

**LEASE**

THIS LEASE ("Lease" or "Lease Agreement") is made and entered into as of this 26<sup>th</sup> day of March, 2019, by and between the **HILLSBORO CHARTER ACADEMY**, a non-stock, not-for-profit corporation in the Commonwealth of Virginia, having an address of 37110 Charles Town Pike, Purcellville, Virginia 20132 (hereinafter referred to as "Lessee"), and the **LOUDOUN COUNTY SCHOOL BOARD**, a school board and political subdivision of the Commonwealth of Virginia, having its address of 21000 Education Court, Ashburn, Virginia 20148 (hereinafter referred to as "Lessor" or "School Board").

WITNESSETH:

WHEREAS, the Lessor is the governing body of the Loudoun County School Division and is vested with the constitutional authority to supervise the schools in Loudoun County under Article VIII, Section 7, of the Constitution of the Commonwealth of Virginia; and

WHEREAS, the Virginia General Assembly has enacted Article 1.2 (Establishment of Charter Schools) of Chapter 13 of Title 22.1 of the Code of the Commonwealth of Virginia authorizing local school boards to initiate and establish charter schools; and

WHEREAS, the Loudoun County School Board approved a charter school by Lessee which involves the conversion of the Hillsboro Elementary School to the Hillsboro Charter Academy charter school, pursuant to which the Lessor and Lessee entered into that certain Charter School Agreement between the Loudoun County School Board and Hillsboro Charter Academy, dated June 23, 2015, and which was renewed on March 26, 2019 (the "Charter School Agreement"); and

WHEREAS, subject to and in accordance with the terms and provisions hereinafter set forth, Lessor desires to rent, lease, and let unto Lessee the exclusive use of the land, buildings and fixtures and improvements thereon subject to the easements, rights, and appurtenances thereunto belonging, except for Town invitees to access the Old Stone School, formerly housing the Hillsboro Elementary School for use as the conversion charter school approved by the School Board as the Hillsboro Charter Academy by separate action of the School Board; and

WHEREAS, pursuant to this Lease, Lessee intends to also lease certain furnishings, equipment, computers, phones and such other items at the rents stated herein.

NOW, THEREFORE, for one dollar (\$1.00) and good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and in and for the covenants, agreements, representations and warranties hereinafter set forth, Lessor and Lessee hereby mutually covenant, agree, represent and warrant as follows:

1. **The Property:** Lessor, for and in consideration of the covenants and conditions herein contained to be kept, performed and observed by Lessee, does lease to Lessee, and Lessee does lease, rent and accept from Lessor the Real Property including the land, buildings and fixtures and improvements thereon, subject to the easements, rights, and appurtenances thereunto

belonging along with and subject to all applicable School Board policies and regulations, formerly housing the Hillsboro Elementary School, and known as 37110 Charles Town Pike, located in the Town of Hillsboro and identified by parcel identification number 482-16-0095-000 and containing 5 acres more or less (hereinafter referred to as “**the Real Property**”) (except for Town invitees to access the Old Stone School) and all of the furnishings, equipment, computers, Promethean Boards, phones and such other items hereinafter referred to as “**the Personal Property**”, and together with the Real Property, “**the Property**”) for the rents stated herein. The technology hardware such as circuit boards, building cabling, switches and such shall be part of a separate technology services agreement between the parties and will remain the property of the School Board except for such items that are replaced at HCA’s expense. The parties contemplate a separate technology service firm fixed price contract.

The Real Property and Personal Property shall be used by and for the Hillsboro Charter Academy charter school in accordance with School Board Policy §6310 (Facility Use) as may be amended or superseded. For clarity, the Real Property and Personal Property may be used for the Extracurricular Activities Plan, if any, described in the Charter School Renewal Agreement provided the proper licensing is obtained if required for the use(s) in question.

The parties acknowledge and agree that a portion of the land under the playground is not part of the Real Property and belongs to the Town of Hillsboro. The parties will collaborate to find a solution or to acquire the consent of the Town in the event the Town declines to continue to permit the use of the playground. The parties further acknowledge that the driveway, including the circular drive, are on the school’s property.

The Lessor represents that it knows of no violation of the existing certificate of occupancy for the Property, and knows of no violations of local zoning laws or any other applicable laws, statutes, ordinances, orders, regulations, rules and requirements now or hereafter in effect of the federal, state, county, municipal or other governmental authorities (collectively, “**Laws**”).

2. **Term:** The term of this agreement shall be for an initial term of five years commencing on July 1, 2019 (“**Commencement Date**”), through June 30, 2024. The initial term may be renewed, at the option of the Lessee, for one successive five-year extension term for the purpose of operating a charter school, under the terms and conditions stated herein and provided the Lessee is not in material breach of this Lease or of the Charter School Agreement granted to Lessee, and provided that the Lessee gives written notice of its election to renew this Lease not less than ninety (90) days prior to the expiration of the then-current term. Notwithstanding the foregoing provision, if the Charter School Agreement is not renewed, is revoked or is otherwise terminated pursuant to its terms, then this Lease and any renewals shall also terminate simultaneously upon such non-renewal, revocation or termination.

3. **Real and Personal Property:** Except as otherwise provided in this Lease, Lessor leases the Real and Personal Property in its “As-Is, Where-Is” condition and without any warranties such that all warranties other than those specifically made herein are disclaimed including, but not limited to, the warranty of fitness for a particular purpose and the implied warranty of merchantability.

Lessee shall not transfer or dispose of a material amount of Personal Property without the prior consent of the Lessor. Lessee may dispose of broken beyond repair furnishings, equipment and supplies having no usefulness. If, at any time, any Personal Property is no longer needed, the Lessee will promptly notify the Lessor who will remove it. Moreover, the Lessee acknowledges the Lessee has inspected the Real and Personal Property or had professional consultants acting on the Lessee's behalf inspect the Real and Personal Property and that the Real and Personal Property is acceptable to the Lessee, except as otherwise provided herein, and subject to Lessor's ongoing obligations under this Lease.

The rent for the Personal Property being leased shall be \$1.00 per year which shall be paid in one annual deduction from any amounts owed to the Lessee by the Lessor under the Charter School Agreement between the parties on July 1, 2019 and each July 1<sup>st</sup> thereafter during the term of this Lease Agreement.

4. Lessee's Reasonable Care: Lessee shall use reasonable care to avoid damaging existing buildings, equipment, existing technology and vegetation on or in the Real Property and similarly shall use reasonable care regarding the Personal Property. Lessee shall return all Real Property and Personal Property to the Lessor at the expiration or termination of this Agreement in as good a condition as when first leased by Lessee (normal wear and tear, and loss or damage due to casualty or condemnation, and any other condition for which Lessor is responsible under this Lease, excepted). Lessee shall immediately report to Lessor any Real or Personal Property defects, damages, losses or thefts valued at \$1,000 or more.

5. Changes and Improvement:

(a) It is understood and agreed between the parties that if Lessee desires, solely at its expense, any physical changes, renovations or alterations to the Real Property that have a reasonably likelihood of triggering provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. Section 1201, et seq. ("ADA") or that materially affect the building structure, the building systems or the exterior of the Real Property, such as, but not limited to, paving of new areas, excavations, new roads, new structures or building additions, the Lessee must have prior written approval from the Lessor, which such approval shall not be unreasonably withheld, and the work for the same must be periodically inspected by the Lessor or designee at Lessor's cost; provided, however, that Lessor's prior written consent shall not be required with respect to the installation of cosmetic alterations (such as painting or carpeting), but Lessee and Lessor will confer in advance. The Lessee will be responsible for such expenses including any costs associated with complying with the ADA solely by reason of Lessee's physical changes, renovations or alterations to the Real Property. Lessor represents it believes, but has not conducted an audit or assessment, that the Real Property is in compliance with the ADA as of the date hereof, and covenants and agrees to be responsible for all legally mandated costs and expenses of compliance of the Real Property with the ADA, except as set forth in the immediately preceding sentence.

- (b) Without limitation of the foregoing, if Lessor requires or makes any physical changes, renovations or alterations to the Real Property, or if any changes, renovations or alterations are required be made pursuant to any law, statute, ordinance, order, regulation, rule or requirement now or hereafter in effect of the federal, state, county, municipal or other governmental authorities, Lessor, at its sole cost and expense, shall be responsible for such changes, renovations or alterations, including any costs associated with complying with the ADA but shall not be responsible for consequential, special, punitive or other damages to Lessee.
- (c) In the event that any changes, renovations or alterations are made to the land under the school playground, which is partially located on the Real Property and partially located on land owned by the Town of Hillsboro, the parties shall obtain prior written approval from the Town of Hillsboro, unless the Lessor has obtained an easement to make such changes, renovations or alterations without the prior written approval of the Town of Hillsboro.

6. Maintenance, Repair and Upkeep:

- (a) Except as otherwise set forth in this Section 6, Lessee shall be responsible, at its sole cost and expense, for preventive maintenance, general cleanliness and upkeep as well as non-capital repairs to the Real Property, including, but not limited to, the roof, windows, glass, plate glass, doors, special fronts, entries, the interior surfaces of exterior walls, interior walls, floors, heating and air conditioning systems, dock boards, truck doors, dock bumpers, plumbing fixtures and equipment, and electrical components. Lessee shall also be responsible for the grounds including:
  - (1) landscaping and lawn care;
  - (2) snow removal; and
  - (3) illuminating and maintaining the parking area, walks and driveways, including portions of the parking area, walks and driveways for which Lessor permits use by Town invitees at the Old Stone School.
- (b) Subject to paragraph 6(d) below, Lessee shall, at its sole cost and expense, keep the Real Property and Personal Property during the term of this Lease in as good an operating condition as of the Commencement Date, normal wear and tear, and loss or damage due to casualty or condemnation, and any other condition for which Lessor is responsible under this Lease, excepted. Lessee shall keep the Real Property free from dirt, rubbish, waste and debris at all times. Lessee shall keep the Real Property sufficiently heated to avoid the bursting of pipes or other damage to the Real and Personal Property. Lessee shall not overload the floors in the

Real Property or exceed the load-bearing capacity of the floors in the building. Lessee shall not damage the Real and Personal Property or disturb the integrity and support provided by any wall. Lessee shall, at Lessee's expense, promptly repair any damage to the Real and Personal Property caused by Lessee or any agent, officer, employee, contractor, licensee or invitee of Lessee. The Parties may choose to enter into a reimbursement agreement allowing the Lessor to continue maintenance of certain items, while reimbursed by the Lessee. Lessee shall be responsible for the following at its sole cost and expense and shall transfer, if not already done, the billing accounts with the respective providers into its name unless agreed otherwise in writing:

- (1) cleaning and janitor's services, including removal of rubbish from the building and furnishing of washroom and cleaning supplies in the building;
- (2) providing, installing and replacing all necessary light bulbs and tubes in the building;
- (3) the following utilities: water, gas, heat, air conditioning, telephone service and electricity; , sewer and refuse disposal;
- (4) life safety systems, including fire alarm systems (including but not limited to fire alarm equipment, fire alarm hook up, fire alarm inspections, fire alarm maintenance and service);
- (5) security systems (including but not limited to camera equipment, DVR's, AiPhone, card readers, security systems maintenance and service);
- (6) communication systems, including but not limited to alert radios, portable radios, and related communication maintenance and service;
- (7) all photocopying machine leases and related service agreements;
- (8) signage;
- (9) insurance coverage to the extent required under below, including general liability insurance.

The parties contemplate entering into a separate technology services agreement for the provision of technology services and contemplate a separate support services contract for the provision of support services including refuse collection and disposal and may also include card access, AiPhone, surveillance camera and alarm maintenance if so desired by the parties.

HCA will reimburse LCPS for its actual costs (including governmental fees) for maintaining and testing the well water at the HCA site. A facility services support agreement between the parties will include this matter.

- (c) Lessee shall, at its sole cost and expense, cause to be performed preventive maintenance on all equipment including all mechanical, plumbing, electrical and HVAC systems as recommended by the manufacturer. The

School Board shall provide the preventative maintenance schedules for the equipment on the Property to the Lessee by October 1<sup>st</sup> of each year and at the School Board's request, Lessee shall provide written proof that the maintenance was performed. The schedule of preventative maintenance for the 2019-2020 and subsequent school years will be provided when available.

- (d) If an unexpected repair or replacement is necessitated by a system failure or other failure, break-down, or defect, including but not limited to heating and air conditioning systems, electrical systems, plumbing systems, mechanical systems, and the roof, that directly impact the health, habitability, or safety of building occupants, the parties agree to negotiate in good faith regarding the needed repair or replacement and with regards to the allocation of costs between them. In an emergency, the School Board will take reasonable immediate efforts to stabilize the situation and insure the safety of students and staff in place or elsewhere in advance of the negotiation mentioned in the prior sentence. Lessor shall not be responsible for the cost of any repairs or replacement to the extent that such repair or replacement arises by reason of Lessee's failure to provide the preventive maintenance required under this Lease or by reason of Lessee's negligence or willful misconduct.
- (e) **Capital Investment.** The School Board agrees to annually consider the school building for inclusion in the Capital Asset Preservation Program but it is not obligated to include any specific actions or improvements and will balance the needs of this school building against the needs of all other LCPS facilities and available funds.

7. **Insurance:** Lessee and Lessor shall each at their own expense maintain throughout the term of the lease Commercial General Liability Insurance policies through insurance carriers licensed to do business in the Commonwealth of Virginia and acceptable to the other party. While avoiding duplication of coverage, such Commercial General Liability policies will provide insurance coverages subject to the terms, conditions, and exclusions of the policies and shall protect the parties from liability, claims and damages arising from occupancy of, use of, construction on, and operation of improvements and betterments on the leased premises. Such insurance is to be in limits of not less than the amount of Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence. Lessee's liability insurance policy(ies) shall name Lessor as an additional insured and loss payee.

Lessee and Lessor shall each at their own expense maintain replacement value Business Property Insurance for special perils to protect each party's interest in their owned or leased property located on the leased premises. Lessee shall provide replacement cost insurance coverage for any leased Personal Property, and for any construction, improvements, or betterments made by Lessee to the property. Lessor shall provide replacement cost insurance coverage for all owned buildings and amenities situated on the leased premises.

The parties shall each provide to the other certificates of insurance annually evincing the continued existence of coverage required by the lease. No provisions in the lease shall constitute a waiver of sovereign immunity.

8. Improvements: Improvements, if any, made upon the Property by Lessee (other than unattached, movable trade fixtures) shall become a part thereof and shall become the property of the Lessor upon termination of this Lease.

9. Damage or Destruction of School Building:

- (a) If any portion of the Real Property is damaged or destroyed by fire or other casualty, the parties will meet and confer, consider the available insurance proceeds, discuss the situation as it is then-existing, and work together to try to develop a plan to repair such damage if feasible, and, if needed, a reasonable temporary or permanent housing alternative for the Lessee's charter school.
- (b) Notwithstanding the foregoing, if the building is damaged or destroyed by fire or other casualty, in whole or in part, so as to render it unusable as a school, unfit for occupancy or otherwise uninhabitable in substantial part or in its entirety for more than [three consecutive months], as determined in the School Board's sole discretion or by the Superintendent under Section 22.1-136 of the Code of Virginia at any time without regard to the three consecutive months, then either party may terminate this Lease upon thirty (30) days' prior written notice with no further obligation upon either party except for any amounts owed by the Lessee except as the parties may agree in writing. This provision supersedes and takes precedence over any other conflicting provision.

10. Use as a School: The Lessee shall comply with all laws and regulations regarding the use of the Real Property as a public school including, but not limited to, compliance with radon testing and filing requirements of Section 22.1-138 of the Code of Virginia and lead water testing requirements. The obligations of the Division Superintendent under Section 22.1-136 (fitness of occupancy) of the Code of Virginia shall not be impaired or impeded by any provision contained in this Lease.

11. Assignment and Sublease: The Lessee shall not transfer, assign, sublease or otherwise convey its leasehold interest without the written consent of the Lessor, provided that Lessee shall be permitted, without Lessor's consent, to enter into subleases or other agreements providing use of the Property when not needed for school purposes pursuant to the terms and conditions set forth in School Board Policy §6310 (Facility Use). Lessor expressly approves of the proposed uses described in the Extracurricular Activities Plan, if any, in the Charter School Agreement and shall be deemed to have given its approval to any subleases or agreements deemed necessary by Lessee, in its sole discretion, to implement the Extracurricular Activities Plan, provided that the Lessee has demonstrated (a) that it has all of the necessary licenses or permits, or (b) that such licenses or permits are not required for the use(s) in question.

12. **Law:** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to the principles of conflicts of laws. Lessee shall not file any lawsuit or action of any kind without first having presented its claim or grievance in writing to the Lessor which shall have ninety (90) days from the date received to render a decision. Lessee shall exhaust this process prior to the filing of any lawsuit whatsoever. Any and all legal actions, claims or lawsuits shall be filed exclusively in the Circuit Court of Loudoun County, Virginia.

13. **No Waiver of Breach:** No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

14. **Hold-Over:** Holding over past the expiration of the then-current term shall be deemed a day-to-day tenancy at sufferance for which Lessor shall be entitled to possession upon demand with one day's notice. In no event shall Lessee be liable for any consequential, special or punitive damages incurred by Lessor in connection with any such holding over.

15. **Default:** Any of the following events constitute default by the Lessee:

- (a) Non-performance of any term, covenant, or condition of this Lease Agreement by the Lessee that continues for ten (10) days after written notice from Lessor to cure any such non-performance (provided, that if such non-performance is not reasonably capable of being cured within such ten (10) day period, then provided that Lessee has commenced to cure such non-performance during such ten (10) day period, Lessee shall not be in default so long as Lessee continues to diligently pursue cure of such non-performance but in no event shall the cure period exceed (30) thirty days from the Cure Notice to the Lessee unless otherwise agreed by the Parties; or
- (b) Any act of insolvency by the Lessee or the filing of any petition under any bankruptcy, reorganization, insolvency, receivership, or moratorium law, or any law for the relief of, or relating to debtors; or
- (c) The filing of any involuntary petition under any bankruptcy statute against the Lessee or the appointment of any receiver or trustee or to take possession of the property of the Lessee; or
- (d) Failure of the Lessee to pay a third party(ies) resulting in any claim(s) against the Lessor or the filing of liens on public funds, provided that Lessee shall have ten (10) days after written notice from Lessor to cure any such failure; or



- (e) Failure to maintain the required insurance and such failure continues for five (5) days after written notice from Lessor to cure any such failure; or
- (f) Any material breach, default or the revocation of the charter school contract approved by the Loudoun County School Board for the Hillsboro Charter Academy School, beyond any applicable notice and cure period under such contract.

16. Mechanic's Liens:

- (a) Lessee covenants that it shall not (and has no authority to) create or allow any encumbrance against the Real and/or Personal Property or any part of any thereof or of Lessor's interest therein.
- (b) Lessee covenants that it shall not suffer or permit to be created, or to remain, any lien or claim thereof (arising out of any work done or services, material, equipment or supplies furnished for or at the request of Lessee or by or for any contractor or subcontractor of Lessee, other than such furnished by Lessor) which is or may become a lien upon the Real and/or Personal Property or any part of any thereof or the income therefrom or any fixture, equipment or similar property therein.

17. Signs: Lessee shall be permitted to place such signs and logos on the Real Property as may be permitted by applicable governmental rules, regulating ordinances or other statutes and any matter of public record. Lessor hereby approves the current logo and location of signage. Any material changes to the proposed logo and location of signage on the building shall require the written approval of Lessor, such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall be solely responsible for all costs and expenses associated with the erection and removal of any of Lessee's signs on the Real Property and shall be obligated to obtain and provide to Lessor any and all necessary permits and approvals prior to the placement or erection of such signage. Lessee shall continue to fly a U.S. Flag on the Real Property.

18. Locks: No locks shall be changed without the prior written consent of the Lessor.

19. Indemnification: The parties agree that Section 37.3 of the Charter School Renewal Agreement is hereby incorporated by reference and shall be made a part of this Lease hereof, and such provisions shall survive the expiration or termination of this Lease.

20. Waiver of Jury Trial: It is mutually agreed by the parties that they hereby waive trial by jury in any action, proceeding or counter-claim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of the parties as Lessor and Lessee, the Lessee's use or occupancy of the Real and/or Personal Property or any claim of injury or damage.

21. No Recordation: This Lease shall not be recorded or any memorandum thereof without the prior written consent of the other party.

22. Merger, Conflicts and Amendments: This Lease merges all understandings, representation and agreements between the parties hereto with respect to this Lease and the leasing of the Real and Personal Property except as may be stated in the Charter School Agreement. In the event of any conflict between this Lease and the Charter School Agreement, the Charter School Agreement shall control. This Lease shall not be changed or modified in any manner except by an instrument in writing executed by the parties hereto.

23. Law: This Lease shall be construed and interpreted under the laws of the Commonwealth of Virginia without regard to conflicts of laws statutes. Any claim, proceeding, lawsuit or action shall be brought exclusively in the state courts of Loudoun County, Virginia.

24. Interpretation: This Lease shall be construed fairly as to both parties and not in favor of or against either party, regardless of which party prepared the Lease or any particular provision herein.

25. Easements: Lessor reserves the right to grant easements over the Property notwithstanding this Lease if deemed necessary by the School Board in its sole discretion, provided that any such easements shall not interfere with Lessee's use of the Property as contemplated by this Lease.

26. Environmental Matters. Lessor shall be responsible, at its sole cost and expense, for compliance with any government orders for the correction, abatement or prevention of any Hazardous Materials (as defined below) at, on, under or emanating from the Property, or any violation of Law at, on or under the Property, except to the extent that such correction, abatement or prevention arises solely from Lessee's use, operation or maintenance of the Property during the term of this Lease, and is not attributable to a condition that existed at the Property prior to the commencement of this Lease or to any condition that was cause by Lessor or any other past, present or future tenant, user or occupant of the Property, whether prior to, on or after the commencement of this Lease. As used in this Lease, the term "**Hazardous Materials**" means any hazardous, dangerous or toxic substance, material or waste or any pollutant, contaminant or chemical that is or becomes regulated by any federal, state or local governmental authority, including, without limitation, any material, substance, pollutant or contaminant that is (i) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1317), (ii) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (iv) petroleum and any petroleum by-products, and (v) asbestos.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have executed this Lease as the date first set forth above.

SO AGREED:

Approved as to form:

Stephen L. DeVita  
Stephen L. DeVita, Division Counsel

ACCEPTED AND AGREED BY AND FOR THE  
LOUDOUN COUNTY SCHOOL BOARD

By: Jeffrey E. Morse  
Name: Jeffrey E. Morse  
Title: Chairman  
Date: 3/26/19

SO AGREED:

ACCEPTED AND AGREED BY AND FOR THE  
HILLSBORO CHARTER ACADEMY CHARTER  
SCHOOL

By: Ben Lenhart (SEAL)  
Name: Ben Lenhart  
Title: President  
Date: 5-29-19