

**LEASE AGREEMENT**

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**BUILDING HOPE GRAND TETON MALL, LLC  
AS LANDLORD**

**-and-**

**ALTURAS INTERNATIONAL ACADEMY, INC.  
AS TENANT**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (“Lease”) is made as of February 9, 2021 (“Lease Date”), by and between BUILDING HOPE GRAND TETON MALL, LLC, an Idaho limited liability company, having an office at 910 17<sup>th</sup> Street NW, Suite 1100, Washington, D.C. 20006 (“Landlord”), and ALTURAS INTERNATIONAL ACADEMY, INC., an Idaho non-profit corporation and a public charter school duly organized and validly existing under the laws of the State of Idaho (the “State”), having an address of 2105 Coronado Street, Idaho Falls, ID 83404 (“Tenant”).

### WITNESETH

WHEREAS, Tenant is a nonprofit corporation, an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), which is exempt from federal taxation under Section 501(a) of the Code, and a public charter school duly organized and validly existing pursuant to Chapter 52, Title 33, Idaho Code, as supplemented and amended from time to time (the “Charter Schools Act”); and

WHEREAS, the Tenant is authorized by Section 33-5204 of the Charter Schools Act to acquire real property by lease for use as a charter school facility; and

WHEREAS, the Landlord: (i) is a single purpose Idaho limited liability company that is wholly owned by Building Hope Idaho, Inc., an Idaho nonprofit corporation and an organization described in Section 501(c)(3) of the Code (“BH Idaho”), which is exempt from federal taxation under Section 501(a) of the Code; and (ii) is authorized under its organizational documents, and action of its governing body and applicable law, to own and manage its properties, to conduct its affairs in the State, to lease the Facilities (defined below) pursuant to this Lease and to otherwise act in the manner contemplated herein; and

WHEREAS, Landlord has entered or will enter into a loan agreement (the “Loan Agreement”), with Zions Bancorporation, N.A., dba Vectra Bank Colorado (the “Lender”), under which the Lender will lend funds to Landlord (the “Loan”) to finance Landlord’s acquisition of the Property and renovation and/or construction of certain improvements thereto. The Loan will be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “Deed of Trust”), encumbering the Facilities and the Lease; and

WHEREAS, Building Hope Finance, a District of Columbia nonprofit corporation (“Subordinate Lender”) has or will enter into a Loan Agreement and Subordinate Promissory Note with Landlord to provide additional funding for the Facilities (the “Subordinate Loan”). The Subordinate Loan is secured by a Second Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the “Second Deed of Trust” and together with the Loan Agreement and Promissory Note, the “Subordinate Loan Documents”), encumbering the Facilities and the Lease; and

WHEREAS, pursuant to the Loan Agreement and the Deed of Trust, the Landlord will: (i) absolutely assign to Lender all of the Landlord’s right, title and interest in, to and under this Lease; (ii) grant a security interest to the Lender in the Facilities; and (iii) grant a lien on and encumber the Facilities for repayment of amounts due for the benefit of the Lender and its successors and assigns;

WHEREAS, the execution, delivery and performance of this Lease by the Tenant are in the best interest of the Tenant, serve a public purpose and have been duly authorized by the governing board of the Tenant; and

WHEREAS, the execution, delivery and performance of this Lease, the assignment by the Landlord to Lender, pursuant to the Loan Agreement and the Deed of Trust, of all right, title and interest of the Landlord in, to and under this Lease and the grant by the Landlord of a security interest to Lender, and a lien against the Facilities pursuant to the Deed of Trust, are in the best interest of the Landlord and have been duly authorized by the sole member of the Landlord; and

WHEREAS, the Landlord desires to lease the Facilities to the Tenant, and the Tenant desires to lease the Facilities from the Landlord, pursuant to the terms and conditions and for the purposes set forth in this Lease, subject in all respects to the liens evidenced by the Loan Agreement, the Deed of Trust, and the Subordinate Loan Documents.

NOW, THEREFORE, for and in consideration of the mutual covenants and the representations, covenants, and warranties contained in this Lease, the parties hereto agree as follows:

**1. Definitions.** In addition to other terms which may be defined herein, the following terms shall have the meanings set forth in this Section 1 unless the context otherwise requires:

- (a) “Acts of Bankruptcy” shall have the meaning set forth in Section 19(a)(4).
- (b) “Additional Rent” shall have the meaning set forth in Section 4(f).
- (c) “Affiliate” means, when used with reference to a specified Person: (i) any Person who directly or indirectly controls, is controlled by or is under control with the specified Person, (ii) any Person who is an officer, member or trustee of, or serves in a similar capacity with respect to, the specified Person, or for which the specified Person is an officer, member or trustee or serves in a similar capacity, (iii) any Person who, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of the specified Person, or of which the specified Person, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of the specified Person, or of which the specified Person, directly or indirectly, is the owner of ten percent (10%) or more of any class of equity securities, and (iv) any relative of the specified Person.
- (d) “Bankruptcy Law” shall have the meaning set forth in Section 19(a)(4).
- (e) “Building” shall mean the building located on the Property in which the school will be located.
- (f) “CCR Agreement” shall mean that Covenants, Conditions and Restrictions Agreement to be entered into between Landlord and Grant Teton Mall, LLC, which will be recorded in the real property records of Bonneville County, Idaho, and is included as part of the Permitted Encumbrances.
- (g) “Change Orders” shall have the meaning set forth in Section 14.
- (h) “Charter” means that certain charter school agreement between Tenant and the Granting Authority, approved effective October 8, 2020 (as amended, renewed, extended or reissued from time to time), pursuant to which Tenant will operate a charter school at the Facilities.
- (i) “Depository Bank” means Zions Bancorporation National Association, Zions Bank Corporate Trust Department, Boise, Idaho.

(j) “Environmental Law” means the Comprehensive Environmental Response, Compensation and Liability Act of 1976, 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. §§ 1820 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1810 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 9601 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq. and the Clean Air Act, 42 U.S.C. §§ 7412 et seq., and any other applicable federal or state laws pertaining to the protection of the environment, as any such laws may be amended, modified or supplemented and any regulations promulgated pursuant to any of the foregoing.

(k) “Environmental Requirements” means all applicable federal, State, regional or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251, et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, et seq., the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, et seq., the National Environmental Policy Act of 1975, 42 U.S.C. § 4321, the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 et seq., the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651, et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f), et seq., and all rules, regulations, policies and guidance documents promulgated or published thereunder, and any State, regional, parish or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation those relating to: (i) releases, discharges, emissions or disposals to air, water, land or groundwater; (ii) the withdrawal or use of groundwater; (iii) the use, handling, or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde; (iv) the transportation, treatment, storage, disposal, release or management of hazardous substances or materials (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), and any other solid, liquid, or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Facilities or any property adjacent to or surrounding the Facilities; (v) the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances; and (vi) any Regulated Chemical.

(l) “Event of Default” shall have the meaning set forth in Section 19(a).

(m) “Expiration” and “Expiration Date” means the date upon which this Lease actually expires or terminates, whether at the end of the Term or upon any earlier termination of this Lease for any reason whatsoever.

(n) “Facilities” means the Property, the Building and related parking, driveway and all other Improvements, structures and facilities now owned or hereafter acquired or constructed on the Property, including, but not limited to, the Project, as more specifically described in the plans and specifications on **Schedule D** and attendant construction documents, which are expressly incorporated into this Lease.

(o) “Fixed Rent” shall have the meaning set forth in Section 4(a).

(p) “Governmental Authorities” means all federal, state, county, municipal, town, village and local governments, and all departments, commissions, boards, bureaus, agencies, offices and officers thereof, having or claiming jurisdiction over all or any part of the Facilities or the use thereof.

(q) “Granting Authority” means Idaho Public Charter School Commission, or any other entity with authority to grant, renew, and/or revoke Tenant’s Charter.

(r) “Gross Revenues” means all revenues, rentals, fees, third-party payments, receipts, donations, contributions or other income of Tenant derived from the Facilities, including the rights to receive such revenues (each subject to Permitted Encumbrances), all as calculated in accordance with generally accepted accounting principles, including, but not limited to, State Payments, proceeds derived from insurance, condemnation proceeds, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Tenant which are derived from the Facilities; and all gifts, grants, bequests and contributions (including income and profits therefrom) specifically restricted by the donor or maker thereof to the Facilities, or to the extent not specifically restricted by the donor or maker thereof to a particular purpose inconsistent with their use for any of the payments required hereunder.

(s) “Hazardous Materials” means: (i) any substances defined as “hazardous substances,” “pollutants,” “contaminants,” “hazardous materials,” “hazardous wastes,” or “hazardous or toxic substances” or related materials as now or hereafter defined in any Environmental Law; (ii) those substances listed or otherwise identified as substances of the type referred to in the preceding subsection (i) in the regulations adopted and publications issued pursuant to any Environmental Law, as the same may be amended, modified or supplemented; (iii) any friable asbestos, airborne asbestos in excess of that generally found in the atmosphere, respectively, where the Facilities are located, or any substance or material containing asbestos, excluding any such materials located on the Facilities prior to the date hereof so long as such materials are contained, maintained, abated or removed in compliance with all applicable Environmental Laws; and (iv) any substance the presence of which on the Facilities is prohibited by any applicable Environmental Law; provided that Hazardous Material shall not include any such substances used in or resulting from the ordinary operation of the Facilities or for the cleaning of the Facilities, provided that such substances are stored, handled and disposed of in compliance with all applicable Environmental Laws and other applicable laws and regulations.

(t) “Impositions” means all duties, taxes, water and sewer rents, rates and charges, assessments (including all assessments for public improvement or benefit), charges for public utilities, excises, levies, license and permit fees (excluding any license or permit fees relating to the development of the Improvements), sales tax on rent, commercial rent tax, gross receipts tax based on rent, fees and assessments imposed by any owners’ association and other charges, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever, which have been or may be laid, levied, assessed or imposed upon or become due and payable during the Term out of or in respect of, or become a lien on, the Property, Tenant’s Personal Property or any other property or rights included in the Facilities, or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and revenues (but not taxes levied with respect to the net income of the Landlord) received by Landlord from the Facilities, by virtue of any present or future law, order or ordinance of the United States of America, the State or of any state, county, city or local government or of any department, office or bureau thereof or any other Governmental Authority.

(u) “Improvements” means the improvements now or hereafter constructed on, over or under the Property, including, without limitation, the Building, and all replacements thereof and additions thereto, all walkways, parking and road improvements of whatever nature, utility and sewage lines (to the extent of Landlord’s interest therein) and all apparatus, machinery, devices, fixtures,

appurtenances and equipment necessary for the proper operation and maintenance of the foregoing now or hereafter owned by Landlord or hereafter acquired by Tenant and, as herein provided, to be surrendered to Landlord upon the Expiration of this Lease and attached to and used in connection with the Building and the Land.

(v) “Indebtedness” means all indebtedness of the Tenant for borrowed moneys, no matter how created, secured by the Gross Revenues.

(w) “Indemnified Parties” shall have the meaning set forth in Section 18(a).

(x) “Landlord’s Mortgages” shall have the meaning set forth in Section 31.

(y) “Law” or “Laws” shall have the meaning set forth in Section 9(a).

(z) “Lease Coverage Ratio” means the lesser of (i) 22% during the first year following the Possession Date, and 20% thereafter, of the State Payments for the current year or (ii) Net Operating Income before interest, taxes, depreciation and amortization (EBITDA), and before Fixed Rent, for the preceding calendar quarter (excluding all amounts paid toward the Annual Administrative Fee) then annualized, plus the applicable balance of any identified and confirmed grants, divided by the then current annual Fixed Rent.

(aa) “Lease Interest Rate” means the lesser of (i) the highest lawful rate which at the time may be charged by Landlord to Tenant under the Laws of the State or (ii) 15% per annum, whichever is lower.

(bb) “Lease Year” means the twelve (12) calendar month period commencing on each July 1<sup>st</sup> and ending on the following June 30<sup>th</sup> during the Term of this Lease; provided, however, that the period commencing on the Lease Date and ending on June 30, 2021 shall be treated as the first Lease Year.

(cc) “Loan” means that loan from Lender described in the recitals to this Lease, together with any amendment, modification, extension or refinance of such loan.

(dd) “Loan Agreement” means that loan agreement to be entered into between Lender and Landlord, the terms of which will not materially change the obligations of Tenant hereunder without Tenant’s prior written consent (except that Fixed Rent payments will be determined at the time of Loan Closing), together with any amendment, modification or extension thereof, and also including any substitute or new loan agreement entered into between Landlord and Lender or another lender in connection with the refinance of the initial Loan.

(ee) “Loan Closing” means the date that the Loan to Landlord from Lender is funded.

(ff) “Maturity Date” means September 1, 2026.

(gg) “Net Operating Income” means, for any period of determination thereof, the aggregate Gross Revenues of the Tenant for such period minus the total Operating Expenses for such period but excluding (i) any profits or losses which would be regarded as extraordinary items under generally accepted accounting principles; (ii) proceeds of insurance policies, other than policies for business interruption insurance, maintained by or for the benefit of the Tenant; and (iii) the proceeds of any sale, transfer or other disposition of any of the Tenant’s assets by the Tenant, and any condemnation or any other damage award received by or owing to the Tenant.

(hh) “Notice(s)” shall have the meaning set forth in Section 28.

(ii) “Operating Expenses” means fees and expenses of the Tenant incurred with respect to the Facilities, including Rent, management fees, maintenance, repair expenses, utility expenses, administrative, accounting, legal, and other similar professional expenses, miscellaneous operating expenses, advertising costs, payroll expenses (including taxes), the cost of material and supplies used for current operations of the Tenant, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Tenant, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with generally accepted accounting principles, all in such amounts as reasonably determined by the Tenant and approved by Landlord in the annual budget; provided however, “Operating Expenses” shall not include (i) depreciation and other non-cash expenses and (ii) those expenses which are actually paid from any revenues of the Tenant which are not Gross Revenues.

(jj) “Permits” shall have the meaning set forth in Section 9(a).

(kk) “Permitted Encumbrances” means those certain mortgages, liens, easements, rights of way and other encumbrances set forth on **Schedule B** annexed hereto and incorporated herein by reference.

(ll) “Permitted Subordinate Indebtedness” means Indebtedness of the Tenant, including any leasehold interests and any capital and/or operating leases entered into by the Tenant, in an aggregate amount not to exceed \$150,000 and subordinate to the obligation of the Tenant to pay Rent hereunder.

(mm) “Possession Date” shall have the meaning set forth in Section 2.

(nn) “Person” means and includes any individual, corporation, partnership, limited liability company, unincorporated association, trust, Governmental Authority or other entity.

(oo) “Project” means the renovation of the Building and construction of Improvements on the Property as described in **Schedule D** annexed hereto and incorporated herein by reference.

(pp) “Property” means the land described in **Schedule A** annexed hereto and incorporated herein by reference.

(qq) “Provisions” shall have the meaning set forth in Section 36.

(rr) “Rent” means Fixed Rent, Additional Rent, and all other payments required to be made by Tenant under the Provisions of this Lease.

(ss) “Rent Payment Date” means a date in each of the months of August, November, February, May, and July that a State Payment is made on behalf of Tenant, but in no event later than the last day of each such month.

(tt) “Repairs” shall have the meaning set forth in Section 8(a).

(uu) “State Payments” means any and all payments made by the State to the Tenant pursuant to the Charter Schools Act that are not restricted by the State from being used for the payment of Rent under this Lease.

(vv) “Subordinate Loan” means that loan from the Subordinate Lender described in the recitals to this Lease, together with any amendment, modification, extension or refinance of such loan.

(ww) “Subordinate Note” means that promissory note given by Landlord to Subordinate Lender described in the recitals to the Lease, together with any amendment, modification or extension thereof, and also including any substitute or new promissory note given or loan agreement entered into between Landlord and Subordinate Lender or another lender in connection with the refinance of the initial Subordinate Loan.

(xx) “Tenant Alterations” means each and every: (i) demolition of the whole or any part of any Improvement now or hereafter erected upon the Property; (ii) excavation at any time made or to be made in, on or about the Facilities; (iii) repair, addition, installation, betterment, rebuilding, or fixturing made by Tenant of, to, in, on or about the Facilities or any part thereof; and (iv) construction of any additional Improvements by Tenant upon the Property.

(yy) “Tenant Deliveries” means the following instruments and documents to be executed, acknowledged and/or delivered by Tenant to Landlord and at such time or times as the same are reasonably requested by Landlord or required herein, including, without limitation, in conjunction with a sale of the Facilities by Landlord: (i) Tenant estoppel certificate in form acceptable to Landlord and its lenders or potential purchasers of the Facilities; (ii) the insurance certificate required pursuant to Section 10(d); (iii) the subordination, non-disturbance and attornment agreement provided for in Section 32; and (iv) upon request of Lender or the holder of any Landlord's Mortgage, one or more legal opinions from outside counsel for Tenant licensed in the jurisdiction of their state and nation of formation acceptable to Landlord (“Tenant’s Counsel Opinion”), stating that (A) Tenant is duly formed, validly existing, and in good standing under the laws of its state of formation; (B) the person executing this Lease is duly appointed and authorized by Tenant to execute this Lease; (C) this Lease has been duly authorized, executed and delivered by Tenant, and constitutes a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms subject to exceptions relating to bankruptcy, insolvency and the application of equitable principles; (D) Tenant has full power and authority to execute, deliver and perform its obligations under this Lease and to carry on its businesses as presently conducted; and (E) the execution, delivery and performance of this Lease will not conflict with or result in a breach or violation of any term or provision of, or constitute a default under (1) the Articles of Incorporation or Bylaws of Tenant, (2) any material loan agreement or mortgage to which Tenant is a party or by which Tenant is bound, (3) any statute, rule or regulation of any Governmental Authority, or (4) any order, writ, injunction or decree of any court or any arbitrator having jurisdiction over Tenant. Tenant shall permit, and shall cause Tenant’s counsel to permit, any holder of any of Landlord’s Mortgages to rely on Tenant’s Counsel Opinion if one or more subject matters of such opinion is (are) (x) required by the holder of any of Landlord’s Mortgages as a condition to the closing of any of Landlord’s Mortgages and (y) of the type customarily required by institutional lenders.

(zz) “Tenant’s Personal Property” means: (i) all items that are owned by third parties and leased to Tenant, (ii) Tenant’s trade fixtures, (iii) inventory and moveable equipment at the Facilities owned by Tenant, and (iv) all other items of personal property purchased or otherwise acquired by Tenant, except in discharge of Tenant’s obligations hereunder.

(aaa) “Term” shall have the meaning set forth in Section 3(a).

(bbb) “Unavoidable Delays” means causes or events which are beyond a party’s reasonable control which prevent such party’s performance under this Lease which events may include: acts of God, fire, earthquake, flood, storm, epidemic, explosion, war, invasion, insurrection, civil commotion, embargo, riots, mob violence, vandalism, lockouts, strikes, sabotage, picketing, inability to



procure or general shortage of labor, equipment, facilities, supplies or materials, failure of transportation, litigation, condemnation, requisition, governmental restriction, including inability or delay in obtaining governmental consents or approvals, material adverse weather conditions, or any other cause, whether similar or dissimilar to the foregoing, not within such party's control; provided reasonably satisfactory evidence of the occurrence of each instance thereof shall be furnished by the party claiming Unavoidable Delays to the other party. Financial inability of a party shall not be the basis of an Unavoidable Delay.

**2. Demise; Conditions Precedent; Landlord's Reserved Rights.** Landlord is considering the purchase of the Property, Building and other existing improvements as of the Lease Date, and is considering renovating the Building and constructing Improvements on the Property as described on **Schedule D** with proceeds of the Loan and Subordinate Loan. Tenant acknowledges and agrees that for any reason, or no reason at all, Landlord may decline to or may be prohibited from purchasing the Property, or that Landlord may not be able to obtain the Loan. In such event, Landlord may give written notice thereof to Tenant and thereupon this Lease will terminate, and neither party shall have any obligations or rights hereunder except as to those provisions hereof which survive such termination as expressly set forth herein. Subject to the foregoing, Tenant acknowledges and agrees that as of the Lease Date, this Lease is a binding obligation of Tenant enforceable against Tenant in accordance with its terms. Tenant shall be entitled to possession of the Facilities following completion of Landlord's renovation of the Building and completion of Improvements pursuant to Section 14 and **Schedule D**, and receipt of a temporary or final certificate of occupancy (the "Possession Date"). Subject to and expressly conditional on the foregoing, Landlord, for and in consideration of the Rent hereinafter reserved by Landlord and the Provisions herein contained on the part of Tenant to be paid, kept and performed, has leased, rented, let and demised, and by these presents does hereby lease, rent, let and demise to Tenant, and Tenant does hereby take and hire from Landlord, the Facilities, upon and subject to the Provisions herein set forth.

TOGETHER with all right and interest, if any, of Landlord in and to the land lying in the streets and roads in front of and adjoining the Property and in and to any easement appurtenant to the Property.

SUBJECT, however, to the following:

- (a) Present and future building, environmental, zoning, use and other laws of all Governmental Authorities;
- (b) The condition and state of repair of the Facilities or any part thereof as it may be on the Possession Date, subject to the obligations of Landlord under Section 14 of this Lease;
- (c) Rights, if any, of others relating to water, gas, sewer, electric, telephone and other utility lines, wires, poles, pipes, conduits and other equipment of any kind whatsoever and the maintenance thereof;
- (d) Liens for Impositions attributable to the period from and after the Lease Date;  
and
- (e) The Permitted Encumbrances.

**3. Term.**

(a) TO HAVE AND TO HOLD the Facilities unto Tenant, for a period of approximately twenty-five (25) years commencing on the Lease Date and ending at 11:59 P.M. on June 30, 2045 (the "Term"), unless sooner terminated as provided by this Lease, including, but not limited to, upon a termination of this Lease by Landlord or its assigns upon an Event of Default.

(b) Except for the Tenant's obligations that expressly survive the Expiration or end of the Term, the Expiration or end of the Term shall terminate all unaccrued obligations of the Tenant under this Lease and shall terminate the Tenant's rights of possession under this Lease; provided however, all obligations of the Tenant that have accrued hereunder prior to such termination or Expiration shall continue until they are paid, performed and discharged in full.

**4. Rent; Gross Revenues.** Commencing on the August 2021 Rent Payment Date, Tenant shall pay Rent as set forth in this Lease.

(a) Fixed Rent. Tenant shall pay annual fixed rent ("Fixed Rent") on or before each Rent Payment Date, without Notice or demand, as follows:

Lease Years 1-6 (until the Maturity Date): Tenant shall pay or cause to be paid fixed rent to Landlord from the August 2021 Rent Payment Date through September 1, 2026 (the Maturity Date), in the amounts necessary to pay (i) principal and interest due on the Loan (the "Senior Fixed Rent") as provided in the Loan Agreement, and (ii) principal and interest due on the Subordinate Loan as provided in the Subordinate Loan Documents. An estimate of Lease Years 1-6 Fixed Rent is set forth on **Schedule C**. Schedule C shall be updated upon Loan Closing to reflect the actual debt service payments, and it shall be modified by Landlord and such modifications provided to Tenant in writing, and Fixed Rent payments revised under the following circumstances: (i) as required, to reflect any changes in the debt service on the Loan and the Subordinate Loan, resulting from: (A) alterations to any construction draw quantities or timing; (B) all Change Orders accepted and implemented pursuant to this Lease; (C) any and all adjustments to the total cost of the Improvements; and (ii) to reflect reduced amounts of interest and principal that will become due on the Loan or Subordinate Loan, as applicable, as a result of partial prepayment.

Following the Maturity Date: Following the Maturity Date, Fixed Rent shall be market rent as set forth on **Schedule C**. Thereafter, each Lease Year during the Term, Fixed Rent shall be increased from the Fixed Rent in the immediately previous Lease Year based upon increases in the cost of living (CPI increases) in accordance with the provisions set forth in **Schedule C**.

Each Lease Year during the Term commencing on the August 2021 Rent Payment Date, the annual Fixed Rent shall be paid on the following dates and in the following percentages:

(1) Tenant shall pay fifty percent (50%) of the annual Fixed Rent on the August Rent Payment Date;

(2) Tenant shall pay twenty percent (20%) of the annual Fixed Rent on the November Rent Payment Date;

(3) Tenant shall pay twenty percent (20%) of the annual Fixed Rent on the February Rent Payment Date;

(4) Tenant shall pay ten percent (10%) of the annual Fixed Rent on the May Rent Payment Date; and

(5) Tenant shall pay zero percent (0%) of the annual Fixed Rent on the July Rent Payment Date, except to the extent of any then current deficiency in Tenant's payment of Fixed Rent.

Fixed Rent shall also include an annual administrative fee of \$10,000 payable to Landlord in four (4) equal installments on the August, November, February and May Rent Payment Dates each year. The percentage of annual Fixed Rent to be paid on each Rent Payment Date has been determined by Landlord and Tenant to correspond with the receipt of State Payments by Tenant. In the event of a change in dates or percentage allocations of the State Payments, Landlord and Tenant may, by mutual agreement, adjust the payment timing of the Fixed Rent.

(b) Additional Payments; Net Lease. *Tenant acknowledges and agrees that Landlord has entered into the Loan Agreement, Subordinate Loan Documents, and this Lease, as applicable, for the sole benefit of Tenant, to provide a credit enhancement to enable Tenant to acquire facilities for its operation as a charter school. Accordingly, Tenant shall pay, as additional rent ("Additional Rent") all payments to be made in connection with the Loan and the Subordinate Loan, and all expenses incurred by Landlord during the Term in connection with the Facilities, the Loan, the Subordinate Loan and this Lease that are not paid with proceeds of the Loan or Subordinate Loan, including, but not limited to, Landlord's legal, accounting and other professional fees, it being the intent of the parties that this Lease shall be absolutely net to Landlord.* In the event that Landlord is obligated to pay any amount under the Loan Agreement or the Subordinate Loan Documents or otherwise in connection with the Facilities or this Lease, including, but not limited to, any indemnification obligations of Landlord (except to the extent such indemnification obligation arises out of the gross negligence or willful misconduct of Landlord), *Tenant shall make all such payments directly to Lender or the applicable Person on the next Rent Payment Date, or on demand upon receipt of notice from Landlord.* In the event Landlord makes any payment or incurs any damages or expenses that are the obligation of Tenant as set forth in this Section, Tenant shall reimburse Landlord for all such amounts on demand.

(c) Pledge of Gross Revenues. Tenant covenants and agrees to use its Gross Revenues including, but not limited to, State Payments to pay Rent. During the term of the Loan, Tenant agrees to take all necessary steps to direct the State Payments to be sent directly to the Lender (or designated agent of the Lender, or successor to Lender upon a refinance of the Loan and notice of the same from Landlord), to the extent permitted by law, to be applied toward the repayment of the Loan and the Subordinate Loan. After application of State Payments to Rent (excluding Additional Rent paid to third parties pursuant to Sections 4(b) and 4(f)), Lender will transfer any remaining amounts from the State Payments directly to Tenant within one (1) business day.

(d) Prepayments. Tenant may prepay Fixed Rent at such times, at such cost and to the extent Landlord is permitted to prepay principal under the Loan Agreement or Subordinate Loan Documents, as applicable. Any prepayment shall be applied against the Fixed Rent due under this Lease corresponding to the installments of principal due under the Loan Agreement or Subordinate Loan Documents, as applicable. Neither the Loan nor the Subordinate Loan may be prepaid in whole until the second (2<sup>nd</sup>) anniversary of the Loan Closing.

(e) Late Payment. If Tenant shall fail to make payment of any installment of Rent hereunder within five (5) business days from the date upon which the same shall first have been due hereunder, then Landlord shall have the right to charge Tenant, in addition to the installment or other payment due, as Additional Rent, a late payment fee to compensate Landlord for legal, accounting and other expenses incurred by Landlord in administering the delinquent account by reason of such late payment in the amount of five percent (5%) of the amount due as a late charge. For the purposes of this Section 4(e), payments shall be deemed made upon the date of actual receipt by Landlord or as directed by Landlord at the place specified in this Lease. The late payment fee required to be paid by Tenant pursuant to this Section 4(e) shall be in addition to all other rights and remedies provided in this Lease or by Law to Landlord for such nonpayment.

(f) Additional Rent. It is the purpose and intent of Landlord and Tenant that the Fixed Rent and other payments set forth in this Section 4 shall be net to Landlord and that Tenant shall pay as Additional Rent, without notice or demand, and without abatement, deduction or set-off, and save Landlord harmless from and against, any and all costs, Impositions and insurance premiums (including reimbursement to Landlord for the premiums incurred for insurance required to be carried by Landlord in connection with this Lease, the Loan and the Subordinate Loan) to which the Facilities are subject and all other expenses and obligations of every kind and nature whatsoever related to, or arising in connection with, the use and occupancy of the Facilities or any portion thereof, or as otherwise provided in this Lease (including reasonable attorneys' fees and disbursements incurred in connection with any Event of Default hereunder, whether or not a suit or proceeding is brought to enforce any right or remedy of Landlord) which may arise or become due prior to or during the Term, other than obligations, if any, which are the specified responsibility of Landlord under the terms of this Lease. Additional Rent shall include all shopping center common area maintenance charges under the CCR Agreement, estimated to be between \$40,000 and \$60,000 per year, and all other costs and expenses allocated to the Property pursuant to the Permitted Encumbrances. Tenant acknowledges that on the Possession Date it will give notice to all public and private utilities that it is in possession of the Facilities and will assume liability for all such charges imposed by such utility companies from and after the Possession Date to the Expiration of this Lease, including but not limited to, charges for water, gas, electric and other utilities, which shall be prorated with Landlord where necessary from the Possession Date. In the event of any nonpayment of any of the foregoing, Landlord shall have, in addition to all other rights and remedies, all of the rights and remedies provided for herein or by law in the case of nonpayment of Fixed Rent.

(g) Manner of Payment; No Abatement or Offset. Fixed Rent shall be paid in lawful money of the United States of America by or on behalf of the Tenant directly to the Landlord (or to the Lender at Landlord's direction). All Additional Rent described in Sections 4(b) and 4(f) shall be paid by the Tenant on a timely basis directly to Lender or the Person to which such Additional Rent is owed. The obligation of the Tenant to pay Rent required under this Section 4 and other Provisions of this Lease, during the Term, shall be absolute and unconditional, and payment of Rent shall not be abated for any reason, including without limitation, by reason of accident or unforeseen circumstances and Tenant is required, and solely responsible, under this Lease to purchase and maintain necessary insurance to comply with this obligation. Notwithstanding any dispute between Tenant and Landlord or any other Person with respect to the Facilities, Tenant shall, during the Term, make all payments of Rent when due and shall not withhold any Rent pending final resolution of such dispute (except as specifically permitted in this Lease relative to Additional Rent), nor shall the Tenant assert any right of set-off or counter-claim against its obligation to make such payments required hereunder; provided, however, that the making of such payments shall not constitute a waiver by the Tenant of any rights, claims or defenses which the Tenant may assert. No action or inaction on the part of the Landlord shall affect the Tenant's obligation to pay Rent during the Lease Term.

(h) Landlord's Payment of Rent. In the event Landlord elects to make a payment of any Rent to avoid any breach, penalties, delinquency or fines, Landlord agrees that it will give Tenant prompt notice of any intent to pay any Rent and Landlord will make such payment only if it does not receive assurance to its reasonable satisfaction that such payment has been or is being timely made by or on behalf of Tenant within five (5) days of Tenant's receipt of such notice; provided however, nothing herein shall be deemed to preclude Landlord from paying any Rent directly and immediately if, in its judgment, there is an emergency or an extraordinary circumstance warranting such payment. In the event of a payment of Rent by Landlord, Tenant shall immediately reimburse Landlord for such amount on demand.

## **5. Payment of Impositions.**

(a) Tenant shall use its best efforts to maintain the Facilities as exempt from ad valorem property or other taxes to the extent allowable by law. During the Term, Tenant shall pay all Impositions, or cause the same to be paid, as and when due and payable, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof.

(b) Except as provided in this Section 5(b), Tenant shall not be required to pay income taxes assessed against Landlord, or any capital levy, corporation franchise, or gross receipts tax based on Landlord's income, excess profits, estate, succession, inheritance taxes or transfer, documentary, excise or similar taxes of Landlord; provided however, that if at any time during the Term, the present method of taxation shall be changed so that in lieu of or as a substitute for the whole or any part of any Impositions on real estate and the improvements thereon there shall be levied, assessed or imposed on Landlord a new capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents or the present or future Improvements, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, but only to the extent that the same would be payable if the Facilities were the only property of Landlord, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions. In the event that the present method of taxation is changed as aforesaid, Landlord and Tenant agree to meet to equitably adjust the Impositions to be paid by Tenant.

(c) During the Term, Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition, or to seek a reduction in the valuation of the Facilities as assessed for real estate or personal property tax purposes by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof in which event Tenant shall have the right to postpone or defer payment of such Imposition, in each case only if:

(1) Neither the Facilities nor any part thereof would by reason of such postponement or deferment be in imminent danger of being subjected to foreclosure proceedings, forfeited or lost; and

(2) Tenant shall either (i) have deposited with Landlord the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may be assessed against or become a charge on the Facilities or (ii) have deposited with Landlord or with the authority imposing the Imposition or a court of competent jurisdiction security reasonably satisfactory to Landlord or a bond by a surety company approved by Landlord, whereby such surety undertakes to pay such Imposition in the event that Tenant shall fail to pay the same upon the final disposition of the contest (including appeals) or the Facilities or any part thereof is, in the reasonable judgment of Landlord in imminent danger of being forfeited or lost during the pendency of such contest. The initial deposit or bond shall be in an amount equal to 125% of the amount so contested and unpaid. Any deposit made by Tenant under the Provisions of this subsection 5(c)(2), together with any additions thereto and all interest, if any, earned thereon, shall be held in trust and disposed of as hereinafter provided.

(d) Upon the termination of any proceeding (including appeals), conducted pursuant to Section 5(c) hereof, or if Tenant should so elect, at any time prior thereto, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceeding, the payment of which may have been deferred during the prosecution of such proceeding, together with any costs, fees, interest,

penalties or other liabilities in connection therewith, and upon such payment, Landlord shall return any amount deposited with it (and not previously applied by it as herein provided) with respect to such Imposition. Such payment, at Tenant's request, shall be made by Landlord out of and to the extent of the amount deposited with it with respect to such Imposition, any balance due shall promptly be paid by Tenant, and any balance remaining shall be paid to Tenant with interest, if any, accrued thereon. If, at any time during the continuance of such proceeding, the Facilities or any part thereof are, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost, Landlord may require the amount theretofore deposited with Landlord to be applied to the payment of such Imposition (or Landlord may require application of the bonded amount by the surety company, if a bond has been furnished) as provided in the preceding sentence, any balance due shall promptly be paid by Tenant, and any balance remaining due shall be returned to Tenant with interest, if any, accrued thereon. Notwithstanding anything to the contrary set forth in this Section 5(d), no such deposit held by Landlord, or any part thereof, or interest thereon, shall be returned to Tenant so long as any Event of Default shall then exist hereunder.

(e) Landlord shall have the right: (i) to seek a reduction in the valuation of the Property and/or the Improvements and/or any portion or part thereof assessed for tax purposes if, within 30 days after Notice by Landlord, Tenant fails to commence a proceeding to secure such reduction; (ii) at Landlord's expense to participate in any such proceeding commenced by Tenant at Landlord's insistence or otherwise; and (iii) to commence a proceeding with Notice to Tenant, or to intervene in and prosecute any proceeding commenced by Tenant, for a reduction of such assessed valuation or valuations which shall in whole or in part be for any period of time subsequent to the Expiration of this Lease. Tenant shall be obligated to reimburse Landlord in connection with any proceeding referenced in clauses (i) and (iii) of this Section 5(e) (including reasonable attorney's fees), but only to the extent of the aggregate amount of savings in Impositions that are actually realized by Tenant during the Term as a result of such proceeding.

(f) To the extent to which any tax refund payable as a result of any proceeding which Landlord or Tenant may institute, or payable by reason of compromise or settlement of any such proceeding, may be based upon a payment made by or for the account of Tenant and shall not relate to a period prior to the Lease Date or subsequent to the Expiration of this Lease, subject to Tenant's obligation to reimburse Landlord forthwith under this Lease for any expense incurred by Landlord in connection with such proceeding (including reasonable attorney's fees), and so long as no Event of Default shall exist, Tenant shall be authorized to collect the same.

(g) Landlord shall not be required to join in any proceeding referred to in Section 5(c) of this Lease unless the provisions of any Law at the time in effect shall require that such a proceeding be brought by and/or in the name of Landlord or any owner of the Property, in which event Landlord shall, upon written request by Tenant, join in such proceeding or permit the same to be brought in its name, upon compliance by Tenant with the requirements of Section 5(c) and this Section 5(g). Tenant agrees to indemnify and hold Landlord harmless from and against any costs or expenses (including reasonable attorneys' fees) or liabilities in connection with any such proceeding, if such proceeding has been requested or initiated by Tenant.

(h) The certificate, advice or bill of the appropriate official designated by Law to make or issue the same or to receive payment of any Imposition, of payment or non-payment of such Imposition, shall be prima facie evidence that such Imposition is paid or due and unpaid at the time of the making or issuance of such certificate, advice or bill.

## **6. Use and Operation of Facilities.**

(a) Tenant shall have the right to use and occupy the Facilities for the sole purpose of operating a charter school, building local community partnerships, and for such other lawful purposes incidental thereto, subject to restrictions in the Permitted Encumbrances and Tenant's covenants set forth in this Lease including, but not limited to, those covenants set forth in Sections 20 and 21. Tenant shall have the right to erect and maintain signs in and about the Facilities and elsewhere at its expense and subject to compliance with applicable Laws and the Permitted Encumbrances and subject to Tenant's obligation to remove all such signs at the termination of this Lease for any reason and repair all damage to the Facilities resulting therefrom, all at Tenant's sole cost and expense. Tenant shall be responsible for all of its obligations under this Lease notwithstanding the loss of the Charter or any permits or authorizations needed or convenient to the operation of the school.

*Tenant acknowledges that certain components of the Facilities may be "common areas" subject to use by others pursuant to the terms and conditions of the shopping center covenants, conditions and restrictions included in the Permitted Encumbrances. Tenant agrees to review all Permitted Encumbrances and to use the Facilities in compliance therewith.*

Tenant agrees that it will at all times maintain the Facilities in a state of repair and maintenance as required under Section 8; will not commit waste, overload the floors or structure of the Building or subject the Facilities to any use that would damage the Facilities; and will provide adequate security for the Facilities.

(b) Without the prior written consent of Landlord, Tenant shall not use, maintain, permit or allow the use, or maintenance of the Facilities or any part thereof to treat, store, dispose of, transfer, release, convey or recover, or permit or suffer these to be present on, under or about the Facilities, any Hazardous Materials nor shall Tenant otherwise, in any manner, possess or allow the possession of any Hazardous Materials on or about the Facilities, except for (i) vehicles parked at the Facilities, and (ii) incidental cleaning, educational and landscaping supplies used and stored in compliance with all Environmental Laws, whether such Hazardous Materials existed on the Facilities prior to the Possession Date or after the Possession Date. Should Landlord consent in writing to Tenant bringing, using, storing or treating any Hazardous Material(s) in or upon the Facilities or if Tenant is allowed to bring, use, store, or treat Hazardous Materials in or upon the Facilities pursuant to this Lease, Tenant shall strictly obey and adhere to any and all Environmental Laws, which in any way regulate, govern or impact Tenant's possession, use, storage, treatment or disposal of said Hazardous Materials. Tenant shall immediately notify Landlord of the presence or suspected presence of any Hazardous Materials, on or about the Facilities and shall deliver to Landlord any notice received by Tenant relating thereto.

(c) Subject to laws pertaining to access of the Facilities while students are present, Landlord and its employees, contractors and agents shall have the right, but not the duty, to inspect the Facilities and conduct tests thereon at any time to determine whether or the extent to which there is Hazardous Materials on the Facilities. Landlord shall have the right to immediately enter upon the Facilities to remedy any contamination found thereon. In exercising the rights herein, Landlord shall use reasonable efforts to minimize interference with Tenant's business but such entry shall not constitute an eviction of Tenant, in whole or in part, and Landlord shall not be liable for any interference, loss, or damage to Tenant's personal property or business caused thereby, unless such loss or damage results from gross negligence or willful misconduct of Landlord. If any lender or Governmental Authority shall ever require testing to ascertain whether there has been a release of Hazardous Materials, then, the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent. Tenant shall execute affidavits, representations and estoppels from time to time, in form reasonably acceptable to

Tenant, at Landlord's request, concerning Tenant's knowledge and belief regarding the presence of any Hazardous Materials at the Facilities or Tenant's intent to store or use Hazardous Materials at the Facilities. Tenant shall indemnify and hold harmless Landlord from any and all claims, losses, liabilities, costs, expenses or damages, including reasonable attorneys' fees and other costs of remediation, incurred by Landlord in connection with any breach by Tenant of its obligations under this Section. The covenants and obligations of Tenant hereunder shall survive the Expiration or earlier termination of this Lease.

(d) Tenant shall not use or occupy or permit the Facilities or any part thereof to be used or occupied, for any unlawful purpose or in violation of the Charter or any certificate of occupancy, certificate of compliance, Permit, Permitted Encumbrance or Law covering or affecting the use of the Facilities or any part thereof. Tenant shall not suffer any act to be done or any condition to exist at the Facilities or any part thereof which may, in Law, constitute a nuisance, public or private, or which may make void or voidable any insurance with respect thereto.

(e) Tenant shall not use, occupy or improve or permit the Facilities or any part thereof to be used, occupied or improved, so as to violate any of the terms, conditions or covenants of the Permitted Encumbrances or any other easements, restrictions, covenants or agreements hereafter affecting the Facilities.

(f) Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be liable to Landlord for any claims, losses, damages, fines, penalties or costs whatsoever arising from the existence as of the Lease Date of any Hazardous Materials in, on or under the Facilities, unless and except the actions of Tenant, its directors, officers, agents, employees or invitees disturb the surface of the Facilities to expose to the air, surface water, groundwater or human contact, any Hazardous Materials below the surface of the ground.

## **7. Surrender of the Facilities; Holding Over.**

(a) Tenant shall, on the Expiration of this Lease, or upon any re-entry by Landlord upon the Facilities pursuant to this Lease, surrender and deliver up the Facilities into the possession and use of Landlord, without delay and in the same state of repair and maintenance as the state of repair and maintenance of the Facilities on the Possession Date, ordinary wear excepted and casualty damage excepted, free and clear of all lettings and occupancies, free and clear of all liens, charges and encumbrances except: (i) the Permitted Encumbrances and any easements, restrictions, covenants, charges or other encumbrances existing as of the Lease Date; and (ii) all those which Landlord causes after the Lease Date or to which Landlord expressly consents in writing (which, for the purposes of this Section 7(a), shall be deemed to be additional Permitted Encumbrances). On the Expiration of this Lease, title to and ownership of the Improvements shall automatically vest in Landlord without the execution of any further instrument and without any payment therefor by Landlord. Tenant shall remove all its signs from the Facilities upon Expiration of this Lease and shall promptly repair any damage to the Facilities resulting from such removal. Tenant shall remove Tenant's Personal Property upon Expiration of this Lease and Tenant shall promptly repair any damage to the Facilities resulting from such removal. Any of Tenant's signs or other Personal Property remaining at the Facilities in excess of sixty (60) days following the Expiration of this Lease shall, at the option of Landlord, be deemed abandoned and become Landlord's property. In addition, Landlord shall have the right to remove any of Tenant's Personal Property upon the Expiration of this Lease, and to store the same, all at the sole cost and expense of Tenant. Tenant shall, on demand, execute, acknowledge and deliver to Landlord a written instrument, in recordable form, confirming such Expiration, as well as any further assurances of title to the Improvements as Landlord may reasonably request, together with instruments in recordable form evidencing the Expiration of this Lease and the Memorandum of this Lease.



(b) In the event of any holding over by Tenant after Expiration or in the event Tenant continues to occupy the Facilities after the termination of Tenant's right of possession pursuant to this Lease, occupancy of the Facilities subsequent to such termination or Expiration shall be that of a tenancy at sufferance and in no event for month-to-month or year-to-year, but Tenant shall, throughout the entire holdover period, pay Fixed Rent (on a per month basis without reduction for any partial months during any such holdover if such holdover exceeds five (5) calendar days and on a per diem basis if such holdover is five (5) calendar days or less) equal to one hundred fifty percent (150%) of the Fixed Rent due for the period immediately preceding such holding over and the actual Additional Rent accruing on a pro rata basis during the holdover period, provided that in no event shall Fixed Rent and Additional Rent during the holdover period be less than the fair market rental for the Facilities. No holding over by Tenant or payments of money by Tenant to Landlord after the Expiration of the Term of this Lease shall be construed to extend the Term or prevent Landlord from recovery of immediate possession of the Facilities by summary proceedings or otherwise. Tenant shall be liable to Landlord for all actual or special damages which Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify Landlord against any and all proved claims made by any other tenant or prospective tenant against Landlord for delay by Landlord in delivering possession of the Facilities to such other tenant or prospective tenant.

(c) The Provisions of this Section 7 shall survive the Expiration of this Lease.

## **8. Repairs and Maintenance.**

(a) Throughout the Term, Tenant, at its sole cost and expense, shall: (i) maintain in good condition and repair the interior and exterior of the Facilities, including but not limited to: the electrical systems, heating and air conditioning systems, plate glass, windows and doors; sprinkler, plumbing and sewage systems and facilities; fixtures; interior and exterior walls; floors; ceilings; roof, and all structural components of Building and Facilities; gutters, downspouts, sidewalks, parking lot pavement, parking areas, grounds, recreational and landscaped areas of the Facilities; all electrical facilities and equipment including but not limited to, interior and exterior lighting fixtures, lamps, fans and any exhaust equipment and systems; electrical motors; and kitchen and all other appliances, fixtures and equipment of every kind and nature located in, upon or about the Facilities; and all glass, both interior and exterior (and any broken glass shall be promptly replaced at Tenant's expense by glass of like kind, size and quality); (ii) keep the Facilities in the same order, repair and condition as of the Possession Date; and (iii) make all necessary or appropriate repairs, replacements and renewals, and all necessary or appropriate alterations and restorations thereto, interior and exterior, ordinary and extraordinary, and foreseen and unforeseen (collectively, "Repairs"). Tenant shall, at its expense, conduct seasonal preventive maintenance on the heating, ventilating and air conditioning systems, and shall provide a report to Landlord showing compliance with this requirement.

(b) The necessity for and adequacy of Repairs to the Facilities made or required to be made pursuant to Section 8(a) shall be measured by standards which are appropriate for school buildings of similar age and containing similar facilities in the locality of the Property and which are necessary to maintain the Facilities in a state of repair and maintenance substantially the same as the state of repair and maintenance of the Facilities as at the Possession Date. Whenever a portion of the Facilities must be replaced in order to comply with the requirements of this Section 8, new equipment and materials of a quality equal to or superior to the quality of the equipment and/or materials being replaced shall be used. Tenant shall, within thirty (30) days after demand by Landlord, begin to make such Repairs, or perform such items of maintenance, to the Facilities as Landlord may reasonably require in order to maintain the Facilities at the standards required by this Lease and thereafter Tenant shall diligently and continuously pursue and promptly complete such Repairs.

(c) Landlord shall not be required to furnish any services or facilities or to make any Repairs in or about the Facilities or any part thereof, Tenant hereby assumes the full and sole responsibility for all Repairs to, and for the condition, operation, maintenance and management of, the Facilities at the Possession Date and during the Term. Tenant shall, at its sole cost and expense, subject to the Permitted Encumbrances, keep the sidewalks, curbs, entrances, passageways, roadways and parking spaces, planters and shrubbery and public areas adjoining (excluding areas not the responsibility of Landlord under applicable Law) or appurtenant to or constituting part of the Facilities in a clean and orderly condition, free of ice, snow, rubbish, obstructions and damage.

(d) Upon completion of the Improvements, Landlord shall obtain an industry standard one (1) year construction warranty from Landlord's contractor. Tenant shall be a beneficiary of and entitled to the benefit(s) of such one (1) year warranty and any and all third-party warranties given or running in favor of Landlord with respect to the Facilities which would in any way be useful to Tenant in fulfilling Tenant's obligations under this Section 8; and Landlord shall have the obligation to cooperate with Tenant in making available to Tenant the benefit of any and all third-party warranties given or running in favor of Landlord with respect to the Facilities which would in any way be useful to Tenant in fulfilling its obligations under this Section 8. Further, Landlord agrees that it will cooperate with Tenant in connection with claims against third-parties regarding Tenant's repair and maintenance obligations hereunder upon Tenant's request and provided Tenant shall be responsible for the reasonable costs and expenses incurred by Landlord as a result of such cooperation.

(e) The foregoing obligations of Tenant and Landlord are subject to Section 11 and, in the event of a conflict between this Section 8 and Section 11, Section 11 shall control.

(f) If Tenant fails to perform any repair or maintenance for which it is responsible under this Lease, and such failure is not corrected within thirty (30) days after written notice from Landlord, Landlord may perform such work and be reimbursed by Tenant for the cost thereof, together with interest thereon at the rate provided for in this Lease, within thirty (30) days after demand therefor. Notwithstanding anything to the contrary contained herein, Tenant shall bear the full cost of any repair of damage to any part of the Facilities that is caused by Tenant, its agents, employees, invitees, or contractors.

## **9. Compliance with Laws; Maintenance of Licenses and Charter; Tenant's Board.**

(a) Throughout the Term, Tenant, at its own sole cost and expense, shall comply with all present and future laws, ordinances, statutes, administrative and judicial orders, rules, regulations and requirements, including, without limitation, the Americans with Disabilities Act (each individually, a "Law," and collectively, "Laws") of all Governmental Authorities, foreseen and unforeseen, ordinary as well as extraordinary, applicable to the Facilities or any part thereof, the appurtenances thereof and, to the extent required by any Laws, the sidewalks, curbs, alleyways and passage-ways, adjoining the Facilities, or to the use or manner of use of the Facilities or the owners, tenants or occupants thereof whether or not any such Laws necessitate structural changes or improvements or interfere with the use or enjoyment of the Facilities. Tenant shall also procure, pay for and maintain all permits, licenses, approvals and other authorizations (collectively, "Permits," necessary for the lawful operation of its business at the Facilities and the lawful use and occupancy of the Facilities in connection therewith.

(b) Tenant shall, at its own sole cost and expense, observe and comply with all of the obligations of Tenant under Tenant's Charter, and shall operate the charter school in accordance with the Charter and with all applicable Laws. Tenant shall give immediate written notice to Landlord of any default or breach under the Charter, or of any suspension, termination, amendment or extension thereof.

Tenant shall timely make application for extension of the Charter such that the Charter shall remain in full force and effect without any lapse for the Term.

(c) Tenant shall have the right, after Notice to Landlord, to contest by appropriate legal proceedings, conducted in good faith, in the name of Tenant or Landlord or both, the validity or application of any Laws of the nature referred to in Section 9(a), and Landlord, on written request, shall execute and deliver any appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such Law, subject to the following:

(1) If by the terms of any such Law, compliance therewith pending the prosecution of any such proceedings may legally be delayed without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, and without subjecting the Facilities or any part thereof to any lien, charge, forfeiture, loss or suspension of operations, and Tenant (i) furnishes security reasonably satisfactory to Landlord against loss or injury by reason of such contest or delay and (ii) diligently and continuously prosecutes the contest to completion, then Tenant may delay compliance therewith until the final determination of any such proceeding.

(2) Tenant agrees that it will indemnify Landlord against any costs, expenses or liabilities it may sustain by reason of any act or thing done or omitted to be done by Tenant pursuant to this Section 9(c).

(d) Tenant represents and warrants to Landlord that it has complied with the public meeting requirements applicable to it with respect to all meetings of its board concerning the execution and delivery of this Lease (including public notice), and with all Laws applicable to its operation of the charter school.

(e) Throughout the Term, Tenant shall provide Landlord notice and an opportunity to attend all meetings of its board of directors (the "Board"); provided that, notwithstanding the foregoing, Landlord shall not be permitted to attend Board meeting executive sessions without the consent of Tenant.

(f) During the Term, Tenant shall provide written notice to Landlord prior to adding, subtracting, or replacing any: (i) officer of Tenant; or (ii) member of Tenant's Board. Tenant shall notify Landlord promptly upon becoming aware that such addition, subtraction or replacement is going to occur. Tenant shall permit Landlord to provide suggestions with respect to any such addition, subtraction or replacement and Tenant shall give good faith consideration to such suggestions. In addition, when appointing a director to the Tenant's Board, Tenant shall take into account all relevant factors, including the background, expertise and experience of the proposed director, to ensure that the Tenant's Board has an appropriate mix of backgrounds, expertise and experience.

## **10. Insurance.**

(a) Landlord, at the sole cost and expense of Tenant, shall throughout the Term procure and maintain, or cause Tenant to procure and maintain:

(1) Casualty/property damage insurance, special risk, covering the Facilities, Building, and Improvements (including flood insurance, if the Property is in a designated flood zone) on a guaranteed replacement cost and agreed amount basis with no coinsurance (which replacement amount shall be subject to Landlord's prior written approval) and for an amount not less than the loan amount under any financing (with

deductibles not greater than \$25,000), such coverage to include twelve months business income/loss of rents; and

(2) Such other insurance and in such amounts as may from time to time be reasonably required by Landlord or Landlord's lenders, against other insurable hazards.

(b) Tenant, at the Tenant's sole cost and expense, commencing on the Possession Date and continuing throughout the Term, shall procure and maintain:

(1) Casualty/property damage insurance, special risk, covering the full replacement value of all furniture, removable trade fixtures, equipment, and other personal property located at the Facilities (with deductibles not greater than \$5,000), such coverage to include twelve months business income/loss of rents and endorsed to provide that Tenant's insurance is primary in the event of any overlapping coverage with the insurance carried by Landlord;

(2) Comprehensive general liability insurance against claims for personal injury, bodily injury, death, property damage occurring upon, in or about the Facilities, and educators legal, professional, abuse and molestation insurance, such insurance to: (i) be on the so-called "occurrence" form; (ii) afford immediate protection at the Lease Date to the limit of not less than \$1,000,000 per occurrence and \$5,000,000 aggregate (including any umbrella coverage); (iii) continue at not less than the said limits until required to be changed by Landlord in writing by reason of changed economic conditions making such protection inadequate; and (iv) cover at least the following hazards: (A) premises and operations; and (B) independent contractors on an "if any" basis. Such policies shall name Landlord (and any other Person required in the Deed of Trust or Second Deed of Trust) as an additional insured in connection with Tenant's policies;

(3) Workers' compensation insurance in an amount not less than the minimum amount required by applicable law and adequate employee's liability insurance covering all persons employed by Tenant at the Facilities;

(4) At all times when Tenant Alterations are being made, Tenant shall have insurance providing the following coverage for its Tenant Alterations (i) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned comprehensive general public liability insurance policy; (ii) contractual liability insurance covering the indemnity contained in Section 18(a) hereof; (iii) builder's risk completed value coverage (A) for 100% of the contract price, (B) on a non-reporting form, (C) deleting all co-insurance provisions, (D) against all risks insured against pursuant to Section 10(a) hereof with the addition of damage due to faulty materials, workmanship and errors in design, and (E) including permission to occupy the Facilities; and (iv) coverage for delay in startup (a/k/a delayed completion coverage); and

(5) Such other insurance and in such amounts as may from time to time be reasonably required by Landlord, or Landlord's lenders, against other insurable hazards.

The insurance required of Tenant pursuant to this Lease may, at Tenant's option, be effected by blanket and umbrella policies covering the Facilities and other properties owned or leased by Tenant and/or its Affiliates, provided that evidence thereof satisfying the requirements of Section 10 is delivered to Landlord.

(c) In the event of failure of Tenant to maintain such coverages as are determined under this Section 10, Landlord may at its option acquire such coverages (or as similar thereto as Landlord is able to procure) and the cost thereof, plus interest at the Lease Interest Rate, shall become Additional Rent due hereunder, or terminate this Lease.

(d) All insurance provided for in this Section 10 shall be effected under valid and enforceable policies, in such forms and, from time to time after the Lease Date, in such amounts as is required hereunder, issued by financially sound and responsible insurance companies having a Best Policyholder Rating of not less than "A-", a financial rating of not less than XI or such higher rating as Lender or the holder of any of Landlord's Mortgages may require, and authorized to do business in the State, to the extent commercially obtainable. On or before one day prior to the Possession Date and not less than 10 calendar days prior to the expiration dates of the policies theretofore furnished pursuant to this Section, Acord Form 28 certificates of insurance (or substantively comparable certificates) evidencing such policies and payment therefore shall be delivered by the party responsible for obtaining the subject insurance to the other party. In addition, in the event that Landlord conveys its interest in the Facilities and this Lease, Tenant shall provide an Acord Form 28 certificate of insurance (or substantively comparable certificates) naming the grantee of such conveyance as an additional insured of the insurance required to be maintained by Tenant pursuant to this Section 10 (excluding workers' compensation insurance); such insurance certificate shall be delivered to Landlord within five (5) business days of its request therefor. Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section 10 to be furnished by, or which may be reasonably required to be furnished by, Landlord unless Landlord is included therein as an additional insured, with loss payable to Landlord or Landlord's lender(s), as applicable. Tenant shall immediately notify Landlord of the taking out of any such separate insurance and shall cause the certificates therefor to be delivered as required in this Section 10(d).

(e) All policies of insurance provided for or contemplated by Section 10 of this Lease to be obtained by Tenant shall name Tenant as the insured and, other than workers' compensation insurance, Landlord and Lender as additional insureds as their respective interests may appear. Such policies of insurance shall, to the extent obtainable, contain clauses or endorsements to the effect that:

(1) No act or negligence of Tenant, or anyone acting for Tenant, which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Landlord, or Landlord's lenders are concerned;

(2) Such policies shall not be changed or canceled without at least 30 days' Notice to Landlord; and

(3) Landlord shall not be liable for any premiums thereon or subject to any assessments thereunder.

(f) All insurance policies required hereunder shall provide for waiver of subrogation as to Landlord and Tenant.

#### **11. Damage or Destruction by Fire or Other Casualty; Condemnation.**

(a) If, during the Term, (i) the Facilities, or any portion thereof, shall be destroyed (in whole or in part), or damaged by fire or other casualty; (ii) title to, or the temporary or permanent use of the Facilities, or any portion thereof, or the estate of Tenant, Lender, or Landlord in the Facilities or any portion thereof, shall be taken under the exercise of the power of eminent domain by any

Governmental Authority or by any Person acting under governmental authority; (iii) breach of warranty or any material defect with respect to the Facilities shall become apparent; or (iv) title to or the use of all or any portion of the Facilities shall be lost by reason of defect in the title thereto, then, Tenant shall continue to pay Rent, without diminution, offset or abatement of any kind.

(b) All Net Proceeds of any insurance, performance bonds or condemnation awards shall be applied in accordance with the Loan Agreement and Permitted Encumbrances, as applicable. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the property of Landlord, subject to the Loan Agreement and this Lease, and shall be included as part of the Facilities under this Lease and the Loan Agreement. Tenant shall comply with all conditions to disbursement of Net Proceeds under the Loan Agreement.

(c) In the event the Loan Agreement is no longer in place, all such Net Proceeds shall be paid to Landlord and Landlord shall have the option to either (i) repair or replace the Facilities to the condition substantially the same as prior to such event described in Section 11(a) or otherwise in a condition reasonably acceptable to Tenant for its use as a charter school, or (ii) terminate this Lease effective as of the date of the damage or other event.

(d) If there occurs an event described in Section 11(a) hereof, and if any Net Proceeds received as a consequence of such event shall be insufficient to pay in full the cost of all repairs, restoration, modifications, improvements or replacements of the Facilities required under this Lease, Tenant shall, in accordance with Section 8 hereof, repair, restore, modify or improve the Facilities or replace the Facilities (or portion thereof) with property of a value equal to or in excess of the Facilities as it existed prior to such event, and pay as Additional Rent any cost in excess of the amount of the Net Proceeds, and Tenant agrees that, if by reason of any such insufficiency of the Net Proceeds, Tenant shall make any Additional Rent payments pursuant to this paragraph, Tenant shall not be entitled to any reimbursement therefor from Landlord or Lender, nor shall Tenant be entitled to any diminution of Rent.

(e) Landlord shall cooperate fully with Tenant in filing any proof of loss with respect to any insurance policy (including title insurance) or performance bond covering the events described in Section 11(a) hereof, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Facilities or any portion thereof, and in the prosecution of any action relating to defaults or breaches of warranty under any contract relating to the Facilities. Tenant shall pay to Landlord as Additional Rent all reasonable fees and expenses incurred by Landlord under this Section. This Section shall not be construed to obligate Landlord to advance its own funds in order to take any action hereunder.

## **12. Tenant Alterations.**

(a) Tenant shall have no right at any time to undertake or cause to be made, Tenant Alterations, except with the Landlord's express written consent, unless such Tenant Alteration can be completed for less than ten thousand dollars (\$10,000.00).

(b) Tenant covenants and agrees that any and all Tenant Alterations will be made in compliance with, and Tenant hereby covenants that it will comply with, each of the following Provisions:

(1) All Tenant Alterations shall be made with reasonable diligence and dispatch (subject to Unavoidable Delays) in a first class manner and with materials and workmanship comparable to the quality of the Improvements existing on the Possession Date;

(2) Tenant shall furnish copies of plans and specifications prepared in connection with any Tenant Alteration to Landlord, which plans and specifications shall be subject to prior approval by Landlord, which approval shall not be unreasonably withheld or delayed;

(3) Before any Tenant Alterations are commenced, Tenant shall procure, at its own sole cost and expense, all necessary Permits from all Governmental Authorities and shall deliver photocopies thereof to Landlord. Upon Tenant's request, Landlord shall join in the application for such Permits whenever such action is necessary, and Tenant covenants that Landlord will not suffer, sustain or incur any costs, expense or liability by reason thereof;

(4) All Tenant Alterations shall be made in compliance and conformity with all applicable (i) Laws of all Governmental Authorities (including all building and zoning Laws); (ii) Permits; and (iii) rules, regulations, orders and requirements of insurance boards;

(5) In making any Tenant Alterations, Tenant shall not violate the terms or conditions of any insurance policy obtained or required pursuant to the Provisions hereof affecting or relating to the Facilities or any part thereof, or the terms of any covenants, restrictions or easements affecting the Facilities;

(6) Promptly after the completion of any Tenant Alterations, Tenant shall procure, at Tenant's sole cost and expense, all Permits of Governmental Authorities, if any, for the complete Tenant Alterations as may be required by any applicable Laws of Governmental Authorities, and all insurance boards' approvals, if any, as may be required or customary in connection therewith, and on demand, shall promptly deliver photocopies thereof to Landlord;

(7) Tenant shall pay all costs, expenses and liabilities arising out of, in connection with, or by reason of any Tenant Alterations, and shall keep the Facilities free and clear of all liens, claims and encumbrances in any way arising out of, in connection with, or by reason of, any Tenant Alterations, subject to the Provisions of Section 13 hereof;

(8) No Tenant Alterations shall be made which would tie in or connect any Improvement with any other building or structure located outside the boundary lines of the Property;

(9) Unless Tenant Alterations: (i) are performed entirely within the enclosed walls of any Improvement then existing at the Facilities, or (ii) would not be reflected on a survey of the Facilities, Tenant shall, upon completion thereof, promptly deliver to Landlord a copy of an ALTA "as built" survey of the Facilities showing such Tenant Alterations;

(10) No Tenant Alterations shall be made which would render title to the Facilities or any part thereof unmarketable, or which would reduce the value of the Facilities for the uses permitted herein below the value thereof immediately prior to the making of such Tenant Alterations; and

(11) Landlord shall not be required to make any contribution to the cost of any Tenant Alterations or any part thereof, and Tenant covenants that Landlord shall not be required to pay any cost, expense or liability arising out of or in connection with or by reason of any Tenant Alterations.

### **13. Discharge of Liens.**

(a) Tenant shall not create or permit or cause (intentionally or otherwise) to be created, any lien, encumbrance or charge levied on account of any Imposition or any mechanic's, contractor's, subcontractor's, laborer's, or materialman's lien, or any mortgage, deed of trust or otherwise which might or does constitute a lien, encumbrance or charge upon the Facilities or any part thereof, or the income therefrom, unless the same arises prior to the Lease Date or from any act of Landlord, and, other than matters created by Landlord, Tenant will not suffer any other matter or thing whereby the estate, rights and interests of Landlord in the Facilities or any part thereof might be impaired; provided that any Imposition may, after the same becomes a lien on the Facilities, be paid or contested in accordance with Section 5(c)(1) hereof, and any mechanic's, laborer's, or materialman's lien may be discharged in accordance with Section 13(b) hereof.

(b) If any such mechanic's, laborer's or materialman's lien shall at any time be filed against the Facilities or any part thereof, other than matters created by Landlord, Tenant, within 30 days after filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within such period then, in addition to any other right or remedy, Landlord may (after so notifying Tenant), but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if it so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor, with interest, costs and allowances. In any event, if any suit, action or proceedings shall be brought to foreclose or enforce any such lien (whether or not the prosecution thereof was so compelled by Landlord), Tenant shall, at its own sole cost and expense, promptly pay, satisfy and discharge any final judgment entered therein. If Tenant fails to pay such final judgment, Landlord may (after so notifying Tenant), but shall not be obligated to, discharge the same. Any and all amounts so paid by Landlord as in this Section provided, and all costs and expenses paid or incurred in connection with any or all of the foregoing matters, including reasonable attorneys' fees, together with interest thereon at the Lease Interest Rate from the respective dates of such payments from Landlord, shall be paid by Tenant to Landlord on demand as Additional Rent hereunder.

(c) Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, materialman, architect or engineer for the performance of any labor or the furnishing of any materials or services for or in connection with the Facilities or any part thereof. Notice is hereby given that Landlord shall not be liable for any labor or materials or services furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor, materials or services shall attach to or affect the fee or reversionary or other estate or interest of Landlord in the Facilities or in this Lease. At the request of Landlord, Tenant shall execute and record in the applicable public records, a written instrument for the purpose of providing notice of the existence of the provisions of the preceding sentence.

### **14. Condition of and Title to Facilities; Improvements by Landlord.**

(a) Landlord hereby covenants to improve the Facilities as specified in **Schedule D** and in accordance with all applicable Laws, regulations and rules of Governmental Authorities having



jurisdiction thereover (the “Project”). Tenant and Landlord have agreed upon the Project as specified in **Schedule D**. Tenant acknowledges that the Project is being undertaken by Landlord at the Tenant’s request. Any additional or replacement renovations beyond the scope of the Project undertaken by Landlord (the “Change Orders”) will be those requested by the Tenant or mandated by Law or applicable building code requirements for public charter schools in the City of Idaho Falls and the State of Idaho. Landlord will apprise the Tenant of the cost of the Change Orders and provide documentation thereof. Change Orders are subject to Landlord’s sole and absolute discretion, not to be unreasonably withheld.

(b) Tenant acknowledges and agrees that except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, as to merchantability, fitness for a particular purpose or use, or otherwise, have been made by or on behalf of Landlord in respect of the Facilities, the status of title, physical condition, income, profit potential or expenses of operation thereof, the zoning or other Laws, regulations, rules and orders applicable thereto, Impositions, private agreements, or of any other matter or thing affecting or relating to the Facilities, and that Tenant has relied on no such representations, statements or warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY TENANT OF THE FACILITIES, OR ANY PORTION THEREOF. TENANT ACKNOWLEDGES THAT LANDLORD IS NOT A MANUFACTURER OF PORTIONS OF THE FACILITIES, AND THAT TENANT IS LEASING THE FACILITIES AS IS.

#### **15. Entry on Facilities by Landlord.**

(a) Tenant shall permit Landlord and its authorized representatives and designees to enter the Facilities at all reasonable times upon reasonable prior notice for the purposes of: (i) inspecting the Facilities, (ii) making the Improvements described in Section 14, and (iii) making any Repairs thereto and performing any work therein that may be necessary by reason of Tenant’s failure to perform the same for ten (10) days after Notice from Landlord (or without Notice in case of emergency). Nothing herein contained shall be construed as imposing any duty upon Landlord to do any work not otherwise required by the terms of this Lease. The performance thereof by Landlord shall not constitute a waiver of Tenant’s default in failing to perform the same, and Landlord shall have the right to receive reimbursement in respect thereof as provided in Section 30.

(b) Landlord may, during the progress of any work at the Project performed or caused to be performed by it in accordance with this Section, keep and store thereon all necessary materials, tools, supplies and equipment. Landlord shall not be liable for reasonable inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of the constructing of Improvements or making Repairs pursuant to Section 15(a) or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into or through the Facilities during the course thereof, except due to its gross negligence or willful misconduct, and the obligations of Tenant under this Lease shall not be affected thereby.

(c) Landlord and its designees shall have the right to enter the Facilities at all reasonable times during usual business hours upon reasonable prior notice for the purpose of showing the Facilities to prospective purchasers and mortgagees and, during the last two (2) years of the Term or following any Event of Default by Tenant for so long as such default remains uncured or if Tenant has vacated the Facilities for more than thirty (30) days, to prospective tenants.

(d) In exercising its right of entry pursuant to this Section 15, Landlord shall use commercially reasonable efforts to minimize any disruption of Tenant's business operations at the Facilities and at all times comply with applicable Laws pertaining to access to schools while students are present and pertaining to student health, safety and welfare.

#### **16. Estoppel Certificates.**

(a) Tenant agrees at any time and from time to time, upon request from Landlord or the holder of any Landlord's Mortgage, to execute, acknowledge and deliver, without charge, to Landlord or to any Person designated by Landlord or the holder of any Landlord's Mortgage, a statement in writing certifying that: (i) this Lease is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof); (ii) Tenant has not received any Notice of default or Notice of termination of this Lease (or if Tenant has received such a Notice, that it has been revoked, if such be the case); (iii) to the best of Tenant's knowledge, that no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case); (iv) that Tenant has no claims or offsets against Landlord hereunder (or if Tenant has any such claims or offsets, specifying the same); (v) the dates to which Rent payable by Tenant hereunder has been paid; and (vi) such other information as may be reasonably requested by Landlord or the holders of any Landlord's Mortgage and can be supplied by Tenant without unreasonable expense. Failure to timely deliver the foregoing estoppel certificate shall constitute an Event of Default under this Lease.

(b) Landlord agrees at any time and from time to time, upon not less than fifteen (15) days' Notice by Tenant, to execute, acknowledge and deliver, without charge, to Tenant, or to any Person designated by Tenant, a statement in writing certifying that: (i) this Lease is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof); (ii) that no Notice of default or Notice of termination of this Lease has been served on Tenant (or if Landlord has served such Notice, that the same has been revoked, if such be the case); (iii) that to Landlord's knowledge, no Event of Default exists under this Lease (or if any such Event of Default does exist, specifying the same); (iv) the dates to which Rent has been paid by Tenant; and (v) any other document required by law to be delivered to Tenant by Landlord.

#### **17. Assignment and Subletting.**

(a) The Landlord's rights under this Lease, including rights to receive and enforce payments hereunder, have been assigned to the Lender pursuant to the Loan Agreement and secondarily from Landlord to the lender of the Subordinate Loan Documents.

(b) This Lease may not be assigned, subleased or otherwise transferred, directly or indirectly, by operation of law or otherwise, by the Tenant for any reason, except with the prior written consent of Landlord.

(c) The Tenant agrees that except for the Permitted Encumbrances and the Tenant's right to sublease pursuant to Section 17(b), Tenant shall not mortgage, sell, assign, transfer or convey the Facilities, any portion thereof or its interest therein during the Term.

(d) Nothing in this Section 17 is intended to prevent Tenant from allowing use of portions of the charter school for events by other organizations for a fee, so long as such use is in the ordinary course of business for a public school and in compliance with the requirements of Tenant's Charter and the Permitted Exceptions.

## **18. Indemnification; Subrogation.**

(a) Tenant shall indemnify and save Landlord, Lender, Subordinate Lender and their respective successors, assigns, trustees, directors, officers, employees, agents, contractors, subcontractors, licensees, and invitees (collectively referred to in this Section 18 as “Indemnified Parties”), harmless from and against, and shall reimburse the Indemnified Parties for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, whether founded in tort, in contract or otherwise, including reasonable architects’ and attorneys’ fees and costs, which may be imposed upon or incurred or paid by or asserted against the Indemnified Parties or the Indemnified Parties’ interest in the Facilities by reason of or in connection with any of the following occurring during the Term, which shall not be affected by any assignment by or among the Indemnified Parties:

(1) The completion of any Tenant Alterations and anything done in, on or about the Facilities or any part thereof in connection therewith;

(2) The use, non-use, possession, occupation, condition, operation, maintenance or management of the Facilities, or any part thereof, or, to the extent that Tenant is legally responsible therefor, any street, alley, sidewalk, curb, passageway or space adjacent thereto;

(3) Any negligent or tortious act on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;

(4) Any accident, injury, death or damage to any Person or property occurring in, or about the Facilities or, to the extent that Tenant is legally responsible therefor, any part thereof of any street, alley, sidewalk, curb, passageway or space adjacent thereto;

(5) Any failure on the part of Tenant to perform or comply with any of the Provisions contained in this Lease on its part to be performed or complied with, including all instances where Tenant’s failure to perform results in a breach of any agreement to which any Indemnified Party is a party;

(6) Any violation of Law, including but not limited to, Environmental Law and Environmental Requirements;

(7) Any liabilities incurred by an Indemnified Party in connection with the Loan or the Subordinate Loan Documents, except to the extent caused by the gross negligence or willful misconduct of the applicable Indemnified Party; or

(8) Any violation of the Permitted Encumbrances by Tenant, its officers, employees or agents.

(b) Nothing contained in Section 18(a) shall be deemed to require Tenant to indemnify Landlord for any acts or omissions of Landlord, its agents, contractors, servants, employees, licensees or invitees at the Facilities, or breach of this Lease by Landlord, except to the extent covered by Tenant’s insurance obligations under Section 10.

(c) In case any action or proceeding is brought against Landlord by reason of any claim referred to in Section 18(a), Tenant, upon Notice from Landlord, shall, at Tenant’s expense, indemnify, resist, and defend such action or proceeding, in Landlord’s name, if necessary, by counsel for

the insurance company, if such claim is covered by insurance, otherwise by counsel approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord agrees to give Tenant prompt Notice of any such claim or proceeding.

(d) The Provisions of this Section 18 shall not in any way be affected by the absence in any case of any covering insurance or by the failure or refusal of any insurance company to perform any obligation on its part. If any Provision of this Lease requires that either Landlord or Tenant provide indemnification to the other with respect to any claim or liability identified therein, the indemnified party shall promptly give Notice of any such claim or liability to the indemnifying party and said indemnifying party shall have the right to participate in the prosecution and/or settlement of any such claim or liability.

(e) Notwithstanding any contrary Provision contained in this Lease, Landlord and Tenant hereby each waive and release all liability against the other for any claims, losses or damages relating to property and caused by fire or other insurable property peril that may have been caused by the fault or neglect of the other party or anyone for whom the other party may be legally responsible, to the extent insured by either party hereunder or required to be insured by the claimant party to this Lease, and accordingly do hereby release each other from any and all liabilities and responsibilities and all rights of action against the other or owing to the other or anyone else claiming through or under or by way of subrogation or otherwise, for any loss or damage to property caused by fire or property peril to the extent insured by either party hereunder or required to be insured by the claimant party to this Lease, that may have been caused by the fault or neglect of the other party or anyone for whom the other party may be legally responsible. To the extent of any deductibles carried by either party with respect to any insurance coverage obtained, the foregoing waivers of liability and of subrogation shall be operative to the same extent as if third party insurance (with appropriate clauses permitting a waiver of subrogation or liability) had been provided. Landlord and Tenant agree, further, that the "all-risk" policies, and other insurance covering the Facilities or the contents, furniture, fixtures, inventory, equipment and improvements therein shall contain a waiver of subrogation in favor of the other party and a clause or endorsement providing in substance that the insurance shall not be prejudiced if the insureds have waived right of recovery from any person or persons prior to the date and time of loss or damage, if any.

## **19. Default and Remedies Provisions.**

(a) The following shall each constitute an event of default ("Event of Default") hereunder:

(1) If default shall be made in the due and punctual payment to Landlord of any installment of Rent (other than Additional Rent) due under this Lease following five (5) business days' notice from Landlord specifying the amount of the late payment;

(2) If default shall be made in the due and punctual payment of any Additional Rent payable by Tenant under this Lease when and as the same shall become due and payable, or if default shall be made in the delivery of any Tenant Deliveries, and such default shall continue for a period of ten (10) business days after Notice from Landlord; or

(3) If: (i) the Facilities shall be abandoned by Tenant or (ii) if default shall be made by Tenant in the performance of or compliance with any of the Provisions contained in this Lease other than those referred to in the foregoing subsections 19(a)(1) or 19(a)(2) or if any representation or warranty of Tenant contained herein is untrue, and either such default shall continue for a period of 30 days after Notice thereof from Landlord to Tenant, or, in the case of a default or a contingency which is susceptible of

being cured but which cannot with due diligence be cured within 30 days, if Tenant fails to commence with all due diligence within such period of 30 days to cure the same and thereafter to continuously prosecute the curing of such default with all due diligence but in no event to exceed 90 days in the aggregate; provided, however, notwithstanding the foregoing if a specific cure period is provided in another Provision of this Lease, Tenant shall not be entitled the cure period set forth in this Section 19(a)(3); or

(4) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any present or future Federal Bankruptcy Code or any other present or future applicable Law ("Bankruptcy Law") that is not discontinued or otherwise vacated within 90 days, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Facilities, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as the same become due (collectively, "Acts of Bankruptcy"); or

(5) If within 90 days after the commencement of any proceedings against Tenant seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any Bankruptcy Law, such proceedings shall not have been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of Tenant, or any trustee, receiver or liquidator of Tenant, or of all or any substantial part of its properties or the Facilities (other than a result of Landlord's acts unrelated to the enforcement of Landlord's rights under this Lease), such appointment shall not have been vacated or stayed on appeal or otherwise, or within 90 days after the expiration of any such stay such appointment shall not have been vacated, or if within 60 days, an execution, warrant, attachment, garnishment levied or fixed against the Facilities, or any part thereof, or against Tenant (other than as a result of Landlord's acts unrelated to the enforcement of Landlord's rights under this Lease), shall not be bonded, vacated or discharged (each of such events also being an "Act of Bankruptcy"); or

(6) If Tenant shall fail at any time to obtain and keep in full force and effect any insurance required under this Lease on the terms and conditions set forth herein, whether or not Landlord gives notice of such failure to Tenant;

(7) Any violation of the Permitted Encumbrances by Tenant, its officers, employees or agents; or

(8) A notice of probation, termination, nonrenewal, or revocation of the Charter by the Granting Authority, or any event or circumstance wherein the Charter fails to be in full force and effect for any reason.

(b) Upon the occurrence of an Event of Default, Landlord may, without any further demand or notice, exercise one or any combination of the following remedies:

(1) Terminate this Lease without any right on the part of the Tenant to reinstate its rights under this Lease by the payment of any amount due or by the performance of any obligation, term or covenant broken, and give notice to the Tenant to vacate and surrender the Facilities within 10 calendar days from the date of such notice,

and if the Tenant does not surrender possession to the Landlord, the Landlord shall have the right to recover possession of the Facilities with or without legal process, breaking locks and replacing locks, and removing Tenant's and any third party's property therefrom, and making any disposition thereof as the Landlord may deem commercially reasonable;

(2) Reenter and take possession of the Facilities in accordance with applicable Law, repossess the same, expel the Tenant and those claiming through or under the Tenant, and remove the effects of both or either, using such force for such purposes as may be lawful and necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or other amounts payable under this Lease or as a result of any preceding breach of covenants or conditions;

(3) Break open locked doors, if necessary, to effect entrance, without liability to action or prosecution for damages for such entry or for the manner thereof, for the purpose of distraining or levying and or any other purposes, and take possession of and sell all goods, chattels, fixtures, furnishings and equipment of the Tenant at auction, on three (3) days' notice served in person on the Tenant or left on the Facilities, and retain the proceeds thereof on account of the Tenant's obligations hereunder; and the Tenant hereby forever remises, releases and discharges the Landlord and its respective agents, from all claims, actions, suits, damages, and penalties, for or by reason or on account of any entry, distraint, levy, appraisalment or sale;

(4) To pursue any and all other rights and remedies available under State Law, in law or in equity, including, without limitation, taking possession and selling any and all of Tenant's real or personal property upon which the Landlord or its assignees has a lien hereunder or under the Deed of Trust or Second Deed of Trust;

(5) Declare the entire balance of Rent and all other sums payable by the Tenant for the remaining Term due, payable and in arrears as if by the terms and Provisions of this Lease said balance of Rent were on that date payable in advance. Any such acceleration by the Landlord shall not constitute a waiver of any right or remedy of the Landlord;

(6) Distrain, collect or bring action for Rent and all other sums payable by the Tenant for the remaining Term as Rent in arrears, or enter judgment therefor as Rent in arrears in an amicable action as herein elsewhere provided, or file a Proof of Claim in any bankruptcy or insolvency proceeding for such Rent and other sums due, or institute any other proceedings, whether similar or dissimilar to the foregoing, to enforce payment thereof;

(7) With or without terminating this Lease, re-enter and re-possess the Facilities, or any part thereof, and lease the same to any Person upon such terms and conditions as the Landlord shall deem reasonable, for a term within or beyond the Term;

(8) Proceed as a secured party under the provisions of the Uniform Commercial Code against the collateral, in which the Landlord has a security interest;

(9) Exercise any specific remedies for breach of the covenants set forth in Sections 25 and 26, if applicable and as set forth in such sections; or

(10) Require Tenant to engage, at the Tenant's expense, an independent consultant selected by Landlord, to review and analyze the operations and administration of the Tenant, inspect the Facilities, and submit to the Tenant and Landlord written reports, and make such recommendations as to the operation and administration of the Tenant's charter school as such independent consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The independent consultant may recommend a management change, and in such case, the Board shall vote on the recommendation at a meeting of the Board and document such vote in the minutes; provided, however, the Board is not required to approve or implement any such management change. Except as provided in the preceding sentence, the Tenant agrees to adopt and carry out such recommendations by the independent consultant provided that such recommendations do not violate the terms of the Tenant's charter or State law as evidenced by the opinion of counsel.

(11) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Facilities under this Lease, the Loan Agreement, the Deed of Trust, or the Second Deed of Trust, as applicable.

(c) In addition to the foregoing remedies, upon the occurrence of an Event of Default under Section 19(a)(1), the Landlord may, without any further demand or notice to Tenant, enter the Facilities and market the Facilities for sale.

(d) Landlord and Tenant each agree that it will refrain from exercising any legal or equitable remedy available to it until the expiration of the applicable cure periods set out in this Lease.

(e) No failure by either party to insist upon the strict performance of any Provision of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any breach, shall constitute a waiver of any such breach or such Provision. No Provision of this Lease to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every Provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(f) Except as may be otherwise provided in this Lease, in the event of any breach or if Landlord has knowledge of a threatened breach by Tenant of any of the Provisions of this Lease, Landlord shall be entitled to enjoin such breach or threatened breach.

(g) Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and, subject to Section 19(d), the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity. Each right and remedy of Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and, subject to Section 19(d), the exercise or beginning of the exercise by Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity. Notwithstanding the foregoing, in no event shall Tenant have the right or remedy of termination of this Lease or abatement of Rent.

(h) Landlord shall not be deemed to be in default under this Lease unless (i) Tenant has given Notice to Landlord specifying the default claimed, and (ii) Landlord has failed for 30 days (or for such longer period as may be required with the exercise of due diligence) to cure such default, if curable, or to institute and diligently pursue reasonable corrective or ameliorative efforts towards a non-curable default. In the event Landlord shall fail to repair any damage or perform any other acts for which Landlord is responsible under this Lease and has had prior notice of such obligation and Tenant's intention to perform the same, or in the event Landlord's default results in an emergency or life threatening condition and such default is not promptly cured after notice from Tenant of such default and Tenant's intention to cure the same, Tenant shall have the right to perform such obligation and to receive reimbursement from Landlord of the reasonable costs associated therewith, plus interest at the Lease Interest Rate, within thirty (30) days after delivery to Landlord of invoices supporting such reimbursement claim.

(i) In the event that either Landlord or Tenant commences a suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, the prevailing party, as determined by the court having jurisdiction over the suit, shall be entitled to recover its reasonable costs and expenses, including, but not limited to, all attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts, as determined by such court.

(j) In addition to its other rights hereunder, in the event of a default hereunder by Tenant, Landlord shall have the right to engage a financial advisor or other consultant to review the books, records, operating procedures, staffing, management and all other aspects of Tenant, and Tenant shall permit such financial advisor or other consultant full access (to the extent permitted by law) to its books, records, facilities and personnel, and Tenant shall comply with the recommendations of such financial advisor or other consultant to effect improvement to Tenant's business and financial condition. Failure by Tenant to comply with the requirements of this paragraph shall constitute an Event of Default hereunder.

## **20. General Representations, Covenants and Warranties.**

(a) Tenant represents, covenants and warrants as follows, for the benefit of Landlord, Lender, Subordinate Lender and their respective successors and assigns, which representations, covenants and warranties shall be deemed to be continuing throughout the Term:

(1) Tenant is and will remain, a non-profit corporation and a public charter school duly organized, validly existing, and its status is "active" under the laws of the State, including the Charter Schools Act, and has all requisite power and authority and all necessary licenses and permits (i) to lease the Facilities from the Landlord pursuant to this Lease and (ii) to execute, deliver and perform its obligations under this Lease.

(2) None of the execution and delivery of this Lease, the fulfillment of or compliance with the terms and conditions of this Lease or the consummation of the transactions contemplated by this Lease, conflicts with or results in a breach of the terms, conditions or provisions of the Tenant's Charter, or of any material restriction or any agreement or instrument to which the Tenant is now a party or by which the Tenant is bound, or constitutes a default under any of the foregoing or, except as specifically provided in this Lease, the Loan Agreement or the Subordinate Loan Documents, results in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the Tenant.



(3) There are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of Tenant, after making due inquiry with respect thereto, threatened against or affecting Tenant in any court or by or before any Governmental Authority or arbitration board or tribunal, which involve the likelihood of materially and adversely affecting the properties, business, prospects, profits, operations, or condition (financial or otherwise) of Tenant, or the ability of Tenant to perform its obligations under this Lease, or which, in any way, would adversely affect the validity or enforceability of any agreement or instrument to which Tenant is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby, nor is Tenant aware of any facts or circumstances presently existing which would form the basis for any such actions, suits, or proceedings. Tenant is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule, or regulation of any court, Governmental Authority, or arbitration board or tribunal. All tax returns (federal, state, and local) required to be filed by or on behalf of Tenant have been duly filed.

(4) The execution and delivery by Tenant of this Lease, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the Provisions hereof (i) are within the power, legal right, and authority of Tenant, (ii) do not conflict with or constitute on the part of Tenant a violation of or a breach of or a default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance (except as set forth herein) upon any property of Tenant under the provisions of any bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which Tenant is a party or by which Tenant or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over Tenant, or any of its activities or properties, and (iii) have been duly authorized by all necessary and appropriate corporate action on the part of Tenant. This Lease is the valid, legal, binding, and enforceable obligation of Tenant, subject to the customary exceptions for bankruptcy and the application of equitable remedies. The officers of Tenant executing this Lease are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of Tenant.

(5) Tenant, in connection with the execution, delivery, and performance of this Lease, and the consummation of any transaction contemplated herein, has obtained all required consents, registrations, qualifications, approvals, permissions, orders, licenses, and/or authorizations with any and all Governmental Authorities.

(6) No event has occurred and no condition exists that would constitute an Event of Default or which, with the lapse of time or with the giving of notice or both, would become an Event of Default. The Tenant will deliver prompt written notice to the Landlord of the occurrence or existence of any event or state of facts which, with the passage of time or the giving of notice or both, would constitute an Event of Default under this Lease.

(7) Tenant is not in violation of any laws, ordinances, or governmental rules or regulations to which it is subject and Tenant has not failed to obtain any licenses, Permits, franchises, or other governmental authorizations (which are presently obtainable) necessary to the ownership of its properties or to the conduct of its business,

which violation or failure to obtain might materially and adversely affect the properties, business, prospects, profits and conditions (financial or otherwise) of Tenant.

(8) To the best knowledge of the Tenant, except as disclosed in writing to the Landlord and Lender: (i) the Facilities have at all times been operated in substantial compliance with all Laws; (ii) all Permits required by Law in respect of the Facilities have been or will be obtained and are in full force and effect and the Tenant is or will be in substantial compliance with the material terms and conditions of such Permits; (iii) there is no pending litigation, investigation, administrative or other proceeding of any kind before or by any Governmental Authority or other Person relating to, or alleging, any violation of any Law in connection with the Facilities and there are no grounds on which any such litigation, investigation or proceedings might be commenced against the Tenant; (iv) the Facilities are not subject to any judgment, injunction, writ, order or agreement respecting any Law; (v) there is no Hazardous Substance located on, in or under the Facilities in violation of any Law; (vi) there has been (to Tenant's actual knowledge) no disposal of any Hazardous Substance on, from, into or out of the Facilities in violation of any Law; and (vii) there has been (to Tenant's actual knowledge) no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing or dispersing of any Hazardous Substance into the indoor or outdoor environment from, into or out of the Facilities including, but not limited to, the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Facilities or the abandonment or discard of barrels, containers or other open or closed receptacles containing any such items from, into or out of the Facilities in violation of any Law.

(9) The Tenant is currently in compliance with and in the future will comply with all applicable federal and state nondiscrimination laws.

(10) The Tenant is an organization described in Section 501(c)(3) of the Code that is exempt from federal taxation under Section 501(a) of the Code. The Tenant is, and has received a determination letter classifying it as, an organization (i) described in Section 501(c)(3) of the Code which is exempt from federal income taxation under Section 501(a) of the Code (except with respect to "unrelated business taxable income" within the meaning of Section 512(a) of the Code) and (ii) which is not a "private foundation" as defined in Section 509(a) of the Code. Such determination letter has not been modified, limited, revoked or superseded. The Tenant has not received any indication or notice, written or verbal, from representatives of the Internal Revenue Service (the "IRS") to the effect that its exemption under Section 501(c)(3) of the Code has been modified, limited, revoked, or superseded, or that the IRS is considering modifying, limiting, revoking or superseding such exemption. The Tenant is in compliance with all of the terms, conditions and limitations, if any, contained in its determination letter. There has been no change in the facts and circumstances represented to the IRS as a basis for receiving, and which formed the basis on which the IRS issued, the determination letter relating to the Tenant's status as an organization described in Section 501(c)(3) of the Code and as an organization which is not a "private foundation" as defined in Section 509 of the Code of a nature or to a degree as would warrant any action by the IRS to modify, limit, revoke or supersede such determination letter of the Tenant. No administrative or judicial proceedings are pending or threatened which may, in any way, adversely affect the classification of the Tenant as an organization (i) described in Section 501(c)(3) of the Code which is exempt from federal

income taxation under Section 501(a) of the Code and (ii) which is not a “private foundation” as defined in Section 509 of the Code.

(11) Neither the representations of the Tenant contained in this Lease, nor any oral or written statements, furnished by the Tenant, nor written statements furnished on behalf of the Tenant, to the Landlord, Lender, or any other Person in connection with the transactions contemplated hereby, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading. There are no facts that the Tenant has not disclosed to the Landlord and Lender in writing that materially and adversely affect or in the future may (so far as the Tenant can now reasonably foresee) materially and adversely affect the properties, business, prospects, profits, or condition (financial or otherwise) of the Tenant, or the ability of the Tenant to perform its obligations under this Lease or any documents or transactions contemplated hereby or thereby.

(12) Tenant currently has or will secure all necessary Permits, consents, licenses and authorizations for the operation of the school from all appropriate Governmental Authorities, agencies, departments and bureaus which Permits, consents, licenses and authorizations shall be maintained for the Term.

(13) Except as set forth herein, there are no currently effective Uniform Commercial Code financing statements naming Tenant as debtor, except as shall have been disclosed by Tenant to Landlord prior to the effective date hereof.

(14) Tenant shall notify Landlord in writing of the engagement of any educational management organization or charter management organization.

(15) Tenant covenants and affirms that: (i) Tenant has been granted “charter school” status under the applicable Laws of the State and is entitled to operate a charter school at the Facilities; (ii) Tenant has no reason to believe that its Charter will not be renewed in accordance with and as required by applicable Laws of the State and Tenant shall timely make application to the Granting Authority to renew the Charter prior to its expiration and at the required intervals thereafter in order to keep its Charter valid and remain in good standing with the Granting Authority; (iii) Tenant’s Charter is in full force and effect; (iv) Tenant is in compliance with all applicable terms and provisions of its Charter and all applicable Laws and requirements of the State and the Granting Authority; (v) each and every other charter of Tenant is in good standing and has not been revoked nor is any revocation or suspension pending or threatened; (vi) without the prior written consent of Landlord, Tenant shall not modify or amend its Charter, which consent shall not be unreasonably withheld or delayed; and (vii) Tenant will provide written notice to Landlord immediately (not later than 3 days) in the event the Tenant receives notice that the Tenant’s Charter is being recommended for revocation, revoked, not renewed or proceedings are commenced with respect to a revocation. Additionally, Tenant must obtain approval from Landlord, not to be unreasonably withheld, before operating any new public charter school campuses in the State under the same Charter.

(16) Tenant covenants and agrees not to perform any act or enter into any agreement that causes any revocation or adverse modification of its status as a nonprofit charter school and organization described in Section 501(c)(3) of the Code, or carry on or permit to be carried on in the Facilities or permit the Facilities to be used for any trade or business, the conduct of which is not substantially related to the exercise or performance

by Tenant of the purposes or functions constituting the basis for its exemption under Section 501(c)(3) of the Code if such use would result in the loss of Tenant's exempt status under Section 501(c)(3) of the Code.

(17) Without the prior written consent of Landlord, which consent shall not be unreasonably withheld, Tenant shall not acquire any other real or personal property (that is not in the approved budget for a given year and that exceeds a fair market value of \$25,000 for any single item of personal property) or enter into, amend, modify and/or extend any lease for other real or personal property (that is not in the budget for a given year and that exceeds a fair market value of \$25,000 for any single item of personal property), except that Tenant shall be permitted to enter into capital leases relating to tangible personal property that will be located at the Facilities and used in school operations not to exceed the Permitted Subordinate Indebtedness.

(18) Except for the Permitted Subordinate Indebtedness, Tenant shall not enter into any new loans or other financing, and shall not amend, modify, and/or extend any currently outstanding loans or other financing. Without the prior written consent of Landlord, Tenant shall not mortgage or otherwise encumber any of its assets, including, but not limited to, all real property, personal property, and accounts receivable.

(19) Tenant may be required by any of Landlord's lenders to maintain its principal depository relationship with it and/or deposit per pupil payments into a "Controlled Account" to ensure first priority payment of the Rent. Landlord shall use commercially reasonable efforts to cause each such lender to permit Tenant to maintain its principal depository relationship with a reputable bank that has a safe physical branch in a location convenient to Tenant. Without the prior written consent of Landlord, Tenant shall not close or move the Controlled Account.

(20) Tenant will execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease including, but not limited to, execution and delivery of advance certificates.

(21) Tenant covenants and agrees to fully comply with, perform under, and abide by all agreements, obligations, requirements, and conditions imposed on Landlord or running with or in connection with the Facilities pursuant to the Permitted Encumbrances, including but not limited to the maintenance requirements and use restrictions set forth on Exhibit H of the CCR Agreement. Tenant further acknowledges and agrees that Tenant's employees must park on the Property or in the Additional Parking Area (as set forth and defined in the CCR Agreement) and in no other location.

(22) Tenant covenants and agrees not to participate in the State's advanced charter payment schedule.

(b) Landlord represents, covenants and warrants as follows, for the benefit of Tenant, which representations, covenants and warranties shall be deemed to be continuing throughout the Term:

(1) Landlord is duly organized, existing and in good standing under the laws of the State, is possessed of full power to purchase, own, hold and lease (as owner and Landlord) real and personal property, has all necessary power to lease the Facilities to the Tenant pursuant to this Lease and to execute, deliver and perform its obligations under

this Lease and has duly authorized the execution, delivery and performance of its obligations under this Lease.

(2) The Landlord shall at all times maintain, preserve, and renew all the rights and powers provided to it under its certificate of organization, operating agreement, action of its governing body and applicable Law.

(3) There are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of Landlord, after making due inquiry with respect thereto, threatened against or affecting Landlord in any court or by or before any Governmental Authority or arbitration board or tribunal, which involve the likelihood of materially and adversely affecting the properties, business, prospects, profits, operations, or condition (financial or otherwise) of Landlord, or the ability of Landlord to perform its obligations under this Lease, or which, in any way, would adversely affect the validity or enforceability of any agreement or instrument to which Landlord is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby, nor is Landlord aware of any facts or circumstances presently existing which would form the basis for any such actions, suits, or proceedings. Landlord is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule, or regulation of any court, Governmental Authority, or arbitration board or tribunal.

(4) The execution and delivery by Landlord of this Lease, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the Provisions hereof (i) are within the power, legal right, and authority of Landlord, (ii) do not conflict with or constitute on the part of Landlord a violation of or a breach of or a default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance (except as set forth herein) upon any property of Landlord under the provisions of any bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which Landlord is a party or by which Landlord or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over Landlord, or any of its activities or properties, and (iii) have been duly authorized by all necessary and appropriate corporate action on the part of Landlord. This Lease is the valid, legal, binding, and enforceable obligation of Landlord, subject to the customary exceptions for bankruptcy and the application of equitable remedies. The designated official of Landlord executing this Lease is fully authorized and empowered to execute the same for and on behalf of Landlord.

(5) The Facilities will be leased by the Landlord in accordance with all requirements of Law.

(6) Neither the execution and delivery of this Lease, the fulfillment of or compliance with the terms and conditions hereof, or the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Landlord is now a party or by which the Landlord is bound or constitutes a default under any of the foregoing.

**21. Loan Specific Covenants.** Tenant represents, covenants and warrants as follows, for the benefit of Landlord, Lender and their respective successors and assigns, which representations, covenants and warranties shall be deemed to be continuing throughout the Term:

(a) Tenant will entertain a proposal from the Depository Bank to provide operating and reserve accounts.

(b) Tenant will provide Lender with copies of all material correspondence with the Granting Authority and Landlord, including enrollment reports and financial reports.

(c) Tenant shall not use, occupy, or permit the use or occupancy of the Facilities by Tenant or any licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for commercial, medical, or personal purposes), or any law relating to the medicinal use or distribution of marijuana.

(d) Following written notice from Landlord, Tenant agrees to comply with any additional covenants required by the Loan Agreement that are reasonable and customary for this type of transaction and that do not materially change the obligations of Tenant hereunder.

**22. Financial Statements; Reports; Annual Certificate.**

(a) Maintenance of Books and Accounts. The Tenant agrees that it will maintain and make available to Landlord and Lender proper books of records and accounts of all of its operations with full, true and correct entries of all of its dealings substantially in accordance with practices generally used for public school accounting and such other data and information as may reasonably be requested by Landlord and Lender from time to time. The recipients of such books and records shall not further reproduce or distribute such books and records.

(b) The Tenant agrees that it will have its books and records audited annually, commencing with the Fiscal Year ending June 30, 2022, by an Accountant as soon as practicable after the close of such Fiscal Year and no later than 210 days after the end of each Fiscal Year, and shall furnish to the Landlord simultaneously with submission to the Office of the State Auditor, a copy (which may be sent electronically) of the annual audited financial report (together with any management letter delivered by the auditors) accompanied by a certificate signed by an authorized representative of the Tenant setting forth, to the best of the authorized representative's knowledge, whether or not the Tenant currently is, or has been during such Fiscal Year, in default of the performance of any covenant contained in this Lease and if so, specifying such default. Each annual audited financial report shall demonstrate whether the Tenant is in compliance with the financial covenants contained herein.

(c) The Tenant shall provide to Landlord and Lender the information set forth on **Schedule E.**

**23. [reserved]**

**24. Limitations on Incurrence of Additional Indebtedness.** The Tenant shall not incur any Indebtedness, other than the Permitted Subordinate Indebtedness, that is secured in any manner by Gross Revenues without the prior written consent of Landlord.

**25. Coverage Ratio Covenant.** The Tenant shall maintain a Lease Coverage Ratio in an amount equal to at least 1.0. The covenant made in this Section 25 may be tested monthly by Landlord or Lender.

In the event that the Lease Coverage Ratio is less than 1.0 on any testing date, the Landlord or Lender may require Tenant to engage, at the Tenant's expense, an independent consultant selected by Landlord, to review and analyze the operations and administration of the Tenant, inspect the Facilities, and submit to the Tenant and Landlord written reports, and make such recommendations as to the operation and administration of the Tenant's charter school as such independent consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Independent Consultant may recommend a management change, and in such case, the Board shall vote on the recommendation at a meeting of the Board and document such vote in the minutes; provided, however, the Board is not required to approve or implement any such management change. Except as provided in the preceding sentence, the Tenant agrees to adopt and carry out such recommendations by the Independent Consultant provided that such recommendations do not violate the terms of the Tenant's charter or State law as evidenced by the opinion of counsel.

**26. Enrollment Covenants.** Commencing in the second Lease Year and continuing for the Term, Tenant shall observe and comply with each of the enrollment benchmarks as set forth and described in **Schedule F**, attached hereto and incorporated herein. The covenant made in this Section 26 shall be tested annually on or before September 30 for the twelve-month period immediately preceding such testing date, at which time Tenant is required to deliver to Landlord evidence of current compliance with the requirements set forth in **Schedule F**. So long as the Tenant is otherwise in full compliance with its obligations under this Lease, it shall not constitute an Event of Default if the Tenant is not in compliance with the enrollment requirement set forth in **Schedule F** on any testing date as described above. Notwithstanding the foregoing, in the event that the Tenant's enrollment is less than ninety-five percent (95%) of the enrollment benchmark set forth in **Schedule F** on any two consecutive testing dates, an Event of Default shall be deemed to have occurred hereunder.

**27. Invalidity of Particular Provisions.** If any Provision of this Lease or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such Provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each Provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

**28. Notices.**

(a) All notices, requests, demands, consents, approvals and other communications which may or are required to be served or given hereunder ("Notices") shall be in writing and shall be personally delivered with a receipt signed by the recipient or sent by a nationally recognized courier service providing evidence of delivery addressed as follows:

If to Landlord:	Building Hope Grand Teton Mall, LLC c/o Building Hope Idaho, Inc. 910 17th Street NW, Suite 1100 Washington, D.C. 20006 Attn: Michael D'Alessandro, General Counsel
with a copy to:	Givens Pursley LLP 601 W Bannock Boise, ID 83702 Attn: Kimberly D. Maloney

If to Tenant: *After the Possession Date:*  
Alturas International Academy, Inc.  
2280 E. 17<sup>th</sup> St.  
Idaho Falls, ID 83404

*Before the Possession Date:*  
Alturas International Academy, Inc.  
151 N. Ridge Ave.  
Idaho Falls, ID 83402

with a copy to: Yorgason Law Offices, PLLC  
6200 N. Meeker Place  
Boise, ID 83713  
Attn: Christopher E. Yorgason

Either party may, by Notice, change its address for all subsequent Notices, except that neither party may require Notices to it to be sent to more than four addresses. Notice given by counsel for a party shall be deemed Notice by such party.

(b) Except where otherwise expressly provided to the contrary in this Lease, Notices shall be deemed given when received or, when delivery is refused.

(c) All Notices from either party made pursuant to this Lease shall also be provided, in accordance with the above Notice procedures above, to:

Bluum, Inc.  
Attn: Marc Carignan  
1010 W Jefferson St, Suite 201  
Boise, ID 83702

**29. Quiet Enjoyment.** Landlord covenants that Tenant, upon paying Rent when due and observing and keeping all Provisions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Facilities during the Term of this Lease, without hindrance or molestation by Landlord, or anyone claiming by, through or under Landlord, subject, however, to the exceptions, reservations, and Provisions of this Lease.

**30. Landlord's Right to Perform Tenant's Covenants.**

(a) If Tenant shall at any time fail to pay any Imposition in accordance with the Provisions of Section 5 hereof, or to take out, pay for, maintain or deliver any of the insurance policies to be provided by Tenant in Section 9 hereof, or shall fail to make any other payment on its part to be made, then Landlord (without Notice in the case of insurance requirements and with five days' Notice in the case of Impositions), and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to):

(1) Pay any Imposition payable by Tenant pursuant to the Provisions of Section 5 hereof; or

(2) Take out, pay for and maintain any of the insurance policies to be provided by Tenant in Section 9 hereof; or



(3) Make any other payments on Tenant's part to be made as provided in this Lease; and

(4) May enter upon the Facilities for any such purpose and take all reasonable action thereon as may be necessary therefor.

(b) All sums so paid by Landlord, and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Lease Interest Rate from the respective dates of Landlord making of each such payment or incurring of each such cost and expense, shall be paid by Tenant to Landlord on demand as Additional Rent hereunder, and Landlord shall not be limited in the proof of any damages which they may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach the uninsured amount of any loss, to the extent of any deficiency in the minimum amount of insurance required by the Provisions of this Lease, and damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Improvements occurring during any period when Tenant shall have failed or neglected to provide such insurance.

### **31. Landlord's Right to Mortgage, Sell or Assign Rents.**

(a) Landlord shall have the right at any time and from time to time to place one or more deeds of trust or mortgages, including but not limited to the Deed of Trust and the Second Deed of Trust, on all or any part of the Facilities (all such deeds of trust and mortgages and any increases, renewals, modifications, consolidations, refinancings, replacements and extensions thereof being collectively called "Landlord's Mortgages"). It is understood and agreed that wherever in this Lease Tenant may be required to make any policies of insurance payable to the holder of any of Landlord's Mortgages, such requirements shall apply to the holder of any Landlord's Mortgage of which Landlord gives Tenant Notice, but (as to insurance) only to the extent of Landlord's entitlement to such proceeds under the Provisions of this Lease.

(b) Except as otherwise provided in this Section 31(b), nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect Landlord's absolute right at any time or times to convey its interest in the Facilities, subject to this Lease, or to assign its interest in this Lease, or to assign from time to time the whole or any portion of Rent at any time paid or payable hereunder by Tenant to Landlord, to a transferee which assumes in writing Landlord's obligations under this Lease and is designated by Landlord in a Notice to Tenant, and in any such case Tenant shall pay Rent payable by Tenant to Landlord, or the portion thereof so assigned, subject to the Provisions of this Lease, to Landlord's designee at the address mentioned in any such Notice. In addition, Landlord may assign this Lease and sums due hereunder, for collateral purposes, from time to time without notice to or consent from Tenant.

### **32. Subordination and Non-Disturbance.**

(a) Subject to Section 31, Tenant accepts this Lease subject and subordinate to any Landlord's Mortgage. This clause shall be self-operative and no further instrument of subordination shall be required. In the event Tenant fails to execute a subordination document consistent with this Section 32 within ten (10) business days of receipt of a request by Landlord and Tenant provides no reasonable objection to Landlord's request, Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any Landlord's Mortgage, and Tenant agrees upon demand to execute such further instruments subordinating this Lease, acknowledging the subordination of this Lease or attorning

to the holder of any such Landlord's Mortgage as Landlord may request. If any Person shall succeed to all or part of Landlord's interests in the Facilities whether by purchase, foreclosure, deed-in-lieu of foreclosure, power of sale, termination of lease or otherwise, and if and as so requested or required by such successor-in-interest, Tenant shall, without charge, attorn to such successor-in-interest, provided said successor-in-interest shall agree that so long as no uncured Event of Default exists under this Lease, Tenant's right to quiet possession shall not be disturbed and the terms of this Lease shall remain unchanged. Tenant shall promptly execute and deliver one or more agreements reasonably requested by the holder of any such Landlord's Mortgage in form and substance common in the commercial mortgage lending industry.

(b) If at any time during the term of this Lease the tenant enters into a contract with an educational management organization ("EMO") or charter management organization ("CMO"), such contract shall provide that the EMO or CMO shall: (i) bill the Tenant for services provided six (6) months in arrears; (ii) subordinate all management fees to Fixed Rent throughout the Term such that the management fees will not be paid if Fixed Rent payments cannot be made timely and in full; and (iii) in the event a management fee is paid, and thereafter Tenant is unable to make a payment of Fixed Rent during the same fiscal year, the manager shall repay any such management fee to Landlord in full or in the amount equal to the Fixed Rent deficiency, whichever is less.

**33. Unavoidable Delays.** Except for the obligation to pay Rent which shall continue, whenever a party is required to perform an act under this Lease by a certain time, said time shall be deemed extended so as to take into account events of Unavoidable Delays.

**34. Obligations Absolute; Application of Payments.** All Rent, including but not limited to Fixed Rent, Additional Rent and all other sums payable by Tenant pursuant to this Lease are the absolute and unconditional obligations of Tenant, and shall not be subject to set-off, deduction, counterclaim or abatement, and except as expressly set forth to the contrary in this Lease, Tenant shall not be entitled to any credit against such payment obligations for any reason whatsoever, including, but not limited to: (i) any accident or unforeseen circumstances; (ii) any damage or destruction of the Facilities or any part thereof; (iii) any restriction or interference with Tenant's use of the Facilities; (iv) any defects, breakdowns, malfunctions, or unsuitability of the Facilities or any part thereof; or (v) any dispute between Tenant and Landlord, any vendor or manufacturer of any part of the Facilities, or any other Person.

**35. Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed an original, all such counterparts together shall constitute one and the same instrument, and signature pages from one counterpart may be removed and added to another counterpart to create a single, integrated counterpart with all necessary signatures.

**36. Provisions Deemed Conditions and Covenants.** All of the terms, covenants, agreements, limitations, conditions and provisions of this Lease (collectively, "Provisions") shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate Provision hereof.

**37. Reference to Termination.** Any reference herein to the termination of this Lease shall be deemed to include any termination hereof by Expiration, or pursuant to Sections 11 or 19 hereof, or otherwise.

**38. No Waste.** Tenant shall not do or suffer any waste to the Facilities or any part thereof.

**39. Captions and Construction.**

(a) The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Lease nor in any way shall affect this Lease or the construction of any Provision hereof.

(b) The terms “include,” “including” or words of like import shall be construed as meaning “including, without being limited to.”

(c) Wherever the context so requires in this Lease, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural.

(d) The phrase “provided no default [or Event of Default] shall exist hereunder . . .” and any similar phrase shall be construed in this Lease as meaning “provided no uncured default [or Event of Default] exists as to the payment of a liquidated sum of money, and no other uncured default [or Event of Default] exists as to which Landlord has notified Tenant; however, if any such default [or Event of Default] exists and is later cured within the applicable time period set forth in this Lease, but in any event before the Expiration of this Lease, all remaining rights of Tenant hereunder shall be restored, including but not limited to the right to receive funds or proceeds but for such default [or Event of Default].”

**40. No Partnership or Joint Venture.** Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other Person.

**41. Oral Change or Termination.** This Lease and the documents referred to herein contain the entire agreement between the parties pertaining to the subject matter hereof, and no modification, change or discharge of any term or Provision herein shall be effective unless the same is in writing and signed by Landlord and Tenant. This Lease cannot be changed or terminated orally.

**42. Successors and Assigns.** The Provisions in this Lease shall bind and inure to the benefit of Landlord and Tenant, and, except as otherwise provided in this Lease, their respective legal representatives, executors, successors and assigns

**43. Governing Law.** This Lease shall be governed by, and interpreted under, the laws of the State, without regard to conflict of laws principles.

**44. SUITS BY TENANT.** TENANT HEREBY COVENANTS THAT, PRIOR TO THE FILING OF ANY SUIT FOR AN ALLEGED DEFAULT BY LANDLORD HEREUNDER, IT SHALL GIVE ALL MORTGAGEES WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES ON THE FACILITIES (TOGETHER WITH THEIR RESPECTIVE NOTICE ADDRESSES), NOTICE AND TIME TO CURE SUCH ALLEGED DEFAULT BY LANDLORD AS PROVIDED IN THIS LEASE, MEASURED FROM THE DATE OF RECEIPT OF NOTICE.

**45. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD HEREUNDER) TO SUITS BY TENANT FOR ANY MONETARY DAMAGES OR JUDGMENT SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE FACILITIES (INCLUDING RENTAL INCOME AND THE PROCEEDS FROM THE SALE OF THE FACILITIES), AND TENANT AGREES TO LOOK SOLELY TO LANDLORD’S INTEREST IN THE

FACILITIES FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST THE LANDLORD, IT BEING INTENDED THAT LANDLORD SHALL NOT BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY.

[end of text; signature page(s) follow]

Landlord and Tenant have executed this Lease as of the Lease Date.

**LANDLORD:**

BUILDING HOPE GRAND TETON MALL, LLC, an  
Idaho limited liability company

By: BUILDING HOPE IDAHO INC., an Idaho  
nonprofit corporation, its sole member



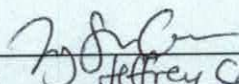
By: \_\_\_\_\_

Name: Dru Damico

Title: President /Member

**TENANT:**

ALTURAS INTERNATIONAL ACADEMY, INC., an  
Idaho non-profit corporation and a public charter school  
duly organized and validly existing under the laws of the  
State of Idaho

By:   
Name: Jeffrey Carr  
Title: Chair, Board of Directors

**SCHEDULE A  
LEGAL DESCRIPTION OF PROPERTY**

**PARCEL 1:**

**LOT 15, BLOCK 101, ROSE NIELSEN ADDITION, DIVISION NO. 101, FIFTH AMENDED, A  
SUBDIVISION OF THE CITY OF IDAHO FALLS, BONNEVILLE COUNTY, IDAHO,  
ACCORDING TO THE OFFICIAL PLAT RECORDED FEBRUARY 16, 2021, AS INSTRUMENT  
NO. 1674759. WITH AFFIDAVIT OF PLAT CORRECTION RECORDED FEBRUARY 16, 2021,  
AS INSTRUMENT NO. 1674760**

**SCHEDULE B**  
**PERMITTED ENCUMBRANCES**

1. All easements, restrictions, agreements, and encumbrances of public record as of the Lease Date, including, but not limited to, those matters set forth on Schedule B-1, attached hereto.
2. Covenants, Conditions and Restrictions Agreement to be entered into between Landlord and Grant Teton Mall, LLC (the “CCR”).
3. Consent letter from Grantor agreed and acknowledged by Dillard Store Services, Inc. recorded concurrently herewith.
4. Consent letter from Grantor agreed and countersigned by J.C. Penney Corporation, Inc. recorded concurrently herewith.
5. Any matter or circumstance that would be disclosed by an accurate survey or physical inspection of the Facilities.
6. A Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents for the Facilities, between Landlord, as trustor, Subordinate Lender, as beneficiary, and First American Title Company (or other legally authorized entity), as trustee.
7. A fixture filing financing statement for the Facilities naming Lender as the secured party.
8. A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing for the Facilities, between Landlord as trustor, the Lender, as beneficiary, and First American Title Company (or other legally authorized entity), as trustee.
9. A Subordination and Standstill Agreement, among Landlord, Lender and the Subordinate Lender.
10. A Subordination, Non-Disturbance and Attornment Agreement, among the Lender, Landlord, and Tenant.



**SCHEDULE B-1**  
**LIST OF CERTAIN PERMITTED ENCUMBRANCES**

1. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
2. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).  
  
Plat of Rose Nielsen Addition, Division No. 1010, Fifth Amended, recorded February 16, 2021, as Instrument No. 1675759 Affidavit of Plat Correction recorded February 16, 2021, as Instrument No. 1674760.
3. Covenants, Conditions and Restrictions recorded February 24, 2021 as Instrument No. 1675747, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).
4. The Terms and Conditions contained in the Declaration of Restrictions and Grant of Easements for the Grand Teton Mall, recorded January 14, 1985 as Instrument No. 676644, which, among other things, contains or provides for: certain easements, maintenance costs, covenants, conditions and restrictions.
5. Memorandum Lease upon the terms, conditions and covenants contained therein:  
Recorded: June 21, 1983, as Instrument No. 644384  
Lessor: Grand Teton Land Company, a Utah Partnership  
Lessee: Grand Teton Development Company.
6. Dillard Store Services, Inc. Consent to Charter School Development Notice recorded February 17, 2021 as Instrument No. 1674783.
7. J.C. Penney Corporation, Inc. Consent to Building Hope Development, Recorded February 24, 2021, as Instrument No. 1675718.
8. Unrecorded Survey, dated January 16, 2021, by Duryea & Associates, Job No. 12-1718.
9. 2021 taxes are an accruing lien, not yet payable.
10. 2020 taxes due June 2, 2021 in the amount of \$ 475,244.12, Tax Parcel Number RPA3063101011B, are paid in full.

**SCHEDULE C**  
**FIXED RENT SCHEDULE – ESTIMATE\***

<b>Alturas International Academy, Inc. - Building Hope Grand Teton Mall, LLC Rent Summary</b>							
July 1 – June 30 each year	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	First 2 mos 2026-2027	Last 10 mos 2026-2027
Senior Debt Service	380,000	539,497	539,497	539,497	539,497	89,916	
Subordinate Debt Service	94,500	124,900	124,900	179,252	179,252	29,875	
Building Hope LLC Admin Fees (OPEX)	10,000	10,000	10,000	10,000	10,000	1,667	8,333
Market Rent							779,167
<b>Total Debt Service + Admin Fee</b>	<b>484,500</b>	<b>674,397</b>	<b>674,397</b>	<b>728,749</b>	<b>728,749</b>	<b>121,458</b>	<b>787,500</b>

*\* The annual Fixed Rent Schedule Lease Years 1-6 will be revised upon closing of the Loan and completion of construction to reflect the actual debt service schedule based upon the interest rate determined at Loan Closing and Total Project Cost. Fixed Rent for the remaining Term shall be calculated based upon the CPI Adjustment set forth below.*

JSC  
(tenant initials)

**Market Rent/CPI Adjustment – starting in Lease Year 7**

Commencing in Lease Year 7 Fixed Rent shall be **\$945,000**. Fixed Rent shall be increased each year thereafter by the CPI Increase (defined below) measured from the commencement of the then current Lease Year (July 1) to the date in which the prior Lease Year commenced.

The term “CPI Increase” shall mean the percentage by which the CPI Index as of a given date exceeds the CPI of a prior given date. The “CPI” shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for western region US, as published by Bureau of Labor Statistics, U.S. Department of Labor. The CPI for a specific month shall be deemed to mean the CPI published for such month or, if not published for that month, the CPI published for a month most recently prior to such month. If publication of the CPI is discontinued, or if the basis of calculating the CPI is materially changed, then Landlord shall substitute for the CPI comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result that would have been achieved by the CPI.

## SCHEDULE D PROJECT DESCRIPTION

Alturas Prep Academy

**Pro Builders INC.**  
**208-233-3111**  
970 W. CEDAR • POCATELLO, ID

Job #	2020-1
Job Address	2300 E 17th St
	Idaho Falls, Idaho

Drawing #	Drawing Title	Revision No	Drawing Date:	Received Date:	Set:
	TITLE AND CODE REVIEW				
T-1	TITLE AND CODE REVIEW	1	11/17/2020	11/25/2020	Construction
	Civil				
C0.1	CITY NOTES	1	11/11/2020	11/25/2020	Construction Set
C1.0	CIVIL TITLE SHEET	1	11/11/2020	11/25/2020	Construction Set
C1.1	GENERAL NOTES	1	11/11/2020	11/25/2020	Construction Set
C2.0	SITE SURVEY	1	11/11/2020	11/25/2020	Construction Set
C3.0	DEMOLITION PLAN	1	11/11/2020	11/25/2020	Construction Set
C4.0	SITE PLAN	1	11/11/2020	11/25/2020	Construction Set
C5.0	GRADING & DRAINAGE PLAN	1	11/11/2020	11/25/2020	Construction Set
C6.0	EROSION CONTROL PLAN	1	11/11/2020	11/25/2020	Construction Set
C7.0	PROJECT DETAILS	1	11/11/2020	11/25/2020	Construction Set
C7.1	PROJECT DETAILS	1	11/11/2020	11/25/2020	Construction Set
	ARCHITECTURAL				
A-1	DEMOLITION PLAN	0	10/20/2020	10/20/2020	CONSTRUCTION
A-2	OVERALL FLOOR PLAN & OCCUPANT LOAD SCHEDULE	1	11/13/2020	11/25/2020	CONSTRUCTION
A-3	FLOOR PLAN- AREA A	1	11/13/2020	11/25/2020	CONSTRUCTION
A-4	FLOOR PLAN- AREA B & GYM COURTLINES	1	11/13/2020	11/25/2020	CONSTRUCTION
A-5	FLOOR PLAN- AREA C	1	11/13/2020	11/25/2020	CONSTRUCTION
A-6	EXTERIOR BUILDING ELEVATIONS	1	11/13/2020	11/25/2020	CONSTRUCTION
A-7	EXTERIOR BUILDING ELEVATIONS AND BUILDING CROSS SECTIONS	1	11/13/2020	11/25/2020	CONSTRUCTION
A-8	WALL SECTIONS AND DETAILS	1	11/13/2020	11/25/2020	CONSTRUCTION
A-9	WALL SECTIONS AND DETAILS	1	11/13/2020	11/25/2020	CONSTRUCTION
A-10	ROOM FINISH PLAN	1	11/13/2020	11/25/2020	CONSTRUCTION
A-11	REFLECTED CEILING PLAN	0	10/20/2020	10/20/2020	CONSTRUCTION
A-12	TYPICAL CLASSROOM WALL ELEVATIONS AND DETAILS	1	11/13/2020	11/25/2020	CONSTRUCTION
A-13	MILLWORK ELEVATIONS AND DETAILS	0	10/20/2020	10/20/2020	CONSTRUCTION
A-14	DOOR SCHEDULE	1	11/13/2020	11/25/2020	CONSTRUCTION
A-15	SCHEDULES AND DETAILS	0	10/20/2020	10/20/2020	CONSTRUCTION
	STRUCTURAL				
S1.1	STRUCTURAL NOTES AND SCHEDULES	0	11/17/2020	11/25/2020	CONSTRUCTION
S1.2	STRUCTURAL SCHEDULES AND SECTIONS	0	11/17/2020	11/25/2020	CONSTRUCTION
S1.3	STRUCTURAL SCHEDULES AND SECTIONS	0	11/17/2020	11/25/2020	CONSTRUCTION
S2.1	OVERALL WALL FRAMING PLAN	0	11/17/2020	11/25/2020	CONSTRUCTION
S2.2	AREA "A" WALL FRAMING PLAN	0	11/17/2020	11/25/2020	CONSTRUCTION
S2.3	AREA "B" WALL FRAMING PLAN	0	11/17/2020	11/25/2020	CONSTRUCTION
S2.4	AREA "C" WALL FRAMING PLAN	0	11/17/2020	11/25/2020	CONSTRUCTION
S3.1	OVERALL ROOF FRAMING PLAN	1	11/17/2020	11/25/2020	CONSTRUCTION
S3.2	AREA "A" ROOF FRAMING PLAN	0	11/17/2020	11/25/2020	CONSTRUCTION
S3.3	AREA "B" ROOF FRAMING PLAN	1	11/17/2020	11/25/2020	CONSTRUCTION
S3.4	AREA "C" ROOF FRAMING PLAN	0	11/17/2020	11/25/2020	CONSTRUCTION
	MECHANICAL/PLUMBING				
M0.1	MECHANICAL DEMO PLAN	0	10/15/2020	10/15/2020	CONSTRUCTION
M1.1	MECHANICAL FLOOR PLAN- AREA "A"	0	10/15/2020	10/15/2020	CONSTRUCTION
M1.2	MECHANICAL FLOOR PLAN- AREA "B"	0	10/15/2020	10/15/2020	CONSTRUCTION
M1.3	MECHANICAL FLOOR PLAN- AREA "C"	0	10/15/2020	10/15/2020	CONSTRUCTION
M3.1	MECHANICAL DETAILS AND DIAGRAMS	0	10/15/2020	10/15/2020	CONSTRUCTION
M3.2	MECHANICAL SCHEDULES AND DETAILS	0	10/15/2020	10/15/2020	CONSTRUCTION
P0.1	PLUMBING DEMO PLAN	0	10/15/2020	10/15/2020	CONSTRUCTION
P1.1	PLUMBING FLOOR PLAN	0	10/15/2020	10/15/2020	CONSTRUCTION
P2.1	LARGE SCALE PLUMBING PLANS	0	10/15/2020	10/15/2020	CONSTRUCTION
P2.2	LARGE SCALE PLUMBING PLANS	0	10/15/2020	10/15/2020	CONSTRUCTION
P2.3	PIPING ISOMETRICS	0	10/15/2020	10/15/2020	CONSTRUCTION
P3.1	PLUMBING DETAILS AND SCHEDULES	0	10/15/2020	10/15/2020	CONSTRUCTION

P3.2	PLUMBING DETAILS AND SCHEDULES	0	10/15/2020	10/15/2020	CONSTRUCTION
	ELECTRICAL				
E1.0	ELECTRICAL NOTES AND DETAILS	1	11/17/2020	11/25/2020	CONSTRUCTION
E1.1	EXISTING ELECTRICAL PLAN	1	11/17/2020	11/25/2020	CONSTRUCTION
E2.0	LIGHTING PLAN- AREA "A"	1	11/17/2020	11/25/2020	CONSTRUCTION
E2.1	LIGHTING PLAN- AREA "B"	1	11/17/2020	11/25/2020	CONSTRUCTION
E2.2	LIGHTING PLAN- AREA "C"	1	11/17/2020	11/25/2020	CONSTRUCTION

## **SCHEDULE E REPORTING REQUIREMENTS**

The Tenant shall provide to Landlord (and to Lender upon Landlord's request) the following information:

(a) Reports

(i) within 210 days after the end of each Fiscal Year, commencing with Fiscal Year June 30, 2022, annual unqualified audited financial statements;

(ii) within 45 days following adoption by the Tenant's governing board (the "Board"), a copy (which may be sent electronically) of the Tenant's adopted annual budget and capital budget for the present Fiscal Year and a copy of revisions, if any, to the Tenant's annual budget and capital budget as approved by the Board; provided that prior to Tenant's adoption of its annual budget, Tenant must receive approval of the proposed annual budget from Landlord;

(iii) within 45 days from the end of each quarter, unaudited financial statements for the previous quarter reflecting revenues and expenses in comparative form with the Tenant's operating budget as submitted by the Tenant to the Board (which may be sent electronically);

(iv) unless publically available, within 10 days following written request from Landlord a copy (which may be sent electronically) of meeting minutes of the Board; and

(v) any other information required pursuant to the Loan Agreement, or that Landlord or Lender may reasonably request (items (i) through (v) are collectively referred to herein as the "Reports").

(b) Enrollment Reports. Tenant shall provide Landlord with a copy (which may be by electronic transfer) of each report on enrollment, by grade, headcount, membership, attendance or any other similar report that is required to be submitted to the State on the date that is one (1) month prior to the State reporting date and at the time the State enrollment report is filed. Tenant shall also provide Landlord with re-enrollment statistics on April 30<sup>th</sup> and on the date that is one (1) month prior to the start of school.

(c) Additional Reports. If at any time an Event of Default has occurred and is continuing, the Tenant shall provide Landlord with a copy of monthly financial statements of the Tenant and any other information that Landlord shall reasonably request on a monthly basis.

(d) Tenant Report. Further, the Tenant will deliver to the Landlord within six weeks after the end of the Tenant's Fiscal Year a certificate executed by the Tenant's president or chief financial officer stating that:

(i) A review of the activities of the Tenant during such Fiscal Year and of performance hereunder has been made under [his/her] supervision; and

(ii) [He/She] is familiar with the provisions of this Lease and to the best of his/her knowledge, based on such review and familiarity, the Tenant has fulfilled all of its obligations hereunder and thereunder throughout the Fiscal Year, and there have been no defaults under the Lease, or, if there has been a default in the fulfillment of any such obligation in such Fiscal Year, specifying each such

default known to [him/her] and the nature and status thereof and the actions taken or being taken to correct such default.

(e) Charter Compliance. The Tenant will deliver to Landlord within 10 days of receipt, any notice or report with respect to charter compliance that would allow the Granting Authority to begin any process or proceedings towards charter revocation, termination or non-renewal.

(f) Testing Results. The Tenant will deliver to Landlord the results of any educational testing required by State or federal law within 30 days of receipt thereof by the Tenant.

Landlord and Lender shall have no duty hereunder regarding such information other than to retain any such information that it receives and to transmit same in accordance herewith.

**SCHEDULE F**  
**ENROLLMENT BENCHMARKS**

Fiscal Year	2021-22	2022-23	2023-24	2024-25	2025+
Enrollment Benchmark	261	330	409	484	517