

**NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE
(FACILITIES)**

PART "A"

This Charter School Lease ("Lease") is made and entered into as of the ____ day of _____, 20____, ("Reference Date Only") by and between "Landlord" and "School".

SPECIFIC LEASE PROVISIONS (SLP)

A. "Landlord": _____, a _____

B. Landlord's Notification
Address:

c/o _____

with copy to:

C. "School": _____, a _____

D. School's Notification
Address:

c/o _____

with copy to:

E. "Complex": The real estate in _____ County, New Mexico, having an address of _____, New Mexico _____ described on Exhibit "A" ("Land"), together with the "Building(s)" and other "Improvements" existing or to be constructed thereon.

F. "Premises": _____ square feet, more or less, of "School's Usable Area" and _____ square feet, more or less, of "School's Allocated Common Area" within the Building(s), for a total of _____ square

feet, more or less ("School's Rentable Area"), together with the "Exclusive Use Area(s)" described on Exhibit "B".

(i) New Mexico Construction Industries Department 'E' Occupancy Certificate date: _____.

(ii) NMPSFA:

(a) Approval date: _____.

(b) NMCI score: _____.

(iii) NMPSFA Square Footage Calculations:

(a) "Gross Square Feet": _____.

(b) "Net Square Feet": _____.

(c) "Tare" Square Feet: _____.

(d) Percent Tare: ____%.

(e) Education Square Feet (w/tare included): _____.

(f) Administration Square Feet (w/tare included): _____.

(g) Other Space: _____.

G. "Landlord's Work": Improvements to the Building(s) and other areas of the Complex to be constructed by Landlord pursuant to the "Approved Plans" in accordance with the "Landlord's Work Addendum" attached as Exhibit "C".

H. "Construction Allowance": \$ _____.

I. "School's Pro Rata Share": _____% based on the Complex having a "Complex Rentable Area" of _____ square feet, more or less.

J. "Term Commencement Date": The date on which Substantial Completion of Landlord's Work is achieved, and delivery of possession of the Premises to School by Landlord occurs. The Term Commencement Date and certain other dates referenced in this Lease will be memorialized by Landlord and School within thirty (30) days after the Term Commencement Date on the "Acknowledgement" attached hereto as Exhibit "D".

K. "Rent Commencement Date": The date which is the earlier to occur of (a) _____ (____) days following the Term Commencement Date, or (b) the date School opens for business to the public.

L. "Initial Term": Commences on the Term Commencement Date and continues for _____ (____) years and _____ (____) months after the Term

Commencement Date, plus if the Term Commencement Date is not the first day of a calendar month, the Initial Term shall be extended for the number of days remaining in the calendar month in which the Term Commencement Date occurs so that the expiration date of the Initial Term shall be the last day of a calendar month.

M. "Renewal Term(s)": _____ (__) _____ (__) year extensions of the Initial Term to be exercised pursuant to Section 3.04.

N. "Base Rent": Is set forth on "Addendum One" attached hereto. The Base Rent is based on School's Rentable Area. If School's Rentable Area is recalculated pursuant to Section 3.02, the Base Rent shall be recalculated.

O. "Reimbursable Expenses": "Utility CAM Costs", "Real Estate Related Taxes" and "Landlord's Insurance" for the Complex. The "Monthly Fixed Reimbursable Expenses" is School's Pro Rata Share of the Reimbursable Expenses, which amount is reflected on Addendum One. If School's Rentable Area or the Complex Rentable Area is recalculated pursuant to Section 3.02, the Monthly Fixed Reimbursable Expenses shall be recalculated.

P. "Prepaid Rent": \$ _____ representing Base Rent and Monthly Fixed Reimbursable Expenses due for the _____ full month following the Rent Commencement Date due on the date of the execution of this Lease by School.

Q. "Security Deposit": \$ _____.

R. "Permitted Use": A school and all related legal uses, including but not limited to evening events, community events, public meetings and community uses. The specific grades of instruction, types of educational programs and community programs to be undertaken by School are listed on attached Exhibit "E" ("Description of Specific Uses").

S. "Parking": School shall have the non-exclusive right to park up to _____ vehicles within the Common Areas during the Lease Term.

T. Brokers: _____,
representing Landlord ("Landlord's Broker"); and
_____ representing
School ("School's Broker").

U. "Charter Expiration Date": School's current five (5) year charter expires on _____.

V. Contingencies: (i) Approved Plans (Exhibit "C", Landlord's Work Addendum Section I) not later than _____;

(ii) _____;

(iii) _____;

W. Amendments:

The General Lease Terms are amended as follows:

(i) _____;

(ii) _____;

(iii) _____;

X. Addenda/Exhibits:

Addendum "One" Base Rent and Reimbursable Expenses

Addendum "___" _____

Addendum "___" _____

Exhibit "A" Legal Description of Land

Exhibit "B" Diagram of Complex, Premises and Exclusive Use
Area(s)

Exhibit "C" Landlord's Work Addendum

Exhibit "D" Acknowledgment

Exhibit "E" Description of Specific Uses

Exhibit "G" SY 2013-2014 Conflict of Interest Questionnaire

Exhibit "H" _____

References in the "General Lease Terms" to the "Specific Lease Provisions" or "SLP" are references to the information set out above. Each term used but not defined in the SLP shall have the meaning set forth in the General Lease Terms. If a conflict exists between the Specific Lease Provisions and the General Lease Terms, the Specific Lease Provisions will control. References to "Paragraphs" are to the Specific Lease Provisions and references to "Articles" or "Sections" are to the General Lease Terms.

**NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
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PART "B"

GENERAL LEASE TERMS

RECITALS

I. School is a public charter school duly organized and validly existing pursuant to the New Mexico Charter Schools Act (Sections 22-8B-1, et seq. NMSA 1978, as amended) (the "Act"), and School is authorized by the Act to contract with any third party for the use of a school building and grounds.

II. Landlord is the owner of the Complex, which includes the Premises.

III. School has determined it is in the best interests of School to lease the Premises from Landlord pursuant to this Lease, and the "Board" has duly authorized entering into this Lease; and Landlord has determined it is in the best interests of Landlord to lease the Premises to School pursuant to this Lease, and Landlord has duly authorized entering into this Lease.

IV. The terms and provisions of Part "A", Specific Lease Provisions (SLP), which contain the variable provisions of this Lease, are incorporated herein.

V. This Part "B", General Lease Terms, shall not be modified, except by language in Part "A", Special Lease Provisions, and amendments, addenda and exhibits referenced therein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, it is agreed as follows:

ARTICLE I

DEFINITIONS

- A. "Acknowledgment" means Exhibit "D".
- B. "Act" is defined in Recitals I of the GLT.
- C. "Actual Prior Year Reimbursable Expenses" is defined in Section 4.02 (a).
- D. "Additional Rent" means the Monthly Fixed Reimbursable Expenses and all other amounts due by School under the terms of this Lease, except Base Rent.
- E. "Alterations by School" is defined in Article IX.
- F. "Approved Plans" is defined in Exhibit "C", Landlord's Work Addendum, Section I.

- G. "Base Rent" is defined in Paragraph N of the SLP.
- H. "Board" means the governing council of School.
- I. "Building(s)" means the building(s) housing the Premises.
- J. "Building Area" means the square footage of the Building(s) in the Complex measured to and from the exterior or outside of perimeter walls and to and from the centerline of party walls.
- K. "Building Common Areas" means the square footage of the Common Areas within the Building(s) measured to and from the exterior or outside of perimeter walls and to and from the centerline of party walls.
- L. "Business Day" means any day other than a Saturday, a Sunday or a day on which federal banks in Albuquerque, New Mexico are authorized by law to remain closed.
- M. "Change Order" is defined in Landlord's Work Addendum, Section V.
- N. "Charter Expiration Date" is defined in Paragraph U of the SLP.
- O. "Common Areas" is defined as all areas within the boundaries of the Complex, including, without limitation, all driveways, drive aisles, curbs, gutters, landscaping, street lights, parking areas and sidewalks, and including the foundations, roof, exterior walls and all other structural components of the Building(s), excluding only the interior and non-structural portions of the Premises and any other buildings or Improvements intended for the non-exclusive use of School and all other tenants or occupants of the Building(s) and/or the Complex.
- P. "Complex" is defined in Paragraph E of the SLP.
- Q. "Complex Rentable Area" means the leasable square footage of the Building(s) in the Complex measured to and from the exterior or outside of perimeter walls and to and from the centerline of party walls.
- R. "Construction Allowance" is defined in Paragraph H of the SLP.
- S. "Contractor" is defined in Landlord's Work Addendum, Section II.
- T. "Description of Specific Uses" means Exhibit "E".
- U. "Educational Occupancy Standards" means the requirements of the Act, approval of the NMPSFA, the "E" Occupancy Certificate of the New Mexico Construction Industries Department, and all other Requirements of Law related to the use and occupancy of the Premises for a school.
- V. "Effective Date" is the date the last of Landlord and School fully execute this Lease.
- W. "Estimated Actual Expenses" is defined in Section 4.02 (c).
- X. "Event of Default" is defined in Section 16.01 (a).
- Y. "Event of Nonappropriation" is defined in Section 5.02.

Z. "Exclusive Use Area(s) means those areas outside the Premises and within the Complex which are for the exclusive use of School.

AA. "Final Plans" is defined in Landlord's Work Addendum, Section I.

BB. "Fiscal Year" means School's fiscal year, which begins on July 1 of each year and ends on June 30 of the following year.

CC. "Force Majeure" shall mean any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, terrorism, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes (except financial) beyond the reasonable control of the party obligated to perform, shall excuse the performance by that party for a period equal to the prevention, delay or stoppage; provided the party prevented, delayed or stopped shall have given the other party written notice thereof within thirty (30) days of such event causing the prevention, delay or stoppage.

DD. "GLT" is the General Lease Terms.

EE. "Gross Square Feet" is the total of all space in the Building(s) that includes the Net Square Feet, plus all other non-assignable spaces measured to the outside of exterior walls pursuant to the New Mexico Public School Adequacy Planning Guide.

FF. "Improvements" means the Building(s), site improvements, equipment and fixtures constituting real property located in, on or under the Land, as same may be removed, altered or otherwise renovated pursuant to the terms of this Lease.

GG. "Initial Term" is defined in Paragraph L of the SLP.

HH. "Land" is defined in Paragraph E of the SLP.

II. "Landlord" is defined in Paragraph A of the SLP.

JJ. "Landlord's Broker" is defined in Paragraph T of the SLP.

KK. "Landlord's Insurance" is defined in Section 12.01.

LL. "Landlord's Work" is defined in Paragraph G of the SLP.

MM. "Landlord's Work Addendum" means Exhibit "C".

NN. "Lease" is this Charter School Lease, and it includes all amendments or supplements hereto.

OO. "Lease Term" is the Initial Term and all Renewal Terms.

PP. "Modified Gross Lease" is defined in Section 2.02 (c).

QQ. "Monthly Fixed Reimbursable Expenses" is defined in Paragraph O of the SLP.

RR. "Net Proceeds" is defined as: (1) the gross proceeds received: (a) from any insurance, performance bond or condemnation award or in lieu payment regarding the Premises or the

Complex, or (b) as a consequence of any default or breach of warranty under any contract relating to the Premises or the Complex, minus (2) expenses incurred in the collection of such gross proceeds or awards.

SS. "Net Square Feet" is the interior usable space of the Building(s) required to meet or exceed the general or specific programmatic needs pursuant to the New Mexico Public School Adequacy Planning Guide.

TT. "NM Adequacy Standards" means Sections 6.27.30.1, et seq., NMAC.

UU. "NMPSFA" means the New Mexico Public Schools Facilities Authority.

VV. "NMPSFA Requirements" is defined in Landlord's Work Addendum, Schedule I.

WW. "Overpayment of Reimbursable Expenses" is defined in Section 4.02 (b).

XX. "Parking" is defined in Paragraph S of the SLP.

YY. "PEC" is the Public Education Commission of the State of New Mexico.

ZZ. "PED" is the Public Education Department of the State of New Mexico.

AAA. "Permitted Encumbrances" means, as of any particular time, (1) liens for taxes and assessments not then delinquent, or liens which may remain unpaid; (2) this Lease (3) easements, licenses, rights of way, rights and privileges, restrictions and exceptions which School certifies will not materially adversely affect the value, or interfere with or impair the effective use or operation, of the Premises; (4) any financing statements filed with respect to Landlord's interest in the Premises or this Lease (5) any lien, mortgage or other encumbrance consented to by Landlord on any portion of or all of the Premises; (6) any applicable zoning requirements; and (7) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Premises and as do not, in the opinion of Landlord, materially impair title to the Premises.

BBB. "Permitted Use" is defined in Paragraph R of the SLP.

CCC. "Person" means any natural person, firm, corporation, partnership, limited liability company, State or local charter school, political subdivision of any state, other public body or other organization or association.

DDD. "Preliminary Plans" is defined in the Landlord's Work Addendum, Section I.

EEE. "Premises" is defined in Paragraph F of the SLP.

FFF. "Prepaid Rent" is defined in Paragraph P of the SLP.

GGG. "Prior Year Reconciliation" is defined in Section 4.02 (a).

HHH. "Punch List" is defined in Landlord's Work Addendum Section III.

III. "Real Estate Related Taxes" is defined in Article XI.

JJJ. "Reference Date Only" is the dated reflected in the first paragraph of this Lease.

KKK. "Reimbursable Expenses" is defined in Paragraph O of the SLP.

LLL. "Renewal Option" is defined in Section 3.04.

MMM. "Renewal Term(s)" is defined in Paragraph M of the SLP.

NNN. "Rent Commencement Date" is defined in Paragraph K of the SLP.

OOO. "Requirements of Law" means any federal, State or local statute, ordinance, rule or regulation, any judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any permit or any other binding determination of any governmental authority relating to the ownership or operation of property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety issues.

PPP. "Rules and Regulations" means Exhibit "F".

QQQ. "School" is defined in the Paragraph C of the SLP.

RRR. "School's Allocated Common Area" means School's Pro Rata Share of the Building Common Areas which are used by School and other tenants and occupants of the Complex.

SSS. "School's Broker is defined in Paragraph T of the SLP.

TTT. "School Delay" is defined in Landlord's Work Addendum, Section VI.

UUU. "School's Pro Rata Share is defined in Paragraph I of the SLP.

VVV. "School's Rentable Area" means the square footage of School's Usable Area, plus the School's Allocated Common Area.

WWW. "School's Usable Area" means the square footage of the Premises measured to and from the exterior or outside of perimeter walls and to and from the centerline of party walls.

XXX. "School's Work" is defined in Landlord's Work Addendum, Section IV.

YYY. "Security Deposit" is defined in Paragraph Q of the SLP.

ZZZ. "Shortfall in Reimbursable Expenses" is defined in Section 4.02 (b).

AAAA. "SLP" is the Specific Lease Provisions.

BBBB. "State" means the State of New Mexico.

CCCC. "Sublease" is defined in Section 14.02.

DDDD. "Substantial Completion" is defined in Landlord's Work Addendum, Section III.

EEEE. "Tare" is the Gross Square Feet of a Building(s) less the Net Square Feet therein which results in non-assignable spaces pursuant to the New Mexico Public School Adequacy Planning guide.

FFFF. "Term Commencement Date" is defined in Paragraph J of the SLP.

GGGG. "Tort Claims Act" is the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended.

HHHH. "Utility CAM Costs" means all costs of utilities for the Common Areas and utility costs related to the Premises which are not separately metered and paid directly by School.

ARTICLE II

REPRESENTATIONS, COVENANTS, WARRANTIES AND ACKNOWLEDGEMENTS

Section 2.01. Representations, Covenants and Warranties by Landlord. Landlord represents, covenants and warrants that:

(a) Landlord (i) is in good standing under the laws of the State, (ii) is duly qualified to do business in the State, (iii) is the owner of the Complex, and (iv) is authorized, by its governing body and applicable law, to own the Complex, to lease the Premises to School and to execute, deliver and perform its obligations under this Lease.

(b) Landlord warrants that as of the Term Commencement Date, the Premises complies with or will comply with all Requirements of Law, including applicable Educational Occupancy Standards pertaining to School's Permitted Use. Landlord further warrants that Landlord's Work has been or will be completed in accordance with the Approved Plans.

(c) The Premises are free of any hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601, et seq., any applicable State law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq., any applicable State law or regulations promulgated under either), special waste, petroleum or petroleum derived substances, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Premises in violation of any Requirements of Law. Landlord warrants that the Premises comply with any and all federal and State environmental regulations.

Section 2.02. Landlord Acknowledgment. Landlord acknowledges and recognizes that:

(a) This Lease will be terminated upon the occurrence of an Event of Nonappropriation, and that a failure by School to appropriate funds in a manner that results in an Event of Nonappropriation is solely within the discretion of the Board; and

(b) This Lease will be terminated upon nonrenewal or revocation of School's charter.

(c) This is a "Modified Gross Lease", meaning, as to operating costs for the Premises and Complex, including all maintenance, repairs and replacements, ad valorem taxes, insurance and utilities, except for the Base Rent, Monthly Fixed Reimbursable Expenses, utilities separately metered to School, janitorial services for the Premises, personal property taxes of School and specific obligations related to indemnity by School and tortious conduct of School, School shall only be liable for increases in Reimbursable Expenses after the initial Fiscal Year of the Lease Term pursuant to Article VIII.

Section 2.03. Representations, Covenants and Warranties by School. School represents, covenants and warrants that:

- (a) School is a public charter school authorized by the PEC or local school board, and duly organized and validly existing under the laws of the State.
- (b) School is authorized under Section 22-8B-4 NMSA 1978, as amended, to lease the Premises from Landlord and to execute, deliver and perform its obligations under this Lease.
- (c) The Initial Term may expire after the Charter Expiration Date.
- (d) The Base Rent payable in each Fiscal Year during the Lease Term is not more than the fair value of the use of the Premises during such Fiscal Year. The Base Rent and Monthly Fixed Reimbursable Expenses payable in each Fiscal Year during the Lease Term do not exceed a reasonable amount so as to place School under an economic compulsion (i) to continue this Lease beyond any Fiscal Year; or (ii) not to exercise its right to terminate this Lease at any time through an Event of Nonappropriation. In making the representations, covenants and warranties set forth above in this subsection, School has given due consideration to the Premises, the purposes for which the Premises will be used by School, the benefits to School from the use of the Premises, and the terms of this Lease governing the use of the Premises.
- (e) School is not aware of any current violation of any Requirements of Law relating to the Premises.
- (f) School has appropriated sufficient monies in its operating budget to pay the Base Rent and Monthly Fixed Reimbursable Expenses estimated to be payable in the current Fiscal Year, upon commencement of the Lease Term, and such monies will be encumbered to pay such Base Rent and Monthly Fixed Reimbursable Expenses.

ARTICLE III

DEMISE OF PREMISES; LEASE TERM

Section 3.01. Demise of Premises. Landlord hereby leases to School and School leases from Landlord, on the terms and conditions set forth herein, the Premises for the Lease Term, subject to the Permitted Exceptions, together with the nonexclusive right to use the Common Areas (including the Parking), with all other tenants and occupants of the Complex and their customers and patrons.

Section 3.02 Measurement of the Complex. On or before the Term Commencement Date, Landlord shall have a licensed architect certify the square footages set forth in Part "A", Special Lease Provisions (SLP) Paragraph F, and any adjustments thereto shall be reflected in the Acknowledgment.

Section 3.03. Lease Term. The Lease Term shall commence on the Term Commencement Date and shall expire on the earlier of any of the following events:

- (i) the last day of the month in which the final Base Rent payment is scheduled to be paid;
- (ii) June 30 of any Fiscal Year during which an Event of Nonappropriation or nonrenewal/revocation of School's charter has occurred;

- (iii) termination of this Lease following an Event of Default in accordance with Article XVI; or
- (iv) the final effective date of any revocation of School's charter by the applicable authorities.

Section 3.04. Renewal Option. School shall have the option of extending the Initial Term for the Renewal Term(s) on the same terms and conditions as provided for in this Lease for the Initial Term, except that the Base Rent for each Renewal Term and the Monthly Fixed Reimbursable Expenses will be as set forth in Paragraph N of the SLP ("Renewal Option"). Each Renewal Option shall be exercised in writing delivered to Landlord not later than one hundred eighty (180) days prior to the expiration of the Initial Term or current Renewal Term, as applicable. Notwithstanding the foregoing, if School does not exercise a Renewal Option within the applicable one hundred eighty (180) day period, Landlord shall send written notice to School so notifying School, and School shall have fifteen (15) days after the receipt of said notice to exercise the Renewal Option.

Section 3.05. Effect of Termination of Lease Term. Upon termination of the Lease Term:

- (a) All unaccrued obligations of School hereunder shall terminate, but all obligations of School that have accrued hereunder prior to such termination shall continue until they are discharged in full; and
- (b) If the termination occurs because of the occurrence of an Event of Default, School's right to possession of the Premises hereunder shall terminate and (i) School shall, within ninety (90) days, vacate the Premises; and (ii) if and to the extent the Board has appropriated funds for payment of Base Rent, Monthly Fixed Reimbursable Expenses and other Additional Rent payable during, or with respect to School's use of the Premises during the period between termination of the Lease Term and the date the Premises and Improvements are vacated, School shall pay such Base Rent, Monthly Fixed Reimbursable Expenses and other Additional Rent to Landlord.
- (c) If the termination occurs because of the occurrence of an Event of Nonappropriation or the nonrenewal/revocation of School's charter, the termination shall be effective as of the last date of the then current Fiscal Year or upon the effective date of the revocation of School's charter in the case of revocation.

ARTICLE IV

RENT; SECURITY DEPOSIT

Section 4.01 Base Rent; Reimbursable Expenses. From and after the Rent Commencement Date, School shall pay the Base Rent and Monthly Fixed Reimbursable Expenses in equal monthly installments, on or before the first day of each month, without demand. Should the Rent Commencement Date occur on a day other than the first day of a calendar month, then the monthly installment of Base Rent and Monthly Fixed Reimbursable Expenses for the first fractional month shall be equal to 1/30th of the monthly installment of Base Rent and Monthly Fixed Reimbursable Expenses for each day from the Rent Commencement Date to the end of the partial month.

Section 4.02 Reimbursable Expenses.

- (a) On or before August 1st of each year after the first Fiscal Year of the Lease Term, Landlord shall deliver to School a reconciliation for the prior Fiscal Year ("Prior Year

Reconciliation") of the Monthly Fixed Reimbursable Expenses paid by School, and the actual amount of School's Pro Rata Share of the Reimbursable Expenses paid by Landlord ("Actual Prior Year Reimbursable Expenses").

(b) If the Prior Year Reconciliation reveals that the Actual Prior Year Reimbursable Expenses exceeds the Monthly Fixed Reimbursable Expenses paid by School for such preceding Fiscal Year ("Shortfall in Reimbursable Expenses"), School shall pay Landlord the difference in a lump sum within thirty (30) days of receipt of the Prior Year Reconciliation, if adequate funds have been appropriated to pay said amount. If the Prior Year Reconciliation reveals that the Actual Prior Year Reimbursable Expenses are less than the Monthly Fixed Reimbursable Expenses paid by School for such preceding Fiscal Year ("Overpayment of Reimbursable Expenses"), Landlord shall credit such overpayment toward the Base Rent and Monthly Fixed Reimbursable Expenses next coming due under this Lease.

(c) To facilitate budgeting for a Shortfall in Reimbursable Expenses, on or before March 1st of each year, Landlord shall deliver to School an estimate of School's Pro Rata Share of the projected total Reimbursable Expenses through June 30 of the current Fiscal Year based on nine (9) months of data, as well as any Shortfall in Reimbursable Expenses for the prior Fiscal Year, if applicable ("Estimated Actual Expenses").

(d) In the event the Lease Term has expired and School has vacated the Premises, at such time as the final determination has been made regarding the actual amount of School's Pro Rata Share of Reimbursable Expenses for the Fiscal Year in which this Lease terminated (which determination shall be timely made), School shall, within thirty (30) days following receipt of the Prior Year Reconciliation for such final Fiscal Year, pay any amounts due as a result of the actual School's Pro Rata Share of Reimbursable Expenses for such Fiscal Year exceeding the Monthly Fixed Reimbursable Expenses paid with respect thereto. Conversely, any overpayment made in the event the actual amount of School's Pro Rata Share of Reimbursable Expenses for the final Fiscal Year are less than Monthly Fixed Reimbursable Expenses paid with respect thereto, shall be remitted to School by Landlord concurrently with Landlord's delivery of the Prior Year Reconciliation for the final Fiscal Year.

(e) PED, NMPSFA, School and its duly authorized representatives shall have the right to audit and copy the records of Landlord related to School's Pro Rata Share of Reimbursable Expenses with respect to any Fiscal Year within twelve (12) months following receipt of the applicable Prior Year Reconciliation for such Fiscal Year, upon not less than ten (10) days' prior written notice to Landlord, during normal business hours at Landlord's business offices. In the event School, in good faith, disputes the accuracy of any Prior Year Reconciliation on the basis of any such audit, such dispute must be alleged in reasonable detail in written notice to Landlord within one hundred twenty (120) days following School's completion of such audit. If the Actual Prior Year Reimbursable Expenses are determined to have been overstated by Landlord for any Fiscal Year, Landlord shall refund the Overpayment of Reimbursable Expenses to School within thirty (30) days of Landlord's receipt of the audit, and pay the reasonable costs of School's audit.

Section 4.03 Security Deposit. School shall deposit with Landlord, coincidentally with the execution of this Lease, the Security Deposit for the full and timely performance and observance of any and all of the terms and conditions of this Lease on School's part to be performed and observed. Landlord in its discretion and from time to time and at any time shall be entitled to apply any portion or all of the Security Deposit to reimbursement or satisfaction of any and all defaults by School of its obligations under this Lease and/or any and all damages, losses, attorneys' fees, costs or expenses of Landlord resulting therefrom, including those not remedied by School within the period, if any, expressly provided for in this Lease for such remedial action. Upon Landlord giving School notice of any such application of

the Security Deposit, School shall, within thirty (30) days thereafter, pay to Landlord a sum sufficient to restore the amount of such Security Deposit to the amount set forth in the SLP. Within thirty (30) days following expiration of the Lease Term (except as otherwise provided by law), Landlord shall refund to School any balance of the Security Deposit remaining on deposit with Landlord which has not been applied to reimbursement or satisfaction of the foregoing items, and Landlord shall have no further liability with respect to such Security Deposit. Interest shall not be payable or paid on the Security Deposit or any balance thereof, unless otherwise required by law. Landlord shall not be required to segregate the Security Deposit in a separate account.

ARTICLE V

APPROPRIATION AND NONAPPROPRIATION OF FUNDS

Section 5.01. Appropriation. The officer of School who is responsible for formulating budget proposals with respect to payments of Base Rent and Monthly Fixed Reimbursable Expenses is hereby directed (i) to estimate any Shortfall in Reimbursable Expenses or Additional Rent payable in the next ensuing Fiscal Year prior the submission of each annual budget proposal to the Board during the Lease Term and (ii) to include in each annual budget proposal submitted to the Board during the Lease Term the entire amount of Base Rent and Monthly Fixed Reimbursable Expenses scheduled to be paid, and the estimated Shortfall in Reimbursable Expenses and other Additional Rent to be payable during the next ensuing Fiscal Year; it being the intention of School that any decision to continue or to terminate this Lease shall be made solely by the Board, in its sole discretion, and not by any other official of School.

Section 5.02. Event of Nonappropriation. An "Event of Nonappropriation" shall be deemed to have occurred:

(a) On June 30 of any Fiscal Year if the State Legislature or School has, on such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rent and all Monthly Fixed Reimbursable Expenses scheduled to be paid, and any Shortfall in Reimbursable Expenses and other estimated Additional Rent to be payable in the next ensuing Fiscal Year; or

(b) If:

(i) Damage to, a material defect in, or loss of title to the Premises pursuant Article XIII, Section (a) has occurred, and

(ii) the Net Proceeds received as a consequence of such event are not sufficient to repair, restore, modify, improve or replace the Premises in accordance with Article XIII, Section (c), and

(iii) School has not appropriated amounts sufficient to proceed under Article XIII, Section (c) (ii) by June 30 of the Fiscal Year in which such event occurred or by June 30 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Premises becomes apparent, on June 30 of the Fiscal Year in which such event occurred or on June 30 of any subsequent Fiscal Year in which such insufficiency became apparent, as applicable.

Section 5.03. Waiver by Landlord. Notwithstanding Section 5.02, Landlord may waive any such failure to appropriate under said Section 5.02 which is cured by School within a reasonable period of time.

Section 5.04. Exercise of Right.

(a) In the event School is determined to exercise its annual right to terminate this Lease effective on June 30 of any Fiscal Year, School shall give written notice to such effect to Landlord not later than April 1 of such Fiscal Year; provided, however, that a failure to give such notice shall not (i) constitute an Event of Default, (ii) prevent School from terminating this Lease or (iii) result in any liability on the part of School.

(b) School shall furnish Landlord with copies of all appropriation measures relating to Base Rent and Additional Rent promptly upon the adoption thereof by the Board, but not later than thirty (30) days following the adoption thereof by the Board; provided however, that a failure to furnish copies of such measures shall not (i) constitute an Event of Default, (ii) prevent School from terminating this Lease, or (iii) result in any liability on the part of School.

(c) Subject to the provisions of Section 5.05, School specifically agrees that it shall not declare or cause to be declared by School, the Board or any other officer of School with such authority, an Event of Nonappropriation unless the State Legislature eliminates or discontinues funding for lease reimbursement payments to charter schools or decreases said funding below an amount which is sufficient for School to pay the Base Rent and Additional Rent from the lease reimbursement funding source.

Section 5.05. Limitations on Obligations of School.

(a) Payment of Base Rent and Additional Rent by School shall constitute currently appropriated expenditures of School and may be paid from any legally available funds.

(b) School's obligations under this Lease shall be subject to School's annual right to terminate this Lease upon the occurrence of an Event of Nonappropriation or upon nonrenewal or revocation of School's charter.

(c) No provision of this Lease shall be construed or interpreted (i) to directly or indirectly obligate School to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (ii) as creating a debt or multiple Fiscal Year direct or indirect debt or other financial obligation whatsoever of School within the meaning of Article IX, Section 11 of the New Mexico Constitution or any other constitutional or statutory limitation or provision; (iii) as a delegation of powers by School; (iv) as a loan or pledge of the credit or faith of School or as creating any responsibility by School for any debt or liability of any Person within the meaning of Article IX, Section 11 of the New Mexico Constitution; or (v) as a donation or grant by School to, or in aid of, any Person within the meaning of Article IX, Section 14 of the New Mexico Constitution.

(d) No provision of this Lease shall be construed to pledge or to create a lien on any class or source of moneys of School, nor shall any provision of this Lease restrict the future issuance of any obligations of School, payable from any class or source of monies of School.

(e) Notwithstanding any other provision of this Lease, School shall be under no obligation to pay Base Rent, Monthly Fixed Reimbursable Expenses or other Additional Rent or any other amount(s) on any portions of the Premises that have not been certified pursuant to the Educational Occupancy Standards, and all payments by School contemplated under this Lease are expressly conditioned upon the Premises satisfying the Educational Occupancy Standards.

ARTICLE VI

USE; COMMON AREAS; QUIET ENJOYMENT

Section 6.01. Use. The Premises shall only be used for the Permitted Use, without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. School shall comply with all Requirements of Law related to the Premises and its use thereof, and School shall not take any action that would constitute a nuisance, nor permit any unlawful practice to be carried on or committed at the Premises.

Section 6.02. Common Areas. School shall have the non-exclusive right to use the Common Areas in conjunction with the other tenants and occupants of the Complex. Landlord has promulgated the Rules and Regulations which shall control use of the Common Areas. Landlord may revise the Rules and Regulations provided said revisions are reasonable. Any revisions to the Rules and Regulations shall be effective thirty (30) days after School's receipt thereof.

Section 6.03. Quiet Enjoyment. Landlord covenants that School, on paying the Base Rent and Additional Rent, and performing the covenants of this Lease shall and may peaceably and quietly have, hold and enjoy the Premises for the Lease Term.

ARTICLE VII

LANDLORD WORK; DELIVERY OF POSSESSION; CONDITION OF PREMISES

Section 7.01. Construction of Landlord's Work. Landlord shall cause Landlord's Work to be constructed in accordance with Landlord's Work Addendum. School shall cooperate at all stages to promote the efficient and expeditious completion of Landlord's Work.

Section 7.02. Delivery of Possession.

(a) "Delivery of possession" of the Premises shall be deemed to occur on the date of Substantial Completion of Landlord's Work and Landlord notification of School in writing that School may take possession. Delivery of possession shall not occur later than the Term Commencement Date.

(b) If Landlord does not deliver possession of the Premises to School on or before the Term Commencement Date, unless such failure is due to an Event of Default by School, or Force Majeure, Landlord shall be subject to liability for such failure, and the Term Commencement Date shall be extended one (1) day for each day of delay, but the expiration date of the Lease Term shall not be extended. Further, since the actual damages which School would sustain due to such a delay would be difficult to calculate, the parties agree that liquidated damages equal to two (2) days of Base Rent abatement for each day of delay would be a reasonable approximation of such damages. Provided further, School may terminate this Lease if delivery of possession of the Premises does not occur within thirty (30) days of the Term Commencement Date by providing written notice thereof to Landlord not later than thirty-five (35) days after the Term Commencement Date. In such event, all Prepaid Rent, the Security Deposit and any payments for Change Orders shall be returned to School and the parties shall have no further obligations under the terms of this Lease, except for those matters which specifically survive termination.

(c) Landlord warrants that as of the Term Commencement Date, the Premises comply or will comply with all Requirements of Law, including applicable Educational Occupancy Standards.

Section 7.03 Early Possession. If School enters into possession of the Premises before the Term Commencement Date pursuant to Exhibit "C", Landlord's Work Addendum, such possession shall be subject to School providing Landlord evidence that all insurance required of School in Article XII has been obtained, and such possession shall be subject to the provisions of this Lease, except that the payment of Base Rent and Monthly Fixed Reimbursable Expenses shall not be due prior to the Rent Commencement Date.

ARTICLE VIII

REPAIRS AND MAINTENANCE; LIENS

Section 8.01. Repairs and Maintenance by School. The parties acknowledge and agree that School shall not be responsible for any maintenance, repair or replacement obligations whatsoever with regard to the Premises or the Complex, except: (a) for janitorial services, (b) for maintenance, repair or replacement obligations related to School's trade fixtures and personal property, (c) for maintenance, repair or replacement obligations related to Alterations by School that are not performed pursuant to Article IX, and (d) to the extent said maintenance, repair or replacement obligations arise as a result of the tortious conduct of School, its employees, students, agents or representatives, or are subject to the indemnity obligations of School provided for in this Lease.

Section 8.02. Repairs and Maintenance by Landlord.

(a) During the Lease Term, Landlord shall be responsible for all maintenance, repair and replacement obligations related to the Premises and the Complex, except as otherwise provided for in Section 8.01, and damage due to fire or casualty, to the extent this Lease requires Landlord to insure against such fire or casualty. All repairs and maintenance to be made by Landlord shall be at Landlord's risk and expense.

(b) If at any time during the Lease Term, Requirements of Law shall mandate that certain renovations or Improvements be made to the Premises and/or Complex, Landlord shall bear the cost of making the renovations and Improvements without reimbursement from School.

(c) If, within thirty (30) days after written notice by School to Landlord (or such shorter time as may be required in an emergency or pursuant to Requirements of Law), Landlord fails to provide any of the maintenance, repairs or replacements required of Landlord, and/or fails to complete the same with reasonable diligence, then School may, at its option, provide such maintenance, repairs or replacements and the costs thereof shall be deducted from succeeding Base Rent and Monthly Fixed Reimbursable Expenses payable hereunder.

Section 8.03. Liens and Encumbrances.

(a) School shall keep the Premises free and clear of all mechanics' liens and other liens or encumbrances on account of work done for School or Persons claiming under it. If any such lien shall at any time be filed against the Premises, School shall cause the same to be discharged within sixty (60) days after the recording thereof; provided, however, in the event School is contesting such lien in good faith, School shall have the right to discharge such lien by posting a bond with the applicable State court. If School shall fail to cause the same to be discharged within said sixty (60) day period, then, in addition to any other right or remedy of Landlord resulting from School's said default, Landlord may, but shall not be obligated to, following seven (7) days written notice to School, discharge the same either by paying the amount claimed to be due, procuring the discharge of such lien by giving security, or in such

other manner as is, or may be, prescribed by law. School shall repay to Landlord, as Additional Rent, on demand, all sums disbursed or deposited by Landlord pursuant to the provisions of this Section 8.03 (a), including all costs, expenses and attorneys' fees incurred by Landlord in connection therewith. Nothing contained herein shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanics' lien or other lien law.

(b) Should any claim of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

(c) Landlord shall have the right to post and keep posted upon the Premises notices of non-responsibility or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. School shall, before the commencement of any work which might result in any such lien, give Landlord written notice of its intention to do so in sufficient time to enable the posting of such notices.

ARTICLE IX

ALTERATIONS BY SCHOOL

School shall have the right to make non-structural changes and Improvements to the then existing Premises, as School shall desire ("Alterations by School"). Any Alterations by School that are structural, affect plumbing, electrical, or other Building systems, or impact the square footage of the then existing Premises shall be subject to Landlord's approval, in its reasonable discretion. For both structural and non-structural Alterations by School, School shall (a) submit plans of all changes to Landlord at least thirty (30) days in advance of the proposed construction date, (b) provide Landlord with evidence of School's financial ability to pay for such changes, (c) complete all such construction in a good and workmanlike manner and in material compliance with all Requirements of Law, at School's sole expense, (d) provide for all contractors and subcontractors to have "builder's risk" and workers compensation insurance before commencing construction, and (e) the Alterations by School (whether structural or non-structural) shall not reduce the fair market value of the Premises, as reasonably determined by Landlord. Subject to the Tort Claims Act, School agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from Alterations by School.

ARTICLE X

UTILITIES

School, at School's sole cost, shall before delinquency pay all deposits and bills for utilities delivered to the Premises during the Lease Term (including, without limitation, gas, electric, water, sewer, telephone, internet, TV and trash removal). Landlord shall not be liable in any way for any payment, deposit or other charges for utilities delivered to the Premises during the Lease Term. Landlord shall not be responsible for any problems whatsoever with respect to the quality, quantity or interruption of such services, If School fails to pay when due any charges referred to in this Article, Landlord may, but shall not be obligated to, pay the bills for utilities and School shall reimburse Landlord, as Additional Rent, for any amount so paid by Landlord.

ARTICLE XI

TAXES

Beginning on the Term Commencement Date, School shall pay to Landlord as Monthly Fixed Reimbursable Expenses, School's Pro Rata Share of all real property taxes and assessments (including ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents and any tax or charge for governmental services such as street maintenance or fire protection) payable with respect to the Complex, including the Premises and any Improvements constructed thereon, and any other tax or charge that is in lieu of or a substitute for any of such taxes or charges (such as gross receipts taxes) which are levied or assessed against the Complex, including the Premises, and taxes on the personal property and equipment located in or on the Common Areas (collectively "Real Estate Related Taxes").

School may contest an assessment or tax bill related to the Real Estate Related Taxes by providing written notice to Landlord. Any such contest shall be at School's sole cost and expense; provided further that School shall be required to pay any taxes or post a bond to ensure no penalties or interest are assessed as a result of any such contest.

School shall also pay, prior to delinquency, all taxes, assessments, license fees and public charges or levies, assessed or imposed upon School's business operations, trade fixtures, leasehold improvements, equipment, merchandise and other personal property in, on or upon the Premises.

ARTICLE XII

INSURANCE

Section 12.01. Landlord's Insurance. Landlord agrees that on or before the Term Commencement Date, Landlord will obtain and maintain during the Lease Term extended coverage property insurance (or its equivalent) covering the Premises from an insurance company authorized to do business in New Mexico, in an amount equal to at least one hundred percent (100%) of the full replacement cost thereof, excluding foundation and excavation costs, and commercial general liability insurance with coverage limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate ("Landlord's Insurance"). School will reimburse Landlord for School's Pro Rata Share of Landlord's Insurance as Monthly Fixed Reimbursable Expenses.

Section 12.02. School's Insurance. Prior to the earlier of the Term Commencement Date or School taking possession of the Premises, and until the expiration of the Lease Term, or earlier termination of his Lease, School shall, at its own expense, obtain and maintain the following policies of insurance:

(a) Commercial comprehensive general liability and automobile liability insurance against claims arising in, on or about the Premises, including in, or about the Common Areas and Complex, with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate; and

(b) Such other forms of insurance as are customary for a school or are mandated by Requirements of Law, including, without limitation, any legally required workers compensation insurance.

Section 12.03. Insurance Policies.

(a) The insurance policies required in Sections 12.01 and 12.02 shall meet the following conditions: (i) any insurance policy may have a deductible clause in an amount not to exceed \$20,000; (ii) each insurance policy shall be so written or endorsed as to make losses, if any, payable to School and Landlord, as their respective interests may appear; (iii) each insurance policy shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of School or Landlord without first giving written notice thereof to School and Landlord at least thirty (30) days in advance of such cancellation or modification; (iv) each insurance policy, or each certificate evidencing such policy, shall be deposited with Landlord upon request; (v) full payment of insurance proceeds under any insurance policy up to the dollar limits required in connection with damage to the Premises shall, under no circumstances, be contingent on the degree of damage sustained at other property owned or leased by School; and (vi) to the extent School can control the terms of each insurance policy, each insurance policy shall explicitly waive any coinsurance penalty.

School may, in its discretion, provide any of the insurance required by Section 12.02 under blanket insurance policies that insure not only the risks required to be insured hereunder but also other similar risks.

(b) The parties acknowledge that School is required to maintain insurance coverage pursuant to Section 6.20.2.20 NMAC.

Section 12.03. Waiver of Subrogation. Landlord and School each waive any and every claim which arises or may arise in its favor against the other party hereto and the other party's officers, directors, and employees for any and all loss of or damage to property REGARDLESS OF WHETHER ANY OF SUCH PARTIES' NEGLIGENCE OR FAULT OR OTHER TORTIOUS CONDUCT CONTRIBUTED IN WHOLE OR IN PART TO SUCH CLAIM OR WHETHER SUCH PARTY WOULD BE STRICTLY LIABLE UNDER APPLICABLE LAW, to the extent (but only to the extent) that the waiving party who suffers such loss or damage is actually compensated by insurance or would be compensated by the insurance policies contemplated in this paragraph if such policies were maintained as required hereby. Each party agrees to have such insurance policies properly endorsed so as to make them valid notwithstanding this waiver, if such endorsement is required to prevent a loss of insurance.

ARTICLE XIII

DAMAGE AND DESTRUCTION; CONDEMNATION; LOSS OF TITLE

(a) If (i) the Premises (or any portion thereof) is destroyed or damaged by fire or other insured casualty, (ii) title to, or the temporary or permanent use of, the Premises (or any portion thereof) or the interest of School or Landlord in the Premises (or any portion thereof), is taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, (iii) a breach of warranty or any material defect with respect to the Premises (or any portion thereof) becomes apparent or (iv) title to or the use of the Premises (or any portion thereof) is lost by reason of a defect in the title thereto, then, the Net Proceeds of any insurance, performance bond or condemnation award or the Net Proceeds received as a consequence of any default or breach of warranty under any contract relating to the Premises or the Complex shall be deposited into a special trust fund held by Landlord and School, as their interests may appear. Base Rent and Monthly Fixed Reimbursable Expenses shall abate during such period of time as to the Premises or portion thereof that do not meet the Educational Occupancy Standards.

If the Premises, or substantial portions thereof are destroyed or substantially damaged so as to substantially impair School's uses for educational purposes, and the destruction or damage to the Premises cannot be substantially restored within ninety (90) days from the time of such damage or destruction, then School or Landlord shall have the right to terminate this Lease.

(b) Subject to subsection (a) of this Article, if the costs of the repair, restoration, modification, improvement or replacement of the Premises following an event described in subsection (a) of this Article are equal to or less than the Net Proceeds available, such Net Proceeds shall be used promptly to repair, restore, modify, improve or replace the Premises (or portion thereof) and any excess shall be delivered to Landlord or School, as applicable.

(c) If the costs of the repair, restoration, modification, improvement or replacement of the Premises following an event described in subsection (a) of this Article are more than the amount of Net Proceeds available, then:

(i) School may elect either:

(A) to direct Landlord to use the Net Proceeds promptly to repair, restore, modify or improve or replace the Premises (or portion thereof) with materials of a value equal to or in excess of the value of the Premises (or applicable portion thereof), and pay (subject to Article V) as Additional Rent the costs thereof in excess of the amount of the Net Proceeds, or

(B) to terminate this Lease.

(ii) If, by June 30 of the Fiscal Year in which the event described in subsection (a) of this Article occurred (or June 30 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Premises becomes apparent), School has not appropriated amounts sufficient to proceed under subsection (c) (i) (A) of this Article, an Event of Nonappropriation shall be deemed to have occurred.

(d) School shall not voluntarily settle or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to default or breach of warranty under any contract relating to the Premises or the complex without the written consent of Landlord.

ARTICLE XIV

ASSIGNMENT; SUBLETTING

Section 14.01. Transfer of School's Interest in Lease and Premises. School may assign, transfer or convey School's interest in this Lease and the Premises with Landlord's consent (which consent shall not be unreasonably withheld or delayed), to any foundation or not-for-profit corporation created for the purpose of supporting School, to any corporation which controls, is controlled by or is under common control with School, or to any corporation resulting from a merger or consolidation with School, or to any Person which acquires all the assets of School's business as a going concern, provided that: (1) the assignee assumes in full the obligations of School under this Lease, (2) School remains fully liable under this Lease, and (3) the use of the Premises remains unchanged. Except as otherwise permitted in this Section or Section 14.02 with respect to subleases, School shall not sublease, assign, encumber, convey or otherwise transfer all or any portion of its interest in this Lease or the Premises to any Person, whether now in existence or organized hereafter.

Section 14.02. Subleasing by School. School may sublease or grant a right to use all or any portion of the Premises for the Permitted Use, with Landlord's approval (which approval shall not be unreasonably withheld or delayed); provided further that School remains fully liable under this Lease, and School shall maintain its direct relationship with Landlord, notwithstanding any such sublease, grant or use ("Sublease").

Section 14.03. Non-waiver. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Any attempted or purported assignment or sublease without Landlord's consent shall constitute an Event of Default.

Section 14.04. No Release. No assignment or subletting, whether with or without Landlord's consent shall relieve School from its covenants and obligations under this Lease and each such assignment or subletting shall state that School shall be jointly and severally liable for the payment and performance of the obligations hereunder.

Section 14.05. By Landlord. In the event of the transfer and assignment by Landlord of its interest in the Premises and this Lease to a Person expressly assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and School agrees to look solely to such successor in interest of Landlord for performance of such obligations. Any Security Deposit given by School to secure performance of School's obligations hereunder may be assigned and transferred by Landlord to such successor in interest and Landlord shall thereby be discharged of any further obligation relating thereto.

ARTICLE XV

COMPLIANCE WITH LAW

School shall at all times operate the Premises, or cause the Premises to be used and operated: (a) in substantial compliance with all Requirements of Law, including the Educational Occupancy Standards; (b) with no use or disposal of hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601, et seq., or any applicable regulations promulgated thereunder), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq., or any applicable regulations promulgated thereunder), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Premises in violation of any Requirements of Laws; (c) with no disposal of any of the items referred to in subsection (b) of this Article on, from, into or out of the Premises in violation of any Requirements of Law; and (d) with no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing depositing, or dispersing of any of the items referred to in subsection (b) of this Article into the indoor or outdoor environment from, into, or out of the Premises, including the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Premises, or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into or out of the Premises in violation of any Requirements of Law.

ARTICLE XVI

DEFAULTS AND REMEDIES

Section 16.01. Events of Default by School Defined.

(a) Any of the following shall constitute an "Event of Default" under this Lease:

(i) failure by School to pay any specifically appropriated Base Rent and Monthly Fixed Reimbursable Expenses to Landlord on or before the applicable Base Rent and Monthly Fixed Reimbursable Expenses due date; provided, however, that a failure by School to pay Base Rent and Monthly Fixed Reimbursable Expenses on the applicable Base Rent and Monthly Fixed Reimbursable Expenses due date shall not constitute an Event of Default if such payment is received by Landlord within five (5) days following such Base Rent and Monthly Fixed Reimbursable Expenses due date;

(ii) failure by School to pay any other Additional Rent within thirty (30) days of the receipt of written notice (unless a shorter period is specifically provided for in this Lease) for which funds have been specifically appropriated when due, or if such Additional Rent is payable to a Person other than Landlord, when nonpayment thereof has, or may have, a material adverse effect upon the Premises or the interest of Landlord in the Premises;

(iii) failure by School to vacate the Premises within 90 days following an Event of Nonappropriation in accordance with Section 3.05 (b);

(iv) any sublease, assignment, encumbrance, conveyance or other transfer of the interest of School in all or any portion of this Lease or the Premises in violation of Sections 14.01 and 14.02 or any succession to all or any portion of the interest of School in the Premises in violation of Sections 14.01 and 14.02; or

(v) failure by School to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsections (a) (i), (ii), (iii) or (iv) of this Section 16.01, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied shall be given to School by Landlord; provided, however, that if the failure stated in the notice cannot reasonably be corrected within said thirty (30) day period and corrective action shall be instituted within said thirty (30) day period and diligently pursued until the default is corrected, no Event of Default shall occur.

(b) The provisions of subsection (a) of this Section 16.01 are subject to the following limitations:

(i) School shall be obligated to pay Base Rent and Additional Rent only during the Lease Term, except as otherwise expressly provided in Section 3.05 (b) (ii); and

(ii) if, by reason of Force Majeure, School shall be unable in whole or in part to carry out any agreement on its part herein contained, other than its obligation to pay Base Rent or Additional Rent hereunder, School shall not be deemed in default during the continuance of such inability; provided, however, that School shall, as promptly as legally and reasonably possible, remedy the cause or causes preventing School from carrying out such agreement, except that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of School.

Section 16.02. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, Landlord may take one or any combination of the following remedial steps:

- (a) terminate the Lease Term and give notice to School to vacate the Premises, in the manner provided in Section 3.05 (b).
- (b) lease its interest in all or any portion of the Premises; and/or
- (c) recover from School:
 - (i) the portion of Base Rent and Additional Rent payable pursuant to Section 3.05 (b) (ii);
 - (ii) the portion of Base Rent for the then current Fiscal Year that has been specifically appropriated by the Board, regardless of when School vacates the Premises to Landlord; and
 - (iii) the portion of the Additional Rent for the then current Fiscal Year that has been specifically appropriated by the Board, but only to the extent such Additional Rent is payable prior to the date, or is attributable to the use of the Premises prior to the date that School vacates the Premises and delivers the Premises to Landlord;
- (d) enforce any provision of this Lease by equitable remedy, including, but not limited to, enforcement of the restrictions on assignment, subletting, encumbrance, conveyance, transfer or succession under Article XIV by specific performance, writ of mandamus or other injunctive relief; and
- (e) take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Premises under this Lease, subject, however, to the limitations on the obligations of School set forth in Sections 5.05.

Section 16.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Landlord is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Landlord to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 16.04. Waivers. Landlord may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 16.05. Notice to Sublessee. Landlord shall provide written notice to the sublessee of a valid Sublease of an Event of Default by School in no less than five (5) days after the occurrence.

Section 16.06. Landlord's Default. If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from School specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within said thirty (30) day period and diligently pursue the cure to conclusion, then Landlord shall be liable to School for any damages sustained by School as a result of Landlord's breach. If, after notice to Landlord of default, Landlord (or any first mortgage or first deed of trust

beneficiary of Landlord) fails to cure the default as provided herein, then School shall have the right to cure that default at Landlord's expense, and to either terminate this Lease or to withhold, reduce or offset any amount against any payments of Base Rent and Additional Rent or any other charges due and payable under this Lease. No remedy herein conferred upon School is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE XVII

SUBORDINATION; ESTOPPEL

Section 17.01. Subordination. This Lease and the rights of School hereunder are expressly subordinate and subject to any mortgage, deed of trust, or other voluntary hypothecation now or hereafter encumbering the Premises and the Complex, including the Land, Building(s) and other Improvements included therein, or of which the Premises are a part, or any portions thereof, subject only to School's receipt of a written non-disturbance agreement (subject to School not being in default hereunder beyond applicable grace and cure period) for the benefit of School, in a form reasonably acceptable to School. School shall execute and deliver to Landlord such documents (in a form reasonably acceptable to School) and take such further action as Landlord in its reasonable discretion deems necessary or advisable to confirm, effect, or maintain such subordination and non-disturbance within ten (10) Business Days after written request of Landlord or such beneficiary or mortgagee to do so.

Section 17.02. Estoppel. School agrees that it will from time to time within fifteen (15) days after written request by Landlord execute and deliver to Landlord a written statement addressed to Landlord (or to a party designated by Landlord), which statement shall identify School and this Lease, shall certify that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm the Term Commencement Date, the Rent Commencement Date, the Lease Term, the amount of Base Rent, Monthly Fixed Reimbursable Expenses and other sums due by School hereunder and the amount of any advance payments of Base Rent, Monthly Fixed Reimbursable Expenses or deposits in the possession of Landlord, shall confirm to the best of its knowledge that Landlord is not in default as to any obligations of Landlord under this Lease (or if Landlord is in default specifying any default), shall confirm School's agreements contained in this Section 17.02, and shall contain such other information or confirmations as Landlord may reasonably require.

ARTICLE XVIII

INDEMNITY

Section 18.01. Indemnification by School. Landlord releases and discharges School and its "public employees" as defined in the Tort Claims Act from any and all claims, damages and causes of action arising out of any damage to or destruction of the Premises where such damage or destruction was not caused by the willful act of School or any of its "public employees." To the extent not covered by insurance, and within the limits and subject to the provisions of the Tort Claims Act, School shall protect, defend, indemnify, and save harmless Landlord from all claims, actions, demands, liability, and expense of loss of life, damage, or injury to persons or property, brought for or on account of any action or failure to act by School, its agents, representatives, and employees, pursuant to this Lease, except to the extent caused by the negligent or intentional acts or omissions of Landlord, its agents, representatives and employees.

Section 18.02. Indemnification by Landlord. Except as may be caused primarily by the gross negligence or intentional acts or omissions of Landlord, Landlord shall not be liable for (a) injury, damage or loss of business which may be sustained by School, its agents, officers, directors, employees or invitees, or to their goods, wares, merchandise or property, caused by or resulting from the condition or state of repair of the Premises; (b) injury, damage or loss of business from fire, steam, electricity, gas, water or rain that may leak or flow from or into any part of the Premises; or (c) injury, damage or loss of business from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the Premises. Except as to the previous sentence of this Section, and to the extent caused by the negligent or intentional acts or omissions of School, its agents, representatives and employees, Landlord shall protect, defend, indemnify, and save harmless School from all claims, actions, demands, liability, and expense of loss of life, damage, or injury to persons or property, arising out of the negligent or intentional acts or omissions of Landlord, its agents, representatives, and employees.

Section 18.03. Survival of Indemnities. The indemnities contained in this Lease shall specifically survive the expiration of the Lease Term or earlier termination of this Lease.

Section 18.04. Limitations on Indemnities. No indemnities contained herein shall extend to those matters for which indemnification is prohibited pursuant to Section 56-7-1 NMSA 1978, as amended.

ARTICLE XIX

SURRENDER AND HOLDING OVER

Upon the expiration of the Lease Term, School shall deliver all keys to the Premises to Landlord and shall surrender the Premises to Landlord broom clean and in as good order and condition as existed on the Term Commencement Date, except for ordinary wear and tear and damage by fire or other casualty not caused by School, and loss due to condemnation or threat of condemnation. In the event School continues to occupy the Premises after the expiration of the Lease Term, such occupancy shall be considered a tenancy from month-to-month at a rent equal to the Base Rent and Monthly Fixed Reimbursable Expenses due for the last full calendar month of the Lease Term and such tenancy shall be upon and subject to all of the other terms, provisions, covenants and agreements set forth herein. Upon the expiration or termination of this Lease, School may remove, at its expense, any trade fixtures and unattached personal property previously placed in the Premises by School; but any damage to the Premises caused by such removal shall be repaired by School at the time of the removal. All other installations (including HVAC equipment, duct work, electric and water connections and electric lighting fixtures) and all repairs, Improvements, replacements and Alterations by School to the Premises, made by School shall, upon being installed, become the property of Landlord. However, School shall promptly remove any Alterations by School or Improvements to the Premises made by School without Landlord's prior written consent (or made with Landlord's consent, but subject to Landlord's right to require its removal) if requested to do so by Landlord, and shall repair any damage to the Premises resulting from such removal. Notwithstanding the foregoing, Landlord may only require the removal of Alterations by School, if School was so advised at the time Landlord approved said Alterations by School.

ARTICLE XX

GENERAL PROVISIONS

Section 20.01. Notices; Demands. Any notice, demand or other communication required or permitted by law or any provision of the Lease to be given or served on either party shall be in writing,

addressed to the address set forth in Paragraphs B and D of the SLP, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, or (b) delivered by an overnight private mail/courier service which provides delivery confirmation. All notices shall be deemed to be received the earlier of: (i) three (3) Business Days after being deposited in the United States mail with proper postage, (ii) upon delivery by overnight courier, or (iii) upon actual receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver. Either party may designate additional addresses for the receipt of notices or demands at any time by written notice to the other.

Section 20.02. Attorneys' Fees. If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to recover all costs and expenses, including reasonable attorneys' fees and costs, incurred by it on account of or related to such action or proceeding.

Section 20.03. Binding Effect. This Lease shall inure to the benefit of and bind the parties hereto and their respective heirs, successors, personal representatives, and permitted assigns.

Section 20.04. Severability. If any term or provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

Section 20.05. No Waiver. A waiver by Landlord or School of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by said party of the same or any other provision.

Section 20.06. Time of Essence. Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

Section 20.07. No Third Party Rights. The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any Person other than the parties hereto.

Section 20.08. No Principal-Agent Relationship. Nothing contained in this Lease shall be construed as creating the relationship of principal and agent, partnership or joint venture between Landlord and School.

Section 20.09. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 20.10. Warranty of Authority. Landlord and School that if they are corporations, limited liability companies or partnerships, or other artificial entities that each individual executing this Lease on behalf of the Landlord and School represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Landlord and School, as applicable, and that this Lease is binding upon Landlord and School.

Section 20.11. Brokers. Landlord represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Lease, except for Landlord's Broker, and agrees to hold School harmless from any cost, expense or liability for any compensation, commission or charges claimed by any other realtors, brokers or agents claiming by, through or on behalf of Landlord with respect to this Lease and/or the negotiation hereof. School represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Lease other than School's Broker, and agrees to hold Landlord harmless from any cost, expense or liability for any compensation, commission or charges claimed by any realtors, brokers or agents claiming by, through or on behalf of School with respect to this Lease and/or the negotiation hereof.

Section 20.12. Counterparts. This Lease may be executed in several counterparts and all so executed counterparts shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

**SIGNATURE PAGE ONE
TO
NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE**

LANDLORD:

_____, a

By: _____
Name: _____
Title: _____

DRAFT

**SIGNATURE PAGE TWO
TO
NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE**

SCHOOL:

_____, LLC,
a _____

By: _____
Name: _____
Title: _____

DRAFT

ADDENDUM "ONE"

BASE RENT AND MONTHLY FIXED REIMBURSABLE EXPENSES

| <u>Initial Term:</u> | <u>Annual Base Rent:</u> * | <u>Monthly Base Rent:</u> | <u>Monthly Fixed Reimbursable Expenses:</u> ** |
|--------------------------|--------------------------------|-------------------------------|--|
| "RCD" to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |

**First Renewal
Term:**

| | | | |
|-----------------------|-----------------------------|----------|----------|
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |

**Second Renewal
Term:**

| | | | |
|-----------------------|-----------------------------|----------|----------|
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |
| 7/1/____ to 6/30/____ | \$ _____ (\$ _____/sq. ft.) | \$ _____ | \$ _____ |

* The Annual Base Rent is based on the square foot prices reflected in parenthesis multiplied by School's Rentable Area.

** The Monthly Fixed Reimbursable Expenses are based on School's Pro Rata Share of the total Reimbursable Expenses for the Complex.

"RCD" - Rent Commencement Date

EXHIBIT "A"

Legal Description of the Land

(To be attached)

DRAFT

EXHIBIT "B"

Diagram of Complex, Premises, including Exclusive Use Area(s)

(To be attached)

DRAFT

EXHIBIT "C"

LANDLORD'S WORK ADDENDUM

THIS LANDLORD'S WORK ADDENDUM forms a part of the Charter School Lease executed by Landlord and School.

I. Approved Plans; Construction Allowance:

Subject to and upon the conditions hereinafter set forth, Landlord agrees to construct or cause to be constructed at the Complex Landlord's Work substantially in accordance with NMPSFA requirements described on Schedule I attached hereto ("NMPSFA Requirements") and the preliminary plans and specifications described on Schedule II attached hereto (the "Preliminary Plans"). School has reviewed and hereby approves the Preliminary Plans.

Within _____ (___) days after the Effective Date, Landlord shall provide School a copy of the final plans and specifications based on the Preliminary Plans ("Final Plans"). School shall have thirty (30) days after receipt of the Final Plans to reasonably approve or disapprove of same by providing written notice thereof to Landlord. If School disapproves of the Final Plans, Landlord shall have ten (10) days after the receipt of the disapproval to agree to cure all objections of School, or Landlord shall provide written notice to School that it elects not to cure some or all of School's objections to the Final Plans. Thereafter, School shall have ten (10) days after the receipt of Landlord's election not to cure all of School's objections to waive the failure to cure and approve the Final Plans, with any modifications Landlord has approved, or to terminate this Lease. If this Lease is terminated pursuant to this Section I, all Prepaid Rent and the Security Deposit shall be returned by Landlord to School, and neither party shall have any further obligations under the terms of this Lease, except as to those matters which specifically survive termination.

The Final Plans, as the same may be modified pursuant to this Section I, shall be the "Approved Plans".

Landlord acknowledges and agrees that if the costs and expenses for Landlord's Work based on the Approved Plans exceed the Construction Allowance, Landlord shall be responsible for all such cost overruns, and the same shall not be billed to School or increase the Base Rent to be paid by School.

Landlord shall provide School with an "as built" set of plans for the Landlord's Work within thirty (30) days after the Term Commencement Date.

II. Contractors and Subcontractors:

Landlord will select the general contractor to construct Landlord's Work (the "Contractor"), and Landlord will promptly enter into a contract with the Contractor on Landlord's standard form of construction contract for the construction of Landlord's Work. Landlord shall have the right to select architects, engineers, subcontractors, and other professionals, as it deems necessary or desirable.

III. Construction of Landlord's Work:

Landlord will cause Substantial Completion of Landlord's Work to occur on or before the Term Commencement Date, which date is subject to Force Majeure. "Substantial Completion" of Landlord's Work shall be deemed to be on the date that (a) Landlord delivers a certification to School from Landlord's licensed architect or the Contractor that Landlord's Work have been completed in accordance

with the Approved Plans, subject only to a punch list ("Punch List") of minor items remaining to be corrected by Landlord, which will be prepared by representatives of Landlord and School, and which will not materially interfere with School's use of the Premises as a charter school, (b) a "certificate of occupancy" or comparable certificate has been issued for Landlord's Work by the appropriate governmental authority, and (c) the Premises and Improvements comply with the Educational Occupancy Standards. Landlord and School shall cooperate to obtain necessary approvals for the Substantial Completion of Landlord's Work. Landlord will complete the Punch List prior to the Term Commencement Date, unless otherwise agreed by School, at its sole option.

IV. Entry by School

School may cause its contractors and subcontractors to enter the Premises prior to the completion of Landlord's Work for the purpose of making Improvements, and installing fixtures and equipment (the "School's Work"); provided that (a) the plans for the School's Work have been approved by Landlord in advance, (b) all of the School's Work that complies with all Requirements of Law, (c) all such contractors and subcontractors engaged in the prosecution of School's Work shall be required to procure and maintain the insurance set forth in the Lease, and "ALL RISKS" builders' risk insurance in an amount reasonably acceptable to Landlord, (d) School's Work performed in such a manner and at such times as to maintain harmonious labor relations and not to interfere with or delay the Contractor and its subcontractors, and (e) all of School's contractors and subcontractors will contact the Contractor and schedule time periods during which they may perform School's Work (and Landlord will require the Contractor to reasonably cooperate with School's subcontractors and contractors in this regard).

School shall also have the right to enter into possession of the Premises under duress prior to Substantial Completion of Landlord's Work if School is required to open under the Requirements of Law or be in violation of its charter, and the Premises satisfy all Educational Occupancy Standards.

V. Change Orders

School may request changes to the Approved Plans. Any changes are subject to Landlord's consent, which may not be unreasonably withheld. If Landlord approves any of School's requested changes to the Approved Plans, all of Landlord's actual costs and expenses in excess of the Construction Allowance associated with such changes, including, but not limited to, increases in the Contractor's fees, will be paid by School. The additional costs shall be paid either in cash, if said amount is so appropriated, or by amortizing the additional costs at ____% per annum over the Initial Term and increasing the Base Rent by said amount each month. Prior to implementing any requested change to the Approved Plans, Landlord will prepare and deliver to School for School's approval a written "Change Order" setting forth the estimated cost of such requested changes and the number of days of delay associated therewith, if any. If School fails to approve, execute, and deliver to Landlord such Change Order within ____ (__) Business Days following delivery of the Change Order by Landlord, School will be deemed to have withdrawn the proposed change. As part of its approval of any Change Order, School agrees to be responsible to pay the amount of all Change Orders.

VI. School Delay

"School Delay" shall mean any delay in the construction of Landlord's Work caused by School, other than Force Majeure, including, without limitation and in addition to other reasons set forth herein, interference with the construction of Landlord's Work and failure to supply or cause to be supplied any equipment or material which School is responsible to supply. Each day of School Delay will add one (1) day to the Term Commencement Date, provided however, the Rent Commencement Date shall not be changed.

Schedule I

NMPSFA REQUIREMENTS

To be attached

DRAFT

Schedule II

PRELIMINARY PLANS

To be attached

DRAFT

EXHIBIT "D"**ACKNOWLEDGMENT**

THIS ACKNOWLEDGMENT is entered into effective the ____ day of _____, 20____, by and between _____ ("Landlord") and _____ ("School")

WHEREAS, Landlord and School entered into a Lease dated _____, 20____ ("Lease") involving the premises located at _____, _____, New Mexico ____; and

WHEREAS, the parties desire to establish the Term Commencement Date, Rent Commencement Date, and/or other terms and provisions of the Lease.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, IT IS AGREED AS FOLLOWS:

1. All capitalized terms shall have the definitions set forth in the Lease, unless otherwise defined herein.
2. The Term Commencement Date is hereby acknowledged to be _____, 20____.
3. The Rent Commencement Date is hereby acknowledged to be _____, 20____.
4. The Initial Term shall terminate on _____.
5. The parties acknowledge and agree that Base Rent and Monthly Fixed Reimbursable Expenses are amended as follows: _____.
6. The parties acknowledge and agree that the square footages of the Premises and/or Complex are amended as follows: _____.
7. _____.
8. Except as herein modified and amended, the remaining terms and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the date first hereinabove set forth.

Landlord:**School:**

_____, a

_____, a

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "E"

"DESCRIPTION OF SPECIFIC USES"

- A. Total number of students _____
- B. Grades served _____
- C. Unique (non-traditional) educational programs served:
- a. **No** ()
 - b. **Yes** () [describe space needs that are different from the NM Adequacy Standards for traditional schools]
- D. Community programs served:
- a. **No** ()
 - b. **Yes** () [describe space needs that are different from the NM Adequacy Standards for traditional schools, and revenue generated]

EXHIBIT "F"

RULES AND REGULATIONS

To be attached

DRAFT

EXHIBIT "G"

SY 2013-2014 CONFLICT OF INTEREST QUESTIONNAIRE

**PSCOC LEASE ASSISTANCE APPLICATION
ANNUAL CONFLICT OF INTEREST QUESTIONNAIRE – PRIVATE LANDLORD
FOR SCHOOL YEAR 2013-2014**

The following definitions apply to this Questionnaire:

- **“Interested party”** An employee of a school district or charter school who has authority to procure or make decisions regarding procurement, purchasing or contracting on behalf of the district or charter school or an employee who is in a position to influence such decisions; or a member of a district school board or charter school governing body (collectively referred to as “governing body”), who has a direct or indirect financial interest, as defined below.
- **“Financial interest”** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family member relationship:
 - a. An ownership or investment interest in any entity with which the school district or charter school has a transaction or arrangement (e.g. a property lease),
 - b. A compensation arrangement with the school district or charter school or with any entity or individual with which the school district or charter school has a transaction or arrangement, or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the school district or charter school is negotiating a transaction or arrangement.
- **“Family Member”** means a spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. NMSA 1978 §22-8B-10 (2009).

District/School Name: _____

Please include as an attachment to this Questionnaire a current list of governing body members, a current list of school board and/or charter school foundation members, and if applicable, a copy of governing board minutes approving exception to anti-nepotism laws.

Question 1: Briefly describe the property selection process and actions taken to ensure that the leased premises were in the best interest of the district/school. _____

Question 2: Briefly describe how the leased premises support the current or future space needs of the district/school. _____

Question 3: Briefly describe how the determination was made that the negotiated lease was at or below fair market value. _____

Question 4: In selecting the leased facility, was the site selected competitively from other potential school sites **Yes** () **No** () [Describe the selection process, the number of sites considered, the number of offers made, and the reason the selected leased site was chosen. How was it determined that the selected site and lease was a good value.]: _____

Question 5: Can any of the parties to the lease be considered an “interested party” or a “family member” of an interested party as defined above? **Yes** () **No** () [If no, then skip Question 6 and proceed to Question 7.]

Question 6: If you answered “Yes” to Question No. 5, provide the following information.

(a) Which party to the lease has a financial interest? _____

(b) Describe the financial interest of the party identified in 6.(a). _____

(c) Was the financial interest disclosed to the governing body prior to execution of the lease? **Yes** () **No** () [If yes, attach a copy of the governing body minutes of the meeting at which the financial interest was disclosed and/or any other documentation evidencing disclosure. If no, explain why the financial interest was not disclosed prior to execution of the lease or whether some other consideration of the financial interest was made by the governing body or district/school employee executing the lease]: _____

(d) If the financial interest was not properly disclosed, describe possible remedies and justification of how the benefits of continuing the current lease outweigh the conflict. Describe any hardship that would result if the PSCOC denied lease assistance. _____

Question 7: Does your district/school have a written conflicts of interest policy and written disclosure of conflicts requirement? **Yes** () **No** (). [If yes, attach a copy of your policy.]

Question 8: If you do not have a written policy addressing conflicts of interest, does your governing body or district/school have an internal rule or procedure that addresses entering into contracts with interested persons? **Yes** () **No** (). [If yes, attach a copy of the written rule or procedure.]

CERTIFICATION

The undersigned hereby certify that to the best of their knowledge the answers to this questionnaire are true and accurate, that if any of the answers to this Questionnaire change that the authorized representative of the district/charter school will notify the PSCOC through the PSFA within thirty (30) days, and that

Check one:

- ☐ the lease and price negotiated for the property was in the best interest of the district/school and that there were no violations of any conflict of interest laws.
- ☐ a financial interest was not properly disclosed and the district/school requests an exception due to the undue hardship that will result to the district/school by avoiding the prohibited conflict when weighed against the public interest served.
- ☐ due to extenuating circumstances the district/school requests additional time to respond.

BY:

School Board President / Governing Council President

Date

School District Superintendent / Charter School Administrator

Date

If locally chartered charter school:

School District Superintendent

Date

**NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE PURCHASE**

PART "A"

This Charter School Lease Purchase ("Lease") is made and entered into as of the ____ day of _____, 20____, ("Reference Date Only") by and between "Landlord" and "School".

SPECIFIC LEASE PROVISIONS (SLP)

A. "Landlord": _____, a _____

B. Landlord's Notification
Address:

c/o _____

with copy to:

C. "School": _____, a _____

D. School's Notification
Address:

c/o _____

with copy to:

E. "Premises": The real estate in _____ County, New Mexico, having an address of _____, New Mexico _____ described on Exhibit "A" ("Land"), together with the "Building(s)" containing _____ square feet, more or less, of "School's Rentable Area" and other "Improvements" existing or to be constructed thereon.

(i) New Mexico Construction Industries Department 'E' Occupancy Certificate date: _____.

(ii) NMPSFA:

- (a) Approval date: _____.
- (b) NMCI score: _____.

(iii) NMPSFA Square Footage Calculations:

- (a) "Gross Square Feet": _____.
- (b) "Net Square Feet": _____.
- (c) "Tare" Square Feet: _____.
- (d) Percent Tare: ____%.
- (e) Education Square Feet (w/tare included): _____.
- (f) Administration Square Feet (w/tare included): _____.
- (g) Other Space: _____.

F. "Landlord's Work": Improvements to the Building(s) and other areas of the Premises to be constructed by Landlord pursuant to the "Approved Plans" in accordance with the "Landlord's Work Addendum" attached as Exhibit "C".

G. "Construction Allowance": \$ _____.

H. "School's Pro Rata Share": 100%.

I. "Term Commencement Date": The date on which Substantial Completion of Landlord's Work is achieved, and delivery of possession of the Premises to School by Landlord occurs. The Term Commencement Date and certain other dates referenced in this Lease will be memorialized by Landlord and School within thirty (30) days after the Term Commencement Date on the "Acknowledgement" attached hereto as Exhibit "D".

J. "Rent Commencement Date": The date which is the earlier to occur of (a) _____(____) days following the Term Commencement Date, or (b) the date School opens for business to the public.

K. "Lease Term": Commences on the Term Commencement Date and continues for _____ (____) years and _____ (____) months after the Term Commencement Date, plus if the Term Commencement Date is not the first day of a calendar month, the Lease Term shall be extended for the number of days remaining in the calendar month in which the Term Commencement Date occurs so that the expiration date of the Lease Term shall be the last day of a calendar month. In no event shall the Lease Term exceed thirty (30) years after the Term Commencement Date.

- L. "Base Rent": Is set forth on "Addendum One" attached hereto. The Base Rent is based on School's Rentable Area. If School's Rentable Area is recalculated pursuant to Section 3.02, the Base Rent shall be recalculated.
- M. "Reimbursable Expenses": "Real Estate Related Taxes" and "Landlord's Insurance" for the Premises. The "Monthly Fixed Reimbursable Expenses" is School's Pro Rata Share of the Reimbursable Expenses, which amount is reflected on Addendum One.
- N. "Prepaid Rent": \$_____ representing Base Rent and Monthly Fixed Reimbursable Expenses due for the _____ full month following the Rent Commencement Date due on the date of the execution of this Lease by School.
- O. "Security Deposit": \$ _____.
- P. "Permitted Use": A school and all related legal uses, including but not limited to evening events, community events, public meetings and community uses. The specific grades of instruction, types of educational programs and community programs to be undertaken by School are listed on attached Exhibit "E" ("Description of Specific Uses").
- Q. Brokers: _____,
representing Landlord ("Landlord's Broker"); and
_____ representing
School ("School's Broker").
- R. "Charter Expiration Date": School's current five (5) year charter expires on _____.
- S. Lease Purchase: The purchase price shall be \$_____ ("Lease Purchase Price"). The Lease Purchase Price shall bear interest at _____% per annum ("Lease Interest Rate") from the Term Commencement Date, amortized over _____ years ("Lease Amortization Period"). Monthly payments of Base Rent shall include the "Lease Principal Payment" and the "Lease Interest Payment" as defined in Addendum "One".
- T. "Title Company": _____.
- U. "Title Commitment": The commitment for a leasehold owner's title policy from the Title Company attached hereto as Exhibit "H".
- V. "Title Policy": The leasehold owner's title policy to be issued to School by Title Company and paid for by Landlord.
- W. "Memorandum": Exhibit "I" attached hereto which is to be filed coincidentally with the execution of this Lease.
- X. Contingencies: (i) Approved Plans (Exhibit "C", Landlord's Work Addendum Section I) not later than _____;

(ii) _____;

(iii) _____;

Y. Amendments:

The General Lease Terms are amended as follows:

(i) _____;

(ii) _____;

(iii) _____;

Z. Addenda/Exhibits:

Addendum "One" Base Rent, Reimbursable Expenses and Lease Purchase Calculations

Addendum "___" _____

Addendum "___" _____

Exhibit "A" Legal Description of Land

Exhibit "B" Diagram of Premises

Exhibit "C" Landlord's Work Addendum

Exhibit "D" Acknowledgment

Exhibit "E" Description of Specific Uses

Exhibit "F" Rules and Regulations

Exhibit "G" SY 2013-2014 Conflict of Interest Questionnaire

Exhibit "H" Title Commitment

Exhibit "I" Memorandum

References in the "General Lease Terms" to the "Specific Lease Provisions" or "SLP" are references to the information set out above. Each term used but not defined in the SLP shall have the meaning set forth in the General Lease Terms. If a conflict exists between the Specific Lease Provisions and the General Lease Terms, the Specific Lease Provisions will control. References to "Paragraphs" are to the Specific Lease Provisions and references to "Articles" or "Sections" are to the General Lease Terms.

**NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE PURCHASE**

PART "B"

GENERAL LEASE TERMS

RECITALS

I. School is a public charter school duly organized and validly existing pursuant to the New Mexico Charter Schools Act (Sections 22-8B-1, et seq. NMSA 1978, as amended) (the "Act"), and School is authorized by the Act to contract with any third party for the lease purchase of a school building and grounds pursuant to the New Mexico Public School Lease Purchase Act (Sections 22-26A-1, et seq. NMSA 1978, as amended) (the "Lease Purchase Act").

II. Landlord is the owner of the Premises.

III. School has determined it is in the best interests of School to lease, with an option to purchase, the Premises from Landlord pursuant to this Lease, and the "Board" has duly authorized entering into this Lease; and Landlord has determined it is in the best interests of Landlord to lease, with an option to purchase, the Premises to School pursuant to this Lease, and Landlord has duly authorized entering into this Lease.

IV. The terms and provisions of Part "A", Specific Lease Provisions (SLP), which contain the variable provisions of this Lease, are incorporated herein.

V. This Part "B", General Lease Terms, shall not be modified, except by language in Part "A", Special Lease Provisions, and amendments, addenda and exhibits referenced therein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, it is agreed as follows:

ARTICLE I

DEFINITIONS

A. "Acknowledgment" means Exhibit "D".

B. "Act" is defined in Recitals I of the GLT.

C. "Actual Prior Year Reimbursable Expenses" is defined in Section 4.02 (a).

D. "Additional Rent" means the Monthly Fixed Reimbursable Expenses and all other amounts due by School under the terms of this Lease, except Base Rent.

E. "Alterations by School" is defined in Article IX.

F. "Approved Plans" is defined in Exhibit "C" Landlord's Work Addendum, Section

I.

- G. "Base Rent" is defined in Paragraph L of the SLP.
- H. "Board" means the governing council of School.
- I. "Building(s)" means the building(s) within the Premises.
- J. "Building Area" means the square footage of the Building(s) measured to and from the exterior or outside of perimeter walls and to and from the centerline of party walls.
- K. "Business Day" means any day other than a Saturday, a Sunday or a day on which federal banks in Albuquerque, New Mexico are authorized by law to remain closed.
- L. "Change Order" is defined in Landlord's Work Addendum, Section V.
- M. "Charter Expiration Date" is defined in Paragraph R of the SLP.
- N. "Construction Allowance" is defined in Paragraph G of the SLP.
- O. "Contractor" is defined in Landlord's Work Addendum, Section II.
- P. "Conveyance Deed" is defined in Section 5.06.
- Q. "Description of Specific Uses" means Exhibit "E".
- R. "Educational Occupancy Standards" means the requirements of the Act, approval of the NMPSFA, the "E" Occupancy Certificate of the New Mexico Construction Industries Department, and all other Requirements of Law related to the use and occupancy of the Premises for a school.
- S. "Effective Date" is the date the last of Landlord and School fully execute this Lease.
- T. "Estimated Actual Expenses" is defined in Section 4.02 (c).
- U. "Event of Default" is defined in Section 16.01 (a).
- V. "Event of Nonappropriation" is defined in Section 5.02.
- W. "Final Lease Payment" is defined in
- X. "Final Plans" is defined in Landlord's Work Addendum, Section I.
- Y. "Fiscal Year" means School's fiscal year, which begins on July 1 of each year and ends on June 30 of the following year.
- Z. "Force Majeure" shall mean any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, terrorism, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes (except financial) beyond the reasonable control of the party obligated to perform, shall excuse the performance by that party for a period equal to the prevention, delay or stoppage; provided the party prevented, delayed or stopped shall have given the other party written notice thereof within thirty (30) days of such event causing the prevention, delay or stoppage.

AA. "GLT" is the General Lease Terms.

BB. "Gross Square Feet" is the total of all space in the Building(s) that includes the Net Square Feet, plus all other non-assignable spaces measured to the outside of exterior walls pursuant to the New Mexico Public School Adequacy Planning Guide.

CC. "Improvements" means the Building(s), site improvements, equipment and fixtures constituting real property located in, on or under the Land, as same may be removed, altered or otherwise renovated pursuant to the terms of this Lease.

DD. "Land" is defined in Paragraph E of the SLP.

EE. "Landlord" is defined in Paragraph A of the SLP.

FF. "Landlord's Broker" is defined in Paragraph Q of the SLP.

GG. "Landlord's Insurance" is defined in Section 12.01.

HH. "Landlord's Work" is defined in Paragraph F of the SLP.

II. "Landlord's Work Addendum" means Exhibit "C".

JJ. "Lease" is this Charter School Lease Purchase, and it includes all amendments or supplements hereto.

KK. "Lease Amortization Period" is defined in Paragraph S of the SLP.

LL. "Lease Interest Payment" is defined in Addendum "One".

MM. "Lease Interest Rate" is defined in Paragraph S of the SLP.

NN. "Lease Principal Payment" is defined in Addendum "One".

OO. "Lease Purchase Act" is defined in Recital I of the General Lease Provisions.

PP. "Lease Purchase Price" is defined in Paragraph S of the SLP.

QQ. "Lease Term" is defined in Paragraph K of the SLP..

RR. "Memorandum" means Exhibit "I".

SS. "Modified Gross Lease" is defined in Section 2.02 (c).

TT. "Monthly Fixed Reimbursable Expenses" is defined in Paragraph M of the SLP.

UU. "Net Proceeds" is defined as: (1) the gross proceeds received: (a) from any insurance, performance bond or condemnation award or in lieu payment regarding the Premises, or (b) as a consequence of any default or breach of warranty under any contract relating to the Premises, minus (2) expenses incurred in the collection of such gross proceeds or awards.

VV. "Net Square Feet" is the interior usable space of the Building(s) required to meet or exceed the general or specific programmatic needs pursuant to the New Mexico Public School Adequacy Planning Guide.

WW. "NM Adequacy Standards" means Sections 6.27.30.1, et seq, NMAC.

XX. "NMPSFA" means the New Mexico Public Schools Facilities Authority.

YY. "NMPSFA Requirements" is defined in Landlord's Work Addendum, Schedule I.

ZZ. "Option Notice" is defined in Section 5.06.

AAA. "Overpayment of Reimbursable Expenses" is defined in Section 4.02 (b).

BBB. "PEC" is the Public Education Commission of the State of New Mexico.

CCC. "PED" is the Public Education Department of the State of New Mexico.

DDD. "Permitted Encumbrances" means the easements, restrictions and encumbrances set forth on Exhibit "H" and those encumbrances approved by School.

EEE. "Permitted Use" is defined in Paragraph R of the SLP.

FFF. "Person" means any natural person, firm, corporation, partnership, limited liability company, State or local charter school, political subdivision of any state, other public body or other organization or association.

GGG. "Preliminary Plans" is defined in Landlord's Work Addendum, Section I.

HHH. "Premises" is defined in Paragraph F of the SLP.

III. "Prepaid Rent" is defined in Paragraph N of the SLP.

JJJ. "Prior Year Reconciliation" is defined in Section 4.02 (a).

KKK. "Punch List" is defined in Landlord's Work Addendum Section III.

LLL. "Real Estate Related Taxes" is defined in Article XI.

MMM. "Reference Date Only" is the date reflected in the first paragraph of this Lease.

NNN. "Reimbursable Expenses" is defined in Paragraph M of the SLP.

OOO. "Rent Commencement Date" is defined in Paragraph J of the SLP.

PPP. "Requirements of Law" means any federal, State or local statute, ordinance, rule or regulation, any judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any permit or any other binding determination of any governmental authority relating to the ownership or operation of property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety issues.

QQQ. "Rules and Regulations" means Exhibit "F".

RRR. "School" is defined in the Paragraph C of the SLP.

SSS. "School's Broker is defined in Paragraph Q of the SLP.

TTT. "School Delay" is defined in Landlord's Work Addendum, Section VI.

UUU. "School Lien" is defined in Article IX.

VVV. "School's Pro Rata Share is defined in Paragraph H of the SLP.

WWW. "School's Rentable Area" is defined in Paragraph E of the SLP.

XXX. "School's Work" is defined in Landlord's Work Addendum, Section IV.

YYY. "Security Deposit" is defined in Paragraph O of the SLP.

ZZZ. "Shortfall in Reimbursable Expenses" is defined in Section 4.02 (b).

AAAA. "SLP" is the Specific Lease Provisions.

BBBB. "State" means the State of New Mexico.

CCCC. "Sublease" is defined in Section 14.02.

DDDD. "Substantial Completion" is defined in Landlord's Work Addendum, Section III.

EEEE. "Tare" is the Gross Square Feet of a Building(s) less the Net Square Feet therein which results in non-assignable spaces pursuant to the New Mexico Public School Adequacy Planning Guide.

FFFF. "Term Commencement Date" is defined in Paragraph J of the SLP.

GGGG. "Title Commitment" means Exhibit "H".

HHHH. "Title Company" is defined in Paragraph T of the SLP.

IIII. "Title Policy" is defined in Paragraph V of the SLP.

JJJJ. "Tort Claims Act" is the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended.

ARTICLE II

REPRESENTATIONS, COVENANTS, WARRANTIES AND ACKNOWLEDGEMENTS

Section 2.01. Representations, Covenants and Warranties by Landlord. Landlord represents, covenants and warrants that:

(a) Landlord (i) is in good standing under the laws of the State, (ii) is duly qualified to do business in the State, (iii) is the owner of the Premises, and (iv) is authorized, by its governing body and applicable law, to own the Premises, to lease the Premises to School, to sell the Premises to School, and to execute, deliver and perform its obligations under this Lease.

(b) Landlord warrants that as of the Term Commencement Date, the Premises complies with or will comply with all Requirements of Law, including applicable Educational Occupancy Standards pertaining to School's Permitted Use. Landlord further warrants that Landlord's Work has been or will be completed in accordance with the Approved Plans.

(c) The Premises are free of any hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601, et seq., any applicable State law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq., any applicable State law or regulations promulgated under either), special waste, petroleum or petroleum derived substances, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Premises in violation of any Requirements of Law. Landlord warrants that the Premises comply with any and all federal and State environmental regulations.

Section 2.02. Landlord Acknowledgment. Landlord acknowledges and recognizes that:

(a) This Lease will be terminated upon the occurrence of an Event of Nonappropriation, and that a failure by School to appropriate funds in a manner that results in an Event of Nonappropriation is solely within the discretion of the Board; and

(b) This Lease will be terminated upon nonrenewal or revocation of School's charter.

(c) This is a "Modified Gross Lease", meaning, as to operating costs for the Premises, including all maintenance, repairs and replacements, ad valorem taxes, insurance and utilities, except for the Base Rent, Monthly Fixed Reimbursable Expenses, utilities separately metered to School, janitorial services for the Premises, personal property taxes of School and specific obligations related to indemnity by School and tortious conduct of School, School shall only be liable for increases in Reimbursable Expenses after the initial Fiscal Year of the Lease Term pursuant to Article VIII.

Section 2.03. Representations, Covenants and Warranties by School. School represents, covenants and warrants that:

(a) School is a public charter school authorized by the PEC or local school board, and duly organized and validly existing under the laws of the State.

(b) School is authorized under Section 22-8B-4 NMSA 1978, as amended, to lease the Premises from Landlord and to execute, deliver and perform its obligations under this Lease.

(c) The Lease Term will expire after the Charter Expiration Date.

(d) The Base Rent payable in each Fiscal Year during the Lease Term is not more than the fair value of the use of the Premises during such Fiscal Year. The Base Rent and Monthly Fixed Reimbursable Expenses payable in each Fiscal Year during the Lease Term do not exceed a reasonable amount so as to place School under an economic compulsion (i) to continue this Lease beyond any Fiscal Year; or (ii) not to exercise its right to terminate this Lease at any time through an Event of Nonappropriation. In making the representations, covenants and warranties set forth above in this subsection, School has given due consideration to the Premises, the purposes for which the Premises will be used by School, the benefits to School from the use of the Premises, and the terms of this Lease governing the use of the Premises.

(e) School is not aware of any current violation of any Requirements of Law relating to the Premises.

(f) School has appropriated sufficient monies in its operating budget to pay the Base Rent and Monthly Fixed Reimbursable Expenses estimated to be payable in the current Fiscal Year, upon commencement of the Lease Term, and such monies will be encumbered to pay such Base Rent and Monthly Fixed Reimbursable Expenses.

(g) The Lease Purchase Price is the fair value of the Premises as of the Term Commencement Date.

ARTICLE III

DEMISE OF PREMISES; LEASE TERM; TITLE POLICY

Section 3.01. Demise of Premises. Landlord hereby leases to School and School leases from Landlord, on the terms and conditions set forth herein, the Premises for the Lease Term, subject to the Permitted Encumbrances.

Section 3.02 Measurement of the Premises. On or before the Term Commencement Date, Landlord shall have a licensed architect certify the square footages set forth in Part "A", Special Lease Provisions (SLP) Paragraph E, and any adjustments thereto shall be reflected in the Acknowledgment.

Section 3.03. Lease Term. The Lease Term shall commence on the Term Commencement Date and shall expire on the earlier of any of the following events:

- (i) the last day of the month in which the final Base Rent payment is scheduled to be paid;
- (ii) June 30 of any Fiscal Year during which an Event of Nonappropriation or nonrenewal/revocation of School's charter has occurred;
- (iii) termination of this Lease following an Event of Default in accordance with Article XVI; or
- (iv) the final effective date of any revocation of School's charter by the applicable authorities.

Section 3.04. Intentionally Omitted.

Section 3.05. Effect of Termination of Lease Term. Upon termination of the Lease Term:

(a) All unaccrued obligations of School hereunder shall terminate, but all obligations of School that have accrued hereunder prior to such termination shall continue until they are discharged in full; and

(b) If the termination occurs because of the occurrence of an Event of Default, School's right to possession of the Premises hereunder shall terminate and (i) School shall, within ninety (90) days, vacate the Premises; and (ii) if and to the extent the Board has appropriated funds for payment of Base Rent, Monthly Fixed Reimbursable Expenses and other Additional Rent payable during, or with respect to School's use of the Premises during the period between termination of the Lease Term and the

date the Premises and Improvements are vacated, School shall pay such Base Rent, Monthly Fixed Reimbursable Expenses and other Additional Rent to Landlord.

(c) If the termination occurs because of the occurrence of an Event of Nonappropriation or the nonrenewal/revocation of School's charter, the termination shall be effective as of the last date of the then current Fiscal Year or upon the effective date of the revocation of School's charter in the case of revocation.

Section 3.06 Title Policy. Not later than the Term Commencement Date, Landlord shall, at Landlord's sole cost and expense, provide School with the Title Policy, subject only to the exceptions set forth in the Title Commitment and those reasonably acceptable to School.

ARTICLE IV

RENT; SECURITY DEPOSIT

Section 4.01 Base Rent; Reimbursable Expenses. From and after the Rent Commencement Date, School shall pay the Base Rent and Monthly Fixed Reimbursable Expenses in equal monthly installments, on or before the first day of each month, without demand. Should the Rent Commencement Date occur on a day other than the first day of a calendar month, then the monthly installment of Base Rent and Monthly Fixed Reimbursable Expenses for the first fractional month shall be equal to 1/30th of the monthly installment of Base Rent and Monthly Fixed Reimbursable Expenses for each day from the Rent Commencement Date to the end of the partial month.

Section 4.02 Reimbursable Expenses.

(a) On or before August 1st of each year after the first Fiscal Year of the Lease Term, Landlord shall deliver to School a reconciliation for the prior Fiscal Year ("Prior Year Reconciliation") of the Monthly Fixed Reimbursable Expenses paid by School, and the actual amount of School's Pro Rata Share of the Reimbursable Expenses paid by Landlord ("Actual Prior Year Reimbursable Expenses").

(b) If the Prior Year Reconciliation reveals that the Actual Prior Year Reimbursable Expenses exceeds the Monthly Fixed Reimbursable Expenses paid by School for such preceding Fiscal Year ("Shortfall in Reimbursable Expenses"), School shall pay Landlord the difference in a lump sum within thirty (30) days of receipt of the Prior Year Reconciliation, if adequate funds have been appropriated to pay said amount. If the Prior Year Reconciliation reveals that the Actual Prior Year Reimbursable Expenses are less than the Monthly Fixed Reimbursable Expenses paid by School for such preceding Fiscal Year ("Overpayment of Reimbursable Expenses"), Landlord shall credit such overpayment toward the Base Rent and Monthly Fixed Reimbursable Expenses next coming due under this Lease.

(c) To facilitate budgeting for a Shortfall in Reimbursable Expenses, on or before March 1st of each year, Landlord shall deliver to School an estimate of School's Pro Rata Share of the projected total Reimbursable Expenses through June 30 of the current Fiscal Year based on nine (9) months of data, as well as any Shortfall in Reimbursable Expenses for the prior Fiscal Year, if applicable ("Estimated Actual Expenses").

(d) In the event the Lease Term has expired and School has vacated the Premises, at such time as the final determination has been made regarding the actual amount of School's Pro Rata Share of Reimbursable Expenses for the Fiscal Year in which this Lease terminated (which determination

shall be timely made), School shall, within thirty (30) days following receipt of the Prior Year Reconciliation for such final Fiscal Year, pay any amounts due as a result of the actual School's Pro Rata Share of Reimbursable Expenses for such Fiscal Year exceeding the Monthly Fixed Reimbursable Expenses paid with respect thereto. Conversely, any overpayment made in the event the actual amount of School's Pro Rata Share of Reimbursable Expenses for the final Fiscal Year are less than Monthly Fixed Reimbursable Expenses paid with respect thereto, shall be remitted to School by Landlord concurrently with Landlord's delivery of the Prior Year Reconciliation for the final Fiscal Year.

(e) PED, NMPSFA, School and its duly authorized representatives shall have the right to audit and copy the records of Landlord related to School's Pro Rata Share of Reimbursable Expenses with respect to any Fiscal Year within twelve (12) months following receipt of the applicable Prior Year Reconciliation for such Fiscal Year, upon not less than ten (10) days' prior written notice to Landlord, during normal business hours at Landlord's business offices. In the event School, in good faith, disputes the accuracy of any Prior Year Reconciliation on the basis of any such audit, such dispute must be alleged in reasonable detail in written notice to Landlord within one hundred twenty (120) days following School's completion of such audit. If the Actual Prior Year Reimbursable Expenses are determined to have been overstated by Landlord for any Fiscal Year, Landlord shall refund the Overpayment of Reimbursable Expenses to School within thirty (30) days of Landlord's receipt of the audit, and pay the reasonable costs of School's audit.

Section 4.03 Security Deposit. School shall deposit with Landlord, coincidentally with the execution of this Lease, the Security Deposit for the full and timely performance and observance of any and all of the terms and conditions of this Lease on School's part to be performed and observed. Landlord in its discretion and from time to time and at any time shall be entitled to apply any portion or all of the Security Deposit to reimbursement or satisfaction of any and all defaults by School of its obligations under this Lease and/or any and all damages, losses, attorneys' fees, costs or expenses of Landlord resulting therefrom, including those not remedied by School within the period, if any, expressly provided for in this Lease for such remedial action. Upon Landlord giving School notice of any such application of the Security Deposit, School shall, within thirty (30) days thereafter, pay to Landlord a sum sufficient to restore the amount of such Security Deposit to the amount set forth in the SLP. Within thirty (30) days following expiration of the Lease Term (except as otherwise provided by law), Landlord shall refund to School any balance of the Security Deposit remaining on deposit with Landlord which has not been applied to reimbursement or satisfaction of the foregoing items, and Landlord shall have no further liability with respect to such Security Deposit. Interest shall not be payable or paid on the Security Deposit or any balance thereof, unless otherwise required by law. Landlord shall not be required to segregate the Security Deposit in a separate account.

ARTICLE V

APPROPRIATION AND NONAPPROPRIATION OF FUNDS; PURCHASE OF PREMISES

Section 5.01. Appropriation. The officer of School who is responsible for formulating budget proposals with respect to payments of Base Rent and Monthly Fixed Reimbursable Expenses is hereby directed (i) to estimate any Shortfall in Reimbursable Expenses or Additional Rent payable in the next ensuing Fiscal Year prior the submission of each annual budget proposal to the Board during the Lease Term and (ii) to include in each annual budget proposal submitted to the Board during the Lease Term the entire amount of Base Rent and Monthly Fixed Reimbursable Expenses scheduled to be paid, and the estimated Shortfall in Reimbursable Expenses and other Additional Rent to be payable during the next ensuing Fiscal Year; it being the intention of School that any decision to continue or to terminate this Lease shall be made solely by the Board, in its sole discretion, and not by any other official of School.

Section 5.02. Event of Nonappropriation. An "Event of Nonappropriation" shall be deemed to have occurred:

(a) On June 30 of any Fiscal Year if the State Legislature or School has, on such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rent and all Monthly Fixed Reimbursable Expenses scheduled to be paid, and any Shortfall in Reimbursable Expenses and other estimated Additional Rent to be payable in the next ensuing Fiscal Year; or

(b) If:

(i) Damage to, a material defect in, or loss of title to the Premises pursuant Article XIII, Section (a) has occurred, and

(ii) the Net Proceeds received as a consequence of such event are not sufficient to repair, restore, modify, improve or replace the Premises in accordance with Article XIII, Section (c), and

(iii) School has not appropriated amounts sufficient to proceed under Article XIII, Section (c) (ii) by June 30 of the Fiscal Year in which such event occurred or by June 30 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Premises becomes apparent, on June 30 of the Fiscal Year in which such event occurred or on June 30 of any subsequent Fiscal Year in which such insufficiency became apparent, as applicable.

Section 5.03. Waiver by Landlord. Notwithstanding Section 5.02, Landlord may waive any such failure to appropriate under said Section 5.02 which is cured by School within a reasonable period of time.

Section 5.04. Exercise of Right.

(a) In the event School is determined to exercise its annual right to terminate this Lease effective on June 30 of any Fiscal Year, School shall give written notice to such effect to Landlord not later than April 1 of such Fiscal Year; provided, however, that a failure to give such notice shall not (i) constitute an Event of Default, (ii) prevent School from terminating this Lease or (iii) result in any liability on the part of School.

(b) School shall furnish Landlord with copies of all appropriation measures relating to Base Rent and Additional Rent promptly upon the adoption thereof by the Board, but not later than thirty (30) days following the adoption thereof by the Board; provided however, that a failure to furnish copies of such measures shall not (i) constitute an Event of Default, (ii) prevent School from terminating this Lease, or (iii) result in any liability on the part of School.

(c) Subject to the provisions of Section 5.05, School specifically agrees that it shall not declare or cause to be declared by School, the Board or any other officer of School with such authority, an Event of Nonappropriation unless the State Legislature eliminates or discontinues funding for lease reimbursement payments to charter schools or decreases said funding below an amount which is sufficient for School to pay the Base Rent and Additional Rent from the lease reimbursement funding source.

Section 5.05. Limitations on Obligations of School.

(a) Payment of Base Rent and Additional Rent by School shall constitute currently appropriated expenditures of School and may be paid from any legally available funds.

(b) School's obligations under this Lease shall be subject to School's annual right to terminate this Lease upon the occurrence of an Event of Nonappropriation or upon nonrenewal or revocation of School's charter.

(c) No provision of this Lease shall be construed or interpreted (i) to directly or indirectly obligate School to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (ii) as creating a debt or multiple Fiscal Year direct or indirect debt or other financial obligation whatsoever of School within the meaning of Article IX, Section 11 of the New Mexico Constitution or any other constitutional or statutory limitation or provision; (iii) as a delegation of powers by School; (iv) as a loan or pledge of the credit or faith of School or as creating any responsibility by School for any debt or liability of any Person within the meaning of Article IX, Section 11 of the New Mexico Constitution; or (v) as a donation or grant by School to, or in aid of, any Person within the meaning of Article IX, Section 14 of the New Mexico Constitution.

(d) No provision of this Lease shall be construed to pledge or to create a lien on any class or source of moneys of School, nor shall any provision of this Lease restrict the future issuance of any obligations of School, payable from any class or source of monies of School.

(e) Notwithstanding any other provision of this Lease, School shall be under no obligation to pay Base Rent, Monthly Fixed Reimbursable Expenses or other Additional Rent or any other amount(s) on any portions of the Premises that have not been certified pursuant to the Educational Occupancy Standards, and all payments by School contemplated under this Lease are expressly conditioned upon the Premises satisfying the Educational Occupancy Standards.

(f) Notwithstanding any other provisions of this Lease, School shall be under no obligation to purchase the Premises.

Section 5.06 Purchase of Premises. If, and only if, School elects to purchase the Premises, School shall provide not less than ninety (90) days prior written notice to Landlord ("Option Notice"). In the Option Notice School shall establish the closing date at the Title Company. At the closing, School shall pay the "Final Lease Payment" (the balance due on the Lease Purchase Price, including all interest as reflected on the Addendum "One"), if not previously paid, plus or minus prorations. Normal prorations shall apply to the date of closing, and closing costs shall be split as is typical for Albuquerque, New Mexico. Landlord shall convey title to the Premises to School by warranty deed ("Conveyance Deed"), subject only to the Permitted Encumbrances. Landlord shall assign, convey or transfer all of Landlord's rights and title to any contracts, warranties, leases and other personal property by bill of sale, assignment or other appropriate document. The parties agree to execute any and all documents reasonably required by the Title Company to complete the transaction.

ARTICLE VI

USE; QUIET ENJOYMENT

Section 6.01. Use. The Premises shall only be used for the Permitted Use, without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. School shall comply

with all Requirements of Law related to the Premises and its use thereof, and School shall not take any action that would constitute a nuisance, nor permit any unlawful practice to be carried on or committed at the Premises.

Section 6.02. Quiet Enjoyment. Landlord covenants that School, on paying the Base Rent and Additional Rent, and performing the covenants of this Lease shall and may peaceably and quietly have, hold and enjoy the Premises for the Lease Term.

ARTICLE VII

LANDLORD WORK; DELIVERY OF POSSESSION; CONDITION OF PREMISES

Section 7.01. Construction of Landlord's Work. Landlord shall cause Landlord's Work to be constructed in accordance with Landlord's Work Addendum. School shall cooperate at all stages to promote the efficient and expeditious completion of Landlord's Work.

Section 7.02. Delivery of Possession.

(a) "Delivery of possession" of the Premises shall be deemed to occur on the date of Substantial Completion of Landlord's Work and Landlord notification of School in writing that School may take possession. Delivery of possession shall not occur later than the Term Commencement Date.

(b) If Landlord does not deliver possession of the Premises to School on or before the Term Commencement Date, unless such failure is due to an Event of Default by School, or Force Majeure, Landlord shall be subject to liability for such failure, and the Term Commencement Date shall be extended one (1) day for each day of delay, but the expiration date of the Lease Term shall not be extended. Further, since the actual damages which School would sustain due to such a delay would be difficult to calculate, the parties agree that liquidated damages equal to two (2) days of Base Rent abatement for each day of delay would be a reasonable approximation of such damages. Provided further, School may terminate this Lease if delivery of possession of the Premises does not occur within thirty (30) days of the Term Commencement Date by providing written notice thereof to Landlord not later than thirty-five (35) days after the Term Commencement Date. In such event, all Prepaid Rent, the Security Deposit and any payments for Change Orders shall be returned to School and the parties shall have no further obligations under the terms of this Lease, except for those matters which specifically survive termination.

(c) Landlord warrants that as of the Term Commencement Date, the Premises comply or will comply with all Requirements of Law, including applicable Educational Occupancy Standards.

Section 7.03 Early Possession. If School enters into possession of the Premises before the Term Commencement Date pursuant to Exhibit "C", Landlord's Work Addendum, such possession shall be subject to School providing Landlord evidence that all insurance required of School in Article XII has been obtained, and such possession shall be subject to the provisions of this Lease, except that the payment of Base Rent and Monthly Fixed Reimbursable Expenses shall not be due prior to the Rent Commencement Date.

ARTICLE VIII

REPAIRS AND MAINTENANCE; LIENS

Section 8.01. Repairs and Maintenance by School. The parties acknowledge and agree that School shall not be responsible for any maintenance, repair or replacement obligations whatsoever with regard to the Premises, except: (a) for janitorial services, (b) for maintenance, repair or replacement obligations related to School's trade fixtures and personal property, (c) for maintenance, repair or replacement obligations related to Alterations by School that are not performed pursuant to Article IX, and (d) to the extent said maintenance, repair or replacement obligations arise as a result of the tortious conduct of School, its employees, students, agents or representatives, or are subject to the indemnity obligations of School provided for in this Lease.

Section 8.02. Repairs and Maintenance by Landlord.

(a) During the Lease Term, Landlord shall be responsible for all maintenance, repair and replacement obligations related to the Premises, except as otherwise provided for in Section 8.01, and damage due to fire or casualty, to the extent this Lease requires Landlord to insure against such fire or casualty. All repairs and maintenance to be made by Landlord shall be at Landlord's risk and expense.

(b) If at any time during the Lease Term, Requirements of Law shall mandate that certain renovations or Improvements be made to the Premises, Landlord shall bear the cost of making the renovations and Improvements without reimbursement from School.

(c) If, within thirty (30) days after written notice by School to Landlord (or such shorter time as may be required in an emergency or pursuant to Requirements of Law), Landlord fails to provide any of the maintenance, repairs or replacements required of Landlord, and/or fails to complete the same with reasonable diligence, then School may, at its option, provide such maintenance, repairs or replacements and the costs thereof shall be deducted from succeeding Base Rent and Monthly Fixed Reimbursable Expenses payable hereunder.

Section 8.03. Liens and Encumbrances.

(a) School shall keep the Premises free and clear of all mechanics' liens and other liens or encumbrances on account of work done for School or Persons claiming under it. If any such lien shall at any time be filed against the Premises, School shall cause the same to be discharged within sixty (60) days after the recording thereof; provided, however, in the event School is contesting such lien in good faith, School shall have the right to discharge such lien by posting a bond with the applicable State court. If School shall fail to cause the same to be discharged within said sixty (60) day period, then, in addition to any other right or remedy of Landlord resulting from School's said default, Landlord may, but shall not be obligated to, following seven (7) days written notice to School, discharge the same either by paying the amount claimed to be due, procuring the discharge of such lien by giving security, or in such other manner as is, or may be, prescribed by law. School shall repay to Landlord, as Additional Rent, on demand, all sums disbursed or deposited by Landlord pursuant to the provisions of this Section 8.03 (a), including all costs, expenses and attorneys' fees incurred by Landlord in connection therewith. Nothing contained herein shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanics' lien or other lien law.

(b) Should any claim of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

(c) Landlord shall have the right to post and keep posted upon the Premises notices of non-responsibility or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. School shall, before the commencement of any work which might

result in any such lien, give Landlord written notice of its intention to do so in sufficient time to enable the posting of such notices.

ARTICLE IX

ALTERATIONS BY SCHOOL

School shall have the right to make non-structural changes and Improvements to the then existing Premises, as School shall desire ("Alterations by School"). Any Alterations by School that are structural, affect plumbing, electrical, or other Building systems, or impact the square footage of the then existing Premises shall be subject to Landlord's approval, in its reasonable discretion. For both structural and non-structural Alterations by School, School shall (a) submit plans of all changes to Landlord at least thirty (30) days in advance of the proposed construction date, (b) provide Landlord with evidence of School's financial ability to pay for such changes, (c) complete all such construction in a good and workmanlike manner and in material compliance with all Requirements of Law, at School's sole expense, (d) provide for all contractors and subcontractors to have "builder's risk" and workers compensation insurance before commencing construction, and (e) the Alterations by School (whether structural or non-structural) shall not reduce the fair market value of the Premises, as reasonably determined by Landlord. Subject to the Tort Claims Act, School agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from Alterations by School.

Notwithstanding the foregoing, if any State or other governmental funds are used in excess of the Base Rent payments to construct or acquire Improvements, the cost of the Improvements shall constitute a lien on the Premises in favor of the School ("School Lien") and then, if the Lease is terminated prior to Final Lease Payment and transfer of title to the School:

- (a) the School may foreclose on the School Lien in the same manner as mortgages, with a one (1) month right of redemption in lieu of nine (9) months; or
- (b) the current market value of the Premises at the time of the termination of this Lease, as determined by an independent appraisal certified by the New Mexico Taxation and Revenue Department, in excess of the outstanding principal due under this Lease shall be paid to the School.

ARTICLE X

UTILITIES

School, at School's sole cost, shall before delinquency pay all deposits and bills for utilities delivered to the Premises during the Lease Term (including, without limitation, gas, electric, water, sewer, telephone, internet, TV and trash removal). Landlord shall not be liable in any way for any payment, deposit or other charges for utilities delivered to the Premises during the Lease Term. Landlord shall not be responsible for any problems whatsoever with respect to the quality, quantity or interruption of such services. If School fails to pay when due any charges referred to in this Article, Landlord may, but shall not be obligated to, pay the bills for utilities and School shall reimburse Landlord, as Additional Rent, for any amount so paid by Landlord.

ARTICLE XI

TAXES

Pursuant to Section 22-26A-5.1B of the Lease Purchase Act, the Premises are to be considered "public property". However, to the extent the Premises are not tax exempt, beginning on the Term Commencement Date, School shall pay to Landlord as Monthly Fixed Reimbursable Expenses, Schools Pro Rata Share of all real property taxes and assessments (including ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents and any tax or charge for governmental services such as street maintenance or fire protection) payable with respect to the Premises and any Improvements constructed thereon, and any other tax or charge that is in lieu of or a substitute for any of such taxes or charges (such as gross receipts taxes) which are levied or assessed against the Premises, and taxes on the personal property and equipment located in or on the Premises (collectively "Real Estate Related Taxes").

School may contest an assessment or tax bill related to the Real Estate Related Taxes by providing written notice to Landlord. Any such contest shall be at School's sole cost and expense; provided further that School shall be required to pay any taxes or post a bond to ensure no penalties or interest are assessed as a result of any such contest.

School shall also pay, prior to delinquency, all taxes, assessments, license fees and public charges or levies, assessed or imposed upon School's business operations, trade fixtures, leasehold improvements, equipment, merchandise and other personal property in, on or upon the Premises.

ARTICLE XII

INSURANCE

Section 12.01. Landlord's Insurance. Landlord agrees that on or before the Term Commencement Date, Landlord will obtain and maintain during the Lease Term extended coverage property insurance (or its equivalent) covering the Premises from an insurance company authorized to do business in New Mexico, in an amount equal to at least one hundred percent (100%) of the full replacement cost thereof, excluding foundation and excavation costs, and commercial general liability insurance with coverage limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate ("Landlord's Insurance"). School will reimburse Landlord for School's Pro Rata Share of Landlord's Insurance as Monthly Fixed Reimbursable Expenses.

Section 12.02. School's Insurance. Prior to the earlier of the Term Commencement Date or School taking possession of the Premises, and until the expiration of the Lease Term, or earlier termination of his Lease, School shall, at its own expense, obtain and maintain the following policies of insurance:

(a) Commercial comprehensive general liability and automobile liability insurance against claims arising in, on or about the Premises, with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate; and

(b) Such other forms of insurance as are customary for a school or are mandated by Requirements of Law, including, without limitation, any legally required workers compensation insurance.

Section 12.03. Insurance Policies.

(a) The insurance policies required in Sections 12.01 and 12.02 shall meet the following conditions: (i) any insurance policy may have a deductible clause in an amount not to exceed \$20,000; (ii) each insurance policy shall be so written or endorsed as to make losses, if any, payable to

School and Landlord, as their respective interests may appear; (iii) each insurance policy shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of School or Landlord without first giving written notice thereof to School and Landlord at least thirty (30) days in advance of such cancellation or modification; (iv) each insurance policy, or each certificate evidencing such policy, shall be deposited with Landlord upon request; (v) full payment of insurance proceeds under any insurance policy up to the dollar limits required in connection with damage to the Premises shall, under no circumstances, be contingent on the degree of damage sustained at other property owned or leased by School; and (vi) to the extent School can control the terms of each insurance policy, each insurance policy shall explicitly waive any coinsurance penalty.

School may, in its discretion, provide any of the insurance required by Section 12.02 under blanket insurance policies that insure not only the risks required to be insured hereunder but also other similar risks.

(b) The parties acknowledge that School is required to maintain insurance coverage pursuant to Section 6.20.2.20 NMAC.

Section 12.03. Waiver of Subrogation. Landlord and School each waive any and every claim which arises or may arise in its favor against the other party hereto and the other party's officers, directors, and employees for any and all loss of or damage to property REGARDLESS OF WHETHER ANY OF SUCH PARTIES' NEGLIGENCE OR FAULT OR OTHER TORTIOUS CONDUCT CONTRIBUTED IN WHOLE OR IN PART TO SUCH CLAIM OR WHETHER SUCH PARTY WOULD BE STRICTLY LIABLE UNDER APPLICABLE LAW, to the extent (but only to the extent) that the waiving party who suffers such loss or damage is actually compensated by insurance or would be compensated by the insurance policies contemplated in this paragraph if such policies were maintained as required hereby. Each party agrees to have such insurance policies properly endorsed so as to make them valid notwithstanding this waiver, if such endorsement is required to prevent a loss of insurance.

ARTICLE XIII

DAMAGE AND DESTRUCTION; CONDEMNATION; LOSS OF TITLE

(a) If (i) the Premises (or any portion thereof) is destroyed or damaged by fire or other insured casualty, (ii) title to, or the temporary or permanent use of, the Premises (or any portion thereof) or the interest of School or Landlord in the Premises (or any portion thereof), is taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, (iii) a breach of warranty or any material defect with respect to the Premises (or any portion thereof) becomes apparent or (iv) title to or the use of the Premises (or any portion thereof) is lost by reason of a defect in the title thereto, then, the Net Proceeds of any insurance, performance bond or condemnation award or the Net Proceeds received as a consequence of any default or breach of warranty under any contract relating to the Premises shall be deposited into a special trust fund held by Landlord and School, as their interests may appear. Base Rent and Monthly Fixed Reimbursable Expenses shall abate during such period of time, as to the Premises or portion thereof, that do not meet the Educational Occupancy Standards.

If the Premises, or substantial portions thereof are destroyed or substantially damaged so as to substantially impair School's uses for educational purposes, and the destruction or damage to the Premises cannot be substantially restored within ninety (90) days from the time of such damage or destruction, then School or Landlord shall have the right to terminate this Lease.

(b) Subject to subsection (a) of this Article, if the costs of the repair, restoration,

modification, improvement or replacement of the Premises following an event described in subsection (a) of this Article are equal to or less than the Net Proceeds available, such Net Proceeds shall be used promptly to repair, restore, modify, improve or replace the Premises (or portion thereof) and any excess shall be delivered to Landlord or School, as applicable.

(c) If the costs of the repair, restoration, modification, improvement or replacement of the Premises following an event described in subsection (a) of this Article are more than the amount of Net Proceeds available, then:

(i) School may elect either:

(A) to direct Landlord to use the Net Proceeds promptly to repair, restore, modify or improve or replace the Premises (or portion thereof) with materials of a value equal to or in excess of the value of the Premises (or applicable portion thereof), and pay (subject to Article V) as Additional Rent the costs thereof in excess of the amount of the Net Proceeds, or

(B) to terminate this Lease.

(ii) If, by June 30 of the Fiscal Year in which the event described in subsection (a) of this Article occurred (or June 30 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Premises becomes apparent), School has not appropriated amounts sufficient to proceed under subsection (c) (i) (A) of this Article, an Event of Nonappropriation shall be deemed to have occurred.

(d) School shall not voluntarily settle or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to default or breach of warranty under any contract relating to the Premises without the written consent of Landlord.

ARTICLE XIV

ASSIGNMENT; SUBLETTING

Section 14.01. Transfer of School's Interest in Lease and Premises. School may assign, transfer or convey School's interest in this Lease and the Premises with Landlord's consent (which consent shall not be unreasonably withheld or delayed), without cost to the school district, to a locally chartered or State-chartered school or to the State or one of its institutions, instrumentalities or other political subdivisions. The assignee shall acquire all rights and benefits of its predecessor in interest under the terms of this Lease.

Section 14.02. Subleasing by School. School may sublease or grant a right to use all or any portion of the Premises for the Permitted Use, with Landlord's approval (which approval shall not be unreasonably withheld or delayed); provided further that School remains fully liable under this Lease, and School shall maintain its direct relationship with Landlord, notwithstanding any such sublease, grant or use ("Sublease").

Section 14.03. Non-waiver. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Any attempted or purported assignment or sublease without Landlord's consent shall constitute an Event of Default.

Section 14.04. No Release. No assignment or subletting, whether with or without Landlord's consent shall relieve School from its covenants and obligations under this Lease and each such assignment or subletting shall state that School shall be jointly and severally liable for the payment and performance of the obligations hereunder.

Section 14.05. By Landlord. In the event of the transfer and assignment by Landlord of its interest in the Premises and this Lease to a Person expressly assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and School agrees to look solely to such successor in interest of Landlord for performance of such obligations. Any Security Deposit given by School to secure performance of School's obligations hereunder may be assigned and transferred by Landlord to such successor in interest and Landlord shall thereby be discharged of any further obligation relating thereto.

ARTICLE XV

COMPLIANCE WITH LAW

School shall at all times operate the Premises, or cause the Premises to be used and operated: (a) in substantial compliance with all Requirements of Law, including the Educational Occupancy Standards; (b) with no use or disposal of hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601, et seq., or any applicable regulations promulgated thereunder), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq., or any applicable regulations promulgated thereunder), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Premises in violation of any Requirements of Laws; (c) with no disposal of any of the items referred to in subsection (b) of this Article on, from, into or out of the Premises in violation of any Requirements of Law; and (d) with no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing depositing, or dispersing of any of the items referred to in subsection (b) of this Article into the indoor or outdoor environment from, into, or out of the Premises, including the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Premises, or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into or out of the Premises in violation of any Requirements of Law.

ARTICLE XVI

DEFAULTS AND REMEDIES

Section 16.01. Events of Default by School Defined.

- (a) Any of the following shall constitute an "Event of Default" under this Lease:
- (i) failure by School to pay any specifically appropriated Base Rent and Monthly Fixed Reimbursable Expenses to Landlord on or before the applicable Base Rent and Monthly Fixed Reimbursable Expenses due date; provided, however, that a failure by School to pay Base Rent and Monthly Fixed Reimbursable Expenses on the applicable Base Rent and Monthly Fixed Reimbursable Expenses due date shall not constitute an Event of Default if such payment is received by Landlord within five (5) days following such Base Rent and Monthly Fixed Reimbursable Expenses due date;
 - (ii) failure by School to pay any other Additional Rent within thirty (30)

days of the receipt of written notice (unless a shorter period is specifically provided for in this Lease) for which funds have been specifically appropriated when due, or if such Additional Rent is payable to a Person other than Landlord, when nonpayment thereof has, or may have, a material adverse effect upon the Premises or the interest of Landlord in the Premises;

(iii) failure by School to vacate the Premises within 90 days following an Event of Nonappropriation in accordance with Section 3.05 (b);

(iv) any sublease, assignment, encumbrance, conveyance or other transfer of the interest of School in all or any portion of this Lease or the Premises in violation of Sections 14.01 and 14.02 or any succession to all or any portion of the interest of School in the Premises in violation of Sections 14.01 and 14.02; or

(v) failure by School to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsections (a) (i), (ii), (iii) or (iv) of this Section 16.01, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied shall be given to School by Landlord; provided, however, that if the failure stated in the notice cannot reasonably be corrected within said thirty (30) day period and corrective action shall be instituted within said thirty (30) day period and diligently pursued until the default is corrected, no Event of Default shall occur.

(b) The provisions of subsection (a) of this Section 16.01 are subject to the following limitations:

(i) School shall be obligated to pay Base Rent and Additional Rent only during the Lease Term, except as otherwise expressly provided in Section 3.05 (b) (ii); and

(ii) if, by reason of Force Majeure, School shall be unable in whole or in part to carry out any agreement on its part herein contained, other than its obligation to pay Base Rent or Additional Rent hereunder, School shall not be deemed in default during the continuance of such inability; provided, however, that School shall, as promptly as legally and reasonably possible, remedy the cause or causes preventing School from carrying out such agreement, except that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of School.

Section 16.02. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, Landlord may take one or any combination of the following remedial steps:

(a) terminate the Lease Term and give notice to School to vacate the Premises, in the manner provided in Section 3.05 (b).

(b) lease its interest in all or any portion of the Premises; and/or

(c) recover from School:

(i) the portion of Base Rent and Additional Rent payable pursuant to Section 3.05 (b) (ii);

(ii) the portion of Base Rent for the then current Fiscal Year that has been specifically appropriated by the Board, regardless of when School vacates the Premises to Landlord; and

(iii) the portion of the Additional Rent for the then current Fiscal Year that

has been specifically appropriated by the Board, but only to the extent such Additional Rent is payable prior to the date, or is attributable to the use of the Premises prior to the date that School vacates the Premises and delivers the Premises to Landlord;

(d) enforce any provision of this Lease by equitable remedy, including, but not limited to, enforcement of the restrictions on assignment, subletting, encumbrance, conveyance, transfer or succession under Article XIV by specific performance, writ of mandamus or other injunctive relief; and

(e) take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Premises under this Lease, subject, however, to the limitations on the obligations of School set forth in Sections 5.05.

Section 16.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Landlord is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Landlord to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 16.04. Waivers. Landlord may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 16.05. Notice to Sublessee. Landlord shall provide written notice to the sublessee of a valid Sublease of an Event of Default by School in no less than five (5) days after the occurrence.

Section 16.06. Landlord's Default. If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from School specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within said thirty (30) day period and diligently pursue the cure to conclusion, then Landlord shall be liable to School for any damages sustained by School as a result of Landlord's breach. If, after notice to Landlord of default, Landlord (or any first mortgage or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then School shall have the right to cure that default at Landlord's expense, and to either terminate this Lease or to withhold, reduce or offset any amount against any payments of Base Rent and Additional Rent or any other charges due and payable under this Lease. No remedy herein conferred upon School is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE XVII

SUBORDINATION; ESTOPPEL

Section 17.01. Subordination. This Lease and the rights of School hereunder are expressly subordinate and subject to any mortgage, deed of trust, or other voluntary hypothecation now or hereafter encumbering the Premises, including the Land, Building(s) and other Improvements included therein, or any portions thereof, subject only to School's receipt of a written non-disturbance agreement (subject to School not being in default hereunder beyond applicable grace and cure period) for the benefit of School,

in a form reasonably acceptable to School. School shall execute and deliver to Landlord such documents (in a form reasonably acceptable to School) and take such further action as Landlord in its reasonable discretion deems necessary or advisable to confirm, effect, or maintain such subordination and non-disturbance within ten (10) Business Days after written request of Landlord or such beneficiary or mortgagee to do so.

Section 17.02. Estoppel. School agrees that it will from time to time within fifteen (15) days after written request by Landlord execute and deliver to Landlord a written statement addressed to Landlord (or to a party designated by Landlord), which statement shall identify School and this Lease, shall certify that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm the Term Commencement Date, the Rent Commencement Date, the Lease Term, the amount of Base Rent, Monthly Fixed Reimbursable Expenses and other sums due by School hereunder and the amount of any advance payments of Base Rent, Monthly Fixed Reimbursable Expenses or deposits in the possession of Landlord, shall confirm to the best of its knowledge that Landlord is not in default as to any obligations of Landlord under this Lease (or if Landlord is in default specifying any default), shall confirm School's agreements contained in this Section 17.02, and shall contain such other information or confirmations as Landlord may reasonably require.

ARTICLE XVIII

INDEMNITY

Section 18.01. Indemnification by School. Landlord releases and discharges School and its "public employees" as defined in the Tort Claims Act from any and all claims, damages and causes of action arising out of any damage to or destruction of the Premises where such damage or destruction was not caused by the willful act of School or any of its "public employees." To the extent not covered by insurance, and within the limits and subject to the provisions of the Tort Claims Act, School shall protect, defend, indemnify, and save harmless Landlord from all claims, actions, demands, liability, and expense of loss of life, damage, or injury to persons or property, brought for or on account of any action or failure to act by School, its agents, representatives, and employees, pursuant to this Lease, except to the extent caused by the negligent or intentional acts or omissions of Landlord, its agents, representatives and employees.

Section 18.02. Indemnification by Landlord. Except as may be caused primarily by the gross negligence or intentional acts or omissions of Landlord, Landlord shall not be liable for (a) injury, damage or loss of business which may be sustained by School, its agents, officers, directors, employees or invitees, or to their goods, wares, merchandise or property, caused by or resulting from the condition or state of repair of the Premises; (b) injury, damage or loss of business from fire, steam, electricity, gas, water or rain that may leak or flow from or into any part of the Premises; or (c) injury, damage or loss of business from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the Premises. Except as to the previous sentence of this Section, and to the extent caused by the negligent or intentional acts or omissions of School, its agents, representatives and employees, Landlord shall protect, defend, indemnify, and save harmless School from all claims, actions, demands, liability, and expense of loss of life, damage, or injury to persons or property, arising out of the negligent or intentional acts or omissions of Landlord, its agents, representatives, and employees.

Section 18.03. Survival of Indemnities. The indemnities contained in this Lease shall specifically survive the expiration of the Lease Term or earlier termination of this Lease.

Section 18.04. Limitations on Indemnities. No indemnities contained herein shall extend to those matters for which indemnification is prohibited pursuant to Section 56-7-1 NMSA 1978, as amended.

ARTICLE XIX

SURRENDER AND HOLDING OVER

Upon the expiration of the Lease Term, School shall deliver all keys to the Premises to Landlord and shall surrender the Premises to Landlord broom clean and in as good order and condition as existed on the Term Commencement Date, except for ordinary wear and tear and damage by fire or other casualty not caused by School, and loss due to condemnation or threat of condemnation. In the event School continues to occupy the Premises after the expiration of the Lease Term, such occupancy shall be considered a tenancy from month-to-month at a rent equal to the Base Rent and Monthly Fixed Reimbursable Expenses due for the last full calendar month of the Lease Term and such tenancy shall be upon and subject to all of the other terms, provisions, covenants and agreements set forth herein. Upon the expiration or termination of this Lease, School may remove, at its expense, any trade fixtures and unattached personal property previously placed in the Premises by School; but any damage to the Premises caused by such removal shall be repaired by School at the time of the removal. All other installations (including HVAC equipment, duct work, electric and water connections and electric lighting fixtures) and all repairs, Improvements, replacements and Alterations by School to the Premises, made by School shall, upon being installed, become the property of Landlord. However, School shall promptly remove any Alterations by School or Improvements to the Premises made by School without Landlord's prior written consent (or made with Landlord's consent, but subject to Landlord's right to require its removal) if requested to do so by Landlord, and shall repair any damage to the Premises resulting from such removal. Notwithstanding the foregoing, Landlord may only require the removal of Alterations by School, if School was so advised at the time Landlord approved said Alterations by School.

ARTICLE XX

GENERAL PROVISIONS

Section 20.01. Notices; Demands. Any notice, demand or other communication required or permitted by law or any provision of the Lease to be given or served on either party shall be in writing, addressed to the address set forth in Paragraphs B and D of the SLP, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, or (b) delivered by an overnight private mail/courier service which provides delivery confirmation. All notices shall be deemed to be received the earlier of: (i) three (3) Business Days after being deposited in the United States mail with proper postage, (ii) upon delivery by overnight courier, or (iii) upon actual receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver. Either party may designate additional addresses for the receipt of notices or demands at any time by written notice to the other.

Section 20.02. Attorneys' Fees. If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to

recover all costs and expenses, including reasonable attorneys' fees and costs, incurred by it on account of or related to such action or proceeding.

Section 20.03. Binding Effect. This Lease shall inure to the benefit of and bind the parties hereto and their respective heirs, successors, personal representatives, and permitted assigns.

Section 20.04. Severability. If any term or provision of this Lease or the application thereof to any Person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

Section 20.05. No Waiver. A waiver by Landlord or School of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by said party of the same or any other provision.

Section 20.06. Time of Essence. Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

Section 20.07. No Third Party Rights. The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any Person other than the parties hereto.

Section 20.08. No Principal-Agent Relationship. Nothing contained in this Lease shall be construed as creating the relationship of principal and agent, partnership or joint venture between Landlord and School.

Section 20.09. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 20.10. Warranty of Authority. Landlord and School warrant that if they are corporations, limited liability companies or partnerships, or other artificial entities that each individual executing this Lease on behalf of the Landlord and School represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Landlord and School, as applicable, and that this Lease is binding upon Landlord and School.

Section 20.11. Brokers. Landlord represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Lease, except for Landlord's Broker, and agrees to hold School harmless from any cost, expense or liability for any compensation, commission or charges claimed by any other realtors, brokers or agents claiming by, through or on behalf of Landlord with respect to this Lease and/or the negotiation hereof. School represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Lease other than School's Broker, and agrees to hold Landlord harmless from any cost, expense or liability for any compensation, commission or charges claimed by any realtors, brokers or agents claiming by, through or on behalf of School with respect to this Lease and/or the negotiation hereof.

Section 20.12. Amendments to Lease. Any amendments to this Lease, except amendments that would improve the Premises without additional financial obligations to the School, shall be approved by PED.

Section 20.13. Counterparts. This Lease may be executed in several counterparts and all so executed counterparts shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

DRAFT

**SIGNATURE PAGE ONE
TO
NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE PURCHASE**

LANDLORD:

_____, a

By: _____
Name: _____
Title: _____

DRAFT

**SIGNATURE PAGE TWO
TO
NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE PURCHASE**

SCHOOL:

_____, LLC,
a _____

By: _____

Name: _____

Title: _____

DRAFT

ADDENDUM "ONE"

**BASE RENT, REIMBURSABLE EXPENSES
and
LEASE PURCHASE CALCULATIONS**

Landlord and School shall attach as Schedule I to this Addendum "One" an amortization schedule which reflects the Lease Purchase Price amortized over the Lease Amortization Period at the Lease Interest Rate. Base Rent each month shall be a fixed amount comprised of the Lease Principal Payment and the Lease Interest Payment. The schedule shall have a column reflecting the declining balance due on the Lease Purchase Price each month. When and if School exercises the option to purchase the Premises, the Final Lease Payment shall equal the balance due on the Lease Purchase Price for the last month Base Rent has been paid by School.

The Monthly Fixed Reimbursable Expenses shall be \$ _____.

Schedule I

LEASE PURCHASE PRICE AMORTIZATION

To be attached

DRAFT

EXHIBIT "A"

Legal Description of the Land

(To be attached)

DRAFT

EXHIBIT "B"

Diagram of Premises

(To be attached)

DRAFT

EXHIBIT "C"

LANDLORD'S WORK ADDENDUM

THIS LANDLORD'S WORK ADDENDUM forms a part of the Charter School Lease Purchase executed by Landlord and School.

I. Approved Plans; Construction Allowance:

Subject to and upon the conditions hereinafter set forth, Landlord agrees to construct or cause to be constructed at the Premises Landlord's Work substantially in accordance with NMPSFA requirements described on Schedule I attached hereto ("NMPSFA Requirements") and the preliminary plans and specifications described on Schedule II attached hereto (the "Preliminary Plans"). School has reviewed and hereby approves the Preliminary Plans.

Within _____ (__) days after the Effective Date, Landlord shall provide School a copy of the final plans and specifications based on the Preliminary Plans ("Final Plans"). School shall have thirty (30) days after receipt of the Final Plans to reasonably approve or disapprove of same by providing written notice thereof to Landlord. If School disapproves of the Final Plans, Landlord shall have ten (10) days after the receipt of the disapproval to agree to cure all objections of School, or Landlord shall provide written notice to School that it elects not to cure some or all of School's objections to the Final Plans. Thereafter, School shall have ten (10) days after the receipt of Landlord's election not to cure all of School's objections to waive the failure to cure and approve the Final Plans, with any modifications Landlord has approved, or to terminate this Lease. If this Lease is terminated pursuant to this Section I, all Prepaid Rent and the Security Deposit shall be returned by Landlord to School, and neither party shall have any further obligations under the terms of this Lease, except as to those matters which specifically survive termination.

The Final Plans, as the same may be modified pursuant to this Section I, shall be the "Approved Plans".

Landlord acknowledges and agrees that if the costs and expenses for Landlord's Work based on the Approved Plans exceed the Construction Allowance, Landlord shall be responsible for all such cost overruns, and the same shall not be billed to School or increase the Base Rent to be paid by School.

Landlord shall provide School with an "as built" set of plans for the Landlord's Work within thirty (30) days after the Term Commencement Date.

II. Contractors and Subcontractors:

Landlord will select the general contractor to construct Landlord's Work (the "Contractor"), and Landlord will promptly enter into a contract with the Contractor on Landlord's standard form of construction contract for the construction of Landlord's Work. Landlord shall have the right to select architects, engineers, subcontractors, and other professionals, as it deems necessary or desirable.

III. Construction of Landlord's Work:

Landlord will cause Substantial Completion of Landlord's Work to occur on or before the Term Commencement Date, which date is subject to Force Majeure. "Substantial Completion" of Landlord's Work shall be deemed to be on the date that (a) Landlord delivers a certification to School from Landlord's licensed architect or the Contractor that Landlord's Work have been completed in accordance

with the Approved Plans, subject only to a punch list ("Punch List") of minor items remaining to be corrected by Landlord, which will be prepared by representatives of Landlord and School, and which will not materially interfere with School's use of the Premises as a charter school, (b) a "certificate of occupancy" or comparable certificate has been issued for Landlord's Work by the appropriate governmental authority, and (c) the Premises and Improvements comply with the Educational Occupancy Standards. Landlord and School shall cooperate to obtain necessary approvals for the Substantial Completion of Landlord's Work. Landlord will complete the Punch List prior to the Term Commencement Date, unless otherwise agreed by School, at its sole option.

IV. Entry by School

School may cause its contractors and subcontractors to enter the Premises prior to the completion of Landlord's Work for the purpose of making Improvements, and installing fixtures and equipment (the "School's Work"); provided that (a) the plans for the School's Work have been approved by Landlord in advance, (b) all of the School's Work that complies with all Requirements of Law, (c) all such contractors and subcontractors engaged in the prosecution of School's Work shall be required to procure and maintain the insurance set forth in the Lease, and "ALL RISKS" builders' risk insurance in an amount reasonably acceptable to Landlord, (d) School's Work performed in such a manner and at such times as to maintain harmonious labor relations and not to interfere with or delay the Contractor and its subcontractors, and (e) all of School's contractors and subcontractors will contact the Contractor and schedule time periods during which they may perform School's Work (and Landlord will require the Contractor to reasonably cooperate with School's subcontractors and contractors in this regard).

School shall also have the right to enter into possession of the Premises under duress prior to Substantial Completion of Landlord's Work if School is required to open under the Requirements of Law or be in violation of its charter, and the Premises satisfy all Educational Occupancy Standards.

V. Change Orders

School may request changes to the Approved Plans. Any changes are subject to Landlord's consent, which may not be unreasonably withheld. If Landlord approves any of School's requested changes to the Approved Plans, all of Landlord's actual costs and expenses in excess of the Construction Allowance associated with such changes, including, but not limited to, increases in the Contractor's fees, will be paid by School. The additional costs shall be paid either in cash, if said amount is so appropriated, or by amortizing the additional costs at ____% per annum over the Lease Term and increasing the Base Rent by said amount each month. Prior to implementing any requested change to the Approved Plans, Landlord will prepare and deliver to School for School's approval a written "Change Order" setting forth the estimated cost of such requested changes and the number of days of delay associated therewith, if any. If School fails to approve, execute, and deliver to Landlord such Change Order within ____ (__) Business Days following delivery of the Change Order by Landlord, School will be deemed to have withdrawn the proposed change. As part of its approval of any Change Order, School agrees to be responsible to pay the amount of all Change Orders.

VI. School Delay

"School Delay" shall mean any delay in the construction of Landlord's Work caused by School, other than Force Majeure, including, without limitation and in addition to other reasons set forth herein, interference with the construction of Landlord's Work and failure to supply or cause to be supplied any equipment or material which School is responsible to supply. Each day of School Delay will add one (1) day to the Term Commencement Date, provided however, the Rent Commencement Date shall not be changed.

Schedule I

NMPSFA REQUIREMENTS

(To be attached)

DRAFT

Schedule II

PRELIMINARY PLANS

(To be attached)

DRAFT

EXHIBIT "D"**ACKNOWLEDGMENT**

THIS ACKNOWLEDGMENT is entered into effective the ____ day of _____, 20____, by and between _____ ("Landlord") and _____ ("School")

WHEREAS, Landlord and School entered into a Lease dated _____, 20____ ("Lease") involving the premises located at _____, _____, New Mexico _____; and

WHEREAS, the parties desire to establish the Term Commencement Date, Rent Commencement Date, and/or other terms and provisions of the Lease.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, IT IS AGREED AS FOLLOWS:

1. All capitalized terms shall have the definitions set forth in the Lease, unless otherwise defined herein.
2. The Term Commencement Date is hereby acknowledged to be _____, 20____.
3. The Rent Commencement Date is hereby acknowledged to be _____, 20____.
4. The Lease Term shall terminate on _____.
5. The parties acknowledge and agree that Base Rent and Monthly Fixed Reimbursable Expenses are amended as follows: _____.
6. The parties acknowledge and agree that the square footage of the Premises is amended as follows: _____.
7. _____.
8. Except as herein modified and amended, the remaining terms and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the date first hereinabove set forth.

Landlord:**School:**

_____, a

_____, a

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "E"

"DESCRIPTION OF SPECIFIC USES"

- A. Total number of students _____
- B. Grades served _____
- C. Unique (non-traditional) educational programs served:
- a. **No** ()
 - b. **Yes** () [describe space needs that are different from the NM Adequacy Standards for traditional schools]
- D. Community programs served:
- a. **No** ()
 - b. **Yes** () [describe space needs that are different from the NM Adequacy Standards for traditional schools, and revenue generated]

EXHIBIT "F"

RULES AND REGULATIONS

(To be attached)

DRAFT

EXHIBIT "G"**SY 2013-2014 CONFLICT OF INTEREST QUESTIONNAIRE**

**PSCOC LEASE ASSISTANCE APPLICATION
ANNUAL CONFLICT OF INTEREST QUESTIONNAIRE – PRIVATE LANDLORD
FOR SCHOOL YEAR 2013-2014**

The following definitions apply to this Questionnaire:

- **“Interested party”** An employee of a school district or charter school who has authority to procure or make decisions regarding procurement, purchasing or contracting on behalf of the district or charter school or an employee who is in a position to influence such decisions; or a member of a district school board or charter school governing body (collectively referred to as “governing body”), who has a direct or indirect financial interest, as defined below.
- **“Financial interest”** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family member relationship:
 - a. An ownership or investment interest in any entity with which the school district or charter school has a transaction or arrangement (e.g. a property lease),
 - b. A compensation arrangement with the school district or charter school or with any entity or individual with which the school district or charter school has a transaction or arrangement, or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the school district or charter school is negotiating a transaction or arrangement.
- **“Family Member”** means a spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. NMSA 1978 §22-8B-10 (2009).

District/School Name: _____

Please include as an attachment to this Questionnaire a current list of governing body members, a current list of school board and/or charter school foundation members, and if applicable, a copy of governing board minutes approving exception to anti-nepotism laws.

Question 1: Briefly describe the property selection process and actions taken to ensure that the leased premises were in the best interest of the district/school. _____

Question 2: Briefly describe how the leased premises support the current or future space needs of the district/school. _____

Question 3: Briefly describe how the determination was made that the negotiated lease was at or below fair market value. _____

Question 4: In selecting the leased facility, was the site selected competitively from other potential school sites **Yes** () **No** () [Describe the selection process, the number of sites considered, the number of offers made, and the reason the selected leased site was chosen. How was it determined that the selected site and lease was a good value.]: _____

Question 5: Can any of the parties to the lease be considered an “interested party” or a “family member” of an interested party as defined above? **Yes** () **No** () [If no, then skip Question 6 and proceed to Question 7.]

Question 6: If you answered “Yes” to Question No. 5, provide the following information.

(a) Which party to the lease has a financial interest? _____

(b) Describe the financial interest of the party identified in 6.(a). _____

(c) Was the financial interest disclosed to the governing body prior to execution of the lease? **Yes** () **No** () [If yes, attach a copy of the governing body minutes of the meeting at which the financial interest was disclosed and/or any other documentation evidencing disclosure. If no, explain why the financial interest was not disclosed prior to execution of the lease or whether some other consideration of the financial interest was made by the governing body or district/school employee executing the lease]: _____

(d) If the financial interest was not properly disclosed, describe possible remedies and justification of how the benefits of continuing the current lease outweigh the conflict. Describe any hardship that would result if the PSCOC denied lease assistance. _____

Question 7: Does your district/school have a written conflicts of interest policy and written disclosure of conflicts requirement? **Yes** () **No** (). [If yes, attach a copy of your policy.]

Question 8: If you do not have a written policy addressing conflicts of interest, does your governing body or district/school have an internal rule or procedure that addresses entering into contracts with interested persons? **Yes** () **No** (). [If yes, attach a copy of the written rule or procedure.]

CERTIFICATION

The undersigned hereby certify that to the best of their knowledge the answers to this questionnaire are true and accurate, that if any of the answers to this Questionnaire change that the authorized representative of the district/charter school will notify the PSCOC through the PSFA within thirty (30) days, and that

Check one:

- ☐ the lease and price negotiated for the property was in the best interest of the district/school and that there were no violations of any conflict of interest laws.
- ☐ a financial interest was not properly disclosed and the district/school requests an exception due to the undue hardship that will result to the district/school by avoiding the prohibited conflict when weighed against the public interest served.
- ☐ due to extenuating circumstances the district/school requests additional time to respond.

BY:

School Board President / Governing Council President Date

School District Superintendent / Charter School Administrator Date

If locally chartered charter school:

School District Superintendent Date

EXHIBIT "H"

TITLE COMMITMENT

(To be attached)

DRAFT

EXHIBIT "I"

**NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY
CHARTER SCHOOL LEASE PURCHASE
MEMORANDUM**

This is a Memorandum of that certain New Mexico Public School Facilities Authority Charter School Lease Purchase dated _____, ____ ("Lease"), by and between _____
_____"("Landlord") and _____
_____"("School").

Landlord and School hereby acknowledge that:

A. The "Premises" described in the Lease are located in the County of _____, State of New Mexico and are more particularly described on Exhibit "A" attached hereto.

B. The term of the Lease expires on _____, ____.

C. The Lease grants School an option to purchase the Premises.

The purpose of this Memorandum is to give record notice of the existence of the Lease and to confirm certain rights created therein.

This Memorandum may be executed in several counterparts and all so executed counterparts shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.

IN WITNESS WHEREOF the parties have executed this Memorandum as of the dates set forth in their respective acknowledgments.

LANDLORD:

By: _____
Name: _____
Title: _____

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____, by
_____, _____ of
_____, a _____.

MY COMMISSION EXPIRES:

NOTARY PUBLIC

SCHOOL:

By: _____

Title: 

COUNTY OF _____)

MY COMMISSION EXPIRES:

NOTARY PUBLIC

EXHIBIT "A" TO MEMORANDUM

Legal Description of Premises

To Be Attached

DRAFT