

OPPORTUNITY CENTER
RENTAL AGREEMENT

THIS RENTAL AGREEMENT made and entered into as of _____, 2010, by and between the CITY OF LEXINGTON, NEBRASKA (CITY) and DAWSON COUNTY SCHOOL DISTRICT 001 OF LEXINGTON, NEBRASKA, (SCHOOL).

WHEREAS, the parties have entered into a "Joint Use Agreement" for a portion of the Dawson County Opportunity Center (Opportunity Center), and it is necessary to provide the terms and conditions of occupancy of said Opportunity Center by SCHOOL.

In consideration of the terms and conditions contained herein, the parties agree as follows:

1. Description of Premises: The Opportunity Center shall include the building and real estate owned by CITY and described as Tract 1, and the North 80 feet of Tract 2, Wal-Mart Subdivision in the City of Lexington, Dawson County, Nebraska. SCHOOL shall be entitled to occupancy of the following:

- a. SCHOOL shall exclusively occupy an area of 20,000 more or less, square feet of the building for the purpose of the Early Learning Academy (preschool), Alternative Education, and Parent Student Resource Center, and any other educational related activity.
- b. SCHOOL shall be entitled to share with other occupants, educational classrooms, technology centers, conference rooms and other educational facilities, subject to regulations developed by the City and common usage that will be developed between the parties. (Shared Areas).

2. Term and Payment of Rent: School shall pay a rental payment of \$_____, as finally determined between the parties, that is equal to the renovation costs of the agreed upon space to be occupied by the School. These payments shall cover the total cost for renting the premises in perpetuity. Should School decide to terminate the rental agreement with City, it shall forfeit all rental payments. Should City decide to terminate the rental agreement, School shall recover that share of the total rental payment equal to the total cost of renovations divided by the predetermined life of the renovations (20 years) times the number of years of usable life left of the renovation. Should, during the term of this Agreement, the School invest additional funds into the structure of the building, these additional expenses will be added to the total cost of the renovation.

3. Term of Occupancy: The parties anticipate and agree that SCHOOL shall occupy the premises according to the terms of this Agreement for a period of twenty (20) years, and in the absence of a notice of intent to terminate, this Agreement shall continue for successive terms of one year, which shall coincide with the "school year." In the event that SCHOOL wishes to terminate this Agreement, written notice of intent to terminate shall be given to CITY at least twelve (12) months prior to the date of termination. Upon such termination, SCHOOL shall not be entitled to recover any of the costs provided under Paragraph 2 above, but may remove furnishings and personal property. In the event that CITY wishes to terminate, written notice of intent to terminate shall be given twelve (12) months prior to the date of termination. Upon such termination, SCHOOL shall be entitled to recover a portion of the construction costs advanced, which portion shall be calculated by dividing the actual months of occupancy by the number of

months of useful life, which the parties agree shall be 240 months from the date of construction or any renovations.

4. Utilities: The parties agree that trash removal, water, sewer and electricity are utility services provided by CITY, and that SCHOOL shall be billed and shall pay for these services pursuant to the further agreement of the parties which shall be in written form and attached as an addendum hereto. SCHOOL shall be responsible for contracting and paying it's own cable TV, internet services and telephone service.

5. Insurance:

(a) CITY shall maintain a policy or policies of insurance against loss or damage to the entire building, including the premises Agreement to the SCHOOL.

(b) SCHOOL shall maintain a policy or policies of comprehensive public liability insurance in standard form, protecting CITY and SCHOOL against any and all liability arising out of the use and occupancy of the premises and its use of the parking lot and commons area. Such insurance shall be provided on an occurrence basis. CITY shall be named as an additional insured on the policy. SCHOOL shall be responsible for their personal property.

(c) All insurance provided for in this Article 10 shall be affected under valid and enforceable policies issued by insurers licensed to do business in the State of Nebraska. Each policy of insurance provided by the SCHOOL or CITY shall have attached thereto an endorsement that such policy shall not be cancelled or materially changed without a thirty (30) day prior written notice to the other party and that no act or thing done by either path shall invalidate the policy against the other party. Each party shall deliver to the other party insurance policies or duplicates or certificates thereof (with receipts or other evidence satisfactory to the other party of full payment of the premiums thereon) and thereafter, not less than thirty (30) days prior to the expiration of each insurance policy required to be furnished by the other party pursuant hereto, each party shall deliver to the other party a renewal policy or duplicate or certificate thereof, together with receipts or other evidence satisfactory, to the other party of full payment of the premiums thereon. Each party shall cooperate with the other party in expediting and obtaining insurance recoveries.

6. Alterations: SCHOOL shall not make, install or erect any alterations, additions or improvements in or to the premises or introduce any electrical apparatus or devices therein without first presenting plans and specifications to CITY and obtaining the written consent of the CITY. All alterations, additions and improvements shall be at SCHOOL expense.

All alterations, additions and improvements made and installed by the SCHOOL, including, without limitation, any type of floor covering that may be attached or otherwise affixed to the floors of the premises, shall become the property of the CITY at the termination of this Agreement and shall remain with the premises.

7. Repairs and Maintenance: SCHOOL shall do normal maintenance of the premises exclusively occupied by SCHOOL and an agreed upon portion of the parking lot, and keep them in good repair at its expense. If there are any maintenance and repair problems that develop during the term of this Agreement, they will be agreed upon between the parties as they arise. SCHOOL agrees to participate with the CITY in keeping the parking lot and any outside sidewalks or outside grounds abutting to the premises free from dirt, rubbish, snow and other

obstructions or encumbrances.

8. Occurrence of Casualties: If the premises are substantially (more than fifty percent (50%) of the gross square feet of the entire building where the premises is located) or totally destroyed by fire or any other casualty during the term of this Agreement, SCHOOL, at its option, may cancel this Agreement by notice given to CITY within thirty (30) days after the occurrence of such fire or other casualty, and if such notice be given, this Agreement shall expire, as the case may be, as of the date of occurrence of such fire or other casualty. If this Agreement shall be so cancelled, all fire insurance proceeds attributable to damage to or destruction of the buildings and improvements and property shall be paid to CITY as CITY'S sole and absolute property, except SCHOOL shall be entitled to be paid the sum that it expended for construction of the premises improvements at the percentage provided in paragraph 2.a. herein previously provided.

If the premises are damaged by fire or other casualty to an extent which is not substantial (as defined above), or if SCHOOL shall not exercise its right to cancel this Agreement after a substantial or total destruction, the CITY promptly shall repair, reconstruct and replace the premises and any other damaged improvements to a condition at least equal in quality to their condition immediately prior to the damage or destruction and in the event of default of prompt, repair, reconstruction and replacement to said condition by CITY, SCHOOL may, at SCHOOL'S option, either conduct the repair, reconstruction and replacement at the expense of and for the account of CITY or cancel this Agreement in the manner provided above and receive payment from the insurance proceeds for the sum it expended for construction of premises improvements provided in paragraph 2.a. herein previously provided.

Insurance proceeds, if any, attributable to damage to or destruction of SCHOOL'S separate property shall be paid to SCHOOL.

9. Assignment and Subletting: SCHOOL shall not assign this Agreement, or the premises, in whole or in part, without the prior written consent of the CITY, which consent shall not be unreasonably withheld.

In the event CITY consents to an assignment, subletting, occupation or use of the premises, by anyone other than SCHOOL, such assignee, sublessee or other person shall be bound by all provisions of this Agreement, unless otherwise agreed in writing by the parties, and upon acceptance of the assignment, subletting, occupation or use of the premises by the other party, the SCHOOL shall be released from any further liability and shall have no further obligation under this Agreement.

10. Condemnation: In the event all or ally part of the land upon which the building is located is taken by condemnation or the exercise of the right of eminent domain or as a result of the acquisition of the premises by a condemning authority, this Agreement, at the option of the CITY shall become null and void upon the date of the taking. Any condemnation award shall belong solely to CITY.

11. Signs: SCHOOL agrees to review the design and installation of its corporate identification signs to be installed on the premises, so that there is consistency with the other signs that will be designed and installed on the other businesses located in the building on the real estate.

12. Indemnification:

a. CITY shall indemnify SCHOOL, its agents and employees against, and hold SCHOOL, its agents and employees harmless from, any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities, judgments and expenses (including, without limitation, attorneys' fees and court costs) incurred in connection with or arising from each of the following and except to the extent the same was caused by SCHOOL, its agents or employees:

- (i) any activity, work, or thing, done or permitted or suffered by CITY in or about the premises;
- (ii) any acts, omissions, or negligence of CITY or any person claiming under CITY or the contractors, agents, employees, invitees, or visitors of CITY or any such person in the remainder of the Opportunity Center wherein the premises is a part thereof;
- (iii) any breach, violation or nonperformance by CITY, or any person claiming under CITY, or the employees, agents, contractors, invitees, or visitors of CITY, or any such person, of any term, covenant, or provision of this Agreement or any law, ordinance, or governmental requirement of any kind.

b. SCHOOL shall indemnify CITY, its agents and employees against, and hold CITY, its agents and employees harmless from, any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities, judgments or expenses (including, without limitation, attorney's fees and court costs) incurred in connection with or arising from each of the following and except to the extent the same was caused by the negligence of the CITY, its agents or employees;

- (i) any activity, work, or thing, done or permitted or suffered by SCHOOL in or about the premises;
- (ii) any acts, omissions, or negligence of SCHOOL or any person claiming under SCHOOL or the contractors, agents, employees, invitees, or visitors of SCHOOL or any such person in the remainder of the Opportunity Center wherein the premises is a part thereof;
- (iii) any breach, violation or nonperformance by SCHOOL, or any person claiming under SCHOOL, or the employees, agents, contractors, invitees, or visitors of SCHOOL, or any such person, of any term, covenant, or provision of this Agreement or any law, ordinance, or governmental requirement of any kind.

13. Miscellaneous Provisions: The words "CITY" and "SCHOOL" shall include the plural, wherever the context requires, and all pronouns used herein and referring to said parties shall be construed accordingly, regardless either of the number or gender thereof.

Headings of the various paragraphs are inserted merely as a matter of convenience for reference and shall not be considered as defining, limiting or describing the scope or intent of the particular paragraphs to which they refer or as affecting the meaning or construction of the language in the body of such paragraphs.

All provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns, subject however, to

provisions requiring CITY's consent to any assignment by SCHOOL.

Every notice or consent authorized or required by this Agreement shall be effective when delivered if written and hand delivered or when deposited in the mail sent by United States registered or certified mail, return receipt requested, with postage prepaid, and addressed to CITY, P.O. Box 70, Lexington, Nebraska, 68850, and to SCHOOL at PO Box 890, Lexington, Nebraska 68850, or at such other address as either party shall from time to time designate in writing.

In the event that any of the provisions of this Agreement shall by court order be held invalid, such invalidation shall not affect the remainder of this Agreement, which shall be construed to enforce the remaining understandings of the parties. The Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

Time shall be of the essence of every part of this Agreement.

14. Rules and Regulations: The CITY will develop and promulgate building rules and regulations for the Opportunity Center. The CITY agrees to solicit the participation of the SCHOOL in preparing these rules and regulations. A copy of the Building Rules and Regulations so prepared are attached hereto and hereby made a part of this Agreement.

15. Additional Tenants: The parties agree that the Opportunity Center is available to other public entities for occupancy involving educational programming or non-educational uses. SCHOOL agrees that any rental or occupancy agreements with such additional occupants shall be solely in the discretion of CITY. CITY warrants only that no such occupancies shall interfere with the reasonable and peaceful exercise of SCHOOL's right to occupancy and conduct of its programs.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY OF LEXINGTON, a Public Corporation,

By: _____
Joe Pepplitsch, City Manager

DAWSON COUNTY SCHOOL DISTRICT NO.
001, a Public Corporation,

By: _____
Todd Chessmore, Superintendent

