

**(ATTACHMENT 2) ACTION ON A FIVE-YEAR LEASE AGREEMENT WITH THE
BANNER SCHOOL OF MILWAUKEE**

LEASE AGREEMENT

MILWAUKEE BOARD OF SCHOOL DIRECTORS

AND

BANNER LEARNING CORP.

THIS INDENTURE, made this 20th day of December 2012, by and between the City of Milwaukee by its Board of School Directors, a Wisconsin Statutory Corporation (hereinafter referred to as "the Board") and, Banner Learning Corp for Banner School of Milwaukee (hereinafter referred to as "Lessee").

1. **PREMISES**: The Board does hereby lease, demise and let into Lessee that portion of the Happy Hill School located at 7171 West Brown Deer Road, Milwaukee Wisconsin 53223 ("the Property").

- a. Leased space to include: Entire building
- b. Space not leased to Lessee shall not be leased for a use that is incompatible with Lessee's use of the Property.

2. **TERM**: The term shall commence on July 1, 2013 and will terminate on June 30, 2018, except either party may terminate the lease by providing the other party 60 day written notice of termination. No notice of termination may be given more than 60 days prior to the end of the academic year. In the event that the Lessee loses its Charter or the enrollment falls below 75% of the maximum seats identified in the Charter contract, the Lessee may terminate the lease upon 30 days notice to MPS. Upon termination, Lessee shall vacate the premises in a manner consistent with the terms and conditions of the lease. MPS will cooperate with Banner Learning Corp to provide access as needed prior to July 1, 2013 for the purpose of establishing telephone and internet service to the building and to allow the installation of a sign on the site as soon as practical after the execution of this agreement.

3. **EXTENSION OF LEASE**: Lessee shall have the option to extend this lease of the demised Premises for two additional five-year terms, contingent upon mutual agreement of the Board and the Lessee as to rental for the extension terms.

4. **SUBLEASE**: Lessee shall not have the option to sublease any portion of the demised premises.

5. USE OF THE PREMISES:

- a. Lessee agrees to use the premises for the operation of a non-instrumentality charter school in accordance with the proposal submitted to the Board of School Directors. Such business shall be operated at all times in a reputable and first-class manner so as not to injure the reputation of the Board. Lessee shall provide any and all resources, equipment, and/or personnel required to achieve such a reputable operation.
- b. Lessee agrees that should its use of the premises cease to be for a non-instrumentality charter school, then Lessee's rental fee shall be recalculated as provided in section 6d below.

6. RENTAL: Lessee shall pay a rental fee to the Board as follows

- a. Year one: \$205,200. Year two: \$205,200. Year three: \$230,850. Year four: \$256,500. Year five: \$290,700. Rent shall be payable in twelve (12) equal monthly payments.
- b. The first months payment is due five (5) days prior to the commencement date of this agreement. The last months payment is due five (5) days after receipt of the first charter contract allocation.
- c. Rent is to be paid by business check, however if Lessee fails to submit rent on time, then Lessee will be required to utilize a certified or cashiers check for future payments. Rent to be mailed to: Facilities and Maintenance Services, 1124 North 11th Street, Milwaukee, Wisconsin 53233, Attention: Director.
- d. If, as provided in section 5b, Lessee's use of the space is no longer for a non-instrumentality charter school, then Lessee's rental fee to the Board shall be calculated at a rate of \$12.00 per square foot. Any calculation of rent triggered under section 5b shall also include a 3% cost increase for each year the lease is in force prior to change in Lessee's use.

7. COVENANT OF TITLE: The Board herein warrants that there are no existing restrictions which may deny Lessee the use and occupancy of said premises or restrict its use thereof. Lessee is solely responsible for obtaining the required occupancy permit from the City of Milwaukee and any required approvals of the Board of Zoning Appeals.

8. BOARD'S RIGHT TO ENTER: The Board or the Board's agents shall have the right at all reasonable times during business hours to enter the demised premises to examine the same and make repairs. In addition, the Board or its agents shall have the right to enter during business hours to conduct quarterly inspections to insure compliance with the lease agreement.

9. COVENANT OF QUIET ENJOYMENT: The Board hereby covenants that Lessee, upon paying the rent above stipulated and performing all and singular the covenants and conditions of this lease on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the premises for the aforesaid term, and for the term of any renewal or renewals hereof, free from molestation, eviction or disturbance by the Board, or by any other person or persons lawfully claiming the same, and that the Board has good right to make this lease for the full term thereby granted, including the period for which the Board has the right to effect a renewal hereof.

10. DAMAGE TO PREMISES: In the event of damage or injury to the demised premises or any part thereof, by fire or other casualty, so that the premises are rendered unusable, the Board shall have five (5) days after the loss within which to notify in writing its intention to repair and restore the premises without terminating this lease. In the event said notice of intent to repair the damage is not received within five (5) days, then and in such case, either party hereto upon written notice to the other party may terminate this lease. If, after the five-day (5-day) period, the Board decides to restore the premises, work shall commence immediately and be completed as expeditiously as possible and the Lessee shall have no claim against the Board for any loss due to the condition of the leased premises during the repair and restoration period.

11. COVENANT TO OBEY LAWFUL ORDERS: The Board agrees to obey all ordinances of the City of Milwaukee in regard to cleaning the sidewalk in front of said demised premises hereto leased and any and all lawful orders, rules and regulations of the proper health officers of said City. The Board and the Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and City government and of any and all their departments and bureaus applicable to said premises for the correction, prevention, and abatement of nuisances or other grievances, in, upon or connected with said premises during said term, and shall also promptly comply with and execute all rules, orders, and regulations of the Board of Fire Underwriters of the State of Wisconsin.

Lessee shall not knowingly do, or permit anything to be done, which will violate any Federal, State, or City statute, ordinance, rule, order, regulation, or requirement affecting its occupancy. The Lessee may, at its own expense, and by appropriate legal proceeding, contest the validity, in whole or part, of any such statute, ordinance, rule, order, regulation, or requirement provided that neither the Board or the Premises shall be placed in danger of civil or criminal liability or imposition of any lien by the Lessee's failure to comply.

12. ENVIRONMENTAL POLLUTANTS: Lessee shall not (either with or without negligence) cause or permit the escape, unlawful disposal or release beyond lawful limits of any Hazardous Materials (as hereinafter defined). Lessee, its agents, contractors, invitees, students, shall not bring in or onto the property, Premises, or knowingly allow the storage or use of such substances or prevailing in the industry for the storage and use of such substances or materials. For the purposes of this Section, the term "Hazardous Materials" shall mean, (i) any substances defined as "hazardous substances," "pollutants," "contaminants," "hazardous materials," "hazardous wastes," or "hazardous or toxic substances" as now or hereafter defined in any applicable federal, state or local law, regulation, ordinances, or directive, including, but not limited to, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et. seq.);

the Comprehensive Environmental Response, compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. Sec. 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec 1801, et. seq.; the Toxic Substance Control Act, 15 U.S.C. Sec. 2601, et. seq.; the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 9601, et. seq.); the Clean Water Act, 33 U.S.C. Sec. 1251 et. seq.; the Clean Air Act, 42 U.S.C. Sec. 7412, et. seq.; as any such acts may be amended, modified or supplemented; (ii) those substances listed or otherwise identified in the regulations adopted and publications issued, as may be amended, modified or supplemented, pursuant to any of the above-referenced statutes; (iii) any friable asbestos, airborne asbestos, or any substance or material containing asbestos; (iv) any substance, the presence of which is prohibited by any legal requirement of any governmental authority or which may give rise to an assessment of a governmental authority; and (v) any other substance which by legal requirement of any governmental authority requires special handling in its collection, storage, treatment or disposal.

Lessee, in the operation of school laboratories and science classes, and the handling and storage of chemicals used thereof, agrees to comply with the provisions, safety standards, standard operating procedures, control measures, and management practices contained in OSHA's Laboratory Safety Standard – 29 CFR 1910.1450, "Occupational Exposures to Hazardous Chemicals in Laboratories."

As part of the Laboratory Safety Standard, Lessee is required to develop and implement a comprehensive chemical hygiene/laboratory safety plan that incorporates the provisions found in 29 CFR 1910.1450. As part of the plan, Lessee agrees to develop and maintain an inventory of all chemicals stored on site, and a complete file of Material Safety Data Sheets pertaining thereof. Prior to occupancy, a completed plan must be codified and fully implemented. Lessee agrees to submit to MPS a complete copy of their Laboratory Safety Plan. MPS reserves the right to exclude from the site chemicals which are deemed to be detrimental to the welfare of the occupants.

If any governmental agency shall ever, in its reasonable discretion, require testing to ascertain whether or not there has been any release of Hazardous Materials by Lessee, then all of the reasonable costs thereof shall be reimbursed by the Lessee to the Board upon demand. Lessee shall execute affidavits, representations and the like from time to time at Board's request concerning Lessee's best knowledge and belief regarding the presence of Hazardous Materials on the Premises.

Lessee shall unconditionally indemnify and hold harmless the Board, its officers, employees, agents, successors, and assigns from and against any and all losses, claims, damages, penalties, liabilities, costs, and expenses, (including reasonable attorneys' fees and court costs), fines, injuries, penalties, response costs (including the cost of any required or necessary investigation, testing, monitoring, repair cleanup detoxification, preparation of any closure or other required plans, or other removal, response or remedial action at or relating to the Property) (collectively, the "Claims and Costs"), with respect to, as a direct or indirect result of, or arising out of any of the following: (i) any legal requirements, lawsuit (brought or threatened), reasonable settlement, or requirement of any insurer, relating to the generation, presence, management, disposal, release (or threatened release), escape, seepage, leakage, or cleanup of any Hazardous Materials at, on, from or under all or a portion of the Leased Premises for which the Lessee, its agents, contractors, or invitees are responsible, or (ii) the migration of Hazardous Materials caused by Lessee from the Leased Premises to any other property or onto the school

property, of (iii) the treatment, disposal or storage of Hazardous Materials or the transportation of Hazardous Materials from the leased premises by Lessee, its agents, contractor or invitees; or (iv) the incorporation by the Center of any Hazardous Materials in the Leased Premises.

The foregoing indemnification shall survive the expiration or earlier termination of this Lease.

13. ALTERATIONS: Lessee shall make no alterations to said premises. Should the Lessee desire changes to the facility, all such work will either; (a) be designed and completed by the Board on a reimbursed basis; or (b) be designed and completed by Lessee in accordance with the Board's guide specs, after Lessee receives the Board's prior written approval. Lessee shall be allowed to provide interior signage for installation by the Board. Lessee, at Lessee's expense, shall be allowed to provide exterior signage for installation by the Board. In addition to any other required approvals, all exterior signage must be approved by the Board. At the end of the expiration of the term, the Board may at its discretion direct the Lessee to return the premises to the condition prior to occupancy. All such changes will be at the Lessee's expense. All other alterations to said premises shall remain for the benefit of the Board.

14. REPAIRS AND VANDALISM: The Board shall take good care of the premises and, at its own cost and expense, make all repairs thereto, including structural repairs or replacements unless the need therefore was caused by the Lessee, the Lessee's agents, employees, contractors, students, invitees or licensees, in which case the Lessee would reimburse the Board for such repairs. At the end of the expiration of the term, Lessee shall deliver up the premises in good order, reasonable wear and tear excepted. General maintenance of building will be the responsibility of the Board. The Board will not be responsible for the maintenance or repair of any improvements installed or caused to be installed by the Lessee.

The Board and Lessee shall be individually responsible for the repair of any vandalism that occurs on their demised premises and shall be equally responsible with all building tenants for vandalism that occurs in common areas. When vandalism or other damage is the known result of action by students, agents, employees, invitees or licensees of a specific school or building tenant, that agency shall be solely responsible for all costs of repair, regardless of the location of occurrence. The Board shall complete all repairs required as a result of vandalism. Lessee shall immediately report any vandalism to the school engineer.

15. INSURANCE: Throughout the term of this Lease Agreement, Lessee will carry the following insurance

Worker's Compensation and Employers Liability

--Worker's Compensation	Statutory Limit
--Employers Liability	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 each employee
	\$500,000 policy limit

The Workers Compensation policy shall be modified to include a Waiver of Subrogation Endorsement in favor of the Board.

Commercial General Liability	
--Bodily Injury/Property Damage	\$1,000,000 per occurrence \$2,000,000 aggregate
--Fire Damage Legal Liability (following form with the umbrella insurance)	\$ 50,000 each incident
Medical Expense Limit	\$ 5,000 any one person
Excess Liability Insurance (umbrella insurance)	\$1,000,000 per occurrence \$5,000,000 aggregate

The Board is to be named as an additional insured under Lessee's Commercial General Liability Insurance and other appropriate policies throughout the term of this Lease Agreement and any subsequent renewals thereof. All insurance coverage for the additional insureds shall be on a primary and non-contributory basis. All policies shall provide that any insurance maintained by the additional insureds is excess and non-contributing with any insurance required hereunder. A Certificate of Insurance evidencing the aforementioned insurance requirements is required to be provided to the Board before any services are to commence under this Lease Agreement. Said certificate is to include sixty-day (60) advance notice prior to change, termination, or cancellation of insurance coverage.

The indemnification obligation under this Lease Agreement shall not be reduced in any way by the existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions. Under no circumstances is the Board's recovery limited due to the fact that it is named as an additional insured under the Lessee's insurance policy as listed above.

The Board is responsible for property insurance covering leased premises. The Lessee agrees to be responsible for insurance covering Lessee's contents and improvements while on site during term of said lease. The Board shall not be responsible for any damage, loss, vandalism, or theft of Lessee's improvements, equipment, supplies, materials, or personal property including personal property or belongings of its invitees.

It is the intention and agreement that Lessee shall carry such insurance as contemplated herein and shall look to its insurer for reimbursement of any such loss, and further that the insurer involved shall have no subrogation rights against the Board. Lessee shall advise its insurance company of this release and such policy shall, if necessary, contain a waiver of any right of subrogation by the insurer against the Board.

16. **INDEMNIFICATION:** Lessee agrees to defend, indemnify, and hold harmless the Board, its agents, employees, volunteers, and officers against any and all claims, demands, actions and causes of actions and resulting liability, loss damages, costs and expenses for injury to persons and damages to or loss of physical property to the extent caused directly or proximately by any wrongful, intentional or negligent act or omission of Lessee, its employees, officers, students, invitees, agents, and volunteers who participate in the activities covered by this Lease Agreement.

In accordance with applicable laws, the Board shall be responsible for defending and paying judgments on behalf of its directors, officers, employees, and agents while acting within the scope of their employment or agency for any claims that may arise out of the Board's negligence for acts, policies, or directives that affect the activities covered by this Lease.

Lessee and the Board each agree to promptly notify the other by phone and in writing as soon as reasonably practical of any incident involving any of the other's employees, officers, students, invitees, agents, or volunteers, which may result in action against the other.

17. UTILITIES: The Board will bear the cost of electricity, gas, water, and sewer. Lessee will pay for the installation, maintenance, and service of telephone lines and internet connections for its operation.

18. MAINTENANCE AND CLEANING AND SAFETY SERVICES: The Board shall provide certain maintenance and cleaning services included in the rental charged hereunder. The Board shall maintain the exterior of the demised premises and mechanical equipment and shall maintain the interior, including general cleaning. Basic safety services if purchased by Lessee from the MPS Division of Safety Services shall be available during regular building hours. The Board will provide and maintain a remotely monitored intrusion alarm system and will issue up to three pass cards to lessee for access to the facility. Lessee will be charged \$100 per occurrence for failing to properly arm/disarm the system and for every false alarm caused by the Lessee, its employees, and officers.

19. DEFAULT: Each and every of the following will constitute default of this agreement and result in its automatic termination:

- a. Failure to pay rent when due, and the failure is not cured within five (5) days after written notice of such failure has been given to Lessee by the Board; or
- b. Failure to perform any other terms or conditions of this Lease which are the responsibility of Lessee, and if such failure is not cured within five (5) days after written notice by the Board. If the failure is caused by events beyond the Lessee's reasonable control, the Lessee shall so inform the Board and shall use due diligence to cure the default as soon as feasible and shall not be considered in default; or
- c. Vacating or abandoning the Premises in excess of five (5) days without previously notifying the Board in writing; except that a temporary closing for remodeling or repairs, or for a holiday shall not be deemed vacation or abandonment; or
- d. Adjudgement as a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of the Lessee under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of the State of Wisconsin, shall be entered, and any such decree, judgment or order shall not have been

vacated, stayed or set aside within fifteen (15) days from the date of the entry or granting thereof; or

e. Filing or admitting the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or the Lessee shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Lessee under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition of evidence; or

f. Assignment for the benefit of creditors or application for or consent to the appointment of a receiver for Lessee; or

g. An assignment, transfer, conveyance or other disposition of its interest in the Premises without the express written consent of the Board; or

h. Violation of Article 11, Environmental Pollutants.

Additionally, after having obtained permission from a court of competent jurisdiction, the Board may re-enter the Leased Premises, remove all persons and property there from, and store such property in a public warehouse at the sole cost of the Lessee, without becoming liable for any loss or damage, except for loss of damage resulting from willful or negligent acts of the Board, its employees or agents, and such re-entry will not release the Lessee from liability hereunder.

20. ADDITIONAL TERMS:

a. Lessee is responsible for the conduct of its employees, students, participants, guests and invitees.

b. Intoxicating liquor, weapons, and illegal substances, in any form, will not be allowed on premises. Also, no smoking is allowed on the premises.

c. Lewd conduct will not be tolerated.

d. Lessee will report any repairs or maintenance needed to equipment or facilities to the school engineer within 24 hours.

e. Lessee is to abide by the School Safety Plan that is developed for the facility.

f. The Lessee may utilize any furniture and equipment that remains in the building as of March 1, 2013

21. NOTIFICATIONS: All communications and notifications shall be made to the addresses shown below by U.S. Mail or other express carrier, addressed as follows:

To Lessor:

Copies to:

Milwaukee Board of School Directors
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, WI 53233-1414
Attention: Director, Facilities & Maintenance Services

Milwaukee Board of School Directors
Milwaukee Public Schools
5225 West Vliet Street, Room 1
Milwaukee, WI 53202
Attention: Director, Procurement Services

To Lessee:

Eric A. Carlton, President
Banner Learning Corp.
1243 S. Wabash, #503
Chicago, IL 60605

Copies to:

Sidney Yeldell, VP
Banner Learning Corp.
5460 N. 64th Street
Milwaukee, WI 53218

or at such other address as either party may hereafter designate in writing. Service of any such written notice shall be deemed complete at the time of personal delivery or within three (3) days after mailing as provided above.

22. HOLDOVER: In the event the Lessee remains in possession of the premises after the expiration of this lease, the Lessee shall be deemed to be occupying the premises on a month-to-month basis. All other obligations contained herein shall continue to be applicable except the Lessee shall pay monthly rent equal to twice the amount of the original term, but in no case shall continue beyond sixty (60) days. In addition, all damages sustained by the Board as a result of the holdover shall be the sole responsibility of the Lessee.

23. PROVISIONS OF SCHOOL NUTRITIONAL SERVICES:

No meal services will be provided by MPS unless the tenant has entered into a food service agreement at least 60 days prior to the start of meal services

24. ENTIRE AGREEMENT: This lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument and in writing executed by the parties or their successors in interest. The terms, covenants and conditions contained in this lease and any riders and plans attached hereto shall bind and inure to the benefit of the Board and the Lessee and their respective successors, heirs and legal representatives and assigns.

25. This lease was signed this _____ day of _____20__ with all terms beginning July 1, 2013

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

LESSOR:
MILWAUKEE BOARD OF
SCHOOL DIRECTORS

Michael Bonds, Ph.D.
President

Gregory E. Thornton, Ed.D.
Superintendent of Schools

LESSEE:
BANNER LEARNING CORP.

Eric A. Carlton,
President