

LEASE AGREEMENT

MILWAUKEE BOARD OF SCHOOL DIRECTORS

AND

HIGHLAND COMMUNITY SCHOOL, INC.

THIS INDENTURE, made this ___ day of _____, 2012, by and between the Milwaukee Board of School Directors, a Wisconsin Statutory Corporation (hereinafter referred to as “the Board”) and Highland Community School, Inc. a Wisconsin Non-stock Corporation, (hereinafter referred to as “Lessee”).

1. **LEASED PREMISES:** Subject to all the terms and conditions in this Lease, the Board hereby leases to Lessee, and Lessee hereby leases from the Board, on an **AS-IS, WHERE-IS BASIS**, and with all faults and defects, known or unknown, discovered or to be discovered, except as set forth herein, the real property, improvements and appurtenances located at 1706 W. Highland Blvd, Milwaukee, Wisconsin, which is legally described on Exhibit A (the “Premises”).

2. **TERM:** The Initial Term shall commence on August 20, 2012, and terminate on June 30, 2015

3. **EXTENSION OF LEASE AND OPTION TO PURCHASE:** Lessee shall have the option to extend this Lease of the demised Premises for two additional five-year terms (“Extension Terms”), subject to renewal of the Charter School Contract between the Board and the Lessee for such extension terms, and contingent upon mutual agreement of the Board and Lessee as to rental for the extension terms. Lessee shall provide the Board with written notice of its intent to exercise its Extension Term rights at least one year prior to expiration of the then-current term. If said notice is not provided at least one year prior to expiration of the then-current term, Lessee shall have no right to any further Extension Terms hereunder. If Board and Lessee are unable to come to terms regarding rental for any Extension Term, then this Lease Agreement shall terminate upon expiration of the then-current term.

Lessee and the Board hereby agree that Lessee holds an “Option to Purchase” the Premises. Such Option to Purchase is further described in the Option to Purchase Agreement (the “Agreement”) attached hereto and incorporated herein as Exhibit B. On even date herewith, the parties shall execute the Agreement in the form attached hereto. Lessee and Board further agree that should this Lease Agreement be rendered null and void pursuant to either Section 26.a. or 26.b. of this Agreement, then said Option to Purchase shall automatically terminate.

4. **SUBLEASE:** Lessee shall have the option to sublease any portion of the demised Premises, subject to the following requirements and limitations: a) Lessee shall provide written notice of its intention to sublease the Premises to the Superintendent of the Milwaukee Public Schools District (the “Superintendent”) prior to entering into any sublease arrangement; 2) the

notice from Lessee shall identify the proposed subtenant, the nature of the subtenant's business or operations, their proposed use at the Premises, and a copy of the proposed sublease agreement; 3) after receiving said notice, the Superintendent may reasonably object to any proposed subtenant on grounds that said sublease or subtenant would be contrary to the District's interests, which objection shall clearly state the specific reasons thereof; and 4) if the Superintendent or his designee has not objected to the proposed subtenant within ten (10) days of receiving notice from Lessee, the subtenant shall be deemed approved.

5. USE OF THE PREMISES: Lessee may use the Premises only for a MPS-chartered Montessori elementary school consistent with the proposal submitted to the Board of School Directors and the Charter School Contract and, subject to certain conditions, Lessee may also use a portion of the Premises for operation of a state-licensed childcare center. Said use shall be subject to the following conditions: 1) At no time may the percentage of students enrolled for day care only, relative to the sum of the students enrolled for day care only plus the students enrolled in the elementary school at the Premises, exceed 35%; 2) Lessee shall remain the operator and licensee of the child care center at all times; 3) the child care center must be operated on a non-profit basis consistent with Lessee's status as a non-profit corporation; and 4) Lessee shall obtain all permits, variances, licenses, or other governmental approvals needed for operation of the child care center prior to commencement of any such use. Such business shall be operated at all times in a reputable, safe and first-class manner so as not to injure the reputation of the Board, including its directors and employees. Lessee shall provide any and all resources, equipment, and/or personnel required to achieve such a reputable operation. Any overnight parking and outdoor storage shall comply with applicable provisions of the City of Milwaukee Code of Ordinances.

6. RENTAL:

Lessee shall pay to the Board an annual rental fee of One Dollar (\$1.00), payable in advance on the first day of the Term.

Rent is to be paid by certified or cashiers check and mailed to: Facilities and Maintenance Services, 1124 North 11th Street, Milwaukee, Wisconsin 53233, Attention: Director or by online transfer or wire transfer.

7. COMPLIANCE WITH LAWS AND REGULATIONS:

- a. The Board is leasing the Premises on an "AS IS, WHERE IS" basis.
- b. Lessee shall, at its sole cost and expense, comply with any and all laws, statutes, ordinances, regulations and orders, federal, state, county, or municipal, now or hereafter enforced, or applicable to its respective existence at, or use, occupancy, or improvement (including repair or maintenance) of, any part of the Premises. The Board agrees to cooperate with Lessee's efforts in obtaining necessary permits and approvals. 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 Lessee's failure to comply. Lessee specifically acknowledges the provisions of Wis. Stat. §§ 66.0903 and 66.0904 concerning prevailing wage requirements for projects of public works, and agrees to comply with said laws and all decisions of the Department of Workforce Development concerning the same.

- c. Lessee shall be responsible (i) for remediating any contaminants or environmental pollution, as defined in Section 11 herein, on any part of the Premises caused by Lessee or its employees, agents or invitees, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Premises caused by Lessee or its employees, agents or invitees.
- d. Lessee must obtain the Board's prior written approval, which shall not be unreasonably withheld, before conducting any environmental testing or investigation on or at any part of the Premises.

8. BOARD'S RIGHT TO ENTER AND REQUEST DOCUMENTATION: 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, provided the Board uses reasonable means to avoid unreasonable disruption of Lessee's operation of the Premises. 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. This right shall include the right to receive documentation concerning any and all improvements, repairs, or other work performed by Lessee on the Premises.

9. COVENANT OF QUIET ENJOYMENT: The Board hereby covenants that the Lessee, upon paying the rent above stipulated and any other amounts required under this Lease 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 any extension periods set forth herein.

10. DAMAGE TO PREMISES: In the event the Premises are made substantially untenable by fire or other casualty, then Lessee shall have sixty (60) days from the date of such casualty to deliver written notice to the Board that either (i) Lessee exercises the Option to Purchase as described in Exhibit B attached hereto or (ii) Lessee elects to terminate this Lease, effective on the thirtieth (30th) day following Lessee's notice of termination. If Lessee elects to exercise such Option to Purchase, then Lessee shall be solely responsible for the repair or reconstruction of the Premises per Lessee's property insurance proceeds (as such insurance is further defined in Section 16 herein). If Lessee does not elect to exercise the Option to Purchase, then the Board shall have no obligation to repair or restore the Premises, and Lessee's sole remedy shall be to terminate this Lease.

11. 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 employees, officers, agents, contractors, volunteers, 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. §6901 et. seq.); the Comprehensive Environmental Response, compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. §9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; the Toxic Substance Control Act, 15 U.S.C. §2601, et. seq.; the Resource Conservation and Recovery Act, as amended (42 U.S.C. §9601, et. seq.); the Clean Water Act, 33 U.S.C. §1251 et. seq.; the Clean Air Act, 42 U.S.C. §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.

In the event it is determined that there are Hazardous Material(s) upon, within or under the Premises which exist prior to Lessee's occupying said Premises or any other environmental conditions not caused by Lessee in violation of any environmental regulations, then the Board shall hold Lessee harmless from any claims, liens, losses, damages and expenses, including reasonable attorneys' fees, resulting thereof. If, in Lessee's reasonable opinion, said Hazardous Material(s) or violations substantially impair Lessee's ability to operate upon the Premises and Lessee ceases to operate from the Premises as a direct result thereof, Lessee shall, as its sole remedy, have the right to terminate this Lease by giving written notice to the Board within sixty (60) days of ceasing to operate from the Premises.

Lessee shall comply with all local, state and federal laws, codes, rules, and regulations pertaining to asbestos that apply to public schools, pursuant to the terms of the Charter School Contract by and between Lessee and the Board. The parties hereby agree that the MPS Director of Facilities and Maintenance shall provide to Lessee (i) a copy of the management plan in compliance with the Asbestos Hazard Emergency Response Act, 40CFR Part 763, Subpart E enacted prior to Lessee's occupancy of the Premises and (ii) the most recent three year inspection report for the Premises. Any inspections needed to bring the Premises into compliance with AHERA shall be Lessee's sole obligation and cost.

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. Lessee represents and warrants that its use of the Premises will not include the operation of laboratory facilities or related chemicals, and as such, MPS will not immediately require development and implementation of the safety plan referenced in this paragraph. If circumstances change and Lessee intends on introducing the use of laboratory facilities or related chemicals into the Premises, Lessee shall comply with the requirements of this paragraph before any such uses are commenced at the Premises.

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 beyond lawful limits from the Leased Premises by Lessee, its agents, contractor or invitees; or (iv) the incorporation by the Lessee of any Hazardous Materials in the Leased Premises.

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

12. MAINTENANCE OF PREMISES: Lessee shall be responsible, at its sole expense, for all routine or non-routine, capital or non-capital, repair, and maintenance of the Premises and improvements thereat to. The foregoing includes, but is not limited to, Lessee being responsible for, at its expense:

- a. Picking up and removing litter, trash, and rubbish at the Premises on a routine basis so as to keep the same clean and litter-free.
- b. Removing snow and ice from the entire width of sidewalks along the perimeter of the Premises, and from walkways at the Premises in accordance with Milwaukee Code of Ordinances §§116-8 and 116-16.
- c. Promptly removing graffiti from the Premises and improvements thereat.
- d. Mowing the grass (if any), including grass between the curb and sidewalk, on a regular basis.
- e. Removing weeds and pruning trees, bushes, and vegetation at the Premises, on an as-needed basis.
- f. Repairing and restoring any damage to the Premises or improvements thereat, as practicable and within a reasonable time.
- g. Electrical and plumbing repairs and maintenance work typically associated with reasonable husbandry.
- h. Properly preparing structures and fixtures for winterization, weather and change of seasons.
- i. Keeping the Premises, structures and fixtures in good and clean condition.

On or before June 30 of every year, Lessee shall deliver to the Superintendent, with a copy to DFMS, a report describing all repairs or maintenance activities performed at the Premises by Lessee during the prior year. For repair or maintenance work that is estimated to cost over \$10,000 or that may materially affect the structure or appearance of any structure at the Premises, Lessee shall provide prior written notice to the Superintendent of any such work or improvement. Said notice shall include a copy of the construction documents prepared by a registered architect or professional engineer, if applicable. The Superintendent or DFMS may reasonably object, or attach reasonable conditions to, any such work within ten (10) days of receiving Lessee's notice, which objection shall clearly state the reasons thereof. Any work not objected to within ten (10) days shall be deemed approved. If the Superintendent or DFMS attaches conditions to approval of the work, Lessee shall comply with all such conditions. Following completion of the work, Lessee shall deliver to the Superintendent as-built drawings of the improvements, if any, and copies of all permits secured for the work performed at the Premises. At the end of the expiration of the final term, Lessee shall deliver up the Premises in good order; reasonable wear and tear excepted. All alterations to said Premises shall remain for

the benefit of the Board, except as may be otherwise provided in the terms of any Superintendent or DFMS approvals.

13. TRASH PICK-UP: Lessee shall be solely responsible for all trash and litter pick-up and removal from the Premises. The Board shall bear no expense or obligation associated with trash removal from the Premises.

14. LEASEHOLD MORTGAGES; CONSTRUCTION LIENS: Lessee has no right by virtue of this Lease or the Option to Purchase to mortgage, pledge as collateral, or hypothecate its interest in this Lease, or in any part of the Premises, or in any buildings, improvements, or fixtures at the Premises. Lessee shall take all actions and precautions required to ensure that the Premises do not become attached by, or with, any lien, including, but not limited to, any construction lien, or lien of or by any laborer, contractor, subcontractor, materialman, or supplier (including any lien under Subch. I of Wis. Stat. Ch. 779) relating directly or indirectly to any work that Lessee (or anyone claiming by, through, or under Lessee) may perform or have done at the Premises. Lessee shall indemnify, defend, and hold harmless the Board and the Premises of, from, and against, any such lien which may attach, or be asserted against, the Premises, together with all costs in connection therewith.

Any construction lien filed against the Premises which is received by either the Board or Lessee or filed for work or materials furnished or claimed to be furnished and deriving from materials or work claimed to have been furnished to Lessee or the Premises shall be released and discharged of record by Lessee within twenty (20) days after such filing or receipt, whichever is applicable, at Lessee's expense. If Lessee chooses to contest such claim or notice or lien, Lessee may do so in place of causing the release and discharge thereof, provided that within said twenty (20) day period, (i) Lessee complies with the provisions of Wisconsin Statute Section 779.08, which includes filing with the clerk of court in whose office the claim for lien is filed an undertaking executed by a surety and deposit a sum of money, certified check or negotiable government bonds in par value equal to 125% of the claim for lien, as further described in Wisconsin Statute Section 779.08 and; (ii) Lessee contests such claim, notice or lien in good faith by appropriate proceedings that operate to stay enforcement thereof; and (iii) Lessee promptly pays and discharges any final adverse judgment entered in any such proceeding, as provided in Statute Section 779.08. If Lessee has not caused the release or discharge or begun appropriate proceedings to contest such claim, notice or lien, within said twenty (20) days, the Board may, but shall not be obligated to, pay the amount necessary to remove the same without being responsible for making an investigation as to the validity or accuracy thereof, and the amount so paid, together with all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Board in connection therewith, shall be payable upon demand.

15. PUBLIC RECORDS: Lessee acknowledges that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Lessee further acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Lease, and that Lessee must defend and hold the Board harmless from liability under that law. Except as

otherwise authorized under Wisconsin's Public Records Law, Lessee records regarding this Lease and administration of the Lease shall be retained for 7 years.

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

Worker's Compensation and Employers Liability

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| --Worker's Compensation | Statutory Limit |
| --Employers Liability | |
| Bodily Injury by Accident | \$ 100,000 each accident |
| Bodily Injury by Disease | \$ 500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |
| --The Workers Compensation Policy shall be modified to include a Waiver of Subrogation Endorsement in Favor of the City and the Board. | |

Automobile Liability \$1,000,000 each accident

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) | \$1,000,000 each incident |
| --Medical Expense Limit – any one person (following form with the umbrella insurance) | \$ 10,000 |

Excess Liability Insurance \$5,000,000 per occurrence/aggregate
(umbrella insurance)

The Board is to be named as an additional insured under Lessee's Commercial General Liability and Excess Liability Insurance and other appropriate policies throughout the term of this Lease Agreement and any subsequent renewals thereof. 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 policy is to include, by endorsement or otherwise, 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 parties hereby agree that Lessee, at Lessee's sole cost, shall be responsible for keeping in full force and effect throughout the term of this Lease and any extension thereof, a policy of property insurance insuring the Premises in an amount equal to the full replacement value of the Premises. In the event Lessee elects to terminate the Lease as provided in Section 10 herein, the parties hereby agree that the Board shall look to its own property insurance, if any, to cover the cost of any restoration or reconstruction of the Premises. In addition, 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. The Board shall not be responsible for Lessee's deductibles or other forms of retention.

The Board, at the Board's sole cost, shall keep in full force and effect throughout the term of this Lease and any extension thereof, a policy of comprehensive general public liability insurance with respect to the Premises which the primary coverage per accident or occurrence is not less than \$1,000,000.00 combined single limit.

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.

17. INDEMNIFICATION: Lessee agrees to defend, indemnify, and hold harmless the Board, its agents, employees, 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, agents, and volunteers who participate in the activities covered by this Lease Agreement.

In accordance with applicable law, the Board shall hold harmless Lessee, its employees, and officers from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses including attorney fees, arising solely from any wrongful, intentional or negligent act or omission by the Board, its staff, employees, agents or contractors while acting within the scope of their employment and which may occur during or which arise directly from the performance of this Lease Agreement.

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 faculty, staff, agents or students, which may result in action against the other.

18. DEFENSE OF SUITS: In the event any court action or administrative proceeding is brought against MPS or any of its officers, agents, or employees, for acts of Lessee, its

employees, officers, agents, contractors, volunteers, invitees, students, or for Lessee's failure in whole or in part to perform any acts required by this Contract by Lessee, MPS shall tender its defense of any claim or action at law or equity to the Lessee or Lessee's insurer, and upon such tender it shall be the duty of the Lessee or Lessee's insurer to defend such claim or action without cost or expense to MPS, its officers, agents, or employees.

19. UTILITIES: Lessee is solely responsible for and shall timely pay all utility costs associated with use of the Premises during the Term of this Lease including sewer, water, gas, electricity, telephone, and cable.

20. PROPERTY TAXES, ASSESSMENTS, FEES & CHARGES:

- a. In that the Premises are owned by the City of Milwaukee for use by the Board of School Directors, the Premises are property-tax exempt under Wis. Stat. §70.11(2). See, especially, last sentence of §70.11(2), "[l]easing the property exempt under this subsection, regardless of the lessee and the use of the leasehold income, does not render that property taxable." If the Premises subsequently become, under state law, in the City Assessor's opinion, subject to general property taxes during the term of this Lease, however, Lessee shall be responsible for, and timely pay, such taxes, with the understanding that Lessee may dispute such by following the procedure set forth in Wis. Stat. § 74.35(2m).
- b. Unless otherwise entitled to lawful exemption, Lessee shall pay all taxes, assessments, charges, and fees levied or assessed upon the Premises or its own personal property and its own trade fixtures on, or at, the Premises.
- c. Lessee shall pay any special charge, special assessment, special tax, or fee that may be levied against the Premises at any time during the term of this Lease. Said charges, assessments, taxes and fees expressly include those both known and unknown as of the effective date of this Lease. Notwithstanding the foregoing, Lessee shall pay only the special assessments due and payable for any given applicable lease year and may elect that any special assessment be made payable in yearly installments (rather than a flat sum), if presented as an option by the applicable municipality.

21. TERMINATION:

A. For Default: Each and every of the following will constitute default of this Agreement and may, at the Board's option, result in termination of this Lease:

1. 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

2. 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 twenty-five (25) days after written notice by the Board. If the failure is caused by events beyond Lessee's reasonable control, 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
3. 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, when school is not in session, or for a holiday shall not be deemed vacation or abandonment; or
4. A judgment as a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of 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
5. 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
6. Assignment for the benefit of creditors or application for or consent to the appointment of a receiver for Lessee; or
7. An assignment, transfer, conveyance or other disposition of its interest in the Premises without the express written consent of the Board; or
8. Violation of article 12, Environmental Pollutants; or
9. Non-renewal or termination of the Charter School Contract by and between Lessee and the Board.

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 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 Lessee from liability hereunder. Should Lessee fail to recover such property within a period of three (3) months, the

Board may dispose of the property and use the proceeds to offset the costs of storage or any other amounts owed the Board.

22. ADDITIONAL TERMS:

- a. The Lessee is responsible for the conduct of its employees, students, participants, volunteers, 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. No animals of any kind will be permitted on the Premises, except as may be permitted by Board policies on the subject.
- d. Lewd conduct will not be tolerated.
- e. Exterior window washing, if desired, will be provided by Lessee at its sole expense.
- f. No additional kitchen equipment is to be brought into the Premises without the prior written approval of the MPS Director of Facilities and Maintenance.
- g. DFMS represents that all furniture and equipment that the district desires to repurpose from the Premises will be removed prior to August 20, 2012. Lessee may utilize any furniture and equipment remaining on the Premises after that date. If Lessee exercises the Option to Purchase, then any personal property located on the Premises as of August 20, 2012 shall be included in the transaction and the agreed upon purchase price as further described in the Option to Purchase.
- h. Should Lessee fail to pay rent when due, and should the Board opt not to terminate under article 21(B)(1) after the 5-day grace period, the Board shall charge Lessee liquidated damages in the amount of \$50.00 per calendar day for each day after the five-day grace period that rent remains due and owing. Exercise of this clause will not result in the Board waiving any other rights, including the right to termination, under this contract. In the event of termination, liquidated damages shall be calculated to the day of termination. For the purposes of this agreement, calendar day shall mean every day including weekends and holidays.

23. 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:

Milwaukee Board of School Directors
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, WI 53233-1414
Attn: Superintendent

Copies to:

Milwaukee Public Schools
Facilities and Maintenance
1124 N. 11th Street
Milwaukee, WI 53233
Attn: Director

City Attorney
City of Milwaukee
841 N. Broadway, 7th Floor
Milwaukee, WI 53202

To Lessee:

Pre-July 1, 2012
Highland Community Schools
3030 W. Highland Blvd
Milwaukee, WI 53208
Attn: Executive Director

Post-July 1, 2012
Highland Community Schools
1706 W. Highland Blvd
Milwaukee, WI 53233
Attn: Executive Director

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.

24. 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 Lessee shall pay monthly rent equal to twice the then-current fair market rent, as determined by appraisal, divided by twelve (12) months. But in no case shall such holdover occupancy 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.

25. CONDEMNATION. If all or any portion of the Premises are taken by eminent domain so that the Premises cannot be reasonably used by Lessee for the purposes for which they are demised, then at the option of either party this Lease may be terminated effective as of the date of the taking. The award for any total or partial taking shall be shared between Board and Lessee as provided for by law.

26. CONTINGENCIES. The Parties' respective obligations under this Lease Agreement are contingent upon satisfaction of the following conditions:

- a. Due Diligence. This Lease is contingent upon Lessee, within one hundred twenty (120) days of the date of this Agreement, performing whatever inspections of the Premises, due diligence activities or cost-assessment analysis Lessee deems necessary for its proposed use and purposes. If after performing said inspections, activities and cost-assessment analysis Lessee no longer wishes to proceed with this Lease, in Lessee's sole discretion, Lessee may cancel this Lease upon written notice to the Board within one hundred twenty (120) days of the date of this Agreement. If Lessee should provide such notice, this Agreement shall be null and void, with no costs or expenses owing to either party, and the Option to Purchase shall terminate. If no notice is provided to the Board, this contingency shall be deemed waived.
- b. Zoning. This Lease is contingent upon Lessee, within one hundred twenty (120) days of the date of this Agreement, obtaining any necessary zoning approvals for the intended occupancy and use. If Lessee is unable, after good-faith attempts, to obtain such approvals, Lessee may cancel this Lease upon written notice to the Board within one hundred twenty (120) days of the date of this Agreement. If Lessee should provide such notice, this Agreement shall be null and void, with no costs or expenses owing to either party, and the Option to Purchase shall terminate. If no notice is provided to the Board, this contingency shall be deemed waived.
- c. Charter. If, at any time during the term of this Lease or any extension thereof, Lessee's charter to operate a charter school in the State of Wisconsin is terminated for any reason or the public funding provided to Lessee is terminated or reduced to a level that does not allow Lessee to operate its school within the Premises, for any reason, then Lessee may, at its sole option, elect to terminate this Lease upon service to Landlord of a 30-day notice to terminate this Lease. This Lease is further contingent upon Lessee remaining a charter school, chartered through the Milwaukee Public Schools District. In the event Lessee does not remain chartered through the Milwaukee Public Schools District, the Board may terminate this Lease upon service to Lessee of a 30-day notice to terminate this Lease. Notwithstanding the foregoing, in the event that Lessee's charter school contract through the Milwaukee Public Schools District with the Board (the "Charter School Contract") is terminated because the Board fails or is unable to appropriate the funds necessary for funding of said Charter School Contract, then Lessee shall have thirty (30)

days from the termination of said Charter School Contract to exercise its Option to Purchase the Premises as set forth in the attached Exhibit B.

- d. **Financing.** This Lease is contingent upon Lessee, within one hundred eighty (180) days from the date of this Agreement, obtaining a commitment for financing planned and needed improvements to the Premises to accommodate Lessee's intended uses, on terms acceptable to Lessee and the Board. If Lessee is unable to secure acceptable financing, Lessee may cancel this Lease upon written notice to the Board within one hundred eighty (180) days of the date of this Agreement. If Lessee should provide such notice, this Agreement shall be null and void, with no costs or expenses owing to either party. If no notice is provided to the Board, this contingency shall be deemed waived.

- e. **Day Care License.** This Lease is contingent upon Lessee, within one hundred eighty (180) days of the date of this Agreement, obtaining all approvals, permits and licenses to operate a child-care center on the Premises. If Lessee is unable to secure such approvals, permits or licenses, Lessee may cancel this Lease upon written notice to the Board within one hundred eighty (180) days of the date of this Agreement. If Lessee should provide such notice, this Agreement shall be null and void, with no costs or expenses owing to either party. If no notice is provided to the Board, this contingency shall be deemed waived.

27. **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 Lessee and their respective successors, heirs and legal representatives and assigns.

[Signatures on page immediately following.]

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.
School Board President

GREGORY E. THORNTON, Ed.D.
Superintendent of Schools

LESSEE

HIGHLAND COMMUNITY SCHOOL, INC.

By: _____

Name: _____

Title: _____

LIST OF EXHIBITS

Exhibit A – Legal Description of Leased Premises

Exhibit B – Option to Purchase

Exhibit A
Legal Description of Premises

Exhibit B
Form of Option to Purchase

Option to Purchase MacDowell Elementary School

THIS OPTION TO PURCHASE is hereby granted as of the ____ day of ____, 2012 (the "Agreement"), by and between the Milwaukee Board of School Directors, a Wisconsin Statutory Corporation (hereinafter referred to as the "Board"), the City of Milwaukee (hereinafter referred to as the "City") (the Board and the City shall hereinafter be collectively referred to as the "Seller") and Highland Community School, Inc.. (hereinafter referred to as "Highland").

WHEREAS, the City owns and holds fee simple title to the real property and all appurtenances thereto located at 1706 W. Highland Blvd., Milwaukee, Wisconsin, and more particularly described on Exhibit A attached hereto (the "Property");

WHEREAS, per Wisconsin Statute, the Board is able to lease and enter into options to purchase on behalf of the City;

WHEREAS, the Board and HIGHLAND have entered into a Lease Agreement (the "Lease") of even date herewith for which HIGHLAND shall lease the Property from the Board, and pursuant to the Lease, HIGHLAND shall be granted an option to purchase the Property on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the Seller and HIGHLAND do hereby covenant and agree as follows:

1. Option. The Seller hereby grants to HIGHLAND, and HIGHLAND hereby accepts from the Seller, the sole and exclusive option to purchase all of the City's right, title and interest in and to the Property and all appurtenances thereto, and all personal property owned by the Board or the City located on the Property as of the date of closing (the "Option"). The term of this Agreement and the Option granted hereunder, shall commence as of the date of the Lease and shall terminate June 30, 2015. In order to exercise the Option, HIGHLAND shall deliver to the Seller written notice (the "Option Notice") given at any time prior to May 1, 2015. The Option Notice shall be accompanied by an offer to purchase consistent with the terms of this Agreement. If HIGHLAND fails to deliver the Option Notice prior to May 1, 2015 this Agreement and the Option shall be deemed null and void.

2. HIGHLAND's Right to Access and Inspect the Property. The Seller acknowledges and agrees that HIGHLAND and HIGHLAND's contractors and agents shall have the right to inspect and conduct tests on the Property as may be deemed necessary or desirable by HIGHLAND to satisfy HIGHLAND as to the condition of the Property during the term of this Agreement. Such inspections and tests shall include, but are not limited to, surveys, physical inspections and environmental studies.

3. Purchase Price. In the event HIGHLAND exercises this Option within the first three years of the initial term of the Lease, or prior to June 30, 2015, the parties hereby agree that the purchase price of the Property shall be equal to the appraised value as identified in the

appraisal report that shall be completed as a result of executing the Lease. MPS shall engage an appraiser within 60 days of the execution of the Lease. All expenses related to such appraisal shall be shared equally by Seller and HIGHLAND.

In the event HIGHLAND exercises this Option at any time after the initial three years of the initial term of the Lease, then the purchase price of the Property shall be determined as follows:

a. New Appraisal. Within ten (10) days after the Seller's receipt of the Option Notice, the parties shall retain a mutually agreed upon appraiser with experience appraising commercial properties similar to the Property in the Milwaukee metropolitan area to provide a fair market value determination for the Property. All expenses related to such appraisal shall be shared equally by Seller and HIGHLAND.

b. Right to Terminate Option. If, for any reason, HIGHLAND does not accept the purchase price determined by the new appraisal outlined above, then HIGHLAND may terminate the Option and shall have the right to continue its tenancy in the Property for the remainder of the term of the Lease, and any extensions or renewals thereof, as specified in the Lease.

4. Deed Restrictions.

a. Competing Use Restriction. HIGHLAND agrees that if HIGHLAND exercises this Option, then HIGHLAND agrees to take title subject to a deed restriction prohibiting use of the Property for any "competing use" at any time during the five (5) years following the effective date of the Lease. For purposes of this section, the term "competing use" means use by any school that would have the incident or effect of diminishing the annual average number of pupils enrolled in MPS, as determined for such school year under Wis. Stat. § 121.05, and as compared to the immediately preceding school year. Said deed restriction may, among other things, provide for defeasance upon introduction of a competing use (i.e., fee simple subject to a condition subsequent). Seller agrees that said deed restriction shall contain clauses that provide for: (i) automatic termination of the deed restriction on a date five years following the date of the Lease, or _____, 2017, and (ii) that the deed restriction shall terminate in the event that HIGHLAND's Charter School Contract with Seller is terminated because Seller fails or is unable to appropriate funds necessary for funding of said Charter School Contract.

b. Restriction Against Tax Exemption. HIGHLAND further agrees to take title subject to a deed restriction requiring that the Property be taxable for purposes of a portion of the *ad valorem* real property taxes payable under Wisconsin law. Said restriction shall include the execution and recording of a "Payment in Lieu of Taxes Agreement" in a form acceptable to and approved by the City of Milwaukee. In addition to any other terms that may be required by the City of Milwaukee, said Payment in Lieu of Taxes Agreement shall include the following substantive provision, unless otherwise agreed to by the Parties:

Beginning in the year the Property or any portion thereof becomes exempt, and so long as the Property or any portion thereof continues to be exempt, in whole or in

part, under § 70.11, Wis. Stats., HIGHLAND or its successors and assigns shall pay MPS an annual PILOT Payment for the Property or the portion thereof which is exempt for each calendar year. For so long as the Property is used as a MPS charter school (i.e., a charter school chartered through the Milwaukee Public Schools District) the PILOT payment due to MPS hereunder shall be \$1 per year. In the event the Property is no longer used for operation of a MPS charter school, the method to be used in determining the PILOT Payment shall be the Value of the Property for that tax year determined by the City Assessor's office times the MPS Property Tax Rate for the tax year. For purposes of this provision, "Value" means the City Assessor's determination of the fair market value of the Property on January 1 of each tax year, and "MPS Property Tax Rate" means the tax rate for MPS taxes calculated to include only MPS taxes as reflected on City of Milwaukee property tax bills from time to time (in 2010, the MPS Property Tax Rate was \$10.86 per \$1,000 of assessed value).

c. Right of First Refusal. Said deed restrictions shall also contain a "right of first refusal" granted in favor of the Board. The right of first refusal shall contain the following substantive provisions:

HIGHLAND hereby grants to the Board the right of first refusal with respect to the sale of all or any part of the Property. If at any time during HIGHLAND's ownership of the Property, HIGHLAND receives a bona fide offer to purchase the Property that is acceptable to HIGHLAND (the "Offer"), HIGHLAND shall forward a copy of said Offer to the Board. Within twenty (20) days following receipt of the Offer, the Board may notify HIGHLAND that it elects to purchase the Property on the terms contained in the Offer. Said election, if exercised, shall be accompanied by a written offer to purchase on the terms specified in the Offer, which shall then constitute the contract between HIGHLAND and the Board. If the Board does not notify HIGHLAND within the 20-day period, HIGHLAND may proceed to sell the Property to the person or entity who submitted the Offer on substantially the terms specified therein, and the Board will upon request execute and deliver a recordable document to evidence the Board's release of its right of first refusal with respect to the Property.

5. Title Review. Within thirty (30) days following the date of this Agreement, HIGHLAND shall obtain at its sole cost, and provide Seller with a copy of, a commitment for an owner's policy of title insurance for the Property in the amount of the purchase price, written by a title insurance company licensed by the State of Wisconsin (the "Commitment"). If any of the documents or exceptions referenced therein would, in the sole discretion of HIGHLAND, materially impair the marketability of title or HIGHLAND's intended use, HIGHLAND may, on or before October 1, 2012, provide written notice to Seller of any such objection, in which case this Option and Agreement shall be null and void. If HIGHLAND does not so object, then HIGHLAND shall be deemed to have consented to said title exceptions (the "Permitted Exceptions"). HIGHLAND, at HIGHLAND's sole cost, shall update the Commitment following delivery of the Option Notice (the "Updated Commitment"). If there are any documents or exceptions appearing in the Updated Commitment other than the "Permitted Exceptions" ("New

Exceptions”), then HIGHLAND's obligation to purchase the Property shall be subject to HIGHLAND's approval, in HIGHLAND's sole discretion, of The New Exceptions.

6. Closing. The closing of the purchase transaction contemplated under this Agreement shall be held not later than the sixtieth (60th) day after the date of delivery of the Option Notice (or if such date is a Saturday, Sunday or legal holiday, the next business day) at a time and place in the metropolitan Milwaukee area designated by HIGHLAND. The purchase price shall be paid in cash in full at closing, without offset, adjustment, or prorations.. At closing, the City shall convey the Property to HIGHLAND by Special Warranty Deed, free and clear of all liens and encumbrances, except the following: municipal and zoning ordinances and recorded agreements entered under them; recorded building and use restrictions and covenants; recorded easements for the distribution of utilities serving the Property; any title exceptions referenced in the Commitment or Updated Commitment not objected to by HIGHLAND; general and special real estate taxes, assessments, charges and fees for which HIGHLAND is responsible under the Lease; any conditions(s) that would be revealed by a survey of the Property; and the deed restriction referenced in Section 4 of this Agreement.

The parties hereby agree that the Lease shall terminate as of the closing date and the parties shall have no further obligations under the Lease.

7. Closing Expenses. The Seller and HIGHLAND hereby agree to each pay half of the title insurance company's closing fee. HIGHLAND shall pay for the recordation of the deed and the recordation of the deed restriction release, as well as all due diligence costs, including the cost of the title commitment and policy of title insurance. The Seller hereby agrees to pay the cost of all transfer taxes. Except as may otherwise be set forth in this Agreement, all other closing fees and expenses shall be paid by the party customarily responsible for such items in connection with the purchase and sale of commercial property in Milwaukee County, Wisconsin.

8. Representations and Warranties. The Board and the City hereby individually make the following representations, warranties and covenants with respect to the Property and this Agreement. Such representations, warranties and covenants shall also be true and applicable as of the date of closing.

- a. The City and the Board are empowered to enter into this Agreement.
- b. HIGHLAND is authorized to enter into this Agreement.
- c. The City and the Board, if applicable, has or will use commercially reasonable efforts to obtain the proper approvals to sell the Property per the terms of this Agreement.
- d. If the Option is exercised, the City has the authority to and shall convey the Property to HIGHLAND on terms consistent with those set forth in this Agreement.

9. Default. In the event of a violation of the terms, covenants or conditions of this Agreement by the Seller, HIGHLAND shall have the right to exercise all available remedies at law or in equity.

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

To the Board:

Milwaukee Board of School Directors
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, WI 53233
Attn: Superintendent

With copy to:

Milwaukee Public Schools
Facilities and Maintenance
1124 N. 11th Street
Milwaukee, WI 53233
Attn: Director

To the City:

Commissioner of City Development
City of Milwaukee
809 North Broadway
Milwaukee, WI 53202

With copy to:

City Attorney
City of Milwaukee
841 N. Broadway, 7th Floor
Milwaukee, WI 53202

To HIGHLAND:

Pre-July 1, 2012
Highland Community Schools
3030 W. Highland Blvd
Milwaukee, WI 53208
Attn: Executive Director

Post-July 1, 2012
Highland Community Schools
1706 W. Highland Blvd
Milwaukee, WI 53233
Attn: Executive Director

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 (3) three days after mailing provided above.

11. Miscellaneous. The offer to purchase shall include such other comprehensive terms and conditions as are customary at the time of delivery of the Option Notice. HIGHLAND acknowledges and agrees that, as to form and execution, the offer to purchase is subject to review and approval, on Seller's behalf, by the City of Milwaukee Office of the City Attorney.

12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

13. Headings. The headings of the paragraphs and subparagraphs hereof are for purposes of convenience only and shall in no way affect the construction of any of the terms, covenants or conditions hereof.

14. Time of the Essence. Time is of the essence as to all dates and deadlines set forth in this Agreement.

15. Amendments. This Agreement shall not be changed except by a written document executed and acknowledged by all parties to this Agreement.

16. Assignment. HIGHLAND may not assign or otherwise transfer its rights under this Agreement without the prior written approval of Seller, which approval shall not be unreasonably withheld or delayed.

17. Memorandum. Any party may require that the others sign a Memorandum of Option to Purchase to be recorded against the Property, evidencing this Agreement and setting forth the legal description of the Property and other pertinent information. In the event this Agreement terminates pursuant to the terms hereof, and if a Memorandum of Option to Purchase has been recorded against the Property, HIGHLAND shall execute a termination of this Agreement, in recordable form, to be recorded against the Property, evidencing the termination of this Agreement and setting forth the legal description of the Property, the document number of the recorded Memorandum of Option to Purchase and other pertinent information.