

(ATTACHMENT 3) ACTION ON A REQUEST TO TERMINATE A LEASE AGREEMENT WITH HMONG AMERICAN PEACE ACADEMY FOR SPACE AT LANCASTER ELEMENTARY SCHOOL LOCATED AT 4931 NORTH 68TH STREET; AND TO ENTER INTO A NEW LEASE AGREEMENT WITH HMONG AMERICAN PEACE ACADEMY FOR HAPPY HILL SCHOOL LOCATED AT 7171 WEST BROWN DEER ROAD.

LEASE AGREEMENT

MILWAUKEE BOARD OF SCHOOL DIRECTORS

AND

HMONG AMERICAN PEACE ACADEMY, LTD.

THIS LEASE, made this 30th day June of 2016 ("the Lease"), by and between the City of Milwaukee by its Board of School Directors, a Wisconsin Statutory Corporation (hereinafter referred to as "the Board"), and Hmong American Peace Academy, Ltd. (hereinafter referred to as "Lessee").

1. **PREMISES:** The Board does hereby lease, demise and let into Lessee the entirety of Happy Hill School, located at 7171 West Brown Deer Road, Milwaukee, Wisconsin 53223 ("the Property").

a. Leased space to include: Entire Building and Grounds as shown on Exhibit A.

2. **TERM:** The term shall commence on July 1, 2016 and will terminate on June 30, 2018, with each one-year period from July 1 through and including June 30 being designated herein as a "Lease Year," except either party may terminate the Lease by providing the other party 60 days' written notice of termination. No notice of termination may be given more than 60 days prior to the end of any Lease Year. Upon termination, Lessee shall vacate the Property in a manner consistent with the terms and conditions of the lease.

3. **EXTENSION OF LEASE:** Lessee shall have successive options to extend the term of this lease for two additional five-year terms. Lessee's right to exercise each option is contingent upon: (1) Lessee must give notice of its intention to exercise its option at least 90 days prior to the end of the then current term; (2) mutual agreement of the Board and Lessee as to rental fee and other terms for the applicable extension term; and (3) Lessee having obtained from the Board a renewal of Lessee's then charter contract or Lessee having entered into a new charter school contract with the Board, in each instance for the time period covered by the applicable extension.

4. **SUBLEASE:** Lessee shall not have the option to sublease any portion of the Property.

5. **USE OF THE PREMISES:**

a. Lessee agrees to use the Property for the operation of a non-instrumentality charter school in accordance with the proposal submitted to the Board of School Directors. Such business shall be operated at all times in a reputable and first-class manner so as not to injure the

reputation of the Board. Lessee shall provide any and all resources, equipment, and/or personnel necessary to satisfy the requirements of its charter contract with the Board.

- b. Lessee agrees that should its use of the Property cease to be for a non-instrumentality charter school, then Lessee's rental fee shall be recalculated as provided in section 6d below.
- c. Prior to the commencement of the Lease, Lessee and Board shall complete a walk-through of the Property to identify any furnishing or equipment to be left in place for Lessee's use during the term of the lease. The Board shall remove all other personal property from the Property. On or before commencement of the Lease, Lessee will be issued three keys and three alarm passcode cards for access to the building at the Property.

6. RENTAL: Lessee shall pay a rental fee to the Board as follows:

- a. Lease Year one: \$336,875. Lease Year two: \$350,350. Rent shall be payable in twelve (12) equal monthly payments. Monthly rent shall be due no later than the 10th day of each month.
- b. First and last months' payment is due five (5) days prior to the commencement date of this agreement.
- c. Rent is to be paid by regular check and mailed to: Facilities and Maintenance Services, 1124 North 11th Street, Milwaukee, Wisconsin 53233, Attention: Director.
- d. If, as provided in section 5b, Lessee's use of the Property is no longer for a non-instrumentality charter school, then Lessee's rental fee to the Board shall be calculated at a rate of \$12.00 per square foot. Any calculation of rent triggered under section 5b shall also include a 3% cost increase for each Lease Year following the change in Lessee's use.

7. COVENANT OF TITLE: The Board herein warrants that there are no existing restrictions which may deny Lessee the use and occupancy of the Property or restrict its use thereof. Lessee is solely responsible for obtaining the required occupancy permit from the City of Milwaukee and any required approvals of the Board of Zoning Appeals.

8. BOARD'S RIGHT TO ENTER: The Board or the Board's agents shall have the right at all reasonable times during business hours to enter the Property to examine the same and make repairs. In addition, the Board or its agents shall have the right to enter during business hours to conduct quarterly inspections to ensure compliance with the lease agreement.

9. COVENANT OF QUIET ENJOYMENT: The Board hereby covenants that Lessee, upon paying the rent above stipulated and performing all and singular the covenants and conditions of this lease on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Property for the aforesaid term, and for the term of any extension or extensions hereof, free from molestation, eviction or disturbance by the Board, or by any other person or persons lawfully claiming the same, and that the Board has good right to make this lease for the full term thereby granted, including the period for which the Board has the right to effect an extension hereof.

10. DAMAGE TO PREMISES: In the event of damage or injury to the Property or any part thereof, by fire or other casualty, so that the Property is rendered unusable, the Board shall have five (5) days after the loss within which to notify Lessee in writing of the Board's intention to repair and restore the Property without terminating this Lease. In the event said notice of intent to repair the damage is not received by Lessee within five (5) days, then and in such case, either party hereto upon written notice to the other party may terminate this Lease. If, after the foregoing five-day (5-day) period, the Board decides to restore the Property, work shall commence immediately and be completed as expeditiously as possible and the Lessee shall have no claim against the Board for any loss due to the condition of the Property during the repair and restoration period.

11. COVENANT TO OBEY LAWFUL ORDERS: The Board agrees to obey all ordinances of the City of Milwaukee in regard to cleaning the sidewalk in front of the Property and any and all lawful orders, rules and regulations of the proper health officers of said City. The Board and the Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and City government and of any and all their departments and bureaus applicable to said Property for the correction, prevention, and abatement of nuisances or other grievances, in, upon or connected with the Property during said term, and shall also promptly comply with and execute all rules, orders, and regulations of the Board of Fire Underwriters of the State of Wisconsin.

Lessee shall not knowingly do, or permit anything to be done, which will violate any Federal, State, or City statute, ordinance, rule, order, regulation, or requirement affecting its occupancy. The Lessee may, at its own expense, and by appropriate legal proceeding, contest the validity, in whole or part, of any such statute, ordinance, rule, order, regulation, or requirement provided that neither the Board or the Property shall be placed in danger of civil or criminal liability or imposition of any lien by the Lessee's failure to comply.

12. ENVIRONMENTAL POLLUTANTS: Lessee shall not (either with or without negligence) cause or permit the escape, unlawful disposal or release beyond lawful limits of any Hazardous Materials (as hereinafter defined). Lessee, its agents, contractors, invitees, and students, shall not bring in or onto the Property, or knowingly allow the storage or use of such substances or materials at the Property, excepting such customary substances or materials, and in such amounts, as are stored or used by Lessee in compliance with applicable law and in the ordinary course of Lessee's use of the Property under section 5a above. For the purposes of this Section, the term "Hazardous Materials" shall mean, (i) any substances defined as "hazardous substances," "pollutants," "contaminants," "hazardous materials," "hazardous wastes," or "hazardous or toxic substances" as now or hereafter defined in any applicable federal, state or local law, regulation, ordinances, or directive, including, but not limited to, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. Sec. 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec 1801, et. seq.; the Toxic Substance Control Act, 15 U.S.C. Sec. 2601, et. seq.; the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 9601, et. seq.); the Clean Water Act, 33 U.S.C. Sec. 1251 et. seq.; the Clean Air Act, 42 U.S.C. Sec. 7412, et. seq.; as any such acts may be amended, modified or supplemented; (ii) those substances listed or otherwise identified in the regulations adopted and publications issued, as may be amended, modified or supplemented, pursuant to any of the above-referenced statutes; (iii) any friable asbestos, airborne asbestos, or any substance or material containing asbestos; (iv) any substance, the presence of which is prohibited by any legal requirement of any governmental authority or which may give rise to an assessment of a governmental authority; and (v) any other substance which by legal requirement

of any governmental authority requires special handling in its collection, storage, treatment or disposal.

Lessee, in the operation of school laboratories and science classes, and the handling and storage of chemicals used thereof, agrees to comply with the provisions, safety standards, standard operating procedures, control measures, and management practices contained in OSHA's Laboratory Safety Standard – 29 CFR 1910.1450, "Occupational Exposures to Hazardous Chemicals in Laboratories."

As part of the OSHA Laboratory Safety Standard, Lessee is required to develop and implement a comprehensive chemical hygiene/laboratory safety plan that incorporates the provisions found in 29 CFR 1910.1450. As part of the plan, Lessee agrees to develop and maintain an inventory of all chemicals stored on the Property, and a complete file of Material Safety Data Sheets pertaining thereof. Prior to occupancy, a completed plan must be codified and fully implemented. Lessee agrees to submit to MPS a complete copy of their OSHA Laboratory Safety Plan. MPS reserves the right to exclude from the site chemicals which are deemed to be detrimental to the welfare of the occupants.

If any governmental agency shall ever, in its reasonable discretion, require testing to ascertain whether or not there has been any release of Hazardous Materials by Lessee, then all of the reasonable costs thereof shall be reimbursed by the Lessee to the Board upon demand. Lessee shall execute affidavits, representations and the like from time to time at Board's request concerning Lessee's best knowledge and belief regarding the presence of Hazardous Materials on the Property.

Lessee shall unconditionally indemnify and hold harmless the Board, its officers, employees, agents, successors, and assigns from and against any and all losses, claims, damages, penalties, liabilities, costs, and expenses, (including reasonable attorneys' fees and court costs), fines, injuries, penalties, response costs (including the cost of any required or necessary investigation, testing, monitoring, repair cleanup detoxification, preparation of any closure or other required plans, or other removal, response or remedial action at or relating to the Property) (collectively, the "Claims and Costs"), to the extent arising out of any of the following: (i) any legal requirements, lawsuit (brought or threatened), reasonable settlement, or requirement of any insurer, relating to the generation, presence, management, disposal, release (or threatened release), escape, seepage, leakage, or cleanup of any Hazardous Materials at, on, from or under all or a portion of the Property for which the Lessee, its agents, contractors, or invitees are responsible, or (ii) the migration of Hazardous Materials from the Property to any other property or onto the school property caused by Lessee, or (iii) the treatment, disposal or storage of Hazardous Materials or the transportation of Hazardous Materials from the Property by Lessee, its agents, contractor or invitees; or (iv) the incorporation by the Lessee of any Hazardous Materials in the Property.

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

13. ALTERATIONS: Lessee shall make no alterations to the Property without prior written authorization of the Board. Should the Lessee desire changes to the Property, all such work will either; (a) be designed and completed by the Board on a reimbursed basis; or (b) be designed and completed by Lessee in accordance with the Board's guide specs, after Lessee receives the Board's prior written approval. Lessee shall be allowed to provide interior signage for installation by the Board. Lessee, at Lessee's expense, shall be allowed to provide exterior

to include sixty-day (60) advance notice prior to change, termination, or cancellation of insurance coverage.

The indemnification obligation under this Lease shall not be reduced in any way by the existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions. Under no circumstances is the Board's recovery limited due to the fact that it is named as an additional insured under the Lessee's insurance policy as listed above.

The Board is responsible for property insurance covering the Property. The Lessee agrees to be responsible for insurance covering Lessee's contents and improvements while on site during term of said Lease. The Board shall not be responsible for any damage, loss, vandalism, or theft of Lessee's improvements, equipment, supplies, materials, or personal property including personal property or belongings of its invitees.

It is the intention and agreement that Lessee shall carry such insurance as contemplated herein and shall look to its insurer for reimbursement of any such loss, and further that the insurer involved shall have no subrogation rights against the Board. Lessee shall advise its insurance company of this release and such policy shall, if necessary, contain a waiver of any right of subrogation by the insurer against the Board.

16. INDEMNIFICATION: Lessee agrees to defend, indemnify, and hold harmless the Board, its agents, employees, volunteers, and officers against any and all claims, demands, actions and causes of actions and resulting liability, loss, damages, costs and expenses for injury to persons and damages to or loss of physical property, to the extent caused directly or proximately by any wrongful, intentional or negligent act or omission of Lessee, its employees, officers, students, invitees, agents, and volunteers who participate in the activities covered by this Lease.

In accordance with applicable laws, the Board shall be responsible for defending and paying judgments on behalf of its directors, officers, employees, and agents while acting within the scope of their employment or agency for any claims that may arise out of the Board's negligence for acts, policies, or directives that affect the activities covered by this Lease.

Lessee and the Board each agree to promptly notify the other by phone and in writing as soon as reasonably practical of any incident involving any of the other's employees, officers, students, invitees, agents, or volunteers, which may result in action against the other.

17. UTILITIES: The Board will bear the cost of electricity, gas, water, and sewer. Lessee will pay for the installation, maintenance, and service of telephone lines and internet connections for its operation.

18. MAINTENANCE AND CLEANING AND SAFETY SERVICES: The Board shall provide maintenance and daily cleaning services for the Property included in the rental charged hereunder. In furtherance of such services, and for purposes of clarification, the Board shall maintain the exterior of the Property (including common area (e.g., parking areas, driveways, lanes, sidewalks and playground)) maintenance, such as ice and snow removal and placement of salt, and landscaping, such as regular grass cutting, for the Property) and mechanical equipment serving the Property; and the Board shall maintain the interior of the Property, including general cleaning, cafeteria set up, take down and cleaning, garbage and recycling removal, and sanitary services in classrooms, bathrooms and interior common areas

during school hours. The building engineer will be scheduled to work at the Property for the period from 6:15 a.m. to 2:45 p.m., Monday through Friday. The cleaning staff will be scheduled to work at the Property for the period from 2:30 p.m. to 11:00 p.m., Monday through Friday. Basic safety services if purchased by Lessee from the MPS Division of Safety Services shall be available during regular building hours. The Board will provide and maintain a remotely monitored intrusion alarm system and will issue up to three pass cards to lessee for access to the facility. Lessee will be charged \$100 per occurrence for failing to properly arm/disarm the system and for every false alarm caused by the Lessee, its employees, and officers.

19. **DEFAULT:** Each and every of the following will constitute default of this agreement and result in its automatic termination:

- a. Failure to pay rent when due, and the failure is not cured within five (5) days after written notice of such failure has been given to Lessee by the Board; or
- b. Failure to perform any other terms or conditions of this Lease which are the responsibility of Lessee, and if such failure is not cured within five (5) days after written notice by the Board. If the failure is caused by events beyond the Lessee's reasonable control, or is of a nature that cannot be cured within the foregoing five-day (5-day) period, then the Lessee shall so inform the Board and provided the Lessee uses due diligence to cure the default as soon as feasible, the Lessee and shall not be considered in default; or
- c. Vacating or abandoning the Property in excess of five (5) days without previously notifying the Board in writing of the circumstances of such vacating or abandonment; except that a temporary closing for remodeling or repairs, or for a holiday, shall not be deemed vacation or abandonment; or
- d. Adjudgement as a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of the Lessee under Federal Bankruptcy Laws as now in effect or hereafter amended, or under the laws of the State of Wisconsin, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within fifteen (15) days from the date of the entry or granting thereof; or
- e. Filing or admitting the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now in effect or hereafter amended, or the Lessee shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Lessee under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition of indebtedness; or
- f. Assignment for the benefit of creditors or application for or consent to the appointment of a receiver for Lessee; or
- g. An assignment, transfer, conveyance or other disposition of its interest in the Property without the express written consent of the Board; or
- h. Violation of Article 12, Environmental Pollutants.

Additionally, after having obtained permission from a court of competent jurisdiction, the Board may re-enter the Property, remove all persons and property there from, and store such property in a public warehouse at the sole cost of the Lessee, without becoming liable for any loss or damage, except for loss of damage resulting from willful or negligent acts of the Board, its employees or agents, and such re-entry will not release the Lessee from liability hereunder.

20. ADDITIONAL TERMS:

- a. Lessee is responsible for the conduct of its employees, students, participants, guests and invitees.
- b. Intoxicating liquor, weapons, and illegal substances, in any form, will not be allowed on or at the Property. Also, no smoking is allowed on or at the Property.
- c. Lewd conduct will not be tolerated.
- d. Lessee will report any repairs or maintenance needed to equipment or facilities to the school engineer within 24 hours.
- e. Lessee is to abide by the School Safety Plan that is developed for the facility.

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

To Lessor:

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

Copies to:

Milwaukee Board of School Directors
Milwaukee Public Schools
5225 West Vliet Street, Room 1
Milwaukee, WI 53202
Attention: Director of Procurement

To Lessee:

Chris Her-Xiong
Executive Director
Hmong American Peace Academy, Ltd.
4601 North 84th Street
Milwaukee, WI 53225

Copies to:

HAPA Board of Directors
Hmong American Peace Academy, Ltd.
4601 North 84th Street
Milwaukee, WI 53225
Attention: Jason Handal, Board Chair

or at such other address as either party may hereafter designate in writing. Service of any such written notice shall be deemed complete at the time of personal delivery or within three (3) days after mailing as provided above.

22. HOLDOVER: In the event the Lessee remains in possession of the Property after the expiration of this Lease, the Lessee shall be deemed to be occupying the Property on a month-to-month basis. All other obligations contained herein shall continue to be applicable except the Lessee shall pay monthly rent equal to twice the amount of the original term, but in no case shall continue beyond sixty (60) days. In addition, all damages sustained by the Board as a result of the holdover shall be the sole responsibility of the Lessee.

23. ENTIRE AGREEMENT: This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument and in writing executed by the parties or their successors in interest. The terms, covenants and conditions contained in this Lease and any riders and plans attached hereto shall bind and inure to the benefit of the Board and the Lessee and their respective successors, heirs and legal representatives and assigns.

24. EXECUTION DATE; EFFECTIVENESS OF LEASE: This Lease was signed the ____ day of _____, 2016, with all terms beginning July 1, 2016.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

LESSOR:
**MILWAUKEE BOARD OF
SCHOOL DIRECTORS**



Mark A. Sain
President
Milwaukee Board of School Directors



Darienne B. Driver, Ed.D.
Superintendent of Schools



LESSEE:
HMONG AMERICAN PEACE ACADEMY, LTD.



Chris Her-Xiong
Executive Director

EXHIBIT A

SITE PLAN
SITE NO. 206 - HAPPY HILL ELEMENTARY SCHOOL
711 W. BROWN DEER RD., MILW., WI. 53218
DATE: 8/24/08

