Purchaser as provided in Paragraph 15 as of the Closing Date;

(ii) The representations and warranties of Seller contained in Paragraph 22, except as contained in subparagraph 22(A)(viii) thereof, or otherwise made in writing shall be true and correct in all material respects as of the Closing Date as though made on such date, except for any change contemplated or permitted by this Contract;

(iii) Seller shall have duly performed and complied with all agreements and conditions required by this Contract to be performed and complied with by Seller;

(iv) Seller shall have delivered to Purchaser a certificate executed by Seller to the effect that, as of the Closing Date, all representations and warranties made by Seller under this Contract and all certificates and exhibits given and delivered to Purchaser pursuant to this Contract are, to the best of Seller's knowledge, true and correct;

(v) This Contract shall not have been terminated as herein provided; and

(vi) Seller shall have received Seller's Court Approvals or Seller shall have determined same is unnecessary in

connection with the transaction contemplated by this Contract, and Purchaser's attorney and the Title Company agree therewith.

25. Each and every one of the following events shall constitute a default of Seller under this Contract (an "Event of Default"):

(i) A default in the payment of any amounts due to be paid by Seller pursuant to this Contract;

(ii) A failure of Seller to deliver certificates of insurance as set forth in subparagraph 23(v) hereof;

(iii) Any failure of Seller to observe or perform any of the other covenants, terms or conditions set forth in this Contract;

(iv) A failure by Seller to adequately secure the improvements located on the Premises against further damage following the damage or destruction of all or any portion of the improvements by fire or other casualty; and

(v) Should any representation or warranty made by Seller in this Contract prove to be untrue in any material respect and as a result of said untruth, the value of the Premises is materially adversely affected thereby.

26. If there has been an Event of Default by Seller under this Contract, and the Event of Default continues for fifteen (15) days after Seller has received written notice thereof from Purchaser (except that if such Event of Default shall require more than fifteen (15) days to remedy, and Seller shall not have remedied such Event of Default within a period of time reasonably required to remedy said Event of Default), then, in that event, Purchaser shall send an additional written notice to Seller and, if Seller fails to remedy said Event of Default within five (5) days after receipt of Purchaser's second written notice, then Purchaser shall have the option to (i) terminate this Contract, or (ii) take action to cure Seller's default, provided, however, that Purchaser may, following an Event of Default, enter into or upon the Premises, either personally or by its agents, nominees or attorneys, to cure such default. Such option of Purchaser shall be exercised by written notice to Seller. In the event that Purchaser terminates this Contract as provided in this Paragraph 26, neither party shall have any liability whatsoever to the other hereunder except that Purchaser shall be entitled to (i) a return of the Letter of Credit or the proceeds thereof, as the case may be, and (ii) reimbursement for the net charges for

surveys and examination of title actually incurred by Purchaser as evidenced by paid receipts provided to Seller. Following the occurrence of any Event of Default, Purchaser may personally or by his agents or attorneys insofar as may be applicable, take such steps to protect and enforce his rights by suit or proceeding in equity for the specific performance of this Contract, in all events Seller shall promptly return the Letter of Credit or the proceeds thereof, as the case may be, to Purchaser and reimburse Purchaser for the net charges for surveys and for examination of title actually incurred by Purchaser as evidenced by paid receipts provided to Seller.

27. If, prior to the Closing Date, any portion of the Premises is taken by eminent domain, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Contract upon notice to Seller given not later than sixty (60) days after receipt of Seller's notice. If this Contract is terminated as aforesaid, the Letter of Credit or the proceeds thereof, as the case may be, shall be returned by Escrow Agent to Purchaser and, thereafter, neither Purchaser nor Seller shall have any further rights or obligations to the other hereunder. In case of any such taking, if Purchaser elects not to terminate this Contract as aforesaid, there shall be no abatement of the Purchase Price but Seller shall assign and turn over at the closing of title, and Purchaser shall be entitled to receive and keep, all awards for such taking.

The provision of this Paragraph 27 shall govern in place of Section 5-1311 of the General Obligations Law.

28. If, prior to the Closing Date, all or any portion of the Premises is destroyed or damaged by fire or other casualty, Seller shall notify Purchaser of such fact but Purchaser shall have no option to terminate this Contract; rather, the closing of title shall occur as provided in this Contract, except as otherwise provided in the last sentence of this Paragraph 28, and there shall be no abatement of the Purchase Price, provided, however, that, at Seller's option, exercised by notice to Purchaser within ten (10) days after the date of such casualty, Seller may elect either to (i) repair the damage, and the Closing shall be adjourned at Seller's request for one or more periods, not to extend beyond September 1, 1990, in order to permit Seller to make such repair, and Seller shall be reimbursed from insurance proceeds received or to be received for expenses incurred in connection with the repair, including legal expenses and expenses of collection of the proceeds, and Seller may retain the proceeds remaining after payment of all expenses associated with the repair, if any, or (ii) Seller shall assign and turn over, at the closing of title hereunder,

and Purchaser shall be entitled to receive and keep, all insurance proceeds paid or to be paid to compensate for the damage to the Premises caused by such casualty that remain after legal and other expenses of collection, without further abatement of the Purchase Price. In the event Seller elects not to repair as above provided, then, at Seller's option, the Closing Date may be accelerated to such other date (but in no event earlier than 60 days after the date Purchaser receives notice of Seller's election) as may be reasonably requested by Seller giving due consideration to the fact that Seller operates a school.

The provisions of this Paragraph 28 shall govern in place of Section 5-1311 of the General Obligations Law.

29. Seller and Purchaser each shall complete, execute, verify and deliver to the appropriate party, in a timely manner so as not to delay the Closing, any appropriate returns, questionnaires, affidavits or other documents required with respect to Article 31B of the New York Tax Law (the "Gains Tax Law") by reason of the transaction contemplated by this Contract and which are required to be completed, executed, delivered or verified by Seller and Purchaser, respectively. Seller and Purchaser shall each have the right to review the returns, questionnaires, affidavits and other documents which the other party proposes to deliver prior to such delivery. In the event that either Seller or Purchaser does not deliver such returns, questionnaires, affidavits and other documents in a timely manner so as not to delay the Closing, Seller or Purchaser, as the case may be, is hereby authorized to deliver such documents on behalf of the other party. Seller shall pay any tax which may be determined to be due under the Gains Tax Law in connection with this transaction. Seller shall defend, indemnify and hold Purchaser harmless with respect to all claims based on a breach or alleged breach by Seller of its obligations contained in this Paragraph 29, and Paragraphs 8, 9 and the first sentence of Paragraph 23(ii), together with any and all losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements) relating to such claims or arising therefrom or incurred by Purchaser in connection with the enforcement of this indemnification provision. The provisions of this Paragraph shall survive the Closing.

30. Seller shall complete, execute, verify and deliver to the appropriate authorities a certification in the form substantially similar to that set forth on Exhibit D annexed hereto and made a part hereof, and such other documents, affidavits or certificates which may be required to be completed, executed, delivered or verified by Seller

(collectively, the "Other Documents") with respect to Section 1445 of the Internal Revenue Code of 1986 (the "FIRPTA Certification") by reason of the transactions contemplated by this Contract.

31. Purchaser agrees that it will not assign its interest in this Contract unless Seller shall have consented thereto by a signed writing, which consent may be withheld for any or no reason at Seller's sole and absolute discretion. Notwithstanding the foregoing, Purchaser may assign his interest in this Contract to any family member or any corporation, partnership or trust which is controlled directly or indirectly, through ownership, agreement or otherwise, by Purchaser, or to The Wexner Foundation, The Leslie H. Wexner Foundation, The Wexner-Heritage Foundation or any other charitable foundation formed by Purchaser or of which he is a past or present trustee, director or other fiduciary.

32. Purchaser and Purchaser's designees shall have the right to enter into and upon the Premises prior to the Closing Date, from time to time, during school breaks or recesses or after school hours, and upon reasonable notice, for purposes of arranging for certain renovation, decorating and remodeling of the Premises which Purchaser intends to perform after the Closing (the "Renovation Work"), provided, however, that Purchaser shall be liable to Seller for any damage or destruction to the Premises caused by the inspection thereof pursuant to this Paragraph 32, including, but not limited to, liability for any Violations, including Violations with respect to asbestos, created thereby, and, in no event, shall Purchaser or its designees have any right to puncture the walls or ceilings, drill into same or otherwise invade the spaces bounded thereby. In connection with Purchaser's preparations for the Renovation Work, the Seller shall cooperate with Purchaser in (i) the obtaining of any and all permits, approvals and certificates required by any governmental or other authorities, including, without limitation, public utilities and landmark authorities (collectively, "the Permits"), and shall promptly execute any applications, certificates, documents or papers requested by Purchaser in connection therewith, provided, however, that Purchaser pays all of the costs and expenses of Seller incurred in connection therewith, including reasonable attorneys' fees and disbursements and (ii) the prosecution of any legal or administrative proceedings or actions to the extent reasonably requested by Purchaser, at Purchaser's expense, and Seller shall not withhold its consent to the prosecution of any such proceedings or actions in the name of Seller, if, in the reasonable opinion of counsel to Purchaser, such action or proceeding should be prosecuted in the name of

Seller for the success thereof. Purchaser shall indemnify Seller against all reasonable costs and expenses of, and claims which may be asserted against Seller in connection with, Seller's prosecution of any legal or administrative proceedings or actions as aforesaid. Seller shall, at the Closing, assign to Purchaser, in the manner and to the extent directed by Purchaser, all of the right, title and interest of Seller under all of the Permits to the extent assignable and not required in connection with the operation of a school by Seller in which case, Purchaser shall assume all of Seller's liabilities and obligations arising under the Permits from and after the date of such assignment. Purchaser shall pay all of the costs and expenses of Seller, including reasonable attorneys' fees and disbursements incurred by Seller in connection with the assignment of the Permits to Purchaser. The covenants contained in this Paragraph shall survive the Closing.

33. Any errors or omissions in computing apportionments at the Closing shall be corrected promptly after their discovery. The provisions of this Paragraph shall survive the Closing.

34. This Contract (a) contains the entire agreement between the parties hereto, (b) is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Contract, made by the other, (c) may not be changed, modified or terminated orally, but only by an instrument in writing, signed by the party against whom enforcement of any waiver, modification or discharge is sought, and (d) is to be deemed to have been jointly prepared by the parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties. If any term or provision of this Contract shall, to any extent, be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

35. If two or more persons constitute either Seller or Purchaser, the word "Seller" or the word "Purchaser" shall be construed as if it read "Sellers" or "Purchasers" whenever the sense of this Contract so requires.

36. Anything contained in this Contract to the contrary notwithstanding, but subject, however, to the terms and

provisions of subparagraph 39.C.(B) hereof, the liability of Seller upon Seller's default under this Contract shall be limited to Seller's interest in the Premises, or any part thereof, and no other property or assets of Seller shall be subject to levy, execution or other enforcement procedure for the satisfaction of Purchaser's claims or any judgments against Seller. Purchaser, by his execution of this Contract, agrees that, in the event he pursues any remedies available to him hereunder or under instruments delivered pursuant to this Contract, Purchaser shall have no monetary recourse against Seller or any of Seller's successors or assigns other than as hereinabove set forth, nor against any officer, shareholder, director, trustee, principal, employee or agent of Seller, or any of such successors' or assigns' officers, shareholders, directors, trustees, employees, principals or agents for any deficiency, loss or claim for monetary damages resulting therefrom, and none of the personal property or assets of any of the foregoing persons shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of Purchaser hereunder. Upon Seller's default pursuant to this Contract, if Seller shall promptly return the Letter of Credit or the proceeds thereof, as the case may be, and reimburse Purchaser for the cost of title examination and survey, then Purchaser's sole remedy hereunder is to seek specific performance for the enforcement of this Contract.

37. No waiver by either party of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

38. This Contract shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of New York.

39. The Letter of Credit shall be held by Battle Fowler (the "Escrow Agent") in escrow upon the following terms and conditions:

A. If the closing of title takes place, Escrow Agent shall either (i) draw upon the Letter of Credit and deliver the proceeds of the Letter of Credit to, or upon the instructions of, Seller at the closing of title or (ii) if Purchaser delivers written notice to Seller and Escrow Agent at least ten (10) days prior to the closing of title that Purchaser intends to pay to Seller by cash or good certified check the amount of the Downpayment, then, upon such payment by Purchaser to Seller at the closing of title, Escrow Agent shall return the Letter of Credit to, or upon the instructions of, Purchaser at the closing of title.

B. If this Contract is terminated in accordance with the terms hereof, and the party entitled to the proceeds of the Letter of Credit in accordance with the provisions of this Contract is Seller, Escrow Agent shall draw upon the Letter of Credit and deliver the proceeds thereof to, or upon the instructions of Seller; otherwise, if the party entitled to the return of the Letter of Credit in accordance with the provisions of this Contract is Purchaser, the Letter of Credit shall be so returned to Purchaser.

C. (A) If Seller shall be ready, willing and able to close title in full compliance with its obligations under this Contract, and if Purchaser shall default in its obligations under the terms of this Contract, Seller shall deliver written notice to Escrow Agent and Purchaser claiming Purchaser's default, and, if Purchaser fails to contest such claim by written notice to Escrow Agent received by Escrow Agent within ten days after receiving Seller's notice as aforesaid, then Escrow Agent shall draw upon the Letter of Credit and Seller shall be entitled to receive, and Escrow Agent shall deliver to Seller, the proceeds received by drawing on the Letter of Credit, and, thereupon, Escrow Agent's responsibilities under this Contract shall terminate.

(B) If Purchaser shall be ready, willing and able to close title in full compliance with its obligations under this Contract, and if Seller shall default in its obligations under the terms of this Contract, Purchaser shall deliver written notice to Escrow Agent and Seller claiming Seller's default, and, if Seller fails to contest such claim by written notice to Escrow Agent received by Escrow Agent within ten days after receiving Purchaser's notice as aforesaid, then Purchaser shall be entitled to receive, and Escrow Agent shall return to Purchaser, the Letter of Credit, or the proceeds thereof, as the case may be, and thereupon, Escrow Agent's responsibilities under this Contract shall terminate.

D. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, IF EITHER PARTY SHALL CONTEST THE CLAIM OF THE OTHER PARTY TO THE RETURN OF THE LETTER OF CREDIT OR THE PROCEEDS THEREOF, AS HEREIN PROVIDED, ESCROW AGENT SHALL CONTINUE TO HOLD THE LETTER OF CREDIT OR THE PROCEEDS THEREOF, AS THE CASE MAY BE, PURSUANT TO THE TERMS OF THIS CONTRACT, AND PURCHASER'S SOLE REMEDY ON ACCOUNT OF ANY CLAIMED SELLER BREACH SHALL BE TO SEEK SPECIFIC PERFORMANCE FOR THE ENFORCEMENT OF THIS CONTRACT.

E. It is agreed that:

(a) the duties of Escrow Agent are only as herein specifically provided and are purely ministerial in nature, and that Escrow Agent shall incur no liability whatever except for willful misconduct or gross negligence as long as Escrow Agent has acted in good faith;

(b) Escrow Agent shall not be liable or responsible for the collection of the proceeds of the Letter of Credit;

(c) in the performance of its duties hereunder, Escrow Agent shall be entitled to rely upon any document, instrument or signature believed by it to be genuine and signed by either of the parties hereto or their successors and assigns;

(d) Escrow Agent may assume that any person purporting to give any notice or instructions in accordance with the provisions hereof has been duly authorized to do so;

(e) Escrow Agent shall not be bound by any modification, cancellation or rescission of this Contract unless in writing and signed by it, Seller and Purchaser;

(f) Seller and Purchaser shall jointly and severally reimburse and indemnify Escrow Agent for, and shall hold it harmless from and against, any and all loss, liability, cost or expense, including, without limitation, reasonable attorneys' fees and disbursements and reasonable court costs and expenses of defending any claim or liability, incurred by it without its willful misconduct or gross negligence and arising out of or in connection with its acceptance of, or its performance of its duties and obligations under, this Contract; and

(g) Seller and Purchaser each hereby release Escrow Agent from any act done or omitted to be done by the Escrow Agent in good faith in the performance of its duties hereunder.

F. Escrow Agent is acting as a stakeholder only with respect to the Letter of Credit, or proceeds thereof, as the case may be, and any other monies held by Escrow Agent pursuant to the terms of this Contract. If there is any dispute as to whether Escrow Agent is obligated to deliver the Letter of Credit, or proceeds thereof, as the case may be, or any other monies held by Escrow Agent, or as to whom the Letter of Credit, or proceeds thereof, as the case may be, or any other monies held by Escrow Agent, is to be delivered, Escrow Agent shall hold the same until receipt by Escrow Agent of an

authorization in writing, signed by all of the parties having any interest in such dispute, directing the disposition of the Letter of Credit or the proceeds thereof, as the case may be, or any other monies held by Escrow Agent, or, in the absence of such authorization, Escrow Agent shall hold the Letter of Credit or the proceeds thereof, as the case may be, or any other monies held by Escrow Agent, until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceedings for such determination are not begun within thirty days after the date set forth herein for the Closing Date and diligently continued, the Escrow Agent may bring an appropriate action or proceeding for leave to deposit the Letter of Credit or the proceeds thereof, as the case may be, or any other monies held by Escrow Agent, in court pending such determination. Escrow Agent shall be reimbursed for all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements, by the party determined not to be entitled to the Letter of Credit or the proceeds thereof, as the case may be, or any other monies held by Escrow Agent, or if the Letter of Credit or the proceeds thereof, as the case may be, or any other monies held by Escrow Agent, are split between the parties hereto, such costs of Escrow Agent shall be split, pro rata, between Seller and Purchaser, based upon the amount of the proceeds of the Letter of Credit and/or other monies, received by each. Upon making delivery of the Letter of Credit or the proceeds thereof, as the case may be, or any other monies held by Escrow Agent, in the manner provided in this Contract, Escrow Agent shall have no further liability hereunder.

G. Escrow Agent has executed this Contract solely to confirm that Escrow Agent has received the Letter of Credit and that it shall hold same in escrow, pursuant to the provisions of this Contract.

H. Escrow Agent shall have the right to represent Seller in any dispute between Seller and Purchaser with respect to the Letter of Credit or otherwise.

40. The parties agree that neither the Contract nor any memorandum or notice thereof shall be recorded, and Purchaser agrees not to file any notice of pendency against the Premises as long as Seller is not in default in the performance or observance of its obligations hereunder.

41. This Contract may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereto.

In the presence of:

Leslie H. Wexner  
Leslie H. Wexner,  
Purchaser

BIRCH WATHEN SCHOOL, INC.,  
Seller

By: Philip S. Sassower  
Name: PHILIP S. SASSOWER  
Title: CHAIRMAN ELECT + VICE PRESIDENT

BATTLE FOWLER, Escrow Agent

By: Robert Wether  
A Partner

Exhibit A

ALL that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 71st Street distant 225 feet easterly from the corner formed by the intersection of the easterly side of 5th Avenue with the northerly side of 71st Street; running

thence Easterly along the northerly side of 71st Street 50 feet;

thence Northerly and parallel with 5th Avenue 102 feet 2 inches to the centre line of the block between 71st and 72nd Streets;

thence Westerly along the said center line and parallel with 71st Street 50 feet;

thence Southerly and parallel with 5th Avenue 102 feet 2 inches to the northerly side of 71st Street at the point or place of Beginning.

Exhibit B

(Covenants, Restrictions, Agreements)

None

Schedule C

Personal Property

One (1) Louis XIV Painted Armchair

One (1) Mahogany Dining Table

Twelve (12) Dining Chairs

One (1) set Mahogany Dining Furniture

One (1) Desk – Early Louis XIV

Exhibit D

Note – Attached

## PROMISSORY NOTE

New York, New York  
November \_\_, 1998

FOR VALUE RECEIVED, the undersigned, NES, LLC, a New York limited liability company (the "Maker"), hereby unconditionally promises to pay to the order of Leslie H. Wexner (the "Holder") the principal amount of Ten Million Dollars (\$10,000,000), together with interest on the unpaid principal balance at the rate of four and five-tenths percent (4.5%) per annum, on December 31, 1999.

All payments of principal and interest hereunder shall be made in lawful money of the United States, in immediately available funds at One Whitebarn Road, New Albany, OH 43054 (or at such other place as the Holder of this Note may designate in writing to the Maker).

In the event that any payment hereunder shall become due on a Saturday, Sunday or legal or bank holiday under the laws of the place at which such payment is to be made hereunder, such payment shall be made on the next succeeding business day.

This Note is made and delivered to the Holder pursuant to the provisions of a certain Purchase and Sale Agreement of even date herewith by and between the Maker and the Holder. The payment of this Note is guaranteed by Jeffrey E. Epstein (the "Guarantor") as provided under a certain Guaranty of even date herewith.

1. Voluntary Prepayment. The unpaid principal amount of this Note and/or any accrued interest hereunder may be prepaid at any time, in whole or in part, without premium or penalty. Any such prepayment shall first be applied to accrued interest and then to principal hereunder.

2. Events of Default.

(a) If any of the following events shall occur during the term hereof, such events shall be deemed a default by the Maker hereunder (each an "Event of Default"):

(i) The Maker shall have defaulted in the payment of any principal or interest under this Note as and when such payment shall have become due and payable in accordance with the terms hereof and failed to cure such default within ten (10) business days of the Maker's receipt from the Holder of written notice of such default;

(ii) There shall have been entered by a court of competent jurisdiction any order, judgment or decree for relief in respect of the Maker or the Guarantor under any applicable Federal or state bankruptcy law or other similar law, or

appointing a receiver, an assignee, a trustee or a custodian of all or a substantial part of any of the Maker's or the Guarantor's property, assets or revenues, and such order, judgment or decree shall have been continued unstayed, unbonded and in effect for a period of 60 days;

(iii) The filing by the Maker or the Guarantor of a petition or a consent to a petition seeking relief under Title 11 of the United States Code, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by the Maker or the Guarantor to the institution of proceedings thereunder or to the filing of any such petition or to the appointment or taking of possession by a receiver, a liquidator, an assignee, a trustee or a custodian, of any substantial part of the property, assets or revenues of the Maker or the Guarantor, or the making by the Maker or the Guarantor of an assignment for the benefit of creditors, or the inability of the Maker or the Guarantor to pay its or his debts as they become due and payable;

(iv) The Guarantor does not own a majority of the membership interests of the Maker; or

(v) The sale or other transfer of all, or substantially all, of the Maker's assets to any person other than the Guarantor or an affiliate of the Guarantor.

(b) In the case of an Event of Default, without any demand, presentment, protest or other notice whatsoever to the Maker, or other statutory or other rights of redemption, or any other action by the Holder, all of which are hereby expressly waived by the Maker, the unpaid principal amount hereof and accrued interest hereunder shall become due and payable in full upon the occurrence of any such Event of Default and the Holder may exercise, simultaneously or seriatim, any or all of such other rights and remedies as may be lawfully permitted under Federal law or state law and any and all of the remedies of the Holder set forth herein.

(c) All payments hereunder shall first be applied to accrued interest and then to principal hereunder.

4. No Off-Set. All sums payable by the Maker under this Note shall be made without reduction for any reason in respect of set-off, counterclaim or otherwise.

5. Loss, etc. of Note. At the Holder's request and upon the Maker's receipt of evidence reasonably satisfactory to the Maker of the loss, theft, destruction or mutilation of this Note, and of indemnity reasonably satisfactory to the Maker, the Maker shall execute and deliver to Holder a new note identical in all respects to this Note.

6. Waivers. The Maker hereby waives diligence, presentment, protest and demand, and also notice of protest, of demand, of non-payment, of dishonor and of maturity.

7. Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts to be performed entirely within that state, without giving effect to the principles of conflict of laws thereof.

8. Non-Waiver. Any waiver of any provision hereof must be in writing. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or privilege under this Note shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any and all other remedies provided by law.

9. Collection. The Maker hereby agrees to pay, upon demand by the Holder, in lawful money of the United States of America, all of the Holder's reasonable costs and expenses of enforcement and collection of this Note, including, but not limited to, reasonable attorneys' fees and disbursements, in the event and to the extent that it becomes necessary for the Holder to enforce any of the provisions of this Note, including, but not limited to, the Maker's obligations to pay the principal and interest as provided herein.

10. Notices. Each notice or other communication required or permitted hereunder shall be given by certified or registered mail, return receipt requested, by reputable overnight delivery service or by personal delivery addressed to the intended recipient thereof at its or his address set forth below or at such substituted address as either party hereto may from time to time designate for such purpose by notice given in like manner to the other party hereto:

If to the Maker, to it at:

NES, LLC

[REDACTED]

If to the Holder, to it at:

Leslie H. Wexner

[REDACTED]

Each such notice or other communication so given shall be deemed to have been given and received three (3) business days after deposit with the United States Post Office, if so