



THE SCHOOL DISTRICT
PALM BEACH COUNTY

PALM BEACH COUNTY: E-AGENDA

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Special Meeting
Jan. 26, 2005

Real Estate: Lease Agreement / Montessori Academies of P. B. County

APPROVED

Description:

- The School District has an overcrowding situation in the North area that will be relieved through new construction and modernizations.
- This Charter School serves Elementary School students and will bring needed temporary relief to overcrowded schools in the area.
- The Charter School Programs will serve students in the North County area that are not able to access the current District Montessori Programs.
- This agreement consists of leasing the "old" media center on a temporary basis to the Montessori Academies of Palm Beach County, Inc. Charter School for the interim period during which time the school will be adding new elementary school capacity in the area (Jerry Thomas Elem. Addition, Limestone Creek Elem. Addition, Westward Elem. Modernization).
- The Charter School will use the "old" media center for the 05-06 and 06-07 school years at a cost of \$1.00 per year.
- The Charter School will be responsible for modifications of the facility and will be required to return the building to the current layout if required by the District at the end of the lease.
- The Charter School needs for this facility will be for no more than two (2) years.
- While the District has current administrative needs for the "Old" Media Center Building, it considers the needs of the students that will be served by these programs its' first priority.
- Board in approving this item also approves an Access License Agreement which will allow the Charter School and it's contracted professionals access to the property for the design plans and renovation work prior to the commencement of the Lease.
-

Item Type:

Action

Recommendation:

I recommend the School Board approve the lease agreement between the Montessori Academies of Palm Beach County, Inc. and the School Board of Palm Beach County for the use of the "old" H. L. Watkins Media Center for the 05-06 and 06-07 school years; and authorize the Superintendent and Chairman to sign all necessary documents.

Legal Review Required:

Yes

Contact:

[Joseph M. Moore \(moorej@Mail.palmbeach.k12.fl.us\)](mailto:moorej@Mail.palmbeach.k12.fl.us)

Joseph M. Sanches

Financial Impact:

N/A

Full Review Required:

No

Attachments (list):

HLWatkinsMediaCenterLease11205.pdf

MapHLWatkinsOldMediaCenter.pdf

AttachmentMontessori.pdf

History:

Wednesday, December 22, 2004 - Item submitted by Cathy Clarke.

Wednesday, December 22, 2004 - Joe Sanches has changed this item.

Wednesday, December 22, 2004 - Joe Sanches has Approved this item.

Wednesday, December 22, 2004 - Joe Moore has submitted a revision request.

Wednesday, December 22, 2004 - Cathy Clarke has changed this item. All approvals and reviews have been discarded.

Monday, January 10, 2005 - Cathy Clarke has changed this item. All approvals and reviews have been discarded.

Monday, January 10, 2005 - Joe Moore has Approved this item.

Wednesday, January 12, 2005 - Cathy Clarke has changed this item. All approvals and reviews have been discarded.

Wednesday, January 12, 2005 - Cathy Clarke has changed this item. All approvals and reviews have been discarded.

Wednesday, January 12, 2005 - Cathy Clarke has changed this item. All approvals and reviews have been discarded.

EXHIBIT I

**SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
LEASE AGREEMENT**

between

**SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
(School Board)**

and

**THE MONTESSORI ACADEMIES OF PALM BEACH COUNTY, INC.
(Tenant)**

LEASE AGREEMENT

THIS LEASE made and entered into, by and between SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a corporate body politic, existing under the laws of the State of Florida, hereinafter referred to as "School Board" and The Montessori Academies of Palm Beach County, Inc., a Florida non profit corporation; hereinafter referred to as "Tenant."

RECITALS:

WHEREAS, School Board is the owner of certain real property situated in Palm Beach County, Florida, at 9480 MacArthur Boulevard and known as Howell L. Watkins Middle School, which property is legally described in Exhibit "A" attached hereto (hereinafter "the School"); and

WHEREAS, Tenant has requested a lease to occupy a portion of the School property known as the existing Media Center and designated parking area depicted in Exhibit "B" attached hereto (hereinafter referred to as the "Leased Premises"), to facilitate Tenant's use for Charter School purposes; and

WITNESSETH:

NOW, THEREFORE, in consideration of the rental reserved herein, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC LEASE PROVISIONS

Section 1.01 Terms and Conditions. The School Board hereby grants to Tenant the right to and Tenant shall be permitted to utilize the Leased Premises pursuant to the terms, conditions and provisions of this Lease.

Section 1.02 Length of Term and Commencement Date. The term of this Lease shall commence on August 1, 2005 (the "Commencement Date") and shall extend until May 31, 2007 (the "Term"), unless sooner terminated pursuant to the provisions of this Lease

Section 1.03 Intentionally Deleted.

Section 1.04 Acceptance by Tenant. Tenant certifies that Tenant has inspected the Leased Premises and accepts same "As Is," in its existing condition, as of the Commencement Date of this Lease, together with all defects, latent or patent, if any, and subject to all easements, encumbrances and restrictions and matters of record. Tenant further acknowledges that the School Board has made no warranties or representations of any nature whatsoever regarding Leased Premises including, without limitation, any

relating to the physical condition thereof or of any improvements located therein, or the suitability of the Leased Premises for Tenant's intended use thereof. School Board shall not be required to perform any repair work, alterations, or remodeling of the School or Leased Premises as a condition of this Lease.

Section 1.05 Inability to Operate. In the event Tenant (i) is unable to obtain or maintain in full force and effect through no fault of Tenant, any permit, license or other governmental approval necessary or required for the continued operation, School Board shall have the right to terminate this Lease upon thirty (30) days prior written notice to Tenant. Thereafter the parties shall be relieved of all further obligations under this Lease arising subsequent to the date of such termination.

ARTICLE II RENT

Section 2.01 Annual Rent. Commencing upon the Commencement Date, and each subsequent anniversary thereof during the entire Term of this Lease, Tenant shall pay School Board an annual net rental of One and no/100 Dollars (\$1.00) (the "Annual Rent"). This amount shall be made payable to the School Board and shall be delivered to the Real Estate Services Department, Suite B246, 3300 Forest Hill Boulevard, West Palm Beach, Florida 33406. This Lease shall be what is commonly referred to as "triple net" to School Board, it being understood by the parties that School Board shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expenses of any nature whatsoever relating to this Lease or ownership or operation of the School and Leased Premises, including without limitation those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

Section 2.02 Security Deposit. Tenant, upon the School Board's approval of this Lease, shall deposit with the School Board the sum of Five Thousand Dollars (\$5,000) (the "Security Deposit"). The Security Deposit may be commingled with other funds of School Board, and School Board shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant beyond any applicable cure period(s), then the School Board, at its option, may appropriate and apply the Security Deposit, or so much thereof as School Board may deem necessary, to compensate the School Board for all actual loss or damage sustained or suffered by School Board due to such default or failure on the part of Tenant. Should any portion of the Security Deposit be so appropriated and applied by School Board, then Tenant shall, upon the demand from School Board, forthwith remit to School Board a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Tenant's failure to do so within thirty (30) days after receipt of such demand shall constitute a default of this Lease. At the expiration of this Lease, provided Tenant is not then in default of any terms, covenants, and conditions of this Lease and Tenant has paid all sums payable by Tenant to School Board hereunder, the Security Deposit shall be returned in full to Tenant within thirty (30) days of such expiration.

Section 2.03 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease other than the Annual Rent shall be considered

“Additional Rent,” whether or not the same is specifically so designated and School Board shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to School Board relating to the Annual Rent.

Section 2.04 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Real and Personal Property Taxes. Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent even though the applicable statute or ordinance may propose to impose such tax against School Board. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Leased Premises, Tenant’s leasehold interest or Tenant’s Alterations and personal property attributable to Tenant’s Lease.

Section 2.05 Unpaid Fees, Holdover. In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the maximum rate permitted by law shall accrue against the delinquent payment(s) from the date due until the date payment is received by the School Board. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, School Board shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to School Board pursuant to this Lease, subject to applicable cure periods set forth in this Lease, or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to vacate and relinquish possession of the Leased Premises at the expiration or earlier termination of this Lease, Tenant shall be liable to pay to School Board during the entire period of such holdover, double rental, as provided for in Chapter 83.06, Florida Statutes.

Section 2.06. Accord and Satisfaction. In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The School Board may accept any check or payment without prejudice to School Board’s right to recover the balance due or to pursue any other remedy available to School Board pursuant to this Lease or under the law.

ARTICLE III ALTERATIONS TO LEASED PREMISES

Section 3.01. Tenant’s Work.

(a) **Alterations.** Tenant shall not at any time construct or make any improvements, additions, modifications or alterations to the Leased Premises without the prior written consent of School Board, which consent may be withheld in the sole discretion of School Board. In the event Tenant proposes to construct any alteration, improvement, or modification of the Leased Premises, Tenant shall submit to School Board conceptual plans and specifications for such proposed alterations (the “Alterations”). In the event School

Board approves such Alterations, Tenant shall prepare and submit to School Board for approval detailed plans and otherwise comply with the terms of this Article III. All Alterations, including improvements, additions and modifications constructed by Tenant shall be deemed a part of the Leased Premises, and, upon expiration or earlier termination of this Lease, shall, at the sole discretion of the School Board, be removed by Tenant and Tenant shall repair any damage caused by the installation, use, maintenance or removal of the Alterations, using materials of like kind and quality.

(b) Governmental Approvals. Tenant shall obtain, at Tenant's sole cost and expense, all other approvals, including but not limited to School Board, local, state and federal permits and consents necessary for construction of any Alterations and shall further be responsible for all conditions which may be imposed in connection with such approvals. Tenant acknowledges that it will not use this Lease, or the requirements of this Lease, as a basis for argument that Tenant should be relieved of, or have modified conditions and/or interpretations of any regulatory requirements. Nothing contained herein shall be construed to alter, limit or eliminate the obligation of the parties to comply with applicable ordinances, statutes and laws relating to such approvals. School Board's Chief of Facilities Management ("CFM") shall execute such applications and/or consents as may be reasonably required to facilitate the issuance of permits and approvals for the Alterations.

(c) General Installation Guidelines. All work performed by Tenant pursuant to this Lease shall be performed by Tenant at Tenant's sole cost and expense, shall be performed only by duly licensed contractors specializing in such work, and who are approved in advance by the School Board's CFM, or designee. All work shall be performed in a good and workmanlike manner and shall be diligently prosecuted to completion substantially in accordance with the plans approved by the School Board, and all applicable governmental laws, regulations, rules, codes and orders. Tenant, its contractors, subcontractors, laborers, materialmen, suppliers and professionals shall exercise diligent care and caution in the installation, construction, maintenance, and repair of the Leased Premises or any appurtenances thereto, in order to avoid damage to the School and School Board's improvements. In the event of such damage, Tenant shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by Tenant, at Tenant's sole cost and expense. Tenant agrees and acknowledges that all work performed by Tenant pursuant to this Lease is performed and accomplished solely for the benefit and convenience of Tenant and not for the benefit of School Board, such work being nonetheless subject to each and every provision of this Lease and shall be performed to the satisfaction of School Board. Tenant shall ensure that that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

(e) Contractor Requirements. Tenant shall require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of School Board endorsed thereon, in such amounts and in such manner as School Board may reasonably require. School Board may require additional insurance for any alterations or improvements approved hereunder, in such amount as School Board reasonably determines to be necessary.

(f) No Liens. Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by School Board to subject the estate of School Board to liability under the Construction Lien Law of the State of Florida, it being expressly understood that School Board's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by School Board, Tenant shall file a notice satisfactory to School Board in the Public Records of Palm Beach County, Florida stating that School Board's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within ten (10) days from the date Tenant received notice of such filing. In the event that Tenant fails to satisfy or transfer such claim within said ten (10) day period, School Board may do so and thereafter charge Tenant, and Tenant shall promptly pay to School Board upon demand, as Additional Rent, all costs incurred by School Board in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save School Board harmless from and against any damage or loss incurred by School Board as a result of any such construction lien.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF BY TENANT

Section 4.01 Use. Tenant shall exercise the rights granted hereunder solely and exclusively for operation of a Charter School pursuant to its Charter School Agreement with the School Board. Tenant shall not use, or suffer the use of the Leased Premises for any other use, business, or purpose other than those specifically permitted hereby.

Section 4.02 Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste upon or within the School or Leased Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which interferes with School Board's or any third parties' quiet enjoyment of the School or Leased Premises or results in damage to the School or which may affect School Board's fee interest in the Leased Premises or results in an unsightly condition. Tenant shall cause any and all trash or discarded materials, including but not limited to construction materials used and/or generated by Tenant, to be removed from the School and Leased Premises at Tenant's sole cost and expense immediately.

Section 4.03 Governmental Regulations. Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all School Board, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to Tenant's use of the Leased Premises. Tenant shall indemnify, defend and save School Board harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

Section 4.04 Non-Discrimination. Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and School Board's Policy No. 7.081, and shall not discriminate against any individual on the basis of their religion, race, national origin, color, sex, marital status, parental status or handicap with respect to any activity occurring under this Lease.

Section 4.05 Surrender. Upon termination or expiration of this Lease, the Tenant shall vacate and surrender the Leased Premises to the School Board and the parties shall be relieved of all further obligations arising subsequent to the date of such termination or expiration.

Section 4.06 Hazardous Substance. For purposes hereof, "Hazardous Materials" shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. "Disposal" shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Tenant shall not use, maintain, store or dispose of any Hazardous Materials, chemicals or other agents used or produced in Tenant's operations, at the Leased Premises, in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the disposal of Hazardous Materials upon the School or Leased Premises or upon adjacent lands and shall operate and occupy the Leased Premises in compliance with all Environmental Laws.

Any disposal of a Hazardous Material, whether by Tenant or any third party associated with Tenant, shall be reported to School Board immediately upon the knowledge thereof by Tenant. Tenant shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the School or the Leased Premises, or emanating from the Leased Premises, or onto adjacent lands, as a result of Tenant's, or Tenant's agents, contractors or employees exercise of the rights granted by this Lease.

Tenant hereby agrees to indemnify, defend and hold harmless School Board from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by School Board, including reasonable attorney's fees and costs at trial and on appeal, which may arise directly, indirectly or proximately as a result of any violation of Environmental Laws or the disposal of any Hazardous Materials by Tenant, or Tenant's agents, contractors or employees. Tenant's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Tenant, it shall not be deemed to alter or diminish any statutory or common law liability of Tenant.

Tenant acknowledges that School Board would not have entered into this Lease without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive the expiration or termination of this Lease.

ARTICLE V REPAIRS AND MAINTENANCE

Section 5.01 Responsibility of Tenant. Tenant shall keep and maintain the Leased Premises, and all Alterations, in good condition and repair and in a clean condition, free of refuse, trash, and rubbish, at Tenant's sole cost and expense. Tenant shall be responsible for any repairs caused by the negligent or intentional acts of Tenant or Tenant's employees, agents, students, invitees or contractors. School Board shall have sole discretion to determine when and what maintenance, repairs and/or renovations Tenant shall perform. Tenant shall provide School Board with thirty (30) days advance notice of any such work which may reasonably be foreseen by Tenant to impact the School. The notice required under this Section shall describe in detail the type of work to be performed. Tenant shall cooperate with School Board to devise a plan to permit such work and minimize the impact of such work to the School. Tenant shall be responsible for all costs associated with preparation of and implementation of such plan. Notwithstanding the foregoing, in the event of an emergency, School Board and Tenant shall have no duty to provide such advance notice as a result of undertaking any work necessary as a result of such emergency. For purposes of this Section 5.01, an "emergency" shall be defined as the occurrence of an event that threatens immediate harm to persons or property.

Section 5.02 School Board's Right to Inspect. School Board or School Board's agents shall have the right to inspect the Leased Premises. School Board shall conduct such inspections in a manner that does not unreasonably interfere with or disrupt Tenant's operations.

ARTICLE VI INSURANCE

Section 6.01 Insurance. Tenant shall, at its sole expense, maintain in full force and effect at all times during the life of this Lease, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein, as well as School Board's review or acceptance of insurance maintained by Tenant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under the Lease.

Section 6.02 Commercial General Liability. Tenant shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence and not more than a \$5,000 deductible. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless approved by School Board's Employee Benefits and Risk Management Department. This coverage shall be provided on a primary basis.

Section 6.03 Business Automobile Liability. Tenant shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence and not more than a \$5,000 deductible for all owned, non-owned and hired automobiles. In the

event Tenant does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Tenant to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. This coverage shall be provided on a primary basis.

Section 6.04 Worker's Compensation Insurance & Employers Liability. Tenant shall maintain Worker's Compensation Insurance & Employers Liability in accordance with Chapter 440, Florida Statutes. This coverage shall be provided on a primary basis.

Section 6.05 Additional Insured. Tenant shall cause School Board to be provided Additional Insured coverage equivalent to that provided by a CG 2026 Additional Insured - Designated Person or Organization endorsement to the Commercial General Liability and casualty insurance coverage. This Additional Insured coverage shall extend to the interests of "School Board of Palm Beach County, Florida, a corporate body politic under the laws of the State of Florida, its Officers, Employees and Agents." The Additional Insured endorsements shall provide coverage on a primary basis.

Section 6.06 Waiver of Subrogation. Tenant by entering into this Lease, agrees to a Waiver of Subrogation for each required policy; provided, however, School Board acknowledges and agrees that Tenant does not agree to a waiver of subrogation for incidents that arise from the acts or omissions of School Board or its agents, employees or contractors. When required by the insurer, or should a policy condition not permit an Insured to enter into an pre-loss agreement to waive subrogation without an endorsement, then Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or voids coverage should Tenant enter into such an agreement on a pre-loss basis.

Section 6.07 Certificate(s) of Insurance. Immediately following execution of this Lease by Tenant, Tenant shall deliver to School Board a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Lease have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate (s) of Insurance should be mailed to and reference in the "CERTIFICATE HOLDER" box (ACCORD FORM or its equivalent) the following: Real Estate Services Department, 3300 Forest Hill Boulevard, Suite B246, West Palm Beach, FL 33406.

Section 6.08 Umbrella or Excess Liability. If necessary, Tenant may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit of not less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability.

The School Board shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Section 6.09 Right to Review. School Board, by and through its Employee Benefits and Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to periodically (i) review, reject or accept any required certificates of insurance, including limits of coverages noted thereon, to the extent said certificates of insurance are not in compliance with this Article VI, and (ii) reasonably adjust the limits of coverage required hereunder from time to time throughout the term of this Lease. School Board further reserves the right, but not the obligation, to review and reject any insurer providing coverage because said insurer fails to maintain a rating of at least "B++" by AM Best rating service or failure to operate legally.

Section 6.10 Casualty Insurance: Tenant shall reimburse School Board as Additional Rent for the cost of maintaining, during the Term of this lease, casualty insurance which shall include fire and extended coverage insurance on all buildings and structures within the Leased Premises. The cost for the initial year of coverage is \$2,755.00, which shall be paid on or before the Commencement Date. The School Board shall notify Tenant as to the cost of this coverage for the second year of the Term.

gao

ARTICLE VII INDEMNIFICATION OF SCHOOL BOARD

Tenant shall, in addition to any other obligation to indemnify the School Board, and to the fullest extent permitted by law, protect defend, indemnify and hold harmless the School Board, their agents, officers, elected officials and employees from and against any and all claims, suits, actions, liabilities, losses (including economic losses), and costs arising during the Term of this Lease or any renewal hereof for any actual or alleged bodily injury, sickness, disease or death and/or damage to property, including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of Tenant, or anyone directly or indirectly employed by Tenant, sustained in or about the School or Leased Premises, by reason or as a result of the use and occupancy of the School or Leased Premises by the Tenant, its agents, employees, and contractors, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees at trial and on appeal, expenses and liabilities incurred in and about the defense of any such claim. In the event School Board shall be made a party to any litigation commenced against the Tenant as a result of Tenant's use of the School or Leased Premises, or by the Tenant against any third party relating to Tenant's use of the School or Leased Premises, then Tenant shall indemnify, defend, and hold School Board harmless and pay all costs and attorney's fees incurred by School Board in connection with such litigation, and any appeals thereof. Notwithstanding the foregoing, Tenant shall have no obligation pursuant to the immediately preceding sentence relating to claims or damages that are judicially determined to be solely attributable to School Board's negligent or intentional acts or omissions. The indemnification obligations hereunder shall not be

limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Tenant under workers' compensation acts; disability benefits acts, other employee benefit acts or any statutory bar. Any costs or expenses, including attorney's fees, incurred by the School Board to enforce this agreement shall be borne by Tenant. Tenant recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the School Board in support hereof according to the laws of the State of Florida. This section shall survive the termination of this Lease.

ARTICLE VIII DAMAGE OR DESTRUCTION

In the event the Leased Premises is destroyed or so damaged or injured by fire or other casualty during the Term of this Lease, whereby the same are rendered untenable, in whole or in part, School Board may, at its sole option, elect not to restore or repair the Leased Premises but to terminate this Lease. Notwithstanding anything herein to the contrary, in the event of damage by fire or other casualty that cannot reasonably be expected to be repaired within thirty (30) days following same or, if the Leased Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Tenant's operations for more than thirty (30) days, then Tenant may at any time following such fire or other casualty terminate this Lease upon fifteen (15) days written notice to School Board. Notwithstanding the foregoing, in the event such casualty is caused by the negligent or intentional acts of Tenant or its employees, contractors or agents, Tenant shall not have the right to terminate this Lease. In the event either School Board or Tenant elects to terminate this Lease, Tenant shall vacate and surrender the Leased Premises as required hereby, whereupon the parties shall be relieved of all further obligations hereunder arising after the date of such termination. The termination herein mentioned shall be evidenced in writing. Annual Rent shall be prorated to the date of any such termination of this Lease and School Board shall refund any balance owing to Tenant, within 30 days after written notice to the School Board. Termination of this Lease shall not affect Tenant's obligations under this Lease arising prior to such termination.

ARTICLE IX ASSIGNMENT AND SUBLETTING

Tenant may not assign, mortgage, pledge, collaterally assign, or encumber this Lease, in whole or in part, nor sublet or rent all or any portion of the Leased Premises nor grant any easements or enter into any management agreements affecting the Leased Premises, without prior written consent of School Board, which may be granted or withheld at School Board's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

ARTICLE X

UTILITIES

Tenant is responsible for paying for all costs and charges for utilities, including but not limited water, sewer, electricity and garbage removal. All utilities provided to the Leased Premises shall be separately metered, or in the event separate metering is not permitted by the utility provider, Tenant shall reimburse School Board as Additional Rent for its prorata share of such utility services within 10 days of receipt of invoice. Notwithstanding anything herein to the contrary, in no event shall School Board be liable for any interruption of power or other utility service to the Leased Premises.

ARTICLE IXI ACCESS

Tenant shall comply with any reasonable security procedures established by School Board to prevent unauthorized access to the Leased Premises and School generally. Tenant and School Board shall each designate emergency contact personnel to notify in case of an emergency requiring access to the Leased Premises.

ARTICLE XII DEFAULT

Section 12.01 Default by Tenant. The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Lease: (i) Tenant's failure to pay any sum due hereunder within fifteen (15) days after the due date for said payment; (ii) Tenant's failure to perform or observe any other term, covenant, or condition of this Lease on Tenant's part to be performed hereunder and such failure continues for a period of more than thirty (30) days after the date Tenant receives written notice from School Board notifying Tenant of the specific failure, provided, however, Tenant shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion within sixty (60) days; (iii) Tenant's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding; or (iv) termination of Tenant's Charter School Agreement. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, School Board shall have the right to pursue such remedies as may be available to School Board under the law, including, without limitation, the right to give Tenant notice that School Board intends to terminate this Lease upon a specified date not less than three (3) days after the date notice is received by Tenant, in which event this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the three (3) day period and the School Board is so notified, this Lease will continue.

Section 12.02 Default by School Board. School Board shall not be in default unless School Board fails to perform obligations required of School Board within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to

School Board, specifying wherein School Board has failed to perform such obligations; provided, however, that if the nature of School Board's obligations is such that more than thirty (30) days are required for performance then School Board shall not be in default if School Board commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XIII
INTENTIONALLY DELETED**

**ARTICLE XIV
QUIET ENJOYMENT**

Upon payment by the Tenant of the Annual Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the rights granted hereunder for the Term hereby demised without hindrance or interruption by School Board or any other person or persons lawfully or equitably claiming by, through or under the School Board, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XV
CONDEMNATION**

If the Leased Premises or any part thereof shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, School Board shall be entitled to the entire award therefore, including, without limitation, any award relating to both Tenant's leasehold estate and School Board's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Tenant. Tenant hereby assigns and relinquishes to School Board all right, title and interest in such award and, upon request, shall execute all documents required to evidence such result. In the event of a total taking of the Leased Premises, this Lease shall terminate upon the date title vests in the condemning authority. In the event of such termination, the Annual Rent shall be prorated to the date of termination. School Board shall refund any remaining balance to Tenant after Tenant has vacated the Leased Premises and complied with all of its obligations arising hereunder prior to such termination, or as a result of such termination. Thereafter, the parties shall be relieved of all further obligations hereunder. Notwithstanding such termination, Tenant shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Annual Rent shall be abated on a pro rata basis. In the event of a temporary taking, Annual Rent shall be abated on a pro rata basis for the period of time Tenant is unable to use the portion of the Leased Premises temporarily taken. After such period, Annual Rent shall be restored to the Annual Rent, which would have been then due without regard to such taking. School Board shall have no obligation to restore the Leased Premises or improvements or otherwise perform any work upon same as a result of any such taking.

In the event of condemnation of the Leased Premises or any portion thereof, and, if such condemnation may reasonably be expected to disrupt Tenant's operations at the Leased Premises for more than thirty (30) days, Tenant may terminate this Lease upon fifteen (15) days written notice to School Board. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Lease. Termination of this Lease shall not affect Tenant's obligations under this Lease arising prior to such termination.

ARTICLE XVI MISCELLANEOUS

Section 16.01 Entire Agreement. This Lease and any Exhibits attached hereto and forming a part hereof, as if fully set forth herein, constitute all agreements, conditions and understandings between School Board and Tenant. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Lease shall be binding upon School Board or Tenant unless reduced to writing and signed by them.

Section 16.02 Notices. All notices, consents, approvals, demands and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designed the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the Tenant at:
The Montessori Academies of Palm Beach County, Inc.
P.O. Box 31511
Palm Beach Gardens, FL 33420
Attention: Dr. Joseph A. Orr

- (b) If to the School Board at:
Real Estate Services Department
Attn.: Director
3300 Forest Hill Boulevard, Suite B246
West Palm Beach, FL 33406

with copies to:
School Board of Palm Beach County, Florida
Attn.: Chief Counsel
3318 Forest Hill Boulevard, C302
West Palm Beach, FL 33406

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

Section 16.03 Severability. If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 16.04 Broker's Commission. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and agrees to indemnify, defend and hold harmless School Board from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 16.05 Waiver. The waiver by either party of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by School Board to or of any act by Tenant requiring School Board's consent or approval shall not be deemed to waive or render unnecessary School Board's consent to or approval of any subsequent similar act by Tenant. No waiver of any provision of this Lease shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

Section 16.06 Waiver of Jury Trial. THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LEASE.

Section 16.07 Governing Law. This Lease shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

Section 16.08 Radon. Radon is a naturally occurring radioactive gas that, when it

has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from School Board's public health unit.

Section 16.09 Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

Section 16.10 Non-exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 16.11 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

Section 16.12 Effective Date of Agreement. This Lease is expressly contingent upon the approval of the School Board, and shall become effective only when signed by Tenant duly authorized representatives of the School Board.

Section 16.13 Force Majeure. Any party delayed by a Force Majeure Event, as defined herein, in performing under this Lease shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Lease. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm, failure of utility service, or labor dispute.

Section 16.14 Intentionally Deleted

Section 16.15 Binding Effect. This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

Section 16.16 Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.

Section 16.17 Headings. The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

Section 16.18 Amendment. This Lease may be modified and amended only by written instrument executed by the parties hereto.

Section 16.19 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference.

Section 16.20 Public Entity Crimes. As provided in Florida Statutes 287.132-133, Tenant hereby certifies that, to its knowledge, neither it, nor its affiliates, agents, contractors, employees, or suppliers who will perform work under this Lease have been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) month period immediately preceding the Commencement Date of the Term of this Lease. This certificate is required pursuant to Florida Statute 287.133(3)(a).

Section 16.21 Tenant's Property. School Board agrees and acknowledges that all of the personal property of Tenant stored within the Leased Premises shall remain the personal property of Tenant, and, upon expiration or earlier termination of this Lease, shall be removed by Tenant.

(REMAINDER OF PAGE INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

Date of Execution: February 1, 2005



Karen J. Sides
MY COMMISSION # DD127140 EXPIRES
July 8, 2006
BONDED THRU TROY FAIN INSURANCE, INC.

ATTEST:

Karen J. Sides
(Signature)
Notary
(Title)

MONTESSORI ACADEMY OF NORTH
PALM BEACH,
a Florida non-profit corporation

By: Joseph A. Orr
(Signature)
Its: Managing Director
(Title)

ATTEST:

Arthur C. Johnson
By: _____
Arthur C. Johnson, Ph.D., Superintendent

(Seal)

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA, a corporate body
politic

By: Thomas E. Lynch
Thomas E. Lynch, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Blair Lewis 2/3/05
School Board Attorney

SCHEDULE OF EXHIBITS

- EXHIBIT "A" - LEGAL DESCRIPTION OF SCHOOL
- EXHIBIT "B" - SKETCH OF LEASED PREMISES (including designated parking area)
- ATTACHMENT - DESCRIPTION OF MONTESSORI ACADEMY (including list of Board of Directors)

Exhibit "B"



H. L. Watkins Middle School "Old" Media Center

35 Spaces Within
Existing Parking Lot

