

ORIGINAL

IN THE SUPREME COURT OF OHIO

Hope Academy Broadway Campus, <i>et al.</i> ,	:	Case No. 13-2050
	:	
Appellants,	:	
	:	On Appeal from the Franklin County
vs.	:	Court of Appeals, Tenth Appellant
	:	District
White Hat Management, LLC, <i>et al.</i> ,	:	
	:	Court of Appeals Case No. 12AP-496
Appellees.	:	

MOTION TO SUPPLEMENT THE RECORD

Appellees seek leave of Court to supplement the record by including the Affidavit of Thomas R. Barrett tendered herein. The grounds supporting their motion are set forth in the annexed memorandum.

Respectfully Submitted,

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FILED
 JUL 29 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT OF MOTION

This appeal involves ten Appellants and twelve Appellees. Even though there are twenty-two separate legal entities, there are numerous transactions and events in the history of these proceedings that involve substantively identical contracts. These include Management Agreements entered into in 2005 and Interim Management Agreements entered into in 2012.

Substantively identical Interim Management Agreements were entered into by five Appellants and five Appellees shortly after the Notice of Appeal was filed in the trial court on June 11, 2012. A copy of the Interim Management Agreement entered into between Hope Academy Lincoln Park Campus and HA Lincoln Park, LLC was filed with the Tenth District Court of Appeals by Appellants on October 9, 2012. (R. 20890-Q62-63 and T33-51).

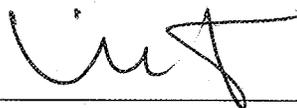
Thereafter, briefing in the Court of Appeals raised the issue of mootness. Arguments were based upon the Interim Management Agreements executed by five of the Appellants and the conduct of the five other Appellants which did not execute the Interim Management Agreements. Although the parties are fully aware of which executed the Interim Management Agreements and which did not, the briefing below did not specifically identify the contractual status of all twenty-two parties. In affirming the trial Court's judgment the Court of Appeals did not address the mootness issue.

Appellees believe that mootness remains an issue and intend to address it in the Merit Brief. In order to specifically identify the parties and their individual contractual relationships, Appellees tender to the Court the Affidavit of Thomas R. Barrett ("Affidavit"). The Affidavit identifies which of the Appellants are parties to the Interim Management Agreements entered into in 2012, and which remain parties to the Management Agreements entered into in 2005. The Affidavit mirrors the contractual relationships described in Appellees' Court of Appeals Brief

(pp. 33-35) and adds no new legal arguments. (See Appellees' Brief, November 20, 2012, R. 0A008 p. 0026-28). It does specifically identify by name each of the Appellants which are parties to the substantively identical Interim Management Agreements of 2012 and which remain parties to the substantively identical Management Agreements of 2005.

Appellees seek leave to have the Affidavit added as a supplement to the record so that the Court will have an accurate depiction of the relationships between the parties in its consideration of this appeal.

Respectfully Submitted,



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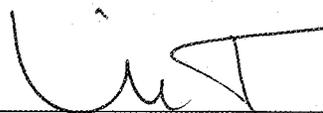
CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served via U.S. mail this 29th day of July, 2014, upon:

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Gregory P. Mathews
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Columbus, OH 43215

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Counsel for Ohio Department of Education



Kevin R. McDermott

IN THE SUPREME COURT OF OHIO

Hope Academy Broadway Campus, et al.,	:	
	:	Case No. 13-2050
Appellants,	:	
	:	On Appeal from the Franklin County
vs.	:	Court of Appeals, Tenth Appellant
	:	District
White Hat Management, LLC, et al.,	:	
	:	Court of Appeals Case No. 12AP-496
Appellees.	:	

AFFIDAVIT

STATE OF OHIO)
) SS
COUNTY OF SUMMIT)

Thomas M. Barrett, being first duly sworn, deposes and sayeth as follows:

1. I am the President and CEO of HA Lincoln Park, LLC.
2. I have personal knowledge of the matter set forth herein.
3. On or about July 1, 2012, HA Lincoln Park, LLC and Hope Academy Lincoln Park Campus n/k/a Lincoln Prep entered into an Interim Management Agreement. A true copy of the Interim Management Agreement was previously submitted to the Franklin County Court of Appeals on or about October 9, 2012, as part of the Appendix. (See Exhibit A).
4. On or about July 1, 2012, Hope Academy Chapelside Campus, n/k/a Green Inspiration Academy, Hope Academy University Campus, n/k/a Middlebury, Hope Academy Brown Street Campus, n/k/a Colonial Prep, and Hope Academy West, n/k/a West Prep entered into substantially identical Interim Management Agreement that mirror the terms of the attached Exhibit A.

5. The remaining Appellants did not enter into Interim Management Agreements. Two are no longer operating (Hope Academy Broadway Campus and Hope Academy Cathedral Campus). Three others are operating with another management company (Life Skills Center of Akron n/k/a Towpath, Life Skills Center of Cleveland n/k/a Invictus, and Life Skills Center of Lake Erie n/k/a Lake Erie International). None of these remaining Appellants invoked the provisions of the Management Agreements executed in 2005 regarding the assignment of leases or the purchase of property at the time the Management Agreements expired.

Further, Affiant sayeth naught.


Thomas M. Barrett

Sworn to and subscribed before me on this 25th day of July, 2014.



Coleene McDevitt
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 11/22/2015

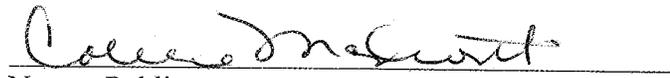
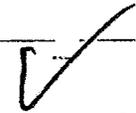

Notary Public

EXHIBIT A

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ORIGINAL

**IN THE TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY, OHIO**

HOPE ACADEMY BROADWAY	:	
CAMPUS, <i>et al.</i> ,	:	
	:	Case No. 12APE-05-496
Appellants,	:	
	:	REGULAR CALENDAR
v.	:	
	:	Appeal from Franklin County
WHITE HAT MANAGEMENT, LLC, <i>et al.</i> ,	:	Common Pleas Case No.
	:	10 CVH-05-7423
Appellees.	:	

APPENDIX OF APPELLANTS HOPE ACADEMY BROADWAY CAMPUS, HOPE ACADEMY CHAPELSIDE CAMPUS, HOPE ACADEMY LINCOLN PARK CAMPUS, HOPE ACADEMY CATHEDRAL CAMPUS, HOPE ACADEMY UNIVERSITY CAMPUS, HOPE ACADEMY BROWN STREET CAMPUS, LIFE SKILLS CENTER OF CLEVELAND, LIFE SKILLS CENTER OF AKRON, HOPE ACADEMY WEST CAMPUS, AND LIFESKILLS CENTER LAKE ERIE

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FILED
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FRANKLIN CO. OHIO
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CLERK OF COURTS

APPENDIX
TABLE OF CONTENTS

1. Decision and Entry, Franklin County Court of Common Pleas, filed May 11, 2012
2. Motion for Summary Judgment and Table of Contents
3. Exhibit A-N of Motion for Summary Judgment
4. Interim Management Agreement
5. R.C. 3314.04
6. R.C. 3313.41
7. R.C. 3314.01(B)

INTERIM MANAGEMENT AGREEMENT

THIS INTERIM MANAGEMENT AGREEMENT ("Agreement") is entered into effective as of this 1st day of July, 2012, by and between HA Lincoln Park, LLC, a Nevada limited liability company (the "Operator") and Hope Academy Lincoln Park Campus, an Ohio not-for-profit corporation (the "Corporation"), which is governed by its Directors (the "The Governing Authority").

WITNESSETH:

WHEREAS, the Corporation is organized as an Ohio nonprofit corporation under Chapter 1702 of the Ohio Revised Code and the Corporation has entered into a Community School Contract effective July 1, 2012 (the "School Contract") with St. Aloysius Orphanage (the "Sponsor"), pursuant to which the Corporation is authorized to operate a community school under Chapter 3314 of the Ohio Revised Code (the "School").

WHEREAS, the Operator has developed an educational model which it utilizes to manage and operate a unique group of schools as more fully described in Exhibit A attached hereto and incorporated herein by reference (together with any future improvements, alterations or refinements thereto, the "Model"), and provides management services to community or charter schools throughout the State of Ohio and in other states, including educational, managerial, financial and other consulting services.

WHEREAS, the Corporation desires the Operator to provide such requisite management, educational, financial, technology and other consulting services necessary to operate a community school all in accordance with the School Contract; and

WHEREAS, the Operator desires to provide the aforementioned services and other expertise referenced herein.

WHEREAS, Except as provided in paragraph 31 in this Agreement, the Parties specifically intend that this Agreement will replace and be a substitute for both the Management Agreement entered into by the Parties effective November 1, 2005 and the Standstill Agreements in the Case.

NOW, THEREFORE, in consideration of their mutual promises and covenants, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Term.** This Agreement shall have a term of one (1) year, commencing on July 1, 2012, and ending on June 30, 2013, unless sooner terminated as provided for herein.

2. **The School Contract.** The Corporation shall be responsible for its own corporate governance and operation in accordance with applicable law. In order to assist the Corporation in carrying out the terms of the School Contract, the Corporation hereby contracts with the Operator to provide the Model and its related curriculum as approved by the Governing Authority as a condition precedent to this Agreement and as attached hereto as Exhibit A and any

and all functions, equipment, technology, supplies, facilities, services and labor relating to the provision of education, management and day-to-day operation of the School as provided for herein.

In providing services required by this Agreement, the Operator, Corporation and Governing Authority must observe and comply with all applicable federal, state and local law, statutes and regulations. The Operator shall be responsible and accountable to the Governing Authority for the administration, operation and performance of the School in accordance with the School Contract, except for the Corporation's accounting, financial reporting and audit functions which will be performed by the designated fiscal officer hired by the Corporation at its own expense. The Corporation shall not amend the School Contract in a manner which would materially affect the responsibilities and obligations between the Operator and the Corporation during the term of this Agreement without the Operator's approval.

3. Management Services. The School further contracts with the Operator, to the extent permitted by law, to provide the functions outlined below relating to the provision of educational services and the operation of the School. The Operator will provide the School the following services:

(a) **Academic Progress and Reporting.** The Operator shall report academic progress consistent with the provisions of the School Contract, monthly, to the Governing Authority at its regularly scheduled meetings.

(b) **Curriculum Development.**

(i) The Operator shall ensure that its curriculum is aligned with the state standards applicable to the School, and shall monitor and continuously assess the curriculum and standardized testing procedures. The Operator and the Corporation agree that the curriculum attached hereto satisfies the state standard and meets the Corporation's obligations under the School Contract.

(ii) The Operator shall evaluate and assess the School's accountability system as needed or upon reasonable request of the Corporation after notice to the Sponsor. The Operator may from time to time redefine, modify and/or replace curriculum models and testing procedures, so long as the newly defined or replaced curriculum models and testing procedures satisfy the School Contract and are approved by the Governing Authority.

(iii) The Operator shall, as needed or upon reasonable request of the Corporation after notice to the Sponsor, identify its gifted education and special education plans to the Governing Authority consistent with the provisions of the School Contract and shall report to the Governing Authority at regular meetings and seek the Governing Authority's approval of any material changes or modifications to the programs.

(c) **Professional Development for School Administrators and Teachers.**

(i) The Operator shall establish and maintain on a continuous basis such teacher development programs to define teacher qualifications and performance requirements as the Operator and the Corporation deem appropriate. The Operator shall similarly implement, with the prior approval of the Governing Authority, a professional development program aimed at improving the effectiveness of each teacher's ability to help students' learning, in general.

(ii) The Operator shall coordinate ongoing teacher training with respect to technology; and shall provide training in its methods, curriculum, and programs on a regular and continuous basis.

(iii) Non-instructional personnel shall receive such training as the Operator determines to be reasonably necessary from time to time.

(d) School Facility and Facility Management.

(i) The Operator will provide a facility for the School. The School will be initially be located at 3181 W. 41st Street, Cleveland, Ohio 44109 (the "School Facility"). During the term of this Agreement, the School Facility shall be used only to carry out the terms and conditions of the School Contract, educational purposes not inconsistent with the School Contract and other uses which do not violate the School Contract, do not conflict with applicable laws, and do not conflict or interfere with the operation of the School or the safety and security of the School and its students. Notwithstanding any language contained in this Agreement to the contrary, the Corporation specifically disclaims any possessory interest in the School Facility beyond the term of this Agreement.

(ii) The Operator shall be responsible for maintenance, custodial and security services for the School Facility.

(iii) The Operator shall be responsible for making reasonable improvements to the School Facility as needed for the School's operation, safety, health and welfare of the School's students. All upkeep and improvements shall be made in accordance with applicable law and reasonable Sponsor mandates. Said improvements shall be made in a timely and reasonable manner.

(iv) Upon the recommendation of the Operator and subject to approval by the Governing Authority, which approval shall not be unreasonably withheld, the Operator may increase or decrease the size of the School Facility or move the School Facility to another location by leasing or purchasing a suitable facility for the School's operations as defined by State and Federal law.

(v) In the event the School Facility or any portion thereof is determined to be or becomes unsafe or otherwise unsuitable for the School's operations to the extent that use thereof must cease immediately, the Operator

may relocate some or all of the School operations to another suitable location on a temporary or permanent basis, as required by the circumstances, without first obtaining the Governing Authority's approval under (iv) above. The Operator shall notify the Governing Authority and the Sponsor immediately in the event of any such relocation and shall, in a timely fashion, provide the Governing Authority and the Sponsor with reasonable proof that the alternate location is a suitable facility for the School's operations as defined in the School Contract.

(e) Equipment, Technology, and Operational Support Services.

(i) The Corporation shall make all furniture, technology including but not limited to technical infrastructure, hardware and software, equipment, and other personal property currently owned or hereafter acquired by it available for use in the operation of the School, available to the Operator throughout the term hereof for continued use in the operation of the School.

(ii) The Operator is hereby designated as the School's purchasing/leasing agent, starting upon the effective date of this Agreement, and shall act as such in the purchase of any property funded by grants or otherwise purchased with the Corporation's separate funds. The Operator shall design, select, coordinate the purchase of, implement and manage technology used by the School, irrespective of the source of funding. If equipment is purchased on behalf of the Corporation using funding specifically provided by the Corporation pursuant to Section 7(c), it will be titled in the Corporation's name instead of the Operator's name. However, in no event shall any of the Continuing Fee or the Operator's other funds be used for the purchase of Corporation-titled equipment.

(iii) The Operator shall negotiate the terms of the purchase or lease of any additional furniture, technology, equipment, and other personal property necessary for the operation of the School. The Operator shall purchase or lease all furniture, and other personal property of any kind, including without equipment, technology, and fixtures, used for the operation of the School which is not provided by the Corporation. The Operator shall design, select, coordinate the purchase of, implement and manage technology used by the School, irrespective of the source of funding.

(iv) The Operator shall consummate the purchase or lease of the equipment and from the time of the purchase or lease and at all times thereafter, manage and maintain the equipment in proper working order. The foregoing shall not limit the Operator's ability to sell, scrap or dispose of its own equipment which is obsolete, unneeded, excessive, broken or inoperable as determined by the Operator in its sole discretion, so long as it is in accordance with generally applicable law.

(v) The Operator shall use commercially reasonable efforts to integrate approved purchased technology with the School's curriculum or provide suitable

workarounds; provided that integration of Corporation owned technology shall be at the Corporation's sole cost and expense.

(vi) The Operator shall perform initial and ongoing staff and teacher training with respect to the technology and various procedures, including utilization of forms and systems.

(f) **Management and Management Consulting.** It is the responsibility of the Operator to perform as follows:

(i) Perform day-to-day management of the School, in accordance with the School Contract.

(ii) Provide the Model, curriculum and program development as discussed in this Agreement and the School Contract.

(iii) Perform other consulting and liaison services with governmental and quasi-governmental offices and agencies as are necessary in day-to-day operations of the School or as required by the School Contract;

(iv) Perform advisory services regarding special education and special needs students, programs, processes and reimbursements through the Operator's Special Education Department;

(v) Provide all data information management services, testing, and testing analysis required by law or otherwise deemed necessary or useful by the Operator and provide the same to the Sponsor if required by the School Contract;

(vi) Draft operations manuals, forms (including teacher contracts, applications, enrollment and similar forms), and management procedures, as the same are from time to time developed by the Operator;

(g) **Student Recruitment.** The Operator shall be responsible for the recruitment and enrollment of students subject to the Operator's general recruitment and admission policies. Students shall be recruited and selected in accordance with the procedures set forth in the School Contract and in compliance with all applicable federal, state and local law.

(h) **Rules, Regulations and Procedures.** Rules, regulations and procedures in effect on June 30, 2012 shall continue in effect during the term of this Agreement. The Parties may mutually amend these rules, regulations and procedures when necessitated by the health, safety or welfare of the children or upon recommendation of the Sponsor or ODE.

(i) **Authority.** Consistent with paragraph 2, the Operator shall have the

authority and power necessary to undertake its responsibilities described in this Agreement.

(j) **Subcontractors.** The Operator reserves the right to subcontract services to be provided hereunder without the Governing Authority's approval; provided that the Operator shall be solely responsible for all costs, expenses and fees associated with such subcontractors.

(k) **Quarterly Accounting.** The Operator shall provide quarterly accounting of operating expenses, in the form as attached hereto as Exhibit B, and grant expenditures, according to generally accepted governmental accounting standards, to the Governing Authority and the Sponsor commencing thirty days after each fiscal quarter end beginning with the fiscal quarter ended September 30, 2012.

4. **Purchases with Corporation Funds.** Any property purchased by the Corporation or by the Operator on behalf of the Corporation with the Corporation's funds, such as curriculum materials, books and supplies, and equipment which, by the nature of the funding source, must be titled in the Corporation's name will be the property of the Corporation; provided that the Corporation must fund the purchase of such Corporation-titled assets with grants for that specific purpose or from other funds available to the Corporation. In no event shall any of the Continuing Fee or other funds belonging to the Operator be used for the purchase of Corporation-titled equipment. The Operator shall permanently mark or tag with a number any property owned by the Corporation in accordance with School policy and keep an inventory of said property.

5. **Insurance and School Responsibilities.**

(a) **The Operator.** The Operator shall at its expense, maintain such commercial general liability insurance and other insurance required by the School Contract, except the Directors and Officers insurance, which shall be maintained by the Corporation. The limits of the Operator's primary and umbrella insurance policies shall at all times meet or exceed the requirements set forth in the School Contract. The Operator's policies shall name the Corporation and the other parties mentioned in the School Contract as insureds, or as an additional insureds on an Operator policy. A certificate of insurance evidencing such coverages shall be provided upon reasonable request. All such policies of insurance shall be issued by responsible companies of recognized standing authorized to do business in the State, shall be written in standard form, and shall provide that the policies shall not be cancelable except upon (30) days written notice to the Corporation. Upon the Corporation's request, the Operator shall deliver to the Corporation a copy of such policies and other written confirmation acceptable to Corporation, together with evidence that the insurance premiums have been paid.

(b) **The Corporation.** The Governing Authority will be responsible for its directors' and officers' insurance, legal fees for the representation of the Governing Authority and general corporate matters, accounting, audit, tax and consulting fees for the School and other expenses approved by the Governing Authority.

6. Budget.

(a) **Projected Budget.** The fiscal officer shall provide the Governing Authority with an annual projected Budget for the Corporation (the "Budget").

(b) **Budget Detail.** The Budget shall contain detail as required for public auditing purposes.

(c) **Approval.** The Budget shall be prepared by the fiscal officer and submitted to the Governing Authority for approval, which approval shall not be unreasonably withheld or delayed. The Budget may be amended from time to time at the recommendation of the fiscal officer and submitted to the Governing Authority for approval, which approval shall not be unreasonably withheld or denied.

(d) **Participation.** The Operator shall cooperate with the fiscal officer as reasonably necessary for him to complete the Budget.

(e) **Operating Expense of Operator.** The Operator shall provide to the Governing Authority its budget for operating expenses for the 2012/2013 academic year not later than August 1, 2012.

7. Fees.

(a) **Continuing Fee.** The Corporation shall pay a monthly management, consulting and operation fee (the "Continuing Fee") to the Operator of 90% of the Qualified Gross Revenues As used in this Agreement, "Qualified Gross Revenues" shall mean the revenue per student received by the Corporation from the State pursuant to the Ohio Revised Code. Qualified Gross Revenues do not include: student fees, charitable contributions, PTA/PTO income, and other miscellaneous revenue received which shall be retained by the Corporation or PTA/PTO. Federal Title Programs and other federal, state and local government grant funding, including any grants under the American Recovery and Reinvestment Act of 2009 ("Supplemental Revenues") are not part of the Qualified Gross Revenue or the Continuing fee, but shall be paid to the Operator in full within five (5) business days of receipt of any such Supplemental Revenues by the Corporation for administration pursuant to paragraph (7)(c) below. The Continuing Fee shall be paid within five (5) business days of receipt by the Corporation of any Qualified Gross Revenues via electronic funds transfer. The Continuing Fee shall be subject to an annual reconciliation based upon actual enrollment and actual revenue received (including the final month of the term, even though the payment may be made beyond expiration of the term).

(b) **Payment of Costs.** Except as otherwise provided in this Agreement, all costs incurred in providing the Model at the School shall be paid by the Operator. Such costs shall include, but shall not be limited to, compensation of all personnel, curriculum materials, textbooks, library books, technology and other equipment (excluding

Corporation-titled equipment), supplies, building payments, maintenance, and capital improvements required in providing the Model. As provided in Section 4, all property purchased by Operator shall remain Operator's sole property at all times.

(c) **Grants.** The Operator is the School's agent for purposes of applying for and administering grants of any type. The Operator may from time to time and with the prior approval of the Governing Authority, apply for available grants in the name of the School that will provide additional funding to the School, aid the Corporation in fulfilling the terms of the School Contract and/or provide additional services, equipment and programs to the School's students. The Board shall not unreasonably withhold or delay approval of any grant application, and shall be deemed to have approved any grant application submitted by the Operator unless it gives specific written objections to the same within ten (10) business days after such submission.

Within five (5) business days following the Corporation's receipt of grant funds from the applicable funding source the entire amount of such grant funds shall be paid over to the Operator via electronic funds transfer following the presentation of an invoice for that amount by the Operator. The Corporation and its designated fiscal officer shall cooperate with the Operator to establish any necessary accounts, authorizations and procedures such that the Corporation shall automatically transfer the funds received from grant funding sources when such funds are immediately available in the Corporation's accounts.

(d) The Governing Authority shall cooperate with the Operator to set up and establish necessary accounts and procedures for grant funding. Operator shall fully comply with all applicable federal, state and local laws and regulations related to such grants. Operator will indemnify the School, the Corporation and all subgrants for any liability resulting from the grants, including attorney fees, except to the extent such liability arises from any act or omission of the Board or its fiscal officer. This Section shall survive any expiration or termination of this Agreement until all payments earned prior to the date of such expiration or termination shall have been paid in full.

(e) **The Governing Authority Funds.**

(i) The Governing Authority shall be responsible for paying its fees to its Sponsor plus its own operational expenses and legal, insurance, tax and other professional fees out of the portion of Qualified Gross Revenues retained by the Corporation. The costs and fees relating to any annual Audit by the Auditor of the State of Ohio, special or independent audits shall also be paid by the Governing Authority out of such retained funds. The Corporation shall be solely responsible for the purchase and operation of equipment and procurement of services deemed necessary or appropriate by the Governing Authority for the Corporation's operations that are separate from the day-to-day operation of the School.

8. Personnel and Training.

(a) **Personnel Responsibilities.** All personnel necessary to implement the Model shall be employed by the Operator. The Operator and the Governing Authority shall jointly have the responsibility and authority to determine staffing levels and salaries, and to select, evaluate, assign, discipline, transfer and terminate personnel, consistent with the School Contract and state and federal law.

(b) **School Administrator.** The Operator will have the authority to select and supervise the School Administrator and to hold him or her accountable for the success of the School. The employment contract with the School Administrator and the duties and compensation of the School Administrator shall be determined by the Operator. The Operator shall obtain the approval of the Governing Authority prior to the retention, hiring or termination of the Administrator.

(c) **Teachers.** The Operator, with the approval of the Governing Authority shall, prior to the commencement of the school year, determine the number of teachers and the applicable grade levels and subjects required for the operation of the School. The Operator shall employ teachers who meet applicable legal requirements and who are qualified in the grade levels and subjects required by law. The curriculum taught by such teachers shall be the curriculum developed pursuant to Section 3(b) hereof. Such teachers may, at the discretion of the Operator, work at the School on a full or part time basis. It is specifically agreed that the Operator has the right to reduce the number of teachers at the School to conform to student enrollment so long as, prior to any reduction, the Operator advises the Governing Authority of its intent to reduce the number of teachers.

(d) **Support Staff.** The Operator shall, with the approval of the Governing Authority prior to the commencement of the school year determine the number and functions of support staff, qualified in the areas required, as are required for operation of the School and by Ohio Law. Such support staff may, at the discretion of the Operator, work at the School on a full or part time basis. It is specifically agreed that the Operator has the right to reduce the number of support staff at the School to conform to student enrollment so long as, prior to any reduction, the Operator advises the Governing Authority of its intent to reduce the number of support staff.

(e) **Training.** The Operator shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular and continuous basis. Non-instructional personnel shall receive such training as the Operator determines as reasonable and necessary under the circumstances.

(f) **Board Liaison.** The Governing Authority, in combination with four other Governing Authorities identified in Exhibit C hereto, shall hire and pay a qualified person to serve as a liaison to the Governing Authorities. The liaison shall have access to the School Facility during normal school hours to observe classrooms, analyze and critique

the performance of the Administrator, and report to the Governing Authorities in accordance with the directives of the Governing Authorities. In addition, the liaison shall have access to the educational records as defined by FERPA.. In the event that the liaison determines, in his or her sole discretion, that disciplinary or corrective action is necessary at any School, the liaison shall first consult with the respective School Administrator and, if dissatisfied with the Administrator's action, shall report the same to the Governing Authority. The Governing Authority may make written demand to the Operator who shall have three (3) business days of such demand to respond. If the Operator and the Governing Authority agree upon the action to be taken, such action shall be taken within 48 hours of such agreement. If the Operator and Governing Authority disagree on the action to be taken, either party may submit a request to the School Sponsor for a final decision upon the matter. The parties agree that the decision of the School Sponsor is non-appealable and shall be implemented within 48 hours of such School Sponsor decision.

(f) **Salary and Benefits.** For employees that the Operator provides to the School, the Operator assumes full responsibility and liability for benefits, salaries, worker's compensation, unemployment compensation, and liability insurance.

(g) **Additional Programs.** The services provided by the Operator and the Corporation under this Agreement consist of the educational program during the school year and school day, and for the age and grade level of students as set forth in the School Contract, as such school year, school day, and age and grade level may change from time to time. The Corporation and the Operator may decide to provide such additional programs as may be mutually agreed upon by the Corporation and the Operator. The foregoing shall not prohibit the Operator from offering other educational services at the School Facility outside of school hours; provided the same do not interfere with the operation of the School and do not expend the Continuing Fee or Grant Funds.

9. **Termination by the Corporation.** The Corporation may, at its option, terminate this Agreement, upon the occurrence of any of the following events:

(a) The School Contract is not renewed by the Sponsor and no similar contract is obtained with the Sponsor or any other authorized sponsor;

(b) The Operator materially fails to comply with a specific and essential material requirement of this Agreement and the Operator does not cure said failure within 30 days of its receipt of written notice from the Corporation, unless the failure cannot be reasonably cured within 30 days, in which case, the Operator shall promptly undertake and continue efforts to cure said failure within a reasonable time. Notwithstanding the foregoing, in the event that a failure shall be such that it creates an imminent danger to the life of students, parents or others, said failure must be cured immediately upon written notice from the Corporation;

(c) The Operator files for bankruptcy or has a bankruptcy suit filed against it which is not dismissed within ninety (90) days, is insolvent, ceases its operations, admits

in writing its inability to pay its debts when they become due, or has a receiver appointed for the benefit of its creditors;

- (d) The Operator fails to maintain the insurance coverages as described above;
- or
- (e) The parties mutually agree in writing to terminate the Agreement.

In the event that the Corporation elects to terminate this Agreement for any of the aforementioned reasons, then the parties shall continue to perform their respective obligations hereunder, notwithstanding such notice of termination, until the end of the then current academic year. The Operator specifically waives its rights under R.C. 3314.026.

10. Termination by the Operator. The Operator may, at its option, terminate this Agreement upon the occurrence of any of the following events:

- (a) The Corporation fails to make any payment of money due to the Operator hereunder within five (5) business days of when due;

- (b) If any academic year results in operating deficits, provided that any notice of termination delivered to the Corporation after school opens for education of students for any school year shall not be effective until the end of that academic year;

- (c) The Corporation is in material default under any other condition, term or provisions of this Agreement or the School Contract, which default remains uncured for the period of thirty (30) days from the time that the Corporation receives written notice of said default, unless the default cannot be reasonably cured within 30 days, in which case the Corporation shall promptly undertake or continue efforts to cure said material default within a reasonable time;

- (d) Any adverse and material change in local, state or federal funding for the Corporation's students; provided that any notice of termination delivered to the Corporation based upon an adverse and material change in funding shall be effective when the funding change goes into effect or such later date as designated by the Operator; or

- (e) Any Operator facility that is instrumental to the implementation of the Model or the day-to-day operations of the School is inaccessible so that, in the Operator's reasonable discretion, providing maintenance or continuing of School operations would be unfeasible, uneconomical or impractical, provided that notice of termination is delivered by the Operator to the Corporation promptly (within sixty (60) days) after the occurrence of the event(s) giving rise to such right of termination.

In the event that the Operator elects to terminate this Agreement for any of the aforementioned reasons, then the parties shall continue to perform their respective obligations hereunder, notwithstanding such notice of termination, until the end of the then current academic year.

11. **Duties Upon Termination.** Upon termination of this Agreement at the end of the academic school year, the Corporation shall immediately pay to the Operator and/or any of the Operator's affiliates any moneys owing to such person or entity. Furthermore, the Corporation shall return to the Operator all property of the Operator pursuant to Section 3 above and the Operator shall return to the Corporation all property of the Corporation in the Operator's possession or control. The Operator shall assist the Corporation in any transition of management and operations, including, but not limited to: (i) the orderly transition of all student records and the delivery of Corporation-owned equipment and material (if any) to the Governing Authority, (ii) sending notices to students as reasonably requested by the Corporation at the Corporation's cost, and (iii) at the Corporation's option and cost, delivering student records directly to the students. This Section 11 shall survive any expiration or termination of this Agreement. The Corporation specifically disclaims any interest in the Operator's intellectual property.

12. **License.** The Operator developed and owns proprietary rights to the Model, the Protected Materials, as defined in Section 13 below, and the "Hope Academy" name (the "Name"). The Operator hereby grants the Corporation a limited revocable license to use the Model, the Protected Materials and the Name in connection with the School. At such time as this Agreement is terminated or otherwise expires, the license granted herein shall automatically terminate and the Corporation shall: (a) immediately cease use of the Name, the Protected Materials and the Model; (b) immediately begin doing business under and change its corporate name to some name other than the Name, which new name shall not consist in any variation or manner of the word or words "Hope Academy," used alone or in any combination; and (c) notify the Sponsor, the Department of Education and any other oversight entity of the name change including, but not limited to, the Secretary of State. This Section 12 shall survive any expiration or termination of this Agreement.

13. **Proprietary Rights.** The copyrights and intellectual property rights for all methods, documents, curricula and materials developed by the Operator during the course of operating the School (collectively, the "Protected Materials") shall constitute the sole and exclusive property of the Operator, and neither the Corporation, the School nor the Governing Authority shall have any right to any of the same either as a "Work Made for Hire" (as such are defined under the U.S. and international copyright laws) or otherwise. The Operator shall exclusively own all United States and international copyrights, trademarks, patents and all other intellectual property rights in said Protected Materials. The Protected Materials may not be used by the Corporation, the School or the Governing Authority for any purpose other than strictly within the scope of the license granted under Section 12 above without the prior written consent of the Operator. Immediately upon termination of this Agreement or the Operator's earlier request, the Corporation, the School and the Governing Authority shall deliver all originals and copies of the Protected Materials (regardless of the media on which the same is stored) to the Operator and delete all of the same from all databases and other storage media maintained by the Corporation, the School and the Governing Authority. This Section 13 shall survive any expiration or termination of this Agreement. Nothing in this paragraph shall be construed to prevent the Corporation from compliance with Ohio's public records laws and any other laws requiring the Corporation or the Sponsor to maintain copies of documents that constitute records of the School which are required to be maintained under provisions of Ohio law.

14. Confidentiality and Non-Disclosure. Without the prior written consent of the other party, neither party will at any time use for its own benefit or purposes or for the benefit or purposes of any other person, corporation or business organization, entity or enterprise, or disclose in any manner to any person, corporation or business organization, entity or enterprise any trade secret, information, data, know-how or knowledge (including but not limited to curricula information, financial information, marketing information, cost information, vendor information, research, marketing plans, educational concepts and employee information) belonging to, or relating to the affairs of a party to this Agreement ("Protected Party") or that the other party received through its association with the Protected Party, whether received prior to the date hereof or hereafter (collectively, "Confidential Information"), unless: (a) the party can show that such information, data or knowledge was known to it prior to the time its association with the Protected Party began, (b) it can show that any such information, data or knowledge has become generally available to the public otherwise than by a breach of this Agreement by the party, or (c) is subsequently disclosed to the party by a third person or entity which is not prohibited from disclosing same by a contractual, fiduciary or other legal obligation to the Protected Party. The existence of the relationship between the parties and any agreements they have entered into or may hereafter enter into also constitute Confidential Information.

Nothing herein shall be deemed to prohibit the parties from disclosing any Confidential Information which a party becomes legally compelled to disclose. Without limiting the generality of the foregoing, in the event that a party becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, investigative demand, public records requests under R.C. Chapter 149 or similar laws, or similar process) to disclose any of the Confidential Information, the party covenants to use its best efforts to provide the Protected Party with prompt written notice (not less than forty-eight (48) hours) so that the Protected Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Protected Party waives compliance with the provisions of this Agreement, the party covenants to furnish only that portion of the Confidential Information which the party is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. Employee information must be reviewed by sponsor. This Section 14 shall survive any expiration or termination of this Agreement.

15. Non-solicitation. The Corporation hereby agrees that commencing on the date of this Agreement and continuing for a period equal to one year after the expiration or termination of this Agreement by either party for any reason, it will not, and none of its affiliates will directly solicit any employee of the Operator, or directly solicit any personnel employed by the Operator to terminate his or her relationship with the Operator. This section shall survive the termination or expiration of this Agreement.

16. No Third Party Beneficiaries. This Agreement and the provisions hereof are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to confer or have conferred any rights, express or implied, upon any

other third person. Notwithstanding the limitations of this paragraph 16., the Corporation acknowledges that some of the components of the Hope Academy Educational Model and related curriculum and certain confidential information belong to affiliates of the Operator, including without limitation White Hat Management, LLC, White Hat Ventures, LLC, and WHLS of Ohio, LLC (collectively, "EMO Affiliates"); (b) some of the curriculum may be developed by one or more EMO Affiliates; and (c) some of the employees used in the provision of the Hope Academy Educational Model may be employed by the EMO Affiliates. Subject to this section, this Agreement and the provisions hereof are for the exclusive benefit of the Parties hereto and their affiliates and not for the benefit of any other third person other than the Sponsor and the Ohio Department of Education by operation of law, nor shall this Agreement be deemed to confer or have conferred any rights, express or implied, upon any other third person. This paragraph 16 shall survive any expiration or termination of this Agreement.

17. Injunctive Relief / Dispute Resolution.

- (a) **Injunctive Relief.** If the Corporation engages in any activity in violation of the provisions of paragraphs 12, 13, 15, and 16 above, the Operator shall, in addition to any other remedies available to it, be entitled to an injunction by any competent court of equity enjoining and restraining the School from continuance of such activity upon a showing sufficient to meet generally applicable standards for such relief.
- (b) **Dispute Resolution Procedures.** The Parties hereto will endeavor to resolve in good faith any controversy, disagreement or claim arising between them, whether as to the interpretation, performance or operation of this Agreement or any rights or obligations hereunder. If they are unable to do so, then mediation shall be mandatory with the Honorable Patrick McGrath, retired Judge, to serve as mediator. In the event Judge McGrath cannot serve, the parties will agree to another mediator. If mediation fails to resolve the dispute within 30 days, then the dispute may be submitted for resolution to the Franklin County, Ohio Court of Common Pleas. Pending the resolution of the dispute, all other obligations of the parties hereto will continue as stipulated herein, and all monies will continue to be paid when due.

18. Notices. Any notices to be provided hereunder shall be provided to the Sponsor within 10 days and given in writing with by personal service, mailing the same by United States certified mail, return receipt requested, and postage prepaid, facsimile (provided a copy is sent by one of the other permitted methods of notice), or a nationally recognized overnight carrier, addressed as follows:

If to the Operator, to:

White Hat Management, LLC
121 South Main Street, Suite 200
Akron, Ohio 44308

Attn: President
Facsimile: (330) 762-5037

With a copy to:

John F. Martin
Brennan, Manna & Diamond, LLC
75 East Market Street
Akron, Ohio 44308
Phone: (330) 253-5060
Facsimile: 330-255-1158

If to the Corporation, to

Ken Baris, President
Hope Academy Lincoln Park Campus
3181 W. 41st Street
Cleveland, OH 44109
Phone:
Facsimile:

With a copy to:

April Hart, Esq.
2529 Canterbury Road
Cleveland Heights, Ohio 44118
Phone: (216) 321-9415
Facsimile: (216) 321-7334

19. **Severability.** The invalidity or unenforceability of any provision or clause hereof shall in no way affect the validity or enforceability of any other clause or provision hereof.

20. **Waiver and Delay.** No waiver or delay of any provision of this Agreement at any time will be deemed a waiver of any other provision of this Agreement at such time or will be deemed a waiver of such provision at any other time.

21. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio and jurisdiction is proper in Franklin County, Ohio. The Governing Authority, the Corporation, and the Operator each acknowledge that the School is a public body under Ohio law.

22. **Assignment; Binding Agreement.** Neither party shall assign this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that the Operator may assign this Agreement to a similarly situated and qualified affiliate without the consent of the Corporation so long as an assignment would not invalidate the School Contract. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

23. **Independent Activity.** All of the parties to this Agreement understand that Operator's business is to operate and manage charter schools throughout the State. As such, the parties agree that Operator and its affiliates, may operate other charter schools in multiple states including the State of Ohio.

24. Representations and Warranties of the Operator. The Operator hereby represents and warrants to the School as follows:

(a) The Operator is duly organized, validly existing, and in good standing under the laws of the State of Nevada, is properly registered to do business within the State of Ohio, and has the authority to carry on its business as now being conducted and the authority to execute, deliver, and perform this Agreement.

(b) The Operator has taken all actions necessary to authorize the execution, delivery, and performance of this Agreement, and this Agreement is a valid and binding obligation of the Operator enforceable against it in accordance with its terms, except as may be limited by federal and state laws affecting the rights of creditors generally, and except as may be limited by legal or equitable remedies.

(c) The Operator has made, obtained, and performed all registrations, filings, approvals, authorizations, consents, licenses, or examinations required by any government or governmental authority, domestic or foreign, in order to execute, deliver and perform its obligations under this Agreement.

(d) The Operator has the financial ability to perform all of its duties and obligations under this Agreement.

25. Indemnification of the Parties. The Corporation and the Operator (herein referred to as "Party" and/or "Parties") shall indemnify and hold harmless each other and its members, directors, employees, officers and affiliates from any and all claims, demands, actions, suits, causes of action, obligations, losses, costs, expenses, attorney fees, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity or otherwise, arising from any of the following:

(a) A failure of the Party or any of its officers, trustees, directors, or employees to perform any duty, responsibility or obligation imposed by law or by this Agreement or the School Contract; and

(b) An action or omission by the Party or any of its officers, trustees, directors, employees; successors, agents or contractors that results in injury, death or loss to person or property, breach of contract, or violation of statutory law or common law (state or federal).

26. Force Majeure. In the event that the Operator shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire or other casualty, acts of God, strike, lockout, labor trouble, inability to procure services or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the Operator, then such performance shall be excused for the period of the delay and the period for such performance shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse the Corporation

from prompt payment of any amounts required by the terms of this Agreement.

27. **Amendment.** This Agreement may not be modified or amended except by a writing signed by each party hereto.

28. **Counterparts.** This Agreement may be executed in several counterparts, with each counterpart deemed to be an original document and with all counterparts deemed to be one and the same instrument.

29. **Captions.** Paragraph captions are used herein for references only and are not intended, nor shall they be used, in interpreting this instrument.

30. **Integration / Entire Agreement.** This Agreement (together with the documents referred to herein) contains the entire agreement between the parties and supersedes all prior agreements between the parties, if any, written or oral, with respect to the subject matter hereof.

31. **Preservation of claims and defenses.** The Operator, the School, the Governing Authority, and ODE are Parties in *Hope Academy Broadway, et al v. White Hat Management, LLC, et al*, Franklin Co. C.P. Case No. 10 CV07432, and all related appeals ("the Case"). They each expressly agree that nothing in this agreement in any way prejudices their respective claims and defenses in the Case, except for the Corporation's claims to possess the School Facility beyond the term of this Agreement or the Corporation's possession of personal property, whenever acquired, purchased by the Operator with non-grant or Operator funds.

IN WITNESS WHEREOF, the parties hereto have set their hands by and through their duly authorized officers as of the date first above written.

CORPORATION:

By: _____
Its: _____

OPERATOR:

By: _____
Its: _____

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CORPORATION:

HOPE ACADEMY LINCOLN PARK CAMPUS

By: KABas
Its: Board President

OPERATOR:

HA LINCOLN PARK, LLC

By: _____
Its: _____

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CORPORATION:

HOPE ACADEMY LINCOLN PARK CAMPUS

By: _____
Its: _____

OPERATOR:

HA LINCOLN PARK, LLC

By: Thomas M Barrett
Its: CEO