

MEMORANDUM OF AGREEMENT AND LICENSE FOR THE USE OF COLLEGE PROPERTY

This Memorandum of Agreement and License (“Agreement”), dated as August 1, 2018, is by and between Cape Cod Community College (“College”), located at 2240 Iyannough Road, West Barnstable, MA 02668-1599, and Academy for Lifelong Learning of Cape Cod, Inc., a Massachusetts educational and charitable corporation, (“Academy”), having an address at 2240 Iyannough Road, West Barnstable, MA 02668-1599.

Background

The College provides a range of educational courses and programs to residents of Cape Cod and other regions of Massachusetts including courses that lead to an Associate’s Degree and non-credit educational and vocational courses and manages and keeps in repair all property, real and personal, located at 2240 Iyannough Road, Barnstable, Massachusetts where such courses and other activities and operations of the College take place. The Academy offers non-credit educational courses and programs to its members, most all of whom reside on Cape Cod, with those educational programs occurring primarily in the College’s buildings. This Agreement is intended to describe the relationship between the College and the Academy for the continued offering of the Academy’s educational courses at the College and to grant a license for the use of a portion of the College’s buildings and/or property by the Academy for the following purpose (the “Academy’s Purpose”): to offer educational activities and instruction by and for individuals aged 50 years and over for the purposes of improving or developing capabilities and the exploration of intellectual interests and personal development and to explore new areas of learning in the company of their peers consistent with educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and consistent with the purposes and activities set forth in the Academy’s Articles of Organization.

The Academy is desirous of fostering and continuing to maintain a strong, mutually beneficial relationship with the College. Towards that end when requested by the College and subject to the willingness and availability of its members, the Academy will use reasonable efforts to make available to the College the diverse experience and life knowledge of its members through lecturing, and when appropriate, administrative aid. In return, the Academy will be encouraged and invited to participate in appropriate College functions such as lectures, recitals, exhibitions, and the like.

The College shall designate the Vice President of Finance and Operations and/or another senior leader to serve as a focal point and liaison(s) with the Academy to ensure that the intent and provisions of this Agreement are effectively carried out and to support the alignment of the respective missions and objectives of the Academy and the College. The

College shall notify the Academy of such appointment(s) and any subsequent changes thereof.

Similarly, the President of the Academy, or the President's designee, subject to the control of the Academy's Board of Directors, shall be the liaison between the Academy and the College. The Academy will keep the College current as to the composition of its Board of Directors and the identity of its President and if there be one, the President's designee.

Agreement

The College and the Academy agree as follows:

1. License

The College hereby agrees that the Academy may use certain buildings and/or property located on its premises subject to and in accordance with the terms of this Agreement and the license granted herein. This License is granted at the pleasure and discretion of the College and is revocable upon written notice from either party to the other as provided in this Agreement.

This License shall commence on August 1, 2018 and expire on July 31, 2020 ("License Term"). The Parties, upon written mutual agreement and not less than 180 days prior to the then scheduled expiration of the License Term, may extend the License Term for one additional two-year term (August 1, 2020 to July 31, 2022). All terms and conditions of the license granted herein shall apply to any extensions thereof.

Upon revocation or termination of the License, the Academy shall have no further access to or use of the College's premises. The Academy acknowledges that the Academy has no property or possessory rights in or to the Licensed Premises except a License for temporary use of the Licensed Premises as described herein and except for the Academy's ownership interest in the Academy's Equipment (as defined below). Upon revocation or termination of the License, the Academy may remove the Academy's Equipment from the Licensed Premises.

2. Licensed Premises

That portion of the College's premises to be used by the Academy during the License Term consists of the following: Grossman Commons Building North End Suite, C-106 and C-115, office and common area, and additional classrooms on a space available basis ("Licensed Premises").

The College reserves the right to adjust space assignments in order to accommodate high priority instructional needs; therefore, during the Fall 2019 and/or Spring 2020 semesters, the College may need to adjust the assignment of one ALL classroom, to meet scheduling needs across

campus, should several other currently scheduled classroom spaces on campus become unavailable for use.

In such case, the College will provide an equivalent alternative space to the Academy, and where reasonably possible, will do so with at least five months' notice to accommodate the Academy's programming and publication schedule.

Equivalent alternative space shall conform to the following specifications:

- Located on the main campus of CCCC;
- Seating capacity for at least 25 students;
- Audio-visual equipment capability equal to C106/C115;
- Accessible Monday through Friday and available for the same ALL 12-week periods from 8:30 AM to 4:30 PM as C115; and
- Class times to conform to the C115 timetable.

The Academy shall be restricted in its use of the Licensed Premises according to the following schedule: Monday – Friday 8am – 4:30pm. The College may, at its discretion and upon advance written request from the Academy, permit the Academy's use of other premises and facilities at the College for the Academy's program and special events or may permit use of the Licensed Premises at times other than those specified herein during the License Term.

The College will provide access to the library, computer labs (subject to departmental scheduling), parking facilities, and common areas in the cafeteria to members of the Academy during normal business hours.

The Licensed Premises shall be used by the Academy only in accordance with this License. The Licensed Premises shall be used by the Academy in its "as is" condition, except as otherwise agreed to by the Parties, and those portions used by the Academy pursuant to this License shall be surrendered to the College on the date of revocation or termination of this License in as good condition as on the date this License commenced, reasonable wear and tear excepted. College acknowledges that the classroom tables, audio visual equipment installed in classroom ceilings and general office equipment located in the Licensed Premises are owned by the Academy ("Academy's Equipment"). The Academy shall have access to the Academy's Equipment throughout the term of the License during normal business hours. The Academy shall make no alterations or improvements to the Licensed Premises without the College's prior, written consent. The College shall have unlimited access to the Licensed Premises during the term of the License consistent, however, with the Academy's Uses and Programs.

3. Academy's Uses and Programs

The Academy shall provide course offerings at the College in the Licensed Premises (and at such other College locations mutually agreed upon by the College and the Academy), and

conduct other related activities consistent with its past practice and in accordance with the Academy's Purpose (the "Uses and Programs"). The Academy's Uses and Programs currently are carried out during the Fall and Spring academic semesters, with approximately 50 courses offered in the Licensed Premises and additional courses delivered in other College premises, however the Academy uses the office space and storage areas in the Licensed Premises year-round. The Academy has over 850 active members who are attending Academy courses. Academy membership changes each year, but it ranges between 700 and 900. The Academy usually offers between 60 and 80 courses per semester, at no instructional cost to the College.

4. College's Services

The College shall provide the following services and/or utilities to the Licensed Premises during the term of this License: heating, air conditioning, electricity, use of pre-existing telephone wiring, trash dumpster and proper disposal of dumpster contents, custodial/cleaning of common areas (including restrooms), restroom supplies, water and sewer services and building security. The Academy shall have access to the Licensed Premises during routine College business hours during the term of this License.

5. License Fee

Academy shall pay the College a License Fee for use of the Licensed Premises according to the following schedule:

October 1, 2018:	\$5,062
March 1, 2019:	\$5,062
October 1, 2019:	\$5,264
March 1, 2020:	\$5,264

The license fee shall be increased by 4% annually for any extension of the License Term pursuant to section 1 hereof with the annual license fee payable in two equal installments on October 1 and March 1.

6. Academy Responsibilities

The Academy, its employees, agents, members, and guests shall comply with all rules and regulations of the College. Employees or agents of the Academy shall not be considered employees of the College and shall possess appropriate identification as an employee or agent of the Academy while on the College's property. The Academy shall fully inform its employees, agents and guests that the College's property, including the Licensed Premises, is a non-smoking facility. The Academy shall pay for all its copying, printing and postage expense. The Academy will reimburse the College at the standard per hour rate for technology and/or facility set up and support for special set up/event requests. Further, the

Academy shall regularly update and maintain its website so to present a professional image of the Academy and the College.

To enable the College to articulate how space and services provided support both “the Academy’s Purpose” and the College mission, the Academy will provide annually the following information to the College Liaison(s):

- Total number of Academy courses delivered at the College, noting location (e.g. main campus, Hyannis)
- Total combined number of hours of instruction plus total number of individuals registered for such courses
- Total number of Academy members with distribution by town
- A list of other initiatives and/or support (e.g. joint events, mentoring, scholarships and other college/educational foundation/student support) provided to the College and/or our students

7. Academy’s Certification

The Academy certifies under the pains and penalties of perjury, pursuant to M.G.L., c.62C, §49A, that it has filed all state tax returns, paid all taxes, and complied with all laws of the Commonwealth relating to taxes; and that pursuant to M.G.L., c.151A, §19A(b), has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System; and with all laws of the Commonwealth relating to Worker’s Compensation, c.152. The Academy also represents that it is qualified to carry out its Uses and Programs and has obtained all requisite licenses and permits, as may be required, to carry out its Uses and Programs.

8. Liability

During the License Term the Academy shall maintain insurance for personal injury and property damage. The minimum terms of such insurance shall be one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. The Academy shall provide the College with at least thirty (30) days written notice prior to the termination, suspension or modification of such insurance coverage. The Academy shall annually provide the College liaison a Certificate of Insurance from the underwriter naming the College as an additional insured. The Academy agrees to indemnify and hold the College, its officers, agents, employees, and students harmless for any and all loss, damage, suits, claims, costs, expenses, demands, judgments or liabilities of whatsoever kind or nature, to the extent arising out of the Academy’s performance of its Uses and Programs under this License, if resulting in bodily injury or property damage to third parties and attributable to the negligence of the Academy, its officers, agents, subcontractors, guests, employees and/or members.

9. Successors and Assigns; College's Liability

The Academy's rights under this Agreement are for the benefit only of the Academy. The Academy shall not assign, sublicense, or transfer any of its rights under this Agreement. The College may transfer its rights and obligations under this Agreement to a successor owner of the Licensed Premises.

10. Facility Accessibility and Accommodations

During the term of this License, the Academy shall bear all costs associated with the provision of reasonable accommodations, academic adjustments, auxiliary aid or any other service required in connection with the Academy's Uses and Programs; however the Academy shall not be required to make any physical alterations or improvements to the Licensed Premises or to the College's other facilities to remove physical barriers or make improvements to provide accessible facilities under the Americans with Disabilities Act, as amended, or the regulations of the Massachusetts Architectural Access Board, the Parties acknowledging that the Licensed Premises were fully renovated in 2004-2005 and to the best of either Party's knowledge, the alterations to the Licensed Premises were designed and constructed in compliance with then-applicable accessibility requirements.

11. Termination

Notwithstanding the revocable nature of the License Agreement, both parties acknowledge and agree to use their best efforts to provide at least one (1) year of notice to the other prior to the effective date of a decision to terminate this Agreement. The College agrees that if it intends to terminate the license granted herein or does not intend to extend the license for an additional term it will work in good faith and with diligence with the Academy on transitional issues and make every reasonable effort to assist the Academy to locate comparable replacement space at comparable cost for the Academy's Uses and Programs elsewhere.

12. Prohibition on Political Fundraising

Under no circumstances shall any political fundraising be permitted on any state property or in any state building, including the Licensed Premises.

13. Entire Agreement

This License constitutes the entire agreement between the parties with respect to the Licensed Premises, and may be amended only upon the mutual, written consent of Licensor and Licensee. No provision of this License shall be deemed to have been waived by either party unless such waiver is in writing and is signed by the party to be charged.

14. Miscellaneous

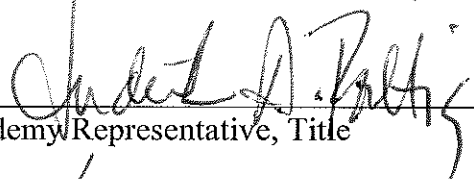
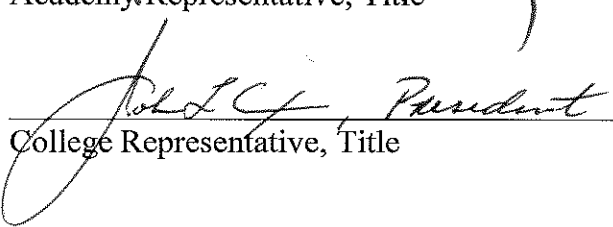
Any notice given under or in connection with this License shall be effective only if given in writing and shall be deemed duly served if and when hand delivered or if and when mailed prepaid certified mail (in either case, whether or not accepted for delivery) at the address given above. Either party may from time to time designate other addresses within the continental United States by notice to the other. This License may be amended only in writing by an instrument signed by all of the Parties hereto. No provision of this License shall be deemed to have been waived by either Party unless such waiver is in writing and is signed by the Party to be charged.

15. Controlling Law

This agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. All disputes shall be resolved in a court of competent jurisdiction situated in the Commonwealth of Massachusetts.

16. Authority to Enter into License Agreement

The College and the Academy each represent and warranty that they each are duly authorized to enter into this Agreement, and that the person or persons executing this Agreement has or have full authority to do so and to fully bind their respective Parties.

 _____ Academy Representative, Title	<u>7/17/18</u> Date
 _____ College Representative, Title	<u>18 July 18</u> Date