

EQUIPMENT LEASE AGREEMENT

This EQUIPMENT LEASE AGREEMENT ("Lease") is made and entered into as of the date of the final signature, by and between the Clayton County Board of Education (the "Lessor") and Utopian Academy for the Arts: The Miller Foundation Inc. (the "Lessee").

W I T N E S S E T H:

1. EQUIPMENT. The personal property hereby leased to Lessee is two (2) Reach-in Refrigerators (Serial Number Box #1: M1944007L Traulsen Model # RHT1-32WPUT; Serial Number Box #2: M1943907L Traulsen Model # RHT1-32WPUT) (hereinafter "Equipment"). This Lease is for the Equipment as described above and for the Equipment only. This Lease does not give Lessee any rights or privileges to occupation of any other of Lessor properties or possessions.

2. LEASE TERM. The lease term ("Term") shall commence on January 9, 2023 or the date of the formal execution of all signatures, if all have not been obtained by that date ("the Effective Date") and shall, unless terminated earlier as provided herein, expire at 11:59 p.m. on August 31, 2023 (the "Expiration Date"). Lessee shall notify Lessor thirty (30) days in advance before August 31, 2023 of an extension of usage of Equipment.

3. POSSESSION. The taking of possession by Lessee shall be deemed conclusively to establish that said Equipment is in good and satisfactory condition as of when possession was taken. Lessee further acknowledges that no representations as to the repair of the Equipment, nor promises to alter or improve the Equipment, have been made by Lessor unless such are expressly set forth in this Lease. Lessee shall remove Equipment from Lovejoy Middle School on the Effective Date of the Lease and transport the Equipment to Utopian Academy.

4. MAINTENANCE. Throughout the Term, Lessee shall provide for the service, repair and maintenance of the Equipment, at Lessee's sole expense, so as to keep the Equipment in as good condition, repair, appearance and working order as when delivered to Lessee hereunder, ordinary wear and tear excepted. Lessee shall, at Lessee's sole expense, replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices shall be free and clear of liens, encumbrances, and rights of others and shall become the property of the Lessor and shall be covered by this Agreement to the same extent as the Equipment originally covered by this Agreement.

5. USE OF EQUIPMENT. Lessee shall exercise due care in its operation, use and maintenance of the Equipment. Lessee shall not use, and shall not permit others to use, the Equipment in any manner that would contravene applicable laws, rules, regulations and other governmental directives, would violate the terms of any manufacturer's or like warranty, or would contravene the manufacturer's reasonable operational standards for the Equipment. If the Lessor notifies Lessee of any additional operational standards, Lessee shall adhere, and shall cause others using the Equipment under this Agreement to adhere, to such standards in the operation of the Equipment. Lessee shall not alter or modify the Equipment without the prior written consent of

the Lessor.

6. EVENTS OF DEFAULT. The following events shall be deemed to be events of default by Lessee under this Lease:

- (a) Lessee shall fail to return Equipment or fail to make any payment with respect to taxes hereunder, or any other payment or reimbursement to Lessor required herein by such payment's due date, and the failure of Lessee to pay such amount within ten (10) days of notice from the Lessor.
- (b) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- (c) Lessee shall file a petition under any section or chapter of the Bankruptcy Reform Act, as amended, or under any similar law or statute of the United States or any state thereof; or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder, which are not dismissed within one hundred and twenty (120) days thereof.
- (d) A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee.
- (e) Lessee shall desert or vacate any substantial portion of the Equipment.
- (f) Lessee shall fail to comply with any term, provision or covenant of this Lease (other than the foregoing in this Section 6), and shall not cure such failure within ten (10) days after written notice thereof to Lessee, provided, however, that in the event such default cannot reasonably be cured within said ten (10) day period, Lessee shall be deemed to be in compliance with this subparagraph if it pursues all reasonable means to cure and such default is in fact cured within twenty (20) days after written notice to Lessee, provided that Lessee shall not be entitled to more than one such notice and cure period during the Term.

7. REMEDIES. Upon the occurrence of any such events of default in Section 6 hereof, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- (a) Terminate this Lease, in which event Lessee shall immediately surrender the Equipment to Lessor, and if Lessor fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession of Equipment, enter upon and take possession of the Equipment, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination, whether through inability to relet the Equipment on satisfactory terms or otherwise.
- (b) Entrance and retrieval of Equipment, without being liable for prosecution or any claim for damages therefor, and do whatever Lessee is obligated to do under the term of this Lease; and Lessee agrees to reimburse Lessor, on demand for any expenses which Lessor may incur in thus effecting compliance with that which Lessee is obligated to do under the terms of this Lease; and Lessee agrees to reimburse Lessor on demand for any expenses which Lessor may incur in thus effecting compliance with Lessee's obligations under this Lease, and Lessee further agrees that Lessor shall not be liable for any damages resulting to Lessee from such action, whether caused by the negligence of Lessor or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Lessor hereunder or of any damages accruing to Lessor by reason of the violation of any of the terms, provision and covenants herein contained. No act or thing done by Lessor or its agents during the term hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Equipment, and no agreement to terminate this Lease or accept a surrender of the Equipment shall be valid unless in writing signed by Lessor. No waiver by Lessor of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the term, provisions and covenants herein contained. Lessor's acceptance of the payment of rental or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Lessor so notifies Lessee in writing, and no receipt of money by Lessor from Lessee after the termination of this Lease or after service of any notice or after the commencement of any suit or after final judgment for possession of the Equipment shall reinstate, continue or extend the term of this Lease or affect any such termination, notice, suit or judgment, unless Lessor so notifies Lessee in writing. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute waiver of such default or of Lessor's right to enforce any such remedies with respect to such default or any subsequent default: If, on account of any breach or default by Lessee in Lessee's obligations under the term and conditions of this Lease, it shall become necessary or appropriate for Lessor to employ or consult with an attorney concerning such breach or default by Lessee or to enforce or defend any of Lessor's rights or remedies hereunder, Lessee agrees to pay any reasonable attorneys' fees so incurred.

8. RETURN OF EQUIPMENT. Upon termination of this Lease, Lessee, at is sole cost and expense, shall promptly deliver the Equipment to Lovejoy Middle School. Lessee shall be liable to the Lessor for the fair market value of the Equipment, determined as of the date of this Agreement, unless Lessee shall return the Equipment to the Lessor by August 31, 2023 after termination of this Agreement, in good working order, reasonable wear and tear excepted. Lessee shall be responsible for any damage to the Equipment in shipping or transporting the Equipment back to Lovejoy Middle School. In the event the Lessor provides shipping instructions to Lessee, Lessee shall comply with such shipping instructions.

9. DAMAGE TO EQUIPMENT. Lessee shall be responsible for any loss of or damage to the Equipment from any cause at all, whether or not insured, from the Equipment Acceptance Date. If the Equipment is lost, stolen or damaged, Lessee will promptly notify the Lessor of such event. In no event shall such loss or damage relieve Lessee of its obligations under this Agreement. In the event of such loss or damage, Lessee, at its option, shall: (i) promptly repair the Equipment to return it to good working order; or (ii) replace the Equipment with like Equipment of the same or later model (upon the Lessor's written approval), in good condition and working order, free and clear of all liens and encumbrances and grant the Lessor the right to perfect its security interest in the replacement Equipment and such replacement shall be substituted in this Agreement by appropriate amendment; or (iii) pay the Lessor the replacement value.

10. SECURITY INTERESTS IN EQUIPMENT. In no event shall Lessee assert any ownership interest in or to the Equipment. Lessee shall not grant or permit any person or business

entity to assert a security or other interest in the Equipment. At all times during the Term, Lessee shall ensure that the Equipment is identified as being owned by the Lessor

11. DISCLAIMER OF WARRANTIES. LESSOR DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE CONCERNING THE EQUIPMENT LEASED UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE EQUIPMENT SHALL BE LEASED AND ACCEPTED "AS IS" WITH ALL DEFECTS.

12. PERSONAL PROPERTY. The Equipment is and shall at all times be and remain personal property of Lovejoy Middle School, notwithstanding that the Equipment, or any part thereof, may now be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws or otherwise.

13. NOTICES. Each provision of this Lease or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice by Lessor to Lessee or with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to Lessor shall be deemed to be complied with when and if the following steps are taken:

Signed Lease as required by Lessor to Lessee hereunder shall be binding to Lessor at the address herein below set forth or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith. Lessee's obligations to Lease Equipment to Lessor under the terms of this Lease shall not be deemed satisfied until such Equipment have been actually returned by Lessee.

Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail postage prepaid, Certified or Registered Mail, return receipt requested, addressed to the parties hereto at the respective addresses set out below, or at other such address as they have theretofore specified by written notice delivered in accordance herewith.

LESSOR:

Clayton County Public Schools
1058 5th Avenue
Jonesboro, Georgia 30236
Attn: Ralph Simpson, Deputy Superintendent
E-mail: audrey.hamilton@clayton.k12.ga.us

With a copy to:

Fincher Denmark LLC
Attn: Winston Denmark, Esq.
100 Hartsfield Centre Pkwy, Suite 400

Atlanta, Georgia 30354
Facsimile 770-471-9948
E-mail: wdenmark@fincherdenmark.com

LESSEE:

Utopian Academy
P.O. Box 1182
Mableton, Georgia 30126
Attn: Artesius Miller, Executive Director
E-mail: artesius.miller@utopianacademy.com

With a copy to:

If and when included within the term "Lessor," as used in this instrument, there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Lessor; if and when included within the term "Lessee," as used in this instrument, there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address within the continental United States for the receipt of notices to Lessee. All parties included within the terms "Lessor" and "Lessee," respectively, shall be bound by notices given in accordance with the provisions of this Section 13 to the same effect as if each had received such notices.

Lessee is required to update its condition of Lease address in writing with Lessor every three months. Lessee will provide the address update to Lessee's counsel, Winston Denmark, Esq. at the address listed above.

14. INDEMNITY.

- (a) Lessee shall indemnify Lessor and save it harmless from suits, actions, damages, liability and expense (including attorneys' fees and expenses of litigation relating thereto and to this indemnity) in connection with loss of life, bodily or personal injury, for property damage, arising from or out of any occurrence the usage or use by Lessee of the Equipment, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, subcontractors, employees, servants, invitees, licensees or concessionaires;
- (b) Lessee shall store the Equipment at its own risk and shall release Lessor, to the full extent permitted by Law, from all claims of every kind resulting from loss of life, personal and bodily injury or property damage;

- (c) Lessor shall not be responsible or liable to Lessee or to those claiming by, through, or under Lessee for any loss or damage to either property of Lessee that may be occasioned by or through the acts or omissions of person(s) using the Equipment.
- (d) Lessor is not responsible in any event for consequential damages;
- (e) Lessee shall give prompt notice to Lessor of defects in the Equipment; in any fixtures or equipment; and
- (f) Lessee shall pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Lessor in enforcing the terms of this Lease.

15. MISCELLANEOUS.

- (a) *Third-parties.* The terms, provisions, covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. Lessor shall have the right to assign any of its rights and obligations under this Lease. Each party agrees to furnish to the other, promptly upon demand, a corporate resolution, proof of due authorization by partners, or other appropriate documentation evidencing the due authorization of such party to enter into this Lease.
- (b) *Captions and Headings.* The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.
- (c) *Amendments.* This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.
- (d) *Assumption.* In the event of a transfer by Lessor of its interest in the Equipment and the assumption in writing by Lessor's transferee of Lessor's obligations under the terms of this Lease, then in such event Lessor shall be released from any further obligations and liabilities under the terms of this Lease.
- (e) *Severability.* If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- (f) *Offer.* This Lease shall be treated as an offer, with such offer subject to the withdrawal or non-acceptance by Lessor, and this Lease shall not be valid or binding unless and until accepted by Lessor in writing and a fully executed copy delivered to both parties hereto.
- (g) *Calculation of time periods.* All references in this Lease to "the date hereof" or similar

references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease. Unless otherwise provided herein, whenever this Agreement calls for or contemplates a period of time for the performance of any term, provision, or condition of this Agreement, all of the days in such period of time shall be calculated consecutively without regard to whether any of the days falling in such period of time shall be a Saturday, Sunday, or other non-business day; provided, however, if the last day of any period of time shall happen to fall on a Saturday or Sunday or legal holiday observed by the State of Georgia, the last day shall be extended to the next succeeding business day immediately thereafter occurring.

- (h) Time is of the essence of this Lease.
- (i) *Governing Law.* This Lease shall be governed, controlled and construed in accordance with the laws of the State of Georgia. The state and federal courts located in Clayton County, Georgia, shall have exclusive jurisdiction over all matters arising out of this Lease.
- (j) *Entire Lease.* This Lease, including all exhibits, schedules, and any documents or instruments incorporated herein by reference constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, between the Parties with respect to the subject matter hereof.
- (k) *Waiver.* No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Lease operates or may be construed as a waiver thereof or any other right, remedy, power, or privilege. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (l) *Interpretation.* The Parties acknowledge that this Lease and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the Lease shall have no application to the terms and conditions of this Lease.
- (m) *Counterparts.* This Lease may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Lease. PDF signatures shall constitute original signatures.

(Signature page attached hereto)

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease as of the date of the effective signatures.

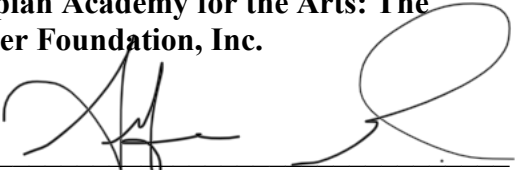
LESSOR:

Clayton County Public Schools

By: Ralph Simpson
Name: Ralph Simpson
Title: Deputy Superintendent
Date: January 9, 2023 | 6:55:35 PM EST

LEASEE:

**Utopian Academy for the Arts: The
Miller Foundation, Inc.**

By: 
Name: Dr. Artesius Miller
Title: CEO
Date: 1/9/23