

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "**Agreement**") is made and entered into as of the 16 day of MARCH, 2010, by and between **NATIONAL HERITAGE ACADEMIES, INC.**, a Michigan corporation ("**NHA**"), and **FOUNDATIONS ACADEMY**, a Colorado charter school (the "**Academy**").

### RECITALS

The Academy is a charter school, organized as a public school pursuant to C.R.S. §§22-30.5-101 et seq., which authorizes the formation of charter schools (the "**Charter School Law**"). In accordance with C.R.S. § 22-30.5-104(4), the Academy has been incorporated as a nonprofit Colorado corporation, which incorporation does not affect its status as a public charter school for any purposes under Colorado law. Except to the extent expressly waived in accordance with the terms of the Charter School Law, the Academy is subject to the Colorado laws applicable to Colorado public schools (the "**Colorado School Laws**"), including without limitation Article 22 of the Colorado Revised Statutes. The Academy was issued a Charter Contract by School District 27J (the "**Authorizer**") to organize and operate a public charter school. The Academy's Charter Application and the Charter Contract between the Academy and Authorizer, and all amendments to the Charter, are collectively referred to as the "**Charter**".

The Academy and NHA desire to create an enduring educational alliance, whereby the Academy and NHA will work together to promote educational excellence and innovation, based on NHA's school design, comprehensive educational program and management principles.

In order to facilitate the organization and opening of the Academy, and to implement an innovative educational program at the Academy, the parties desire to establish this arrangement for the management and operation of the Academy.

The Academy and NHA agree that no provision of this Agreement shall be construed to interfere with the Academy Board's constitutional duty to exercise its statutory, contractual and fiduciary responsibilities in governing the operation of the Academy. The parties acknowledge and agree that the Academy Board is an independent, self-governing public body which shall operate in accordance with the Charter and applicable law.

Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

### ARTICLE I

#### CONTRACTING RELATIONSHIP

**A. Authority.** The Academy's Board of Directors (the "**Board**") represents that it is authorized by law to contract with a private entity and for that entity to provide educational, business administration and management services. Upon issuance of the Charter to the Board by the Authorizer, the Board will be vested with all powers and authority necessary to operate a charter school under the Charter School Law.

**B. Management Services.** Subject to the terms and conditions of this Agreement, the Academy hereby contracts with NHA, to the extent permitted by law, for the provision of all labor, materials, equipment and supervision necessary for the provision of educational, business administration and management services.

**C. Charter.** This Agreement shall be subject to and comply with the terms and conditions of the Charter, the terms of which are incorporated herein by reference.

**D. Designation of Agents.** Neither NHA nor its employees, agents or representatives shall be deemed an agent or employee of the Academy solely on account of this Agreement, except as follows:

1. NHA, and its respective officers, directors, employees and designated agents are each hereby authorized to serve as agents of the Academy having a legitimate educational interest in the Academy and its students for purposes of the Family Educational Right and Privacy Act, 20 U.S.C. §1232g et seq ("**FERPA**"), such that they are jointly and severally entitled to access the educational records of the Academy for all purposes related to FERPA.

2. As otherwise expressly designated by written resolution or agreement of the Board.

**E. Status of the Parties.** The parties to this Agreement intend that the relationship between NHA and the Academy created by this Agreement is that of an independent contractor and not employer – employee. NHA shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. NHA is a for-profit Michigan corporation, and is not a division, subsidiary or employee of the Academy. The Academy is a body corporate and governmental entity authorized by Charter School Law, and is not a division, subsidiary or employee of NHA. The relationship between NHA and the Academy is based solely on the terms of this Agreement, and the terms of any other written agreements between NHA and the Academy.

## ARTICLE II

### TERM

A. **Term.** This Agreement shall be effective as of MARCH 16, 2010, and unless otherwise terminated pursuant to this Agreement, this Agreement shall continue until the termination or expiration of the Charter currently in effect, inclusive of any Charter reauthorization or renewal periods. The first school year of this Agreement shall be from July 1, 2010 to June 30, 2011, and each school year thereafter shall commence on July 1 and end on June 30 of the following year.

## ARTICLE III

### OBLIGATIONS OF NHA

A. **Responsibility.** NHA shall be responsible and accountable to the Board for the educational, business administration and management services of the Academy in accordance with the Charter. NHA's responsibility is expressly limited by: (i) the Academy's budget which is to be submitted in proposed form by NHA to the Board and approved by the Board as provided in this Agreement ("**Budget**"), and (ii) the availability of state funding to pay for said services. Subject to Article VI(B)(3), neither NHA nor the Academy shall be allowed to expend Academy funds on services in excess of the amount set forth in the Budget.

B. **Educational Program.** The Academy has adopted NHA's educational and academic programs and goals as set forth in the Charter (collectively the "**Educational Program**"). NHA, subject to the oversight of the Academy, agrees to implement and administer the Educational Program. The Educational Program was developed by NHA; in the event that NHA reasonably determines that it is necessary or advisable to make material modifications to the Educational Program, NHA shall inform the Board of the proposed changes and obtain Board approval, as well as Authorizer approval if required by the terms of the Charter. The parties hereto acknowledge that an essential principle of the Educational Program is its flexibility, adaptability and capacity to change in the interest of continuous improvement and efficiency. The Academy and NHA each agree that they are interested in results and not in inflexible prescriptions. Not less than annually, and otherwise as requested, NHA will provide the Board with a progress report detailing progress made on each of the educational goals set forth in the Educational Program.

C. **Specific Functions.** Subject to the oversight and authority of the Board as provided herein, NHA shall be responsible for implementing the Educational Program and the educational, business administration and management services of the Academy including establishment of operational practices that are consistent with Board policy. Such functions include, but are not limited to:

1. Student recruitment and student admissions.
2. Implementation and administration of the Educational Program, including, without limitation, the acquisition of instructional materials, equipment and supplies.

3. Employment of personnel working at the Academy and management of all personnel functions, as set forth in Article VII below.

4. All aspects of the Academy's business administration.

5. All aspects of the accounting operation, including general ledger management, financial reporting, payroll, employee benefits and payroll tax compliance.

6. Transportation to the extent such service is authorized by the Board and to the extent NHA agrees to provide such service. Food service to the extent that it is authorized by the Board.

7. All aspects of the Academy's facility administration.

**D. NHA Purchases Funded By Board Discretionary Funds.** Items purchased by NHA for the Academy and paid for with Board discretionary funds, such as non-proprietary instructional and/or curriculum materials, books, supplies and equipment, shall be the property of the Academy. The property of the Academy excludes items leased, financed or purchased by NHA with NHA's Fee as defined in Article VI(C). NHA agrees not to add any fees or charges to the cost of equipment, materials or supplies purchased by NHA on behalf of the Academy with Academy discretionary funds. For purposes of this Agreement, Board Discretionary Funds shall mean funds generated solely by the Board through efforts such as fundraising for services not provided by NHA under this Agreement and exclusive the Board Reserve.

NHA, in making such purchases for the Academy pursuant to this subparagraph D, shall comply with applicable law, and shall provide the Board, upon request, with available documentation evidencing the costs associated with such purchases.

**E. Subcontracts.** NHA reserves the right to subcontract any and all aspects of all services it agrees to provide to the Academy, including, but not limited to transportation and/or food service. However, NHA shall not subcontract the management or oversight of the Educational Program, except as specifically permitted in this Agreement or with prior written approval of the Board.

**F. Place of Performance.** NHA reserves the right to perform functions other than instruction, such as purchasing, professional development, and administrative functions, off-site, unless prohibited by the Charter or applicable law.

**G. Student Recruitment.** NHA shall be responsible for the recruitment of students. Students shall be selected in accordance with the procedures set forth in the Charter and in compliance with the Charter School Law and applicable law. Marketing costs charged to the Academy shall be limited to those costs specific to the Academy and shall not include costs for the marketing of NHA.

**H. Due Process Hearings.** NHA shall provide student due process hearings in conformity with the requirements of the Academy's Charter and applicable law regarding discipline, special education, confidentiality and access to records. The Board shall retain the right to provide due process as required by law.

**I. Legal Requirements.** NHA shall implement and enforce rules, regulations and procedures applicable to the Academy that are consistent with adopted Board policy and the Educational Program in accordance with the Charter and applicable law. To the extent allowable under the Charter and permitted by the Authorizer, the Board shall interpret all applicable federal, state and/or local laws, rules and regulations liberally to give NHA flexibility and freedom to implement its Educational Program.

**J. Rules and Procedures.** NHA shall recommend to the Board reasonable rules, regulations, policies and procedures applicable to the Academy and is authorized and directed by the Board to enforce such rules, regulations and procedures adopted by the Board.

**K. School Year and School Day.** The school year and the school day schedule shall be approved by the Board as required under the Charter.

**L. Pupil Performance Standards and Evaluation.** NHA shall implement pupil performance evaluations that permit evaluation of the academic progress of each Academy student. NHA shall be responsible and accountable to the Board for the academic performance of students who are enrolled at the Academy. NHA will utilize assessment strategies required by the terms of the Charter and applicable law. The Board and NHA will cooperate in good faith to identify academic goals and methods to assess the students' academic performance.

**M. Services to Disabled Students and Special Education.** NHA shall provide special education services to students who attend the Academy in conformity with the requirements of applicable law. NHA may subcontract as necessary and appropriate for the provision of services to students with special needs. Such services shall be provided in a manner that complies with applicable law.

**N. Contract between the Academy and Authorizer.** NHA will not act in a manner that causes or would cause the Academy to be in breach of its Charter.

**O. Unusual Events.** NHA agrees to timely notify the Board and school administrator of any anticipated or known material: (i) health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could reasonably be expected to adversely affect the Academy in complying with the Academy's responsibilities under the Charter, this Agreement or applicable law.

**P. Academy Records.** The financial, educational and student records pertaining to the Academy (collectively the "**Academy Records**"), are property of the Academy. Except as may be prohibited or limited by the Charter or applicable law, the Academy Records shall be available to the Board and the Authorizer for their review, and are subject to inspection and copying to the same extent that records of a public school are subject to inspection and copying pursuant to applicable law. All Academy Records shall be physically or electronically available upon request at the Academy's physical facility.

**Q. Intellectual Property Rights.** "**Educational Materials**" shall include (without limitation) all curriculum, print and electronic textbooks, instructional materials, lesson plans, teacher guides, workbooks, tests and all other curriculum-related materials.

The Academy will own all proprietary rights to Educational Materials that: (i) are developed by the Academy and paid for out of Academy discretionary funds; or (ii) are developed by NHA or a third party at the direction of the Academy and paid for out of Academy discretionary funds (the “**Academy Materials**”).

NHA shall own all proprietary rights to, and the Academy’s proprietary interest shall not include, Educational Materials that were developed by NHA or copywritten or similarly protected by NHA. NHA shall own all intellectual property rights, including (without limitation) copyrights in and to the Educational Program and all Educational Materials relating thereto, as well as any non-curriculum materials created or provided by NHA in connection with, or related to, the implementation of the Educational Program including, without limitation, all corrections, modifications, and derivatives thereof (collectively all of the foregoing shall be referred to as the “**NHA Materials**”).

The parties acknowledge that to the extent the Academy’s Materials are derivative of NHA Materials, the Academy’s intellectual property ownership rights extend only to the new, original aspects of such works and not to any underlying or pre-existing material. Relevant Educational Materials and teaching techniques used by or at the Academy shall be subject to disclosure to the extent required under the Charter School Law and Colorado Open Records Act.

NHA hereby grants to the Academy the non-exclusive, non-transferable license to use the NHA Materials in furtherance of the Educational Program during the term of this Agreement including, without limitation, the right to reproduce, publicly display, distribute, and create derivatives of same, in hard copy format, or electronically via the Academy’s intranet. To the extent any part of the Academy Materials may be a derivative of NHA Materials, the Academy shall have the non-exclusive, non-transferable right to use such NHA Materials, as same may have been previously embodied or incorporated in the Academy Materials, beyond the termination or expiration of this Agreement solely in connection with the operation of the Academy and in the ordinary course of such operations. The Academy represents and warrants that during the term of this Agreement, or following the expiration or termination of this Agreement, the Academy will not exploit, or assist any third party in exploiting, the Academy Materials or any NHA Materials for commercial purposes. Subject to applicable law, inclusive of FERPA, the Academy hereby grants NHA the non-exclusive, irrevocable, worldwide, assignable right to use, distribute, modify and display the Academy Material, solely for education purposes in any and all media now known or hereafter developed.

NHA hereby grants the Academy the non-exclusive, non-transferable license to use NHA’s trade name and NHA’s trademark(s) to promote and advertise the Academy. No other use of the NHA Trademarks is permitted without NHA’s prior written permission. The Academy shall acquire no rights in the NHA Trademarks, and all goodwill of the NHA Trademarks shall inure to the benefit of and remain with NHA. NHA shall have pre-approval rights for each form and manner of public display of the NHA Trademarks.

**R. Facility.** NHA shall use reasonable efforts to secure a facility to be leased or otherwise provided to the Board on terms mutually agreeable to NHA and the Board. The facility shall comply with the requirements of the Charter and applicable law. NHA shall also

use reasonable efforts to cause the facility to be furnished with equipment and technology as is reasonably necessary to implement the Educational Program.

#### **ARTICLE IV**

##### **OBLIGATIONS OF THE BOARD**

**A. Good Faith Obligation.** The Board shall be responsible for its fiscal and academic policies. The Board shall exercise good faith in considering the recommendations of NHA, including but not limited to, NHA's recommendations concerning policies, rules, regulations and budgets.

**B. Assistance to NHA.** The Board shall cooperate with NHA and, to the extent consistent with applicable law, shall timely furnish NHA all documents and information necessary for NHA to properly perform its responsibilities under this Agreement, including but not limited to, applying for and supporting the waiver of state laws, regulations and rules that NHA reasonably determines to interfere with the effective and efficient operation of the Academy to the extent consistent with the Charter Contract.

**C. Unusual Events.** The Board agrees to timely notify NHA of any anticipated or known material: (i) health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could reasonably be expected to adversely affect NHA in complying with its responsibilities hereunder.

**D. NHA Office Space.** Upon request by NHA, the Board shall provide NHA with suitable space at the Academy, provided: (i) the requested space is available and can be provided without materially prejudicing the Educational Program, and (ii) the requested space is used only for activities related to the Academy. The space shall be provided at no cost to NHA.

**E. Retained Authority.** The Board shall retain the authority to make reasonable regulations in accordance with applicable law relative to anything necessary for the proper establishment, maintenance, management, and operation of the Academy, including, without limitation, regulations relative to the conduct of pupils while in attendance at the Academy or en route to and from the Academy.

#### **ARTICLE V**

##### **SOLICITATION AND USE OF PRIVATE FUNDS**

NHA must seek the Board's approval prior to soliciting any non-governmental grants, donations or contributions on behalf of the Academy. Any such funds so received shall be used solely in accordance with the purpose for which they were solicited, applicable donor restrictions, or as otherwise approved by the Board. Subject to applicable donor restrictions, the Board shall determine the allocation of any funds subject to this Article V that remain unexpended following completion of the project or purpose for which they were originally designated.

## ARTICLE VI

### FINANCIAL ARRANGEMENTS

**A. Revenues.** Except as hereinafter provided, all monies received by the Academy Board shall be deposited in the Board's depository account within three (3) business days with a financial institution acceptable to the Board, provided, however, that upon receipt of a notice from NHA, the Academy agrees to pay all such funds owing under this Agreement directly to the account or party specified in such notice. Interest income earned on Academy depository accounts shall accrue to the Academy. Except as specifically excluded by the terms of this Agreement, the term "**Revenues**" shall include all funds received by or on behalf of the Academy, including but not limited to:

1. Funding for public school students enrolled at the Academy.
2. Special education funding provided by federal and/or state governments that is directly allocable to special education students enrolled at the Academy.
3. Gifted and talented funding provided by federal and/or state governments that is directly allocable to gifted and talented students enrolled at the Academy.
4. At-risk funding provided by federal and/or state governments that is directly allocable to at-risk students enrolled at the Academy.
5. Funding provided by federal and/or state governments that is directly allocable to students enrolled at the Academy with limited English proficiency.
6. All other federal and/or state grant sources, including, but not limited to, Title I and any start up funding allocable to the Academy.
7. All other grants and donations received by the Academy to support or carry out programs at the Academy (except to the extent NHA is not required or involved in soliciting, administering or managing the contribution and/or donation).
8. Fees charged to students as permitted by law for extra services approved by the Board.

The Revenues shall be expended by NHA in accordance with the Budget and as otherwise authorized by the Board. The expenditure of Revenues received from governmental entities shall be consistent with all applicable regulations and policies. The expenditure of Revenues received



from non-governmental grants, contributions and donations shall be made consistent with the provisions of Article V.

**B. Budget**

1. **Budget.** NHA shall provide the Board with an annual proposed Budget prepared and maintained in accordance with the School District Budget Law of 1964, C.R.S. § 22-44-101 et seq., and the Academy's Charter. For the Academy's first school year, the proposed Budget shall be submitted prior to the beginning of the school year. Thereafter, the proposed Budget shall be submitted to the Board prior to June 1<sup>st</sup> for the next school year.

2. **Review and Approval of Budget.** The Board shall be responsible for reviewing and approving the Budget in accordance with the Charter and applicable law. The Budget shall be amended from time to time as necessary to comply with the Colorado School Laws.

3. **Board Reserve.** Notwithstanding any other provision of this Agreement, each school year during the term of this Agreement, there shall be reserved in the Academy's account in an amount of 3% of current fiscal year spending in compliance with Article X, Section 20 of the Colorado constitution (the Taxpayers Bill of Rights or TABOR) (the "**Board Reserve**"). These funds may not be expended except under special circumstances allowed by law. Under any circumstance, the 3% reserve must be restored to the extent expended by June 30 of the applicable fiscal year. Unused Board Reserves apply to next year's Board Reserve requirement.

C. **Fee.** NHA shall receive all Revenues as its Management Fee (the "Fee"), from which it shall pay all operating costs of the Academy as detailed in the Budget. NHA and the Board acknowledge that operating costs include an administrative fee of 2.5% payable to the Authorizer as set forth in the Contract. It is anticipated that NHA will be paid its Fee on the same frequency that the Academy receives its Revenues. NHA shall be entitled to retain as compensation for its services rendered pursuant to this Agreement the difference, if any, between the amount of the Fee and the amount actually expended by NHA in operation and/or management of the Academy during the Academy's fiscal year.

D. **Availability of Funds.** Except as specifically set forth in this Agreement, NHA shall only be required to perform its responsibilities under this Agreement to the extent that there are sufficient Revenues to make payments in accordance with the terms of the Budget.

E. **Other Schools.** The Academy acknowledges that NHA has entered into similar management agreements with other schools. NHA shall maintain separate accounts for expenses incurred in the operation of the Academy and other schools managed by NHA, and shall reflect in the Academy's financial records only those expenses incurred in the operation of the Academy. If NHA incurs expenses that are for both the benefit of the Academy and other schools managed by NHA, then NHA shall allocate, to the extent permitted by law, such expenses among all such affected schools, including the Academy, on a prorated basis based

upon the number of enrolled students, the number of classrooms, or the number of teachers at the affected schools, or on such other equitable basis.

**F. Financial Reporting.** NHA shall provide the Board with:

1. The annual proposed Budget as required by the terms of this Agreement.
2. Statements of Revenues, Expenditures and Changes in Fund Balance detailing all revenues received, and all expenditures for services rendered or expenses incurred in operation of the Academy, whether incurred on-site or off-site, at each regularly scheduled Board meeting. The Statements of Revenues, Expenditures and Changes in Fund Balance shall include detail of budget to actual revenue and expenditures with an explanation of variances.
3. Reports on Academy operations and student performance shall be provided to the Board quarterly, unless otherwise reasonably requested by the Board.
4. Such other information as the Board may reasonably request to enable the Board to (i) evaluate the quality of the services provided by NHA to the Academy, and (ii) timely provide all reports and information that the Academy is required to provide pursuant to the Charter and applicable law.

**G. Access to Records.** NHA shall keep accurate financial records pertaining to its operation of the Academy, together with all Academy financial records prepared by or in possession of NHA, and shall retain all of the aforereferenced records according to the Charter and applicable law to which such books, accounts, and records relate. NHA and the Board shall maintain the proper confidentiality of personnel, students, and other records as required by law.

**H. Accounting Standards/Annual Audit.**

1. **Accounting Standards.** The Academy shall at all times comply with generally accepted public sector accounting principles, accounting system requirements of the Colorado School, as applicable, and applicable Colorado Department of Education rules.
2. **Annual Audit.** The Board shall select and retain an independent auditor to conduct an annual audit of the Academy's financial matters in accordance with the Academy's Charter and applicable law. Subject to applicable law, all records in the possession or control of NHA that relate to the Academy, including, but not limited to, financial records, shall be made available to the Academy and the Academy's independent auditor.

**I. Start-up Costs/NHA Contribution.** NHA will provide start-up funds for (i) the development of curriculum, a technology system and a school operations plan; (ii) recruiting, selecting and training of staff members; and (iii) cleaning, renovating (to the extent necessary as reasonably determined by NHA) and equipping of the Academy facility. In addition, NHA may, but need not, make contributions to the Academy in the event Academy expenses exceed revenues (the "**Contributions**"). NHA Contributions, if any, shall be in amounts acceptable to NHA and the Board and shall be included in the Budget. The Academy shall not be legally

obligated to repay NHA for NHA Contributions made to or on behalf of the Academy. NHA's agreement to make such Contributions shall not be deemed to negate or mitigate the need for the Academy to apply for or solicit state or federal start-up funds, grants or sub-grants which the Academy, as a public school, may be eligible to receive.

## ARTICLE VII

### PERSONNEL & TRAINING

**A. Personnel.** NHA shall select and hire qualified personnel to perform services at the Academy. NHA shall have the responsibility and authority, subject to subparagraphs B, C and D below, to select, hire, evaluate, assign, discipline, transfer, and terminate personnel consistent with the Budget and applicable law. Personnel working at the Academy shall be employees of NHA unless otherwise agreed by NHA and the Board. Each party shall be responsible for their respective employees. However, the compensation of all employees working at the Academy shall be included in the Budget. Upon Board request, NHA shall disclose to the Board the level of compensation and fringe benefits provided by NHA to NHA employees working at the Academy. A criminal background check and unprofessional conduct search in compliance with applicable law shall be conditions for the hiring of or services provided by any person who will or may be reasonably expected to have unsupervised access to and the care, custody or control of, any Academy student(s).

**B. School Administrator.** The Academy Administrator (the "**Administrator**") shall be an employee of NHA and not the Board. The duties and terms of the Administrator's employment shall be determined by NHA. The Administrator shall work with NHA in the operation and management of the Academy. The accountability of NHA to the Academy is an essential foundation of this Agreement. Since the Administrator is critical to the Academy's success, NHA shall have the authority, consistent with subparagraph A above, to select, hire, evaluate, assign, discipline, transfer and terminate the Administrator, and to hold the Administrator accountable for the performance of the Academy. NHA shall consult with the Board with respect to the hiring and termination of the Administrator.

**C. Teachers.** NHA shall, consistent with subparagraph A above, provide the Academy with teachers qualified to teach their assigned subjects and grade level. The curriculum taught by the teachers shall be consistent with the Educational Program. The teachers may, at the discretion of NHA, work at the Academy on a full or part time basis. If working at the Academy on a part time basis, the teacher(s) may also work at other schools managed or operated by NHA. The cost for such teacher(s) shall be shared proportionately among the schools at which the teacher(s) are working. Each teacher working at the Academy shall hold a valid teaching certificate issued by the state board of education or applicable state agency to the extent required by Colorado School Laws (taking into consideration any applicable waivers).

**D. Support Staff.** NHA shall, consistent with subparagraph A above, provide the Academy with qualified support staff as needed to operate the Academy in an efficient manner. The support staff may, at the discretion of NHA, work at the Academy on a full or part time basis. If assigned to the Academy on a part time basis, the support staff may also work at other

schools managed or operated by NHA. The cost for such support staff shall be shared proportionately among the schools at which the support staff is working. An individual who provides a service to students in the Academy that is not teaching, and for which a license is required under Colorado law, must have the appropriate license to provide the service in Colorado.

**E. Training.** NHA shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular basis. Instructional personnel shall receive at least the minimum hours of professional development as required by the Charter School Law. Non-instructional personnel shall receive training as NHA determines reasonable and necessary under the circumstances.

**F. Background Checks and Qualifications.** NHA shall comply with Colorado law regarding background checks, unprofessional conduct searches and certification/licensure, as applicable, for all persons working in the Academy.

**G. Terms of Employment.** No member of the staff at the Academy shall be subject to any covenant not to compete or other employment restriction as part of the terms of his or her employment with NHA for services at the Academy.

**H. Limitations on Discretion.** All decisions made by NHA, and any discretion exercised by NHA, in its selection, hiring, evaluation, assignment, discipline, transfer, and termination of personnel, shall be consistent with the Budget, the parameters adopted and included in the Educational Program, and applicable law.

## **ARTICLE VIII**

### **TERMINATION OF AGREEMENT**

#### **A. Termination.**

**1. By NHA.** NHA may, at its option, terminate this Agreement prior to the end of the terms specified in Article II in the event the Board fails to remedy a material breach within thirty (30) days after notice from NHA. A material breach includes, but is not limited to, NHA's failure to receive for any reason compensation or reimbursement as required by the terms of this Agreement, or the Academy's loss or suspension of its Charter.

**2. By Academy.** The Academy may terminate this Agreement prior to the end of the terms specified in Article II in the event that NHA shall fail to remedy a material breach within thirty (30) days after notice from the Board. A material breach includes, but is not limited to: (i) failure to account for its expenditures or to pay Academy operating costs in accordance with the terms of the Budget (provided funds are available to do so), (ii) failure to follow policies, procedures, rules, regulations or curriculum duly adopted by the Board that are not in violation of the Charter, this Agreement, or applicable law, (iii) receipt by the Board of unsatisfactory reports from NHA or from an educational consultant retained by the Board about matters concerning NHA's performance or the performance of the Academy that are not adequately corrected or explained; or (iv) if this Agreement or its implementation would serve as

grounds for revocation of the Academy's Charter or would otherwise jeopardize tax exemptions or non-profit tax status of the Academy.

3. **By Either Party.** Either party may terminate this Agreement for any reason upon giving not less than ninety (90) days notice to the other party.

**B. Termination/Expiration.**

1. **Effective Date of Termination.** In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, absent a material breach or unusual and compelling circumstances, the termination will not become effective until the end of the then current school year in which the notice of termination is issued.

2. **Removal of Personal Property.** Upon termination or expiration of this Agreement, NHA shall have the right to remove equipment and other assets owned or leased by NHA. Equipment and other assets owned by the Academy or leased by the Academy from third parties shall remain the property of the Academy.

3. **Amounts Due upon Termination or Expiration.** Except as otherwise provided in this Agreement or unless otherwise agreed to in writing by NHA, upon termination or expiration of this Agreement for any reason, the Academy shall pay or reimburse NHA for: (i) the prepaid portion of any expenses paid by NHA in accordance with the Budget; and (ii) for any outstanding liabilities incurred by NHA as of the effective date of the termination of this Agreement, in accordance with the budget or as a result of NHA's obligations under this Agreement. NHA will provide the Academy with written documentation of all such amounts.

4. **Transition.** NHA, for a fee reasonably acceptable to NHA, may at its sole discretion assist the Academy for a period not to exceed ninety (90) days following the effective date of termination of this Agreement, with the Academy's transition to another administrative or managerial arrangement (notwithstanding the foregoing, NHA will have no obligation to provide any assistance to the Academy if the Academy intends to transition to another management company or service provider).

## **ARTICLE IX**

### **INDEMNIFICATION**

A. **Indemnification.** To the extent not prohibited by the Charter or applicable law, each party to this Agreement does hereby agree to indemnify and hold the other party and the Authorizer (the "**Indemnified Party**"), harmless from and against any and all claims, actions, damages, expenses, losses or awards which arise out of (i) the negligence of the indemnifying party, (ii) any action taken or not taken by the indemnifying party, or (iii) any noncompliance or breach by the indemnifying party of any of the terms, conditions, warranties, representations, or undertakings contained in or made pursuant to this Agreement. As used in this subsection, Indemnified Party shall include the party's trustees, directors, officers, employees, agents, representatives and attorneys. Such indemnification may be achieved by the joint purchase of general liability and property insurance policies, or by such other means as the parties may

mutually agree. Notwithstanding anything in this Agreement to the contrary, the Academy Board shall not be precluded by the terms of this Agreement from asserting or declining to assert a claim of governmental immunity.

## **ARTICLE X**

### **INSURANCE**

**A. Insurance Coverage.** NHA shall maintain such policies of insurance as required by the Charter or applicable law. In addition, NHA shall maintain an umbrella liability policy of not less than two million dollars (\$2,000,000.00) (or such greater amount if required by the terms of the Charter or applicable law). Each party shall maintain general liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence (or such greater amount if required by the terms of the Charter or applicable law), with the other party listed as an additional insured. The Academy shall maintain insurance on its facility and related capital items leased by the Academy, all as required by the terms of the Academy's lease(s). Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this paragraph. Each party shall comply with any information or reporting requirements required by the other party's insurer(s), to the extent reasonably practicable.

**B. Workers' Compensation Insurance.** Each party shall maintain workers' compensation insurance as required by law, covering their respective employees.

## **ARTICLE XI**

### **WARRANTIES AND REPRESENTATIONS**

**A. Academy Warranties and Representations.** The Board warrants and represents that, on behalf of and in the name of the Academy, it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement. The Board warrants that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.

**B. NHA Warranties and Representations.** NHA warrants and represents that it is a corporation in good standing and is authorized to conduct business in the State of Colorado. NHA will comply with all registration and licensing requirements relating to conducting business under this Agreement. The Board agrees to assist NHA in applying for such licenses and permits and in obtaining such approvals and consents.

**C. Mutual Warranties.** The Board, on behalf of the Academy, and NHA mutually warrant to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

## ARTICLE XII

### MISCELLANEOUS

**A. Entire Agreement.** This Agreement and any attachments to this Agreement shall constitute the entire agreement of the parties on the subject matter set forth in this Agreement. This Agreement supersedes and replaces any and all prior agreements and understandings between the Academy and NHA.

**B. Force Majeure.** Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike, or other acts beyond its reasonable control; provided either party may terminate this Agreement in accordance with the termination provisions contained in this Agreement if sufficient grounds exist as provided in the Article governing termination.

**C. State Governing Law/Waiver of Jury Trial.** The rights of all parties hereto shall be subject to the jurisdiction of courts located in Kent County, Michigan, and be construed according to the laws of the State of Michigan without regard to conflict of law principles. NHA and the Academy hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either NHA or the Academy against the other.

**D. Official Notices.** All notices and other communications required by the terms of this Agreement shall be in writing and sent to the parties hereto at the facsimile number or address set forth below. Notice may be given by (i) facsimile with written evidence of confirmed receipt by the receiving party of the entire notice, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) personal delivery. Notice shall be deemed to have been given on the date of transmittal if given by facsimile, or upon the date of postmark if sent by certified or registered mail, or upon the date of delivery if given by personal delivery. Notices to the Academy shall be sent to the current address of the then current Board president, with a copy to the then current Board attorney. The address of the parties hereto for the purposes aforesaid, inclusive of the address of the initial Board president, are as follows:

The Academy:

**FOUNDATIONS** <sup>MO</sup> ~~Charter Academy~~  
Attn: President, Board of Directors  
*Monty*  
340 S. 45th Ave. Brighton, Co 80601  
Telephone: ~~(303)~~ 906-8441  
Facsimile: ~~303~~ 940-9717

WITH A COPY TO:

Brad Miller, Esq.  
15575 Curwood Dr.  
Colorado Springs, Mi 80921

Telephone: 719.338.4189  
Facsimile: 719.488.9562

NHA:

National Heritage Academies, Inc.  
Attn: Gregory Lambert  
3850 Broadmoor, S.E. Ste. 201  
Grand Rapids, Michigan 49512  
Telephone: (616) 222-1700  
Facsimile: (616) 222-1701

WITH A COPY TO:

McShane & Bowie  
Attn: John R. Grant  
1100 Campau Square Plaza  
99 Monroe Ave., N.W.  
Grand Rapids, Michigan 49501  
Telephone: (616) 732-5000  
Facsimile: (616) 732-5098

**E. Assignment.** NHA may assign this Agreement with the prior written approval of the Board.

**F. Amendment.** This Agreement shall not be altered, amended, modified or supplemented except by memorandum approved by the Board and signed by both an authorized officer of the Academy and NHA.

**G. Waiver.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

**H. Cost and Expenses.** If any party commences an action against another party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

**I. Severability.** If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions set forth herein shall remain in full force and effect and shall in no way be affected,



impaired or invalidated, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term or provision.

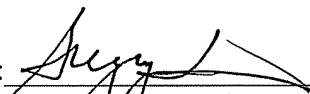
**J. Delegation of Authority.** Nothing in this Agreement shall be construed as delegating to NHA powers or authority of the Board which are not subject to delegation by the Board under the Charter or applicable law.

**K. Compliance with Law.** The parties to this Agreement agree to comply with the Charter and all applicable law.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

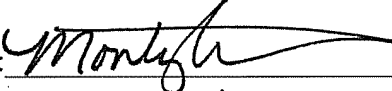
Date: 4-12, 2010

NATIONAL HERITAGE ACADEMIES,  
INC., a Michigan corporation

By:   
Gregory Lambert  
Its: Senior Vice President & Chief Financial Officer **TREASURER**

Date: 3/16, 2010

FOUNDATIONS ACADEMY

By:   
Its: President