



LINCOLN PUBLIC SCHOOLS

BUCKNER M. CREEL
ADMINISTRATOR FOR BUSINESS AND FINANCE

March 17, 2020

To: School Committee
Rebecca McFall, Superintendent
From: Buckner Creel

Subject: Recommendation for Award – Hartwell Space Lease September 2021 –August 2026

Background In January 2016, the School Committee entered into a five-year lease with Magic Garden for classroom, administrative and playground space in and around the Hartwell Building, to be used for nursery school and related uses. This lease began on September 1, 2016 and ends on August 31, 2021.

In October 2019, the Magic Garden Executive Board was given a reminder of the expiration of the current lease and of the School Committee’s intent to recompetete on a timely basis. The Year 5 annual lease payment is \$13,200, so the rental value of the property over the five-year period will exceed \$25,000 and a formal RFP process must be followed to comply with M.G.L. c. 30B § 16.

Process In accordance with the procedures outlined in M.G.L. 30B and in the memo prepared for the School Committee dated October 11, 2019, proposals for the lease of space in the Hartwell Building were solicited using the following process:

- At its meeting on October 24, 2019, the School Committee declared space in the Hartwell Building surplus and identified use restrictions by unanimously approving the following motion:
“**MOVE**...that the School Committee **affirms** that the space in the Hartwell Building currently occupied by Magic Garden continues to be surplus space and available for lease, that it desires the surplus space be used for programs with an educational purpose harmonious with the proper functioning of the adjacent Lincoln Pre-School, and directs the Administration to solicit proposals for lease of the space in compliance with Massachusetts General Law.”
- Legal notices were published in the Concord Journal on November 28 and December 5, 2019.
- Announcements in the *Central Register* on the State Publications and Regulations web site were published announcing the availability of Request for Proposal (RFP) documents beginning on November 28, 2019.
- RFP packets were given to one potential proposer in response to these advertising efforts.
- One potential proposer attended the pre-proposal conference held December 10, 2019 at 11:00 am. The pre-proposal conference was mandatory.
- No addenda were added to the bid packet after the pre-proposal conference.
- One proposal, from Magic Garden, Inc., was received on December 17, 2019, two days prior to the proposal receipt deadline of December 19, 2019.

Proposal Review Process The request for proposal (RFP) contains a single-step proposal evaluation process. The details of the process are outlined in the RFP specifications, and include evaluations by a Final Selection Committee following a preliminary review.

Preliminary Evaluation Committee We received only one proposal in response to the RFP, from the present occupant of the space, Magic Garden, Inc. Maureen Onigman and I reviewed the proposal to ensure that it contains the materials required by the RFP and necessary for your selection, conducted reference checks, and reviewed the supplemental financial information provided by Magic Garden. I find the proposal responsive and responsible.

Final Selection Committee Task Philosophically, the role of the Selection Committee is to help ensure that the School Committee enters into an agreement for the use of school space that benefits the Town. The RFP states “The Selection Committee will review all proposals passed to them from the Administrator for Business & Finance, rank them using the set of comparative criteria listed below and make a recommendation for award to the Lincoln School Committee, the Awarding Authority...”

The fact that there is only one proposal means that the first part of the Selection Committee task is simplified, as no ranking of competing alternatives is required. The second part of the task remains critical, but the members of the Selection Committee had reviewed the proposal submitted by Magic Garden for the current lease using the ranking criteria and felt it unnecessary to review the current, subsequent proposal. The members of the Selection Committee recommend acceptance of the proposal to the School Committee.

Price Analysis The rule for award included in the RFP documents states:

“The Lincoln Public Schools will accept the most advantageous offer from a responsive and responsible proposer, taking into consideration all evaluation criteria and price.”

The selection Committee found the proposal to be responsive; among other criteria, the proposal met the minimum terms of the RFP, proposing an initial lease payment of \$13,550 (versus the RFP minimum of \$13,500) and the first year’s maintenance allowance of \$10,000 (the RFP minimum). These amounts will be escalated in each of the subsequent years. Through its financial status review, the Selection Committee also found the proposer responsible. The Selection Committee found that the proposal, including the price, provides value to the Town, hence it is reasonable.

Recommendation The sole proposer, Magic Garden, Inc., is a responsive, responsible proposer who has offered a reasonable price. Accordingly, the Final Selection Committee recommends that the School Committee accept the Magic Garden, Inc. proposal and enter into an agreement with them for their use of the Hartwell space as a preschool for the five-year period beginning September 1, 2021 and ending August 31, 2026, contingent upon successful negotiation of the lease.

Respectfully submitted.

Buckner Creel
for the Final Selection Committee

LEASE

Hartwell Building Space

Between

Magic Garden, Inc.

and

Lincoln School Committee

For the period

September 1, 2021 through August 31, 2026

ARTICLE I: SUMMARY

1.1 Key Terms

- a. DATE OF LEASE: January 4, 2016
- b. LESSOR: LINCOLN PUBLIC SCHOOLS
- c. LESSOR'S ADDRESS: Lincoln Public Schools
6 Ballfield Road
Lincoln, MA 01773
781-259-9401
- d. LESSEE: MAGIC GARDEN, INC.
- e. LESSEE ADDRESS: 8 Ballfield Road
PO Box 34
Lincoln, MA 01773
781-259-8161
- f. PROPERTY: Hartwell Building
6 Ballfield Road
Lincoln, MA 01773
- g. LEASED PROPERTY DESCRIPTION: Four classroom spaces designated as 108, 109, 110 and 111; the designated office and kitchen space in the Hartwell Building; the reception area and conference room in Room 106; the entryway between Rooms 106 and 108 and associated hallways; the fenced playground to the north of the Hartwell Building; and the playground to the north of Pod B, as described in the Specifications.
- h. LEASE PAYMENT: As set forth in section 3.1 of this Lease below.
- i. TERM OF LEASE: This Lease shall run from September 1, 2021 and shall terminate on August 31, 2026, unless sooner terminated as provided in Articles VI and VII below.

ARTICLE II: PREMISES

2.1 Premises

Lessor does hereby demise and lease unto Lessee those premises ("Premises") described in Section 1.1.g.

Lessee shall have, as appurtenant to the Premises, the right to use all sidewalks, parking

amenities, any common entrances and exits, and also any pipes, ducts, conduits, wires, and equipment serving the Premises, in common with others entitled thereto.

The Lessee shall use the Premises for a nonprofit, community-based, full-time, year-round childcare program. (the "Permitted Uses").

ARTICLE III: LEASE PAYMENT; DATE OF OCCUPANCY

3.1 Lease Payment, Capital Improvement and Fee Payments

a. Schedule of annual lease payments.

1. Year 1 -- \$13,550
2. Year 2 -- \$14,000
3. Year 3 -- \$14,400
4. Year 4 -- \$14,800
5. Year 5 -- \$15,250

b. Throughout the term of this Lease, the Lessee shall pay the annual lease payment ("Lease Payment") in four equal installments, on or before the following dates: September 1, December 1, March 1 and June 1. All such payments to be delivered to the Lessor at the mailing address aforesaid or at such other place as the Lessor shall from time to time designate in writing, without notice, demand, off-set or deduction (unless herein specifically authorized).

c. Capital improvement allowance. In addition to Lease Payment, Lessee shall pay a separate amount for the purposes of maintenance and making regular capital improvements to the interior and exterior of the building. The first-year capital improvement allowance shall be \$10,000 and shall be increased by \$500 each year for the duration of the Lease. Capital improvement funds shall be held in an account established by the Lincoln Finance Director until expended. The Lessor shall determine how the funds will be used for capital projects. Any capital improvement funds remaining at the end of the Lease will be returned to the Lessee.

d. Fees for custodial services. If Lessee elects to receive custodial services provided by the Lessor, the fee for these services for the first year of the Lease shall be \$53,000, and shall increase by 4% each year, for the duration of the agreement. Lessee shall pay the fee for these services in four equal payments, on or before the following dates: September 1, December 1, March 1 and June 1. All such payments to be delivered to the Lessor at the mailing address aforesaid or at such other place as the Lessor shall from time to time designate in writing, without notice, demand, off-set or deduction (unless herein specifically authorized).

ARTICLE IV: LESSOR'S COVENANTS

4.1 Ownership and Title

The Lessor warrants and represents that it is the owner of the Premises.

4.2 Quiet Enjoyment

The Lessor hereby warrants and covenants that Lessee shall have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of the Lessor, or by any other person(s) for whose actions the Lessor is legally responsible.

The Lessor or its agents may, at reasonable times and without interfering with Lessee's operations, enter the Premises to make repairs or to view the Premises. Lessor may enter to show the Premises to prospective Lessees only after a minimum of twenty-four (24) hours notice to Lessee.

ARTICLE V: LESSEE'S COVENANTS

5.1 Use of Premises

a. Lessee shall use the Premises only for the Permitted Uses. The Lessee shall, at its expense, obtain any and all licenses and permits necessary for such use and comply with all governmental laws, ordinances and regulations applicable to the use of the Premises. The Lessee shall not use the Premises in any manner that constitutes a nuisance. The Lessee shall not permit the Premises to be used in any way which would, in the opinion of the Lessor, be extra-hazardous or which would increase or render void the fire insurance on the Premises.

b. Shared use of reception and conference areas. The Lessee will use the reception area in Room 106 in a way that will not interfere with access to and use of the adjacent Lincoln Preschool Office. The Lessee will have priority of use of the conference room in Room 106, and will maintain a sign-up list to record its scheduled uses. The Lincoln Preschool may sign up to use the conference room for open periods. Neither Lessor nor Lessee will have a pre-emptive right to use the conference room once the room has been scheduled for use. The parties anticipate a harmonious shared use of the reception and conference areas for the benefit of both.

c. Shared use of playgrounds. The Lincoln Preschool operations and the Lessee will use the fenced playground to the north of the Hartwell Building and the playground to the north of Pod B on a shared, non-exclusive basis. The details of the sharing will be worked out between the directors of the Lessee and Lessor programs, with the parties anticipating a harmonious shared use of the playground areas for the benefit of both as a condition of the Lease.

5.2 Compliance With Applicable Laws and Removal of Liens

Lessee shall comply with all laws, orders and regulations of federal, state, county and city authorities, and with any of Lessor's rules and regulations which may be set forth in this Lease, all of which are applicable to Lessee's use of the Premises.

5.3 Assignment and Subleasing

Lessee shall not assign, sublet, underlet, mortgage, pledge or encumber (collectively referred to as "Transfer") this Lease without Lessor's prior written consent, which consent shall be exercised in the Lessor's sole discretion. Consent by Lessor, whether express or implied, to any Transfer shall not constitute a waiver of Lessor's right to prohibit any subsequent Transfer; nor shall such consent be deemed a waiver of Lessor's right to terminate this Lease upon any subsequent Transfer. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of the Lessee's interest in the Lease by operation of law.

5.4 Improvements, Alterations and Additions

a. The Lessee may make non-structural alterations or additions to the Premises without the Lessor's prior written consent. The Lessee may make structural alterations or additions to the Premises, provided Lessee shall first obtain the Lessor's prior written consent thereto, which consent shall not be unreasonably withheld. All such allowed or required alterations or additions shall be at Lessee's expense, and shall be in quality at least equal to the present construction. Lessee shall not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Lessee in connection with work of any character performed at the direction of the Lessee and shall cause any such lien to be released of record without cost to Lessor. Lessee shall obtain written consent of Lessor before erecting any new or replacement sign on the Premises.

b. The Lessee shall procure all necessary permits before undertaking any work on the Premises, including without limitation any structural alterations, and shall cause all such work to be performed in a good and first-class workmanlike manner and in accordance with the requirements of insurers, employing new materials of prime quality and shall defend, hold harmless, exonerate and indemnify the Lessor from all injury, loss or damage to any person or property occasioned by such work. The Lessee shall at all times comply with, to the extent the same are applicable, (i) Massachusetts public bidding laws and all laws, rules, orders and regulations of governmental authorities having jurisdiction thereof, in effect at the time of application for permits for such work; (ii) orders, rules and regulations of any Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing insurance rating bureaus; and (iii) plans and specifications (which shall be prepared by and at the expense of the Lessee and approved by the Lessor prior to beginning any work). The Lessee agrees to employ responsible contractors for such work and shall cause such contractors to carry workers' compensation insurance in accordance with statutory requirements and comprehensive public liability insurance and automobile liability insurance covering such contractors on or about the Premises in amounts reasonably acceptable to the Lessor and agrees to submit certificates evidencing such coverage to the Lessor prior to the commencement of and during the continuance of such work.

c. Should any improvements, alterations or repairs be made to the Premises or material be furnished or labor be performed therein or thereon by or on behalf of the Lessee, as permitted under the terms of this Lease, the Lessor shall not, under any circumstances, be liable for the payment of any expenses incurred or for the value of any work done or material furnished to the Premises or any part thereof, but all such improvements, alterations and repairs shall be done and materials and labor furnished at the Lessee's expense, and the laborers and materialmen furnishing labor and materials to the Premises or any part thereof shall release the Lessor and the Premises from any liability.

d. All structural alterations and additions made by Lessee shall become the exclusive property of the Lessor upon completion. The Lessee may at any time, at its sole option, remove any such structural alteration or addition and restore the Premises to the same conditions as prior to such alteration or addition, reasonable wear and tear and damage by fire or other casualty only excepted.

e. At the conclusion of the Lease Agreement any and all fixtures that cannot be removed by Lessee without injury to the premises, including any and all plumbing fixtures,

whether or not installed by the Lessee, shall become property of the Lessor. At Lessor's option, when this Lease Agreement is terminated, and upon Lessor's advance written notice to Lessee, Lessee shall within a reasonable period, remove any fixtures that were installed by the Lessee that the Lessor does not wish to retain and restore the Premises to its original condition, reasonable wear and tear excepted.

5.5 Utilities; Maintenance and Repairs

a. Water, Sewer, Heating and Grounds Services. During the Term of this Lease, Lessor shall provide water, sewer service, heating, snow plowing and walk clearing, and certain landscaping services (grass cutting and seasonal clean-ups) at the Premises unless otherwise agreed in writing.

b. Electricity. Electricity to the Premises is provided through a separate meter and distribution system. The Lessee shall maintain an account with Eversource and an energy provider (if appropriate) and pay all associated electricity charges.

c. Telecommunications. Lessor shall not be responsible for providing or paying for any Telecommunication services, including but not limited to, telephone or cable service, Internet connectivity, email or other messaging service, internal telephone and data networks, etc. The Lessee agrees to pay for any telecommunication and related services associated with their telecommunication use in the Premises, and will submit their plan for the provision of these services for approval by the Lessor.

d. Interruption of Service. Lessor will not be liable for any interruption of utility services to the Premises, nor will any such interruption constitute a termination of this Lease or an actual or constructive eviction of Lessee. If Lessee fails to pay for electrical or telecommunications services furnished to the Premises, Lessor shall have the right, but not the obligation, to pay the same, and Lessee shall reimburse Lessor promptly upon demand for all costs, expenses and other sums of money in connection therewith, with interest, as Additional Lease Payment.

e. Maintenance. Lessee shall be responsible, at its sole expense, for the general maintenance of the Premises. Lessee shall keep the Premises, including, without limitation, the electrical fixtures, windows, halls, stairwells, lavatories and all other areas of the Premises, all pipes, wiring and lighting, all plumbing and utility lines serving the Premises, the heating and ventilating system and the fire protection equipment and systems serving the Premises, in good and safe order, condition and repair, excepting only reasonable use and wear and damage by fire or other casualty. Lessee agrees to keep, operate, use and maintain every part of the Premises in conformity with all requirements of the law and applicable fire underwriting and related regulations, and to do all other work necessary to comply with the foregoing covenant. Lessee shall replace plate glass and other glass broken at the Premises during the term of the Lease. Lessee shall not permit the leased Premises to be over loaded, damaged, stripped, or defaced, nor suffer any waste.

f. Repairs. If repairs are required to be made by the Lessee pursuant to the terms hereof, the Lessor may demand that the Lessee make the same forthwith, and, if the Lessee refuses or neglects to commence and diligently pursue the completion of such repairs within ten (10) days after such demand, or forthwith in the case of emergency repairs, the Lessor may (but shall not be required to do so) make or cause such repairs to be made and shall not be

responsible to the Lessee for any loss or damage that may accrue to the Lessee property or business by reason thereof. Except in the case of emergency repairs, such repairs made or caused to be made by the Lessor shall not unreasonably interfere with the Lessee's operation of the permitted uses in the Premises. If the Lessor makes or causes such repairs to be made, the Lessee agrees that the Lessee will forthwith, on demand, pay to the Lessor the cost thereof and, if the Lessee shall default in such payment, the Lessor shall have the remedies provided herein as for default of the Lease.

g. Custodial Services. If the Lessee chooses not to receive custodial services provided by the Lessor as set forth in Section 3.1.d the Lessee shall independently contract with a custodial service to provide the following services at the Premises, without recourse to space or facilities outside the Premises:

1. Daily and weekly custodial services including cleaning classrooms 108, 109, 110 and 111, along with the designated office and kitchen space in the Hartwell Building.
2. Yearly summer cleaning of the classrooms and office space.
3. Custodial supplies and paper products

Custodial Services shall be conducted in accordance with the Sanitizing and Disinfecting Protocols from Massachusetts Department of Early Education and Care, document number P-GCC/SA-13, and the Weekly Classroom Cleaning and Sanitation Checklist, both attached as Exhibit 3. Lessee's custodial contractor shall be subject to Mandatory Criminal Record (CORI) Checks as specified in Section 3 of the Specifications to the Request for Proposals Lease of Classroom and Administrative/Support Space in the Hartwell Building, dated March 1, 2010 (the "Specifications"). If the Lessee chooses to receive custodial services provided by the Lessor, that will satisfy the requirement set forth here to comply with the Sanitizing Protocols and the Sanitation Checklist.

h. Notwithstanding the Lessee's maintenance and repair obligations set forth above, the Lessor agrees, at its expense and upon written notice of the need therefore from the Lessee, to make all major structural repairs reasonably determined by the Lessor to be necessary, including the building exterior, the roof, framing, floor slabs, and foundation of the Premises, the heating and ventilation system, and the septic system serving the Premises. Notwithstanding the foregoing, the Lessee shall bear the cost and expense of any repairs to the Premises necessitated due to the acts or omissions of the Lessee or its agents, servants, employees or invitees. The Lessor shall make such repairs within a reasonable time, consistent with the Lessor's budgetary, appropriation and borrowing requirements and with the Lessor's obligation to comply with legal requirements relating to public building projects and public procurement.

5.6 Yield Up at Termination of Lease

Lessee shall at the expiration or other termination of this Lease remove all Lessee's effects from the Premises. Lessee shall deliver the Premises to Lessor in the condition in which Lessee is required to maintain the same as set forth in this Lease, reasonable wear and tear excepted and fire and other casualty excepted.

5.7. Indemnification

a. The Lessee shall, during the term hereof, assume and maintain exclusive control of the Premises and, to the maximum extent this Lease may be made effective according to law, the Lessee agrees to defend, indemnify and save harmless the Lessor from and against all claims, expenses or liability of whatever nature arising from any act, omission or negligence of the Lessee, the Lessee's contractors, licensees, agents, servants, employees, customers, and invitees, or anyone claiming by, through or under the Lessee, or arising, directly or indirectly, from any accident, injury or damage whatsoever, however caused, to any person, or to the property of any person, occurring after the date that Lessee occupies the Premises and until the end of the term of this Lease and, thereafter, so long as the Lessee or any occupant claiming under the Lessee is in occupancy of any part of the Premises, in or about the Premises, or arising from any accident occurring outside the Premises but within the general area of the Premises, where such accident, injury or damage results or is claimed to have resulted from any act, omission or negligence on the part of the Lessee or Lessee's contractors, licensees, agents, servants, employees, customers, or invitees, or anyone claiming by, through or under the Lessee.

The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including attorneys fees, and the defense thereof with counsel acceptable to the Lessor or counsel selected by an insurance company which has accepted liability for any such claim.

b. To the maximum extent this Lease may be made effective according to law, the Lessee agrees to use and occupy the Premises at the Lessee's own risk, and the Lessor shall have no responsibility or liability for any loss or damage to fixtures or other personal property of the Lessee or any person claiming by, through or under the Lessee. Without limitation, the Lessee agrees that the Lessor shall not be responsible or liable to the Lessee, or those claiming by, through or under the Lessee, for any loss or damage resulting to the Lessee or those claiming by, through or under the Lessee, its or their property from the breaking, bursting, stopping or leaking of electric cables and wires, and water, gas or steam pipes.

c. The provisions of this Section 5.7 shall survive any termination of this Lease.

5.8 Insurance

a. The Lessee agrees to maintain in full force from the date upon which the Lessee first enters the Premises for any reason, until the expiration of the term of this Lease, and thereafter so long as the Lessee is in occupancy of any part of the Premises, a policy of comprehensive public liability and property damage insurance under which the insurer agrees to indemnify and hold the Lessor, and those in privity of estate with the Lessor, harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages mentioned in Section 5.7 above, in the broadest form of such coverage from time to time available in Massachusetts. Each such policy shall be non-cancelable and non-amendable with respect to the Lessor and the Lessor's designees without thirty (30) days prior written notice to the Lessor and the Lessor's designees, and a duplicate original or certificate thereof shall be delivered to the Lessor within five (5) business days from the date of this Lease.

b. The minimum limits of Lessee's insurance shall be not less than those specified in Appendix A to Specifications. However, the Lessor shall have the right to require the Lessee to increase such limits when, during the term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises by responsible owners or Lessees are more or less generally increased, it being the intention of this sentence to require the Lessee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Premises.

c. The Lessor shall have the same rights and remedies for the non-payment by the Lessee to the Lessor of amounts due on account of insurance premiums as the Lessor has under this Lease for the failure of the Lessee to pay the Lease Payment.

d. The Lessee agrees that it shall continuously keep its fixtures, merchandise (if any), equipment and other personal property from time to time located in, on or about the Premises, and all leasehold improvements to the Premises constructed or installed by the Lessee insured by reputable, duly licensed insurance companies against loss or damage by fire with the usual extended coverage endorsements. Within a reasonable time after the Lessee enters the Premises, no less often than annually thereafter, and at any other time upon the request of the Lessor, the Lessee shall furnish to the Lessor evidence of such continuous insurance coverage satisfactory to the Lessor. It is understood and agreed that the Lessee assumes all risk of damage to its own property arising from any cause whatsoever, including, without limitation, loss by theft or otherwise.

e. Lessor shall be named as an additional insured on all insurance policies. All required insurance shall be written with such companies qualified to do business in Massachusetts, as the Lessee shall select and the Lessor shall approve, which approval the Lessor agrees not unreasonably to withhold.

f. The proceeds of such insurance, subject to the requirements of any mortgage on the Premises, shall be a trust fund for the purpose of covering the cost of restoration or repair of the Premises to its former condition in accordance with the terms and provisions of this Lease, all as hereafter provided, and any balance remaining after full payment of all such cost and expense of restoration or repair shall be paid over to the Lessee.

g. Throughout the term of this Lease, the Lessee shall furnish to the Lessor all policies of insurance or renewal policies or certificates of insurance, all as may be required by any of the foregoing provisions, not later than thirty (30) days prior to the date when other insurance coverage maintained in accordance with their terms of this Lease is scheduled to expire. Without limiting the Lessor's other rights under any other provisions of this Lease, if the Lessee shall fail to keep the Premises insured as provided herein, and if such failure shall continue to a period of five (5) days following written notice by the Lessor to the Lessee thereof, then the Lessor, without further notice to the Lessee, may take out and pay for such insurance, and the amount of such payment shall become due and payable as additional Lease Payment on demand.

h. Lessee hereby waives any and all rights of recovery which it might otherwise have against the Lessor, its agents, employees and other persons for whom the Lessor may be responsible for any loss or damage to Lessee's property or improvements in the Premises which are either required to be insured under the terms of this Lease or which Lessee, in the absence of any such requirement, elects to insure, notwithstanding that the loss or damage may result

from the negligence, willful act or default under the terms of this Lease by Lessor, its agents, employees, contractors or other persons for whom Lessor may be responsible, to the extent permitted by law.

i. The Lessor agrees to maintain a policy of insurance upon the Premises, with such deductibles as the Lessor deems advisable, insuring against fire and the risks covered by extended coverage endorsements, subject to appropriate co-insurance requirements, as well as insurance against breakdown of boilers and other machinery as customarily insured against, but specifically excluding any property of the Lessee or fixtures installed by the Lessee. The Lessee agrees to reimburse the Lessor, on demand, for the entire cost of any increases in insurance premiums resulting from Lessee's use of the Premises.

ARTICLE VI: CASUALTY; EMINENT DOMAIN

6.1 Casualty Loss; Taking by Eminent Domain

a. For the purposes of this section, "substantial part" shall be defined as that portion of the property which if damaged or taken by eminent domain would materially affect the use of the property for the purposes set forth in Section 5.1 above.

b. If a substantial part of the Premises shall be destroyed or damaged by fire or other casualty, or if a substantial part of the Premises shall be taken for any public or quasi-public use under governmental law or by right of eminent domain and the taking would materially interfere with the use of the Premises for the purposes for which it is then being used by the Lessee, then this Lease shall terminate at the election of either the Lessor or the Lessee. Any such termination shall be effective thirty (30) days after the date of notice thereof.

c. If any part of the Premises is damaged by fire or other casualty or is taken by a public authority and this Lease is not terminated by Lessor or Lessee as provided above, Lessor shall proceed with reasonable diligence to repair and restore the Premises, or what remains thereof in the case of a partial taking, to their condition prior to such damage, destruction, or taking.

d. In the event of a taking by eminent domain, the Lessor shall have, and hereby reserves and excepts, and the Lessee hereby grants and assigns to the Lessor, all rights to recover for damages to the Premises and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking or damage. The Lessee covenants to deliver such further assignments and assurances thereof as the Lessor may from time to time request, hereby irrevocably designating and appointing the Lessor as its attorney-in-fact to execute and deliver in the Lessee's name and behalf all such further assignments thereof. Nothing contained herein shall be construed to prevent the Lessee from prosecuting in any condemnation proceedings a claim for the value of any of the Lessee's usual trade fixtures installed in the Premises by the Lessee at the Lessee's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by the Lessor from the taking authority.

ARTICLE VII: TERMINATION; DEFAULT

7.1 Lease Termination; Default Conditions

a. Notwithstanding anything herein to the contrary, either party may terminate this Lease, at any time, by giving the Lessee at least two years prior written notice thereof, whereupon this Lease shall be null and void, except for those provisions that are expressly stated to survive termination.

b. If the Lincoln Public Schools, in its sole discretion, undertakes a major public school building construction project requiring the relocation of students or staff at any of the facilities under its control during the term of the lease, which thereby makes it necessary, in the sole opinion of the School Committee, to use the Leased Premises, it may terminate the Lease upon one year's written notice to the Lessee, whereupon this Lease shall be null and void, except for those provisions that are expressly stated to survive termination.

c. In the event that:

i. Lessee fails to pay Lease Payment, other charges or additional Lease Payment within the time specified in this Lease and such default continues for ten (10) days after written notice thereof,

ii. Lessee defaults in the observance or performance of any other of the Lessee's covenants, agreements, or obligations hereunder and such default is not corrected within thirty (30) days after written notice,

iii. Lessee files a petition in bankruptcy under any bankruptcy act or makes an assignment for the benefit of creditors, or

iv. Involuntary proceedings under any bankruptcy law are initiated against the Lessee or a receiver or trustee is appointed for the Lessee and such proceedings are not dismissed or the receivership or trusteeship vacated within thirty (30) days, then Lessor shall have the right thereafter, while such default continues, to re-enter and take complete possession of the Premises, to declare the term of this Lease ended, and remove Lessee's effects, without prejudice to any remedies which might be otherwise used for arrears of Lease Payment or other default. Lessee shall indemnify Lessor against all loss of Lease Payment and other payments, which Lessor may incur by reason of such termination during the residue of the term. If Lessee shall default, after reasonable notice thereof, in the observance or performance of any conditions or covenants on Lessee's part to be observed or performed under or by virtue of any of the provisions in any provision of this Lease, Lessor, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of Lessee. If Lessor makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations insured, with interest and costs, shall be paid to Lessor by Lessee as additional Lease Payment.

d. The Lessor shall not be in default in the performance of any of the Lessor's obligations hereunder unless and until the Lessor shall have failed to perform such obligations

within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by the Lessee to the Lessor properly specifying wherein the Lessor has failed to perform any such obligation.

e. Without limiting any of the Lessor's rights and remedies hereunder, and in addition to all other amounts the Lessee is otherwise obligated to pay, it is expressly agreed that the Lessor shall be entitled to recover from the Lessee all costs and expenses, including reasonable attorneys' fees, incurred by the Lessor in enforcing this Lease from and after the Lessee's default.

ARTICLE VIII: MISCELLANEOUS

8.1 Changes in Lease

None of the covenants, agreements, provisions, terms and conditions of this Lease shall in any manner be changed, altered, waived or abandoned except by a written instrument signed, sealed and mutually agreed upon by all the parties hereto, and approved as required by law. Such instrument shall not be void for want of consideration.

8.2 Holding Over

If Lessee or anyone claiming under Lessee shall remain in possession of the Premises or any part thereof after the expiration of the term hereof, without any agreement in writing between Lessor and Lessee with respect thereto, prior to acceptance of Lease Payment by Lessor, the person remaining in possession shall be deemed a Lessee at sufferance. After acceptance of Lease Payment by Lessor the person remaining in possession shall be deemed a Lessee from month-to-month, subject to the provisions of this Lease insofar as the same may be made applicable to a Lessee from month-to-month.

8.3 Severability

If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

8.4 Force Majeure

In any case where either party hereto is required to do any Act, delays caused by or resulting from war, fire, flood or other casualty, unusual regulations, unusually severe weather, or other causes beyond such party's reasonable control shall not be counted in determining the time during which such Act shall be completed, whether such time be designated by a fixed date, a fixed time or "a reasonable time," and such time shall be deemed to be extended by the period of the delay.

8.5 Binding Agreement; Covenants and Agreements; Governing Law; Personal Liability

This Lease shall bind and inure to the benefit of the parties hereto and their respective representatives, successors and assigns. All covenants, agreements, terms and conditions of this Lease shall be construed as covenants running with the land. This Lease contains the entire agreement of the parties and may not be changed or modified except by a written instrument in

accordance with the provisions herein. This Lease shall be governed by the laws of the Commonwealth of Massachusetts. The provisions of those laws shall not be deemed waived by any provision of this Lease.

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be bound thereby.

No mention in this Lease of any specific right or remedy shall preclude Lessor or Lessee from exercising any other right, or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either in law or in equity.

No official, employee or consultant of the Town of Lincoln or its School Committee shall be personally liable to the Lessee or any partner thereof, or any successor in interest or person claiming through or under the Lessee or any such partner, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease or any amendment or extension entered into pursuant hereto.

8.6 Notice

Any notice relating to the Premises or to the occupancy thereof shall be in writing and shall be deemed duly served when mailed by registered or certified mail, postage prepaid, addressed to the other party at the addresses listed in Section 1.1, or at such other addresses as the parties may from time to time designate by written notice to the other party.

8.7 Exhibits and Riders

The Exhibits and Riders listed below and attached hereto are made a part of this Lease for all purposes.

- Exhibit 1. RFP and Specifications dated November 19, 2019.
- Exhibit 2. Accepted proposal dated December 18, 2019.
- Exhibit 3. Sanitizing and Disinfecting Protocols from Massachusetts Department of Early Education and Care, and Cleaning Checklist.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, this Lease has been executed in triplicate by the parties hereto, under seal.

LESSOR:

LINCOLN PUBLIC SCHOOLS

By: _____ DATE: _____, 2020
Tara Mitchell, Chair

LESSEE:

Magic Garden, Inc.

By: _____ DATE: _____, 2020
Kara Soo, President