

## **ATTACHMENT 3.2**

Management Contract (if any)

[See also, the ESCLEW Principals for School-Management  
Company relationships for guidance attached hereto]

**EDUCATIONAL SERVICE CENTER OF LAKE ERIE WEST  
OPERATING PRINCIPLES  
COMMUNITY SCHOOLS AND MANAGEMENT COMPANIES**

- The Educational Service Center of Lake Erie West (ESCLEW) is not in favor of any law or contractual provision that gives a management company (whether a for profit Educational Management Organization (“EMO”) or a not-for-profit Charter Management Organization (“CMO”) any right to replace or appoint a governing authority member of an Ohio community school.
- The ESCLEW recognizes, and the law generally requires that governing authorities appoint or elect new governing authority members. Although any stakeholder or interested party, including a management company, may submit resumes of disinterested persons, or recommendations or suggestions, the governing authority makes the sole election, vote and decision and the management company does not participate in that appointment or voting process.
- The ESCLEW, while preserving the concept of competition and the varied structures of management contracts among EMO’s and CMO’s, will strongly encourage a governing authority to assess the type of contract contemplated, its pros and cons, and its provisions to assure quality administrative management of the school.
- The ESCLEW will use its influence to improve the relationships between EMO’s, CMO’s and School Governing Authorities based on transparency, trust, quality, and best practices between boards and their administrations.
- The ESCLEW will monitor expectations of a management company by (a) requiring attachment of any management agreement to and within the charter contract and (b) approving any subsequently new or modified contracts, and (c) monitoring through its oversight of the school, how the management company carries out the provisions of the charter contract between the ESCLEW and the school.
- The ESCLEW will strongly encourage school governing authorities to annually evaluate any management company’s performance under the school-management company contract, and provide evidence to the sponsor that the evaluation occurred.
- The ESCLEW recognizes that by law, governing authority members may be paid a limited stipend pursuant to the applicable laws. Statutorily, the stipend may be required to be paid for by a management company, not because the board member is an employee of the management company, but rather that the management company is required to pay the stipend on behalf of the governing authority.
- The ESCLEW will request that management contracts (a) continue through a school year at the discretion of the school, so long as the management company is being paid for services rendered, and (b) provide transition services or cooperation services if terminated.
- The ESCLEW will remain neutral in a management company-school contract dispute, but shall testify, if required, as to the facts it knows first hand, documents signed by it, and matters related to its oversight as a sponsor. The ESCLEW will monitor disputes and take all reasonable steps necessary to avoid disruption to services for public school children. The well-being of public school students and public school education will be primary in these situations.
- The ESCLEW believes that management companies in primary charge of educational services must present clear and concise educational performance data to the governing authorities of the schools managed in order to show growth, progress or lack thereof in all areas measured by the State of Ohio and otherwise required by the ESCLEW.

- The ESCLEW believes that purchases made with public funds belongs to the school. Purchases paid for by the fee for service to a management company are fees for services rendered unless otherwise required by law (such as for equipment or real property under federal grants).
- The ESCLEW recognizes that Community School Governing Authorities control all revenues, through their treasurers, fiscal agents, grant monitoring and contracts. Fees paid out to management companies are for administration and consulting services rendered and are not considered different than fees paid directly to other contractors or administrators.
- The ESCLEW accepts that management contracts with start-up service fees are appropriate so long as the fees are documented, transparent and approved legitimate start-up services provided to the governing authority. Management contracts with termination fees are approved if the fees are based on past services, reimbursements, closure services, or fees approved by the State auditor or previously approved by the Internal Revenue Service in the school's Application for Tax Exempt Status.
- The ESCLEW expects that loans to a community school from a management company be documented clearly in writing and for a stated term, and that interest, if any, should be at or below market rate.
- The ESCLEW believes that managed schools sponsored by the ESCLEW should make provisions with the EMO or CMO for the governing authority to have its own attorney and accountants, in the case of negotiations or controversy between the parties. If a school has not made allowances for this in its management agreement, the ESCLEW feels that the management company should pay for, budget, or set aside provisions for the school's independent professional advisors as needed. The ESCLEW will require that revised or updated contracts address this issue.

The ESCLEW does not disapprove of a management company paying for the school's audits, accountants or attorneys from its fee, so long as the school's independent advisors are assured independence and payment, and confidentiality is preserved.

- The ESCLEW does not act as an auditor in checking all expenses of the school under vendor contracts, and does not assess the value of the services provided under third-party contracts. In addition, the ESCLEW expects the schools it sponsors to exert influence in their management contracts to require the management company to (a) comply with the guidance and laws concerning reporting expenditures to the auditor (if required by law), and (b) to guard against duplication of services between the management company, the school and other non-management company vendors and (c) to otherwise follow all laws, rules and regulations of the auditors and other applicable governmental agencies. The ESCLEW does not audit an independent, private management company, but expects that company to be able to substantiate to the School, that its staffing is sufficient to provide the services contracted for. If an EMO or a CMO is not in compliance with all laws, rules, or regulations, the ESCLEW may use all available remedies it may have at its disposal to require compliance.

## MANAGEMENT AGREEMENT

This Management Agreement is made and entered into as of the 8 day of March, 2002, by and between **National Heritage Academies, Inc.** a Michigan corporation ("NHA"), and **East Dayton School of Discovery**, an Ohio non profit corporation and Ohio public community school (the "School").

### RECITALS

The School is a charter school, organized as a public community school under the revised Ohio Code Section 3314 (the "Code"). The School has submitted an application (the "Application") for, and has been or will be granted, a contract (the "Contract") by the Ohio Board of Education (the "Sponsor") to organize and operate a public community school, with Sponsor as the authorizing body.

The School and NHA desire to create an enduring educational alliance, whereby the School 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 School, and to implement an innovative educational program at the School, the parties desire to establish this arrangement for the management and operation of the School.

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 School represents that it is authorized by law to contract with a private entity and for that entity to provide educational management services. The School further represents that it has been or will be granted the Contract by Sponsor to organize and operate a public community school. The School is therefore authorized by the Code and Sponsor to supervise and control such school, and is invested with all powers necessary or desirable for carrying out the educational program contemplated in this Agreement.

**B. Contract.** The School hereby contracts with NHA, to the extent permitted by law, for the provision of all labor, materials, equipment, facilities and supervision necessary for the provision of educational services to students, and the management, operation and maintenance of the School in accordance with the educational goals, instructional programs, curriculum, methods of pupil assessment, admission and other policies and criteria, school calendar and school day schedule, age and grade range of pupils to be enrolled, and method to be used to monitor compliance with performance of targeted educational outcomes, all as adopted by the School's Board of Directors (the "Board") and included in the Contract between the

School and Sponsor. The School certifies that upon its execution, this Agreement will be a valid and binding obligation of the School enforceable in accordance with its terms and to the best of its knowledge, except as the enforceability thereof may be limited by applicable reorganization, insolvency, liquidation, adjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally as such laws may be applied in the event of the reorganization, insolvency, liquidation, adjustment of debt or other similar proceeding or a moratorium applicable to the School and by general principles of equity.

**C. Designation of Agents.** The Board designates the employees of NHA as agents of the School having a legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. §1232g, the Family Rights and Privacy Act ("FERPA").

**D. Status of the Parties.** NHA is a for-profit Michigan corporation, and is not a division or a part of the School. The School is an Ohio non profit corporation and part of the State of Ohio's program of public education as authorized by the Code, and is not a division or part of NHA. The parties to this Agreement intend that the relationship created by this Agreement is that of an independent contractor and not employer - employee. Except as expressly provided in this Agreement, no agent or employee of NHA shall be deemed to be the agent or employee of the School. NHA shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. The relationship between NHA and the School is based solely on the terms of this Agreement, and the terms of any other written agreements between NHA and the School.

## ARTICLE II

### TERM

**A. Term.** This Agreement shall be effective as of July 1, 2003 and unless otherwise renewed or terminated pursuant to this Agreement shall continue until termination or expiration of the Contract, inclusive of any contract renewal periods and subject to the terms and obligations herein..

## ARTICLE III

### FUNCTIONS OF NHA

**A. Responsibility.** NHA shall be responsible and accountable to the Board for the administration, operation and performance of the School in accordance with the Contract. NHA's responsibility is expressly limited by: (i) the School's budget which is to be submitted and approved by the Board as provided in this Agreement, and (ii) the availability of base state funding to pay for said services. Neither NHA nor the School shall be required to expend School funds on services in excess of the amount set forth in the School budget.

**B. Educational Program.** NHA agrees to implement the educational goals and programs as set forth in the Contract (the "Educational Program"). In the event NHA determines that it is necessary to modify the Educational Program, NHA shall inform the Board of the

proposed changes and obtain Board approval, and if required under the Contract, approval of Sponsor. 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, and that the School and NHA are interested in results and not in inflexible prescriptions. Not less than annually, and otherwise as requested, NHA will provide the Board with updated reports on progress towards implementing each of the School's educational goals in the Educational Program.

**C. Specific Functions.** NHA shall be responsible for the management, operation, administration, accounting and Educational Program at the School. Such functions include, but are not limited to:

1. Implementation and administration of the Educational Program, including the selection and acquisition of instructional materials, equipment and supplies, and the administration of any and all extra-curricular and co-curricular activities and programs approved by the Board.

2. Management of all personnel functions, including professional development for the School Administrator and all instructional personnel and the personnel functions outlined in Article VI.

3. Securing a facility to be leased or otherwise provided to the Board, operation of the facility, and the installation of technology integral to the school design.

4. All aspects of the business administration of the School.

5. All aspects of the accounting operation, including budgets, general ledger management and financial reporting, including but not limited to audits (annual or special).

6. Transportation and food service, if any is provided, for the School.

7. Any other function necessary or expedient for the administration of the School, including but not limited to the annual reports, ADM or similar reporting, EMIS and other reporting required by Ohio law.

**D. Purchases.** Purchases made by NHA on behalf of the School with the School's funds, such as non-proprietary instructional and/or curriculum materials, books and supplies, and equipment will be the property of the School (exclusive of capital items leased or purchased by NHA). NHA's educational materials and teaching techniques used by or at the School shall be subject to disclosure to the extent required under the Ohio Revised Code and the Freedom of Information Act. However, NHA shall own all proprietary rights to, and the School's proprietary interest shall not include, curriculum or educational materials that were previously developed or copyrighted or similarly protected by NHA, or curriculum or educational materials that are developed by NHA with funds from the School that are not otherwise dedicated for the specific purpose of developing School curriculum or educational materials.

**E. Subcontracts.** NHA reserves the right to subcontract any and all aspects of all services it agrees to provide to the School, including, but not limited to transportation and/or

food service. However, NHA shall not subcontract the management, oversight or operation of the teaching and Instructional Program, except as specifically permitted in this Agreement or with 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 state or local law.

**G. Student Recruitment.** NHA and the Board shall be jointly responsible for the recruitment of students subject to agreement on general recruitment and admission policies. Students shall be selected in accordance with the procedures set forth in the Contract and in compliance with the Ohio Revised Code and other applicable law.

**H. Due Process Hearings.** NHA shall provide student due process hearings in conformity with the requirements of state and federal law regarding discipline, special education, confidentiality and access to records, to an extent consistent with the School's own obligations.

**I. Legal Requirements.** NHA shall provide educational programs that meet federal, state, and local requirements, and the requirements imposed under the Code and the Contract, unless such requirements are or have been waived, but the School shall interpret state and local regulations as liberally as allowed by law, in order to give NHA flexibility and freedom to implement its educational and management programs.

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

**K. School Year and School Day.** The school year and the school day shall be as provided in the Contract consistent with the Ohio Revised Code.

**L. Pupil Performance Standards and Evaluation.** NHA shall implement pupil performance evaluations that permit evaluation of the education progress of each School student. NHA shall be responsible and accountable to the Board for the performance of students who attend the School. NHA will utilize assessment strategies required by the terms of the Contract. The Board and NHA will cooperate in good faith to identify measures of and goals for School students and school performance, including but not limited to parent satisfaction.

**M. Services to Disabled Students and Special Education.** NHA shall provide special education services to students who attend the School in conformity with the requirements of state and federal law. NHA may subcontract as necessary and appropriate for the provision of services to students whose special needs cannot be met within the School's program, subject to approval of the School Board. Such services shall be provided in a manner that complies with local, state and federal laws and applicable regulations and policies.

**N. Contract between the School and Sponsor.** NHA will not act in a manner which will cause the School to be in breach of its Contract with the Sponsor or its Policies or with applicable law .

**O. Unusual Events.** NHA agrees to timely notify the Board and/or school administrator of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect the School in complying with its responsibilities hereunder.

**P. Student and Financial Records.** All student and financial information related to the School shall be available for inspection at the School upon reasonable request consistent with applicable federal and state laws.

**Q. School Records/Proprietary.** The financial, educational and student records pertaining to the School are School property, and such records are subject to the provisions of the Ohio Public Records Law to the extent required by applicable law. All School records shall be physically or electronically available, upon request, at the School. Except as prohibited under the Contract and applicable law, the Sponsor and the public shall have access to the School's records.

#### ARTICLE IV

#### OBLIGATIONS OF THE BOARD

**A. Good Faith Obligation.** The Board shall be responsible for its fiscal and academic policy. 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. The Board's failure to adopt NHA's reasonable recommendations with respect to policies, rules and regulations to enable NHA to implement the school design as set forth in the Contract may, at NHA's option, be deemed a material event which shall entitle NHA, at its option, to unilaterally terminate this Agreement pursuant to Article VII.A.1.

**B. Assistance to NHA.** The School shall cooperate with NHA in furnishing all information and submitting all forms and reports required in association with this Agreement, including timely notice of all Board meetings. The School shall timely furnish NHA all documents and records necessary and in the Board's possession for NHA to properly perform its responsibilities under this Agreement.

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

**D. NHA Office Space.** For the term of this Agreement, suitable office space shall upon request be provided at the School without cost for NHA personnel and subcontractors. The office space shall be used by NHA only for NHA activities related to the School. The School shall also provide NHA, upon NHA's request, with an additional room to be used for activities related to the School.

**E. Retained Authority.** The Board shall retain the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance,

management, and carrying on of the School, including regulations relative to the conduct of pupils while in attendance at the School or en route to and from the School.

**F. Building Facility.** NHA shall lease or otherwise cause a facility to be made available to the Board for school classroom facilities. The facility shall comply with, or otherwise be approved, with respect to state and federal (ie: ADA) regulations governing the use of the facility as an elementary/middle school, as applicable.

## **ARTICLE V FINANCIAL ARRANGEMENTS**

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

- 1) Funding for public school students enrolled in the School.
  - 2) Special education funding provided by Federal or State Governments to the School that is directly allocable to special education students in the School.
  - 3) Gifted and Talented funding provided by Federal and State Governments that is directly allocable to Gifted and Talented students in the School.
  - 4) At-Risk Funding provided by Federal and State Governments to the School that is directly allocable to At-Risk students in the School.
  - 5) Funding provided by Federal and State Governments to the School that is directly allocable to students in the School with limited English proficiency.
  - 6) Federal and State grant sources, including Title I, which is directly allocable to the School.
  - 7) All other grants and donations received by the School (except to the extent NHA is not required or involved in soliciting, administering, or managing such grants and/or donations).
  - 8) Fees charged to students for extra services as and to the extent permitted by law.
- (All of the above are hereinafter collectively referred to as the "Revenues").

In performing its obligations under this Agreement, NHA shall comply with the terms of the Budget approved and authorized by the Board, and NHA thereby guarantees fiscal solvency. The expenditure of Revenues received from governmental entities shall be consistent with all applicable regulations and policies, and in the case of private donations, the directives of the donor where applicable.

## **B. Budget**

1. Projected Budget. NHA shall provide the Board with an annual projected Budget (the "Budget"). For the School's first academic year, the Budget shall be submitted prior to the beginning of the academic year. Thereafter, the Budget shall be submitted to the Board prior to May 1st of the next academic year.

2. Budget Detail. The Budget shall contain reasonable detail as requested by the Board. The Budget shall include all projected expenses and costs reasonably associated with operating the School and the NHA school program including, but not limited to, the projected cost of: all services and education programs provided to the School, leasehold and other lease or purchase costs incurred for the facility, maintenance and repairs to School facilities and capital improvements except as otherwise agreed upon, supplies and furnishings necessary to operate the School, all taxes of any kind that are assessed or imposed, insurance premiums, utilities, professional fees, and other costs and expenses connected to operating the School.

3. Approval. The Budget shall be prepared by NHA and submitted to the Board for approval. The Budget may be amended from time to time as deemed necessary by NHA and the Board.

4. Expenditures. NHA shall comply with the provisions of the Budget or amended Budget and shall not deviate materially therefrom without Board approval.

5. Board Designated Funds. Notwithstanding any other provision of this Agreement, during the term of this Agreement, there shall be reserved in the School's account an amount up to 2%, not to exceed \$35,000. The designated funds shall be used for the annual audit by the Auditor of the State of Ohio. No special or independent audits shall be paid by Board designated funds, however, the designated funds may otherwise be used during the year by the Board at its discretion. During each year of the Agreement, the designated funds shall accumulate pro rata as Revenues are received during the year.

**C. Fee.** NHA shall receive all Revenues as its gross revenue, and it shall pay all operating costs of the School identified in the Budget approved by the Board. The difference, if any, between the amount of the School's Revenues and the amount actually expended by NHA in operation and/or management of the School during its fiscal year shall be referred to herein as the "Fee". Notwithstanding any provision to the contrary contained herein, the School acknowledges and agrees that, with the exception of moneys which, pursuant to State or federal law or in the case of private donations the directions of the donor, are restricted as to use, upon the receipt of Revenues due or payable to the School either by the Sponsor or a governmental unit, such moneys immediately become compensation of NHA for its services provided pursuant to this Agreement. Further, the School understands and acknowledges that the School has no further right to or claim upon the Revenues as outlined in Article VII of this agreement.

**D. Availability of Funds.** NHA shall only be required to perform its responsibilities upon this Agreement to the extent that there are sufficient Revenues on a per

annum basis to make payments in accordance with the terms of the Budget provided such budget has been reasonably updated on a regular basis to reflect needed changes.

**E. Other Public School Academies.** The School acknowledges that NHA may enter into similar management agreements with other public school academies. NHA shall maintain separate accounts for expenses incurred by and behalf of the School and other NHA managed schools, and shall only charge the School for expenses incurred by or on behalf of the School. If NHA incurs authorized reimbursable expenses on behalf of the School and other NHA managed schools which are incapable of precise allocation, then NHA shall allocate such expenses among all such academies, including the School, on a prorated basis based upon the number of students enrolled at such academies, or upon such other equitable basis as is acceptable to the parties.

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

- 1) The projected annual Budget as required by the terms of this Agreement.
- 2) Detailed statements of all Revenues received, and detailed statements of all direct expenditures for services and or expenses rendered or incurred to or on behalf of the School, whether incurred on-site or off-site, upon request.
- 3) Reports on School operations, finances, and student performance shall be provided upon request (at regularly scheduled Board meetings), but not less frequently than four (4) times per year.
- 4) Other information on a periodic basis to enable the Board to (i) monitor NHA's performance and the efficiency of its operation of the School, and (ii) furnish reports and information which the School is required to provide pursuant to its Contract and/or the Code.

**G. Access to Records.** NHA shall keep accurate financial records pertaining to its operation of the School, together with all School financial records prepared by or in possession of NHA, and shall retain all of the said records for a period of five (5) years from the close of the fiscal year to which such books, accounts, and records relate. NHA and the School shall maintain the proper confidentiality of personnel, students, and other records as required by law.

**H. Review of Operational Budget.** The School Board shall be responsible for reviewing and approving the annual Budget of the School.

**I. Independent Audit.** If required by statute or to obtain financing, the School Board and NHA shall select and retain an independent auditor to conduct an audit of the School. Subject to applicable law, all finance and other records of NHA related to the School will be made available to the School's independent auditor. The annual audit to be performed by the Auditor of the State will be paid by the School using Board designated funds. Any independent or special audit shall be paid for through Revenues by way of the NHA fee.

**J. Start-up Financing/Operating Losses.** NHA will provide funds for start-up costs and/or operating losses for the School, including funds for the 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 as required by this Agreement. NHA advances shall be included in the Budget and shall be in amounts acceptable to NHA. NHA shall be reimbursed from the Revenues as and when funds are available and upon proper documentation. Nothing herein shall be deemed to exclude the School from receiving state or federal start-up funds, grants or sub-grants.

**K. Marketing.** Marketing and development costs paid by or charged to the School shall be limited to those costs specific to the School program, and shall not include costs for the marketing and development of NHA.

**L. Other Financing.** The Board may apply to NHA for financing from time to time. The School shall reimburse NHA for any such financing from its Revenues.

## ARTICLE VI

### PERSONNEL & TRAINING

**A. Personnel Responsibility.** NHA shall select and hire qualified personnel to perform services at the School. Personnel shall be employees of NHA, unless otherwise agreed by NHA and the Board. Each party shall be responsible for all compensation for their respective employees. The compensation of all employees will be paid in accordance with the Budget referenced in Article V as amended from time to time in a manner mutually acceptable to the Board and NHA. NHA shall have the responsibility and authority to determine staffing levels, and to select, evaluate, assign, discipline, transfer and terminate personnel consistent with state and federal law.

**B. School Administrator.** The accountability of NHA to the School is an essential foundation of this Agreement. Since the responsibility of the school administrator is critical to the School's success, NHA shall have the authority, consistent with state law, to select and supervise each school administrator and to hold the school administrator accountable for the success of the School. NHA shall consult with the Board with respect to the hiring of the School Administrator, and NHA shall remove the School Administrator from the School if the Board is reasonably dissatisfied with his or her performance. The duties of the school administrator, and the terms of the school administrator's employment contract, shall be determined by NHA subject to approval by the Board. The school administrator shall be accountable for the performance of the School, and shall work with NHA in conjunction with the operation and management of the School. Since the selection and performance of the school administrator is essential to the success of the School, the Board's failure to adopt/ratify NHA's recommendations with respect to the school administrator shall, at NHA's option, constitute a material event which shall entitle NHA, at its option, to unilaterally terminate this Agreement pursuant to Article VII A.1. below.

**C. Teachers.** NHA shall determine the number of teachers, and the applicable grade levels and subjects, required for the operation of the School. NHA shall provide the School with such teachers, qualified in the grade levels and subjects required, as are required by the School. The curriculum taught by such teachers shall be consistent with the Educational Program. Such teachers may, in the discretion of NHA, work at the School on a full or part time

basis. If assigned to the School on a part time basis, such teachers may also work at other schools managed or operated by NHA. Each teacher assigned to the School shall hold a valid teaching certificate issued by the state board of education under the Code and undergo a criminal background check as if such teacher was employed by the School.

**D. Support Staff.** NHA shall determine the number and the functions of support staff required for the operation of the School. NHA shall provide the School with qualified staff to efficiently operate the school in accordance with the Contract. The support staff may, in the discretion of NHA, work at the School on a full or part time basis. If assigned to the School on a part time basis, the support staff may also work at other schools managed or operated by NHA.

**E. Training.** NHA shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular basis. Non-instructional personnel shall receive such training as NHA determines reasonable and necessary under the circumstances.

**F. Limitations on Discretion.** All decisions made by NHA, and any discretion exercised by NHA, in its determination of staffing levels and its selection, evaluation, assignment, discipline, and transfer of personnel, shall be consistent with the Budget, State and federal law, and consistent with the parameters adopted and included within the Educational Program.

**G. Background Checks.** NHA shall comply with Ohio law regarding background checks and certification or licensure, as applicable, for all persons working in the School.

## ARTICLE VII

### 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 event within 30 days after notice from NHA. A material event 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 School's loss or suspension of its Contract.

2. **By School.** The School 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 30 days after notice from the Board. Material breach includes, but is not limited to: (i) failure to account for its expenditures or to pay School operating costs (provided funds are available to do so), (ii) failure to follow policies, procedures, rules, regulations or curriculum duly adopted by the Board which are not in violation of the Contract, this Agreement, or law, or (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 staff which are not adequately corrected or explained.

3. **By Either Party.** Either party may terminate this Agreement for any reason upon giving not less than 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 event or unusual and compelling circumstances, the termination will not become effective until the end of the current academic year.

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 School or leased by the School from third parties shall remain the property of the School.

3. **Future Advances/Out-of-Pocket Expenses.** Upon termination or expiration of this Agreement, for any reason, all future advances or out-of-pocket expenses paid by NHA shall be immediately repaid by the School unless otherwise agreed in writing by NHA.

**ARTICLE VIII**

**INDEMNIFICATION**

A. **Indemnification.** Each party to this Agreement does hereby indemnify and hold harmless the other, and Sponsor, and their respective boards of directors, partners, officers, employees, agents, representatives, and attorneys from and against any and all claims, actions, damages, expenses, losses or awards which arise out of (i) the negligence of the other party, (ii) any action taken or not taken by the other party, or (iii) any noncompliance or breach by the other party of any of the terms, conditions, warranties, representations, or undertakings contained in or made pursuant to this Agreement. As used in this subsection, "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, by directors and officers' liability policies or by such other means as the parties may mutually agree.

**ARTICLE IX**

**INSURANCE**

A. **Insurance Coverage.** 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 Contract or applicable law), with the other party listed as an additional insured. In addition, the School shall maintain an umbrella liability policy of two million dollars (\$2,000,000.00) (or such greater amount if required by the terms of the Contract or applicable law), with NHA listed as an additional insured. The building and related capital facilities remain the responsibility of the Board and the Board shall cover its property with

insurance. 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 X  
WARRANTIES AND REPRESENTATIONS**

**A. School Warranties and Representations.** The School represents that 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 Michigan. NHA will comply with all registration and licensing requirements relating to conducting business under this Agreement and in the State of Ohio. The School agrees to assist NHA in applying for such licenses and permits and in obtaining such approvals and consents.

**C. Mutual Warranties.** The School 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 XI  
MISCELLANEOUS**

**A. Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between the School 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 similar occurrences; 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 and be construed according to the laws of the State of Ohio. NHA and the School hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either NHA or the School against the other.

**D. Agreement in Entirety.** This Agreement (including attachments) constitutes the entire agreement of the parties.

**E. 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) by 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 or personal delivery if given by facsimile or personal delivery, or upon the date of postmark if sent by certified or registered mail. Notices to the School 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 and Board, are as follows:

The School: East Dayton School of Discovery

173 Avondale Road  
Dayton, OH 45404

Phone:

Facsimile:

WITH COPY TO:

Eastman & Smith Ltd.

Attn: Amy Borman

P.O. Box 10032

Toledo, OH 43699-0032

Phone: (419) 247-1716

Facsimile: (419) 247-1777

NHA: National Heritage Academies, Inc.

Attn: Peter R. Ruppert

989 Spaulding Avenue, S.E.

Grand Rapids, Michigan 49546

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

**F. Assignment.** NHA may assign this Agreement with the consent of the School Board.

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

**H. 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.

**I. 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.

**J. Severability.** Should any term or provision of this Agreement be deemed unenforceable or invalid in any way, such term shall be stricken and the remainder of this Agreement shall continue in full force and effect, or, such term or provision shall be replaced, if mutually agreed upon, with a new provision that replicates the parties' original intent as nearly as possible.

**K. Compliance with Law.** The parties to this Agreement agree to comply with all applicable laws and regulations.

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

Date: March 8, 2002

NATIONAL HERITAGE ACADEMIES,  
INC., a Michigan Corporation

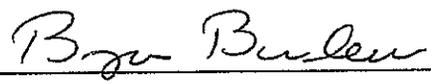
By: \_\_\_\_\_

  
Peter Ruppert  
Its: President

Date: March 8, 2002

EAST DAYTON SCHOOL OF  
DISCOVERY

By: \_\_\_\_\_

  
Its: PRESIDENT