

## **LEASE AGREEMENT**

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**OE BELL WALNUT STREET LLC  
AS LANDLORD**

-and-

**FORRESTER ACADEMY, INC.  
AS TENANT**

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**PREMISES:** Charter school facility  
located at 151 N. Ridge Ave, Idaho Falls, ID

**DATE:** As of November 24<sup>th</sup>, 2016

**THIS LEASE AGREEMENT** (“Lease”) is made as of November \_\_\_\_, 2016, by and between OE Bell Walnut Street LLC, an Idaho limited liability company, having an office at 910 17<sup>th</sup> Street NW, Suite 1100, Washington, D.C. 20006 (“Landlord”), and Forrester Academy, Inc., an Idaho non-profit corporation, having an address of 3950 S Yellowstone Hwy Ste 200, Idaho Falls, ID 83402 (“Tenant”).

**WITNESSETH:**

1.1 **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:

1.2 “Additional Rent” shall have the meaning set forth in Section 4.3.

1.3 “Affiliate” means, when used with reference to a specified Person (i) any Person who directly or indirectly controls, is controlled by or is under control with the specified Person, (ii) any Person who is an officer, member or trustee of, or serves in a similar capacity with respect to, the specified Person, or for which the specified Person is an officer, member or trustee or serves in a similar capacity, (iii) any Person who, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of the specified Person, or of which the specified Person, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of the specified Person, or of which the specified Person, directly or indirectly, is the owner of ten percent (10%) or more of any class of equity securities, and (iv) any relative of the specified Person.

1.4 “Building” shall mean the existing building, and related parking, driveway and other facilities, currently located and to be partially renovated on the Land, as more specifically described in **Schedule E**.

1.5 “Charter” means that certain charter school agreement between Tenant and the Granting Authority, approved on February 11, 2016 (as amended, renewed, extended or reissued from time to time), pursuant to which Tenant operates one or more charter schools on the Property (collectively, the “School”).

1.6 “Debt Service Cushion Account” shall have the meaning set forth in Section 4.7.

1.7 “Demised Premises” shall mean the Land and the Improvements.

1.8 “Environmental Laws” shall have the meaning set forth in Section 6.2.

1.9 “Event of Default” shall have the meaning set forth in Article 21.

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

1.11 “Fixed Rent” shall have the meaning set forth in Section 4.2.

1.12 “Granting Authority” shall mean Idaho Public Charter School Commission, the entity with authority to grant and revoke the Tenant’s Charter.

1.13 “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.

1.14 “Hazardous Materials” shall have the meaning set forth in Section 6.2.

1.15 “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.

1.16 “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.

1.17 “Land” shall mean the land described in **Schedule A** annexed hereto and incorporated herein by reference.

1.18 “Landlord” shall mean the Landlord named herein and, at any given time, its permitted successors and assigns.

1.19 “Landlord’s Mortgages” shall have the meaning set forth in Section 28.1.

- 1.20 “Law” or “Laws” shall have the meaning set forth in Article 9.
- 1.21 “Lease Date” shall mean the date of execution of this Lease.
- 1.22 “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.
- 1.23 “Lease Year” shall mean the twelve (12) calendar month period commencing on each July 1 during the Term of this Lease; provided however that the period commencing on the Lease Date and ending on June 30, 2017 shall be treated as the first Lease Year.
- 1.24 “Notices” shall have the meaning set forth in Section 24.1.
- 1.25 “Owner” shall mean the Owner of the fee title to the Land.
- 1.26 “Permits” shall have the meaning set forth in Article 9.
- 1.27 “Permitted Encumbrances” shall mean those certain mortgages, liens, easements, rights of way and other encumbrances set forth on **Schedule B** annexed hereto and incorporated herein by reference.
- 1.28 “Person” shall mean and include any individual, corporation, partnership, limited liability company, unincorporated association, trust, Governmental Authority or other entity.
- 1.29 “Project” shall mean the renovations to the Property and the Building, as more specifically described in **Schedule E** annexed hereto and incorporated herein by reference.
- 1.30 “Property” shall mean the Demised Premises.
- 1.31 “Provisions” shall have the meaning set forth in Article 30.
- 1.32 “Purchase Option” shall have the meaning assigned thereto in Article 46.
- 1.33 “Renewal Notice” shall have the meaning set forth in Section 3.2.
- 1.34 “Repairs” shall have the meaning set forth in Section 8.1.
- 1.35 “Restorations” shall have the meaning set forth in Section 16.2.
- 1.36 “School” shall have the meaning set forth in Section 1.5.
- 1.37 “State” shall mean the State of Idaho, the state in which the Demised Premises are located.
- 1.38 “Tenant” shall mean the Tenant named herein and, at any given time, its permitted successors and assigns.

1.39 “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.

1.40 “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.

1.41 “Tenant Deliveries” means the following instruments and documents to be executed, acknowledged and/or delivered by Tenant to Landlord and at such time or times as the same are reasonably requested by Landlord or required herein, including, without limitation, in conjunction with a sale of the 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 10.4; (d) the subordination, non-disturbance and attornment agreement provided for in Section 28.2; and (e) upon request of the holder of any Landlord’s Mortgage, one or more legal opinions from outside counsel for Tenant licensed in the jurisdiction of their state and nation of formation acceptable to Landlord (“Tenant’s Counsel Opinion”), stating that (A) Tenant is duly formed, validly existing, and in good standing under the laws of its state of formation; (B) the person executing the Lease is duly appointed and authorized by Tenant to execute the Lease; (C) the Lease has been duly authorized, executed and delivered by Tenant, and constitutes a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms subject to exceptions relating to bankruptcy, insolvency and the application of equitable principles; (D) Tenant has full power and authority to execute, deliver and perform its obligations under the Lease and to carry on its businesses as presently conducted; and (E) the execution, delivery and performance of the Lease will not conflict with or result in a breach or violation of any term or provision of, or constitute a default under (1) the Articles of Incorporation or Bylaws of Tenant, (2) any material loan agreement or mortgage to which Tenant is a party or by which Tenant is bound, (3) any statute, rule or regulation of any governmental body or agency, or (4) any order, writ, injunction or decree of any court or any arbitrator having jurisdiction over Tenant. Tenant shall permit, and shall cause Tenant’s counsel to permit, any holder of any of Landlord’s Mortgages to rely on Tenant’s Counsel Opinion if one or more subject matters of such opinion is (are) (x) required by the holder of any of Landlord’s Mortgages as a condition to the closing of any of Landlord’s Mortgages and (y) of the type customarily required by institutional lenders.

1.42 “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.

1.43 “Term” shall have the meaning set forth in Article 3.

1.44 "Total Debt" shall mean the aggregate amount to repay all loans that Landlord receives that are reasonably related to the acquisition of the Property and the Project, including principal, interest, and any other fees owed to Landlord's lenders.

1.45 "Total Project Cost" shall mean the Total Debt, plus any additional actual insurance costs, accounting fees, development fees, and other actual costs that Landlord reasonably deems to be associated with the acquisition and improvement of the Property.

1.46 "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; Conditions Precedent; Landlord's Reserved Rights.** Landlord is considering the purchase of the Land and existing improvements as of the dated date of this Lease, and the improvement thereof by renovations to the Building. Tenant acknowledges and agrees that for any reason, or no reason at all, Landlord may decline to or may be prohibited from purchasing the Land. In such event, Landlord may give written notice thereof to Tenant and thereupon this Lease will terminate, and neither party shall have any obligations or rights hereunder except as to those provisions hereof which survive such termination as expressly set forth herein.

Subject to and expressly conditional on the foregoing and the acquisition of the Land by Landlord, 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 Demised Premises, 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 Demised Premises or any part thereof as it may be on the date on which the Tenant takes possession of the Demised Premises, subject to the obligations of Landlord under Article 14 hereof.

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 the Lease Date (but not prior thereto).

2.5 The Permitted Encumbrances.

**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 June 30, 2036 (the "Initial Term" and if extended, the "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 two additional periods of five (5) years each, the first of which commencing on the day following the last day of the Initial Term and ending on the day preceding the fifth (5th) anniversary thereof (as so extended and subsequently extended, 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 eight (180) calendar days prior to the expiration of the Initial Term (or of the first Extended Term, respectively), and (ii) there is no Event of Default outstanding at the time of the Renewal Notice or at the expiration of the Initial Term (or of the Extended Term), unless such Event of Default is waived in writing by Landlord. The second right to extend is subject to the conditions and requirements stated above for the first such right to extend, and the further condition that the first extension has been granted and performed.

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 the renewal rights set forth herein as to the renewal term in the Renewal Notice (and any prior renewal terms) are extinguished by such extension.

**4. Rent; Security.**

4.1 During the first five years of the Term, Tenant covenants and agrees to pay to Landlord an amount equal to a percentage of the Total Project Costs, as follows: (i) for the first year of the Term, Tenant shall pay 4.5% of Total Project Costs; (ii) for the second year of the

Term, Tenant shall pay 6.6% of the Total Project Costs; and (iii) for years 3-5 of the Term, Tenant shall pay 7.3% of the Total Project Costs.

4.2 During years six through ten of the Term, Tenant covenants and agrees to pay to Landlord an amount equal to a percentage of the Total Project Costs, as follows:(i) for the sixth year of the Term, Tenant shall pay 8.0% of Total Project Costs; (ii) for the seventh year of the Term, Tenant shall pay 9.0% of the Total Project Costs; (iii) for the eighth year of the Term, Tenant shall pay 10.0% of the Total Project Costs; (iv) for the ninth year of the Term, Tenant shall pay 11.0% of the Total Project Costs; and (v) for the tenth year of the Term, Tenant shall pay 12.0% of the Total Project Costs. Beginning with the eleventh Lease Year and continuing through the end of the Term, the Fixed Rent shall be adjusted every five years to increase based on adjustments to the consumer price index over the previous year's rent. The payments terms of Section 4.1 and 4.2 shall be referred to as the "Fixed Rent." An estimate of Fixed Rent amounts for the first ten Lease Years is set forth in **Schedule D**.

4.3 Fixed Rent shall be payable quarterly in advance, in equal installments, due and payable on August 15, November 15, February 15, and May 15 of each Lease Year. Payment of Rent in the first Lease Year shall commence on the Lease Date, with a payment of \$150,000, and shall continue quarterly thereafter. All Fixed Rent and all Additional Rent (as hereinafter defined) payable to Landlord shall be paid by Tenant to Landlord by payment to Landlord at its address set forth herein, or to such other place and Person as Landlord shall direct in writing.

4.4 If Tenant shall fail to make payment of any installment of Fixed Rent or Additional Rent payable to Landlord hereunder within five (5) business days from the date upon which the same shall first have been due hereunder, then shall have the right to charge Tenant, in addition to the installment or other payment due, as Additional Rent hereunder, a late payment fee to compensate Landlord for legal, accounting and other expenses incurred by Landlord in administering the delinquent account by reason of such late payment an additional sum of five (5%) percent of the amount due as a late charge. For the purposes of this Section 4.4, 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 4.3 hereof. The late payment fee required to be paid by Tenant pursuant to this Section 4.4 shall be in addition to all other rights and remedies provided herein or by Law to Landlord for such nonpayment.

4.5 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 prior to or 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 five (5) days of Tenant's receipt of Landlord's notice; provided however, 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.

#### 4.6 Intentionally Omitted.

4.7 In addition to the Fixed Rent and Additional Rent, Tenant shall deposit into an account, controlled by Landlord, any and all amounts necessary for Landlord to meet its debt service coverage ratios pursuant to Landlord's lender's loan documents (the "Debt Service Cushion Account"). Such amounts shall be deposited into the Debt Service Cushion Account, on a monthly basis. Upon Landlord's full and final repayment of the Total Debt, Landlord shall release the full amount of the Debt Service Cushion Account to Tenant, so long as no Event of Default then exists and is continuing at the time of such final payment.

### 5. Payment of Impositions.

5.1 During the Term, Tenant shall pay all Impositions, or cause the same to be paid, as and when due and payable, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof; 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 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 due 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 the Improvements and/or any portion or part thereof assessed for tax purposes if, within 30 days after Notice by Landlord, Tenant fails to commence a proceeding to secure such reduction; (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 subsequent to the Expiration of this Lease. 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 and shall not relate to a period prior to the Lease Date or subsequent to the Expiration of this Lease, subject to Tenant's obligation to reimburse Landlord forthwith 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 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 otherwise due hereunder.

## **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. Tenant shall have the right to erect and maintain signs in and about the Property and elsewhere at its expense and subject to compliance with Applicable Laws and subject to Tenant's obligation to remove all such signs at the termination of this Lease for any reason and repair all damage to the Property resulting therefrom, all at Tenant's sole cost and expense. Tenant shall be responsible for all of its obligations under this Lease notwithstanding the loss of the Charter or any permits or authorizations needed or convenient to the operation of the School.

(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, except for (i) vehicles parked at the Demised Premises, and (ii) incidental cleaning, educational and landscaping supplies used and stored in compliance with all Environmental Laws (as hereinafter defined), whether such Hazardous Materials existed on the Demised Premises prior to the Lease Date or after the Lease Date. 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) "Hazardous Materials" shall mean and include any and all materials and substances that are defined as "hazardous waste," "hazardous material," "hazardous chemical," "pollutant," "contaminant" or "hazardous substance," in the form, quantity, condition and location then found upon the Demised Premises pursuant to Laws. "Hazardous Materials" includes asbestos in any form and any substance containing asbestos, polychlorinated biphenyls, petroleum, lead-based paint, mold, and urea formaldehyde foam insulation and shall also mean and include 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 Subject to laws pertaining to access of the Demised Premises while students are present, Landlord and its employees, contractors and 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

Article. 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 the Charter or any certificate of occupancy, certificate of compliance, Permit, Permitted Encumbrance 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.

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

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

7.1 Tenant shall, 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, and (ii) all those which Landlord causes after the Lease Date or to which Landlord expressly consents in writing (which, for the purposes of this Section 7.1, 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. In addition, Landlord shall have the right to remove any of Tenant's Personal Property upon the Expiration of this Lease, and to store the same, all at the sole cost and expense of Tenant. Tenant shall, on demand, execute, acknowledge and deliver to Landlord a written instrument, in recordable form, confirming such Expiration, as well as any further assurances of title to the Improvements as Landlord may reasonably request, together with instruments in recordable form evidencing the Expiration of this Lease and the Memorandum of this Lease of even date herewith.

7.2 In the event of any holding over by Tenant after Expiration 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 five (5) calendar days and on a per diem basis if such holdover is five (5) calendar days or less) equal to one hundred fifty percent (150%) of the Fixed Rent due for the period immediately preceding such holding over and the actual Additional Rent accruing on a pro rata basis during the holdover period, provided that in no event shall Fixed Rent and Additional Rent during the holdover period be less than the fair market rental for the 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: (a) 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; roof and roof structural components; gutters, downspouts, sidewalks, parking lot pavement, parking areas, grounds, recreational and landscaped areas of the Demised Premises; all electrical facilities and equipment including but

not limited to, interior and exterior lighting fixtures, lamps, fans and any exhaust equipment and systems; electrical motors; and kitchen and all other appliances, fixtures and equipment of every kind and nature located in, upon or about the Demised Premises; and all glass, both interior and exterior (and any broken glass shall be promptly replaced at Tenant's expense by glass of like kind, size and quality); (b) keep the Property in the same order, repair and condition as of the Lease Date; and (c) make all necessary or appropriate repairs, replacements and renewals, and all necessary or appropriate alterations and restorations thereto, interior and exterior, ordinary and extraordinary, and foreseen and unforeseen (collectively, "Repairs"). Tenant shall, at its expense, conduct seasonal preventive maintenance on the heating, ventilating and air conditioning systems, and shall provide a report to Landlord showing compliance with this requirement.

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 substantially the same as the state of repair and maintenance of the Property as at the Lease Date. 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. 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.

8.3 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 at the Lease Date and during the Term.

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 Articles 11, 12, and 16 and, in the event of a conflict between this Article 8 and Articles 11, 12, or 16, the provisions of Articles 11, 12, or 16, as the case may be, shall control.

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

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

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. 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 immediate written notice to Landlord of any default or breach under the Charter, or of any suspension, termination, amendment or extension thereof. Tenant shall timely make application for extension of the Charter such that the Charter shall remain in full force and effect for the Term.

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, and without subjecting the Property or any part thereof to any lien, charge, forfeiture, loss or suspension of

operations, and Tenant (i) furnishes security reasonably satisfactory to Landlord against loss or injury by reason of such contest or delay and (ii) diligently and continuously prosecutes the contest to completion, then Tenant may delay compliance therewith until the final determination of any such proceeding.

(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 Throughout the Term, Tenant shall provide Landlord notice and an opportunity to attend all meeting of its board of directors; provided that, notwithstanding the foregoing, Landlord shall not be permitted to attend board meeting sessions pertaining to sensitive and/or confidential information related to any student and/or staff member as determined by Tenant in Tenant's sole discretion.

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

## **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 hereof; and (iii) builder's risk completed value coverage (A) for 100% of the contract price, (B) on a non-reporting form, (C) deleting all co-insurance provisions, (D) against all risks insured against pursuant to Section 10.1(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, all risk, on the Improvements (including flood insurance, if Property is in a designated flood zone) on a guaranteed replacement cost basis and for an amount not less than the loan amount under any financing (with deductibles as to wind 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 Landlord's lenders, 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 Reserved.

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

10.4 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 any of Landlord's Mortgages may require, and authorized to do business in the State, to the extent commercially obtainable. On or before one day prior to the 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 28 certificates of insurance (or substantively comparable certificates) evidencing such policies and payment therefore shall be delivered by the party responsible for obtaining the subject insurance to the other party. In

addition, in the event that Landlord conveys its interest in the Property and this Lease, Tenant shall provide an Acord Form 28 certificate of insurance (or substantively comparable certificates) naming the grantee of such conveyance as an additional insured of the insurance required to be maintained by Tenant pursuant to this Article 10 (excluding workers' compensation insurance); such insurance certificate shall be delivered to Landlord within five (5) business days of its request therefor. Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this 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 10.4.

10.5 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, as to property damage insurance, loss payee, and Landlord's lenders as additional insureds and, as to property damage insurance, loss payee, 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 Landlord's lenders are concerned;

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

(c) Neither Landlord nor Landlord's lenders shall be liable for any premiums thereon or subject to any assessments thereunder.

10.6 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 or cause whatsoever (including by title defect) 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 365 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 120 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. All insurance proceeds (plus any retention or deductible of Tenant, which shall be delivered within 30 days of the event of loss) shall be paid over to Landlord, to be applied to repair and restoration of the Demised Premises if so required hereunder and otherwise applied by Landlord in its sole discretion. In addition, Landlord shall have the right to terminate this Lease upon the occurrence of any damage or loss by fire or other casualty or cause whatsoever (including by title defect) which would require Landlord to prepay in whole any Landlord's Mortgage financing applicable to the Demised Premises, and all insurance proceeds (plus any retention or deductible of Tenant which shall be delivered to Landlord within 30 days of the event of loss) shall be delivered to Landlord.

11.2 In the event of any damage or loss by fire or other casualty or cause 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 hereunder ("Tenant Funds"), 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 Demised Premises. Notwithstanding any contrary provision contained herein: (i) in the event the holder of any of Landlord's Mortgages should require that the insurance proceeds be used to retire the mortgage debt, or (ii) the sum of proceeds of insurance, Insurance Plan, and other Tenant Funds 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 or cause (including loss of title) 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 payable by Tenant hereunder shall be equitably reduced by an amount which reflects the loss of use of the Demised Premises due to material adverse interference 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 15% 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 to be constructed shall be as nearly as possible of a size, type and character equal to the damaged or destroyed Improvements, subject to changes in building codes. 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, nor result in any cost or expense exceeding proceeds of insurance and other funds, including self-insured retention, provided by Tenant, or in any material delay in completion of the replacement.

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 or cause 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.

## **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.

12.2 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 Improvements existing on the Lease Date;

(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; and

(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.

(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 or cause (intentionally or otherwise) to be created, any lien, encumbrance or charge levied on account of any Imposition or any mechanic's, contractor's, subcontractor's, laborer's, or materialman's lien, or any mortgage, deed of trust or otherwise which might or does constitute a lien, encumbrance or charge upon the 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 such 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 filing thereof, shall cause the same to be discharged of record by payment,

deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within such period then, in addition to any other right or remedy, Landlord may (after so notifying Tenant), but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if 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 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 and record in the applicable public records, a written instrument for the purpose of providing notice of the existence of the provisions of the preceding sentence.

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

14.1 Landlord hereby covenants to improve the Demised Premises by making renovations to the Building as specified in **Schedule E** and in accordance with all applicable laws, regulations and rules of governmental entities having jurisdiction thereover (the "Project"). Tenant and Landlord have agreed upon the Project as specified in **Schedule E**. Tenant acknowledges that the Project is being undertaken by Landlord at the Tenant's request. Any additional or replacement renovations beyond the scope of the Project undertaken by Landlord (the "Change Orders") will be those requested by the Tenant and mandated by law and applicable building code requirements for public charter schools in the City of Idaho Falls and the State of Idaho. Landlord will apprise the Tenant of the cost of the Change Orders and provide documentation thereof. Change Orders are subject to Landlord's sole and absolute discretion, not to be unreasonably withheld.

14.2 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 IS.

**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) inspecting the Property, (b) making the improvements described in Section 14, and (c) making any Repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to perform the same for ten (10) days after Notice from Landlord (or without Notice in case of emergency). Nothing herein contained shall be construed as imposing any duty upon Landlord to do any work not otherwise required by the terms of this Lease. The performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same, and Landlord shall have the right to receive reimbursement in respect thereof as provided in 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 and at all times comply with Idaho laws pertaining to access to schools while students are present and pertaining to student health, safety and welfare.

**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 between Landlord 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 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 (each a "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 15% 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 Term shall be deemed to be as set forth in Section 4. 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 15% 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 or Tenant shall dispute whether there has been a taking of all or a material portion of the Demised Premises, 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 Appraiser(s) chosen by the parties appointed as above provided 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 shall mean a taking: (a) of 16% 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 may be recorded in the applicable public land records.

18. **Estoppel Certificates.**

18.1 Tenant agrees at any time and from time to time, upon request from Landlord or the holder of any Landlord's Mortgage, to execute, acknowledge and deliver, without charge, to Landlord or to any Person designated by Landlord or the holder of any Landlord's Mortgage, a statement in writing certifying that: (a) this Lease is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof); (b) 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); (c) 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); (d) that Tenant has no claims or offsets against Landlord hereunder (or if Tenant has any such claims or offsets, specifying the same); (e) the dates to which Fixed Rent and Additional Rent payable by Tenant hereunder have been paid; and (f) such other information as may be reasonably requested by Landlord or the holders of any Landlord's Mortgage and can be supplied by Tenant without unreasonable expense. Failure to timely deliver the foregoing estoppel certificate shall constitute an Event of Default under this Lease.

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; and (e) any other document required by law to be delivered to Tenant by Landlord.

19. **Assignment and Subletting.**

19.1 (a) Tenant shall not assign or transfer this Lease or any interest therein or sublease 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). Tenant acknowledges that any proposed assignment will be subject to credit underwriting approval of the assignee. Anything in this Lease to the contrary notwithstanding, Tenant shall have the right, with Landlord's prior written consent not to be unreasonably withheld or delayed, once or more often, to enter into so-called "four-wall" deals whereby the Demised Premises or any part thereof is permitted to be

used by others during non-school hours on a limited engagement basis for any use permitted to be made thereof by Tenant; provided that any such "four-wall" deals shall comply with all Laws and all school and security measures and Tenant shall be covered by the insurance policies required in this Lease.

(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 consent may be granted or withheld in Landlord's 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 Transfer 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 (which term shall include any grant of right of occupancy other than an assignment), 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. Any approved Transfer may be subject to increased Fixed Rent.

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 prior to the expiration of applicable cure periods, Landlord shall have the right to contact any transferee 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 a majority of 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 a majority of 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.

19.4 Any Transfer (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 therefor, 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 therefor, 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 Section 10.

20.3 In case any action or proceeding is brought against Landlord by reason of any claim referred to in this Section 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 Section 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. 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.

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

## **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 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 90 days after the commencement of any proceedings against Tenant seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any Bankruptcy Law, such proceedings shall not have been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of Tenant, or any trustee, receiver or liquidator of Tenant, or of all or any substantial part of its properties or the 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 90 days after the expiration of any such stay such appointment shall not have been vacated, or if within 60 days, an execution, warrant, attachment, garnishment levied or fixed against the 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 also being an “Act of Bankruptcy”); or

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

(g) If there is any default under the Charter which leads to termination of same or the Charter fails to be in full force and effect for any reason.

21.2 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 five (5) 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 set forth in subsection 21.1(d) or 21.1(e) occurring or taken by or against Tenant shall be grounds for an Event of Default 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 or upon re-entry by Landlord hereunder, 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 or re-entry, 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 or re-entry by Landlord hereunder, 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 therefor. 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 or re-entry by Landlord hereunder shall relieve Tenant of its liability under this Lease, and such liability shall survive any such Expiration or re-entry. In the event of any such Expiration or re-entry, 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 or re-entry, 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. Notwithstanding the foregoing, at any time after such Expiration or re-entry, whether or not Landlord shall have collected any monthly Deficiency as aforesaid, Landlord, at Landlord's election, shall be entitled to recover from Tenant in a single lump sum, and Tenant shall pay to Landlord on demand in a single lump sum, 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 effective date of such election 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, said present worth to be computed on the basis of a discount equal to the current yield of United States Government securities as of the effective date of such election 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 Fixed Rent.

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.

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 at law or in equity 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 at law or in equity shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity. Each right and remedy of Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or

remedy provided for in this Lease or now or hereafter existing at law or in equity and, subject to the provisions of Section 21.7, the exercise or beginning of the exercise by Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity. Notwithstanding the foregoing, in no event shall Tenant have the right or remedy of termination of this Lease, unless the same is expressly provided elsewhere herein.

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 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 access (to the extent permitted by law) to its books, records, facilities and personnel, and Tenant shall comply with the recommendations of such financial advisor to effect improvement to Tenant's business and financial condition. Failure by Tenant to comply with the requirements of this paragraph shall constitute an Event of Default hereunder.

## **22. Representations and Warranties of Tenant and Landlord.**

Tenant represents and warrants to Landlord, which representations and warranties shall be deemed to be continuing throughout the Term:

(a) Tenant is a non-profit corporation duly organized, validly existing, and its status is "active" under the laws of the State, 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. Tenant 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) 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) 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) 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 by hereby.

(e) 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) 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) 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) As of the date of this Lease, Tenant is a non-profit Idaho corporation and is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (a "Tax-Exempt Organization"). 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) 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 or the Board 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) Tenant currently has or will secure all necessary permits, consents, licenses and authorizations for the operation of the School from all appropriate governmental entities, agencies, departments and bureaus which permits, consents, licenses and authorizations.

(k) 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.

(l) Reserved.

(m) Tenant shall notify Landlord in writing of the engagement of any Educational Management Organization or Charter Management Organization.

(n) Tenant has obtained its Charter in its own name, to operate a public charter school at the Property. The Charter is valid and Tenant shall timely make application to the government agency responsible for granting Tenant its Charter and for Tenant's funding based on its Charter (the "Granting Authority"), to renew the Charter prior to its expiration and at the required intervals thereafter in order to keep its Charter valid and remain in good standing with the Granting Authority.

(o) Tenant shall notify Landlord in writing of any amendments to its Charter.

(p) Tenant shall comply with the below financial reporting requirements, and provide such other financial information as Landlord may reasonably request.

i. Tenant covenants and agrees to provide the expected enrollment and actual enrollment as calculated by including each student considered as participating in Tenant's school as a result of the most recent count and official enrollment report required by the Granting Authority or other such agency as designated by the laws of the State of Idaho to collect and verify enrollment data from public charter schools.

ii. Within forty-five (45) days of the end of each school year, Tenant shall also provide to Landlord an annual report documenting (i) the previous school year's progress in meeting the performance-based goals identified in Tenant's Charter application and (ii) all State-mandated test scores and performance assessments and other accountability indicators, including proficiency rates and other results as required under the federal Elementary and Secondary Education Act (for so long as such statute applies to public charter schools).

iii. Within thirty (30) days following its annual issuance but no later than December 31 of each year, Tenant shall provide to Landlord a copy of its annual audited financial statements. In addition, at the earlier of August 1st of each Lease Year or within thirty (30) days after submittal to the Granting Authority, Tenant shall provide to Landlord a copy of its annual operating budget, as approved by the Tenant's governing board and submitted to the Granting Authority.

iv. Tenant shall provide to Landlord any and all material correspondence from the Granting Authority. Tenant shall also provide to Landlord any and all documentation related to the continuation or renewal of its Charter, including but not limited to periodic compliance reviews by the Granting Authority.

v. Within forty five (45) days of the end of each quarter, Tenant shall provide its most recent unaudited financial statements prepared by Marc Carignan, or such other person as approved by Landlord in writing.

(q) Tenant covenants and agrees not to perform any act or enter into any agreement that causes any revocation or adverse modification of its status as a nonprofit charter school and organization described in Section 501(c)(3) of the Internal Revenue Code, or carry on or permit to be carried on in the Property or permit the Property to be used for any trade or business, the conduct of which is not substantially related to the exercise or performance by Tenant of the purposes or functions constituting the basis for its exemption under Section 501(c)(3) of the Internal Revenue Code if such use would result in the loss of Tenant's exempt status under

Section 501(c)(3) of the Internal Revenue Code. Landlord acknowledges that Tenant shall not be in violation of this section 22(q) for any conduct of any of Landlord's other tenants at the Property.

(r) Tenant covenants and affirms that: (i) Tenant has been granted "charter school" status under the applicable laws of the State of Idaho and is entitled to operate a charter school at the Property; (ii) Tenant has no reason to believe that its Charter will not be renewed in accordance with and as required by applicable laws of the State of Idaho; (iii) Tenant's Charter is in full force and effect; (iv) Tenant is in compliance with all applicable terms and provisions of its Charter and all applicable laws and requirements of the State of Idaho and the Granting Authority; (v) each and every other charter of Tenant is in good standing and has not been revoked nor is any revocation or suspension pending or threatened; and (vi) without the prior written consent of Landlord, Tenant shall not modify or amend its Charter.

(s) Without the prior written consent of Landlord, which consent shall not be unreasonably withheld, Tenant shall not acquire any other real or personal property (that is not in the Landlord approved budget for a given year and that exceeds a fair market value of \$25,000 for any single item of personal property) or enter into, amend, modify and/or extend any lease for other real or personal property (that is not in the budget for a given year and that exceeds a fair market value of \$25,000 for any single item of personal property), except that Tenant shall be permitted to enter into capital leases relating to tangible personal property that will be located at the Property and used in school operations (the "Permitted Capital Leases"). Additionally, Tenant must obtain Landlord's approval, not to be unreasonably withheld, before operating any new public charter school campuses in the State of Idaho under the same Charter.

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

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

Landlord represents and warrants to Tenant:

(i) *Organization and Power.* Landlord is an Idaho non-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.

(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 (iii) have been duly authorized by all necessary and appropriate corporate action on the part of Landlord. This Lease is the valid, legal, binding, and enforceable obligation of Landlord, subject to the customary exceptions for bankruptcy and the application of equitable remedies. The agents of Landlord executing this Lease 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 under this Lease 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 under this Lease.

(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. The Demised Premises complies with all presently applicable building and zoning, health, environmental, and safety ordinances and laws 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.

(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:

If to Landlord: OE Bell Walnut Street LLC  
c/o Building Hope...A Charter School Facilities Fund  
910 17th Street NW, Suite 1100  
Washington, D.C. 20006  
Attention: President

with a copy to: Michael F. D'Alessandro, Esq.  
910 17<sup>th</sup> Street NW, Suite 1100  
Washington, DC 20006

If to Tenant: Forrester Academy, Inc.  
  
3950 S Yellowstone Hwy Ste 200

Idaho Falls, ID 83402

With a copy to: Marc Carignan  
1010 West Jefferson Street, Suite 201  
Boise, ID 83702

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 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 (without Notice in the case of insurance requirements and with five days Notice in the case of Impositions), and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to):

(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 a Purchase Money Mortgage or a First Mortgage) on all or any part of the Property (a Purchase Money Mortgage or 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 any of Landlord's Mortgages, such requirements shall apply to the holder of any Landlord's Mortgage of which Landlord gives Tenant Notice, but (as to insurance) only to the extent of Landlord's entitlement to such proceeds under the Provisions of this Lease.

28.2 Except as otherwise provided in this Section 28.2, 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 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. In addition, Landlord may assign this Lease and sums due hereunder, for collateral purposes, from time to time without notice to or consent from Tenant.

**29. Subordination and Non-Disturbance.**

29.1 Subject to the provisions of Section 29.2, Tenant accepts this Lease subject and subordinate to any Landlord's Mortgage. This clause shall be self-operative and no further instrument of subordination shall be required. In the event Tenant fails to execute a subordination document consistent with this Article 29 within ten (10) business days of receipt of a request by Landlord and Tenant provides no reasonable objection to Landlord's request, Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any Landlord's Mortgage, and Tenant agrees upon demand to execute such further instruments subordinating this Lease, acknowledging the subordination of this Lease or attorning to the holder of any such Landlord's Mortgage as Landlord may request. If any person shall succeed to all or part of Landlord's interests in the 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.

29.2 The mortgage loan documents with respect to any Landlord's Mortgage, shall provide (or shall require that the holder thereof shall enter into an agreement providing) 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 one or more agreements reasonably requested by the holder of any such Landlord's Mortgage in form and substance common in the commercial mortgage lending industry.

29.3 If at any time during the term of the Lease the School enters into a contract with an Educational Management Organization ("EMO") or Charter Management Organization ("CMO"), the EMO or CMO shall subordinate all management fees payments to any debt service and lease payments throughout the entire term of the Lease such that the management fees will not be paid in a given month if that month's debt service or lease payments are not paid.

**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.** 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 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) Within thirty (30) days following its annual issuance but no later than December 31 of each 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 10 days following the date of delivery thereof to the Granting Authority, a copy of the School's annual audited financial statements, in the same form and with the same attachments and materials provided to the Granting Authority;
- (c) not later than 45 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

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

**32. Obligations Absolute; Application of Payments.** Fixed Rent, Additional Rent and all other sums payable by Tenant pursuant to this Lease are the absolute and unconditional obligations of Tenant, and shall not be subject to set-off, deduction, counterclaim or abatement, and except as expressly set forth to the contrary in this Lease, Tenant shall not be entitled to any credit against such payment obligations for any reason whatsoever, including, but not limited to: (i) any accident or unforeseen circumstances; (ii) any damage or destruction of the 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. Payments received by Landlord hereunder from Tenant shall be applied to sums then due under this Lease in the following order, notwithstanding any contrary notation on or other written or oral instruction from Tenant: first, to any late fees, interest, indemnification obligations owing to Landlord, and any Landlord expenditures, costs and expenses resulting from Tenant's default under this Lease, in such order as Landlord shall determine from time to time; second, to any items of Additional Rent (without duplication), in such order as Landlord shall determine from time to time; third, to Fixed Rent; and fourth, to Rent Concession or the prepayment thereof,

**33. 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.

**34. 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.

**35. 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.

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

**37. 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].”

**38. 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.

**39. Oral Change or Termination.** This Lease and the documents referred to herein contain the entire agreement between the parties pertaining to the subject matter hereof, and no modification, change or discharge of any term or provision herein shall be effective unless the same is in writing and signed by Landlord and Tenant, and, for so long as there is any guaranty of any obligations of Tenant under this Lease, the written consent of such guarantor to such change, modification or discharge is delivered to Landlord and Tenant. This Lease cannot be changed or terminated orally.

**40. 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.

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

**42. 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, MEASURED FROM THE DATE OF RECEIPT OF NOTICE.

**43. 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.

44. **RADON GAS.** The following disclosure is hereby made:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to person who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

45. **Mold and Mildew.** Mold and mildew can occur in buildings under certain circumstances, unless care is taken to avoid such occurrence. The occurrence of mold or mildew may pose health hazards to certain individuals. Landlord has not investigated AND MAKES NO REPRESENTATION CONCERNING the existence or non-existence of mold or mildew in the Demised Premises as of the Lease Date. The Tenant is taking the Demised Premises in its "As Is" condition and shall make all of its own investigations concerning mold and mildew. It is the obligation of Tenant to maintain the Demised Premises in good condition, which includes the prevention and elimination of mold or mildew or the factors that could lead to the presence thereof.

46. **Purchase Option.** At any time during the first ten years of the Term of this Lease (the "Option Period"), Tenant shall have the option to purchase the Demised Premises (the "Option") in accordance with the following terms and conditions:

(a) Tenant shall exercise the Option by delivering written notice (the "Option Notice") to Landlord at any time during the Option Period. The Option Notice shall specify at least five alternative dates for closing, which shall be not fewer than thirty days and not more than one hundred twenty days following the date upon which the Option Notice is deemed received by Landlord hereunder. Within ten days of receipt, Landlord shall respond to the Option Notice and specify its preferred closing date (the "Closing Date").

(b) The purchase price ("Purchase Price") for the Demised Premises pursuant to the Option shall be equal to the Total Project Costs as of the Closing Date, with a credit given for all Fixed Rent payments made hereunder as of the Closing Date.

(c) The closing pursuant to the Option shall be conducted through an escrow established at a title company or title agent acceptable to Landlord. All deliveries shall be deposited in escrow and all closing deliveries and disbursements shall be made through the escrow. At closing, each party shall pay its own legal fees. Landlord shall pay the cost of removing any title exceptions which are not permitted below. All other closing costs (including escrow fees, title insurance premiums, documentary stamps on the deed, recording fees, mortgage financing costs, including stamp and intangibles taxes) shall be paid by Tenant. There shall be no proration of taxes or other expenses. At closing, any rent payable by Tenant shall be prorated (with any rent paid by Tenant attributable to the period from and after the Closing Date to be credited against the Purchase Price).

(d) The absence of any Event of Default, or event or circumstance which would, with the passage of time or the giving of notice, or both, constitute and Event of Default under this Lease, and the absence of any taking, order of taking, or other proceeding or notice of eminent domain by any governmental entity with respect to the Demised Premises (in whole or in part), shall be conditions precedent to both the effectiveness of any Option Notice (as of the date thereof) and the closing of acquisition of the Demised Premises (as of the date thereof). If there is any default or event of default under this Lease, or any such proceeding or notice of proceeding as of the scheduled Closing Date, Landlord shall have the right to revoke the exercise of the Option, in which event Landlord shall have no obligation to sell to Tenant, and Tenant shall have no right to purchase from Landlord, the Demised Premises.

(e) Landlord shall convey to Tenant (or Tenant's designee) fee simple title to the Demised Premises by special warranty deed (warranting title by, through, or under Landlord, but not otherwise) subject only to the Permitted Encumbrances, any matters created by or through Tenant and those matters which a correct survey would show. Tenant may revoke its election to exercise the Option by giving notice to Landlord at any time before the closing if (i) the Demised Premises is materially damaged by casualty, (ii) the Demised Premises suffers environmental contamination not caused by Tenant, its agents, contractors, employees, subtenants, customers or invitees, or (iii) any condemnation has occurred or is pending or threatened which in Tenant's reasonable opinion could materially, adversely affect the use of the Demised Premises for Tenant's intended purposes. In the event of such revocation, or of any failure of Tenant to close for any reason (other than nonperformance by Landlord) Tenant's Option shall terminate and be of no further force and effect, and this Lease shall continue in full force and effect as if such Option had not existed.

(f) THE DEMISED PREMISES SHALL BE CONVEYED TO AND ACCEPTED BY TENANT (OR TENANT'S DESIGNEE) IN "AS IS" CONDITION IN ALL RESPECTS, IT BEING AGREED THAT LANDLORD HAS NOT MADE, AND HEREBY SPECIFICALLY DISCLAIMS, ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER PERTAINING TO THE DEMISED PREMISES, THE CONDITION THEREOF, THE VALUE THEREOF, THE SUITABILITY FOR TENANT'S INTENDED USE, OR ANY OTHER MATTER WHATSOEVER, EXCEPT THE SPECIAL WARRANTY OF TITLE IN THE DEED, AND LANDLORD SHALL HAVE NO OBLIGATION TO MAKE OR REMOVE ANY IMPROVEMENTS WHATSOEVER WITH RESPECT TO THE DEMISED PREMISES.

(g) Tenant's exercise of the Option is irrevocable except as expressly provided in paragraphs (d) and (e) above. Time is of the essence.

(h) If Tenant exercises the Option and fails to close on the purchase of the Demised Premises for any reason other than a default by Landlord or a revocation of the exercise of the Option as expressly provided in paragraphs (d) and (e) above, then the Option shall terminate and be of no further force and effect, and this Lease shall continue in full force and effect in all other respects. Any termination of this Lease prior to the expiration of the Option Period shall terminate the Option.

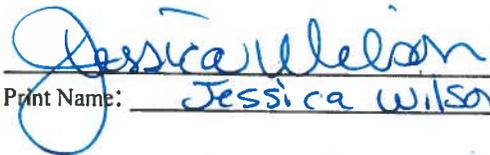
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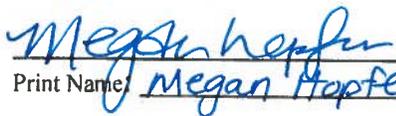
IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

**WITNESSES:**

  
Print Name: Michael D'Alessandro

  
Print Name: Laurel J. Hunt

  
Print Name: Jessica Wilson

  
Print Name: Megan Hopfer

**LANDLORD:**

OE Bell Walnut Street LLC,  
an Idaho limited liability company, by its Sole  
Member, Building Hope Parkside Foundation

By:   
Name: Paul Leleck  
Title: Chief Financial Officer

**TENANT:**

Forrester Academy, Inc.  
an Idaho non-profit corporation

By:   
Name: JARED W. ALLEN  
Title: President

**SCHEDULE A**  
**LEGAL DESCRIPTION OF LAND**

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

1. Any and all Landlord's Mortgages.

**SCHEDULE C**  
**MEMORANDUM OF LEASE**

Prepared by and when  
recorded return to:

Michael F. D'Alessandro, Esq.  
910 17<sup>th</sup> Street NW, Suite 1100  
Washington, DC 20006

**SHORT FORM LEASE AGREEMENT**

This Short Form Lease Agreement is made as of November \_\_, 2016, between OE Bell Walnut Street LLC, an Idaho limited liability company with an address of 910 17th Street NW, Suite 1100, Washington, D.C. 20006 ("Lessor"), and Forrester Academy, Inc., an Idaho non-profit corporation, having an address of \_\_\_\_\_ ("Lessee").

**WITNESSETH:**

Lessor, upon the terms and conditions more particularly set forth in that certain Lease Agreement dated as of even date herewith by and between Lessor and Lessee (the "Lease Agreement"), which terms and conditions are incorporated herein by reference, and in consideration of the rent and covenants therein provided, does hereby lease to Lessee, and Lessee hereby accepts that certain property more particularly described on Exhibit A attached hereto and incorporated herein by reference ("the Property") for an initial term commencing on or about July 1, 2017 and ending on June 30, 2037, upon the terms and conditions set forth in the Lease Agreement.

1. Lessee further has the option to purchase the Property upon the terms and conditions set forth in the Lease Agreement.

2. Lessor covenants that Lessee, on paying the rent and performing the covenants set forth in the Lease Agreement, shall peaceably and quietly have, hold and enjoy the Property.

3. **AS PROVIDED IN THE LEASE, 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. PRIOR TO COMMENCING ANY IMPROVEMENTS, TENANT SHALL EXECUTE, DELIVER TO ITS CONTRACTOR AND RECORD IN THE APPLICABLE PUBLIC RECORDS A WRITTEN INSTRUMENT PROVIDING NOTICE OF THE EXISTENCE OF THE PROVISIONS OF THE PRECEDING SENTENCE**

4. It is understood that this is a Short Form Lease Agreement, which is for the same rents and upon the same terms as the Lease Agreement, which Lease Agreement is incorporated herein by reference and shall be a part of this instrument as fully and completely as if the same were set forth herein.

IN WITNESS WHEREOF, Lessor and Lessee have signed, sealed and delivered this Short Form Lease Agreement as of the date and year first above written for the purpose of providing recorded notice of Lessee's rights under the Lease Agreement.

Signed, sealed and delivered  
in the presence of:

Lessor:  
OE Bell Walnut Street LLC

Witness: \_\_\_\_\_

\_\_\_\_\_, President

Witness: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of OE Bell Walnut Street LLC, an Idaho limited liability company, on behalf thereof. He is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
(NOTARY SEAL)

Signed, sealed and delivered  
in the presence of:

Lessee:  
Forrester Academy, Inc.

Witness: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: President

Witness: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Forrester Academy, Inc., on behalf thereof. He is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
(NOTARY SEAL)

**SCHEDULE D**  
**FIXED RENT**

<b>Total Project Costs</b>		<b>\$7,200,000</b>						
<b>Lease Year</b>		<b>Annual Lease</b>	<b>Effective Rent Rate</b>	<b>Installment Payment</b>	<b>CPI Increase Assumption</b>			
Year 1		\$325,000	4.5%	\$87,500	0.00%	November 2016 - \$150,000 February 2017 - \$87,500 May 2017 - \$87,500		
Year 2		\$475,000	6.6%	\$118,750	0.00%			
Year 3	% of Total Project Costs	\$525,000	7.3%	\$131,250	0.00%			
Year 4		\$525,000	7.3%	\$131,250	0.00%			
Year 5		\$525,000	7.3%	\$131,250	0.00%			
Year 6		\$576,000	8.0%	\$144,000	0.00%			
Year 7		\$648,000	9.0%	\$162,000	0.00%			
Year 8	% of Total Project Costs	\$720,000	10.0%	\$180,000	0.00%			
Year 9		\$792,000	11.0%	\$198,000	0.00%			
Year 10		\$864,000	12.0%	\$216,000	0.00%			
Year 11		\$881,280	12.2%	\$220,320	2.00%			
Year 12	Year 10 + CPI	\$881,280	12.2%	\$220,320	2.00%			
Year 13	(Rent adjusts every five years)	\$881,280	12.2%	\$220,320	2.00%			
Year 14		\$881,280	12.2%	\$220,320	2.00%			
Year 15		\$881,280	12.2%	\$220,320	2.00%			
Year 16	Year 15 + CPI	\$898,906	12.5%	\$224,726	2.00%			
Year 17	(Rent adjusts every five years)	\$898,906	12.5%	\$224,726	2.00%			
Year 18		\$898,906	12.5%	\$224,726	2.00%			
Year 19		\$898,906	12.5%	\$224,726	2.00%			
Year 20		\$898,906	12.5%	\$224,726	2.00%			

**SCHEDULE E**  
**PROJECT DESCRIPTION**