

MANAGEMENT AGREEMENT  
BY AND BETWEEN

LANDMARK ACADEMY

AND

SUMMIT MANAGEMENT CONSULTING, L.L.C.

## MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is made and entered into effective July 1, 2023, by and between Landmark Academy, a Michigan Nonprofit Corporation (“Landmark”), and Summit Management Consulting, L.L.C., a Michigan Limited Liability Company (“Summit”).

### RECITALS

The following is a recital of facts underlying this Agreement:

Landmark is a public school academy organized and operated pursuant to Section 501 et seq. of the Michigan Revised School Code (“the Code”). Landmark has been issued a contract, as defined in the Code by the Board of Control of Saginaw Valley State University (the “Authorizer Board”), dated July 1, 2023, to organize and operate a public school academy (the “Contract”), with the Authorizer Board as the authorizing body.

Landmark and Summit desire to work together to develop and bring about a system of educational excellence and innovation at Landmark.

Landmark desires that the selection and acquisition of instructional materials, equipment and supplies; all matters of compensation, fringe benefits, sick leave, long and short term disability; and all matters pertaining to the daily work schedule for teachers and staff, as well as the employment of same, become the exclusive responsibility of Summit to the extent permitted by law.

THEREFORE, in order to operate Landmark for the 2023-2024 school year and the continuation of Landmark thereafter, and to implement an innovative educational program at Landmark, the parties desire to establish this arrangement for the management and operation of Landmark, and the parties mutually agree as follows:

### ARTICLE I

#### CONTRACTUAL RELATIONSHIP

A. Authority

Landmark represents that it is authorized by law to contract with a private entity and for that entity to provide educational management services. Landmark further represents that it has been issued the Contract by the Authorizer Board to organize and operate a public school academy. Landmark is therefore authorized by the Authorizer Board to supervise and control the Academy, and is invested with all powers necessary or desirable for carrying out the educational program contemplated in this Agreement.

B. Agreement

The parties agree that Summit, to the extent permitted by law, shall as an independent contractor: 1) provide all employees, materials and supervision necessary for the provision of educational services to students of Landmark, and 2) provide for the management, cooperation and maintenance of Landmark, in accordance with the policies of the Landmark Board of Directors (“Landmark Board”) and the requirements of the Authorizer and State and Federal Department of Education including, but not limited to, the educational goals, curriculum, methods of pupil assessment, admissions policy and criteria, school calendar and school day schedule, and age and grade range of children to be enrolled, and methods to be used to monitor compliance with performance of targeted educational outcomes, all as previously adopted by the Landmark Board, submitted in Landmark's application to the Authorizer Board, and included in the Contract, as the same may be amended and supplemented from time to time by the Landmark Board and Authorizer Board. Summit agrees that in providing services to or on behalf of Landmark it shall comply with any and all requirements of the Contract and that it shall insure that Landmark's duties under the Contract shall not be limited or rendered impossible by action or inaction of Summit. The provisions of the Academy’s Contract shall supersede any competing or conflicting provisions contained in this Agreement.

C. Status of the Parties

Landmark is a nonprofit corporation, organized and existing under the laws of the State of Michigan, and is not a division or a part of Summit. Summit is a limited liability company, organized and existing under the laws of the State of Michigan and is not a division or a part of Landmark. The relationship between Landmark and Summit is based solely on the terms of this Agreement. In the performance of the duties of Summit to be rendered pursuant to this Agreement, it is mutually understood and agreed that Summit shall be at all times acting and performing as an independent contractor. Nothing in this Agreement is intended to create an employment relationship, partnership or joint venture relationship between the parties. Summit shall notify Landmark if any principal or officer of Summit, or Summit (including any related organizations or organizations in which a principal or officer of Summit served as a principal or officer) as a corporate entity, has filed for bankruptcy protection in the last six months or within any applicable preference period, whichever is longer.

D. No Related Parties or Common Control

Summit will not have any role or relationship with Landmark that, in effect, substantially limits Landmark's ability to exercise its rights, including cancellation rights, under this Agreement. The Landmark Board shall not include any director, officer or employee of Summit. None of the voting power of the Landmark Board will be vested in Summit, its directors, members, managers, officers, shareholders and employees, and none of the voting power of the Landmark Board or Members of Summit will be vested in Landmark or its directors, members, managers, officers, and employees. Furthermore, Landmark and Summit will not be members of the same control group, as defined in Section 1.150-(f) the regulations under the Internal Revenue Code of 1986 as amended (or its successor), or

related persons, as defined in Section 144(a)(3) of the Internal Revenue Code of 1986 as amended (or its successor).

## ARTICLE II

### TERM

#### A. Term

This Agreement shall become effective July 1, 2023 and shall cover four (4) academic years commencing on July 1, 2023 ("Commencement Date") and ending on June 30, 2027 unless earlier terminated in accordance with this Agreement. For purposes of this Agreement, an "academic year" shall mean fiscal year beginning July 1 and ending June 30 of each year. This Agreement shall automatically terminate if the Contract issued by the Authorizer Board is terminated, revoked or not renewed or reissued for any reason.

Notwithstanding the above, the Term of the Agreement shall not exceed the length of the Contract issued by the Authorizer Board.

## ARTICLE III

### DUTIES AND RESPONSIBILITIES OF SUMMIT MANAGEMENT CONSULTING, L.L.C.

#### A. Responsibility

Summit shall be responsible and accountable to the Landmark Board for the administration, operation and performance of Landmark in accordance with the Contract and the implementation of the Educational Program.

#### B. Educational Services

(a) For the Term (as defined in Article II above) Summit will provide to Landmark and its students the following educational services (the "Educational Services"):

- (i) Curriculum. The development and implementation of the curriculum at the Academy.
- (ii) Instruction. Instruction services and personnel, including the Chief Academic Officer, principals, teachers and support staff in accordance with Article VIII below;
- (iii) Instructional Tools. Instructional tools, equipment and supplies, including text books, computers, software and multi-media teaching tools;

- (iv) Extra-Curricular and Co-Curricular Programs. Extra-curricular and Co-curricular activities and programs approved by the Landmark Board; and
  - (v) Additional Educational Services. Any other services required by the Landmark Board as are necessary or appropriate for the improvement of teaching and learning at Landmark as agreed to from time to time between Summit and the Landmark Board. Any additional services shall be documented in writing and subject to review by the Authorizer Board or its designee in accordance with the Contract.
- (b) The Educational Services will be provided in accordance with the educational goals, curriculum, methods of pupil assessment, admissions policy, student recruitment policy, school calendar, school day schedule and age and grade range of pupils to be enrolled at Landmark as adopted by the Landmark Board and as set forth in the Contract.
  - (c) Subject to this Agreement, Summit may modify the Educational Services, provided that any material modification of the Educational Services will be subject to the prior approval of the Landmark Board, and as required by the Contract, the Authorizer Board or its designee.

C. Administrative Services

- (a) For the Term (as defined in Article II above), subject to the approval of the Landmark Board, Summit will provide to Landmark the following administrative services (the "Administrative Services"):
  - (i) Personnel Management. Management and professional development of all personnel providing Educational Services and Administrative Services;
  - (ii) Facility Operation and Maintenance. Operation and maintenance of Landmark's facility (the "Facility") to the extent consistent with any and all leases or other documents pertaining to the Facility;
  - (iii) Business Administration. Administration of all business aspects of Landmark;
  - (iv) Transportation and Food Services. Contracting for, and oversight of, transportation and food services for the students enrolled at Landmark as required by the Landmark Board;
  - (v) Public Relations. Any and all advertising and public relations with the community and the media;
  - (vi) Budgeting and Financial Reporting.
- (A) Prior to the start of the 2023-2024 school year and each school year thereafter, Summit will propose an annual budget to the Landmark Board for review and approval. The format of the budget shall comply with the Contract and the Uniform Budget and Accounting Act. As necessary, Summit shall provide the Landmark Board with proposed changes to the budget throughout the school fiscal year. The Landmark Board shall be responsible for approval of the budget and any amendments to the budget.

- (B) Summit shall provide statements of all revenues received, from whatever source, with respect to Landmark, and statements of all expenditures for services rendered to or on behalf of Landmark, whether incurred on-site or off-site, on a monthly basis. Said monthly reports will also compare the actual and budgeted revenues and expenditures with an explanation of variances. Also, Summit shall present to the Landmark Board, on a monthly basis, a detailed schedule of expenditures at object level detail for review and approval by the Landmark Board. The foregoing presentation shall be in a form and format acceptable to the Landmark Board and are to be provided to all Landmark Board members not less than five (5) working days prior to the board meeting at which the information will be considered.
- (C) Summit shall provide a general ledger and other financial information reasonably requested, to be audited by Landmark's independent auditor selected by the Landmark Board, as required by and in compliance with the Contract, the Code and other applicable laws and regulations.
- (D) Summit shall report on the finances of Landmark upon the request of the Michigan Department of Education, the Landmark Board or the Authorizer Board, but not less frequently than is required by the Contract, the Code or other applicable laws and regulations.

(vii) Maintenance of Financial and Student Records

- (A) Summit will maintain accurate financial records pertaining to its operation of Landmark, together with all Landmark financial records prepared by Summit and retain all such records in accordance with the public records retention schedule adopted by the Michigan Department of Education. All financial records retained by Summit pertaining to Landmark are public records, are owned by Landmark, and will be available to the Landmark Board, the Authorizer Board, the Michigan Department of Education, Landmark Board appointed independent auditor(s) or any other appropriate regulatory authority and as required to comply with the Contract and applicable law. If requested, copies of such records shall be made available in accordance with the Michigan Freedom of Information Act or other applicable law. Summit shall not select or retain Landmark's independent auditor(s) and shall cooperate with the independent auditor(s) selected and retained by the Landmark Board.
- (B) Summit will maintain accurate educational records pertaining to the students enrolled at Landmark at the Landmark facility as required and in the manner provided by the Contract and applicable law. Landmark student records prepared by or in the possession of Summit, shall be maintained by Summit on behalf of Landmark

until this Agreement is terminated, at which time such records will be transferred to the Landmark Board and become the sole responsibility of Landmark. Summit and Landmark will maintain the proper confidentiality of personnel, student and other records as required by law, including the provisions of the Family Educational Rights and Privacy Act, 20 USC § 1232g et seq. and its implementing regulations, 34 CFR § 99.31(a)(1)(i)(B) (collectively “FERPA”), the requirements of MCL 600.2165 and the Contract. The Landmark Board hereby designates Summit, including its directors, officers and employees, to the extent they have legitimate educational interest in so doing, as “School Officials” for purposes of FERPA during the Term of this Agreement.

- (C) Summit will maintain accurate employment and other records pertaining to the operation of Landmark. Summit will comply with applicable law regarding criminal background and record checks, unprofessional conduct searches and certification/ licensure, as applicable, for all persons assigned to work at Landmark.
- (D) All such financial, educational, and student records pertaining to Landmark are Landmark's property and are subject to the applicable provisions of the Michigan Freedom of Information Act. All such records shall be stored in physical form, on-site at Landmark's facility or directly accessible at Landmark's facility. All records pertaining to teacher and administrator certification, as well as a copy of the employee handbook, shall be maintained physically on site or directly accessible at the Landmark facility.
- (E) Summit agrees to make information available to Landmark as deemed necessary by the Landmark Board in order to enable Landmark to satisfy its obligations under the Contract, and to provide the Landmark Board with the same information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618, for the most recent school fiscal year for which the information is available. Within thirty (30) days of receipt of this information, the Landmark Board shall make the information available on Landmark's website homepage, in a form and manner prescribed by the Michigan Department of Education. The defined terms in section 503c of the Code, MCL 380.503c, shall have the same meaning in this Agreement. Summit shall make available to the Authorizer Board and to the public the information required under MCL 380.503.

(viii) Admissions. Implementation of Landmark's admission policy:

- (A) Student Hearings. Summit will be responsible for administration and enforcement of student disciplinary and special education hearings in conformity with the requirements of the Code, the Individuals with

Disabilities in Education Act, Landmark Board Policy, Landmark's Student Code of Conduct and other applicable laws and regulations (including, but not limited to, requirements involving due process and confidentiality) to the extent consistent with the Landmark Board's duties and obligation under the Code and other applicable laws and regulations.

- (B) Academic Reports. Summit will provide academic reports to the Landmark Board at intervals directed by the Landmark Board or at a minimum on a semester basis. Reports shall detail Landmark's students' academic performance and compliance with the educational goals set forth in the Contract.
- (C) Rules and Procedures. Summit will adhere to Landmark Board Policies and enforce the rules, regulations and procedures as established by the Landmark Board. Summit may recommend rules, regulations and procedures applicable to Landmark and its students to the Landmark Board for its consideration and approval.
- (D) Subject to this Agreement and the Contract, Summit may modify the methods, means and manner by which such Administrative Services are provided at any time subject to prior Landmark Board approval.
- (E) All financial, education and student records pertaining to Landmark are the property of Landmark. Such records shall be kept at the Landmark facility and be reasonably retrievable to satisfy Landmark Board, statutory or contractual requests. This does not apply to the financial or other records relating to Summit and its operation, unless otherwise required by applicable law.

D. Subcontracts

With the prior approval of the Landmark Board and consistent with the Contract, Summit may subcontract the services it agrees to provide to Landmark, including, but not limited to, transportation and/or food service.

E. Place of Performance

Summit shall implement the instruction portion of the Educational Program at Landmark school buildings. Summit may perform functions other than instruction, such as purchasing, professional development, and administrative functions, at any Summit office, if any, unless prohibited by the Contract or applicable law. Student records shall be maintained at each school site.

F. Other Legal Requirements

All services provided by Summit shall meet federal, state, and local requirements, and the requirements imposed under the Contract. The parties agree that no provision of this



Agreement shall predetermine Landmark's determinations to assert or not assert governmental immunity to which it may be entitled under law.

## ARTICLE IV

### **OBLIGATIONS OF THE BOARD**

The parties acknowledge that Landmark is a nonprofit corporation and the members of the Landmark Board have fiduciary responsibilities. The parties acknowledge that, while the Landmark Board is contracting with Summit for the provision of extensive services, there are certain non-delegable duties that remain the responsibility of the Landmark Board. Nothing under this Agreement shall be construed to interfere with the constitutional, statutory or fiduciary responsibilities of the Landmark Board. The Board expressly reserves to itself the following roles and responsibilities:

A. Legal Compliance

The Landmark Board shall be responsible for the operation of Landmark in accordance with the Contract and applicable law.

B. Board Meetings and Minutes

The Landmark Board shall be responsible for holding public board meetings in accordance with the Open Meetings Act. The Landmark Board shall also prepare and maintain the minute book, containing board notices, agendas, resolutions, contracts, meeting minutes, leases, and other legal documents.

C. Fiscal Responsibility

The Landmark Board shall retain an accountant to conduct an independent annual audit showing the manner in which funds are spent at Landmark. The Landmark Board shall receive, deposit or invest all funds received by the Academy in a bank, savings and loan association, credit union, or other institution which is eligible to be a depository of the funds of a public school academy and in instruments permitted by law for such deposit or investment. Landmark bank and other financial or depository accounts shall be in the name of Landmark only and the only signatories on the accounts shall be Landmark Board members properly designated annually by the Landmark Board. Interest income earned on the Landmark bank accounts shall accrue to Landmark.

D. Landmark Mission and Vision

The Landmark Board has the exclusive responsibility for establishing and guarding Landmark's mission and vision.

E. Board Policies

The Landmark Board has the responsibility to adopt board policies governing the operation and management of Landmark. Summit shall implement all board policies adopted by the Landmark Board.

F. Oversight

The Landmark Board shall have the right and obligation to evaluate Summit's performance under this Agreement, including 1) compliance with this Agreement and the Contract; 2) progress toward meeting Landmark's educational goals, and 3) fiscal management.

G. Facility

The Landmark Board shall be responsible for leasing, purchasing, or otherwise securing occupancy rights in a facility at which Landmark operates. With respect to any and all leases under which Landmark is named as the tenant, Summit undertakes to fully perform and complete the obligations under any such leases unless the performance of such duties would create a potential or actual conflict of interest for Summit.

## ARTICLE V

### COMPENSATION AND PAYMENT OF COSTS

A. Compensation for Services

For each school year, the Landmark Board shall pay Summit, as base compensation for its services, an Annual Management Fee equal to eight and a half percent (8.5%) of the Academy's total annual revenue, State, Federal, Grants (Total Revenues). The Annual Management Fee shall be calculated by taking eight and a half percent (8.5%) of each school year's Total Revenues. The purpose of this provision is to fully compensate Summit for services hereunder from whatever sources are available to Landmark.

B. Reasonable Compensation

Summit's compensation under this Agreement is reasonable compensation for services rendered. Summit's compensation for services under this Agreement will not be based, in whole or in part, on a share of net profits from the operation of Landmark.

C. Payment of Costs

Summit is authorized to act as Landmark's agent to incur costs consistent with the annual budget approved by the Landmark Board. In addition to the fee described in Article V A, Landmark shall reimburse Summit for such costs that are consistent with each Landmark Board approved annual budget, as is or as amended, provided such costs are incurred and expended by Summit in providing the Educational Program and other goods and services pursuant to Article III and Article IX of this Agreement and the costs are presented to the Landmark Board for review and approval at their next public meeting. Such costs include,

but are not limited to, salaries of the Summit staff performing work at or in connection with Landmark, curriculum and instructional materials, textbooks, library books, computer and other equipment, software, supplies, food service, transportation, special education, psychological services and medical services for students, if any. Landmark shall reimburse Summit for any costs incurred or paid by Summit as a result of services provided or actions taken pursuant to Articles VI (except as otherwise specifically indicated) of this Agreement. All acquisitions made by Summit for Landmark with funds Summit received pursuant to this Article V C including, but not limited to, instructional materials, equipment, supplies, furniture, computers and other technology, shall be owned by and remain the property of Landmark. Summit is authorized as an agent to incur costs that are consistent with each Landmark Board approved annual budget, as is or as amended.

In addition to the foregoing, in the event that Summit purchases equipment, materials, or supplies from third parties as agent for or on behalf of Landmark and paid for or reimbursed by Landmark funds, 1) such equipment, materials and supplies shall be and remain the property of Landmark; 2) Summit shall comply with Section 1274 of the Code as if Landmark were making such purchases directly from a third party, to the extent required by Section 1274; 3) Summit will not charge any added fee or markup for such equipment, materials or supplies; and 4) Summit shall maintain an inventory of supplies, materials and equipment so it can clearly be established which property belongs to Landmark.

D. Time and Priority of Payments

The fee due to Summit pursuant to Article V A shall be calculated and adjusted annually based on the Total Revenues received by Landmark, as determined by the annual revenue receipts and reconciled to the Annual Financial Audit. Summit shall receive its fee under Article V A as calculated pursuant to the preceding sentence, in monthly installments.

Payment of all costs listed in a Statement of Costs, which has been delivered as provided in Article V C, shall be made by Landmark to Summit before the last day of each month.

**ARTICLE VI**

**AGREEMENTS WITH OTHER PUBLIC SCHOOL ACADEMIES**

Landmark acknowledges that Summit may enter into similar management agreements with other public or private schools or educational institutions. Summit shall maintain separate accounts for all of Landmark funds and reimbursable expenses incurred on behalf of Landmark. If Summit incurs authorized reimbursable expenses on behalf of Landmark and other institutions which are incapable of precise allocation between Landmark and such institutions, then Summit shall allocate such expenses among all such institutions, and Landmark, on a pro-rata basis based upon the number of students enrolled at Landmark and the institutions, or upon such other equitable basis as is acceptable to the parties. All grants or donations received by Landmark or Summit for the specific benefit of Landmark shall be maintained in separate accounts and used solely for Landmark.

## ARTICLE VII

### PERSONNEL & TRAINING

#### A. Personnel Responsibility

Consistent with the Landmark Board approved budget, Summit shall have the sole responsibility and authority to implement staffing levels, and to select, evaluate, assign, discipline and transfer personnel, consistent with the Contract and applicable law.

#### B. Chief Administrative Officer

Landmark shall have a Chief Administrative Officer appointed by the Landmark Board who shall be a Landmark Board member and not be an employee of Summit. If requested, Summit or a Summit employee may assist the designated Landmark Board member in carrying out their duties and responsibilities as Chief Administrative Officer.

#### C. Superintendent

Summit shall provide a fulltime Superintendent to Landmark whose duties shall be to organize and operate the school and to have other duties as designated by the Landmark Board and consistent with the Contract. The Superintendent shall be an employee of Summit. The Superintendent candidate shall be available for interview by the Landmark Board prior to final selection by Summit. Consistent with the Landmark Board approved budget, this Superintendent shall receive a salary as determined by Summit payable in bi-weekly installments. Evaluations of the Superintendent shall be consistent with the Contract and applicable law.

#### D. School Principals

Because the accountability of Summit to Landmark is an essential foundation of this Agreement, and because the responsibility of the School Principals of Landmark is critical to its success, Summit will have the authority, consistent with state law, to select and supervise the School Principals and to hold him or her accountable for the success of Landmark. Consistent with the Landmark Board approved budget and the Contract, the employment contract with the School Principals, and the duties and compensation of the School Principals, shall be determined by Summit. Evaluations of School Principals shall be consistent with the Contract and applicable law.

#### E. Teachers

Consistent with the Landmark Board approved budget and the Contract, Summit will provide Landmark with such teachers as are required to provide the Educational Services, Administrative Services and Supplementary Programs (if any). Summit will determine the number of such teachers needed at Landmark consistent with the Landmark Board approved budget. Such teachers may work at Landmark on a full or part time basis. Each teacher assigned to Landmark will be qualified in his or her grade levels and subjects, hold a valid teaching certificate issued by the Michigan Department of Education under the

Code to the extent required under the Code and other applicable laws and regulations. Evaluations of Teachers shall be consistent with the Contract and applicable law.

F. Support Staff

Prior to the commencement of each school year, and from time to time thereafter, Summit shall, consistent with the Landmark Board approved budget and the Contract, determine the number and functions of support staff required to the operation of Landmark. Summit shall provide Landmark with such support staff, qualified in the areas required, as are required by Landmark. Such support staff may, in the discretion of Summit, work at Landmark on a full or part time basis. If assigned to Landmark on a part time basis, such support staff may also work at other schools operated by Summit.

G. Employer of Personnel

The parties agree that the Superintendent, School Principals, teachers and support staff who are assigned to work at Landmark are and will be employees of Summit only and NOT employees of Landmark under any circumstances or for any reason nor shall Landmark and Summit be considered a joint employer under any circumstance or for any reason. For purposes of this Agreement, compensation shall include salary, fringe benefits, and state and federal tax withholdings. No employee may be employed for a total of more than one full-time position. Employment agreements with Summit for staff shall not contain non-compete and/or nonsolicitation provisions of any kind.

All Summit employees must undergo a criminal history and records check as provided by law. The individual designated by Landmark to perform such criminal history and records checks must be approved in writing by the Landmark Board prior to conducting such checks and be consistent with applicable law. The individual so designated is restricted under applicable law with providing Summit the red light/green light letter relative to the individual's retention for employment and all such criminal history and record check information must be securely retained at Landmark.

H. Training

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

I. Personnel Performance Evaluation System.

Summit agrees that it will adopt, implement and maintain a performance evaluation system for all required personnel as required by the Contract and applicable law.

## ARTICLE VIII

### ADDITIONAL PROGRAMS

The services provided by Summit to Landmark under this Agreement consist of the Educational Program during the school year and school day, and for the age and grade level of students, as set forth in the Contract, as such school year, school day, and age and grade level may change from time to time. Summit and Landmark may decide to provide additional programs, including but not limited to, summer school. Such additional programs will be added to this Agreement by written amendment or by a separate written agreement consistent with the Contract.

## ARTICLE IX

### TERMINATION OF AGREEMENT

#### A. Termination by Landmark

Landmark may terminate this Agreement with cause prior to the end of the term in the event that Summit should fail to remedy a material breach within sixty (60) days of written notice from Landmark. Material breach may include, but is not limited to, a violation of this Agreement, failure to account for its expenditures or to pay operating costs, the failure of Summit in meeting the obligations set forth in this Contract. Upon such termination, Summit shall have the option to reclaim any usable property or equipment that has been purchased with Summit funds. Equipment purchased by Landmark or purchased on behalf of Landmark with Landmark funding shall remain exclusively the property of Landmark.

#### B. Termination by Summit

Summit may terminate this Agreement with cause prior to the end of the term specified in Article II in the event Landmark fails to remedy a material breach within sixty (60) days after notice from Summit. A material breach may include, but is not limited to, a violation of this Agreement, failure to make payments to Summit as required by this Agreement, failure to adhere to the personnel, curriculum, program or similar recommendations made by Summit and adopted by the Landmark Board.

#### Automatic Termination; Termination by Either Party.

In the event that the Contract is revoked, terminated or not continued, this Agreement shall terminate without further action by either party on the same date as the Contract is revoked, terminated or not continued. In addition, in the event that the funding of Landmark by the State of Michigan consistent with the existing funding provisions of applicable law for public school academies ceases or is materially modified, then either party may elect to terminate this Agreement without penalty or liability subject to Section IX(D) and (H) of this Agreement.

C. Termination by Authorizer

The Authorizer Board may determine to exercise its prerogative under the Contract or applicable law to reconstitute the Academy by requiring the termination or amendment of this Agreement. In such case, Summit agrees that such termination or amendment shall be without cost, penalty or recourse to the Authorizer Board, Landmark or any third-party engaged by the Authorizer Board or the Landmark Board by Summit or any subcontracted person or entity of Summit.

D. Termination Responsibilities of Summit

If in the event of termination for any reason, Summit agrees it will, without charge: (i) close the books on the then-current fiscal quarter; (ii) organize and prepare the Academy's records for transition to the new service provider; (iii) organize and prepare student records for transition to the new service provider; and (iv) provide for the orderly transition of employee compensation and benefits to the new service provider without disruption to staffing.

E. Change in Law

If any applicable law or court decision has a material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice, may request renegotiation of the Agreement; and if the parties are unable or unwilling to renegotiate the terms within thirty (30) days after the notice, the party requiring the renegotiation may terminate this Agreement on thirty (30) days' further written notice. Such termination shall not take effect until the end of the academic year following the notice of termination.

F. Mutual Agreement

In the event the parties mutually agree to terminate this Agreement prior to the end of the term specified in Article II, the termination will not become effective until the end of the academic year following the notice of termination.

For purposes of any termination in accordance with this Article, Summit shall be entitled to Annual Management Fee for the academic year of termination, provided that if the effective date of termination occurs other than at the end of such academic year, the Annual Management Fee shall be prorated on a per diem basis, as provided in Article V.

G. Expiration

Upon expiration or termination of this Agreement, Summit shall have the right to reclaim any property or equipment (e.g., including but not limited to desks, computers, copying machines, fax machines, telephones), which were purchased by Summit at its cost or expense.

H. Transition

In the event of termination of this Agreement for any reason by either party prior to the end of this Agreement's term, Summit shall provide Landmark reasonable assistance for up to ninety (90) days to assist in the transition.

**ARTICLE X**

**PROPRIETARY INFORMATION**

Curriculum or other educational materials designed or developed by Summit with funds Summit received pursuant to Article V C, shall be considered property of Landmark.

**ARTICLE XI**

**INDEMNIFICATION**

A. Limitations of Liabilities

Landmark may assert all immunities and statutory limitations of liability in connection with any claims arising under this Agreement, and shall not be required to obtain the written consent of Summit to waive any immunities or limitations of liability permitted under applicable law.

B. Indemnification of Landmark

Summit shall indemnify and save and hold Landmark and all of its board, members, employees, officers, directors, subcontractors and agents harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any noncompliance by Summit with any agreements, covenants, warranties or undertakings of Summit contained in or made pursuant to this Agreement.

C. Indemnification of SVSU

The parties acknowledge and agree that the Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Saginaw Valley State University, which arise out of or are in any manner connected with Saginaw Valley State University Board's approval of the Landmark's application, the University Board's consideration of or issuance of a



Contract, Landmark's preparation for and operation of a public school, or which are incurred as a result of the reliance by Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives upon information supplied by Landmark or Summit, or which arise out of the failure of the Landmark to perform its obligations under the Contract issued to Landmark by Saginaw Valley State University Board of Control. The parties expressly acknowledge and agree that Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

## **ARTICLE XII**

### **INSURANCE**

#### **A. Insurance Coverage**

Landmark and Summit shall each maintain general liability insurance and umbrella insurance coverages in the amounts required by the State of Michigan as well as the requirements of Article XIII of the Terms and Conditions of the Contract and as otherwise determined by the Saginaw Valley State University ("SVSU") President, and naming SVSU as an additional insured under such policy and must include coverage for sexual molestation and abuse. No such policy of insurance shall be changed, revoked or modified except on 30 days' notice to the SVSU President. Summit agrees that if the SVSU President determines additional insurance coverage is required or modifies the level, type, scope or other aspects of such coverage that Summit shall undertake such purchase of additional insurance or such modifications to its policy within 30 days of being notified of such change. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this Article XII. Each party shall comply with any information or reporting requirements required by the other party's insurer(s) and SVSU.

## **ARTICLE XIII**

### **WARRANTIES AND REPRESENTATIONS**

Both Landmark and Summit represent that each has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.

## ARTICLE XIV

### ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

Any and all disputes between the parties, concerning any alleged breach of this Agreement, or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement, shall be attempted to be resolved by mediation. Unless the parties agree upon a single mediator, the mediation panel shall consist of three persons, one person selected by Summit and one person selected by Landmark, and a one person selected jointly by the parties. Absent a resolution by mediation resolution shall occur by binding arbitration with a single arbitrator administered by and under the rules of the American Arbitration Association. A judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction. Any cause opinion (written explanation) prepared by the arbitrator as to a final decision shall be made available to the Authorizer Board upon request.

## ARTICLE XV

### MISCELLANEOUS

#### A. Sole Agreement

This Agreement supersedes and replaces any and all prior agreements and understanding between Landmark and Summit.

#### B. Force Majeure

Notwithstanding any other sections of this Agreement, neither party will be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike or disturbance, failure of suppliers or contractors to meet their timely obligations or other acts beyond its reasonable control.

#### C. Notices

All notices and other communications required by the terms of this Agreement will be in writing and sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice). Notice may be given by: 1) certified or registered mail, postage prepaid, return receipt requested; 2) facsimile (with confirmation of transmission by sender's facsimile machine); or 3) personal delivery. Notice will be deemed to have been given two (2) days after mailing, or on the date of personal delivery, or on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the first business day thereafter). The addresses of the parties are:

If to Summit: Summit Management Consulting, LLC  
P.O. Box 611674  
Port Huron, MI 48061

If to Landmark: Chairperson of the Board  
Landmark Academy  
4864 Lapeer Rd.  
Kimball, MI 48074

D. Severability

The invalidity of any of the covenants, phrases or clauses in this Agreement will not affect the remaining portions of this Agreement, and this Agreement will be construed as if such invalid covenant, phrase or clause had not been contained in this Agreement. To the extent that any covenant, provision, phrase or clause is found to be invalid for any reason whatsoever by a court of competent jurisdiction, such language will be construed to be limited or deleted solely to the extent necessary to make the language valid and binding. In the event that such covenant, provisions, phrase or clause cannot be limited or deleted, the parties will enter into good faith negotiations to modify such language to meeting the objections of such court.

E. Assignment

This Agreement may not be assigned or is assignable to any third party. Notwithstanding the foregoing, should Summit be sold to another entity, or if Travis Gostinger should no longer serve as a managing member of Summit, such event shall be deemed an assignment and such assignment shall require the approval of Landmark, which approval shall not be unreasonably withheld, and review and nondisapproval of the Authorizer Board.

F. Entire Agreement

This Agreement is the entire agreement between the parties relating to the services provided and the compensation for such services by the parties.

G. Non-Waiver

No failure of a party in exercising any right, power or privilege under this Agreement shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies which any of them may otherwise have.

H. Governing Law

This Agreement shall be governed by and enforced in accordance with the laws of the State of Michigan.

I. Amendment

This Agreement shall not be altered, amended, modified or supplemented except in a written document approved by the Landmark Board and signed by authorized officers of both Landmark and Summit. Additionally, the parties may not substantially amend this Agreement without notifying the SVSU President and no amendment shall be contrary to the Contract and must be accompanied by a legal opinion so stating. All amendments shall be submitted by Landmark to the SVSU President within 10 days after any such amendment. Neither this Agreement nor any amendment hereto shall become effective until and unless the Director of the School/University Partnership Office notifies the Academy in writing that it has reviewed and does not disapprove of the Agreement or amendment thereto.

J. Joint Drafting

This Agreement shall be considered as drafted by both parties.

THE PARTIES HAVE EXECUTED THIS AGREEMENT AS ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

SUMMIT MANAGEMENT  
CONSULTING, L.L.C

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

Its: \_\_\_\_\_

*Kevin Eastman*  
OWNER/CEO

LANDMARK ACADEMY

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

Its: \_\_\_\_\_

*Sherrybeirns P. Estelle*  
President