

MANAGEMENT AGREEMENT
MONTESSORI ELEMENTARY SCHOOL
PREAMBLE AND BOARD RESOLUTION

(A) The Board is authorized and empowered under the Revised School Code and State School Aid Act to establish educational programs and schools for educating persons of school age who reside within the School District or who otherwise qualify under state law for attendance at the schools of the School District. The Board determines to establish such an educational program and school to be known as Petoskey Montessori Elementary School (herein referred to as the "Montessori School").

(B) The Board, pursuant to its continuing power and responsibility to regulate the operation and management of its schools and to oversee the academic performance and fiscal integrity of each of the School District's schools, and its general powers and authority to best provide for the education of the children within the School District, determines to provide for the operation and management of the Montessori School by contract with the Corporation in accordance with the Management Agreement.

(C) The Board determines that so engaging the Corporation makes available to both the Montessori School and the School District expertise, information, and resources which could not be otherwise available.

(D) The Board further determines that provision for the management of the Montessori School through the Management Agreement better empowers the Board to fulfill its most essential function, that being schools oversight.

NOW THEREFORE, the Board of Education hereby resolves:

Section 1. Establishment of School. The Board hereby establishes the Montessori School in accordance with the recommendations of the Superintendent. The function of the Board with respect to the Montessori School shall be the establishment, funding, and oversight, on behalf of the public, of the Montessori School, and the provision of support services to the Montessori School as may be requested by the Corporation and approved by the Board pursuant to the Management Agreement. The function of the Corporation shall be as operator and manager of the Montessori School, subject to the terms and limitations of the Management Agreement, the applicable Master Agreement between the Board and the Northern Michigan Education Association (hereinafter, "Master Agreement") and the Board's leadership, direction, policies, standards, oversight and satisfaction.

Section 2. Approval of the Management Agreement: Execution and Delivery. The form of the Management Agreement on file with the minutes of this meeting

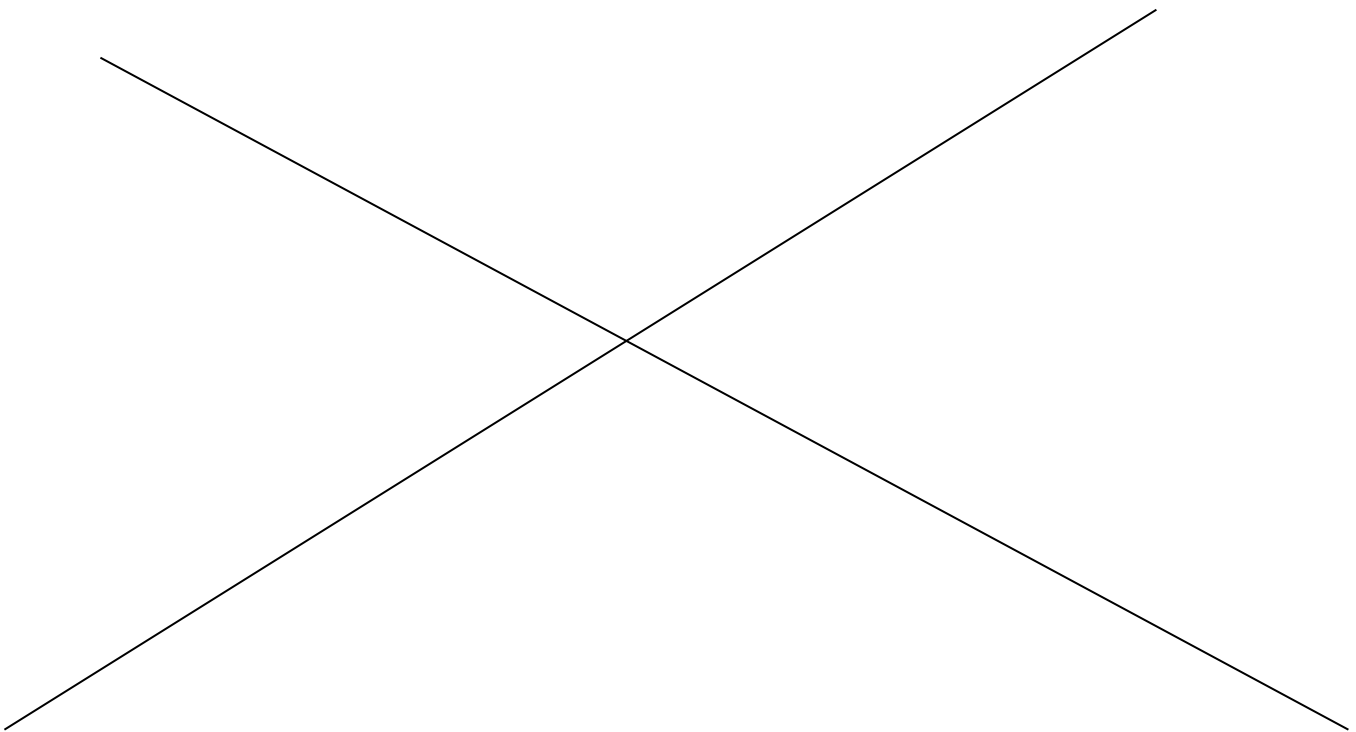
and on which has been endorsed by the Board Secretary the date of adoption of this Resolution is hereby approved. The President of the Board is hereby authorized and directed to execute and deliver, and the Secretary of the Board is authorized to attest the Management Agreement substantially in the form approved, with such changes and insertions in such form of Management Agreement as may be deemed necessary or desirable by the President, Association (as applicable), and Superintendent, so long as permitted by law and any applicable portion of the Master Agreement.

Section 3. Implementation of School Design. The Board hereby determines that the mission, objectives, curriculum, professional development standards, assessment measures, and other features of the School Design and Accountability as appended to the Management Agreement, as Appendix A and Appendix B, respectively, shall apply to the Montessori School for the duration of the Management Agreement, accept as otherwise provided by the Management Agreement. The Superintendent and Corporation as hereby directed to proceed with implementation in the Montessori School of the School Design.

Section 4. Authorization of Other Documents. The President, Secretary, and Superintendent, or any of them, are hereby authorized to execute and deliver such other certificates, documents, instruments, and other papers as may be required by the Management Agreement, or as may be necessary or convenient to effectuate the establishment and operation of the Montessori School, in accordance with the terms of the Management Agreement.

Section 5. Definitions. The words used herein and in the Premises shall have, when not defined herein, those meanings established in the Management Agreement.

Section 6. Conflict Repeal and Effectiveness. All resolutions and parts of resolutions or other proceedings of the Board in conflict herewith are repealed to the extent of such conflict. This is not to imply any waiver of the Master Agreement with the Association. In any conflict, the Master Agreement shall be controlling. This resolution shall become effective upon adoption.



CERTIFICATE

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Education of the Public Schools of Petoskey, Emmet County, State of Michigan, at a regular meeting held on February 20, 2020 and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said act.

I further certify that the following Members were present at said meeting:

and that the following Members were absent:

I further certify that the following Members voted for adoption of said resolution:

and that the following Members voted against adoption of said resolution:

Jessica Shaw-Nolff, Acting Secretary

MANAGEMENT AGREEMENT

This is a Management Agreement, by and between Petoskey Montessori Children's House, a Michigan non-profit corporation (hereinafter "the Corporation") and Public Schools of Petoskey, a Michigan general powers school district and body corporate (the "School District") governed by its Board of Education (hereinafter the "Board" in reference to both the Board of Education and the School District).

PREMISES

A. The Board is authorized and empowered under the Revised School Code ("RSC") to establish and oversee public elementary and secondary schools within the School District. The Board has determined to establish, at a location proximate to the School District, beginning the 1997-98 school year, a new public elementary school, to be known as Petoskey Montessori Elementary School (hereinafter the "Montessori School"), which Montessori School will serve the school children of the District and their families and other school children within the State qualified under the School Code and State School Aid Act to attend.

B. The Board, in the exercise of its obligations and responsibility to provide a quality education for all children within the School District, to continually improve and expand educational opportunities available to all children within the School District, and to equitably, efficiently and effectively utilize the limited economic resources of the School District, has determined that the Montessori School shall be a new type of School District school, both in terms of program and management.

(1) The program of the Montessori School will be modeled upon the Montessori philosophy of education and certified by the Association of Montessori Internationale and the American Montessori Society; and

(2) the Montessori School will be structured on fully site-based educational management techniques which should better enable the direct and effective use of School District resources available to the Montessori School by the professional educators at the school level.

C. The Board has determined that the enrollment at, and funding of, the Montessori School must be equitable. This means that enrollment at the Montessori School shall be open to all elementary school children who live within the School District, taking into account children and their families actively involved and experienced in Montessori programs, and if enrollment for the Montessori School is in excess of capacity, selection will be on a random basis. Funding of the Montessori School shall be on the basis that the blended amount of School District revenues expended per pupil at the Montessori School should reach the blended amount of

School District revenues expended per pupil across the School District, following transitional funding which recognizes the deferred impact of state aid funding for enrollment increases in the School District attributable to the Montessori School.

D. The Board, pursuant to its continuing responsibility to oversee the academic performance and fiscal integrity of each of the School District's schools, and its general powers and authority to best provide for the education of the children within the School District, including the purchase of services for such purpose, has determined to delegate to the Corporation the start-up operation and management of the Montessori School subject to the Master Agreement with the Association, where applicable.

E. The Board has further determined that its delegation to the Corporation for the operation and management of the Montessori School better empowers the Board to fulfill its most essential function, that being schools oversight. The Corporation will operate and manage the Montessori School in accordance with Board policies (including the Master Agreement) and oversight, common educational objectives, and clear management responsibility and accountability.

F. This Management Agreement is authorized by the Board's general powers under RSC § 601a, particularly subsections 601a (1) (d) and 601a(2), and shall be implemented in accordance with those statutes, and the Revised School Code and the State School Aid Act.

IN CONSIDERATION OF THE PREMISES AND THE MUTUAL OBLIGATIONS SET FORTH HEREIN, IT IS AGREED BY AND BETWEEN THE BOARD AND THE CORPORATION AS FOLLOWS:

I. TERM

A. Term. This Agreement shall become effective February 20, 2020 and shall expire August 31, 2022, unless renegotiated by the Parties and renewed and extended for an additional term in writing by the Parties.

II. CONTRACTING RELATIONSHIP

A. Acting under and in the exercise of its authority set forth in the Premises, the Board hereby establishes at 1560 East Mitchell, Petoskey, Michigan, a school to be known as Petoskey Montessori Elementary School (the "Montessori School"), and hereby contracts with the Corporation to the extent permitted by law and the Master Agreement for the management of the School by the Corporation. The Montessori School opened in September, 1997, with an initial student enrollment of 26 students. Eventual expected maximum student enrollment in future years shall be no more than 60 students ages six (6) through twelve (12).

B. The Corporation has no authority to act as agent for or to enter into any contract that would bind the Board. Nothing in this Agreement shall create or be deemed to create a relationship between the parties hereto, or either of them, with

any third person, including a relationship in the nature of a third party beneficiary or fiduciary.

C. The parties intend that an independent contractor relationship will be created by this Agreement and that nothing in this Agreement shall be construed as inconsistent with that status. The Corporation is not to be considered an agent or employee of the School District for any purpose, and neither the Corporation nor the employees of the Corporation are entitled to any of the benefits that the School District provides for its employees.

III. PROGRAM, SERVICES AND MANAGEMENT

A. The Board has determined that the educational program designed by the Corporation and described in the School Design attached hereto as Appendix A and hereby incorporated into this Agreement by this reference, shall be the educational program for the School for the duration of this Agreement, except as otherwise provided in this Agreement. The Corporation shall be responsible for implementing the School Design as such is adapted and modified from time to time. Any substantial adaptation or modification shall be first recommended to the Board by the Corporation and shall be subject to Board approval.

B. The Corporation shall be responsible for and accountable to the Board for the performance of the School in accordance with the standards set forth in Appendix

B. Accountability, attached hereto as Appendix B and hereby incorporated into this Agreement by this reference. The Corporation shall provide information to the

Board on a periodic basis, as set forth in detail below, to enable the Board to monitor the School's educational performance and the efficiency of its management. If there is a disagreement about whether those standards have been met, the parties agree that as an objective third party, an Association of Montessori Internationale consultant, shall be selected by the Board in its reasonable determination to make an evaluation.

C. The functions which the Corporation shall manage and administer include, but are not limited to: the education program and program of instruction; all personnel functions, except employment of teachers; maintenance and operation of the Montessori School buildings and related capital facilities; business administration of the Montessori School; extra and co-curricular activities and programs; professional development for the director/administrator and instructional personnel; and the selection and acquisition of the instructional materials, equipment and supplies.

D. The Corporation and the Board shall mutually agree as to the necessary and appropriate extent of special education services to be provided at the Montessori School. Such agreement shall meet the requirements of § 1751 of the RSC. The Corporation may subcontract to the Board or otherwise for the provision of special education services, subject to approval by the Board.

E. The Montessori School building, including related classroom space and educational facilities as generally identified and described in Appendix C –

Montessori School Facilities (the "School Building") is owned by Petoskey Montessori Children's House. The Corporation hereby licenses to the Board for the duration of this Agreement all access and occupancy to the School Building at all times and as necessary or appropriate for purposes of exercising the Board's statutory powers of establishing the Montessori School and overseeing the conduct and management of the Montessori School, and for purposes of exercising the Board's rights and responsibilities under this Agreement. The Corporation shall adapt, equip and furnish the School Building in a manner substantially in accordance with the School Design. The Corporation shall be responsible for the cleaning and regular and preventive maintenance of the School Building.

F. The Corporation reserves the right to subcontract any and all aspects of all other services it agrees to provide to the Board, as permitted by law and upon Board approval. However, the Corporation shall not subcontract the management or operation of the teaching and instructional program, except for teachers' aides and as specifically permitted herein.

G. Consistent with the requirements of law, the Corporation agrees to abide by the policies of the District including, but not limited to the Master Agreement and, policies pertinent to: corporal punishment/physical contact with students; non-discrimination; child abuse, sexual harassment (students and employees); confidentiality of student records and student record information; bloodborne pathogens exposure control; administration of medication to pupils; and communicable diseases. The Corporation will adhere to professional standards and

will perform all services required under this Agreement in a manner consistent with generally accepted performance standards for the type and nature of services rendered.

H. The Corporation shall abide by and enforce the policies of the Board governing the procurement of supplies, materials and equipment for School District schools, and in accordance with such policies, shall not purchase any item or group of items in a single transaction costing more than the State of Michigan bidding threshold (\$24,924 in 2019/2020) unless competitive bids are obtained for those items and the purchase of those items is approved by the Board.

I. The Corporation shall provide appropriate process to students and their families as regards the requirements of state and federal law regarding discipline, special education, confidentiality and access to records, to an extent consistent with the Board's policies and obligations.

J. The Corporation shall provide educational programs that meet federal, state, and local requirements, unless such requirements are or have been waived.

K. The Corporation shall recommend reasonable rules, regulations and procedures applicable to the Montessori School and is authorized and directed to enforce such rules, regulations and procedures adopted by the Board.

L. The Montessori School shall provide the amount of instruction and training which is no less than the minimum number of days and hours of instruction and training required by state law for maximum state aid funding purposes. The school day shall be approximately six (6) hours per day.

M. During the term of this agreement, the Petoskey Montessori Elementary School will maintain a sign on the exterior which clearly indicates "Public Schools of Petoskey" in addition to the name of the school. The designation "Public Schools of Petoskey" will also be used by the Corporation in addition to the school name in any and all written materials including but not limited to advertisements, press releases, parent communications and letterhead.

The Board and Superintendent will provide the Corporation with notices of all school district activities and events as are provided to other elementary schools within the district.

IV. OBLIGATIONS OF THE BOARD

A. The Board shall exercise good faith in adopting the recommendations of the Corporation, including, but not limited to, the Corporation's recommendations concerning policies, rules, regulations, procedures, curriculum, and budgets. The Board's failure to adopt the Corporation's reasonable recommendations with respect to rules, regulations, procedures and budgets to enable the Corporation to implement the School Design may be considered a material breach of the Agreement.

V. FINANCIAL ARRANGEMENTS

A. Upon reasonable and timely request by the Corporation, the Board shall apply for and/or request any and all state or federal funds available to the Montessori School and its students and for which the Montessori School and its students qualify, provided:

(1) The Corporation shall prepare the application, request, or student-count forms and supporting documentation to facilitate the Board's request for state and/or federal funding for the Montessori School and its students; and

(2) The Corporation hereby warrants and represents to the Board, and at the time of each state or federal funding request may again be asked to warrant and represent, that all information contained in any state or federal funding application,

request, or student-count document is complete, true, and correct, and that the Board, the Corporation, and the Montessori School qualify in fact and by law for all state or federal funds applied for or requested.

B. It is expected that requests for state funding will be for:

(1) per pupil basic Foundation Allowance payments under Section 20 of the State School Aid Act; and

(2) reimbursement of total approved costs under Section 51 of the State School Aid Act for operating special education programs and services;

C. The Corporation may solicit and receive grants and donations consistent with public education requirements under applicable State law and with the mission of the Montessori School. The Corporation retains the right to apply for and receive grant money on its own or together with the Board, and to retain any other funds for use of the Montessori School consistent with the terms of such grants. Any such monies shall not reduce state or federal funding otherwise allocable to the Montessori School. The Corporation shall consult with the Board before applying for grant money for which the Board might also be eligible.

D. Only from state or federal funds actually received by the Board in response to Board funding requests and directly attributable to the Montessori School and its students as determined by the Board in its sole but reasonable judgment, the Board

shall remit such funds to the Corporation by the first day of the next calendar month following receipt, from which the Board shall retain:

(1) Actual out-of-pocket start-up costs of the Board in establishing the Montessori School and entering into this Agreement for legal costs, which will be considered for charge against the Montessori School's annual budget for the 1998-99 or subsequent school years.

(2) For each school year the Public Schools of Petoskey will retain twenty percent (20%) of the total annual State Aid received for the Montessori School and its students as coverage for internal Board costs for processing funding requests, regulating the policies and affairs of the Montessori School, and for providing oversight and monitoring of the Montessori School and this Agreement.

The Public Schools of Petoskey will also retain the contracted salary of all teachers, the fringe benefits of those salaries and an audit expense of One Hundred Fifty Dollars (\$150.00).

(3) Should the Corporation contract with the Board for any central office or other support services other than funding applications, the Corporation shall reimburse the Board for the cost of such services.

(4) In the event the Board determines, whether or not there is potential breach by the Corporation under this Agreement, that the Board has cause, in its sole good

faith discretion, for concern regarding (a) the educational program of the Montessori School, including the welfare of the students, (b) the financial affairs of the Montessori School or the Corporation, or (c) the care and custodial program of the Montessori School, the Board may retain such educational, legal, fiscal, or other consultants or advisors as it deems necessary, including the objective third party to which reference is made to Article III, section B, to review or evaluate its causes of concern, to advise concerning improvement or rectification of the educational, fiscal, and student welfare matters and programs which are the subject of such Board concerns, or to report to the Board whether there is substantial basis for a good faith determination by the Board that the Corporation is in breach of this Agreement.

E. The Corporation shall use the funds received pursuant to this Agreement to pay the costs of the programs provided at the Montessori School. This shall include, but not be limited to, salaries, curriculum materials, textbooks, library books, computer and other equipment, software, supplies, etc. From the sums received, the Corporation may also pay the costs of capital improvements and maintenance and equipment provided to implement the School Design.

F. The Corporation will provide start-up funds for the Montessori School, including funds for the School Design, development of a curriculum, technology system and school operations plan; recruiting, selecting and pre-service training of staff members; and cleaning, fixing, and equipping of the School Building; and legal, accounting and other administrative start-up costs.

G. The Corporation shall provide the Board with a projected budget, in form and substance satisfactory to the Board, prior to opening the Montessori School each school year. The Corporation's expenditures in connection with the operation of the Montessori School shall not deviate materially from the submitted proposed budget without prior written notice to the Board.

H. Upon request, the Corporation shall provide reports in such form as requested by the Board or otherwise as formatted by the Corporation, on Montessori School operations, finances and student performance to the Board. The director/administrator will provide bi-annual reports to the Board at regularly scheduled board meetings regarding all aspects of the Montessori School including but not limited to operations, activities, curriculum and students performance.

I. The Corporation shall, upon request, provide the Board detailed statements of all revenues received, from whatever source, with respect to the Montessori School, and detailed statements of all direct expenditures for services rendered to or on behalf of the Montessori School, whether incurred on-site or off-site.

J. The Corporation shall provide the Board a copy of its annual federal income tax return and, as part of the Board's audit, an annual audit for the Montessori School, in form and in compliance with state and federal law and regulations and Board requirements showing the manner in which funds are spent at the Montessori School.

VI. PERSONNEL AND TRAINING

A. The Corporation shall have the sole and exclusive responsibility and authority to determine staffing levels, and (except teacher(s) who shall be employee(s) of the Board), to select, employ, evaluate, assign, discipline and transfer Montessori School personnel, consistent with state and federal law. All employment conditions, whether or not referenced in this Article, for the Corporation employees shall be the sole and exclusive responsibility of the Corporation.

(1) Because the accountability of the Corporation to the Board is an essential foundation of this Agreement, and because the responsibility of the director/administrator of the Montessori School is critical to its success, the Corporation will have the authority, consistent with state law, to select, employ and supervise the director/administrator of the Montessori School and to hold him or her accountable for the success of the Montessori School. The employment contract between the Corporation and the director/administrator, and the duties and compensation of the director/administrator, shall be determined by the Corporation. The director/administrator shall be employed in the Montessori School and shall be accountable to the Corporation for the performance of the Montessori School. The director/administrator will regularly attend school district administrator meetings.

(2) The Corporation and the director/administrator shall have authority to select and hold accountable the teacher(s) in the Montessori School. However, the Board shall be the employer of all teacher(s) in the school, but not teachers aide(s). The professional services to be provided by the teacher(s) shall include, but not be limited to: (a) classroom instruction; (b) consultation with students relative to educational and behavioral progress; (c) consultation with parents or appropriate individuals, agencies, and entities with respect to student academic, behavioral and rehabilitation matters.

(3) The teacher(s) in the Montessori School shall be covered by any collective bargaining agreement between the Board and the collective bargaining unit for the teachers of the School District, with provisions made for potential conflicts with School Design negotiated between the Board and Association. The following items may be considered for such negotiation:

(a) Recommendation to the Board by the Corporation and its director/administrator of the teacher(s) from all applicants, including applicants outside the School District and assignment by the director/administrator of teaching staff within the Montessori School.

(b) Montessori performance review considerations within the contractual evaluation process consistent with the School Design and the Corporation's principles of accountability.

(c) The work year and work day envisioned by the Corporation and set forth in the School Design fitting within the parameters for such established in the Master Agreement.

(d) Tenure and seniority shall be achieved by teacher(s) with the District, as provided for under state law and the Master Agreement. Teachers shall not achieve tenure with the Corporation.

(e) Continued placement of the teacher(s) in the Montessori School shall be subject to annual satisfactory evaluation by the Corporation and the director/administrator as provided for in the Master Agreement and this Management Agreement. Teacher(s) at the Montessori School who are rated unacceptable may be terminated with just cause as provided in the Master Agreement and those teacher(s) who may have transferred to the Montessori School from other School District schools and/or who otherwise have such provision in their contract with the School District may be transferred back to other School District schools, subject to and in accordance with such teacher(s) contract with the Board. Teacher(s) who are rated unacceptable and transferred back to the other schools in the School District shall not carry any stigma or negative connotation.

(f) It is not the intent of this Agreement to interfere with the Montessori method of providing an educational program. Grievances which may impact this program shall take this into consideration in the resolution of any such issues.

(4) The Board and the Corporation will determine on a case-by-case basis whether the Corporation should assist the Board as a resource in negotiations with the collective bargaining unit representing School District teachers regarding issues needing to be addressed to achieve the common purpose of implementation of this Agreement. However, in no event shall such negotiations be the responsibility of the Corporation.

(5) The teacher(s) employed at the Montessori School shall, as and to the extent required by the RSC, possess at least a valid teaching certificate (appropriately endorsed for the grades and/or subject instructed) issued by the Michigan Department of Education to perform the services required. The Board or Corporation shall immediately give written notification to the other in the event of any suspension, cancellation, revocation or other disqualification of the certificate or license of any of the teacher(s) at the Montessori School.

A copy of the current teaching certificate or license of the teacher(s), or documentation as to the non-applicability of such certificate or license, shall be supplied to both the Board and the Corporation upon the employment of such teacher(s). In the event that the Corporation discovers, learns or otherwise becomes aware that any of the teachers it recommends for employment at the Montessori School have been convicted of any of the crimes specified in § 1535a of the RSC, the fact of such conviction shall be immediately reported, in writing, to the Board. For purposes of this provision "conviction" means a judgment entered by a Court upon

a plea of guilty, guilty but mentally ill, nolo contendere, or upon a jury verdict or other Court finding that a defendant is guilty or guilty but mentally ill.

B. As a condition of entering into this Agreement, the Corporation shall request from the criminal records division of the Department of State Police a criminal history check (including a criminal history check from the Federal Bureau of Investigation) with respect to the teacher(s) recommended by the Corporation, or teacher's aide(s) to perform instructional or other professional services at the Montessori School. The intent of this covenant is to assure that the Corporation complies, and enables the Board to comply, with the standards set forth in § 1230 of the RSC (or its successor provisions) with respect to criminal background checks required to be conducted by the Board in retaining the services of such teachers. Upon receipt and review of criminal history record information with respect to those individuals recommended by the Corporation to perform professional and instruction services under this Management Agreement, the Board shall have the right to decline the employment or assignment of such persons if, in the judgment of the Board, an individual's criminal record adversely affects his/her qualifications for fulfilling the services contemplated under this Agreement.

C. The teacher's aide(s) and non-instructional staff at the Montessori School shall be employed or contracted by the Corporation. Such teacher's aide(s) and non-instructional personnel shall receive such training as the Corporation determines.

D. Except for the teacher(s) who shall be the employees of the Board, the Corporation shall be the employer, and shall be regarded, designated and considered as the employer, with respect to each of its professional, teacher's aide(s) and non-instructional support employees assigned to provide services at the Montessori School pursuant to the terms and operation of this Agreement. The Corporation shall be responsible for evaluation, transfer, discharge, layoff, payment of wages and other similar personnel functions and decisions respecting its employees assigned to perform services for the Montessori School under the terms of this Agreement. The Corporation shall have exclusive and sole responsibility for the processing of any grievances or other claims which may be filed pertaining to its employees who have been assigned to the Montessori School under this Agreement. The Corporation shall be responsible for filing, answering, defending, pursuing, litigating and/or resolving any and all claims arising out of the assignment and performance of all personnel at the Montessori School under this Agreement. These claims shall include, but shall not be limited to: proceedings before the Michigan Employment Relations Commission; claims for workers' compensation benefits under the Workers' Disability Compensation act; claims of unlawful discrimination brought before any state or federal agency; claims for breach of contract; and any other claims of whatsoever kind or character arising from or which are attributable to the performance of such services under the terms of this Agreement. The Board shall not be considered to be a party, joint employer, or successor in interest with regard to any existing or successor collective bargaining agreements between the Corporation and any of its employees, whether instructional, clerical, administrative or support, servicing the Montessori School.

All costs incurred in connection with the defense of the foregoing matters or judgments resulting there from (including all attorney fees, court or administrative costs, back pay or benefits) shall be the sole and exclusive responsibility of the Corporation when such a claim or judgment arises from or is attributable to the performance of professional services by the Corporation (including the Corporation's employees or agents) for the Board under the terms of this Agreement.

VII. TERMINATION

A. Termination is the sole and exclusive remedy by either party for breach of the other of any obligation, representation or any condition to be observed under this Agreement or in any way related to this Agreement or the Montessori School.

B. The Corporation may terminate this Agreement with cause prior to the end of the term specified in Article I in the event the Board fails to remedy a material breach within thirty (30) days after notice from the Corporation. A material breach may include, but is not limited to, failure to make payments to the Corporation as required by this Agreement, failure to adopt procedures, budgets, or similar recommendations of the Corporation, etc. Upon such a termination, the Corporation shall have the right to claim any personal property or equipment (e.g., copy machines, personal computers) installed by the Corporation at the Montessori School.

C. The Board may terminate this Agreement with cause prior to the end of the term specified in Article I in the event that the Corporation should fail to remedy a material breach within thirty (30) days after notice from the Board, except as otherwise provided below. Material breach may include, but is not limited to any one or more of the following:

(1) Failure by the Corporation to account for its expenditures or to pay operating costs (provided there has been Board compliance with Article V).

(2) A good faith determination by the Board that the Corporation has failed to perform any obligation or observe any condition on its part to be performed or observed under this Agreement after reasonable notice from the Board appropriate to the circumstances. Such breaches include, but are not limited to, failure of the Corporation to comply with applicable law, or failure of the Corporation to meet generally accepted accounting standards.

(3) A good faith determination by the Board that the Corporation has been deficient in the performance of its obligations under this Agreement, including falling short of the performance standards and educational goals provided for in this Agreement.

In the event of a determination under paragraph 3, the Board shall advise the Corporation and allow the Corporation a period deemed reasonable by the Board in which to remedy such failures. If the Board makes a good faith reasonable

determination that remedial action of the Corporation is unsatisfactory, the Board may terminate this Agreement upon such notice appropriate to the circumstances.

D. Upon termination of this Agreement by the Board with cause, the Corporation shall have the right to claim any personal property or equipment (e.g., copy machines, personal computers) installed or provided by the Corporation at the Montessori School.

E. If any federal, state, or local law or regulation, or court decision has a material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice, may request renegotiation of the Agreement; and if the parties are unable or unwilling to renegotiate the terms within thirty (30) days after the notice, the party requiring the renegotiation may terminate this Agreement on thirty (30) days further written notice. In any such negotiation or renegotiation, the Association shall have the right to full participation in such actions involving any issue(s) which have or arguably could have impact on its members or interests.

F. Upon expiration of this Agreement at the completion of the contract term and where there is no renewal, the Corporation shall have the right to claim any personal property or equipment installed or provided by the Corporation at the Montessori School.

VIII. PROPRIETARY INFORMATION

A. The Board agrees that the Corporation shall own all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by the Corporation, its employees, agents or subcontractors, or by any individual working for or supervised by the Corporation, which is developed during working hours or during time for which the individual is being paid. The Corporation shall have the sole and exclusive right to license such materials for use by other schools or to modify and/or sell such material to other schools or school districts.

IX. INDEMNIFICATION

A. The Corporation hereby indemnifies and holds harmless the Board, its members, officers, employees, agents and representatives, from any and all claims and liabilities which they may incur and which arise under any circumstances, absent bad faith or gross negligence of the Board or other party seeking such indemnification, and by reason of the establishment or existence of the Montessori School or the Board's participation in this Agreement. Such indemnification shall survive expiration or termination of this Agreement. Such indemnification may be achieved by the purchase of general liability and property insurance policies, or by such means as the parties may mutually agree.

X. INSURANCE

A. The Corporation shall secure and maintain appropriate insurance at its own cost and expense providing coverage of all claims, demands and actions made by or on behalf of any person or entity in any manner arising from or related to the Montessori School, the School Building, or this Agreement. The Corporation shall present evidence to the Board that it maintains this requisite insurance in the amounts not less than \$1,000,000 per occurrence, and in an amount approved by the Board per occurrence in umbrella form aggregate excess liability insurance and in certified form naming the Board, including its members, officers, employees, agents, and representatives, as additional insureds, and non-cancelable except upon 30 days prior written notice to the Board. The Corporation shall comply with any information or reporting requirements applicable to the Board under the Board's policy with its insurer(s), to the extent practicable.

XI. WARRANTS AND REPRESENTATIONS

A. The Board represents that both under the Michigan Constitution of 1963 and under law, the Board has been properly organized and has general, but legally untested, powers establishing a basis of authority of the Board to establish and conduct the Montessori School as contemplated by this Agreement.

B. The Corporation represents that it is incorporated as a non-profit corporation, and authorized and licensed under Michigan law to operate the

Montessori School and that it has the legal authority to enter into, and carry out its obligations under, this Agreement.

C. The Board warrants that it has duly adopted resolutions and taken appropriate actions to authorize and enter into this Agreement, and to perform its obligations hereunder, and that it will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement.

D. The Board and the Corporation each 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.

E. The Board warrants that it has obtained any and all third-party waivers, grants or approvals necessary for it to enter into this Agreement, including any union approvals or waivers or modifications of collective bargaining agreement provisions which would interfere with the ability of the Corporation to implement the School Design.

F. The Corporation represents that it has full and enforceable rights to possess and occupy the School Building for purposes of conducting the Montessori School and granting the Board the rights of access and occupancy described in Article III, Section C-1.

XII. DISPUTE RESOLUTION PROCEDURE

A. Facilitative Mediation - The parties shall attempt to resolve any claim, dispute or other matter arising out of or related to this Agreement by facilitative mediation prior to instituting any legal or equitable proceedings. The request for facilitative mediation shall be made in writing to the other party to this Agreement. The mediator shall be mutually agreed upon. If the mediator cannot be mutually agreed upon, each party shall select a mediator. These mediators shall select a third neutral mediator who alone shall conduct the mediation. The parties shall share the mediator's fee equally. Mediation shall be held within sixty (60) days of the written request for mediation in Petoskey unless another time period or location is mutually agreed upon.

Facilitative mediation discussions shall be confidential until such time as the parties reach mutual agreement. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction. If mutual agreement is not reached by the parties, no testimony or evidence may be submitted by either party in a subsequent judicial proceeding with respect to the statements, discussions or recommendations of the parties or mediator which take place during the facilitative mediation session. Nothing in this Agreement is intended to limit either party in the full and unfettered introduction of independent proofs in defense or support of the cause of action of either party in a judicial proceeding.

B. Venue of Legal Action Any legal action between the parties related to this Agreement shall be conducted in Courts seated in Emmet County, Michigan.

XIII. MISCELLANEOUS

A. This Agreement supersedes and replaces any and all prior agreements and understandings with respect to the Montessori School between the Board and the Corporation.

B. Neither party shall be liable if the performance of any part or all of this Agreement is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

C. This Agreement shall constitute the full and complete Agreement between the parties hereto and may be altered, changed, added to, deleted from or modified only through the voluntary, mutual consent of the parties in a written and signed amendment to this Agreement.

D. This Agreement shall not be assigned by either party without the prior written consent of the other party, provided that the Corporation may without the consent of the Board delegate the performance but not responsibility for such duties and obligations of the Corporation as expressly provided for herein.

E. 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.

F. All representations, warranties and indemnities made herein shall survive termination of this Agreement.

G. This Agreement is made and entered into in the State of Michigan shall be interpreted according to the laws of this State.

PETOSKEY MONTESSORI CHILDREN'S HOUSE

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

Date: _____

PUBLIC SCHOOLS OF PETOSKEY

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

Date: _____