

**FIRST AMENDED AND RESTATED
LEASE AGREEMENT**

This First Amended and Restated Lease Agreement is between the SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS, a Michigan public school district (the “**Landlord**”) whose address is 2603 Leahy Street, Muskegon Heights, Michigan 49444, and MUSKEGON HEIGHTS PUBLIC SCHOOL ACADEMY SYSTEM, a Michigan public school academy (the “**Tenant**”), whose address is 2441 Sanford Street, Muskegon Heights, Michigan 49444.

1. **Premises; Personal Property.**

1.1 Landlord hereby leases to Tenant the Premises (as hereinafter defined) commonly known as:

- (i) Edgewood Elementary, 3028 Howden Street (with the exception of certain pre-assigned rooms occupied for Head Start and Great Start Readiness Program agreeable between the parties);
- (ii) Muskegon Heights Middle School, 55 East Sherman Street; and
- (iii) Muskegon Heights High School, 2441 Sanford Street.

all located in Muskegon Heights, Michigan. The term “**Premises**” shall mean, on a collective basis: (a) the parcel of real estate described in **Exhibit A**, attached hereto (the “**Land**”), together with all rights, easements and interests appurtenant thereto; (b) all improvements located on the Land, including, but not limited to, the above mentioned buildings (the “**Buildings**”) and all other structures, systems, and improvements owned by Landlord and associated with, and utilized by Landlord in, the ownership and operation of the Buildings, including, without limitation, the parking lots, driveways, sidewalks and landscaped areas.

Landlord also agrees to make space available to Tenant from time to time for Tenant’s use at the Muskegon Heights Administration Building, 2603 Leahy Street. Terms of such use will be agreed to by Landlord and Tenant.

1.2 As additional consideration for Tenant’s agreements hereunder, Landlord hereby authorizes Tenant to use the materials, furniture and equipment listed in attached **Exhibit B** (collectively, the “**Office Furniture and Equipment**”) during the Term solely for the Academy’s operation of a public school. Tenant shall have sixty (60) days from July 9, 2012 (the “**Effective Date**”) to notify Landlord of the Office Furniture and Equipment Tenant intends to use. Tenant’s use of the Office Furniture and Equipment shall comply with any grant or other restrictions (if any) placed on Landlord’s use under applicable law, and Landlord agrees to assist Tenant as necessary to facilitate Tenant’s use of the Office Furniture and Equipment. Any Office Furniture and Equipment not identified for use by Tenant may be used by, stored or disposed of by the Landlord in accordance with applicable law.

2. **Term; Options to Extend; Termination.**

The term of this Lease (the “**Term**”) begins on July 9, 2012 (the “**Commencement Date**”) and ends at the last of the school fiscal year of the District in which the treasurer of the

State of Michigan (the “**State Treasurer**”) certifies to the District and any receivership transition advisory board in place for the District (an “**Advisory Board**”) under the Local Financial Stability and Choice Act, Public Act 436 of 2012, as amended, MCL 141.1451 to 141.1575, or any successor law (“**Act 436**”), that all legacy debt of the District has been paid or otherwise satisfied, including, without limitation, any liabilities of the district relating to an emergency loan from the State of Michigan or amounts owed to the Michigan Public School Employees’ Retirement System (“**MSPERS**”) created under The Public School Employees Retirement Act of 1979, Public Act 300 of 1980, as amended, MCL 38.1301 to 38.1467, unless sooner terminated as provided in this agreement.

3. **Condition of the Premises; Tenant’s Work.**

3.1 Tenant agrees that Tenant is familiar with the condition of the Premises and Tenant hereby accepts the foregoing on an “AS-IS,” “WHERE-IS” basis. Tenant acknowledges that neither Landlord nor any representative of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises for the Permitted Use (as defined in Section 6.1 below). Tenant represents and warrants that Tenant has made its own inspection of the Premises. Landlord shall not be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the Premises in connection with, or in consideration of, this Lease.

3.2 Promptly following the Commencement Date, Tenant, at its sole cost and expense, shall improve, furnish and equip the Premises with furniture, fixtures, equipment and inventory and other systems necessary to utilize the Premises for the Permitted Use (“**Tenant’s Work**”). All of such improving, furnishing and equipping shall be done in a good and workmanlike manner. Tenant shall obtain all necessary governmental approvals and permits for the Tenant’s Work. All improvements of any type or nature supplied or paid for by the Tenant shall be the sole property of Tenant, removable by Tenant upon the expiration or termination of the Term, provided that Tenant shall not remove any such improvements if the removal of same would result in permanent disfiguration to the Premises.

3.3 If Tenant’s Work includes structural improvements to the Buildings, Tenant shall obtain Landlord’s prior written approval of such improvements. Landlord’s approval shall not be unreasonably withheld, conditioned or delayed. As used herein, structural improvements shall mean those improvements to the structural and exterior portions of the Buildings, including any load bearing walls and building facade (including Tenant’s building signage).

3.4 All contractors and subcontractors engaged in the performance of Tenant’s Work shall procure, maintain and, prior to commencement of the work, deliver to Landlord certificates evidencing insurance coverage and limits reasonably acceptable to Landlord when considering the scope of work to be performed and consistent with applicable law concerning school construction. Each insurance policy shall provide that the insurer shall endeavor to provide at least ten (10) days’ prior written notice to Landlord of any material change, cancellation, or non-renewal and shall contain a clause setting forth that such policy shall be primary with respect to any policies maintained by Landlord or the other additional insureds and that any coverage carried by Landlord shall be excess insurance. Evidence of insurance coverage and limits required by Landlord shall in no way limit Tenant’s liabilities and responsibilities under this

Lease. Any and all deductibles applicable to the required coverage shall be borne solely by Tenant.

4. **Base Rent; Net Lease.**

4.1 Beginning on the Commencement Date and each year thereafter, Tenant shall pay to the Landlord base rent (“**Base Rent**”) equal to the sum of Four Dollars (\$4.00).

4.2 This is an absolutely net lease to Landlord. It is the intent of the parties hereto that the Base Rent payable under this Lease shall be an absolutely net return to Landlord and that Tenant shall pay all costs and expenses relating to the ownership and operation of the Premises and the business carried on therein (hereinafter “**Additional Rent**”). Any amount or obligation relating to the Premises that is not expressly declared (under this Lease) to be that of Landlord shall be deemed to be an obligation of Tenant to be performed by Tenant, at Tenant’s expense. Base Rent and Additional Rent are sometimes collectively referred to herein as “**Rent**”.

5. **Taxes; Assessments and Utilities.**

5.1 Prior to the date of this Lease, Landlord has utilized the Premises to provide public educational services (the “**Public Educational Use**”). Landlord represents and warrants that as a result of the Public Educational Use, the Premises is currently exempt from all ad valorem real and personal Premises taxes, all governmental assessments, general or special, (for example, but without limitation, assessments levied under special taxing districts) and municipal service charges (for example, but without limitation, water and sewer service and commodity charges), including government-imposed collection fees and charges levied by a governmental authority in lieu of any of the foregoing (hereinafter collectively referred to as “**Taxes**”). During the Term, Tenant also will utilize the Premises for the Public Educational Use and as a result, it is the shared expectation and desire of Landlord and Tenant that the Premises continue to be exempt from all Taxes. In the event that the lease of the Premises by Landlord and use thereof by Tenant as contemplated by this Lease causes all or any part of the Premises to be subject to Taxes, Landlord and Tenant shall cooperate in good faith with one another as necessary to contest the assessment of Taxes against the Premises, including, without limitation, joining in any proceeding which is necessary to initiate such contest.

5.2 Tenant shall pay as Additional Rent all charges made against the Premises for gas, heat, electricity, water, sewer and all other utilities as and when due during the Term.

6. **Use.**

6.1 The Premises are to be used for the operation of a public school (the “**Permitted Use**”) and for no other purpose without Landlord’s prior written consent.

6.2 Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, “**Laws**”), whether such Laws (a) pertain to either or both of the Premises and Tenant’s use and occupancy thereof; (b) concern or address matters of an environmental nature; (c) require the

making of any structural, unforeseen or extraordinary changes; and (d) involve a change of policy on the part of the body enacting the same, including, in all instances described in (a) through (d), but not limited to, the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*). If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof.

7. **Maintenance and Repairs.**

Tenant acknowledges that, with full awareness of its obligations under this Lease, Tenant has accepted the condition, state of repair and appearance of the Premises. Tenant agrees that, at its sole expense, it shall put, keep and maintain the Premises, including any Alterations (as defined in Section 8 below) and any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto or thereon, in a good and safe condition, repair and appearance (collectively, the "**Required Condition**") and shall make all repairs and replacements necessary therefor. Without limiting the foregoing, Tenant shall promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, replacements and repairs of every kind and nature, and correct any patent or latent defects in the Premises, which may be required to put, keep and maintain the Premises in the Required Condition. Tenant will keep the Premises orderly and free and clear of rubbish. Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature to the Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen, or to maintain the Premises or any part thereof in any way or to correct any patent or latent defect therein. Tenant hereby expressly waives any right to make repairs at the expense of Landlord which may be provided for in any law in effect at the Commencement Date or that may thereafter be enacted. As part of any maintenance and repairs required on the Premises, Landlord may assist Tenant with the identification and selection of contractors. However, any contractors selected for work on the Premises shall be under the supervision of the Tenant or its authorized representatives and not the Landlord. Notwithstanding Landlord's assistance with any construction contracting process, all work performed and the costs associated with maintaining and repairing the Premises under this Lease shall be the sole responsibility of Tenant.

8. **Alterations and Additions.**

Tenant may, from time to time, at its expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "**Alterations**"), provided that Tenant first obtains the written consent of Landlord, which shall not be unreasonably withheld. Before proceeding with any Alterations, Tenant shall (a) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; and (b) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of commercial general liability insurance (providing the same coverages as required in Section 3.4 above) and workers' compensation insurance. Tenant shall cause the

Alterations to be performed in compliance with all applicable permits and Laws and requirements of public authorities. If Landlord provides its consent, then at the time Landlord so consents, Landlord shall also advise Tenant whether or not Landlord shall require that Tenant remove such Alterations at the expiration or termination of this Lease. If Landlord requires Tenant to remove the Alterations, then upon expiration or termination of this Lease such Alterations shall be removed and Tenant shall immediately make all necessary repairs to the Premises in order to return the Premises to the same condition that existed on the Commencement Date (reasonable wear and tear excepted).

9. **Entry by Landlord.**

Landlord and its agents shall have the right to enter the Premises at all reasonable times and upon reasonable prior notice for the purpose of inspecting the same.

10. **Construction Liens.**

Tenant shall pay or cause to be paid all costs for work done by Tenant or caused to be done by Tenant on the Premises of a character which will or may result in liens on Landlord's interest therein and Tenant will keep the Premises free and clear of all construction liens and other liens on account of work done for Tenant or persons claiming under it.

11. **Insurance; Release; Waiver of Subrogation.**

Tenant, at its sole cost and expense, will obtain and maintain at all times during the Term, the insurance policies described in this Section 11:

11.1 (a) Worker's Compensation with statutory limits and Employer's Liability with a One Million Dollar (\$1,000,000) per accident limit for bodily injury or disease; (b) Commercial General Liability insurance, including personal injury and property damage, with contractual liability endorsement, in the amount of One Million Dollars (\$1,000,000) for property damage and One Million Dollars (\$1,000,000) per occurrence for personal injuries or deaths of persons occurring in or about the Premises; (c) Automobile Liability covering all owned, non-owned and hired vehicles with a limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage; and (d) Property insurance against all risks of loss covering the full replacement cost (with no coinsurance penalty provision) of all of Tenant's personal property contained within the Premises.

11.2 Insurance covering the Premises (including any alterations or improvements installed by Tenant) in an amount not less than one hundred percent (100%) of the "replacement cost" thereof insuring against the perils of Fire, Lightning, Extended Coverage Vandalism and Malicious Mischief Liability. Landlord shall be identified as the named insured under this policy of insurance. In the event of a loss under this policy, the insurance proceeds will be payable to Landlord; thereafter, such proceeds will be used for the expense of repairing or rebuilding the Buildings and other improvements which have been damaged or destroyed.

11.3 All policies shall (i) name Landlord and such other persons or entities as Landlord may from time to time designate, as additional insureds (except for the Worker's Compensation policy, which instead shall include waiver of subrogation endorsement in favor of Landlord), (ii)

be issued by an insurance company which is licensed to do business in the State of Michigan, rated A: VII or better by Best's Key Rating Guide, and (iii) provide that said insurance shall not be canceled unless then (10) days prior written notice shall have been given to Landlord. Said policies shall provide primary coverage to Landlord; when any policy issued to Landlord is similar or duplicate in coverage, Landlord's policy shall be excess over Tenant's policies.

11.4 Each party hereby releases the other party with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property (including the Premises) occurring during the Term to the extent to which it is insured under a policy or policies containing a waiver of subrogation or permission to release liability or naming the other party as an additional insured as provided above.

12. **Damage or Condemnation.**

It is understood and agreed that if the Premises is damaged or destroyed in whole or in part by fire or other casualty, or is taken by condemnation during the Term, provided there are sufficient insurance proceeds as determined in Landlord's reasonable discretion, Landlord will repair and restore the same to a good and tenantable condition with reasonable dispatch, and the Rent shall abate until the same shall be restored to a tenantable condition. In case the Premises shall be destroyed (or taken): (a) to the extent of more than 25% of the value thereof, (b) during the last six (6) months of the Term; (c) the restoration will take more than 90 days to complete; or (d) the insurance proceeds or condemnation award are not made available to Landlord, either Tenant or Landlord may at its option terminate the Lease upon written notice to the other. If an Advisory Board is in place for the District under Act 436, any termination of this Lease by the District or repossession of the Premises by the District requires the approval of the Advisory Board.

13. **Assignment and Subletting.**

Tenant shall not assign this Lease or sublease the Premises without prior consent from Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. If an Advisory Board is in place for the District, the District may not withhold its consent without the approval of the Advisory Board.

14. **Default by Tenant.**

14.1 Tenant shall be deemed in default (i) in the event Tenant fails to pay the Rent within ten (10) days after the date such is due, (ii) in the performance of any of the terms and provisions of this Lease, other than the payment of Rent or other charges due hereunder, if it has failed to cure the breach for nonperformance within thirty (30) days after written notice from Landlord; provided, however, if Tenant is diligently pursuing a cure, but the default cannot be cured within thirty (30) days, Tenant shall have such additional time needed to cure the default as is commercially reasonable, or (iii) in the event any proceedings under any bankruptcy law or insolvency act of for the dissolution of Tenant shall be instituted against, or by, Tenant; provided, however, if such proceeding is involuntary, Tenant shall have sixty (60) days to cure. In the event Tenant is in default hereunder beyond any applicable notice and/or cure period, then,

as its sole and exclusive remedy hereunder, Landlord, its certain attorney, representatives and assigns, upon ten (10) days' written notice to Tenant, may terminate this Lease and lawfully re-enter into and repossess the Premises and remove Tenant and any other persons occupying the Premises. If an Advisory Board is in place for the District under Act 436, any termination of this Lease by the District or repossession of the Premises by the District requires the approval of the Advisory Board.

14.2 If Tenant fails to pay any sum of money, other than Rent, required to be paid hereunder or fails to perform any act on its part to be performed hereunder, including without limitation the performance of all covenants pertaining to the condition and repair of the Premises, above, and such failure shall continue for a period of thirty (30) days (or a reasonable period of less than thirty (30) days when life, person or property is in jeopardy) after notice thereof by Landlord, Landlord may but shall not be required to, and without waiving or releasing Tenant from any of Tenant's obligations, make any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs, including without limitation the cost of repair, maintenance or restoration of the Premises if so performed by Landlord hereunder, shall be deemed Additional Rent and, together with interest thereon at the rate set forth in Section 4, from the date of payment by Landlord until the date of repayment by Tenant to Landlord, shall be payable to Landlord within five (5) days after receipt of invoice by Tenant. On default in such payment, Landlord shall have the same remedies as on default in payment of Rent. The rights and remedies granted to Landlord under this Section shall be in addition to, and not in lieu of all other remedies, if any, available to Landlord under this Lease or otherwise, and nothing herein contained shall be construed to limit such other remedies of Landlord with respect to any matters covered herein.

14.3 Each and every of the rights, remedies and benefits provided by this Lease are cumulative, and are not exclusive of any other of said rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law. One or more waivers of any covenant or condition by Landlord will not be construed as a waiver of a further or subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval will not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.

15. **Surrender.**

Upon the expiration or earlier termination of this Lease, Tenant shall promptly quit and surrender to Landlord the Premises broom clean, in good order and condition, ordinary wear and tear, maintenance and repairs to be preformed by Landlord and damage from casualty events excepted, and Tenant shall remove all of its movable furniture and other effects and such alterations, additions and improvements to the extent required by Sections 3 and 8 of this Lease.

16. **Holding Over.**

Should Tenant hold over after the termination of this Lease, Tenant shall become a Tenant from month to month only upon each and all of the terms herein provided and any such holding over shall not constitute an extension of this Lease. Tenant shall not be liable to Landlord for consequential damages as a result of such a hold over.

17. **Signage.**

Tenant shall have the right to install signs identifying within the Premises and outside of the Premises so long as such signs are in accordance with the applicable Laws.

18. **Environmental.**

Tenant shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process hazardous substances as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601(14), hazardous wastes as defined in Section 1004(5) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6903(5) and implementing regulations, hazardous wastes as defined in the Michigan Hazardous Waste Management Act, as amended, MCL §299.501 et. seq., gasoline, petroleum, petroleum products and any substances defined as hazardous or toxic substances in any Environmental Laws, or extremely hazardous substances as defined in the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et. seq. (hereinafter collectively referred to as “**Hazardous Substances**”), except for Permitted Hazardous Substances. The term “**Permitted Hazardous Substances**” shall mean and be limited to those Hazardous Substances necessary for the cleaning and maintenance of the Premises, which satisfy the following requirements: (i) the Hazardous Substances are necessary for the operation of Tenant's business from the Premises, and (ii) the Hazardous Substances are used, handled, stored, maintained and transported in full compliance with all Environmental Laws. Environmental Laws mean any applicable federal, state, county or local statutes, laws, regulations, rules, directives, ordinances, operating memoranda, or codes relating to environmental matters, including by way of illustration and not by way of limitation, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource, Conservation and Recovery Act of 1976, the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, the Federal Hazardous Materials Transportation Act, the Toxic Substance Control Act, the State of Michigan Hazardous Waste Management Act, the State of Michigan Natural Resources and Environmental Protection Act, the State of Michigan Water Pollution Control Act, the State of Michigan Solid Waste Disposal Act, and any amendments or extensions thereof, any replacement laws, statutes and ordinances and any rules, regulations, standards or guidelines issued pursuant to any of the aforesaid and all other applicable environmental standards or requirements. Notwithstanding anything to the contrary in this Lease, Tenant shall have no liability or obligation for the cost of investigating, clean up, removing, remediating, resolving, or otherwise dealing with, any Hazardous Substances located in, on or under the Premises prior to the date that Tenant first occupies the Premises.

19. **Limited Transaction.**

Landlord and Tenant acknowledge that this transaction contemplates only the lease of the Premises. Landlord and Tenant do not intend that Tenant be deemed a successor of Landlord with respect to any liabilities of Landlord to any third party. Tenant shall neither assume nor be liable for any of the debts, liabilities, taxes or obligations of, or claims against, Landlord, or of any other person or entity, of any kind or nature, whether existing now, or at any time thereafter. All of such debts, liabilities, taxes, obligations and claims shall be solely those of Landlord, and

Landlord hereby represents, warrants, covenants and agrees to hold harmless Tenant from any liability (including reasonable attorneys' fees) with respect thereto. The debts, liabilities, taxes, obligations and claims for which Landlord alone is liable shall include, without limitation (a) all payments and benefits to past and/or present employees of Landlord in connection with the business being conducted on or from the Premises as may have accrued through the Commencement Date (including salaries, wages, commissions, bonuses, vacation pay, health and welfare contributions, pensions, profit sharing, severance or termination pay, or any other form of compensation or fringe benefit) and (b) obligations of Landlord with respect to any Hazardous Substances located on, under, over or in the Premises.

20. **Memorandum of Lease.**

At the election of either party, Landlord and Tenant shall execute a memorandum of this Lease to be recorded in the Muskegon County records.

21. **Notices.**

Except as specifically provided otherwise in this Lease, any notices or demands required under this Lease shall be in writing addressed to the party at the address set forth below or such changed address provided in writing by such party and served as follows: (a) by personal service with service being effective upon delivery, or (b) by certified mail, return receipt requested, with service being effective two (2) days after mailing, or (c) by telecopy, facsimile or other form of telecommunication, with service being effective upon the date of transmission with reasonable evidence that the transmission was sent, or (d) by recognized overnight courier service, with service being effective one (1) day after delivery to such courier service.

If to Tenant: Board Secretary
Muskegon Heights Public School Academy System
2441 Sanford St.
Muskegon Heights, MI 49444

If to Landlord: Board Secretary
School District of the City of Muskegon Heights
2603 Leahy Street
Muskegon Heights, MI 49444

22. **Miscellaneous.**

22.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

22.2 Except as herein specifically set forth, all terms, conditions and covenants to be observed and performed by the parties hereto shall be applicable to and binding upon their respective heirs, administrators, executors and assigns. The terms, conditions and covenants hereof shall also be considered to be covenants running with the land.

22.3 Time is of the essence hereof.

22.4 This Lease shall be governed by and construed in accordance with the laws of the State of Michigan without regard to its principles of conflicts of laws.

22.5 This Lease, together with the Exhibits attached hereto, contains the entire agreement of the parties with respect to the use and occupancy of the Premises and may not be amended or modified in any manner except by an instrument in writing signed by both parties. If an Advisory Board is in place for the District, any amendment or modification of this lease requires the approval of the Advisory Board.

22.6 Employer Functions. The Tenant shall function as the public employer of any personnel or staff of the Tenant needed for the exercise of functions or responsibilities of the Tenant under this Lease. Collective bargaining agreements, if any, with any employees of the Tenant shall be the responsibility of the Tenant. The Landlord shall function as the public employer of any personnel or staff of the Landlord needed for the exercise of function or responsibilities of Landlord under this Lease. Collective bargaining agreements, if any, with any employees of the Landlord shall remain the responsibility of the Landlord. The Tenant has the responsibility, authority, and right to manage and direct the functions, responsibilities, or services performed or exercised by the Tenant or any employees or agents of the Tenant. The Landlord has the responsibility, authority, and right to manage and direct the functions, responsibilities, or services performed or exercised by the Landlord or any employees or agents of the Landlord.

Section 22.7. Employment Relationships. Nothing in this Lease creates an employment relationship between the Tenant and any employees of the Landlord. Nothing in this Lease creates an employment relationship between the Landlord and any employees of the Tenant. Nothing in this Lease creates a joint employer relationship between the Tenant and the Landlord.

Section 22.8. Non-Liability. The Landlord, Landlord's Emergency Manager and none Landlord's respective board members, officers, agents and employees shall be liable to Tenant for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, the Landlord, Landlord's Emergency Manager and none of Landlord's respective board members, officers, agents and employees shall be liable to Tenant (a) for any damage caused by other persons in, upon or about the Premises, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Landlord is liable, for consequential or indirect damages purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) for any defect in the Premises; (d) for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Premises, or from the pipes, appliances or plumbing work of the same.

Section 22.9. Tenant Indemnification. Except for the Landlord's gross negligence, sole negligence or willful misconduct, Tenant hereby indemnifies, defends, and holds Landlord, Landlord's Emergency Manager and Landlord's board members, officers, agents and employees (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) arising from or in connection with any or all of: (a) the conduct or management

of the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant's Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant has possession of, or is given access to the Premises; (b) any act, omission or negligence of any or all of Tenant and Tenant's Parties; (c) any accident, injury or damage whatsoever occurring in, at or upon the Premises and caused by any or all of Tenant and Tenant's Parties; (d) any breach by Tenant of any or all of its warranties, representations and covenants under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; (f) the creation or existence of any Hazardous Materials in, at, on or under the Premises, if and to the extent brought to the Premises or caused by Tenant or any party within Tenant's control; and (g) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law (collectively, "**Tenant's Indemnified Matters**"). In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this Section 22.9 shall survive the expiration or termination of this Lease.

22.10. Late Charge. In the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within five (5) days of the date when due, a late charge in an amount equal to five percent (5%) of the then delinquent installment of Base Rent and/or Additional Rent (the "**Late Charge**"; the Late Charge, Base Rent and Additional Rent shall collectively be referred to as "**Rent**"), shall be paid by Tenant to Landlord, at Landlord's address identified above, or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

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Each party is signing this first amended and restated lease agreement on the date stated opposite that party's signature. The date of this first amended and restated lease agreement will be the date this is signed by the last party to sign it (as indicated by the date associated with that party's signature). The agreement is effective October 28, 2016.

The parties acknowledge that Steven M. Schiller as the emergency manager for the District is authorized under Act 436 to act for and in the place and stead of the board of education of the District (the "**District Board**"), the authority of the District Board to exercise power for and on behalf of the District under law is suspended and vested in the Emergency Manager under Act 436, and the Emergency Manager is authorized under Act 436 to exercise solely, for and on behalf of the District, all other authority and responsibilities affecting the District that are prescribed by law to the District Board and superintendent of the District.

Date: October 20, 2016

BOARD OF EDUCATION OF THE
SCHOOL DISTRICT OF THE CITY OF
MUSKEGON HEIGHTS

By:

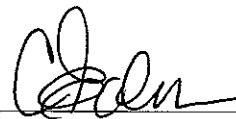


Steven M. Schiller
Emergency Manager

Date: October 24, 2016

MUSKEGON HEIGHTS PUBLIC
SCHOOL ACADEMY SYSTEM

By:



Carmella M. Ealom
Board President

EXHIBIT A
LEGAL DESCRIPTION OF LAND

Legal Description of Edgewood Elementary Property

HT4145 BLK 262 LOTS 19 TO 33 INC MUSKEGON IMPROVEMENT CO'S ANNEX #1

HT4127 BLK 262 LOTS 1, 2, 3, 4, 5, 6 & 7 MUSKEGON IMPROVEMENT CO'S ANNEX #1

Legal Description of Middle School Property

HT2730 ENTIRE BLOCK 170 AND ENTIRE BLOCK 171 AND ABANDONED ALLEY ABUTTING BLK 171
ON S AND VACATED ST BETWEEN BLKS 170& 171

Legal Description of High School Property

HT1717 ENTIRE BLKS 122-124 ORIGINAL PLAT CITY OF MUSKEGON HEIGHTS

EXHIBIT B
PERSONAL PROPERTY

Description of personal property on file at the office of School District of the City of Muskegon Heights and at the office of the Muskegon Heights Public School Academy System.

4837-6225-4138.4