

AGREEMENT



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AGREEMENT NO.: 20215237

CUSTOMER ("you" or "your")

FULL LEGAL NAME: Henningson Christian Community School Inc
ADDRESS: 1803 E Ustick (Addwell) ID 83605
CONTACT NAME: Angela Cannon PHONE #: (208) 453-8070 FEDERAL TAX ID #: 27-3220966

EQUIPMENT AND PAYMENT TERMS

MAKE/MODEL/ACCESSORIES: Toshiba e-studio 557 SERIAL NO. STARTING
Toshiba e-studio 557

MONTHLY PAYMENT AMOUNT: \$ 847.00 (PLUS TAX) TERM IN MONTHS: 60 SECURITY DEPOSIT: \$ 0

ORIGINATION FEE: \$75.00

EQUIPMENT LOCATION: ☐ SEE ATTACHED SCHEDULE

END OF LEASE OPTIONS

By checking a box and initialing below, you may choose one of the following options to apply at the end of the original term, provided that no event of default under this Agreement has occurred and is continuing. If no box is checked and initialed, then Fair Market Value will be your end of lease option. Agreements with \$1.00 purchase option will not be renewed. To the extent that any purchase option indicates that the purchase price will be the "Fair Market Value" (or "FMV"), such term means the value of the Equipment in continued use.
☐ FMV: 1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3. Customer's Initials
☐ \$1.00 Purchase: 1) Purchase the Equipment for \$1.00, or 2) Return the Equipment per paragraph 3. Customer's Initials

THIS AGREEMENT IS NON-CANCELABLE AND IRREVOCABLE. IT CANNOT BE TERMINATED. PLEASE READ CAREFULLY BEFORE SIGNING.

CUSTOMER'S AUTHORIZED SIGNATURE

BY SIGNING THIS PAGE, YOU REPRESENT TO US THAT YOU HAVE RECEIVED, READ, AND ACKNOWLEDGED THE ADDITIONAL TERMS AND CONDITIONS APPEARING ON THE SECOND PAGE OF THIS TWO-PAGE AGREEMENT. THIS AGREEMENT IS BINDING UPON OUR ACCEPTANCE HEREOF.

(As Stated Above)

X M. Cannon
SIGNATURE

MALE CANNON
PRINT NAME & TITLE

12/21/11
DATE

LESSOR ("we", "us", "our")

Allied Business Solutions, Inc.

LESSOR

[Signature]
SIGNATURE

Dara Rapillo

PRINT NAME & TITLE

DATE

10394 West Emerald St, Boise, ID 83704

Senior Account Manager

UNCONDITIONAL GUARANTY

The undersigned, jointly and severally if more than one, unconditionally guarantee(s) that the Customer will timely perform all obligations, including all and any debts, liabilities, and obligations of every nature or form, now existing or hereafter arising or acquired, under the Agreement or any supplements hereto. The undersigned also waive(s) any notification if the Customer is in default and consent(s) to any extensions or modifications granted to the Customer. In the event of default, the undersigned will immediately pay all sums due under the terms of the Agreement without requiring us or our assignee, if applicable, to proceed against Customer or any other party or exercise any rights in the Equipment. The undersigned hereby binds any respective administrators, representatives, successors, and authorized assigns. THE UNDERSIGNED, AS TO THIS GUARANTY, AGREE(S) TO THE DESIGNATED FORUM AND CONSENT(S) TO PERSONAL JURISDICTION, VENUE, AND CHOICE OF LAW AS STATED IN THE AGREEMENT, AGREE(S) TO PAY ALL COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY US OR OUR ASSIGNEE RELATED TO THIS GUARANTY AND THE AGREEMENT, WAIVE(S) A JURY TRIAL AND TRANSFER OF VENUE, AND AUTHORIZE(S) OBTAINING CREDIT REPORTS.

SIGNATURE: X INDIVIDUAL: DATE:
SIGNATURE: X INDIVIDUAL: DATE:

CERTIFICATE OF DELIVERY AND ACCEPTANCE

The Customer hereby certifies that all the Equipment: 1) has been received, installed, and inspected, and 2) is fully operational and unconditionally accepted.

SIGNATURE: X M. Cannon NAME & TITLE: MALE CANNON DATE: 12/21/11



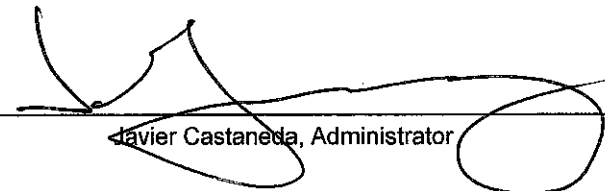
Contract for Special Education Services
School Psychologist
October 2016 - May, 2017

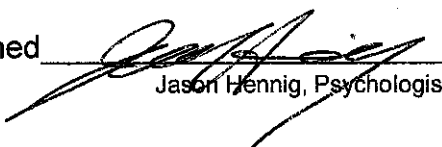
Heritage Community Charter School is contracting for the following services at a rate of \$65 per hour without benefits, taxes, or travel:

1. Conduct assessment of students for special education eligibility in accordance with the Individuals with Disabilities Education Act and Idaho State Code as requested by the HCCS Special Education Director/Coordinator.
2. Provide testing materials as requested.
3. Provide written report of assessment results.
4. Participate in IEP meetings either in person or by phone as requested by the Special Education Director/Coordinator.
5. Consult with special education personnel as requested by the Special Education Director/Coordinator.
6. Payment for services is once per month. Services are billed by month and submitted by the 5th of each month and payment can be expected by the 15th.

Please provide the following documentation:

- Copy of Psychologist licensure/credentials

Signed  Date 20160909
Javier Castaneda, Administrator

Signed  Date 9-9-16
Jason Hennig, Psychologist

ADDITIONAL TERMS AND CONDITIONS

1. AGREEMENT: For business purposes only, you agree to lease from us the goods, together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries (the "Equipment") and/or to finance certain licensed software and services ("Financed Items"), which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, excluding equipment marked as not financed under this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name and address. This Agreement becomes valid upon execution by us. This Agreement is binding upon our acceptance hereof and will begin on the date the Equipment is delivered to you or any later date we designate. Unless otherwise stated in an addendum hereto, this Agreement (if FMV option is chosen) will renew for successive three-month periods unless you send us written notice at least 30 days (before the end of any term) that you want to purchase or return the Equipment, and you timely return the Equipment (according to the conditions herein). Any security deposit will be commingled with our assets, will not earn interest, and will be returned at the end of the term, provided you are not in default. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You shall deliver all information requested by us which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof.

2. RENT, TAXES AND FEES: You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes with respect to this Agreement and the Equipment. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. Unless a \$1 Purchase Option is applicable, we own the Equipment (excluding any Software). You agree to indemnify us for the loss of any U.S. federal income tax benefits resulting from your acts or omissions inconsistent with this Agreement or our ownership of the Equipment. If a \$1 Purchase Option is applicable, you acknowledge that this Agreement shall be deemed to be a conditional sales contract, and that any ownership we have in the Equipment will be transferred to you "As Is" and "Where Is" upon receipt of final payment, and that you are responsible for reporting the Equipment as required to appropriate taxing authorities and for remitting any personal property tax related to the Equipment to such authorities. By the date the first Payment is due, you agree to pay us a origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement. You cannot pay off this Agreement or return the Equipment prior to the end date without our consent. If we consent, we may charge you, in addition to other amounts owed, an early termination fee up to 10% of the Fair Market Value of the Equipment on the date of this Agreement.

3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST; SOFTWARE/DATA: At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at the installation address, and you agree not to move it unless we agree in writing. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, if you do not purchase the Equipment, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. If this Agreement is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence. Except as provided in this paragraph, references to "Equipment" include any software referenced above or installed on the Equipment. We do not own the software and cannot transfer any interest in it to you. We are not responsible for the software or the obligations of you or the licensor under any license agreement. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory.

4. COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE: You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, we may (A) secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we place insurance on the Equipment, we will not name you as an insured and your interests may not be fully protected. If we secure insurance on the Equipment, you will pay us an amount for the premium which may be higher than the premium that you would pay if you placed the insurance independently and an insurance fee which may result in a profit to us through an investment in reinsurance; or (B) charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and, if requested, to defend us against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 2%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. No loss or damage shall relieve you of your payment obligations under this Agreement. All indemnities will survive the expiration or termination of this Agreement.

5. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. DEFAULT AND REMEDIES: You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any amount payable to us is not paid when due, you will pay a late charge equal to: 1) the greater of ten (10) cents for each dollar overdue or twenty-six (\$26.00) dollars; or 2) the highest lawful charge, if less. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 4%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-507 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. FAXED OR SCANNED DOCUMENTS, MISC.: You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. The original of this Agreement shall be that copy which bears your facsimile, scanned or original signature, and which bears our original signature. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

8. WARRANTY DISCLAIMERS: YOU AGREE THAT YOU HAVE SELECTED ANY/ALL THIRD PARTY SUPPLIERS AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST AMOUNTS DUE UNDER THIS AGREEMENT FOR ANY REASON. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS. WE ASSIGN TO YOU ANY WARRANTIES GIVEN TO US.

9. LAW, JURY WAIVER: Agreements, promises and commitments made by Lessor, concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. YOU AGREE THAT THIS AGREEMENT AND ANY CLAIM RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE IN WHICH OUR (OR, IF WE ASSIGN THIS AGREEMENT, OUR ASSIGNEE'S) PRINCIPAL PLACE OF BUSINESS IS LOCATED AND ANY DISPUTE CONCERNING THIS AGREEMENT WILL BE ADJUDICATED IN A FEDERAL OR STATE COURT IN SUCH STATE. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN SUCH COURTS AND WAIVE TRANSFER OF VENUE. For any action arising out of or relating to this Agreement or the Equipment, YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.

10. TRANSITION BILLING: In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. You agree to pay us an additional amount equal to 1/30th of the Monthly Payment for each day between the date the Equipment is delivered and the Effective Date, which will be added to your first invoice.

11. MISCELLANEOUS: You authorize us, our agent or our assignee to furnish your information, including credit application, payment history and account information, to credit reporting agencies and our assignees, potential purchasers or investors and parties having an economic interest in this Agreement or the Equipment, including, without limitation, the seller, supplier or any manufacturer of the Equipment. For security purposes and to help the government fight terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each individual or commercial entity that enters into a customer relationship with the financial institution. For this reason, we may request the following identifying information: name, address, date of birth. We may also ask other questions or request other documents meant to verify your individual or commercial identity.

**HERITAGE COMMUNITY CHARTER SCHOOL DISTRICT NO. 481
SCHOOL BUS SERVICE
AGREEMENT**

THIS AGREEMENT (sometimes hereinafter "**Agreement**") is entered into on this 5th day of May, 2016, between the Board of Trustees of HERITAGE COMMUNITY CHARTER SCHOOL, 1803 E. Ustick Road, Caldwell, Canyon County, Idaho 83605 (sometimes hereinafter referred to as the "**Board**"), and BROWN BUS COMPANY, 2111 East Sherman Avenue, Nampa, Canyon County, Idaho 83686-7391 (sometimes hereinafter referred to as the "**Contractor**").

RECITALS

The Board is interested in entering into a contract for the purpose of providing adequate transportation services for the school children of HERITAGE COMMUNITY CHARTER SCHOOL (sometimes hereinafter referred to as the "**District**") in conformity with local policies and legal requirements for a period of five (5) years.

In 2011, Contractor has bid for the services sought by District, and Contractor's bid has been found by District to be acceptable. In the bid notice for the 2011 contract, duly published pursuant to Idaho Code 33-1510(2). This agreement is an extension of the contract awarded and renegotiated in 2016 as provided in Idaho Code 33-1510(2).

In consideration of the foregoing and for other valuable consideration, District and Contractor hereby mutually agree as follows:

SECTION ONE

SCOPE OF CONTRACT

1.1 Except as otherwise specifically altered by the provisions of this 2016 renegotiated agreement, the following shall be deemed to be part of the contract memorialized by this Agreement:

- a. The 2011 advertisement for bids and statements by District at the pre-bid conference supplementing and amending the advertisement for bids, as documented by the minutes thereof;
- b. The 2011 District letter of interest response;

- c. The 2011 Request for Proposal, Student Transportation Services: Bid Procedures and Specifications — Heritage Community Charter School;
- d. The 2011 bid by Contractor;
- e. The 2011 notice of award;
- f. The provisions contained in this 2016 Agreement and recited; and
- g. All provisions required by law to be inserted in this 2016 Agreement, whether actually inserted or not.¹

1.2 All of the above taken as a whole shall constitute the contract document; provided, however, that in the event of any inconsistencies between this written Agreement and the provisions of subparagraphs (a) through (f) of paragraph 1.1, above, the provisions of this written Agreement shall control if this Agreement specifically addresses the issue in question.

SECTION TWO

DEFINITIONS

The following words and expressions or pronouns used in substitute therefor shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

- a. The term “**Board**” shall mean the Board of Trustees of District or the Board’s duly authorized representative.
- b. The term “**contract**” or “**contract documents**” shall mean each of the various parts the contract referred to in Section One of this Agreement, both as a whole and severally.
- c. The term “**Contractor**” shall mean BROWN BUS COMPANY, an Idaho corporation, Contractor’s assigns, and any person, firm, or corporation who or which shall at any time be substituted in Contractor’s place.
- d. The terms “**law**” or “**laws**” shall mean Federal law, the Constitution of Idaho, the statutes of Idaho, and any ordinance, rule, or regulation having the force of law that is applicable to this contract.
- e. The term “**notice**,” in the context of notice to the Contractor, shall mean written notice deposited in the United States First-Class mail addressed to Contractor at 2111 East

¹Please see, in this regard, Section Twenty-Four of this Agreement.

Sherman Avenue, Nampa, Idaho 83686-7391, or to such other address as may appear in an instrument executed by Contractor for that purpose and mailed by United States mail or delivered to District as a change of address. Notice to District means written notice deposited in the United States First-Class mail addressed to the Administrator of the District at 1803 E. Ustick Road, Caldwell, Idaho 83605, or other duly authorized agent,² or delivered personally to the Administrator of the District or other duly authorized agent.³ Nothing contained in this contract shall, however, be deemed to preclude or render inoperative the service of any notice, direction, or other communication on Contractor personally, or if Contractor is a corporation, on any officer or director of Contractor.

f. The term “**specifications**” shall mean the Request for Proposal, Student Transportation Services: Bid Procedures and Specifications — Heritage Community Charter School, issued by the District.

SECTION THREE

TERM

3.1 **Term.** This contract shall be effective from July 1, 2016, and shall continue for a total period of five (5) years, to end on June 30, 2021, unless sooner terminated in accordance with the provisions of this Agreement.

3.2 **Additional Term.** Notwithstanding the termination date set forth in paragraph 3.1, above, prior to the end of the initial term pursuant to Idaho Code 33-1510, District, at its option, renegotiated terms satisfactory to the District with Contractor and renewed the contract, as amended by the renegotiated provisions, for an additional term not to exceed five (5) years.

SECTION FOUR

GENERAL UNDERSTANDING AND PERFORMANCE OF WORK

²If the District’s agent is to be other than the Administrator for any particular notice (see, *e.g.*, Section Twenty-One of this Agreement — Report of Accident), the District must provide Contractor reasonable prior notice of the authorized agent’s name, address and telephone number.

³*Id.*

Contractor shall perform the services and furnish the equipment and personnel as provided in the specifications, and shall do all things necessary or proper for the performance and completion of the work required by this contract, in the manner and at the times provided in the 2011 bid and specifications as amended by this Agreement.

SECTION FIVE

DELEGATION OF AUTHORITY

District hereby delegates to Contractor the necessary authority to supervise and control students on the buses operated by Contractor while they are en route under such Board policies and administrative regulations and rules as are adopted by District. However, this authorization shall not include the right to administer corporal punishment, nor the right to eject any offender under circumstances that may or are likely to result in injury or danger to the offender.

SECTION SIX

DESIGNATION OF STUDENTS

Contractor shall transport only those students designated by District or its duly authorized agents.

SECTION SEVEN

SCHOOL CLOSING

District agrees to inform Contractor, through duly authorized agents, as soon as reasonably possible when schools are to be closed because of weather or by reason of any other conditions that might arise.

SECTION EIGHT

SCHEDULE DETAILS

8.1 **Scheduling.** A description of each route shall be furnished by Contractor prior to the start of each school year, together with a time schedule and the designated stops to be observed on each route, such routes and schedules having been established prior to the start of the school year by coordinated effort and mutual agreement of District and Contractor. Changes in the

routes, time schedules, or designated stops may be made, and any of the routes may be eliminated or consolidated at the discretion of District or its duly authorized agent to meet changed conditions. However, no change, elimination, or consolidation, except to meet unexpected or emergency situations, will be made until after Contractor has been given an opportunity to confer with District or its authorized representatives with respect to the change, elimination, or consolidation at least thirty (30) days in advance of the change, elimination, or consolidation. Adjustments in the sums to be paid to Contractor will be made for any increase or decrease in mileage resulting from a change, elimination, or consolidation of routes or additional services for high school or elementary school in the nature of school-sponsored activities, as provided in the specifications. District or its duly authorized agents may, from time to time, establish Board policies and administrative rules and regulations to be observed by Contractor in connection with all details incidental to the operation of the routes, including starting times, bus stops, discipline on the buses, and any situations that may from time to time arise in the performance of the contract.⁴

8.2 Route/Activity Busing Definitions. The following are the definitions of the various routes and related bus services to be provided by Contractor pursuant to this contract. The rates set forth on the Contractor's Bid Form, attached hereto as Exhibit A and incorporated herein by this reference, are for the route/other transportation services as hereinafter specifically described:

8.2.1 Daily Transportation. The following Daily Transportation rates are for both year-around and conventional schooling.

a. *Regular Daily Route* is defined as transporting a group of students from designated bus stops to school at the beginning of each school day and transporting a group of students from school to their respective designated bus stops at the end of each school day. Bids for Regular Routes have been submitted on a per-route-per-day basis, with a sixty (60) -mile-per-day base and a four (4) -hour-per-day base, which includes pre-trip and post-trip vehicle inspections. In instances where the four (4) -hour-per-day base is exceeded, the time will be rounded to the nearest one-fourth (1/4) hour.

b. *Kindergarten / Midday Route* is defined as transporting morning kindergarten students from school to designated bus stop(s) each school day and afternoon kindergarten students from designated bus stop(s) to school each school day. Bids shall be submitted on a per-route-per-day basis, with a 30 mile-per-day base and a 2.0-hour-per day base, which includes pre-trip and post-trip vehicle inspections. In instances where the 2.0-hour-per-day base is exceeded the, time will be rounded to the nearest 1/4 hour and includes time for a pre-trip and post-trip inspection.

c. *Special Needs Route* is defined as transporting a student or group of students from designated bus stops to school at the beginning of each school day and transporting

⁴Rules and regulations in this regard in force at the outset of the contract are agreed by the parties to be *Transportation Rules & Regulations for Heritage Community Charter School*.

a student or group of students from school to their respective designated bus stops at the end of each school day, the said student or group of students being designated by the District as needing special assistance through an Individual Education Plan (I.E.P.) or Contractor policy. Routes will provide door-to-school-to-door service and require an assistant in addition to the driver. The assistant shall be a qualified C.D.L. driver and have the responsibility of maintaining the discipline, safety and welfare of the passengers of the bus. Bids shall be submitted on a per-route-per-day basis and shall include the assistant. Each route has a base of sixty (60) -mile-per-day base and a four (4) -hour-per-day base, which includes pre-trip and post-trip vehicle inspections. In instances where the four (4) -hour-per-day base is exceeded, the time will be rounded to the nearest ¼ hour and include time for an adequate pre-trip and post-trip inspection and the bid price includes the assistant.

c. *Lift Route* is defined as transporting a student or group of students from designated bus stops to school at the beginning of each school day and transporting a student or group of students from school to their respective designated bus stops at the end of each school day. Students transported on a Lift Route include students who are not ambulatory or who are designated by the District as needing special assistance through an Individual Education Plan (I.E.P.) or Contractor policy. The bus for a Lift Route is equipped with lifts to assist in loading wheel chairs. Routes provide door-to-school-to-door service and include an assistant in addition to the driver. The assistant shall have the responsibility for assisting in the loading and unloading process and for maintaining discipline, safety and welfare of the passengers on the bus. Bids for Lift Routes have been submitted on a per-route-per-day basis with a sixty (60) -mile-per-day base and a four (4) -hour-per-day base, which includes pre-trip and post-trip vehicle inspections; and the bid price includes the assistant. In instances where the four (4) -hour-per-day base is exceeded, the time will be rounded to the nearest one-fourth (¼) hour.

d. *Standby Buses* are to be used for the purposes of providing activity and field trips and replacement in the event of required and/or necessary service. Bids for Standby Buses have been submitted on a per-bus-per-day basis.

8.2.2 Other Transportation Services. The Other Transportation Services rates do not contemplate overnight trips. The cost of trips that require an overnight stay will be determined by mutual agreement of District and Contractor.⁵ Other Transportation Services to be provided by Contractor are as follows:

a. *Community After-School Programs* are after-school programs requiring transportation of students from school to some after-school program location other than the students' regular bus stops at or near the students' homes. Bids for Community After-School Program Routes have been submitted as a rate per mile calculated on the round trip mileage beginning at the Contractor's bus housing facility and a rate per hour calculated on the total elapsed

⁵There may be an additional *Overnight Charge* for transportation of students on extended trips where the driver is either required by state or Federal law to go off duty for a period of eight hours or the length of the trip necessitates the driver's staying overnight.

time for the round trip rounded up or down to the nearest one-half (½) hour, allowing time for adequate pre-trip and post-trip inspections.

b. *Field Trips* are defined as transporting students from school to some other location and back for non-competition activities. Bids for Field Trips have been submitted as a rate per mile calculated on the round trip mileage beginning at the Contractor's bus housing facility and a rate per hour calculated on the total elapsed time for the round trip rounded up or down to the nearest one-half (½) hour, allowing time for adequate pre-trip and post-trip inspections.⁶

c. *Activity Busing* is defined as transporting students from school to some other location and back for competition activities. Bids for Activity Busing have been submitted as a rate per mile calculated on the round trip mileage beginning at the Contractor's bus housing facility and a rate per hour calculated on the total elapsed time for the round trip rounded up or down to the nearest one-half (½) hour, allowing time for adequate pre-trip and post-trip inspections.⁷

d. *Shuttle Busing* is defined as transporting students from school to school or from school to site and from site to school. Bids for Shuttle Busing have been submitted as a rate per mile calculated on the round trip mileage beginning at the Contractor's bus housing facility and a rate per hour calculated on the total elapsed time for the round trip rounded up or down to the nearest one-half (½) hour, allowing time for adequate pre-trip and post-trip inspections.

e. *Additional Driver* is defined as a qualified driver or bus assistant.

f. *Student Safety Training* is defined as providing at-school training on bus rider safety and emergency procedures. Training includes all students K-12 and be done on a classroom basis. A "classroom," for purposes of this subparagraph, shall not consist of more than 36 students. Student Safety Training has been bid as a rate per classroom.

SECTION NINE

RESPONSIBILITY FOR STUDENTS

Contractor shall be fully responsible for the care and supervision of students during their period of transportation. The transportation of a student shall be deemed to have begun when the student prepares to board the school bus, and shall be deemed to have ended when a student has completed alighting from the bus at the student's designated bus stop or, in the event the bus driver deems the student's designated bus stop unsafe, a reasonably safe place in which to alight in view

⁶Consistent with the introductory paragraph of this Section 8.2.2, there may be an additional *Overnight Charge* for transportation of students on extended trips where the driver is either required by state or Federal law to go off duty for a period of eight hours or the length of the trip necessitates the driver's staying overnight.

⁷*Id.*

of the circumstances then prevailing.

SECTION TEN

COMPLIANCE WITH LAWS AND REGULATIONS

10.1 **Contractor Compliance with Governmental Authority.** Contractor and Contractor's drivers are required to comply with all Federal laws, the laws of Idaho, and all regulations or requirements of the State Motor Vehicle Department, Public Utilities Commission, and the State of Idaho and the local Board or any of them. Furthermore, all school bus drivers employed by Contractor must submit to a criminal history background check pursuant to Idaho Code § 33-130.

10.2 **Agreement is Subject to Governmental Appropriations.** It is understood and agreed that District is a governmental entity and this Agreement shall in no way or manner be construed so as to bind or obligate the District or the State of Idaho beyond the term of any particular appropriation of funds by the Idaho Legislature or the Congress of the United States as may from time to time exist. In the event the Idaho Legislature or Congress fails, neglects or refuses to appropriate such funds as may be designated by and enable the District to continue the payment herein, this Agreement shall automatically be terminated and all future rights and liabilities of the parties hereto shall thereupon cease.

SECTION ELEVEN

PAYMENT

11.1 **Billing, Payment and Verification Procedures.**

a. *Billing and Payment.* On or before the eighth (8th) day of each month of each school year covered by this contract, Contractor shall submit to District a bill that shall include a detailed account showing the mileage covered in each category of transportation furnished during the preceding month. On or before the fifteenth (15th) day of the month in which the bill is submitted, District agrees to pay Contractor the contract price for those services that it shall find to have been rendered, computed on the basis of the bid submitted by the Contractor to District, adjusted by the terms of the adjustment provisions set forth in paragraphs 11.2 through 11.5, below, if applicable. Contractor agrees to submit to District a year-end summary for state reimbursement by August 1st of each year for the preceding one-year period.

b. *Past Due Billings*⁸. If payment is not received by the fifteenth (15th) day of the month which follows the month the billing was originally submitted, transportation will

⁸ Example of time line for past due billings: March billing - submitted April 8th, April 16th - billing past due, May 1st 30-day notice declaring the District in default, May 15th - amount still past due, transportation will cease if payment not received by May 31st.

cease at the end of the month that the billing became past due.

c. *Verification.* District has the right to inspect Contractor's records at any reasonable time during Contractor's regular business hours to verify the accuracy of the information and data used to compile and calculate the billing. This right may include an annual audit within the scope of this Agreement; provided, however, that any such audit, if called for by District, shall be at the cost and expense of District, not Contractor.

11.2 Consumer Price Index (C.P.I.) Adjustment.

a. *Applicable C.P.I.* The annual Consumer Price Index ("C.P.I.") adjustment shall be based on the C.P.I. as defined by the Federal Government. The C.P.I. to be used will be the "Consumer Price Index for All Urban Consumers: U.S. City Average for All Items (1982-1984 = 100)" published monthly in the *Monthly Labor Review* of the Bureau of Labor Statistics of the United States Department of Labor ("CPI-U"). In the event the CPI-U is discontinued, the alternate C.P.I. which will be used will be the "Consumer Price Index for All Urban Wage Earners and Clerical Workers: U.S. City Average for All Items (1982-1984 = 100)" published monthly in the *Monthly Labor Review* of the Bureau of Labor Statistics of the United States Department of Labor ("CPI-W"). In the event both the CPI-U and the CPI-W are discontinued, comparable statistics on the purchasing power of the consumer dollar published by the Bureau of Labor Statistics of the United States Department of Labor will be used for the computation.

b. *Diesel Price Alteration to CPI-U.* To avoid compounding of the Fuel Price Fluctuation Adjustment set forth below at paragraph 11.3, a diesel price alteration to the CPI-U will be made to remove the diesel fuel portion from the CPI-U index before applying the CPI-U for annual rate adjustments provided for in subparagraph (c), below. The alteration will be made in accordance with the recommended methodology by the State of Idaho Department of Education using information from the Bureau of Labor Statistics of the United States Department of Labor.

c. *C.P.I. Adjustment Calculation.* The base contract shall be for a term of five (5) years, beginning July 1, 2016. The prices bid by Contractor will be used for the operations during the first year of the contract, July 1, 2016, through June 30, 2017. Contractor compensation for the second, third, fourth, and fifth years of the contract, beginning on July 1 of each successive year, shall be based on the percentage of increase (or decrease) in the CPI-U.⁹ The "Benchmark Month" for determining the change in the CPI-U shall be July 2016. If the increase (or decrease) in the CPI-U from the Benchmark Month to June 2017 is at least one percent (1%), the rates for the second year of the contract shall be adjusted by the amount of the increase (or decrease). This same procedure will be followed to determine the rate charges for each of the remaining years of the contract.¹⁰

⁹This is the CPI-U adjusted as provided for in subparagraph (b), above.

¹⁰A sample calculation under this approach is as follows: If the CPI-U for July 2016 is 169.2 and the CPI-U for June 2017 is 170.3, there would be no adjustment for the second year of the contract (2017-2018), because the increase in the CPI-U was less than 1% [$(170.3 - 169.2) \div 169.2 = 0.650\%$]. If, however, by June of 2018 the CPI-U was 173.1, the

11.3 Fuel Price Fluctuation Adjustment.

a. *Base Price.* To protect both the District and Contractor against future changes in fuel prices over which neither District nor Contractor has control, the District has determined a base price for fuel as of Wednesday, March 9, 2016. The base price of diesel #2 low sulfur fuel, was \$1.89 per gallon ("**Base Price**") as of that date. This price includes any applicable state and/or Federal taxes. The Base Price was determined by using the Boise Rack price which is based on the Oil Price Information Service (OPIS) average fuel price for the State of Idaho ("**OPIS Price**") for March, 9, 2016.

b. *Calculation of Adjustment.* Starting July 1, 2016, the Contractor's rates will be adjusted up or down for any difference in the current Boise Rack price based on the OPIS Price above or below the Base Price. For every incremental price change of at least five cents (\$0.05) above or below the Base Price, there will be a fuel price adjustment added to or subtracted from the route rates in the amount of \$.50 per-route-per-day. Rate adjustments up or down will not be calculated more frequently than once per month. This adjustment is independent of the C.P.I. Adjustment of paragraph 11.2, above.

11.4 **Mandates by Local, State or Federal Government.** It is recognized that governmental mandates, whether local, state or Federal, that were unanticipated and/or did not exist at the time of bidding, that might require additional training, retrofitting of equipment or any other requirements that become necessary to fulfill the terms of the contract, might be adopted and effective during the period of the contract. Generally, such cost shall be borne by Contractor; however, if such mandates are qualified to be paid by the state or other governmental entity, Contractor, upon presentation of a statement of costs incurred, will be compensated by District as normal and necessary transportation costs of the District.

11.5 **Effect of Material Fundamental Changes to District Busing Model.** It is understood and agreed by District and Contractor that the bidding by Contractor for this contract was predicated on the student transportation model anticipated by the District. In the event any material changes are implemented by District during the term of this contract which would affect material fundamental changes in the existing student transportation model, the parties agree that all bid rates for the contract will be reviewed and renegotiated by the parties for the remainder of the contract term to take into account the altered District student transportation model.

SECTION TWELVE

INSPECTION

bid rates would be increased for the third year of the contract (2018-2019) by 2.305% $[(173.1 - 169.2) \div 169.2 = 2.305\%]$.

District reserves the right for its members or duly authorized agents to inspect any and all buses and their operation by riding as passengers or by other reasonable means.

SECTION THIRTEEN

TIME OF THE ESSENCE

Since the contract concerns a necessary public service, the provisions of the contract relating to the daily schedule and regulations that may be promulgated by District are of the essence of the contract. Accordingly, Contractor shall prosecute the work diligently to assure adherence to the schedules.

SECTION FOURTEEN

ASSIGNMENT OF CONTRACT

Contractor agrees not to assign this contract, or any interest in the contract, without the prior approval in writing of District, which approval shall not unreasonably be withheld.

SECTION FIFTEEN

FAILURE OF OPERATION

Except as otherwise specifically provided herein, in the event that Contractor fails to operate any route because of the failure of equipment or personnel, the amount of payment for the route may be deducted from the following month's payment at the then-current rate.

SECTION SIXTEEN

CONTRACT TERMINATION AND RIGHT TO DECLARE DEFAULT

16.1 Termination Without Cause.

a. *By District.* In the event District desires to terminate this Agreement it shall give Contractor written notification of that intent on or before the January 15 immediately

preceding the upcoming school year for which the termination will first be effective. If, after the notice has been given, mutual agreement cannot be reached for continuing the contract, District may terminate the Agreement by giving a second written notice to Contractor on or before March 15 of the same year.

b. *By Contractor.* In the event Contractor desires to terminate this Agreement it shall give District written notification of that intent on or before the January 15 immediately preceding the upcoming school year for which the termination will first be effective. If, after the notice has been given, mutual agreement cannot be reached for continuing the contract, Contractor may terminate the Agreement by giving a second written notice to District on or before March 15 of the same year.

16.2 Grounds for District to Declare Default. In addition to other rights District may have, District shall have the right to declare Contractor in default if:

- a. Contractor is or becomes insolvent;
- b. Contractor makes a general assignment for the benefit of creditors;
- c. A voluntary or involuntary petition in bankruptcy is filed by or against Contractor;
- d. Contractor fails to perform any bus route schedule when notified to do so by District;
- e. Contractor abandons the work required under this Agreement;
- f. Contractor refuses to proceed with the work required under this Agreement when and as directed by District;
- g. Contractor, without just cause, reduces Contractor's working force to a number that, if maintained, would be insufficient, in the opinion of District, to carry out the work required under this Agreement;
- h. Contractor sublets, assigns, transfers, conveys, or otherwise disposes of this contract other than as specified in this Agreement;
- i. A receiver or receivers are appointed to take charge of the property of Contractor;
- j. District is of the opinion that Contractor has willfully or in bad faith violated any of the material provisions of this Agreement;
- k. Any applicable laws relating to Contractor's providing of services under

this Agreement have been knowingly and repeatedly¹¹ violated by Contractor or Contractor's agents, servants or employees

l. Any vehicles provided by Contractor are repeatedly¹² operated in a manner that imperils the safety of passengers; or

m. Any vehicles provided by Contractor are repeatedly¹³ not kept reasonably clean or in reasonable mechanical condition.

16.3 Grounds for Contractor to Declare Default. In addition to other rights Contractor may have, Contractor shall have the right to declare District in default if:

- a. District is or becomes insolvent;
- b. District makes a general assignment for the benefit of creditors;
- c. A voluntary or involuntary petition in bankruptcy is filed by or against District;
- d. A receiver or receivers are appointed to take charge of the property of District;
- e. Contractor is of the opinion that District has willfully or in bad faith violated any of the material provisions of this Agreement;
- f. Non-payment by District pursuant to Section 11.1 (b).

16.4 Notice, Hearing and Opportunity to Cure. Before District shall exercise its right to declare Contractor in default, it shall give Contractor an opportunity to be heard, upon thirty (30) days' written notice which shall include the specific alleged ground(s) for the default, at which hearing Contractor may, at Contractor's expense, have a stenographer present; provided, however, that a copy of the stenographic notes, if any, shall be furnished to District upon request. Contractor shall not be ultimately determined to be in default under this Agreement if Contractor cures the alleged default(s) within the 30-day period after written notice of hearing on the alleged default(s) has been provided to Contractor.

16.5 Interruption of Service. In the event Contractor fails to provide the student

¹¹"Repeatedly" means more than just one isolated incident.

¹²*Id.*

¹³*Id.*

transportation as provided for in this Agreement due to strike, work stoppage due to labor dispute, act of God, civil disturbance, fire, riot, war, governmental action, or any other condition or cause beyond Contractor's control, no penalty shall be assessed to Contractor by District and District shall excuse Contractor from performance under this Agreement. Should Contractor for any reason fail to provide student transportation as provided for in this Agreement, District may use Contractor's buses to transport and/or cause the students to be transported by any available means until Contractor is able to resume its regular operation. In the event District exercises the option of the immediately preceding sentence, it shall pay Contractor the same amount specified in the rate schedule applicable for that year, less all expenses and costs incurred by District in securing the services of such operating personnel.

SECTION SEVENTEEN

EXERCISE OF RIGHT TO DECLARE CONTRACTOR OR DISTRICT IN DEFAULT

17.1 **District.** The right to declare Contractor in default for any of the grounds specified or referred to in Section 16.2 shall be exercised by sending Contractor a notice signed by the Chairman of Board, Secretary of the Board, or District's duly authorized agent setting forth the ground or grounds on which each default is declared.

17.2 **Contractor.** The right to declare District in default for any of the grounds specified or referred to in Section 16.3 shall be exercised by sending District a notice signed by the Contractor personally, or if Contractor is a corporation, by any officer or director of the Contractor, setting forth the ground or grounds on which each default is declared.

SECTION EIGHTEEN

DISTRICT'S RIGHTS AFTER TERMINATION

After the termination of Contractor's services for a default under this contract, District may employ another contractor or contractors to complete the terms of this contract, and hold Contractor responsible for any extra or added expense or damages suffered by District.

SECTION NINETEEN

OTHER REMEDIES

The contractual provisions outlined in this contract as to the rights of District after termination shall be in addition to any and all other legal or equitable remedies permissible under law.

SECTION TWENTY

INDEMNIFICATION

Contractor shall indemnify District from any loss that it may sustain from any cause arising out of the performance or lack of performance of this contract by Contractor. Likewise, District shall indemnify Contractor with respect to any loss that Contractor may sustain from any cause arising out of the performance or lack of performance of this contract by District.

SECTION TWENTY-ONE

REPORT OF ACCIDENT

Contractor agrees to notify the District's Administrator, or said the duly authorized agent(s) of whom Contractor has been provided reasonable prior notice of name(s) and telephone number(s) by the District, by telephone of any vehicle accident involving a school bus while operating for the District. Contractor agrees to send, within twenty-four (24) hours of each reportable accident, a written report to the District describing all material details of such accident. All accident reports shall be completed and filed by Contractor in accordance with state laws and regulations and any additional requirements of the Idaho State Department of Education.

SECTION TWENTY-TWO

TITLES OF PARAGRAPHS

The various titles to the paragraphs in this Agreement are used solely for convenience and they shall not be used for the purpose of interpreting or construing any word, clause, paragraph, or subparagraph of this Agreement.

SECTION TWENTY-THREE

UNLAWFUL PROVISIONS DEEMED STRICKEN

All unlawful provisions of this contract shall be deemed stricken from the contract, and shall be of no effect. On the application of either party, the unlawful part shall be considered stricken without affecting the binding force of the remainder of the contract.

SECTION TWENTY-FOUR

APPLICABLE LAW

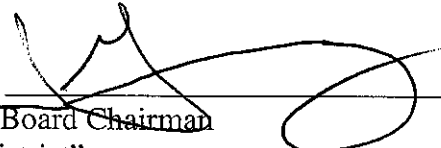
It is the intention of the parties to this contract that all legal provisions of law required to be inserted in this Agreement shall be and are inserted in it. However, if, by mistake or otherwise, some such provision is not inserted in the Agreement, or is not inserted in proper form, then on the application of either party the contract shall be amended so as to strictly comply with the law without prejudice to the rights of either party under the Agreement.¹⁴ This Agreement shall be governed and interpreted by the laws of the State of Idaho.

[The signature page follows.]


¹⁴Please see, in this regard; paragraph 1.1(h) of this Agreement.

IN WITNESS WHEREOF, the Board of Trustees of HERITAGE COMMUNITY CHARTER SCHOOL, Canyon County, Idaho, acting by Josh Gregory its Chairman, duly authorized, and BROWN BUS COMPANY, as Contractor, acting through its duly authorized corporate officer, Brad Carpenter, Secretary/Treasurer, has set his signature and seals at Nampa, Idaho, the day and year first above written.

HERITAGE COMMUNITY CHARTER SCHOOL

By 
Its Board Chairman
"District"

BROWN BUS COMPANY

By 
Its Operations Manager

Attachment: Exhibit A, Bid Form

EXHIBIT "A"

SECTION XXXI


BID FORM:

Rates submitted on the Bid Form are to be used for information purposes by the District in calculating and evaluating the bids submitted and to assist in determining the "Lowest Responsive Responsible Bidder." **Bid award will not be based on cost alone (see Bid Evaluation Sheet), but on a complete evaluation of the entire bid submitted, as per the Bid Procedures and Specifications.** Heritage Community Charter School current needs are for approximately 365 students on Regular Elementary Route Buses. Special Needs & Lift Bus prices are for future needs during the contract.

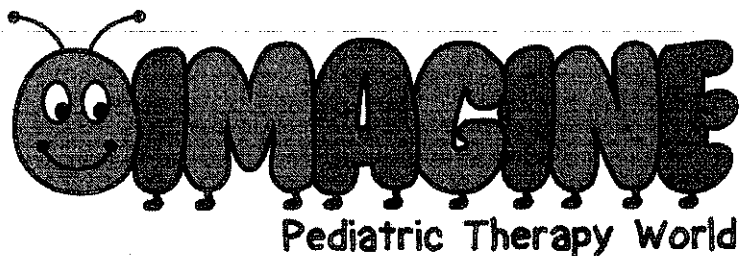
The bidder acknowledges that she/he has read and agrees to all terms and conditions of Bid Procedures and Specifications concerning Heritage Community Charter School Transportation Requirements, including the Bidder Questionnaire and hereby submits the following bid:

		Rate	Excess	Excess	Rate	Rate
	Base-Mile /	Per Day /	Hours	Miles	Per	Per
Description	Base-Hour	Route	Rate	Rate	Hour	Mile
Kindergarten Routes	30/ 2.0	111.88	15.60	0.73	N/A	N/A
Regular-Elem/Second	60/ 4.0	223.76	15.60	0.73	N/A	N/A
Special Needs	60/ 4.0	300.64	15.60	0.73	N/A	N/A
Lift	60/ 4.0	313.83	15.60	0.73	N/A	N/A
Community After-School Program	N/A	N/A	N/A	N/A	20.80	0.88
Field Trip	N/A	N/A	N/A	N/A	20.80	0.88
Activity Trip	N/A	N/A	N/A	N/A	20.80	0.88
Shuttles	N/A	N/A	N/A	N/A	20.80	0.88
Additional Driver or Aid	N/A	N/A	N/A	N/A	15.60	N/A
Safety Training	N/A	N/A	N/A	N/A	No Chrg	N/A
Standby Buses	N/A	No Chrg	N/A	N/A	N/A	N/A

BROWN BUS COMPANY

 , Operations Manager

SIGNATURE OF BIDDER



Heritage Community Charter School, hereby contracts with Imagine Pediatric Therapy World, to provide speech and language services on behalf of the school.

The school has students requiring speech and language services as part of its overall special education program.

Provider desires to contract with the school to offer such services to assigned school.

THE PARTIES THEREFORE AGREE TO THE FOLLOWING TERMS:

1. School shall pay Provider \$ 70 per hour for each hour Provider provides services.
2. Provider will provide up to 6.5 hours a week of speech and language services to include assessments, therapy, paperwork, planning, consultation with staff. Additional service time may be provided as agreed upon by the School and the Provider.
3. Provider shall bill the school by the first Friday of each month for services provided the previous month.
4. School shall pay such bill on or before the 25th of the same month.
5. Provider shall provide a copy of malpractice insurance to the school district and is responsible for her own social security and income tax withholding.
6. Provider shall render the following services:
 - a. Perform speech and language evaluations, as required by IDEA, to include observations if necessary.
 - b. Develop and implement individual education programs for students who qualify for speech and/or language services, according to the Idaho State Special Education Manual.
 - c. Confer with appropriate personnel about student services/needs.
 - d. Make recommendations regarding service delivery and the student's needs to the IEP team for team consensus.
 - e. Prepare and maintain appropriate professional records and reports for students assigned to her caseload.
 - f. Provide consultation/training/supervision to staff regarding speech and language needs and programs for students.
7. Provider will comply with all Federal, State and Local regulations concerning IDEA and maintenance of confidentiality.
8. School will provide access to required assessments and screening materials, district forms, duplicating services, and computer.

This agreement is in effect once signed and maybe terminated by either party, without cause, upon no less than thirty days written notice to the other party.

This agreement shall be interpreted under and according to the laws of the State of Idaho.

I ACCEPT THE TERMS SET FORTH IN THIS AGREEMENT AND EFFECTIVE IMMEDIATELY UPON EXECUTION OF THIS AGREEMENT.

Imagine Pediatric Therapy World

Shauni Holcomb, MS, CCC-SLP

DATE

Heritage Community Charter School

Javier Castaneda

DATE

LEASE AGREEMENT

**CALDWELL SCHOOL DEVELOPMENT, LLC
AS LANDLORD**

-and-

**HERITAGE COMMUNITY CHARTER SCHOOL, INC.
AS TENANT**

PREMISES: Situated on approximately 10 acres, an approximate 33,636 square foot charter school facility located on Ustick Rd, Caldwell, Idaho

DATE: As of February 10, 2011

THIS LEASE AGREEMENT (the "Lease") is made as of February 10, 2011, by and between CALDWELL SCHOOL DEVELOPMENT, LLC, a Utah limited liability company ("Landlord"), and HERITAGE COMMUNITY CHARTER SCHOOL, INC., an Idaho not-for-profit corporation ("Tenant").

WITNESSETH:

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

1.1 "Additional Rent" shall have the meaning set forth in Section 4.6.

1.2 "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 owner of ten percent (10%) or more of any class of equity securities, and (iv) any relative of the specified Person.

1.3 "Building" shall mean the school facilities (in one or more structures) of approximately 33,636 total square feet and described in the attached **Schedule F**.

1.4 "Charter" means each and collectively those certain Charter School Agreements between Tenant and the Idaho State Department of Education (the "State") (as amended, renewed, extended or reissued from time to time) pursuant to which Tenant operates or will operate a charter school on the Property (collectively, the "School").

1.5 "Demised Premises" shall mean the Land and the Improvements.

1.6 "Environmental Laws" shall have the meaning set forth in Section 6.2.

1.7 "Event of Default" shall have the meaning set forth in Article 21.

1.8 "Expiration" and "Expiration Date" shall mean the date upon which this Lease actually expires or terminates, whether at the end of the Initial Term or Extended Term or upon any earlier termination hereof for any reason whatsoever.

1.9 "Extended Term" shall have the meaning set forth in Section 3.2.

1.10 "First Mortgage" shall mean a first mortgage lien that now or hereafter encumbers Landlord's fee or leasehold interest in the Property and is executed for the benefit of a First Mortgagee.

1.11 "First Mortgagee" shall mean Vectra Bank Colorado, National Association, or any future holder of a First Mortgage.

1.12 "Fixed Charges" shall mean as to any measuring period: (i) all base rent (i.e. payments under leases of real property or equipment of an original term of more than one year) due, plus (ii) all principal and interest due in respect of borrowed money (including payments under guaranties, financial support agreements and the like with respect to which the underlying obligation is in default for non-payment), plus (iii) all installment payments due in respect of installment purchase contracts of an original term of more than one year.

1.13 "Fixed Charge Coverage Ratio" shall mean, for any fiscal year of the Tenant, the ratio of (i) Net Revenues Available for Fixed Charges to (ii) the total Fixed Charges for such period.

1.14 "Fixed Rent" shall have the meaning set forth in Section 4.1.

1.15 "Governmental Authorities" shall mean 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 Property or the use thereof.

1.16 "Hazardous Materials" shall have the meaning set forth in Section 6.2.

1.17 "Impositions" shall mean 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 Initial 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 Property, 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 Property, 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.

1.18 "Improvements" shall mean the improvements now or hereafter constructed on, over or under the Land, 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.

1.19 "Indebtedness" shall mean any direct debt for borrowed money, capital lease or other encumbrance arising out of borrowed money, but shall not include any trade payables.

1.20 "Initial Term" shall have the meaning set forth in Section 3.1.

1.21 "Land" shall mean the land situated in Canyon County, Idaho and more particularly described in **Schedule A** annexed hereto and incorporated herein by reference.

1.22 "Landlord" shall mean CALDWELL SCHOOL DEVELOPMENT, LLC and its successors and assigns as landlord under this Lease.

1.23 "Landlord's Mortgages" shall have the meaning set forth in Section 28.1.

1.24 "Law" or "Laws" shall have the meaning set forth in Article 9.

1.25 "Lease Date" shall mean the date that the facility (as described in **Schedule F**) is made tenantable and is approved for use by the charter school in writing but no sooner than August 15, 2011. The Landlord shall provide notice to Tenant on or before July 15, 2011, of Landlord's reasonable conclusion that the Lease Date will be later than August 20, 2011.

1.26 "Lease Interest Rate" shall mean the lesser of (a) the highest lawful rate which at the time may be charged by Landlord to Tenant under the Laws of the State or (b) 15% per annum.

1.27 "Lease Year" shall mean the twelve (12) calendar month period commencing on the Lease Date and each anniversary thereof during the Term of this Lease.

1.28 "Net Revenues Available for Fixed Charges" shall mean, for any period, the sum of (i) all revenues of the Tenant (from any source) arising from core business functions of Tenant (i.e., business functions essential to maintenance of the Charter and similar charters), less (ii) the sum of all costs and expenses of operations and maintenance (determined in accordance with generally accepted accounting principles) of the Tenant in respect of such core business functions, except for Fixed Charges.

1.29 "Notices" shall have the meaning set forth in Section 24.1.

1.30 "Owner" shall mean the Owner of the fee title to the Land.

1.31 "Permits" shall have the meaning set forth in Article 9.

1.32 "Permitted Encumbrances" shall mean those certain liens, easements, rights of way and other encumbrances set forth on **Schedule B** annexed hereto and incorporated herein by reference.

1.33 "Person" shall mean and include any individual, corporation, partnership, limited liability company, unincorporated association, trust, Governmental Authority or other entity.

1.34 "Pro Forma Fixed Charge Coverage Ratio" shall mean the Fixed Charge Coverage Ratio calculated upon the assumption that a particular additional Fixed Charge obligation is undertaken by Tenant, and that the associated revenues and other expenses accrue to Tenant, all such assumptions based upon reasonable business projections documented in writing to or by the board of Tenant, and forming the basis for the decision of the board of Tenant to undertake or not undertake such additional Fixed Charge obligation.

1.35 "Property" shall mean the Demised Premises.

1.36 "Provisions" shall have the meaning set forth in Article 35.

1.37 "Renewal Notice" shall have the meaning set forth in Section 3.2.

1.38 "Repairs" shall have the meaning set forth in Section 8.1.

1.39 "Restorations" shall have the meaning set forth in Section 16.2.

1.40 "State" shall mean the state in which the Demised Premises are located.

1.41 "Tenant" shall mean the Tenant named herein and its legal representatives and, at any given time, its permitted successors and assigns as tenant under this Lease.

1.42 "Tenant Alterations" shall mean each and every (a) demolition of the whole or any part of any Improvement now or hereafter erected upon the Land; (b) excavation at any time made or to be made in, on or about the Demised Premises; (c) repair, addition, installation, betterment, rebuilding, or fixturing made by Tenant of, to, in, on or about the Property or any part thereof; and (d) construction of any additional Improvements by Tenant upon the Land.

1.43 "Tenant's Architect" and "Tenant's Engineer" shall mean, respectively, a duly qualified architect and engineer, licensed in the State, selected and paid by Tenant.

1.44 "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, including, without limitation, in conjunction with a sale of the Property by Landlord: (a) Tenant Estoppel Certificate in form acceptable to Landlord and its lenders or potential purchasers of the Property; (b) the Memorandum of Lease in the form attached hereto as **Schedule C**; (c) the insurance certificate required pursuant to Section 10.2; and (d) the subordination, non-disturbance and attornment agreement provided for in Section 28.2.

1.45 "Tenant's Personal Property" shall mean (a) all items that are owned by third parties and leased to Tenant, (b) Tenant's trade fixtures, (c) inventory and moveable equipment at the Demised Premises owned by Tenant, and (d) all other items of personal property purchased or otherwise acquired by Tenant, except in discharge of Tenant's obligations hereunder.

1.46 "Term" shall have the meaning set forth in Article 3 and shall include the Initial Term and any Extended Term.

1.47 "Unavoidable Delays" shall mean 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, 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.** Landlord, for and in consideration of the rents 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 Property, 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 Demised Premises and in and to any easement appurtenant to the Demised Premises.

SUBJECT, however, to the following:

2.1 Present and future building, environmental, zoning, use and other laws of all Governmental Authorities.

2.2 The condition and state of repair of the Property or any part thereof as the Property may be on the Date the Tenant takes possession and as described in **Schedule F**.

2.3 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.

2.4 Liens for Impositions attributable to the period from and after Tenant takes possession (but not prior thereto).

2.5 The Permitted Encumbrances.

(a) With respect to the Permitted Encumbrances, Landlord will remain responsible for all obligations, costs and expenses related to any improvement agreement entered into between the Landlord or its Affiliates and any Governmental Authority.

3. Term.

3.1 TO HAVE AND TO HOLD the Property unto Tenant, for a period commencing on the Lease Date and ending at 11:59 P.M. on August 14, 2036 (the "Initial Term"), unless extended as provided in Section 3.2 or sooner terminated as herein provided.

3.2 Tenant shall have the right to extend the Term for an additional period of five (5) years commencing on the day following the last day of the Initial Term and ending on the day preceding the fifth (5th) anniversary thereof (the "Extended Term") provided that (i) Landlord receives a notice from Tenant exercising its right to extend the Term (a "Renewal Notice") not less than one hundred and eighty (180) calendar days and not more than four hundred fifty (450) calendar days prior to the expiration of the Initial Term and (ii) there is no Event of Default outstanding at the time of the Renewal Notice or at the expiration of the Initial Term (unless such Event of Default is waived in writing by Landlord).

3.3 The Fixed Rent payable during the Extended Term shall be as set forth in Section 4.2. Upon the giving of the Renewal Notice, and the satisfaction of the conditions applicable thereto, this Lease shall thereupon be deemed extended for the Extended Term with the same force and effect as if such Extended Term had been originally included in the Term.

3.4 All other terms, provisions, covenants and conditions of this Lease shall continue in full force and effect during the Extended Term except that Fixed Rent shall be as provided in Section 4.2.

4. Rent.

4.1 During the Initial Term, Tenant covenants and agrees to pay to Landlord rent for the Property ("Fixed Rent") in the amounts set forth in **Schedule D** attached hereto.

4.2 During the Extended Term, if any, Tenant covenants and agrees to pay to Landlord Fixed Rent in the amounts set forth in **Schedule E** attached hereto.

4.3 Fixed Rent shall be accounted for and paid by Tenant to Landlord in monthly payments, made in advance starting on the Lease Date, and thereafter on the first day of each calendar month during the Term. Fixed Rent for any period during the Term which is less than one full month shall be prorated based upon the actual number of days of the month involved.

4.4 All Fixed Rent payable to Landlord will be paid by Tenant to Landlord as follows:

(a) Tenant shall provide to the Idaho State Department of Education ("ISDE") an irrevocable directive (prior to expiration or termination of this Lease) that the Tenant's funding be paid directly to an escrow account (the "Charter School Escrow Account") maintained for the benefit of Tenant by Zions First National Bank (the "Escrow Agent") as escrow agent for so long as this Lease is in effect.

(b) Tenant shall take all reasonable action required by First Mortgagee in order to ensure that the funding payments from the ISDE are made in this manner.

(c) From each of the disbursements Tenant receives from ISDE each year, the Escrow Agent will withdraw the Fixed Rent in the amounts and on the dates specified by "Amounts Withheld from Disbursements as Prepaid Rent" on the schedule attached hereto as Schedule 4.4 (the "Lease Payment Schedule") and deposit the same into an interest bearing account of the Landlord designated by the First Mortgagee. Not later than two (2) business days after amounts are deposited by the ISDE into the Charter School Escrow Account, the Escrow Agent will transfer the remaining balance therein (after reservation, payment or prepayment of the "Amounts Withheld from Disbursements as Prepaid Rent" on such date in accordance with the Lease Payment Schedule) to an operating account of Tenant established at Zions First National Bank. The Landlord will cause all interest earned on any prepaid rent prior to the date on which such rent is due under the provisions of this Lease to be transferred to the Tenant's operating account no later than the end of each Lease Year.

Tenant will pay to Landlord the amount of any Additional Rent at the address for Landlord set forth herein.

4.5 If Tenant fails to make payment of any installment of Fixed Rent or Additional Rent payable to Landlord hereunder within twenty (20) business days from the date upon which the same shall first have been due hereunder then and in each such event Tenant shall pay Landlord on demand, in addition to the installment or other payment due, as Additional Rent hereunder, to compensate Landlord for legal, accounting and other expenses incurred by Landlord in administering the delinquent account by reason of such late payment an additional sum of five (5%) percent of the amount due as a late payment fee. For the purposes of this Section 4.5, payments shall be deemed made upon the date of actual receipt by Landlord or as directed by Landlord at the place specified in or pursuant to Section 4.4 hereof. The late payment fee required to be paid by Tenant pursuant to this Section 4.5 shall be in addition to all other rights and remedies provided herein or by Law to Landlord for such nonpayment.

4.6 It is the purpose and intent of Landlord and Tenant that the Fixed Rent shall be net to Landlord and that Tenant shall pay as additional rent ("Additional Rent"), without notice or demand, and without abatement, deduction or set-off, (except as expressly provided in this Lease) and save Landlord harmless from and against, all costs, Impositions, insurance premiums to which the Demised Premises is 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 Property 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, in the event that there is any Event of Default, whether or not a suit or proceeding is brought to enforce any right or remedy of Landlord) which may arise or become due from and during the Term, other than (a) payments under any mortgage or other indebtedness of Landlord; and (b) other obligations, if any, which are the specified responsibility of Landlord under the terms of this Lease. Tenant acknowledges that on the Lease Date it will give notice to all public and private utilities that it is in possession of the Demised Premises and will assume liability for all such charges imposed by such utility companies from and after the Lease Date to the Expiration of the Lease, including but not limited to, charges for water, gas, electric and other utilities and shall prorate with Landlord any utility bill for a period during which the Lease Date occurs. 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. Landlord agrees that it will give Tenant prompt notice of any intent to pay any sum which would be deemed Additional 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 twenty (20) days of Tenant's receipt of Landlord's notice; provided however, that nothing herein shall be deemed to preclude Landlord from paying any amount which would otherwise be deemed to be Additional Rent directly and immediately if, in Landlord's judgment, there is an emergency or an extraordinary circumstance warranting such payment.

5. Payment of Impositions.

5.1 During the Initial Term and the Extended 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; provided however, that:

(a) If, by Law, any Imposition, at the option of the taxpayer may be, and customarily is, paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Tenant may, so long as no Event of Default shall then exist under this Lease, exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event shall pay such installments as may become due during the Term together with any interest thereon as the same respectively become due and before any fine, penalty, additional interest or cost may be added thereto; and

(b) Any Imposition (including assessments which have been converted into installment payments by Tenant) relating to a fiscal period of a taxing authority, a part of which is included within the Term and a part of which is included in a period of time prior to the Lease Date or after the Expiration Date shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Property, or any part thereof, or shall become due and payable during the Term) be prorated between Landlord and Tenant as of the Lease Date or the Expiration of this Lease, as the case may be so long as, in the case of any proration in favor of Tenant, no Event of Default shall then exist hereunder.

(c) Landlord causes the notices of Impositions and/or bills to be directed to Tenant in sufficient time for Tenant to pay same as and when due and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof.

(d) In the event of any delay in payment due to Landlord's acts, and such delay results in the imposition of any fine, penalty, interest or cost, then Landlord shall be solely responsible for the payment of the applicable fine, penalty, interest or cost.

5.2 Except as provided in this Section 5.2, 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 Property 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.

5.3 Tenant shall obtain and after payment shall furnish to Landlord official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of any Impositions.

5.4 During the Initial Term and the Extended 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 Property 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:

(a) Neither the Property 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

(b) Tenant shall either (i) have posted 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 Property or (ii) have posted 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 Property 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 5.4(b), together with any additions thereto and all interest, if any, earned thereon, shall be held in trust and disposed of as hereinafter provided.

5.5 Upon the termination of any proceeding (including appeals), conducted pursuant to Section 5.4 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 Property or any part thereof is, 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 shall be returned to Tenant with interest, if any, accrued thereon. Notwithstanding anything to the contrary set forth in this Section 5.5, 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.

5.6 Landlord shall have the right: (a) to seek a reduction in the valuation of the Demised Premises 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; (b) at Landlord's expense to participate in any such proceeding commenced by Tenant at Landlord's insistence or otherwise; and (c) 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 during the Term. Tenant shall be obligated to reimburse Landlord in connection with any proceeding referenced in clauses (a) and (c) above (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.

5.7 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, subject to Tenant's obligation to reimburse Landlord forthwith as Additional Rent hereunder 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.

5.8 Landlord shall not be required to join in any proceeding referred to in Section 5.4 hereof 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, join in such proceeding or permit the same to be brought in its name, upon compliance by Tenant with the requirements of Section 5.4 and this Section 5.8. 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.

5.9 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.

5.10 The Landlord, with Tenant's cooperation, shall timely apply for any applicable tax exemption that may be allowed by law. In the event that the foregoing exemption is granted, then, the exempted amount of taxes (i.e. one of the types of Impositions) shall be deducted from the Additional Rent. This paragraph is meant to clarify the benefit to be derived by the Tenant and provided for by law, it being understood that the rent paid by Tenant herein is composed of Fixed Rent and Additional Rent and that the benefit derived by any exemption shall be applied against the Additional Rent.

6. Use and Operation of Property.

6.1 (a) Tenant shall have the right to use and occupy the Property for the sole purpose of operating a charter school and for such other lawful purposes as may be incidental thereto (including a pre-kindergarten program of Tenant's choice).

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

6.2 (a) Without the prior written consent of Landlord, Tenant shall not use, maintain, permit or allow the use, or maintenance of the Demised Premises 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 Demised Premises, any Hazardous Materials nor shall Tenant otherwise, in any manner, possess or allow the possession of any Hazardous Materials on or about the Demised Premises, unless in compliance with all Environmental Laws (as hereinafter defined), whether such Hazardous Materials existed on the Demised Premises prior to the Closing Date or after the Closing Date. As used herein, "Hazardous Materials" shall not be deemed to mean Hazardous Materials which may be present in: (i) maintenance supplies,

cleaning agents and solvents, (ii) vehicles parked at the Demised Premises, or (iii) fertilizer, herbicides, insecticides, and pesticides applied by Tenant within the Demised Premises, provided that the storage, disposal, use or presence on, in or under the Land of such materials does not constitute or result in a violation of Environmental Laws or regulations. Should Landlord consent in writing to Tenant bringing, using, storing or treating any Hazardous Material(s) in or upon the Demised Premises or if Tenant is allowed to bring, use store or treat Hazardous Materials in or upon the Demised Premises pursuant to this Section, 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 Material(s).

(b) Subject to the provisions of Section 6.2(a), "Hazardous Materials" shall mean any solid, liquid or gaseous waste, substance or emission or any combination thereof which may (x) cause or significantly contribute to an increase in mortality or in serious illness, or (y) pose the risk of a substantial present or potential hazard to human health, to the environment or otherwise to animal or plant life, and shall include without limitation hazardous substances and materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Resource Conservation and Recovery Act, as amended; and any other applicable Laws (collectively "Environmental Laws").

(c) Tenant shall immediately notify Landlord of the presence or suspected presence of any Hazardous Materials, on or about the Demised Premises and shall deliver to Landlord any notice received by Tenant relating thereto.

6.3 Landlord and its agents shall have the right, but not the duty, to inspect the Demised Premises and conduct tests thereon at any time to determine whether or the extent to which there is Hazardous Materials on the Demised Premises. Landlord shall have the right to immediately enter upon the Demised Premises to remedy any contamination found thereon. In exercising its 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 property or business caused thereby, unless such loss or damage results from Landlord's gross negligence or willful misconduct. If any lender or governmental agency 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 on the Demised Premises or Tenant's intent to store or use Hazardous Materials on the Demised Premises. Tenant shall indemnify and hold harmless Landlord from any and all claims, loss, liability, costs, expenses or damage, 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.

6.4 Tenant shall not use or occupy or permit the Property or any part thereof to be used or occupied, for any unlawful purpose or in violation of any certificate of occupancy, certificate of compliance, Permit or Law covering or affecting the use of the Property or any part

thereof. Tenant shall not suffer any act to be done or any condition to exist on the Demised Premises 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.

6.5 Tenant shall not use, occupy or improve or permit the Property 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 Property.

7. Surrender of the Property; Holding Over.

7.1 Tenant shall and will on the Expiration of this Lease, or upon any re-entry by Landlord upon the Demised Premises pursuant to this Lease, surrender and deliver up the Property 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 Property on the Lease 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, (ii) the First Mortgage, if any, together with any other instruments securing the indebtedness secured by the First Mortgage, and (iii) all those which Landlord causes after the Lease Date or to which Landlord expressly consents in writing (which, for the purposes of this Section 7.1, 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. On or about sixty (60) days prior to the Expiration of the Lease, Landlord and Tenant shall conduct a joint inspection of the Property to determine its physical condition and Tenant's compliance with its obligations hereunder, including without limitation, those set forth in Article 8. Landlord's participation in such inspection shall not be deemed to preclude or stop Landlord from thereafter making a claim against Tenant with respect to any condition, circumstance or event related to the Property for which Tenant is responsible under this Lease or otherwise, provided that Landlord must make any claim for such condition, circumstance or event within ninety (90) days of the later of (a) the Expiration Date, and (b) the date on which Landlord regains physical possession of the Property, and provided further that the foregoing time limit on Landlord's right to assert claims shall not apply to conditions which are not readily ascertainable with reasonable diligence or without resort to invasive testing, including by way of example and not limitation, subsurface soil and water conditions that exist as a result of Tenant's use of the Property. Tenant shall remove all its signs from the Property upon expiration of this Lease and shall promptly repair any damage to the Improvements and the Land 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 Improvements and the Land resulting from such removal. Any of Tenant's signs or other Personal Property remaining on the Demised Premises 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. 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 of even date herewith.

7.2 In the event of any holding over by Tenant after expiration or other termination of this Lease or in the event Tenant continues to occupy the Property after the termination of Tenant's right of possession pursuant to this Lease, occupancy of the Property 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 rent (on a per month basis without reduction for any partial months during any such holdover if such holdover exceeds twenty (20) calendar days and on a per diem basis if such holdover is twenty (20) 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 prorata 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 Property. 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 Property by summary proceedings or otherwise. Tenant shall be liable to Landlord for all actual damage 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 Property to such other tenant or prospective tenant.

7.3 The Provisions of this Article 7 shall survive the Expiration of this Lease.

8. Repairs and Maintenance.

8.1 Throughout the Term, Tenant, at its sole cost and expense, shall: maintain in good condition and repair the interior and exterior of the Demised Premises, 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; gutters, downspouts, sidewalks, parking lot pavement, parking areas, grounds, recreational and landscaped areas of the Demised Premises; all electrical facilities and equipment including without limitation 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 Demised Premises; 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; *provided, however*, that during the initial Lease Year, the Landlord, at its sole cost and expense, shall be responsible for repairing and replacing any items that are defective or faulty as a result of, or in connection with, the construction of the Improvements; and *provided further*, that nothing contained herein shall limit the responsibility of the Landlord for the obligations, costs and expenses described in Section 2.5(a) hereof. Subject to the forgoing obligations of the Landlord during the initial Lease Year, the Tenant shall, at its expense, (a) conduct seasonal preventive maintenance on the heating, ventilating and air conditioning systems which shall be subject to the reasonable approval of Landlord; (b) keep the Property in the same order, repair and condition as of the Lease Date, ordinary wear and tear excepted; and (c) make all necessary or appropriate repairs, replacements and renewals, and,

subject to the provisions of Section 2.5(a) and Articles 11, 12 and 16 hereof, all necessary or appropriate alterations and restorations thereto, interior and exterior, ordinary and extraordinary, and foreseen and unforeseen (collectively, "Repairs"). If Tenant fails to perform any repair or maintenance for which it is responsible and such failure is not corrected within forty-five (45) days after written notice from Landlord or in the case of a repair or maintenance which cannot with due diligence be completed within such period of forty-five (45) days, Tenant fails to commence with all due diligence within such period of forty-five (45) days to carry out the same and thereafter to continuously prosecute the completion of such repair or maintenance with all due diligence, 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 forty-five (45) days after demand therefor. Tenant shall bear the full cost of any repair of damage to any part of the Demised Premises that is caused solely by Tenant, its agents, employees, or contractors.

8.2 The necessity for and adequacy of Repairs to the Property made or required to be made pursuant to Section 8.1 shall be measured by standards which are appropriate for school buildings of similar age and containing similar facilities in the locality and which are necessary to maintain the Property in a state of repair and maintenance as close as reasonably possible to the state of repair and maintenance of the Property as at the Lease Date, ordinary wear and tear excepted. Whenever a portion of the Demised Premises must be replaced in order to comply with the requirements of this Article 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. After the initial Lease Year, Tenant shall, within thirty (30) days after demand by Landlord, begin to make such Repairs, or perform such items of maintenance, to the Property as Landlord may reasonably require in order to maintain the Property at the standards required by this Lease and thereafter Tenant shall diligently and continuously pursue and promptly complete such Repairs. During the initial Lease Year, Landlord shall, with respect to any items for which it is responsible under Section 8.1, within thirty (30) days after demand by Tenant, begin to make Repairs, or perform such items of maintenance, to the Property as Tenant may reasonably require in order to maintain the Property at the standards required by this Lease and thereafter Landlord shall diligently and continuously pursue and promptly complete such Repairs.

8.3 Except as provided in Section 2.5(a) and Articles 8, 11 and 16, Landlord shall not be required to furnish any services or facilities or to make any Repairs in or about the Property or any part thereof, Tenant hereby assuming the full and sole responsibility for all Repairs to, and for the condition, operation, maintenance and management of, the Property as at the Lease Date and during the Term (other than items during the initial Lease Year for which the Landlord is responsible).

8.4 Tenant shall, at its sole cost and expense, 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 Property in a clean and orderly condition, free of ice, snow, rubbish and obstructions.

8.5 Tenant shall be entitled to the benefit of any and all third-party warranties given or running in favor of Landlord with respect to the Property which would in any way be

useful to Tenant in fulfilling its obligations under this Article 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 Property which would in any way be useful to Tenant in fulfilling its obligations under this Article 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.

8.6 The foregoing obligations of Tenant and Landlord are subject to the provisions of Section 2.5(a) and Articles 11, 12, and 16 and, in the event of a conflict between this Article 8 and Section 2.5(a) or Articles 11, 12, or 16, the provisions of Section 2.5(a) and Articles 11, 12, or 16, as the case may be, shall control.

9. Compliance with Laws; Maintenance of Licenses and Charter; Rate Covenant; Operating Reserve.

9.1 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 Property or any part thereof, the appurtenances thereof and, to the extent required by any Laws, the sidewalks, curbs, alleyways and passage-ways, adjoining the Demised Premises, or to the use or manner of use of the Property 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 Property, and Landlord will permit such changes or improvements to be made. However, if Landlord's representation in Section 22.2(vi) was untrue as of the date made, Landlord, at its sole cost and expense, shall undertake and complete such works as are necessary to ensure that the Demised Premises are in compliance with the laws, ordinances, rules and regulations referenced by Section 22.2(vi). 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 Demised Premises and the lawful use and occupancy of the Property in connection therewith.

9.2 Tenant shall, at its own sole cost and expense, observe and comply with all of the obligations of Tenant under the Charter, and shall operate the School in accordance therewith and with all applicable Laws. Tenant shall give prompt written notice to Landlord and First Mortgagee of any notice received by Tenant of any default or breach under the Charter, or of the 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 for the Term. Tenant shall make reasonable efforts to conduct its operations in such a manner as to maintain the current enrollment and increase future enrollment consistent with the Charter.

9.3 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 9.1, 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:

(a) 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, or if any lien, charge or civil liability would be incurred by reason of any such delay, the same would not subject the Property or any part thereof to 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.

(b) 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 9.3.

9.4 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 School.

9.5 Tenant covenants and agrees to exercise reasonable skill and diligence with a goal toward providing Net Revenues Available for Fixed Charge Payments sufficient to maintain, for each fiscal year of Tenant commencing with the July 1, 2011 fiscal year, a Fixed Charge Coverage Ratio of not less than 1.10 to 1.00.

9.6 Tenant covenants and agrees that it will use reasonable efforts not to undertake any additional material obligation for Fixed Charges unless the Pro Forma Fixed Charge Coverage Ratio is not less than 1.10 to 1.00.

9.7 Tenant shall make reasonable efforts to deposit each fiscal year an amount equal to one-half of one percent (0.5%) of its gross revenues for such fiscal year into an account to be maintained by Tenant at bank of its choosing (the "Operating Reserve Account"), until the balance in such account is at least five percent (5%) of the gross revenues of Tenant for the fiscal year in which such balance is calculated, and Tenant shall thereafter make reasonable efforts to maintain such account balance as provided herein.

9.8 Tenant shall make reasonable efforts not incur any Indebtedness in excess of \$50,000 without the consent of Landlord and First Mortgagee which consent shall not be unreasonably withheld or delayed.

9.9 Tenant shall enter into a charter school management agreement with a recognized charter school management company acceptable to First Mortgagee pursuant to which a management company will provide financial and human resources services reasonably

required for successful operation of the charter school. Tenant shall maintain such charter school management agreement for the term of the Lease; *provided, however*, that if Tenant determines that it is no longer in Tenant's best interest to continue to engage a charter school management company, Tenant may terminate such charter school management agreement so long as its financial and human resources needs will continue to be professionally addressed as required for the continued successful operation of the charter school.

Tenant shall notify Landlord and First Mortgagee within twenty (20) days of Tenant receiving notice that it has breached any of the representations or covenants set forth in this Article 9; *provided, however*, that the sole remedy for any such breach shall be that the Landlord may require that the Tenant promptly employ a financial consultant to obtain recommendations as to changes in Tenant's operating policies and that the Tenant agree to consider such recommendations.

10. Insurance.

10.1 Tenant, at its sole cost and expense, shall throughout the Term procure and maintain:

(a) Comprehensive general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Demised Premises, 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;

(b) 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 Demised Premises;

(c) 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 20.1(a) hereof; and (iii) builder's risk completed value coverage (A) for 100% of the contract price, (B) on a nonreporting form, (C) deleting all co-insurance provisions, (D) against all risks insured against pursuant to Section 10.1(a) hereof with the addition of damage due to faulty materials, workmanship and errors in design, and (E) including permission to occupy the Demised Premises;

(d) Casualty/property damage insurance on the Improvements (including flood insurance, if Property is in a designated flood zone) on a replacement cost basis and for an amount not less than the loan amount under any First Mortgage financing (with

deductibles as to earthquake coverage not greater than 5%, and as to other coverages, not greater than \$100,000); and

(e) Such other insurance and in such amounts as may from time to time be reasonably required by Landlord, or the holder of the First Mortgage, if any, 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 Property and other properties owned or leased by Tenant and/or its Affiliates, provided that evidence thereof satisfying the requirements of Section 10.3 is delivered to Landlord.

10.2 Notwithstanding the requirements of Section 10.1(d), in the event that Tenant believes that it is unable to procure the requisite coverages for casualty/property damage, Tenant shall give immediate written notice to Landlord, and Landlord and Tenant shall meet within two business days of such notice to determine a resolution of the matter. Failing agreement, each party shall select an experienced property insurance consultant to review the matter, and if such consultants agree on an insurance or loss recovery plan that is in their opinion financially feasible (the "Insurance Plan," which term includes a plan specified by the third insurance consultant referred to below, if the same is engaged under the terms of this Lease), Tenant shall undertake such plan. If no agreement between the consultants is reached within fifteen working days of the date of failure of Landlord and Tenant to agree, they shall refer the matter to a third insurance consultant selected by the two other consultants to resolve the issue. In the event of failure of Tenant to maintain such coverages as are determined under this section, Landlord may at its option place such insurance (or as similar thereto as Landlord is able to procure) and the cost thereof shall become Additional Rent due hereunder, or terminate this Lease.

10.3 All insurance provided for in this Article 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 the holder of the First Mortgage may require, and authorized to do business in the State, to the extent commercially obtainable. On or before one day prior to the Lease Date and not less than 30 calendar days prior to the expiration dates of the policies theretofore furnished pursuant to this Article, Acord Form 27 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 Property and this Lease, Tenant shall provide an Acord Form 27 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 Article 10 (excluding workers' compensation insurance); such insurance certificate shall be delivered to Landlord within ten (10) 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 Article 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. 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 10.3.

10.4 All policies of insurance provided for or contemplated by this Article to be obtained by Tenant shall name Tenant as the insured and, other than workers' compensation insurance, Landlord as an additional insured and loss payee and the holder of the First Mortgage as an additional insured and loss payees, as their respective interests may appear. Such policies of insurance shall, to the extent obtainable, contain clauses or endorsements to the effect that:

(a) 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 the holder of the First Mortgage are concerned;

(b) Such policies shall not be changed or canceled without at least 30 days' Notice to Landlord and; if required under the First Mortgage, to the holder thereof; and

(c) Neither Landlord nor the holder of the First Mortgage shall be liable for any premiums thereon or subject to any assessments thereunder.

10.5 All insurance policies required hereunder shall provide for waiver of subrogation as to both Landlord and Tenant.

11. Damage or Destruction by Fire or Other Casualty.

11.1 In the event of any damage or loss by fire or other casualty whatsoever to the Demised Premises or any part or portion thereof during the Term, Tenant shall give immediate Notice thereof to Landlord. If, with respect to any such damage or loss, (a) the period to restore the Demised Premises, as reasonably estimated by Landlord and Tenant, or if Landlord and Tenant are unable to agree, according to the written estimate of a qualified contractor selected by Landlord and reasonably satisfactory to Tenant, exceeds one hundred eighty (180) days from the date of the damage, or (b) any such damage or loss occurs during the last year of the Term and the period of time to restore the Demised Premises, as reasonably estimated by Landlord and Tenant, or if Landlord and Tenant are unable to agree, according to the written estimate of a qualified contractor selected by Landlord and reasonably satisfactory to Tenant, exceeds ninety (90) days from the date of the damage, then Landlord or Tenant may elect to terminate this Lease upon notice to the other party within thirty (30) days after the determination of the estimated restoration period. In addition, Landlord shall have the right to terminate this Lease upon the occurrence of any damage or loss by fire or other casualty whatsoever which would require or permit Landlord to prepay in whole any Landlord's Mortgage financing applicable to the Demised Premises.

11.2 In the event of any damage or loss by fire or other casualty whatsoever to the Demised Premises for which neither Landlord nor Tenant has the right to terminate this Lease (or, if such right exists, but neither Landlord nor Tenant elects to terminate this Lease), then Landlord

shall, but solely from insurance proceeds available under policies or other coverage maintained on the Demised Premises under Article 10 (including self-insured retention or deductible to be paid by Tenant, or repair reserves or other funds or obligations of Tenant required by any Insurance Plan, all of which funds shall be timely delivered by Tenant), as soon as reasonably possible, but in any event within sixty (60) days after the settlement of the insurance (or such other sums) with respect to such damage or loss, commence to rebuild or repair the Demised Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition in which they were immediately prior to the happening of the casualty, except that Landlord shall not be required to rebuild, repair or replace any part of Tenant's Personal Property or any Tenant Alterations which may have been placed by Tenant on the Premises. Notwithstanding any contrary provision contained herein: (i) in the event the holder of any Landlord's Mortgage should require that the insurance proceeds be used to retire the mortgage debt, or (ii) The insurance, Insurance Plan, or other loss proceeds are materially inadequate to pay the costs of rebuilding, repairing or replacing the damaged Demised Premises, then in either case Landlord shall have no obligation to rebuild and this Lease shall terminate upon notice to Tenant. Any insurance that is carried by Landlord against loss or damage to the Demised Premises shall be for the sole benefit of Landlord and under its sole control.

11.3 In the event of any damage or loss by fire or other casualty to the Demised Premises, unless such damage or loss is the result of the negligence or intentional tortious conduct of Tenant or Tenant's employees, agents, contractors or invitees (excluding Landlord or any Affiliate of Landlord), then during the period from the occurrence of the damage or loss until the substantial completion of the required rebuilding or repairs, the Fixed Rent and Additional Rent payable by Tenant hereunder shall be equitably reduced by an amount which takes into account the actual amount of the Improvements damaged, and the loss of any part of the Demised Premises or any other right, privilege or easement appurtenant to the Demised Premises which materially and adversely interferes with Tenant's permitted use of the Demised Premises. The foregoing shall not apply to the extent that such damage does not render more than 5% of the building space in the Building unusable by Tenant and so long as the number of students allowed to occupy the Building is not diminished.

11.4 Any replacement Improvements so to be constructed shall be as nearly as possible of a size, type and character equal to the damaged or destroyed Improvements, shall have a rentable area which is not less than the rentable area of such Improvements, shall be of a quality of not less than the quality of such Improvements, as the same existed immediately prior to such damage or destruction, and shall be of a quality not less than the quality of the items of the Improvements which were damaged or destroyed by such fire or other casualty. Before commencing the construction of any replacement Improvements which are to be paid by proceeds of insurance or other coverage maintained by Tenant under Article 10 hereof, Landlord shall submit copies of the plans and specifications therefor to Tenant for Tenant's approval, which approval shall not be unreasonably withheld or delayed.

11.5 Except as otherwise specifically provided in this Article 11, no destruction of or damage to the Improvements or any part or item thereof, by fire or other casualty whatsoever, whether such damage or destruction be partial or total or otherwise, shall entitle or permit Tenant to surrender or terminate this Lease or shall relieve Tenant from its liability to pay

in full the Fixed Rent and Additional Rent hereunder, or from any of its other obligations under this Lease.

11.6 All of Landlord's obligations set forth in this Article 11 shall be conditioned on the approval of First Mortgagee as required by the documents pursuant to which the First Mortgage was created.

12. Tenant Alterations.

12.1 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 in each case, which consent shall not be unreasonably withheld, conditioned or delayed.

12.2 Without limiting the generality of the foregoing, Tenant covenants and agrees that any Tenant Alterations to which Landlord has given its consent will be made in compliance with, and Tenant hereby covenants that it will comply with, each of the following Provisions:

(a) 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 Initial Improvements;

(b) 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 Landlord's prior approval, which approval shall not be unreasonably withheld or delayed.

(c) Before any Tenant Alterations are begun, 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;

(d) All Tenant Alterations shall be made in compliance and conformity with all applicable (a) Laws of all Governmental Authorities (including all building and zoning Laws); (b) Permits; and (c) rules, regulations, orders and requirements of Insurance Boards.

(e) 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 Property or any part thereof, or the terms of any covenants, restrictions or easements affecting the Demised Premises;

(f) 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;

(g) 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 Property 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 Article 13 hereof;

(h) No Tenant Alterations shall create any encroachment upon any easement, street or adjacent premises;

(i) 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 Demised Premises;

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

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

(l) 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.

13.1 Tenant shall not create or permit to be created or to remain, and shall discharge, 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 for which Tenant is responsible under this Lease, or any mortgage, deed of trust or otherwise which might or does constitute a lien, encumbrance or charge upon the Property 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 Property or any part thereof might be impaired; provided that any Imposition may, after the same becomes a lien on the Property, be paid or contested in accordance with Article 5 hereof, and any mechanic's, laborer's, or materialman's lien may be discharged in accordance with Section 13.2 hereof.

13.2 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property or any part thereof, other than matters created by Landlord, Tenant, within 30 days after notice 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 Landlord 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, in default of which Landlord, at its option, may do so. Any and all amounts so paid by Landlord as in this Section provided, and all costs and expenses paid or incurred by Landlord 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 Landlord's making of such payments, shall be paid by Tenant to Landlord on demand as Additional Rent hereunder.

13.3 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 Property 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 Property or in this Lease. At Landlord's request, Tenant shall execute a written instrument to be recorded for the purpose of providing notice of the existence of the provisions of the preceding sentence.

14. Condition of and Title to Property.

Landlord hereby covenants to improve the Demised Premises substantially as shown in the plans and specifications prepared by James O. Chamberlain & Associates and acknowledged and signed by Tenant's authorized agent, (the "Plans"), as set forth in **Schedule F** attached hereto, which Plans are hereby incorporated herein by reference. Such Improvements shall be completed in tenantable condition (punch list items excepted) on or before August 22, 2011, subject to force majeure events. In the event that Landlord is unable to deliver such Improvements in tenantable condition by such date, Landlord shall give written notice thereof to Tenant not later than July 15, 2011. Tenant's sole remedies for delay by Landlord shall be (a) the right to (x) defer payment of Fixed Rent and Additional Rent due hereunder until delivery of such Improvements by Landlord (punch list items excepted) and (y) subject to force majeure events, require the Landlord to pay the Tenant a penalty of \$25,000 in the event such Improvements are not in tenantable condition (punch list items excepted) on August 22, 2011; or (b) to terminate this Lease. The parties acknowledge and agree that the Scheduled First Day of

School may be no earlier than August 22, 2011. 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 Demised Premises, 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, or of any other matter or thing affecting or relating to the Property, 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 PROPERTY, OR ANY PORTION THEREOF. TENANT ACKNOWLEDGES THAT LANDLORD IS NOT A MANUFACTURER OF PORTIONS OF THE PROPERTY, AND THAT TENANT IS LEASING THE PROPERTY AS DESCRIBED IN SCHEDULE F.

Without limiting the scope of Section 8.5, Landlord hereby assigns to Tenant all of Landlord's right and interest in any express or implied warranties related to the construction of the Improvements. The Landlord further agrees to cooperate with the Tenant and take any reasonable actions necessary to effect such assignment. Specifically, Landlord extends to Tenant a one (1) year warranty on the materials and workmanship of the Improvements.

15. Entry on Property by Landlord.

15.1 Tenant shall permit Landlord and its authorized representatives and designees to enter the Property at all reasonable times upon reasonable prior notice for the purposes of (a) completing improvements in accordance with the Plans, (b) inspecting the Property, and (c) making any Repairs thereto and performing any work therein that may be necessary by reason of Landlord's obligation to perform such work pursuant to the terms of this Lease or of Tenant's failure to perform the same for thirty (30) days after Notice from Landlord or such longer period as is permitted by Section 8.1 (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 by Landlord of any work required to be performed by Tenant pursuant to the terms of this Lease 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 Article 27.

15.2 Landlord may, during the progress of any work at the Demised Premises performed or caused to be performed by it in accordance with this Article, 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 making of Repairs pursuant to Section 15.1 or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into or through the Demised Premises 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. In making any repairs pursuant to Section 15.1 or doing any such work, Landlord shall proceed

with such work so as to avoid to the extent possible unreasonable inconvenience to Tenant, including dangerous or unsafe conditions for Tenant, staff, faculty and students.

15.3 Landlord and its designees shall have the right to enter the Demised Premises at all reasonable times during usual business hours upon reasonable prior notice for the purpose of showing the Property 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 Demised Premises for more than thirty (30) days, to prospective tenants.

15.4 In exercising its right of entry pursuant to this Article 15, Landlord shall use commercially reasonable efforts to minimize any disruption of Tenant's business operations at the Demised Premises.

16. Condemnation.

16.1 If at any time during the Term hereof all or a material portion (as defined in Section 16.7 hereof) of the Demised Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement in lieu of condemnation among Landlord, Tenant and those authorized to exercise such right (a) the obligations of Tenant to comply with the Provisions of this Lease which are unaffected by such taking shall continue unimpaired until the date of the taking; (b) this Lease and the Term shall Expire on the date of such taking; (c) the Fixed Rent and all Additional Rent hereunder shall be apportioned and paid to the date of such taking; and (d) the entire award received (exclusive of the award that Tenant is entitled to by virtue of the taking pursuant to Section 16.6) shall be paid to Landlord.

16.2 If at any time during the Term (a) less than all or a material portion of the Demised Premises shall be taken, or (b) if any appurtenances to the Demised Premises or any areas outside the boundaries of the Demised Premises or rights in, under or above the streets adjoining the Demised Premises, or the rights and benefits of light, air or access from or to such streets, shall be so taken, or the grade of any such streets shall be changed ("Partial Taking"), except as provided in Section 16.3 below, this Lease shall continue in full force and effect without reduction, abatement or effect of any nature whatsoever upon the Term or the liability of Tenant to pay in full the Fixed Rent or any Additional Rent hereunder. Tenant shall give prompt Notice of any Partial Taking to Landlord and Landlord shall proceed, with reasonable diligence, and to the full extent of the award for such Partial Taking, to perform any necessary repairs and restorations, including any necessary alterations (collectively, "Restoration"). All awards payable as a result of any such Partial Taking (exclusive of any award made directly to Tenant for any taking of Tenant's Personal Property or otherwise pursuant to Section 16.6) shall be paid to Landlord.

16.3 In the case of any Partial Taking, the Fixed Rent payable by Tenant hereunder shall be equitably reduced by an amount which takes into account the actual amount of the Improvements taken, any other part of the Demised Premises or any other right, privilege or easement appurtenant to the Demised Premises taken which materially and adversely

interferes with Tenant's permitted use of the Demised Premises. The foregoing shall not apply to the extent that such taking does not render more than 5% of the building space in the Building unusable by Tenant and so long as the number of students allowed to occupy the Building is not diminished.

16.4 If the temporary use of the whole or any part of the Demised Premises shall be taken at any time during the Term for any public or quasi-public purpose by any lawful power or authority or by the exercise of the right of condemnation or eminent domain or by agreement in lieu of condemnation between Tenant and those authorized to exercise such right, the Term shall not be affected in any way, and Tenant's obligations for the payment of Fixed Rent and Additional Rent hereunder shall continue unabated, and, subject to the other Provisions of this Section, Tenant shall be entitled to receive any award or payment for such use. If such award or payment made for such use is paid in a lump sum, such award shall be paid to Landlord, and after deducting an amount equal to the present value (computed on the basis of a discount equal to the current yield of United States Government securities having a term as near as possible to the period of such temporary taking) of the Fixed Rent and Additional Rent due or which will become due during the period covered by such lump-sum award (it being agreed that the amount of such lump sum award retained by Landlord shall be deemed to satisfy Tenant's Fixed Rent and Additional Rent obligation for such period), Landlord shall remit the balance to Tenant except to the extent allocable to a period subsequent to the Expiration of this Lease. In the event that such taking, condemnation or use is for the balance of the Term of this Lease and is for all or a material portion of the Demised Premises, the provisions of Section 16.1 shall apply. If and to the extent that the amount of any Additional Rent for such period is not ascertained or ascertainable as at the date of the payment of such lump-sum award, Landlord shall estimate the amount thereof, subject to adjustment at such time as the amount thereof is ascertained. For the purposes of this Section, the Fixed Rent during the Initial Term shall be deemed to be as set forth in Section 4.1. If such taking results in changes or alterations in the Demised Premises which would necessitate an expenditure, after repossession, to repair the Demised Premises to their former condition, and such award or payment includes an amount to compensate for such expenditure and is made prior to the Expiration of this Lease, then the amount of such award or payment specified as compensation for the expenses of such repair shall be paid to Landlord in trust, and if possession of the Demised Premises shall revert to Tenant prior to the Expiration of this Lease, Tenant shall, at its sole cost and expense, repair the Demised Premises so that the Demised Premises in every material respect shall, upon completion of such repair, be the same as though no such taking had occurred, and when Landlord shall have received evidence satisfactory to it that such repair has been completed and paid for, the portion of such award or payment deposited with and held by Landlord for such purpose shall be paid over to Tenant. The foregoing Provisions relating to the repair of the Demised Premises shall apply with like effect to any item constituting part of the Improvements. If Tenant shall not so repair the Demised Premises or any item constituting a part of the Improvements upon the Expiration of this Lease the sum so deposited with Landlord shall be paid to Landlord to be applied by Landlord toward Landlord's damages occasioned by such default. The foregoing shall not apply to the extent that such damage does not render more than 5% of the classroom space in the Building unusable by Tenant.

16.5 If, for the purposes of Sections 16.1, 16.2 and 16.4 hereof, Landlord and Tenant cannot agree on whether there has been a taking of all or a material portion of the Property, either party may submit the matter to binding appraisal by Notice to that effect to the other party and shall in such Notice appoint an MAI Appraiser who has been a member of The American Institute of Real Estate Appraisers for not less than ten (10) years and has performed appraisals of net leased commercial properties in the State throughout that period (an "Appraiser") who shall have had experience in appraising commercial properties for financial institutions, as Appraiser on its behalf. Within twenty (20) days thereafter, the other party shall by Notice to the first party appoint a second disinterested Appraiser on its behalf. If the two Appraisers thus appointed cannot reach agreement on the question presented on the basis aforesaid within 45 days after the appointment of the second Appraiser, then the Appraisers thus appointed shall appoint a third disinterested Appraiser possessing all of the other aforesaid qualifications, and such third Appraiser shall alone as promptly as possible determine the question presented, provided that:

(a) If the second Appraiser shall not have been appointed as aforesaid, the first Appraiser shall alone proceed to determine such matter; and

(b) If the two Appraisers appointed by the parties shall be unable to agree, within 45 days after the appointment of the second Appraiser, either on the question presented or on the appointment of a third Appraiser, they or either of them shall give Notice of such failure to agree to the parties, and, if the parties fail to agree upon the selection of such third Appraiser within 15 days after the Appraisers appointed by the parties have given such Notice, then within 30 days thereafter either of the parties, upon Notice to the other party, may request such appointment by the American Arbitration Association (or any successor thereto) in the State or on its failure, refusal or inability to act, may apply for such appointment to a court of competent jurisdiction.

(c) The determination made as above provided shall be conclusive upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The Appraisers chosen by the parties, the sole Appraiser, if the second party does not choose an Appraiser, or the third Appraiser appointed as above provided, as the case may be, shall give Notice to the parties stating their or his determination, and shall furnish to each party a signed copy of such determination.

(d) Each party shall pay the fees and expenses of the Appraiser appointed by such party and one-half of the other expenses of the appraisal properly incurred hereunder.

16.6 Subject to the provisions of Section 16.4, as applicable, Landlord shall be entitled to receive the entire award in any proceeding with respect to any taking of the Demised Premises; provided, however, that Tenant shall have the right to make a separate claim with the condemning authority for (a) any moving expenses incurred by Tenant as a result of such taking, (b) any costs incurred and paid by Tenant in connection with any Tenant's Alterations, (c) the value of any of Tenant's Personal Property taken, and (d) any other separate claim which Tenant

may be permitted to make, provided such other separate claim under this item (d) shall not reduce or adversely affect the amount of Landlord's award.

16.7 As used in this Article 16, a taking of all or a material portion of the Demised Premises (the consequences of which are set forth in Section 16.1 hereof) shall mean a taking: (a) of 6% or more of the net classroom area of the Buildings on the Demised Premises; or (b) which renders unavailable access to the Demised Premises, and access reasonably necessary for Tenant's operations cannot be restored; or (c) which otherwise renders the continued operation of the remainder of the Property not economically feasible as determined by Landlord in its reasonable discretion; provided, however, that an election to treat a taking as a taking of all or a material portion of the Demised Premises, as hereinabove provided, shall be made by Notice to the other party given within 45 days after the taking. Any dispute as to whether there has been a Partial Taking or a taking of all or a material portion of the Demised Premises shall be submitted to arbitration and appraisal in accordance with Section 16.5 hereof.

17. **Memorandum of Lease.** Concurrently with the execution hereof, Landlord and Tenant are executing and acknowledging a Memorandum of Lease, in form annexed as **Schedule C**, which shall be recorded in the appropriate public land records prior to the recordation of any Landlord's Mortgage.

18. **Estoppel Certificates.**

18.1 Tenant agrees at any time and from time to time, upon not less than fifteen (15) days' Notice by Landlord or the holder of Landlord's Mortgage, to execute, acknowledge and deliver, without charge, to Landlord or to any Person designated by Landlord or the holder of 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 Fixed Rent and Additional Rent payable by Tenant hereunder have been paid and (vi) such other information as may be reasonably requested by Landlord or the holders of Landlord's Mortgage and can be supplied by Tenant without unreasonable expense. Failure to timely deliver the foregoing estoppel certificate shall constitute a material default under this Lease.

18.2 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 (a) this Lease is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof); (b) 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); (c) 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); (d) the dates to

which Fixed Rent and Additional Rent have been paid by Tenant; (e) any other document required by law to be delivered to Tenant by Landlord; and (f) such other information as may be reasonably requested by Tenant and can be supplied by Landlord without unreasonable expense.

19. Assignment and Subletting.

19.1 (a) Tenant shall not assign, sublease or transfer this Lease or any interest therein or grant any license, concession or other right of occupancy of the Property or any portion thereof or otherwise permit the use of the Property or any portion thereof by any party other than Tenant (any of which events is hereinafter called a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed (it being understood that if Landlord does not give written indication of denial of consent to Tenant within sixty days of Landlord's receipt of a written request from Tenant under this Section, such consent of Landlord shall be deemed granted), provided however that Tenant may sublease a portion of the Property (not to exceed 2,500 square feet of building space) for the operation of a privately funded pre-kindergarten.

(b) In addition, except as set forth herein, Tenant shall not encumber, mortgage, assign or collaterally assign its interest in this Lease or the Property or any portion thereof as security for any loan, obligation or liability of Tenant or any affiliate of Tenant without Landlord's prior written consent which may be granted or withheld in its sole and absolute discretion for any reason or no reason.

(c) Any attempted Transfer in violation of the terms of this Article shall, at Landlord's option, be void. Consent by Landlord to one or more Transfers shall not operate as a waiver of Landlord's rights as to any subsequent Transfers.

(d) In the event Landlord consents to any such Transfer, the documentation effecting the assignment of this Lease or the sublease shall be in a form reasonably acceptable to Landlord, including but not limited to, a written agreement satisfactory to Landlord wherein the transferee assumes and agrees to be bound by all of the terms and conditions of this Lease, if an assignment, and if a sublease, an acknowledgement that such sublease is subject and subordinate to the terms and conditions of this Lease applicable to the portion of the Demised Premises being sublet, and Tenant shall bear all third party out-of-pocket costs and expenses incurred and paid by Landlord in connection with the review and approval of such documentation including reasonable attorneys' fees and expenses.

19.2 In addition to any other rights Landlord may have in connection with an Event of Default by Tenant hereunder which has not been cured after the giving of notice and the expiration of applicable cure periods, Landlord shall have the right to contact any transferee or subtenant and require that all payments made pursuant to the Transfer shall be made directly to Landlord up to the amount then due and payable by Tenant under the Lease.

19.3 If Tenant is a corporation and if at any time during the Term the person or persons who own the voting shares at the time of the execution of this Lease cease for any reason, including, but not limited to, merger, consolidation or other reorganization involving

another corporation, to own a majority of such shares, or if Tenant is a partnership or limited liability company and if at any time during the Term the partner(s) or member(s) who own the partnership interests in the partnership or membership interests in the limited liability company at the time of the execution (or, in the case of a permitted assignee, assumption) of this Lease, cease for any reason to own a majority of such interests (except as the result of transfers by gift, bequest or inheritance to or for the benefit of members of the immediate family of such original shareholder(s) or partner(s) or member(s)), such an event shall be deemed to be a Transfer. The preceding sentence shall not apply whenever either Tenant is a corporation the outstanding stock of which is listed on a recognized security exchange, or if at least eighty percent (80%) of its voting stock is owned by another corporation, the voting stock of which is so listed, or when the transfer of stock or other equity interest is from one stockholder or partner or member to one or more stockholders, partners or members.

19.4 Any Transfer hereunder (regardless of whether the consent of Landlord is required) shall be only for the permitted use pursuant to Section 6.1 and for no other purpose, and in no event shall any Transfer release or relieve Tenant or any guarantor or surety of Tenant's obligations under this Lease from any obligations under this Lease.

20. Indemnification; Subrogation.

20.1 Tenant shall indemnify and save Landlord harmless from and against, and shall reimburse Landlord 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 Landlord or Landlord's interest in the Property by reason of or in connection with any of the following occurring during the Term of this Lease:

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

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

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

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

(e) 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; and

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

20.2 Nothing contained in Section 20.1 shall be deemed to require Tenant to indemnify Landlord for any acts or omissions of Landlord, its agents, contractors, servants, employees, licensees or invitees or breach of this Lease by Landlord except to the extent covered by Tenant's insurance obligations under Article 10.

20.3 In case any action or proceeding is brought against Landlord by reason of any claim referred to in this Article 20, Tenant, upon Notice from Landlord, shall, at Tenant's expense, resist or 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.

20.4 The Provisions of this Article 20 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.

20.5 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.

20.6 Notwithstanding any contrary provision contained in this Lease, Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property covered by any insurance of the releasing party then in force, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone from whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to any loss or damage occurring during such time as the policy or policies of insurance covering said loss shall contain a clause or endorsement to the effect that this release shall not adversely affect or impair said insurance or prejudice the right of the insured to recover thereunder.

21. Default Provisions.

21.1 The following shall constitute events of default ("Events of Default") hereunder:

(a) If default shall be made in the due and punctual payment to Landlord of any installment of Fixed Rent payable under this Lease when and as the same shall have become due and payable, and such default shall continue for a period of ten (10) days after Notice from Landlord; or

(b) 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) days after Notice from Landlord; or

(c) If (i) the Demised Premises shall be abandoned by Tenant and Tenant shall fail to make adequate arrangements for the maintenance and security of the Property during the period Tenant is not occupying the Demised Premises 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 21.1(a) or 21.1(b), or if any representation or warranty of Tenant contained herein is untrue as of the date made, 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 such period of 30 days, 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 it being intended that in connection with a default susceptible of being cured but which cannot with due diligence be cured within such period of 30 days that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the curing thereof continuously and with all due diligence but in no event to exceed 120 days in the aggregate; or

(d) Subject to the Provisions of Section 21.3 hereof, 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 ninety (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 Property, 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

(e) Subject to the Provisions of Section 21.3 hereof, if within ninety (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 ninety (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 Property (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 ninety (90) days after the expiration of any such stay such appointment shall not have been vacated, or if within sixty (60) days, an execution, warrant, attachment, garnishment levied or fixed against the Property, 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 being an "Act of Bankruptcy"); or

(f) If there is any default under the Charter and such default shall continue for a period of forty-five (45) days after notice to Tenant, or, in the case of a default which is susceptible of being cured but which cannot with due diligence be cured within such period of forty-five (45) days, Tenant fails to commence with all due diligence within such period of forty-five (45) days to cure the same and thereafter to continuously prosecute the curing of such default with all due diligence or the Charter fails to be in full force and effect for any reason.

21.2 Subject to the provisions of the last paragraph of Article 9, upon the occurrence of any Event of Default, Landlord at any time thereafter (but prior to the curing of such Event of Default) may give Notice to Tenant stating that this Lease and the Term shall expire on the date specified in such Notice, which shall be at least thirty (30) days after the giving of such Notice, and on the date specified in such Notice this Lease and the Term shall expire with the same force and effect as though the date so specified were the date herein originally fixed as the Expiration Date of the Term, but Tenant shall remain liable as hereinafter provided.

21.3 No Act of Bankruptcy of Tenant under any Bankruptcy Law set forth in subsection 21.1(d), and no proceeding or action of the nature described in subsection 21.1(e) occurring or taken by or against Tenant shall be grounds for the Expiration of this Lease pursuant to this Article unless the same shall be taken or brought by or against the Person which then is the owner of the interests of Tenant under this Lease.

21.4 Upon any Expiration of this Lease pursuant to Section 21.2 hereof, or by or resulting from summary proceedings, re-entry or otherwise, Tenant shall quit and peaceably surrender the Property. Landlord, in addition to all other remedies herein reserved to it, upon or at any time after such Expiration, may, without further Notice, enter upon and re-enter the Demised Premises and possess and repossess itself thereof by summary proceedings, ejectment or otherwise, and may dispossess and remove Tenant and all other Persons and property from the Property, and may have, hold and enjoy the Property and the right to receive all income of and from the same.

21.5 At any time or from time to time after any such Expiration pursuant to Section 21.2 hereof, or by or resulting from summary proceedings or otherwise, Landlord may relet the Property or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions, free rent and alterations) as Landlord, in its reasonable discretion, may determine, and may collect and receive the rent therefore. Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination of the Lease, whether through inability to relet the Property on satisfactory terms or otherwise, including all costs of such reletting and any deficiency that may arise by reason of any reletting or failure to relet.

21.6 No Expiration of this Lease pursuant to Section 21.2 hereof, or by or resulting from summary proceedings or otherwise, shall relieve Tenant of its liability under this

Lease, and such liability shall survive any such Expiration. In the event of any such Expiration, whether or not the Property or any part thereof shall have been relet, Tenant shall pay Landlord the Fixed Rent to be paid by Tenant up to the time of such Expiration of this Lease, and thereafter Tenant, until the end of what would have been the Term in the absence of such Expiration, shall be liable to Landlord for, and shall pay Landlord, as and for liquidated and agreed current damages for Tenant's default, (a) the equivalent of the amount of Fixed Rent which would be payable under this Lease by Tenant if this Lease were still in effect, less the proceeds, if any, of any reletting effected pursuant to the Provisions of Section 21.5 hereof, and (b) an amount equal to all of Landlord's actual expenses in connection with such reletting, including, but not limited to, brokerage commissions, attorneys' fees, the cost of cleaning, renovation, repair and alteration of the Demised Premises, advertisements, marketing, the cost of caring for the Property while vacant, free rent and other concessions to a new tenant. Tenant shall pay the damages provided for in subdivision (a) above ("Deficiency") to Landlord monthly on the days on which Fixed Rent would have been payable under this Lease if this Lease were still in effect (provided that Landlord has given Tenant reasonable advance notice of the amount of the Deficiency then due), and Landlord shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise or shall have the right to accumulate monthly Deficiencies and sue to recover the same from time to time as Landlord may determine. Tenant shall pay to Landlord the damages provided for in subdivision (b) above on demand. At any time after such Expiration, whether or not Landlord shall have collected any monthly Deficiency as aforesaid, Landlord, at Landlord's election, shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the then present worth of the excess of the Fixed Rent reserved under this Lease from the date of such Expiration over the fair and reasonable rental value of the Property for what would be the then unexpired portion of the Term if the same had remained in effect (less any Fixed Rent paid by Tenant for the period after the Expiration Date), said present worth to be computed on the basis of a discount equal to the current yield of United States Government securities having a term as near as possible to the amount of time remaining on the Term of this Lease and on a net lease basis. For the purposes of this Section 21.6, to the extent the Fixed Rent for the unexpired portion of the Term cannot be ascertained with certainty, the highest annual Fixed Rent in effect during the three (3) most recently ended Lease Years or, if fewer than three (3) Lease Years shall have elapsed since the Lease Date, then during all prior Lease Years, or portions thereof, which have so elapsed, shall be deemed to be the annual Fixed Rent for the unexpired portion of the Term for purposes of such calculations.

21.7 Landlord and Tenant each agrees that it will refrain from exercising any legal or equitable remedy available to it until the expiration of the applicable cure periods set out herein.

21.8 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.

21.9 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 and shall have the right to invoke any right and remedy allowed by Law, in equity or otherwise, as though re-entry, summary proceedings and other remedies were not provided for in this Lease. In addition, in the event Tenant is no longer engaging a charter school management company in accordance with Section 9.9 and there is any material breach of Tenant's obligations under this Lease, Landlord or First Mortgagee may require that Tenant enter into a charter school management agreement with a recognized charter school management company acceptable to Landlord and First Mortgagee.

21.10 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 by Law, in equity or otherwise, and, subject to the provisions of Section 21.7, 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 by Law, in equity or otherwise 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 by Law, in equity or otherwise.

21.11 Landlord shall not be deemed to be in default under this Lease unless (a) Tenant has given Notice to Landlord specifying the default claimed, and (b) Landlord has failed for thirty (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.

21.12 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.

21.13 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 to review the books,

records, operating procedures, staffing, management and all other aspects of Tenant, and Tenant shall permit such financial advisor full reasonable access (to the extent permitted by law) to its books, records, facilities and personnel, and Tenant shall consider the recommendations of such financial advisor to effect improvement to Tenant's business and financial condition.

21.14 Notwithstanding anything to the contrary contained herein, Landlord shall not be entitled to enforce a remedy herein or at law or in equity granted which would dispossess Tenant so long as Tenant is and remains current in the payment of all Additional Rent and such portion of the Fixed Rent as will, in each month, be adequate in that month to satisfy Landlord's obligations for the payments due under any First Mortgage financing, to the extent such moratorium on enforcement is required under the terms of such First Mortgage financing.

22. Representations and Warranties of Tenant and Landlord.

22.1 Tenant represents and warrants to Landlord:

(a) *Organization and Power.* Tenant is a not-for-profit corporation duly organized, validly existing, and its status is "active" under the laws of the State of Idaho, and has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as it is now being conducted and as it is presently proposed to be conducted.

(b) *Pending Litigation and Taxes.* Except as otherwise disclosed to Landlord, 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, and all taxes, assessments, and other governmental charges shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by Tenant in good faith, have been paid or adequate reserves have been made for the payment thereof.

(c) *Agreements Are Authorized.* 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.

(d) *Governmental Consents.* Neither Tenant nor any of its business or properties, nor any relationship between Tenant and any other Person, nor any circumstance in connection with the execution, delivery, and performance by Tenant of its obligations under this Lease is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of Tenant in connection with the execution, delivery, and performance of this Lease, consummation of any transaction herein contemplated, except as shall have been obtained or made and as are in full force and effect, other than the filing of financing statements or instruments effective as financing statements perfecting the security interests created hereby.

(e) *No Defaults.* 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. Tenant is not in default or violation in any material respect under the Charter, its charter documents, or other agreement or instrument to which it is a party or by which it may be bound. The Charter is in full force and effect and to the best of Tenant's knowledge, there are no grounds for termination prior to expiration of its term.

(f) *Compliance with Law.* Tenant is not in violation of any laws, ordinances, or governmental rules or regulations to which it is subject and 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.

(g) *Restrictions on Tenant.* Except as otherwise disclosed to Landlord, Tenant is not a party to or bound by any contract, instrument, or agreement, or subject to any other restriction, that materially and adversely affects its business, properties, assets, operations, or condition (financial or otherwise).

(h) *Tax-Exempt Organization.* As of the date of this Lease, (i) Tenant has filed a Form 1023 with the Internal Revenue Service and believes that it qualifies as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (a "Tax-Exempt Organization"), (ii) Tenant has no reason to believe that it will not receive a determination letter from the Internal Revenue Service to the effect that it is a Tax-Exempt Organization, (iii) Tenant will remain in full compliance with all terms, conditions, and

limitations, if any, contained in such determination letter, and (iv) the facts and circumstances which formed the basis for the status of Tenant, as represented to the Internal Revenue Service in the application for a determination letter, have not materially changed, and substantially exist for Tenant. Tenant is organized and operated exclusively for charitable purposes and not for pecuniary profit and no part of the net earnings of Tenant inures to the benefit of any Person, private stockholder or individual.

(i) *Disclosure.* The representations of Tenant contained in this Lease and in any certificate, document, written statement, or other instrument furnished by or on behalf of Tenant to the Landlord in connection with the transactions contemplated hereby, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact that Tenant has not disclosed to the Landlord that materially and adversely affects or in the future may (so far as Tenant can now reasonably foresee) materially and adversely affect the operation of the School or the properties, business, operations, prospects, profits, or condition (financial or otherwise) of Tenant, or the ability of Tenant to perform its obligations hereunder.

(j) *Compliance.* Once Tenant has taken possession of the Demised Premises, Tenant will comply with all presently applicable building and zoning, health, environmental, and safety ordinances and laws and all other applicable laws, rules, and regulations of any and all governmental and quasi-governmental authorities having jurisdiction over any portion of the Demised Premises, including but not limited to, the State School Board and the Idaho State Department of Education.

(k) *Licenses and Permits.* Tenant currently has or will timely secure all necessary permits, consents, licenses and authorizations for the operation of the School from all appropriate governmental entities, agencies, departments and bureaus.

(l) *Financing Statements.* 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.

22.2 Landlord represents and warrants to Tenant:

(i) *Organization and Power.* Landlord is a Utah limited liability company duly organized, validly existing, and its status is "active" under the laws of the State of Utah, and has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as it is now being conducted and as it is presently proposed to be conducted.

(ii) *Pending Litigation.* 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.

(iii) *Agreements Are Authorized.* 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 (x) are within the power, legal right, and authority of Landlord, (y) 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 (z) 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 officers of Landlord executing this Lease are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of Landlord.

(iv) *Governmental Consents.* Neither Landlord nor any of its business or properties, nor any relationship between Landlord and any other Person, nor any circumstance in connection with the execution, delivery, and performance by Landlord of its obligations under this Lease is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of Landlord in connection with the execution, delivery, and performance of this Lease, consummation of any transaction herein contemplated, except as shall have been obtained or made and as are in full force and effect.

(v) *No Defaults.* No event has occurred and no condition exists that would constitute an Event of Default on the part of Landlord or which, with the lapse of time or with the giving of notice or both, would become an Event of Default on the part of Landlord.

(vi) *Compliance with Law.* Landlord is not in violation of any laws, ordinances, or governmental rules or regulations to which it is subject and 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. At the time Tenant takes possession of the Demised Premises, the Demised Premises complies with all presently applicable building and zoning, health, environmental, and safety ordinances and laws and all other applicable laws, rules, and regulations of any and all governmental and quasi-governmental authorities having jurisdiction over any portion of the

Demised Premises, including but not limited to, the State School Board and the Idaho State Department of Education.

(vii) *Restrictions on Landlord.* Landlord is not a party to or bound by any contract, instrument, or agreement, or subject to any other restriction, that materially and adversely affects its business, properties, assets, operations, or condition (financial or otherwise).

23. 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.

24. Notices.

24.1 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 (or to such other address as is specified in a written Notice to each party of this Lease in accordance with the terms of this Section 24.1):

If to Landlord: CALDWELL SCHOOL DEVELOPMENT, LLC
352 North Flint Street
Kaysville, Utah 84037
Attention: Manager

with a copy to: Vectra Bank Colorado, National Association
2000 South Colorado Blvd., Suite 2-1200
Denver, CO 80222
Attention: Toni Keenan

If to Tenant: HERITAGE COMMUNITY CHARTER SCHOOL, INC.
Chairman of the Board of Directors
1305 S. Kimball Ave.
Caldwell, ID 83605

24.2 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.

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

25. Quiet Enjoyment. Landlord covenants that Tenant, upon paying when due Fixed

Heritage Community Charter School
Lease Agreement

Rent and Additional Rent herein provided for and observing and keeping all Provisions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Property 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.

26. Excavation and Shoring. If any excavation shall be made or contemplated to be made for building or other purposes upon property or streets adjacent to or nearby the Property from and after the Lease Date, Tenant shall do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations. All such work done by Tenant shall be at Tenant's sole cost and expense. Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or indemnity, except work done by or on behalf of Landlord, or for suspension, diminution, abatement or reduction of rent under this Lease.

27. Landlord's Right to Perform Tenant's Covenants.

27.1 If Tenant shall at any time fail to pay any Imposition in accordance with the Provisions of Article 5 hereof, or to take out, pay for, maintain or deliver any of the insurance policies to be provided by Tenant in Article 10 hereof, or shall fail to make any other payment on its part to be made, then Landlord, after twenty (20) business days' Notice to Tenant, except when other Notice is expressly provided for in this Lease (or without Notice in case of emergency) and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to):

- (a) Pay any Imposition payable by Tenant pursuant to the Provisions of Article 5 hereof; or
- (b) Take out, pay for and maintain any of the insurance policies to be provided by Tenant in Article 10 hereof; or
- (c) Make any other payments on Tenant's part to be made as provided in this Lease; and
- (d) May enter upon the Property for any such purpose and take all reasonable action thereon as may be necessary therefor.

27.2 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's 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 Landlord 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.

28. Landlord's Right to Mortgage, Sell or Assign Rents.

28.1 Landlord shall have the right at any time and from time to time to place one or more mortgages (including the First Mortgage) on all or any part of the Property (the First Mortgage and all such 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 the First Mortgage, 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.

28.2 Except as otherwise provided in this Section 28.2 and Article 33, 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 Property, subject to this Lease, or to assign its interest in this Lease, or to assign (other than for collateral purposes which Landlord may do from time to time without notice to or consent from Tenant) from time to time the whole or any portion of Fixed Rent or Additional 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 Fixed Rent and Additional 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.

29. Subordination and Non-Disturbance.

29.1 The mortgage loan documents with respect to the First Mortgage and any other Landlord's Mortgage shall provide (or shall require that the holder thereof shall enter into an agreement providing) for subordination, non-disturbance and attornment with respect to Tenant's rights and obligations under this Lease, which shall provide that this Lease shall be subordinate to such First Mortgage or other Landlord's Mortgage (as applicable), but that Tenant's rights under this Lease shall not be disturbed in the event of foreclosure, sale or otherwise, so long as Tenant attorns to such mortgagee or transferee and there is not otherwise an uncured Event of Default under this Lease. Tenant shall promptly execute and deliver any such requested agreement. If any person shall succeed to all or part of Landlord's interests in the Property 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 the Lease, Tenant's right to quiet possession shall not be disturbed and the terms of the Lease shall remain unchanged.

30. Unavoidable Delays. Except for the obligation to pay Fixed Rent and other charges payable hereunder 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.

31. Financial Statements.

31.1 Tenant will provide to Landlord and First Mortgagee copies of all budgets, filings, financial reports and official correspondence to and from Tenant's chartering district and/or the Idaho State Department of Education concerning Tenant's finances.

31.2 Tenant shall keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with generally accepted accounting principles ("GAAP") reflecting all its financial transactions, and cause to be prepared and furnished to Landlord and First Mortgagee the following (all to be prepared in accordance with GAAP applied on a consistent basis, unless the Tenant's certified public accountants concur in any change therein and such change is disclosed to Landlord and is consistent with GAAP):

(a) not later than one hundred twenty (120) days after the close of each fiscal year, Tenant's audited financial statements (which term includes balance sheets and statement of activities and changes in net assets) as of the end of such year, certified by a firm of independent certified public accountants of recognized standing selected by Tenant and reasonably satisfactory to Landlord;

(b) not later than thirty (30) days after the close of each fiscal quarter, Tenant's financial statements as of the end of such quarter, certified by the chief financial officer of Tenant, together with student enrollment information and discussion of variances to budget, in form and substance reasonably satisfactory to Landlord, and such other financial statements reasonably requested by Landlord; and

(c) not later than thirty (30) days after the date on which such survey is required to be delivered to the Board, each enrollment survey in respect of the Tenant

32. Obligations Absolute. Fixed Rent 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 Property or any part thereof; (iii) any restriction or interference with Tenant's use of the Property; (iv) any defects, breakdowns, malfunctions, or unsuitability of the Property or any part thereof; or (v) any dispute between Tenant and Landlord, any vendor or manufacturer of any part of the Property, or any other person.

33. Tenant's Right of First Refusal. Landlord may not sell or transfer the Property, except to an affiliate of Landlord, unless Landlord has received a bona fide offer to

purchase the Property (whether solicited or not) and Landlord provides Tenant a right of first refusal to purchase the Property pursuant to the following provisions of this Article 33. However, Tenant's right of first refusal set forth herein shall not apply to any transfer of the Property to First Mortgagee or any transfer of the Property made as a result of the exercise of any remedies of First Mortgagee under the First Mortgage.

33.1 Landlord shall give Tenant written notice at least thirty (30) days' prior to any proposed sale of the Property. Such notice shall be accompanied by a copy of an executed, legally binding purchase agreement (the "Third Party Purchase Agreement") between Landlord and the proposed purchaser setting forth the terms and conditions of such proposed sale.

33.2 Tenant shall have the right, but not the obligation, to purchase the Property from Landlord on the same terms set forth in the Purchase Agreement by notifying Landlord in writing, within thirty (30) days of the receipt of the notice provided for in Section 33.1 from Landlord, of its intention to purchase the Property and delivering to Landlord an executed contract for the purchase of the Property on the same terms and conditions set forth in the Third Party Purchase Agreement; however, the date for settlement of Tenant's purchase of the Property shall be either the settlement date set forth in the Third Party Purchase Agreement or a date which is not less than one hundred and twenty (120) days from the date of Landlord's notice to Tenant of the Third Party Purchase Agreement, whichever is later.

33.3 If Tenant does not give timely notice of its intention to purchase the Property or, having given such notice, does not timely close on the purchase the Property, Landlord may then sell the Property to the proposed purchaser pursuant to the Third Party Purchase Agreement. If Landlord does not then sell and convey the Property pursuant to the Third Party Purchase Agreement, any subsequently proposed transaction shall again trigger the provisions of this Article 33.

33.4 If Tenant purchases the Property pursuant to this Article 33, this Lease shall terminate on the date title vests in Tenant, and Landlord shall remit to Tenant all prepaid and unearned rent, and any security deposit paid by Tenant pursuant to the Lease.

33.5 This right of first refusal shall remain in effect for the entire Term of this Lease and shall be applicable to any proposed sale of the Property by the Landlord, its successors, or its assigns.

34. 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.

35. **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.

36. **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 Article 11, 16, or 21 hereof, or otherwise.

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

38. **Captions and Construction.**

37.1 The captions and table of contents 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.

37.2 The terms "include," "including" or words of like import shall be construed as meaning "including, without being limited to."

37.3 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.

37.4 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]."

39. **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.

40. **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 any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed or terminated orally.

41. **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.

42. **Governing Law.** This Lease shall be governed by, and interpreted under, the laws of the State.

43. **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 PROPERTY (TOGETHER WITH THEIR RESPECTIVE NOTICE ADDRESSES), NOTICE AND TIME TO CURE SUCH ALLEGED DEFAULT BY LANDLORD AS ARE PROVIDED IN SECTION 21:11.

44. **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 PROPERTY (INCLUDING RENTAL INCOME AND THE PROCEEDS FROM THE SALE OF THE PROPERTY), AND TENANT AGREES TO LOOK SOLELY TO LANDLORD'S INTEREST IN THE PROPERTY 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.

45. **Purchase Option.** Tenant shall have the option to purchase the Property from Landlord, on the terms and conditions below. Upon such purchase, Landlord will provide Tenant with an owner's title policy in the amount of the Purchase Price (as defined below) and will convey good, marketable and insurable title to the Property to Tenant via warranty deed. For the avoidance of doubt, title shall be conveyed free and clear of any encumbrances for borrowed money or mechanic's or materialmen's liens.

45.1 **Purchase Option.** Tenant shall have the option at its sole discretion to purchase the Property from Landlord, and Landlord shall be required to sell the Property, at any time of Tenant's choosing during the term of this Lease at the Purchase Price (defined below) subject to Tenant's ability to obtain financing on terms and conditions satisfactory to Tenant in its sole discretion, including without limitation a requirement (if Tenant determines desirable) of no down payment and an annual debt service payment amortized over thirty (30) years equal to or less than the current Fixed Rent. Subject to such financing, such sale of the Property shall take place within 120 days after the date the Tenant notifies Landlord in writing of Tenant's exercise of this option; *provided, however*, that in the event either party has objected to the determination of Fair Market Value in accordance with Section 45.2, such sale shall take place within 180 days after the date the Tenant notifies Landlord in writing of Tenant's exercise of this option. Landlord shall, upon request of Tenant, execute a purchase agreement for the sale of the

Property containing the terms and conditions set forth herein, including the condition of financing.

45.2 Purchase Price. The parties hereto agree that the purchase price for the Property shall be the Fair Market Value of the Property, as determined by an MAI real property appraiser selected by the Landlord and the Tenant jointly and paid for by Landlord (the "Purchase Price"). The Landlord shall cause the appraisal to be complete thirty (30) days following notification by the Tenant of its exercise of an option hereunder. Such appraiser shall have substantial experience in appraising charter schools in the intermountain region and have previously appraised at least two different charter schools in the intermountain region. However, in the event either Landlord or Tenant object to the Purchase Price, the objecting party shall inform the other party of their objection within five (5) business days after such party's receipt of the Purchase Price from the appraiser. In such event, the parties agree to negotiate in good faith to determine whether they are able to agree upon a different Purchase Price than such appraised value.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

LANDLORD:

CALDWELL SCHOOL DEVELOPMENT, LLC,
A Utah limited liability company

By: _____

Name: Jed Stevenson

Title: Manager

TENANT:

HERITAGE COMMUNITY CHARTER SCHOOL,
INC., an Idaho not-for-profit corporation

By: _____

Name: Lon C. McRae

Title: President

SCHEDULE A

LEGAL DESCRIPTION OF LAND

This parcel is a portion of the SE ¼ SE ¼ of Section 34, Township 4 North, Range 3 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

COMMENCING at the southeast corner of said Section 34;

thence South 89° 28' 27" West along the south boundary of said SE ¼ SE ¼ a distance of 728.02 feet;

thence North 0° 14' 41" West parallel with the west boundary of the SW ¼ SE ¼ SE ¼ a distance of 45.00 feet to the **TRUE POINT OF BEGINNING**, a 5/8 x 30 inch rebar set with a plastic cap stamped L.S. 3627;

thence South 89° 28' 27" West parallel with the south boundary of said SE ¼ SE ¼ a distance of 563.97 feet to a point that lies on a line 30.00 feet easterly from and parallel with the west boundary of the SW ¼ SE ¼ SE ¼;

thence North 0° 14' 41" West along said parallel line a distance of 584.24 feet to a 5/8 x 30 inch rebar set with a plastic cap stamped L. S. 3627;

thence North 89° 27' 41" East a distance of 30.02 feet to a 5/8 x 30 inch rebar set with a plastic cap stamped L. S. 3627;

thence North 0° 17' 02" West a distance of 73.65 feet to a 5/8 x 30 inch rebar set with a plastic cap stamped L. S. 3627;

thence North 48° 52' 47" East a distance of 436.71 feet to a point witnessed by a 5/8 x 30 inch rebar set with a plastic cap stamped L.S. 3627 bearing South 48° 52' 47" West a distance of 62.30 feet;

thence South 14° 55' 19" East a distance of 47.44 feet to the centerline of the Dixie Drain as shown on the Caldwell Y.M.C.A. Subdivision found in Book 35 at Page 37 in the Canyon County Records;

thence South 32° 44' 18" East along said centerline a distance of 356.96 feet to a point witnessed by a 5/8 x 30 inch rebar set with a plastic cap stamped L.S. 3627 bearing South 0° 14' 41" East a distance of 102.38 feet;

thence leaving said centerline and bearing South 0° 14' 41" East a distance of 594.09 feet to the **TRUE POINT OF BEGINNING**, containing 10.00 acres, more or less, and being subject to all easements and rights-of-way of record or implied.

SCHEDULE B

PERMITTED ENCUMBRANCES

1. Easements, rights of way, reservations, restrictions and dedications as described on the Commitment for Title Insurance issued by Stewart Title Guaranty Company dated January 24, 2011 as Order No. 1107157 MA/JW.

SCHEDULE C

MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
CALDWELL SCHOOL DEVELOPMENT, LLC
Attn: Jed Stevenson
352 North Flint Street
Kaysville, UT 84037

MEMORANDUM OF LEASE

This Memorandum of Lease (this "Memorandum") is made and entered into as of February 10, 2011 by and between Caldwell School Development, LLC a Utah limited liability company ("Landlord") and Heritage Community Charter School, Inc., an Idaho non-profit corporation ("Tenant").

1. DEMISE. By a certain lease dated Feb. 10, 2011 (the "Lease") between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has leased from Landlord, the Premises located in the City of Caldwell, County of Canyon, State of Idaho, and more particularly described in Attachment A hereto. All provisions of the Lease are incorporated herein by reference.
2. TERM. The term of the Lease is twenty-five (25) years commencing on or about August 15, 2010, and ending on July 31, 2036.
3. OPTION TO RENEW. Upon the expiration of the initial term, Tenant has the right and option to renew the Lease. If so renewed by Tenant, the Lease term will end on July 31, 2041.
4. USE OF PROPERTY. Tenant shall have the right to use and occupy the property for the sole purpose of operating a charter school and for such other lawful purposes as may be incidental thereto.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Memorandum of Lease is executed on February 10, 2011.

LANDLORD:

Caldwell School Development, LLC

[Signature]
Jed Stevenson, Manager

STATE OF UTAH

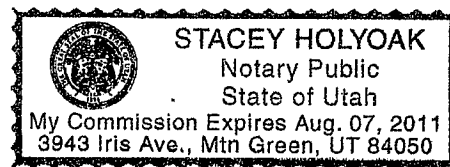
COUNTY OF DAVIS

On the 18 day of February, 2011, before me, a Notary Public in and for the above state and county, personally appeared Jed Stevenson, Manager of Caldwell School Development, LLC, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he or she executed said instrument for the purposes therein contained as his or her free and voluntary act and deed.

[Signature]
NOTARY PUBLIC

TENANT:

Heritage Community Charter School, Inc.



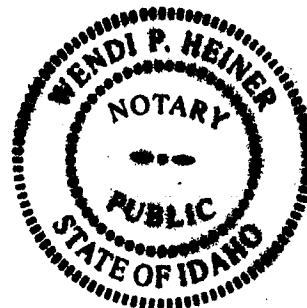
[Signature]
Lon C. McRae, Board President/Chair

STATE OF IDAHO

COUNTY OF CANYON

On the 15 day of February, 2011, before me, a Notary Public in and for the above state and county, personally appeared Lon Chad McRae President/Chairman of Heritage Community Charter School, Inc., known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he or she executed said instrument for the purposes therein contained as his or her free and voluntary act and deed.

[Signature]
NOTARY PUBLIC



Heritage Community Charter School
Lease Agreement

SCHEDULE D
FIXED RENT

ATTACHED TO AND A PART OF THE LEASE AGREEMENT ("LEASE")
DATED AS OF February 10, 2011, BETWEEN

CALDWELL SCHOOL DEVELOPMENT, LLC
and
HERITAGE COMMUNITY CHARTER SCHOOL, INC.

Fixed Rent. The Fixed Rent (annually, subject to adjustments as set forth below) for the First Lease Year (partial or otherwise) shall be computed as the product obtained by multiplying the amount of \$13.85 per square foot of Building times the square footage of the Building (i.e. 33,636 square feet). The Fixed Rent for the Second Lease Year shall be computed as the product obtained by multiplying the amount of \$14.85 per square foot of Building times the square footage of the Building (i.e. 33,636 square feet). The Fixed Rent for the Third Lease Year shall be computed as the product obtained by multiplying the amount of \$15.85 per square foot of Building times the square footage of the Building (i.e. 33,636 square feet). The Building is estimated to contain 33,636 square feet (the actual square footage of the Building as constructed will be determined and, if different than the foregoing area, the parties will memorialize the actual agreed-upon area of the Building in an addendum to this Lease). In calculating the square feet, air conditioned and un-air conditioned spaces were included. Following the Third Lease Year, the yearly Fixed Rent shall be adjusted annually ("Adjusted Fixed Rent") as set forth below in paragraph A.

A. Adjustment of Fixed Rent. Commencing with the first day of the fourth Lease Year, and thereafter on each annual anniversary of such date during the Initial Term, the Fixed Rent shall be adjusted as follows:

(x) The Fixed Rent in effect for such Lease Year shall be equal to the product of (i) the Fixed Rent in effect for the prior Lease Year period, multiplied by (ii) the lesser of (A) 1.015 or (B) the fraction in which the Adjustment CPI (as defined below) is the numerator and Base CPI (as defined below) is the denominator. In no event shall any adjustment made pursuant to this Schedule or any decrease in the CPI ever result in a decrease in the Fixed Rent for any Lease Year below the Fixed Rent in effect at the end of the prior Lease Year, which Fixed Rent shall, in that event, continue in effect until the next adjustment hereunder. Payment of the Adjusted Fixed Rent amount shall begin on the first day of the first calendar month of the Lease Year to which such Adjusted Fixed Rent applies.

(y) If (i) the CPI (as defined below) ceases using the 1982-1984 average of 100 as the basis of calculation, (ii) a significant change is made in the number or nature (or both) of items used to determine the CPI, (iii) Landlord and Tenant agree that the Adjustment CPI does not accurately reflect, in relationship to the Base CPI, the purchasing power of the dollar, or (iv) the CPI shall be discontinued for any reason, the Bureau of Labor Statistics shall be requested to furnish a new index

Heritage Community Charter School
Lease Agreement

comparable to the CPI, together with information which will make possible the conversion to the new index in computing the Adjusted Fixed Rent hereunder. If for any reason the Bureau of Labor Statistics does not furnish such an index and such information, Landlord and Tenant shall instead accept and use such other index or comparable statistics on the cost of living in the city or region in which the Premises is located that is computed and published by an agency of the United States or a responsible financial periodical of recognized authority.

(z) As used herein, the term "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U) for the United States Western Region, All Items (1982-84 = 100), published by the Bureau of Labor Statistics, United States Department of Labor. As used herein, the term "Base CPI" means the most recently published CPI as of the last day of the last month immediately preceding the Commencement Date. As used herein, the term "Adjustment CPI" means the most recently published CPI as of the last day of the last month immediately preceding the commencement of the Lease Year for which the adjustment in Fixed Rent is being determined. Unless otherwise specifically defined in this Schedule, capitalized terms shall have the same respective meanings as set forth in the Lease.

SCHEDULE E
FIXED RENT FOR EXTENDED TERM

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED AS OF February 10, 2011, BETWEEN

CALDWELL SCHOOL DEVELOPMENT, LLC
and
HERITAGE COMMUNITY CHARTER SCHOOL, INC.

Extended Term Fixed Rent. During the Extended Term, if any, the Fixed Rent for each Lease Year shall be the amount of Adjusted Fixed Rent that would have been due if the Initial Term had continued (with annual adjustments as set forth in Schedule D hereof).

SCHEDULE F
DESCRIPTION OF FACILITY

The facility shall be delivered to Tenant in "turn key" condition such that the facility shall be immediately tenantable and able to be occupied by Tenant as a charter school facility; provided however that no furnishings, fixtures (other than standard building systems shown in the Plans), or equipment (other than standard building systems components shown in the Plans). In addition, the facility shall be computer ready, painted and ready for occupancy. Rent shall commence upon delivery of occupancy (subject to punch list items) to Tenant.

The Landlord shall timely proceed to obtain a final certificate of occupancy and shall perform any conditions that may be required under the terms of any temporary certificate of occupancy.

The facility shall be substantially completed as described in the Plans, and shall include parking spaces as described in the Plans.

The facility shall consist of approximately 33,636 gross square feet as shown on the Plans, together with any ancillary site improvements as shown on the plans.

AMENDEDMENT TO LEASE AGREEMENT

THIS AMENDEDMENT TO LEASE AGREEMENT (the "Amendment") is made as of December 3, 2012, by and between Caldwell School Development, LLC, a Utah limited liability company ("Landlord"), and Heritage Community Charter School, Inc., an Idaho not-for-profit corporation ("Tenant").

RECITALS

- A. Landlord and Tenant are parties to a Lease Agreement (the "Lease") dated February 10, 2011.
- B. In order to address concerns regarding Tenant's financial condition, Landlord and Tenant desire to amend the Lease as set forth below.

AGREEMENT

1. Schedule D of the Lease is hereby amended to provide as follows:
 - a. The Fixed Rent due for the Second Lease Year, running from July 1, 2012, until June 30, 2013, shall be reduced by a total of \$55,000. Accordingly, the amount of rent due each month from January 2013 through June 2013 shall be reduced by \$9,166.67 per month.
 - b. The Fixed Rent for the Third Lease Year shall be computed as the product obtained by multiplying the amount of \$14.85 per square foot of Building times the square footage of the Building (i.e. 33.636 square feet).
2. All other terms of the Lease shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

LANDLORD:

Caldwell School Development, LLC,
a Utah limited liability company

By: 

Name: SHeldon KINSACK
Title: Manager

TENANT:

Heritage Community Charter School, Inc.,
An Idaho not-for-profit corporation

By: 

Name: Richard L. Hammond
Title: President

12-3-12

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made as of MAY 20, 2014, by and between Caldwell School Development, LLC, a Utah limited liability company ("Landlord"), and Heritage Community Charter School, Inc., an Idaho not-for-profit corporation ("Tenant").

RECITALS

- A. Landlord and Tenant are parties to a Lease Agreement (the "Lease") dated February 10, 2011, and to an Amendment to Lease Agreement dated December 3, 2012 (the "First Amendment").
- B. In order to address concerns regarding Tenant's financial condition, Landlord and Tenant desire to amend the Lease as set forth below.

AGREEMENT

1. Schedule D of the Lease is hereby amended to provide as follows:
 - a. The total annual Fixed Rent due for each Lease Year from July 1, 2013, until June 30, 2016, shall be \$375,000 per year.
 - b. The total annual Fixed Rent due for each Lease Year from July 1, 2016, until June 30, 2018, shall be \$425,000 per year.
 - c. The total annual Fixed Rent due for each Lease Year from July 1, 2018, and thereafter will be the amount that would have been in effect for that Lease Year pursuant to the First Amendment, without regard to this Amendment, and will continue in accordance with the terms of the First Amendment.
2. The Lease amendment in Section 1, above, is conditioned on satisfaction of the following requirements:
 - a. Within thirty (30) days of the date of this Amendment, Tenant's administrator will consult with administrators and/or business managers of at least two (2) successful Idaho charter schools to discuss Tenant's financial position and to solicit options to adjust Tenant's staffing. A successful charter school is one that has secured bond financing for their facilities; has a 4 star rating; and is in good financial standing.
 - b. Tenant will provide to Landlord by May 1, 2014, a written overview of Tenant's accounting policies and procedures that includes but is not limited to information concerning the time period teacher agreements cover, how accruals are handled, year-end closing procedures, and how financial reports are presented to the Board of Directors (accrual vs. cash basis).
 - c. Tenant will perform the following on a quarterly basis:

i. Retain a qualified professional to review the current quarter's and YTD financial results. The professional will provide Landlord with a brief report on Tenant's financial conditions and make Landlord aware of any specific revenue shortfalls or expense concerns.

ii. Provide Landlord with Tenant's internal financial statements (P&L, Balance Sheet, and Statement of Cash Flows) along with a current budget-to-actual comparison and any budget amendments that occurred during the period.

c. No later than May 1, 2014, Tenant will provide Landlord with a three (3) year projected budget demonstrating that Tenant is able to operate at a surplus. Tenant will act in good faith to operate in accordance with the projected budget.

3. All other terms of the Lease shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

LANDLORD:

Caldwell School Development, LLC,
a Utah limited liability company

By: 

Name: SHeldon Kinsack
Title: Manager

TENANT:

Heritage Community Charter School, Inc.,
An Idaho not for-profit corporation

By: 

Name: ROBB MACDONALD
Title: President