

# RESOLUTION OF THE CITY COUNCIL

No. 96

Approved February 22, 2013

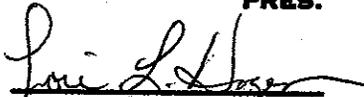
RESOLVED, That His Honor the Mayor is authorized to execute a lease agreement for the Oliver Hazard Perry School, with Achievement First Rhode Island for an initial term of twenty years at an annual rental of \$1.00 and with any other such terms and conditions as may be imposed by the Committee on City Property, the City Council, His Honor the Mayor, and the City Solicitor.

IN CITY COUNCIL

FEB 21 2013

READ AND PASSED

  
PRES.

  
ACTING CLERK

I HEREBY APPROVE.

  
Mayor

Date: 2/22/13

**LEASE**

This Lease is entered into by and between the CITY OF PROVIDENCE (hereinafter the “City” or “Lessor”) and ACHIEVEMENT FIRST RHODE ISLAND, INC., a Rhode Island non-profit corporation (hereinafter the “Lessee” or “AFRI”), on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

It is mutually agreed by and between the parties as follows:

1. **Property**: The Lessor hereby leases to the Lessee the land and buildings commonly known as 370 Hartford Avenue, identified as Lot \_\_\_ on Assessor’s Plot \_\_\_ of the City of Providence, consisting of one building totaling approximately 171,385 square feet of improvements on approximately \_\_\_ acres of land (hereinafter the “Property”).

2. **Rent**: The Lessee will pay to the Lessor the annual rent of One Dollar (\$1.00) on or before the first day of each lease year of the Term.

3. **Permitted Use**: The Lessee will use the Property primarily for educational purposes and uses incidental thereto, unless use for another purpose is consented to in writing by the Lessor. The Lessee will observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations (the “Property Requirements”) of federal, state, and city governments, and all other governmental authorities affecting the Property or the Lessee’s use thereof, provided, however, that the Lessee shall be entitled to a reasonable amount of time to bring the Property into compliance with existing Property Requirements.

4. **Condition of the Property, Repairs, Maintenance and Utilities.**

(i) Except as otherwise set forth herein, the Lessee agrees to keep the Property in substantially the same condition existing as of the commencement of the Term, reasonable wear and use and casualty excepted.

(ii) The Lessee shall be responsible for custodial services required to maintain the interior of the Building during the Term.

(iii) During the Term, the Lessee shall pay to the Lessor on a quarterly basis, within thirty (30) business days of receiving an invoice from the Lessor, a percentage of the cost of utilities in connection with the use and occupancy of the Property, including, without limitation, water, gas, sewer and electricity, which percentage shall be equal to the percentage of square feet of space Lessee occupies in the Building (the "Utilities Percentage"). Prior to the commencement of the Term and within thirty (30) days of September 30<sup>th</sup> each year, the Lessee and the Lessor shall agree in writing as to the Utilities Percentage to be in effect for the subsequent twelve (12) months.

(iv) The Lessor agrees to use its best efforts to apply for and receive State Housing Aid Reimbursements through the Rhode Island Department of Education to pay for capital improvements on the Property or Building to be made by Lessee, or other funding similar in nature.

(v) Notwithstanding anything herein to the contrary, the Lessor shall extend its contract pricing to Lessee for Lessee's school support contracts, including custodial, custodial supplies, food service, and repairs and maintenance. Lessee shall have the option, but not the obligation, to opt into any such school support contract.

5. Alterations and Improvements:

(i) The Lessee, at its sole cost, shall have the right to make such non-structural alterations, additions and improvements to the Property as may be necessary or desirable, provided that such non-structural alterations, additions and improvements do not decrease the value of the Property or Building in any material respect.

(ii) The Lessee, at its sole cost and expense, shall have the right, with the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed, to make such structural alterations, additions and improvements (the "Structural Alterations") to the Property or Building, provided such Structural Alterations do not decrease the value of the Property or Building in any material respect. Notwithstanding the foregoing, any of the capital improvements described on Exhibit A attached hereto are considered pre-approved by the Lessor and shall not require the Lessor's further written consent.

(iii) The Lessee shall, before making any alterations, additions or improvements (including Structural Alterations), at its sole cost and expense, obtain all permits, approvals and certificates required by any governmental authority. The Lessor agrees to use its best reasonable efforts in assisting the Lessee obtain such permits, approvals and certificates.

(iv) The Lessee will cause the Lessee's contractors and subcontractors to carry such worker's compensation, general liability, and personal and property damage insurance as the Lessor may reasonably require. The lessee shall use its best efforts to utilize 30% MBE and WBE contractors during construction.

(v) Any alterations, additions or improvements (including Structural Alterations) to the Property or Building made by the Lessee during the Term shall upon the expiration of the Term be the property of the Lessor without payment therefor by the Lessor, and shall be deemed included in the Property, and the terms and conditions of this Lease shall be fully applicable thereto. The Lessee may, prior to making any such additions, alterations or improvements, request the Lessor's consent to their removal at the end of the Term. If such consent is requested, the Lessor shall be deemed to have given such consent unless a written denial is given to the Lessee within fifteen (15) days after such consent is requested in writing. Lessee shall have no obligation to remove any alterations, additions or improvements (including Structural Alterations) to the Property or Building upon the expiration of the Term.

6. Insurance:

(a) The Lessee will obtain and pay for commercial general public liability insurance insuring the Lessee against loss from and liability for damages on account of loss or injuries suffered by any person within or upon the property, the coverage and protection of such insurance to be not less than the following: on account of an event resulting in injuries to one person, including death, Five Hundred Thousand Dollars (\$500,000), subject to the same limit for each person; on account of any one event resulting in injuries to more than one person, including death, One Million Dollars (\$1,000,000); and on account of an accident resulting in damage to property, One Hundred Thousand Dollars (\$100,000). The Lessee shall include the Lessor as an additional insured on such general commercial public liability insurance.

(b) The Lessee will obtain and pay for property and casualty insurance on the Property, in an amount equal to full replacement cost thereof with an agreed amount endorsement, such insurance to afford protection against fire and other perils customarily covered by a so-called special form "all risk" policy. The Lessee shall include as mortgagee and loss payee on such property and casualty insurance the Lessor and any mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate which the Lessor or such mortgagee or trustee may request to be included as an additional insured in writing to the Lessee.

(c) Any insurance policy required pursuant to this Lease shall not be canceled without at least thirty (30) days prior written notice to each insured named therein. On or before the commencement of the Term and thereafter prior to the expiration date of each expiring policy, certificates of such policies by such insurers shall be delivered by the Lessee to the Lessor and by the Lessor to the Lessee, as applicable.

7. Assignments and Subleases: The Lessee will not assign or encumber its interest in this Lease or in the Property or sublease all or any part of the Property, or permit any other person, firm, or corporation to occupy or use all or any part of the Property (except as permitted under paragraph 3 hereof) without first obtaining the Lessor's written consent, which consent shall not be unreasonably withheld or delayed, provided that, without the Lessor's consent, the Lessee may assign this Lease or sublet the Property or any portion thereof to any of the following: (i) an entity which indirectly controls, is directly or indirectly controlled by, or is under direct or indirect common control with Lessee; or (ii) an organization with a similar purpose to the Lessee. For the purpose of this Section, "control" shall mean the power to direct the management and policies of such entity whether through the exercise of voting rights or similar rights under the constituent organizational documents of such entity. In addition, it is agreed that Lessee has the right to mortgage or otherwise encumber its leasehold interest as provided in Section 20 without first obtaining the Lessor's written consent.

8. Lessee Default: The Lessee will be in default under this Lease upon the occurrence of any of the following events or conditions:

(i) The Lessee's failure to pay rent or make other payments at the time and the manner provided for herein, such failure having continued for a period of thirty (30) days after written notice thereof to the Lessee by the Lessor.

(ii) The Lessee's failure to perform or fulfill any other term, condition or agreement contained or referred to herein, such failure having continued for a period of thirty (30) days after notice thereof to the Lessee by the Lessor, provided that if the default is of such a nature that it cannot be cured within said thirty (30) day period, Lessee shall have such additional time as is needed to cure provided it uses its due diligence to do so.

Upon the occurrence of an event of default under this Section, the Lessor may, at its option, terminate this lease by written notice to Lessee and expel the Lessee and those claiming under the Lessee, without being guilty of any manner of trespass.

9. Lessor Default: The Lessor will be in default under this Lease upon the Lessor's failure to perform or fulfill any term, condition or agreement contained or referred to herein, such failure having continued for a period of thirty (30) days after notice thereof to the Lessor by the Lessee. Upon the occurrence of an event of default under this Section, the Lessee may, at its option, in addition to its remedies at law, terminate this lease by written notice to the Lessor, and thereafter the Lessee shall have no further obligations to the Lessor hereunder.

10. Term and Termination: The Initial Term of this Lease shall be for a twenty year period, which period shall begin on the date that the Property is delivered to the Lessee (the "Initial Term"). The Lessee shall have the option to extend the Initial Term of this Lease for four (4) successive extension periods of five (5) years each (each extension, an "Extension Term"), subject to the same terms and conditions as set forth herein. The Initial Term or an Extension Term, as applicable, shall be automatically extended unless the Lessee notifies the Lessor in writing on or before April 1 that precedes the expiration of the Initial Term or the applicable Extension Term of its intention not to extend the Initial Term or Extension Term, as applicable. Notwithstanding the foregoing, the Lessee shall be entitled to terminate this Lease upon providing the Lessor with notice of its intention to terminate this Lease at least one (1) year in advance of the proposed termination date.

In the event the Lessor requires to use the Property as a public school that is part of the Providence School District, the Lessor shall be entitled to terminate this Lease, provided, that in such event, the Lessor shall be required to: (i) provide the Lessee with notice of its intention to terminate this Lease at least three (3) years in advance of the proposed termination date; (ii) repay the Lessee for any capital improvements made by the Lessee, calculated in accordance

with Section 22, which repayment shall be made by the Lessor first to the holder of any mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate; and (iii) the Lessor shall secure a space adequate for the Lessee's programmatic needs on substantially the same lease terms as those set forth in this Lease. Notwithstanding the foregoing, the Lessor's election to terminate this Lease shall not be effective until the Lessor fulfills the requirements set forth in subsections (i)-(iii) of this Section 10 and the indebtedness secured by any mortgages or trust deeds upon the leasehold estate is repaid in full by the repayment made for capital improvements pursuant to subsection (ii).

11. Option to Purchase: At any time during the Term of this Lease, Lessee may upon at least sixty (60) days prior written notice to the Lessor exercise an option to purchase the Property (the "Option to Purchase") in accordance with Section 416 of the Providence Home Rule Charter.

12. Indemnification: The Lessee does hereby agree to indemnify and hold the Lessor harmless from and against any cost and expense of any litigation and from and against any and all actions, causes of action, claims, demands, damages, and/or judgments ( a "Claim") that may be brought successfully against the Lessor as a result of the Lessor entering into this Lease, unless such Claim arises from or results from the fault, misconduct or negligence of the Lessor or its agents, servants or employees. The Lessor shall give the Lessee prompt notice in writing of any action or proceeding relating thereto. The Lessee shall have the option to defend against any such Claim with counsel of its choice and the Lessor agrees to cooperate reasonably in any such defense. As long as the defense is being handled by the Lessee, the Lessor shall not settle any such claim, action, or proceeding without the prior written consent of the Lessee. In the event the Lessee shall elect not to defend any such claim, action, or proceeding, the Lessee shall indemnify the Lessor as herein provided.

13. Notices: No notice, approval, consent, or other communication permitted or required under this Lease will be effective unless sent post pre-paid, by United States registered or certified mail, return receipt requested, to the other party at the following addresses: if to the City: Director of Public Property, City Hall, 25 Dorrance Street, Providence, RI 02903, with a copy to the City Solicitor, Law Department, 444 Westminster Street, Suite 200, Providence, RI 02903; if to the Lessee: Attention Lisa Desfosses, Senior Director of Facilities, 403 James Street, New Haven CT 06513.

14. Director of Public Property. Approval of (i) any alterations or improvements by the Lessor, (ii) any alternate uses of the Property, or (iii) any subletting or assignment of the Property may be made by and on behalf of the City by the Director of Public Property.

15. Signage: Consistent with the City's Zoning Ordinance, the Lessee shall be allowed to erect signage on the Property, including on the building face, designating the building as "Achievement First Rhode Island" "AFRI," or a similar designation. Existing signage may be removed by the Lessee and delivered to the Director of Public Property.

16. Destruction by Casualty: If the Property is damaged or destroyed in whole or part by storm, fire, lightning, earthquake or other casualty, the Lessor shall promptly commence restoration of the Property, provided that the insurance coverage required in Section 6(b) covers said damage, to substantially its condition immediately prior to such destruction and shall continue such restoration with all due diligence and dispatch. The City will commence restoration within twenty-four (24) hours of insurance approval and complete them in a timely manner. If access to the Property is substantially denied to Lessee, or twenty-five percent (25%) or more of the usable area of the Property is rendered unusable by Lessee, in Lessee's good faith judgment, as a result of such casualty, then Lessee may cancel this Lease by written notice to the Lessor and this Lease shall terminate thirty (30) days after the date of such notice.

Notwithstanding the foregoing, in the event the Lessee elects to cancel this Lease as provided for

in this Section 16, the Lessor must immediately repay the Lessee (through the insurance provided for in Section 6(b)) for any capital improvements made by the Lessee, calculated in accordance with Section 22 herein, which repayment shall be made by the Lessor first to the holder of any mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate, and then to the Lessee, all as limited by the receipt of insurance proceeds unless any loss incurred by the Lessee arises from the failure of the Lessor to maintain insurance in accordance with the terms hereof. Subject to the foregoing, the Lessor shall have no obligation to make any additional payments to compensate the Lessee, its mortgagee or holder of indebtedness.

17. Eminent Domain:

(a) If the entire Property shall be taken for public purposes, then this Lease shall terminate as of the date the Lessee shall be required by law to vacate the Premises or earlier upon the Lessee's election by giving at least thirty (30) days prior written notice to the Lessor. Lessor shall use any condemnation proceeds to repay the Lessee for the value of its leasehold estate and any capital improvements made by the Lessee, calculated in accordance with Section 22 herein, which repayment shall be made by the Lessor first to the holder of any mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate, and then to the Lessee.

(b) If such portion of the Property or access thereto shall be taken so as to render the Property, after repair and restoration, unsuitable for the continuance of the Lessee's business in substantially the same manner as was being conducted immediately prior to such taking, the Lessee shall have the right to terminate this Lease by giving at least thirty (30) days prior written notice to the Lessor. Lessor shall use any condemnation proceeds to repay the Lessee for the value of its leasehold estate and any capital improvements made by the Lessee, calculated in accordance with Section 22 herein, which repayment shall be made by the Lessor

first to the holder of any mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate, and then to the Lessee.

18. Covenant of Quiet Enjoyment: The Lessor covenants that upon the Lessee's paying the rent herein reserved and performing and observing all the other covenants to be performed and observed on the part of Lessee, Lessee may use and occupy the Property throughout the Term.

19. Non-Disturbance: The Lessor covenants and agrees to obtain for, and to provide to, Lessee from each mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate, beneficiary under a deed of trust, underlying landlord or other part whose title might now or hereafter become superior to the title of the Lessor, or who may perfect any title that might otherwise cause a termination of this Lease (collectively, the "Superior Parties"), a written agreement, in form and substance reasonably satisfactory to Lessee, providing that Lessee's use, occupancy and possession of the Property, and other rights, under this Lease will not be disturbed so long as the Lessee shall not be in default hereunder beyond any applicable grace or cure period for curing the same. The Lessor represents and warrants to Lessee that there are as of the date of this Lease no Superior Parties.

20. Mortgaging of Leasehold Estate: In the event Lessee mortgages its leasehold estate and the mortgagee or holder of the indebtedness secured by the leasehold mortgage or trust deed shall notify the Lessor, in the manner provided for the giving of notice, of the execution of such mortgage or trust deed and name the place for service of notice upon such mortgagee or holder of indebtedness, then, in such event, the Lessor agrees that for the benefit of such mortgagees or holder of indebtedness from time to time:

(a) Lessor will give to any such mortgagee or holder of indebtedness simultaneously with service on the Lessee, a duplicate of any and all notices or demands given by the Lessor to the Lessee. Such notices shall be given in the manner and be subject to the terms of the notice provisions of this Lease at the last known address for such mortgagee or holder of indebtedness.

(b) Such mortgagee or holder of indebtedness shall have the privilege of performing any of Lessee's covenants under this Lease, of curing any default of the Lessee or of exercising any election, option or privilege conferred upon the Lessee by the terms of this Lease within the applicable cure periods set forth herein.

(c) The Lessor shall not terminate this Lease or the Lessee's right of possession for any non-monetary default of the Lessee which, although curable, is of such a nature that it cannot be cured within a period of 30 days, if, within a period of 30 days after the Lessor gives such default notice, such mortgagee or holder of indebtedness commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch as provided. While such cure is being prosecuted, the mortgagee or holder of indebtedness shall pay or cause to be paid all rent on a timely basis.

(d) No rights, privilege or option to amend, cancel or terminate this Lease, available to the Lessee, shall be deemed to have been exercised effectively unless joined in by any such mortgagee or holder of the indebtedness.

(e) Except as aforesaid, no liability for the payment of rental or the performance of any of Lessee's covenants and agreements shall attach to or be imposed upon any mortgagee or holder of any indebtedness secured by any mortgage or trust deed upon the leasehold estate, unless such mortgagee or holder of indebtedness forecloses its interest and becomes Lessee under this Lease.

(f) Following a foreclosure of any leasehold estate by any mortgagee or holder of any indebtedness secured by any mortgage or trust deed (or its designee(s) or nominee(s)), Lessor agrees to execute and deliver a new lease to such mortgagee or holder of indebtedness (or its designee(s) or nominee(s)), having the same relative priority in time and in right as the Lease and having the benefit of all of the right, title, interest, powers and privileges of Lessee under the Lease in and to the Premises, including specifically an assignment of the Lessor's interest in and to any then existing sublease where the subtenant may have attorned to the Lessor and may have been recognized by the Lessor. Lessor hereby agrees that with respect to any such sublease, that it will not modify or amend any of the terms or provisions thereof, during the period between the expiration or termination of the Lease and the execution and delivery of the new lease.

(g) Nothing contained herein shall be deemed to obligate the Lessor to subordinate its fee simple title to any such leaseholder mortgage.

21. Estoppel Certificate: The Lessor and the Lessee agree, at any time, and from time to time, upon not less than 30 days' prior written notice from the other party, to execute, acknowledge and deliver to the requesting party, and to any mortgagee or holder of indebtedness secured by any mortgage or trust deed upon the leasehold estate, or any other specific third party which the requesting party may designate a statement in writing addressed to the requesting party and other party designated by the requesting party certifying all of the following: this Lease is in full force and effect without any amendments or modifications (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the actual commencement and expiration dates of this Lease, stating the dates to which rent and other charges, if any, have been paid and stating whether or not to the knowledge of such party there exists any default by either party in the performance of any covenant, agreement, term, provision or condition contained in this Lease, and, if so, specifying each such

default of which the signer may have knowledge and the claims or offsets, if any, claimed by the certifying party; it being intended that any such statement delivered pursuant hereto may be relied upon by the party to whom it is certified.

22. Capital Improvements. The calculation of any repayment of capital improvements by the Lessor to the Lessee under this Lease shall be based on the initial construction cost of the capital improvements less depreciation of such capital improvements in accordance with the requirements of the Internal Revenue Code in effect at the time of repayment.

23. Amendments, Waivers, Consents, etc: No assent, express or implied, by one party to any breach of any covenant or condition herein contained on the part of the other to be performed or observed, and no waiver, express or implied, of or failure by one party to insist on the other's prompt performance or observance of any such covenant or condition, shall be deemed to be a waiver of or assent to any succeeding breach of the same, or any other covenant or condition, and, except as provided herein, any party may assert its rights and remedies hereunder without any prior or additional notice to the other that it proposes to do so. Wherever any consent or approval is required from any party to this Lease it shall not be unreasonably withheld or delayed.

24. Cumulative Rights: Any and all rights and remedies which either party may have hereunder shall be cumulative and the exercise of any one of such rights shall not bar the exercise of any other right or remedy which said party may have.

25. Entire Agreement: This instrument contains the entire and exclusive agreement between the parties and supersedes and terminates all prior or contemporaneous arrangements, understandings and agreements, whether oral or written. This Lease may not be amended or modified, except by a writing executed by the Lessor and the Lessee.

26. Governing Law and Severability: This Lease shall be governed by and interpreted in accordance with the laws of the State of Rhode Island. In the event any provision of this Lease shall be determined to be invalid or unenforceable under applicable law such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Lease shall be construed as if such provision had never been made part hereof.

IN WITNESS THEREOF, the Lessor and the Lessee have executed this Lease on the \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

City of Providence,

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

Achievement First Rhode Island, Inc.

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

Approved as to form and correctness:

\_\_\_\_\_  
Jeffrey M. Padwa, City Solicitor

### **Exhibit A: Pre-Approved Capital Improvements**

Lessee anticipates spending approximately \$10,000,000 on the following capital improvements during the Initial Term of this Lease.

1. Reconfigure spaces for programmatic needs.
2. Life safety improvements including but not limited to fire alarm system, ancillary devices, emergency light fixtures, fire extinguishers, exit signs, and sprinkler system.
3. Electrical improvements including but not limited to lighting and light fixtures, outlets, wires, generator, transfer switches, main electrical gear, electrical distribution panels, security system, phone system, public address system, clock system, egress lighting, and stage lighting.
4. HVAC improvements including but not limited to boiler plant, ventilation system, steam lines, water treatment system, boiler upgrades and replacements, creation of emergency boiler options, radiator control valves, steam traps, and removal of abandoned equipment.
5. Plumbing improvements including but not limited to sanitary piping and fittings, sump pumps, piping within building (including sanitary, storm, and sewer), water fountains, sinks, and toilets.
6. Interior shell improvements including but not limited to flooring, lockers, patching, painting, cleaning, polishing, millwork, doors and hardware, finishes, fixtures, accessories, surfaces, seal penetrations, interior masonry, whiteboard/bulletin board installation, and kitchen preparations, food storage preparations, server preparations, seating, stair treads, and hand rails.
7. Furniture, fixture and equipment installation including but not limited to classrooms, offices, kitchen, dishwashing, bathrooms, cafeteria, nurse's office, auditorium, and stage.
8. Information technology improvements including but not limited to information technology service, wiring, connectivity, networks, systems, and equipment.
9. Exterior shell improvements including doors, hardware and keying, windows, roofs and roof systems, weather-stripping, and security features.
10. Masonry improvements including but not limited to stairs, handrail walls, repointing, parapet coping, and entryways.
11. Security improvements, including security system and security features.
12. Exterior grounds improvements including but not limited to fencing, paving, striping, sidewalks, regarding, landscaping, and playscape or play area.
13. Demolition of former boys' and girls' locker rooms and showers to convert to new use.
14. ADA accessibility improvements in building and grounds, including elevator.
15. Abatement/containment as necessary of hazardous materials.
16. Any other improvements required for statutory purposes.