

## **APPENDIX D**

### **FACILITIES**

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# **APPENDIX D-1**

## **FACILITY MASTER PLAN**

**State-Authorized Charter School Applicant  
Facilities Master Plan/Educational  
Specifications**

**Submitted**

**to**

**Public School Facilities Authority**

**Draft Submitted**

**Final Revision Submitted**

## **State-Authorized Charter School Applicant Facilities Master Plan/Educational Specifications Checklist**

### **GENERAL**

- ☐ **Clear and Concise**
- ☐ **Clearly presented major ideas**
- ☐ **Clearly labeled tabs**
- ☐ **Contact information**

### **CHARTER SCHOOL OVERVIEW**

- ☐ **Year of the initial charter**
- ☐ **First renewal, if any**

\_\_\_\_\_ is a proposed charter school with an anticipated opening Fall 2016 pending approval Fall 2015. The founding board anticipates using Connections Academy's educational products and services. The application will be submitted by the statutory deadline of July 1, 2015.

We acknowledge that we have reviewed the Statewide Adequacy Standards NMAC 6.27.30 and Charter-Alternative School Statewide Adequacy Standard Variance.

\_\_\_\_\_

### **ACROYNMS/DEFINITIONS**

- ☐ **Abbreviations, acronyms, and uncommon terms identified**

Definition of Terms: The description of the \_\_\_\_\_ educational philosophy and program as outlined in the charter application that follows includes some unique terminology, as defined below:

- **Teacher:** A highly specialized, New Mexico–certified teacher specially trained in online delivery and individualized instruction. The majority of the teachers will be physically located in the teaching/learning center in Albuquerque delivering instruction to an online classroom of students and working one-on-one with students through highly interactive, technology-facilitated communication tools.
- **Connexus® Education Management System (EMS):** The platform for organizing and managing the entire Connections educational environment. This proprietary, web-based software, created by Connections Education specifically for K-12 online instruction, delivers every assignment and tracks every activity (whether conducted online or offline), monitoring the completion of individual lessons as well as mastery of discrete skills and knowledge. Connexus operates within a very secure and robust technology infrastructure which protects all data from loss and intrusion while maintaining a safe environment in which students, parents, and teachers can interact with each other. Parents and students must access the online EMS to organize, document, and interact in the learning experience, ensuring an unprecedented level of time-on-task documentation.
- **Learning Coach:** A parent, extended family member, or similarly qualified adult designated by the parent/guardian who works in person with the Connections student under the guidance

of the licensed professional teacher. The Learning Coach and student interact with the teacher via telephone, WebMail message (see below), LiveLesson sessions (see below), and a rare in-person meetings. The school provides ongoing training to help Learning Coaches carry out their important role while making optimum use of the available technology tools and professional teacher support to do so.

- **LiveLesson® session:** A real-time web conferencing tool that allows teachers to work synchronously (in real time) with individual or groups of students using voice over IP, chat, electronic whiteboard, and shared web surfing based on Adobe® Connect™.
- **Multi-tiered Intervention:** Connections employs a multi-tiered intervention model so that every student has access to the resources they need to be successful: Tier 1 – Core Instructional Program; Tier 2 – Supplemental Programs and Supports; Tier 3 – Alternative Programs. The school’s Student Support Team meets regularly to discuss students who are struggling academically to develop an intervention plan and strategies for improvement.
- **Personalized Performance Learning™:** The instructional process used by Connections to create a unique learning experience for each student. This process begins during enrollment when counselors review students’ past records and performance to properly place them in the program, and also includes a “Personalized Learning Plan” developed collaboratively by the teacher, Learning Coach, and student for each student to maximize achievement and to tailor curriculum and instruction in keeping with this plan. Throughout the year teachers monitor students’ progress and make adjustments to their learning programs to focus on areas where students need to improve and to build on students’ strengths.
- **Student Status/Escalation Process:** Connections tracks and reports ongoing student progress based on the objective numeric data generated by the EMS. This is currently analyzed in four to five areas, including attendance, participation, performance, assessment submissions, and contact with the teacher. The status is displayed on the Learning Coach and teacher home pages for instant identification of potential problem areas. The Escalation Process goes into effect when students are in statuses other than ‘On-Track’ in order to ensure students continue to gain the full benefits of this educational option and are being educated appropriately through this unique school choice.
- **WebMail:** The proprietary private email system included in the EMS. Because this system is “closed,” Connections Academy students, Learning Coaches and teachers may only use it to communicate with each other, and are protected from spam, contact from strangers, and other mainstream email issues.

## 1. GOALS / MISSION

### 1.1.1 Mission

#### ☐ Describe the desired state of *school’s* educational programs

The mission of the school is to create a personalized, learner-centered preparatory approach leveraging online learning and New Mexico-certified teachers resulting in academic and personal success for students in grades K-12 and beyond. The mission will include serving students statewide, for a period of time, using online education who are not well served by existing educational options. The school will provide a literacy focus for students in grades K-6, a career and college preparatory focus for students in

grades 7-12, and a focus on parental involvement and personalized instruction for students in all grade levels.

### **1.1.2 Describe the general educational philosophy**

The school will be a high-quality, high-tech, high-touch virtual “school without walls” that brings out the best in every student through Personalized Performance Learning. Every \_\_\_\_\_ student will have a Personalized Learning Plan and an entire team of experts committed to the student’s successful fulfillment of that plan. The school will embody multiple hallmarks of excellence: a rigorous, proven K-12 virtual curriculum that is aligned to Common Core and New Mexico Content Standards; top-quality teachers who are New Mexico-certified, highly qualified under NCLB, and specially trained to excel in a virtual environment; a unique Education Management System (EMS) designed specifically for this K-12 virtual school to provide 360-degree accountability through comprehensive data collection, analysis and reporting; use of a nationally recognized virtual school program and an established track record in increasing academic achievement for previously low-performing students.

We believe that children in the 21st century must become literate and articulate, mathematically competent, scientifically and technologically adept and have the opportunity to develop their creative and physical abilities. The school recognizes its responsibility to generate enthusiasm and excitement for the lifelong process of learning by providing highly engaging and trained teachers, a curriculum that is relevant, integrated, age-appropriate and aligned to state and Common Core academic content standards. The school seeks to engage students through individualized instruction with NM certified teachers and will strive to provide a critical foundation for academic and lifelong success.

Through a Personalized Performance Learning (PPL) approach—a dynamic process through which the student’s strengths and needs are evaluated- individual approaches are developed that work for the student along with the curriculum—all year long

The course offerings will allow for both self-paced and structured learning, and include core lessons, as well as supplementary practice modules. The instruction combines individual study with interactive group sessions. In addition, both cutting-edge online resources and the most highly rated and time-tested textbooks and materials are used throughout the program.

Student exchange and interaction is a critical part of the overall instructional process. While most of the instruction is asynchronous (supporting anytime/anywhere learning), students also participate in a live online virtual classroom environment through LiveLesson technology.

### **1.1.3 Serving the Community**

#### **☐ Describe the desired interaction with school's community**

Real connections are an important component so all students have the opportunity to participate regularly in both face-to-face and virtual community activities. Face-to-face activities include regular field trips and community outings facilitated by the Community Coordinators – parent volunteers which are supported in organizing such activities for families who live in their nearby

community. The majority of the face-to-face activities are curriculum and learning objective focused offered throughout the state and provide an avenue for important student-teacher and peer-to-peer social interaction.

Field trips anticipated for New Mexico families include visits to the State Capitol in Santa Fe; The National Museum of Nuclear Science & History in Albuquerque ; White Sands National Monument at Holloman AFB; the Bradbury Science Museum in Los Alamos; and the Fort Union National Monument in Watrous. Technology related activities include Book Club, Environmental Club, Robotics Club, Debate Club and Student Literary Magazine to name just a few.

Parents and family involvement is absolutely central to the model. There are many benefits to parent involvement in education. Parent participation in a child's education can lead to:

- Improved grades and test scores
- Higher graduation rates
- Greater enrollment in post secondary education

Parents are crucial to the planning process of the school, as well as its operation. Interested parents have already played an important role in encouraging the formation of the school, and will remain involved leading to the school's opening. Without any formal outreach, approximately 300 K-3 families have requested the Connections program in New Mexico. Parental feedback is also an important hallmark of the school's outreach and information sessions in the community. The school will take full advantage of this valuable communication with families to ensure that the school reflects their unique needs and creative ideas.

The community consists of the teachers, staff, administration, students and the Learning Coach. The Learning Coach can be a parent, extended family member, or similarly qualified adult designated by the parent/guardian who works in person with the Connections student under the guidance of the licensed professional teacher. The Learning Coach and student interact with the teacher via telephone, WebMail, LiveLesson sessions, and the rare in-person meeting. The school provides ongoing training to help Learning Coaches carry out their important role while making optimum use of the available technology tools and professional teacher support to do so. This greater school community is an integral part of the learning process.

In addition to involvement focused on their own children's learning needs, the school's parents will have multiple opportunities to shape the overall school experience such as parent representation on the governing council, ad hoc committees, community coordinators, and providers of ongoing, action oriented feedback.

The School Community Coordinators and staff will reach out to community-based organizations and businesses to coordinate face-to-face community service and field trip opportunities for students. In addition, the school Counselor will work with post-secondary institutions to arrange college explorations for the students. The school will draw upon the deep and diverse community connections represented on the Governing Council – whose members represent business and education entities across the state to ensure that Charter School students have multiple opportunities to benefit.

The proposed school redefines the physical boundaries of school and community and lives it out in the community.

## **1.2 Process**

### **1.2.1 Describe process for data gathering and analysis**

The school anticipates limited capital needs except for the initial build out of the facility which would include furniture and workstation materials. Parental input and participation are important to the success of the school and is encouraged through school committees, community coordinators, feedback through the StarTrack System (an integrated rating system allowing every student and Learning Coach to rate each lesson from a low of one star to a high of five stars) and External Evaluation, fieldtrips and other activities.

As a virtual charter school, the school will also gather, monitor, analyze and report more granular data about its effectiveness than most traditional, brick and mortar schools find necessary. The unique Education Management System designed specifically for this K-12 virtual school is intended to provide 360-degree accountability through comprehensive data collection, analysis and reporting to all stakeholders.

With high-quality curriculum and strong accountability measures integrated throughout the program, student's academic success is consistently monitored, evaluated and a point of focus for all the stakeholders-parents, teachers, students and administrators. Teachers communicate regularly with students and deliver highly interactive real-time lessons with students. The school's performance will be measured and communicated continuously to parents and reported regularly to its Governing Council.

Additionally, the Governing Council is responsible for ensuring that all aspects of the financial and programmatic accountability systems fulfill the school's obligations to the Charter School Division of the New Mexico Public Education Department.

Specific plans for monitoring and reporting on the effectiveness of curriculum, teachers, instructional methods and practices during Year 1 follow:

- **Student achievement.** One of the important measures of accountability will be student achievement. The school will measure student achievement through a number of lenses: measurable learning gains, performance on the state standardized tests, and other measures. Student performance, as measured through internal assessments in the EMS, is reported to the Governing Council.
- **Parent satisfaction.** The families will be given an annual opportunity to participate in a thorough parent satisfaction survey, conducted by an independent market research firm. The school's goal is that at least 90% of families rate the school an "A" or a "B." The survey results are reported to the Governing Council and all stakeholders. One of the most important components is teacher effectiveness and communication with students.
- **School growth.** \_\_\_\_\_ Charter School has a plan for school growth that is both scalable and thoughtful, wanting to offer this program to as many students as possible each academic year while growing the program in a fashion that positions both the students and the school for future



success. The school hopes to grow from 500 students (Year 1) to up to 2,000 (Year 5) through a combination of parent outreach, serving its existing families well (student retention), and strong word-of-mouth (current families attracting new families).

- **Compliance with state law.** The school will measure itself against compliance with New Mexico state law regarding public education, charter schools specifically under the Charter School Act, 2011 NMSA 1978 (unannotated)/NMSA 1978 (unannotated)/CHAPTER 22 Public Schools /ARTICLE 8B Charter Schools, and other objective compliance criteria. This compliance will include the timely and accurate reporting of required state data.
- **Fiscal accountability.** The school is fully committed to fiscal accountability. Its budget reflects its commitment to cost control, responsible growth, and regular audits.

### 1.2.2 Authority and Facilities Decision Making

☐ **Identify individual representing the school authorized as contact on issues and questions related to this submission**

Kyla Anderson, wktwanderson@gmail.com

☐ **Identify process for capital planning and decision-making**

The Governing Council of the charter school is responsible for the policy decisions of the school. The Governing Council shall meet regularly (approx. 10 times per year) in open, public meetings to fulfill its duties, and may from time to time create subcommittees or task forces to carry out special tasks. Special and emergency meetings shall be held as needed. All meetings involving a quorum of the Governing Council shall be noticed and conducted in accordance with the Open Meetings Act. The Governing Council shall keep written or digital or tape recorded minutes of all its meetings. The minutes shall include, at a minimum, the date, time and place of the meeting, the names of members in attendance and absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the Governing Council. All minutes shall be made available for public inspection.

The Governing Council is ultimately responsible for the overall financial management of the school. The Governing Council plans to designate one of its members to serve as the Treasurer of the school. This individual will have a financial or business background to enable her/him to perform this function. The Treasurer and the entire Governing Council will participate in regular training with an emphasis on fiscal management and oversight and will ensure that the Business Administrator participates in NM PED charter school training, when appropriate.

The school will follow these detailed fiscal procedures, which comply with Generally Accepted Accounting Principles (GAAP) and will ensure sound financial management.

***Budget process:*** The school will begin the annual budgeting process and set enrollment targets by the Governing Council. The school's Business Official will coordinate the development of revenue and expenditure assumptions based upon this enrollment target. This will be a very

iterative process and involve the appropriate stakeholders– Business Official, Governing Council, Principal, teachers, and others. Once an initial budget, based on planned events, has been drafted, it will be tested against a lower enrollment level to ensure the school can withstand lower-than-expected enrollment. As more information is learned, assumptions will be revised and the impact discussed with the Governing Council.

The following is a plan for the annual budget development process :

- Starts in February with Governing Council-set Enrollment Target
- Key Assumptions are Determined
  - ✓ Student:teacher ratio
  - ✓ Teacher compensation (base salary, merit increases, new positions)
  - ✓ Physical expansion
  - ✓ New initiatives (e.g., additional grades)
  - ✓ Per pupil funding rates – regular ed, special ed, add-ons
- Business Official Develops a Draft Budget
  - ✓ Very iterative process
  - ✓ Includes a financial narrative that explains all of the key assumptions and results
- The Governing Council Designates Individual(s) to Review Draft Budget and Narrative
  - ✓ Usually done via one or more conference calls
- Business Official Presents Revised Draft Budget to Governing Council for Adoption
- Business Official will Revise Budget at Start of School
  - ✓ Reflect updating of key assumptions like enrollment and actual salaries
  - ✓ Governing Council may elect to adopt this revised budget as its official school budget for the year

#### ☐ **Identify how community input is considered**

The school offers multiple Information Sessions –in person and “virtually,” using its LiveLesson technology – for families throughout the state. Families are notified of the *Information Sessions* via email, earned media in newspapers across New Mexico and flyers distributed in local communities. The school plans to use these sessions to provide a complete array of information about the different ways parents can get involved (as described above), its program, including its curriculum, teaching methods, and technology resources.

Outreach to business and community members began in response to groups and individuals in NM requesting interest in improving educational options for students throughout New Mexico on the Connections website and via the phone.

#### ☐ **Describe the nature of Steering committee involvement**

- *Identify members of the steering committee*

Kyla Anderson, [wktwanderson@gmail.com](mailto:wktwanderson@gmail.com)

## **2. PROJECTED CONDITIONS**

### **2.1 Programs and Delivery Methods**

#### **2.1.1 Programs Overview**

##### **☐ Provide overview of proposed educational programs and facilities (if applicable)**

The school requires a physical location for the teachers with “classrooms” for delivery of highly interactive, real-time virtual lessons with students and one-on-one individualized communication for students and learning coaches. Students are not physically present at the facility but are “present” through voice, audio, video, virtual whiteboards, text chat, and/or other means. Day-to-day virtual learning is occurring at the facility and the facility is crucial for the bridging the instructional distance between students and teachers. Students will work from the setting of their families’ choice, such as the home or a supervised community location.

The school will lease permanent space for a principal(s), teachers, counselors, and special education staff, to serve as a “teaching/learning center” where the school’s administrative and teaching staff will work to further the instructional mission of the school. The initial physical facility will need to be flexible for growth and future needs. Students will not physically attend the teaching/learning center; however, they will be attending the school through virtual means both synchronously and asynchronously.

Parent involvement is paramount to the school’s educational philosophy. This involvement includes supervising lessons to participating in field trip planning, to collaborating with our teachers. Parents will communicate with the teacher via email or phone.

##### **☐ Identify and describe any potential shared/joint use facilities with public or private entities**

The school has analyzed locations, including any potential shared/joint use facilities, based upon criteria needed to run an effective online school. The following are some of the criteria the school used to analyze facilities:

- Central location
- Easy access from major roadways, allowing teachers and staff from various areas to reach it easily. The facility needs adequate space for teacher/s classroom space, a Principal’s office, a conference room, and a break room/kitchenette.
- The facility will have a certificate of occupancy, be air-conditioned, heated and illuminated with fluorescent lights, provide male and female bathrooms and parking, will be handicapped accessible, and will be fully equipped with state-required fire safety equipment.
- The facility will provide the necessary infrastructure to support the required computer network.
- The school estimates approximately 125 square feet per person to meet its minimum requirements, allowing for necessary common space, online classrooms, egress, typical build out for conference room and kitchen(ette).

- Teaching/Learning Center's space is in compliance with or capable of modification to bring it into compliance with all local building, zoning and health and safety requirements.
- Teaching/Learning Center is located close to at least one main thoroughfare to allow for ease of access.
- Teaching/Learning Center meets all local minimum Americans with Disabilities Act (ADA) standards.
- Teaching/Learning Center has ample parking accommodations.
- Teaching/Learning Center is available to move-in within 3 months from the selection of the facility.
- Teaching/Learning Center is comprised of primarily open area for online classrooms and dividers.
- Depending upon the availability of sites, the identified location, and the budget, it is possible that the school may consider a "testing room" for periodic required state testing.

Because students will be present in the school headquarters only on the rare occasion, and will not gather there for instructional activities, no special zoning will be required beyond standard commercial use.

The school administrative assistant and the locally based teaching staff will teach and work from this facility. Some staff members may work from remote locations and will report to the principal regularly. Because of the technological infrastructure in place, providing long distance support will be both effective and efficient. In addition, in the future, the school may open additional teaching/learning centers statewide if there is a need for them as determined by input of staff and families and upon consultation, review, funding, and approval by PSFA and the Public Education Commission. The school will provide all required notification to the district of all teaching/learning centers that it operates.

**□ Describe the school's proposed instructional program**

The school believes that children in the 21st century must become literate and articulate, mathematically competent, scientifically and technologically adept and have the opportunity to develop their creative and physical abilities. The school recognizes its responsibility to generate enthusiasm and excitement for the lifelong process of learning by providing a curriculum that is relevant, integrated and age-appropriate while at the same time is aligned to state and Common Core academic content standards.

The teacher will deliver instruction typically from a workstation out of the teaching/learning center. The teacher requires a telephone and basic technology including a computer and Internet access. The teachers will deliver synchronous and asynchronous instruction to an online classroom of students and work one-on-one with students through highly interactive, technology-facilitated communication tools.

**□ Describe the general instructional organization (grade levels, groups, academies)**

The school will serve students in grades K-12. The traditional sense of class periods, and bell schedules does not exist in a virtual classroom.

The Connections program offers a multi-tiered intervention model so that every student has access to the resources they need to be successful. Students who qualify will be eligible to receive technology resources, including computer and Internet connection. In addition, the multi-tiered intervention consists of: Tier 1 – Core Instructional Program; Tier 2 – Supplemental Programs and Supports; and Tier 3 – Alternative Programs. The Student Support Team may recommend placement of a student into Tier 2 for a specified period or longer-term placement into Tier 3.

In grades K-9, gifted and talented courses are offered in language arts, mathematics and science. These challenging courses give students more opportunities to interact with specialized teachers, take part in special projects, and develop higher-level thinking skills.

Connections' curriculum challenges gifted high school students to stretch their abilities and sharpen their critical thinking skills. With a wide array of honors courses, the budding historian or writer is engaged as well as the math whiz and scientist. With eighteen Advanced Placement (AP) courses ranging from Art History to Macroeconomics to World History, students are prepared for the national AP tests that can earn them college credit.

If allowed, advanced students also may take courses at a local university and earn credit toward both high school graduation and college.

Neither regular education, gifted education, nor special education students will be present in the teaching/learning center on a regular basis. Students will work from the setting of their families' choice and will be provided with appropriate resources in order to insure their success.

☐ **Describe scheduling approach (periods, block schedule)**

All daily lesson plans are provided to students and families online, directing them step-by-step through use of the comprehensive set of online textbooks, physical trade books, manipulatives, and consumables that the school will ship to them. Periods in the traditional sense do not apply in a virtual classroom.

The students who enroll in the K-8 program and elect to continue into high school will notice that the high school introduces increased structure and a pacing system that encourages all the students in a single class to move forward at a similar speed. The high school program includes a significant amount of computer-facilitated learning and live lessons with teachers. While hard copy textbooks are provided in some courses (generally along with an enhanced online version of the text as well), students may also take several courses that are completely online. In high school the pacing for core courses follows an asynchronous/fixed schedule (which means that the schedule is fixed and students must all move at a similar pace). This does not take away the ability of the teachers to personalize the curriculum for students; however, it does add accountability, structure, and significant peer and teacher interaction that is necessary for a quality high school program.

☐ **List anticipated special curricular and extracurricular activities to be accommodated in the facility, if any**

N/A

### **2.1.2 Anticipated Changes in Programs (THIS SECTION IS NO LONGER REQUIRED BUT WE WANTED TO INCLUDE IT)**

#### **☐ Identify projected changes in programs that impact use/need for facilities**

The teachers will educate students both remotely and from a “teaching/learning center”, where the school’s administration, some teachers, and staff are located. This mix of remote and teaching/learning center-based teachers provides maximum flexibility to handle changes in program needs. The school will expand and shrink its remote teacher base and, in the event of growth, will either expand its teaching facility or add teaching/learning center(s) in other New Mexico localities.

#### **☐ With regard to School Size, Class Size, Grade Level Configuration, Schedule Discuss opportunities for continuing or increasing shared/joint use in the future**

The growth plan is scalable and thoughtful but may require a change in or additional facilities based upon growth in student enrollment and the appropriate student-teacher ratio balance. One of the benefits to full time virtual education is the ability to quickly react and adapt to changing needs. Since teaching and learning can occur anywhere and are not bound by geographic limitations, it is critical that flexibility be built into the system and infrastructure to adapt to changing student learning needs.

## **2.2 Proposed Enrollment**

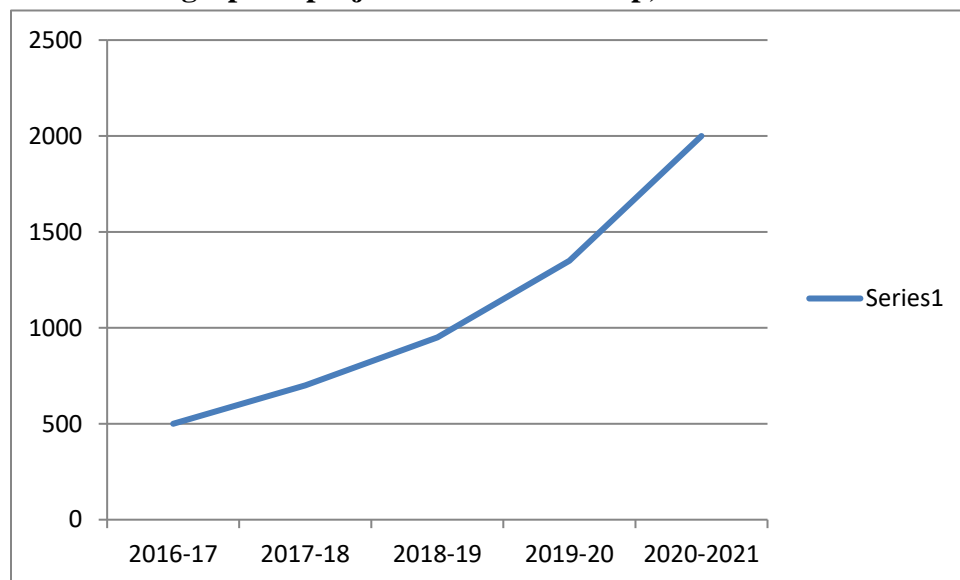
### **2.2.1 Indicate proposed enrollment cap**

The proposed enrollment cap is 2000 students at the end of five years.

### **2.2.2 Describe any plans for phased enrollment**

**The school plans to offer grades K-8 in 2016-17 and add one grade per year until K-12 by 2020-2021 school year.**

☐ **Provide a graph of projected enrollment cap, if incremental**



☐ **Identify by grade level, the five-year post occupancy projection of attendance to be accommodated by any proposed facility**

As mentioned in 2.1.2 above, the school will employ a flexible teaching model whereby teachers can educate students remotely from the primary teaching/learning center or from multiple teaching/learning centers. This maximizes expansion and contraction potential, as needed, and eliminates the need for excessive, under-utilized space.

## 2.2.4 Classroom Loading Policy

☐ **Identify anticipated class loading requirements or district policy**

The school staff anticipates an overall school ratio of 40:1 including Advisory, Special Education, and elementary/secondary teachers. The traditional sense of class periods, and bell schedules does not exist in a virtual classroom.

## 2.2.5 Classroom Needs

☐ **Identify anticipated classroom needs, including the number of classrooms to accommodate the projected enrollment. Provide supporting analysis.**

The virtual school model anticipates 6-25 online classrooms in the facility. Accommodation of teachers and their online teaching space is the primary concern from a facilities perspective, and the school's flexible model allows expansion and contraction as needed throughout the charter period.

☐ **Itemize the quantity and sizes of other spaces required to accommodate the instructional program**

Not applicable

## 2.3 Site and Facilities

### 2.3.1 Location/site

☐ **Include Map(s) which identify the location of any existing and proposed facilities**  
Query survey attached.

☐ **Provide a description of sites and facilities, existing or proposed**

The site/facility for teachers and staff will be a typical office building in a safe, easily accessible area. The description of sites/facilities is more completely captured in Section 3 below.

### 2.3.4 Facility Evaluation (If Applicable)

☐ **Provide a Summary of the facility condition evaluation (FAD Executive Summary Report)**

A summary will be prepared following evaluation and selection of the appropriate facility for the school operations.

***o Has PSFA evaluated the proposed facility for code and adequacy? If so, summarize PSFA/Code analysis of any existing facilities that are proposed for future use and include in this section.***

Since the facility has not yet been selected, PSFA has not evaluated the facility. Given that the facility will house teachers and staff, the school does not believe PSFA/Code analysis is required for the facility and a waiver is warranted from those requirements. Students will rarely, if ever, enter the office space.

## 3. FACILITY REQUIREMENTS (Ed Spec)

### 3.1 Facility Goals and Concepts

#### 3.1.1 What are your goals to be met by your school facility?

☐ **Outline plan for being in a public building by 2015 in compliance with HB-283.**

Upon approval of the charter, we will investigate and examine facilities that meet the 2015 requirements and our site requirements as outlined in this document with the intention of meeting the requirements. If we are unable to identify suitable facilities, then we may seek a waiver due to students rarely being in the school facility based upon a thorough investigation of sites.

#### 3.1.2 Concepts

☐ **Identify and describe major facility goals and concepts including safety, security, sustainability, flexibility, community use, utilities, and any other issues or special considerations that impact space requirements and/or costs**

The school will lease space in a typical office building, through a standard, negotiated office lease, and this space will be used to house teachers and staff. From this space, and from remote locations for remote employees, Teachers will teach students virtually. Students will



rarely, if ever, enter the office space. As previously mentioned, accommodation of teachers is the primary concern from a facilities perspective, and the school's flexible model allows expansion and contraction as needed throughout the charter period.

The school does not anticipate community use and foresees no additional issues that would lead to special considerations. Requirements for the selected site, including safety and security, are discussed below.

### **3.2 Space Requirements**

#### **3.2.1 Space Summary**

Provide a summary list of all individual space needs and sizes.

The facility/suite selected for the school operations will be approximately 4,000 rentable SF and will be located in standard office space. The school will enter into a -TBD-year lease with extension options at the school's election. Key factors considered in the selection process that will be included but may not be limited to:

- ADA compliance
- Suite layout
- Stability of Landlord
- Ability of Landlord to provide a turn-key solution
- Cost on an annual and a full term basis
- Security for both the facility and the surrounding area
- Safety for teachers and staff
- Ease of access (location) for teachers and staff
- Special termination provisions in the event of charter suspension or revocation
- Technology availability, including bandwidth for school operations
- Lighting (natural and otherwise)

#### **3.2.2 Describe site requirements**

##### **Spaces**

☐ **Provide a graphic diagram illustrating the relationship between the program areas**

To be determined once site is selected.

### **4. CAPITAL PLAN**

Our build-out will be a straight Teaching/Learning center environment. We'll look to the landlord to provide a turn-key solution with standard building finishes based on our CAD test fit, we anticipate capital outlay to occupy the leased space to be fairly minimal and limited to furniture and equipment, not Leasehold Improvements.

### **5. MASTER PLAN SUPPORT MATERIAL**

#### **5.1 Sites and Facilities Data Table**

☐ **Provide a table summarizing characteristics of site and facilities**

See Teaching/Learning center space characteristics in 3.2.1 above.

☐ **Name of facility**

- o **State identification number** - To be determined
- o **Physical address** – To be determined
- o **Date of opening** – Approximately one month prior to school opening
- o **Dates of major additions and renovations** – Not applicable
- o **Facility Condition Index (FCI) and N.M. Facility Condition Index (NMCI), if available** – To be determined.
- o **Site owned or leased** - Leased
- o **Total building area gross sq/ ft.** – To be determined. o **Site acreage** – To be determined.
- o **Total number of permanent Teaching Stations** – Seventeen, primarily in teaching stations and conference room spaces. Facility will not house students.
- o **Total number of permanent specialty Teaching Stations** – Eight, in teaching offices/live lesson/conference rooms. Facility will not house students.
- o **Total number of portable classrooms** – None. Facility will not house students.
- o **Total number of classrooms** – None. Facility will not house students.
- o **Percentage of portable classrooms compared to total number of permanent classrooms** – Not applicable
- o **Total enrollment current year (40th day count), if available (may not be available for a newly chartered school)** – Not applicable.
- o **Number of gross sq. ft per student per school facility** – Not applicable

## **5.2 Site Plan**

### ☐ **Scaled School Site Plan**

Will be provided on site selection

## **5.3 Floor Plan**

### ☐ **Scaled school floor plan(s) with rooms numbers to match inventory**

Will be provided on site selection

### ☐ **FAD forms updated**

Not applicable

## **5.8 Detailed Space and Room Requirements (Ed Spec), if applicable**

Not applicable

### **5.8.1 Technology and Communications Criteria**

Not applicable for students. Selected site will have sufficient technology and bandwidth for teacher/staff teaching operations. The teaching/learning center will include an IT room and storage space. The school-based needs are minimal and simple – just a server and phone system hardware. No stand-alone air conditioning is required. No full-time IT person will be required. It is anticipated that we will partner with a virtual education provider that has an extensive IT and tech support staff. We do not anticipate contracting out IT services except on rare occasions. Nearly all IT actions can be handled either remotely or with communications between the IT group and school staff.”

Teachers will have standard HP laptops or desktops, often have dual monitors for Live Lesson delivery, a microphone, video camera, and a phone. The teaching stations will be equipped with data ports and we will equip the Teaching/Learning center with 2 data ports each. The landlord will provide the power we need to operate our equipment.

### **5.8.2 Power Criteria**

Not applicable for students. Selected site will have sufficient power capability for teacher/staff teaching operations.

### **5.8.3 Lighting and day lighting Criteria**

Not applicable for students. Selected site will have sufficient lighting for teacher/staff teaching operations.

### **5.8.4 Environmental Conditioning Criteria**

Not applicable for students. Selected site will have sufficient conditioning for teacher/staff teaching operations.

### **5.8.5 Classroom Acoustics Criteria**

Not applicable for students. Selected site will have sufficient acoustics for teacher/staff teaching operations.

### **5.8.6 Furnishing and Equipment Criteria**

Not applicable for students. Selected site will have sufficient furnishings and equipment for teacher/staff teaching operations. In our initial space, we expect to establish approximately teaching/instructional work areas in a variety of configurations. This equates to a space allocation, given common area/s such as server/storage room and break room, of roughly 150 square feet per work area.

- o Server room needs; Minimal. Planned server room is approximately 100 square feet
- o It is anticipated that a break room/kitchenette may be available.

### **5.8.7 Table types**

Not applicable for students. Selected site will have sufficient tables/work surfaces for teacher/staff teaching operations.

### **5.8.8 Storage types**

Not applicable for students. Selected site will have sufficient storage for teacher/staff teaching operations.

### **5.8.9 Criteria Sheets**

See attached.

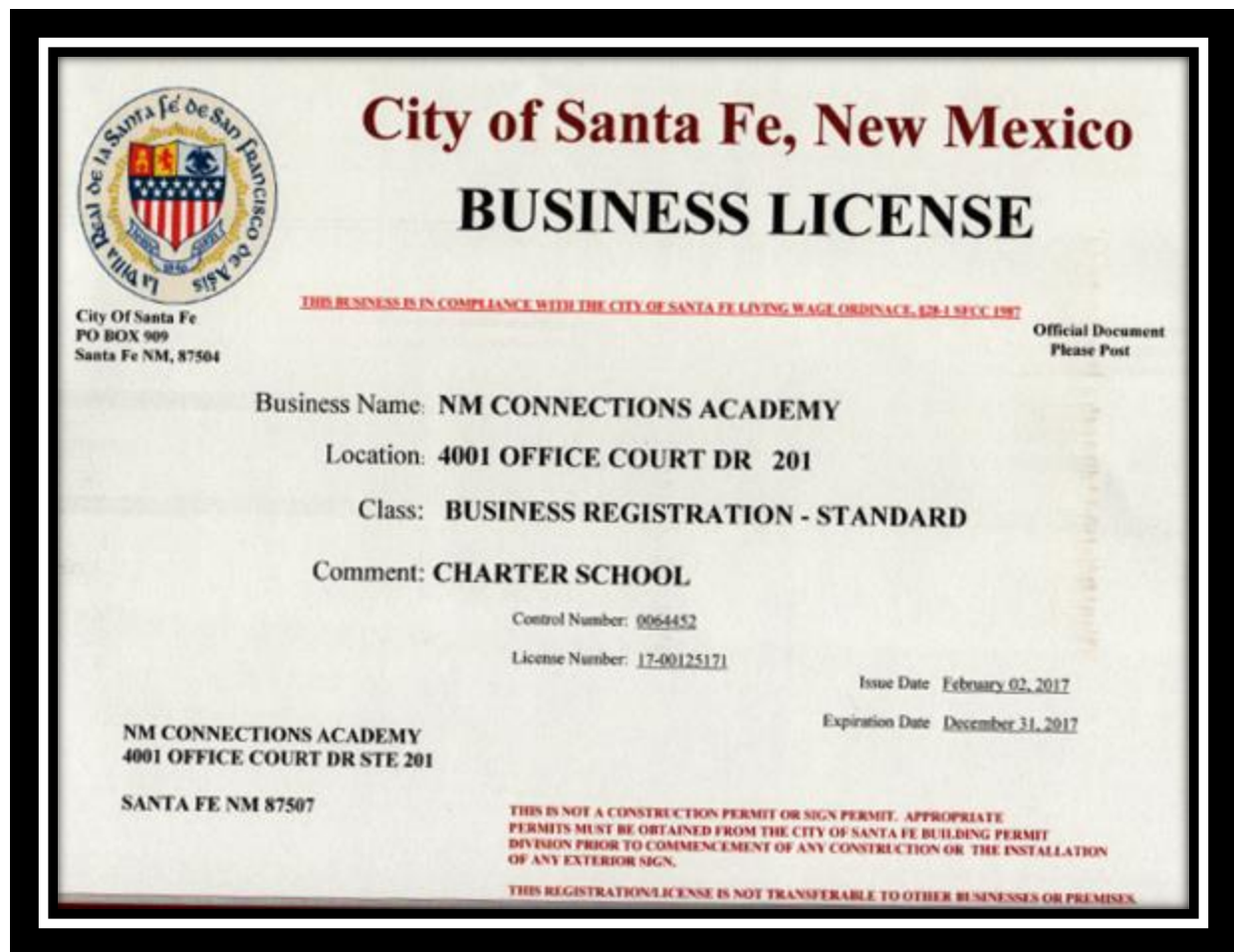
## **5.9 Submission**

**5.9.1 Final hardcopy placed in a three-ring binder.**

**5.9.2 Final electronic copy.**

## **APPENDIX D-2**

### **BUSINESS OCCUPANCY LICENSE**



## **APPENDIX D-3**

### **PSFA LETTER WITH E-OCCUPANCY WAIVER & NMCI SCORE**



Robert A. Gorrell, Director  
Tim Berry, Deputy Director

Santa Fe Office  
410 Don Gaspar  
Santa Fe, NM 87501  
(505) 988-5989  
(505) 988-5933 (Fax)

Albuquerque Field Office  
1312 Basehart Drive SE  
Suite 200  
Albuquerque, NM 87106  
(505) 843-6272  
(505) 843-9681 (Fax)

May 9, 2013

Mr. Mark Boitano  
3615 Horacio Court NW  
Albuquerque, New Mexico 87111

Dear Mr. Boitano:

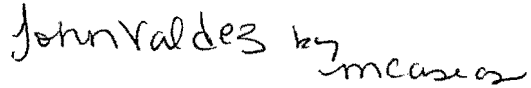
PSFA has received and reviewed the Facility Master Plan/Educational Specification (FMP/Ed Spec) for the proposed New Mexico Connections Charter School. The FMP/Ed Spec's purpose is to guide you in the planning of and/or selection of a facility that it is adequate to accommodate your educational program and method of instruction. Based upon our review, PSFA is pleased to acknowledge that the Plan meets our requirements for FMP/Ed Specs submittal. In accordance with NM House Bill 283, your next step is to submit your charter school application to the New Mexico Public Education Department (PED) and include your plan and this letter. If your application is successful, we request that you send us the plan in a three-ring binder accompanied by an electronic version (either on disc or emailed).

Through our review of the FMP/Ed Spec, PSFA understands the following:

- NM Connections, a virtual charter school will be located in Santa Fe and consists of 3,750 SF, which you plan to lease.
- PSFA has looked at your proposed space and it scored a weighted New Mexico Condition Index of 10.16%, which is better than average.
- Your school will be a virtual charter school in which students attend remotely via online classes. Students will not be present in your facilities except for very rare occasions. If there are any classroom spaces that will be utilized by the six or more students at any one time for educational purposes through the 12<sup>th</sup> grade, they must meet the "E" occupancy requirements per the New Mexico Building Code.
- You plan to have a cap of 2,000 students and consist of grades 4th-12th. You plan to serve students living anywhere within the State of New Mexico. The school will take the necessary steps to ensure that the students you serve are all New Mexico based students.
- Because your curriculum is based upon online instruction and students will not be in your facility, your facility needs include a typical office setting with room to accommodate 25-35 teachers and administrative staff (office layout includes cubicles, kitchenette/breakroom, conference room space and no classrooms).
- The school does not require library, physical education space, or kitchen/cafeteria.
- You have reviewed our adequacy standards, planning guide, and HB 283.

If you are a successful applicant, please remember to work closely with PSFA's Planning and Design team as questions arise regarding facilities. You can reach us at (505) 843-6272.

Sincerely,

A handwritten signature in black ink that reads "John Valdez by mcasias". The signature is written in a cursive, flowing style.

John M. Valdez, AICP  
Facilities Master Planner

cc: Martica Casias, Planning and Design Manager



## **APPENDIX D-4**

### **LEASE AGREEMENT**

Included please find the following:

- Lease Agreement – Page 25
- Lease Amendment – Page 53
- Second Amendment to Lease – Page 54



# **OFFICE LEASE AGREEMENT**

This Lease Agreement (hereafter "the Lease") is made and entered into between Landlord and Tenant upon the terms and conditions contained herein.

## **ARTICLE I FUNDAMENTAL LEASE PROVISIONS**

Lease Provision	Applicable Data	Lease Article																																																
Agreement Date:	June, 2012																																																	
Landlord:	Office Court Development IV, LLC (hereafter "Landlord")																																																	
Tenant:	New Mexico Connections Academy, a New Mexico limited liability company (hereafter "Tenant")																																																	
Description of Premises:	4001 Office Court Drive, Suites 201-204 Santa Fe, NM 87507 Containing approximately Three Thousand Seven Hundred Fifty One (3,751) Square Feet.	Article II																																																
Commencement Date:	Upon Substantial Completion (as defined herein) of the Premises	Article III																																																
Base Term Expiration Date:	August 31, 2016	Article III																																																
Date Rent Obligation Begins:	See Rent Schedule Below	Article III																																																
Base Term:	Thirty Eight (38) Months, more or less depending upon Commencement as described above	Article III																																																
Option Periods (if any):	Two (2) Periods of Three (3) years each	Article III																																																
Option Notice Period:	One Hundred Twenty (120) Days	Article III																																																
Base Rent:	<table><tr><th>Lease Month</th><th>Estimated Start</th><th>Estimated End</th><th>Monthly Rent</th><th>Total For Period</th><th>Rent PSF</th></tr><tr><td>Month 1</td><td>7/1/2013</td><td>7/31/2013</td><td>\$ -</td><td>\$ -</td><td>\$ -</td></tr><tr><td>Months 2-12</td><td>8/1/2013</td><td>6/30/2014</td><td>4,688.75</td><td>51,576.25</td><td>15.00</td></tr><tr><td>Month 13</td><td>7/1/2014</td><td>7/31/2014</td><td>-</td><td>-</td><td>-</td></tr><tr><td>Month 14-24</td><td>8/1/2014</td><td>6/30/2015</td><td>4,845.04</td><td>53,295.46</td><td>15.50</td></tr><tr><td>Month 25</td><td>7/1/2015</td><td>7/31/2015</td><td>-</td><td>-</td><td>-</td></tr><tr><td>Month 26-36</td><td>8/1/2015</td><td>6/30/2016</td><td>5,001.33</td><td>55,014.67</td><td>16.00</td></tr><tr><td>Months 37-38</td><td>7/1/2016</td><td>8/31/2016</td><td>5,157.63</td><td>10,315.25</td><td>16.50</td></tr></table> <p>Any partial month shall be prorated (hereafter "Monthly Base Rent"). Provided no default (after the expiration of any applicable cure period) has occurred under the Lease, rent shall be abated as described above, however in the event of default all such abatement shall be due and payable to Landlord. Landlord and Tenant agree that although the "Estimated End" is August 31, 2016 as set forth in the Base Rent Schedule above, in no event will the Base Term extend beyond August 31, 2016.</p>	Lease Month	Estimated Start	Estimated End	Monthly Rent	Total For Period	Rent PSF	Month 1	7/1/2013	7/31/2013	\$ -	\$ -	\$ -	Months 2-12	8/1/2013	6/30/2014	4,688.75	51,576.25	15.00	Month 13	7/1/2014	7/31/2014	-	-	-	Month 14-24	8/1/2014	6/30/2015	4,845.04	53,295.46	15.50	Month 25	7/1/2015	7/31/2015	-	-	-	Month 26-36	8/1/2015	6/30/2016	5,001.33	55,014.67	16.00	Months 37-38	7/1/2016	8/31/2016	5,157.63	10,315.25	16.50	Article IV
Lease Month	Estimated Start	Estimated End	Monthly Rent	Total For Period	Rent PSF																																													
Month 1	7/1/2013	7/31/2013	\$ -	\$ -	\$ -																																													
Months 2-12	8/1/2013	6/30/2014	4,688.75	51,576.25	15.00																																													
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Months 37-38	7/1/2016	8/31/2016	5,157.63	10,315.25	16.50																																													
Option to Renew/Renewal Term Base Rent:	In the event Tenant exercises any or all of its options to renew the Lease Term, the Base Rent rate for each year of such option term shall increase by 2% over the Base Rent for the previous year. Accordingly, the Base Rent for year one of the first option term is \$16.83/PSF (2% over \$16.50)-and would subsequently increase by 2% each year.																																																	
Annual Increase:	See Rent Schedule above	Article IV																																																
Expense Stop:	Not Applicable	Article IV																																																
Address for Notices and Payments:																																																		
Landlord:	PO Box 6339; Santa Fe, NM 87502	Article XVI																																																
Tenant:	New Mexico Connections Academy   Attn: _____	Article XVI																																																
Security Deposit:	Four Thousand Six Hundred Eighty Eight and 75/100's Dollars (\$4,688.75)	Article IV																																																
Use of Premises:	General office and administrative use (including training and instructional purposes) for operation of a public virtual charter	Article V																																																

	school	
<b>Additional Agreements:</b>		
<b>Guaranty Agreement:</b>	Waived	
<b>Option Agreement:</b>	n/a	
<b>Landlord's Broker</b>	Office Court Companies, Inc. of Santa Fe	
<b>Tenant's Broker</b>	Leon Mellow, Colliers, International	

The above Fundamental Lease Provisions include only some of the provisions of this Lease. This summary is not intended to replace or amend these other Provisions. References in this Article I to other Articles are for convenience and designate some of the other Articles where references to the particular Fundamental Lease Provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions contained in this Article I shall be construed to incorporate all of the terms provided under each such Fundamental Lease Provision. In the event of any conflict between any Fundamental Lease Provision and the balance of the Lease, the latter shall control.

AN INDEX TO LEASE TERM HEADINGS IS AT THE END OF THIS LEASE.

## ARTICLE II PREMISES

2.1 DESCRIPTION Landlord, for and in consideration of the covenants and agreements of Tenant herein contained and upon and subject to the terms, conditions and provisions herein set forth, hereby leases to Tenant, and Tenant leases and accepts, the Premises described in Article I hereof as the Description of Premises and as described on Exhibit A, which is attached hereto and incorporated herein by reference upon which the Landlord has constructed the Building (as defined below), (hereafter "the Premises").

2.2 CONDITION OF PREMISES Subject to satisfactory completion of Landlord's Work (as hereinafter defined) and Landlord's representations and warranties herein and the Addendum, Tenant's taking possession of the Premises shall be conclusive evidence against Tenant that the Premises were then in good order and satisfactory condition, with the exception of punch list items which shall be given to Landlord within two weeks of Substantial Completion. No promises of Landlord to remodel, improve, decorate or clean the Premises have been made, and no representation respecting the condition of the Premises or the Building has been made to Tenant by or on behalf of Landlord except to the extent expressly set forth herein or in Exhibit B attached to this Lease ("Landlord's Work") or the Addendum.

### 2.3 DEFINITIONS

A. The term "Building" or "Project" shall mean the entire development, including any and all structures, (whether reflected in Exhibit A or hereafter incorporated in the compound during the base term of this Lease or any extension thereof), parking facilities, common facilities and the like built on the property of the development, as the same may from time to time be changed or reduced, or as the same from time to time may be increased by the addition of other land, together with structures and the like thereon which may from time to time be included by Landlord in its sole discretion in the development.

B. The term "Common Areas" shall mean all areas within the exterior boundaries of the Building which are now or hereafter made available for the general use, convenience and benefit of Landlord and other persons entitled to occupy any part of the Building, including, but not limited to parking areas, driveways, entrances and exits, ramps, landscaped areas, exterior stairways, service roads, sidewalks and other areas constructed or to be constructed for use in common by the Tenant, other tenants in the Building and their employees and business invitees, subject, however, to the terms of this Agreement and reasonable rules and regulations prescribed from time to time by the Landlord. Landlord expressly reserves the right to change, alter or amend the common areas at any time, and from time to time, in its sole discretion, provided such changes do not materially adversely affect Tenant's access to or use of the Premises for its permitted use. Tenant shall, at all times during the Lease term, including any renewal terms, without charge to use, on a non-exclusive basis, up to 3 parking spaces per 1,000 rentable square feet of the Premises. In addition, Tenant may use, on a non-exclusive, as available basis, additional parking spaces within the parking areas of the Project.

## ARTICLE III TERM

3.1 BASE TERM The base term of this Lease and Tenant's obligation to pay rent hereunder shall commence on the date specified in Article I as the Commencement Date (hereafter "the Commencement Date") unless the date rent obligation begins as set forth in Article I differs from the Commencement Date or Substantial Completion of Landlord's Work does not occur by the Target Delivery Date, and shall continue thereafter during the Base Term specified in Article I herein and shall end on the last day of the last lease year of that Base Term, as specified in Article I herein as Base Term Expiration Date, unless sooner terminated as hereinafter provided in this Lease.

3.2 LEASE YEAR The term "lease year" shall mean the twelve (12) month period beginning on the first day immediately following the commencement date referred to in Paragraph 3.1 above and each year of the Lease thereafter

measured from such commencement date; provided, however, in no event shall the expiration of the initial term of the Lease extend beyond August 31, 2016.

**3.3 OPTION FOR EXTENSION OF LEASE** Tenant may elect to extend this Lease for such additional periods and for such lengths as described in Article I hereof as Option Periods, beginning with the expiration of the base term. (If no periods are indicated in Article I, no options are being granted under this Lease.) Provided, however, that the said options may only be exercised if this Lease is in force and effect at the time of exercise and Tenant, on that date, is not in default (after the expiration of any cure period) and shall be in compliance with all conditions and obligations contained herein. In the event that Tenant desires to exercise such election the Tenant shall give the Landlord notice in writing of such election at least the number of days prior to the expiration of the base term for the first option period and at least the number of days prior to the expiration of each subsequent option term for the next succeeding Option Period, as described in Article I hereof as the Option Notice Period. Leasing of the Premises to Tenant for each of such option periods shall be upon and subject to the terms, conditions and provisions contained in this Lease except for payment for Base Rent which shall be as set forth in Article I herein. The Base Term plus exercised Option periods shall hereafter be the Lease Term.

**3.4 POSSESSION** Tenant understands that the Premises may be in the process of construction and that Landlord makes no representation or agreement that the Premises will be ready for occupancy on the Commencement Date. In the event the Premises shall not be completed and ready for occupancy on the Commencement Date, this Lease shall nevertheless continue in full force and effect and no liability shall arise against Landlord by reason of any such delay beyond the abatement of Base Rent until the Premises are ready for occupancy; provided, however, that there shall be no abatement of Base Rent if the Premises are not ready for occupancy because of the failure to complete the installation of special equipment, fixtures or materials ordered by Tenant. Landlord may authorize Tenant to take possession of all or any part of the Premises prior to the Commencement Date. If Tenant does take possession pursuant to authority so given, all of the covenants and conditions of this Lease shall apply to and shall control such pre-Term occupancy. Rent for such pre-Term occupancy shall be paid upon occupancy and on the first day of each calendar month thereafter at the rate set forth in Article IV. If the Premises are occupied for a fractional month, Rent shall be prorated on a per diem basis for such fractional month. Nothing in this paragraph diminishes or changes Tenant's right to access and occupy the Premises during the early occupancy period, without payment of Rent, as set forth in the Addendum. For avoidance of doubt, to the extent there is a conflict between this Section 3.4 and the Addendum with respect to delivery of the Premises and Pre-Term Occupancy, the terms and conditions of the Addendum shall govern and control.

#### ARTICLE IV RENTS

**4.1 BASE RENT** The Tenant shall pay the Landlord as Base Rent for the Premises during the initial term the amount specified in Article I hereof, as Base Rent (hereafter Base Rent). The rent is due on the first of each calendar month payable at Landlord's address as indicated in Article I hereof, or at such other place as Landlord may designate from time to time, in equal monthly installments during each year, in advance. The obligation to pay rent shall begin on the date specified in Article I hereof as: Date Rent Obligation Begins. In the event the Tenant's obligation to pay rent does not begin on the first day of a month, then Tenant shall pay rent for the days from the date Tenant's obligation to pay rent begins to the first day of the next calendar month on a pro rata basis calculated on the actual number of days in such month, payable upon execution of the Lease. The Base Rent shall be increased as provided in Paragraph 4.2 below. All rent shall be payable in cash, in US currency and without the necessity of prior notice except as specifically provided herein, and without abatement, deduction, counterclaim or set-off.

**4.2 ADDITIONAL RENT:** as described in the Base Rent schedule in Article I of the Lease

**4.3 UTILITIES** Tenant shall pay during the Lease Term for all separately metered utilities, such as gas, electrical power, and telephone, together with any taxes thereon. It shall be Tenant's responsibility to ensure that these utilities have been initiated, maintained, properly billed and paid. Once Landlord has supplied such utilities to the Premises, Landlord shall have no further responsibility to Tenant as to such utilities. Landlord shall be responsible for water and sewer service and shall pay for same, as provided in Paragraph 7.2 below. Notwithstanding the foregoing, to the extent there is an interruption in utility services to be provided by Landlord hereunder, and such interruption is within the reasonable control of Landlord, Landlord shall promptly and diligently take steps to restore such service and if such interruption continues for a period beyond three (3) consecutive business days, then Tenant shall be entitled to a day-for-day rent abatement for each day of interruption in service beyond the foregoing three business-day period until the date of restoration of service.

**4.4 OPERATING EXPENSES AS ADDITIONAL RENT.** INTENTIONALLY DELETED

**4.5 OPERATING EXPENSE INCLUSIONS** INTENTIONALLY DELETED

**4.6 OPERATING EXPENSE EXCLUSIONS** INTENTIONALLY DELETED

**4.7 SECURITY DEPOSIT** Landlord acknowledges that it has received from Tenant a deposit as security for compliance with the Lease (hereafter "Security Deposit") in the amount indicated in Article I hereof which amount shall remain on deposit with Landlord during the term of this Lease and any extensions as security for the payment of rent or damages to or cleaning of the property and the full and faithful performance by Tenant of the covenants and conditions of this Lease. In the event of any default, after written notice to Tenant an opportunity to cure as set forth in this Lease, the sum shall be retained by Landlord and may be applied toward damages arising from such default. Said security deposit shall not be construed as liquidated damages or as a penalty and the retention of the Security Deposit by Landlord shall not be deemed a waiver of the right of

Landlord to collect additional damages hereunder. Upon yielding of said Premises at the termination of this Lease, and provided no default has occurred, said sum, or the remainder thereof, shall be returned to the Tenant within thirty (30) days after the expiration or permitted termination of the Lease. No interest shall be payable on the security deposit and the security deposit may be commingled with the funds of Landlord. It is understood that Landlord shall always have the right to apply said security deposit, or any portion thereof, to the curing of any default that may exist under this Lease. Should Landlord convey its interest under this Lease, the security deposit, or the part or portion thereof not previously applied, shall be turned over to Landlord's grantees or assignees; and Tenant hereby releases Landlord from any liability with respect to the security deposit and Tenant agrees to look solely to such grantee or assignee for return thereof and this provision shall also apply to subsequent grantees or assignees provided all such grantees or assignees have assumed Landlord's obligations hereunder. Tenant agrees it will not assign, pledge, mortgage or otherwise hypothecate its interest in the security deposit. It is agreed that the sum is not made in payment of rent but is paid solely as security by Tenant for the full and faithful performance of the obligations and terms of the Lease. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant, then Tenant shall, upon written demand by Landlord, remit to Landlord a sufficient amount in cash to restore said security to the original sum deposited, and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease.

**4.8 CHARGE ON LATE PAYMENT** Because the late payment of any rent due hereunder results in extraordinary expenses, Landlord reserves the right to charge a late payment charge equal to \$25.00 if any rent is not paid by the fifth (5th) day of any month of the Term and \$10.00 per day thereafter until paid. If any rent is not paid by the 15th day of each of three consecutive months of the Term, the security deposit required under this Lease shall be automatically doubled, or if this Lease does not require a security deposit, a security deposit in the amount of one month's rent shall be automatically required, and the Tenant shall deposit the additional security deposit required within five (5) business days after requested by the Landlord. This provision shall be deemed in addition to provisions of this Lease concerning interest on past due payments. Notwithstanding the foregoing, if Tenant is in default with respect to payment of Rent as provided hereunder but cures such default after written notice, but no more than once each calendar year, the foregoing late fee set forth in this Section shall not be assessed nor payable by Tenant with respect to such one per calendar year occurrence.

**4.9 HOLDING OVER** Tenant shall pay Landlord for each day Tenant retains possession of the Premises or any part thereof after the termination of this Lease for any reason, an amount which is: (i) for the first month of holdover, 125% of the amount of Rent per day, based on the annual rate of the Monthly Base Rent in effect at the time of such termination, and (ii) thereafter, 150% of the amount of Rent per day, based on the annual rate of the Monthly Base Rent in effect at the time of such termination, and Tenant shall also pay all direct damages sustained by Landlord by reason of such retention. Nothing in this Section contained, however, shall be construed or operate as a waiver of Landlord's right of re-entry or any other right or remedy of Landlord.

## ARTICLE V USE OF PREMISES

**5.1 TENANT USE** The Premises shall be used and occupied by Tenant solely as for the purposes indicated in Article I, hereof and for no other purpose without Landlord's written consent. Tenant will not use or permit in the Premises anything that will increase the rate of fire insurance thereon or which would prevent Landlord from obtaining reduced rates for long term insurance policies, or maintain anything that may be dangerous to life or limb, or in any manner, deface, injure or commit waste in, on, or about said Building or any portion thereof, or overload the floors, or permit any objectionable noise or odor to escape or be emitted from said Premises, or to use or permit the use of the Premises for lodging or sleeping purposes, or for any immoral or illegal purposes. Tenant will comply, at Tenant's own cost and expense, with all orders, notices, regulations, policies, or requirements of any municipality, state or other governmental authority respecting the use of the Premises.

Except for Tenant's Systems (as defined in the Addendum) as approved by Landlord, Tenant may not display or allow aerials, antennae, carts, portable signs, or any other objects to be stored or to remain outside the defined exterior walls or roof and permanent doorways of the Premises without first obtaining, in each instance, the written consent of Landlord. Any item so installed without such written consent shall be subject to removal by Landlord without notice at any time.

This Lease does not grant any rights to light or air over or above the real property of Landlord. Landlord specifically reserves to itself the use of any roofs, the exterior portions of the Premises, all rights to the land and improvements below the improved floor level of the Premises and to such areas within the Premises required for installation of utility lines and other installations required to serve any occupants of the Building and to maintain and repair same.

Tenant's use of electricity in the Premises shall be for the operation of building standard lighting, electrical fixtures, typewriters, personal computers and other small office machines and lamps and shall not at any time exceed the capacity of any of the electrical conductors and equipment in or serving the Premises. Landlord acknowledges and agrees that Tenant's permitted use is not in excess of the foregoing capacity.

In order to ensure that such capacity is not exceeded and to avert possible adverse effect on the Building's electrical service, Tenant shall not, without Landlord's prior written consent in each instance which consent shall not be unreasonably withheld, connect any additional fixtures, appliance or equipment (other than normal office electrical fixtures and lamps, including local area computer networks, phone systems, copiers, fax machines, typewriters, and similar small office machines) to the Building's electric system of the Premises existing at the commencement of the Term hereof except for Tenant's Systems. If Landlord grants such consent, the cost of all additional risers and other equipment required therefore shall be paid as Additional Rent by Tenant to Landlord upon demand.

Tenant shall pay as Additional Rent, on demand, the cost of any metering which may be reasonably required by Landlord to measure any excess usage of electricity, water or other utility or energy. Landlord and Tenant acknowledge and agree that Tenant's use is not anticipated to result in any excess usage of the foregoing utility services but Landlord and Tenant shall cooperate and work in good faith if Landlord reasonably believes that such usage is in excess of normal office use.

5.2 SIGNS Tenant shall not place on any exterior door, wall or window of the Premises any sign or advertising matter which is not within the building standard for signs and without first obtaining the Landlord's written approval and consent which approval shall not be unreasonably withheld. Tenant agrees to maintain such signs as approved by Landlord in good condition and repair. All signs shall comply with applicable ordinances or other governmental restrictions and the determination of such requirements and the prompt compliance therewith shall be the responsibility of the Tenant.

5.3 FIRE EXTINGUISHERS Landlord shall provide fire extinguishers to the Premises at the Commencement Date. Tenant will be responsible for all servicing of said fire extinguishers and replacement during the Lease Term. If Tenant fails to comply, within ten (10) business days' prior written notice from Landlord, with this provision Landlord may provide this service at Tenant's expense plus an additional charge of fifty dollars, which sums shall be additional rent due hereunder at the beginning of the next month following notice by Landlord to Tenant of the incurring of said expenditure.

5.4 QUIET ENJOYMENT Landlord agrees that, if the rent is being paid in the manner and at the time prescribed and the covenants and obligations of Tenant being all and singular kept, fulfilled and performed, Tenant shall lawfully and peaceably have, hold, possess, use, occupy and enjoy the Premises so long as this Lease remains in force, without hindrance, disturbance or molestation from Landlord, subject to the specific provisions of this Lease.

5.5 RULES AND REGULATIONS Tenant agrees to observe and not to interfere with the rights reserved to Landlord contained in Paragraph 7.3 hereof and elsewhere in this Lease, and agrees, for itself, its employees, agents, invitees, licensees and contractors, to comply with the rules and regulations set forth in Exhibit C attached to this Lease, and such other rules and regulations as shall be adopted by Landlord from time to time provided such rights and rules and regulations do not materially adversely affect Tenant's use and occupancy of the Premises for its permitted use.

5.6 SURRENDER OF PREMISES At the termination of the Lease Term or any renewal term, the Tenant agrees to deliver the Premises in good condition and repair as received by it on the date of Substantial Completion (subject, to the removals hereinafter required) reasonable wear and tear and damage from casualty excepted, neat and broom clean, and shall surrender all keys for the Premises to the Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes and vaults, if any, in the Premises except for any Tenant confidential information. Tenant shall remove all its trade fixtures, and to the extent required by the Landlord by written notice, shall remove any other installations, alterations or improvements made by Tenant provided herein (excluding Landlord's Work and Tenant's Systems, at Tenant's sole election), and shall repair any damage to the Premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the lease term. Any items remaining in the Premises on the termination date of this Lease shall be deemed abandoned for all purposes and shall become the property of the Landlord and the latter may dispose of the same without liability of any type or nature.

#### ARTICLE VI CONSTRUCTION, MAINTENANCE AND REPAIR

6.1 ALTERATIONS AND ADDITIONS Tenant shall not, without Landlord's prior written consent make any alterations, improvements, additions, or utility installations in, on or about the Premises, including, but not limited to floor coverings, window coverings, air lines, power panels, electrical distribution systems, communication or computer wires, cables and related devices, lighting fixtures, space heaters, air conditioning, plumbing, and fencing, excluding Tenant's Systems which have been approved by Landlord. Notwithstanding the foregoing, Tenant may make minor, non-structural alterations not affecting the Building systems to the interior of the Premises in an amount up to \$15,000 ("Minor Alterations") without Landlord's consent but Tenant shall provide Landlord notice thereof. Tenant shall promptly pay all costs and expenses associated with such alterations, improvements, additions or utility installations, including, but not limited to, all costs and expenses associated with compliance with any governmental statutes, ordinances, rules or regulations required by Tenant's alteration, improvement, addition or utility installation, including all handicapped access requirements and requirements under the Americans With Disabilities Act 42 U.S.C. " 12181, et. seq. Landlord may require Tenant to provide for alterations requiring Landlord's consent, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-quarter (1 1/4) times the estimated cost of such alterations, improvements, additions or utility installations to insure Landlord against any liability for mechanic's and material men's liens and to insure completion of the work. Should Tenant make any alterations, improvements, additions or utility installations without the prior approval of Landlord, Landlord may require that Tenant remove any or all of the same provided Landlord has provided such removal requirement at the time Tenant requested Landlord's approval of such alteration. If Landlord does not advise Tenant in writing at the time of its consent that the alteration is required to be removed upon surrender of the Premises, Tenant may, but shall not be obligated to, remove such alteration.

Any alterations, improvements, additions or utility installations in, or about the Premises that Tenant shall desire to make and which require the prior written consent of the Landlord shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its written consent, its consent shall be deemed conditioned upon Tenant obtaining all necessary permits to do so from appropriate governmental agencies, the furnishing of copies thereof to Landlord prior to the

commencement of the work and the compliance by Tenant of all conditions of such plan approval and permits in a prompt and expeditious manner.

Tenant shall perform all such work in a first class, workmanlike manner and in compliance with all applicable governmental statutes, ordinances, rules and regulations.

Tenant shall pay, when due, all claims for labor, and/or equipment and materials furnished or alleged to have been furnished to or for Tenant at or for its use in the Premises whether or not such claims may be secured by any mechanics' or material men's lien against the Premises or any interest therein. Tenant shall give Landlord not less than fifteen (15) days' notice prior to the commencement of any work in the Premises requiring Landlord's approval, and Landlord shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense, defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Landlord or the Premises, upon the condition that if Landlord shall so require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to one and one-quarter (1 1/4) times the amount of such contested lien claim or demand indemnifying Landlord against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs for Landlord's appearing in and in participating in such action if Landlord shall reasonably decide it is to its best interest to so appear and participate therein through its own counsel.

**6.2 TENANT'S DUTY TO REPAIR** During the term of this Lease and any extensions thereof, Tenant shall:

A. Keep and maintain in good order, condition and repair the following: 1) all lights within the Premises, including all exit signs, emergency lighting and all light bulbs and ballasts (but, at Tenant's option, and upon Tenant's request to Landlord, Landlord shall be responsible for replacement and restoration of such lights and lighting, and Landlord may charge Tenant Landlord's actual costs thereof) (including installation); 2) all signage installed by Tenant (but not by Landlord); 3) all fixtures, improvements, alterations, additions, utility installations and personal property, installed by Tenant; 4) all stopped up or impeded plumbing within the Premises or from the Premises to the main sewer line providing such impeded plumbing can definitively be traced to be directly caused by Tenant; 5) all flooring and carpet within the Premises, including any damage to carpet caused by a lack of protective mats under desk chairs or equipment or any other abnormal puncture or wearing of carpet; 6) subject to Article VIII hereof, all damage to the Premises or the Building caused by the negligence or intentional acts of Tenant, its employees, agents, invitees, licensees or contractors, or strike involving the Tenant or its employees. Any charges to furnish service to the Premises made by any utility company or municipality shall be paid by the Tenant within the time limit specified by each utility company. Tenant shall also be responsible for repairing all damage to the Premises caused by or during the work described in this paragraph. If Tenant refuses or neglects to commence and to complete repairs promptly and adequately, Landlord may, but shall not be required to, upon twenty (20) days prior written notice to Tenant, make and complete such repairs and Tenant shall pay the cost thereof to Landlord as additional rent on demand, plus an overhead and service fee of ten percent (10%) of the amount paid by Landlord.

B. Tenant shall keep and maintain the Premises in a clean, sanitary and safe condition, provide all janitorial service, garbage removal from the Premises and window cleaning in accordance with all directions, rules and regulations of the proper officials of the governmental agencies having jurisdiction, at the sole cost and expense of Tenant; however Landlord shall be responsible for exterior window cleaning, and Tenant shall comply with all requirements of law, by statute, ordinance or otherwise, affecting its use and occupancy of the Premises.

**6.3 LANDLORD'S DUTY TO REPAIR** Landlord shall keep and maintain in good order, condition and repair (including any replacement and restoration as is required for that purpose, all portions of the Premises, the Building or the Common Areas not otherwise required by Tenant to be repaired under Paragraph 6.2 above, except as may be provided in applicable condominium documents, except that Landlord shall not be called upon to make any such repairs occasioned by the act or neglect of Tenant, its agents, employees, invitees, licensees or contractors. Subject to Article VIII hereof, any of the foregoing repairs required to be made by reason of the negligence of Tenant, its agents, employees, invitees, licensees or contractors as above described, shall be the responsibility of Tenant notwithstanding the provisions above contained in this paragraph.

**6.4 ROOF** Tenant will not cause or permit accumulation of any debris or extraneous matter on the roof of the Premises, will not in any manner cut or drive nails into or otherwise mutilate the roof of the Premises and will be responsible for any damage caused to the roof by any acts of the Tenant, its agents, servants, employees, or contractors of any type or nature. Tenant may not put compressors, antennae, microwave, television or other disks, or other such attachments on the roof without Landlord's prior written consent, which consent may be withheld within Landlord's reasonable discretion.

**6.5 TRADE FIXTURES** At the expiration of this Lease or renewal thereof, Tenant shall have the right and obligation to promptly remove any trade fixtures installed by Tenant on the Premises, and shall repair any damage to the Premises caused by such removal.

**6.6 NON TRADE FIXTURES** All installations, additions, non-trade fixtures and improvements, including floor treatments, whether placed there by Tenant or Landlord, except movable furniture and equipment belonging to Tenant, which Tenant shall promptly remove, shall be Landlord's property and shall remain upon the Premises upon expiration of the Term or sooner termination of this Lease or Tenant's possession hereunder, all without compensation, allowance or credit to Tenant; provided, however, that if prior to such expiration or termination, and provided Landlord has notified Tenant of any required

removables or alterations as set forth in Article VI hereof, Tenant, at Tenant's sole cost and expense, shall promptly remove such of the installations, additions, non trade fixtures and improvements placed in the Premises by Tenant as are designated in such notice, and repair any damage to the Premises caused by such removal, failing which Landlord may remove the same and repair the Premises and Tenant shall pay the cost thereof to Landlord on written demand. Tenant shall not be required to remove any of Landlord's Work. Tenant may, but shall not be obligated to, remove Tenant's Systems and if Tenant elects to remove Tenant's Systems, Tenant shall repair any damage to the Premises caused by such removal.

# **ARTICLE VII** **LANDLORD'S RIGHTS AND RESPONSIBILITIES** **AS TO THE OFFICE BUILDING AND PREMISES**

**7.1 CONTROL OF COMMON AREAS** All Common Areas shall at all times be subject to the exclusive control and management of Landlord, except as may be provided in applicable condominium documents, and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to use of all such Common Areas provided they do not materially adversely affect Tenant's access to and use of the Premises for Tenant's permitted use. Landlord shall have the right to operate and maintain the same in such manner as Landlord, in its sole discretion, shall determine from time to time, including without limitation the right to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of said Common Areas. Landlord shall have the exclusive right at any and all times to close any portion of the Common Areas for the purpose of making repairs, changes or additions thereto and may change the size, area or arrangement of the Building or parking areas or the lighting thereof within or adjacent to the existing areas and may enter into agreements with adjacent owners for cross easements for parking and ingress and egress, provided that such activities shall not unreasonably interfere with Tenant's operations. In the event that the lighting controls, ceiling or roof access for the Common Areas shall be located in the Premises, then Landlord in such event shall have the right to enter the Premises for the purpose of adjusting or otherwise dealing with the said controls and/or access as required but only if such event or access does not interfere with Tenant's use and occupancy of the Premises nor reduce the utility of the Premises for Tenant's permitted use. Notwithstanding the foregoing, except in the case of an emergency, Landlord agrees to use commercially reasonable efforts to minimize interruption or impact on Tenant's use and occupancy of the Premises in exercising its rights or performing its obligations under this Lease. In addition, Landlord shall comply with Tenant's reasonable security measures with respect to Landlord's access to the Premises (which may include being accompanied by a Tenant representative (except in an emergency)) wherever such access right is granted in this Lease. Tenant will provide Landlord with its security requirements upon request of Landlord. All of the foregoing, collectively, "Tenant's Access Requirements."

**7.2 SERVICES PROVIDED BY LANDLORD** Landlord, as long as Tenant is not in default (beyond the expiration of any applicable cure period) under any of the covenants of this Lease, shall furnish the following services at Landlord's expense:

(a) Air conditioning and heating units and electric current to the Premises, which shall be properly hooked up to utility services, and which shall be operable by Tenant. Tenant promptly shall pay directly to the utility companies all charges incurred in connection with the use of any such utilities or service. Tenant agrees that its use of electric current will not exceed the capacity of the feeders to the Building or the risers or wiring installed thereon. Tenant may not, at any time, reduce the heating to the Premises to create any risk that the pipes in and around the Premises would freeze.

(b) Domestic water and refuse service in common with other tenants. In the event that Tenant makes greater use of water service or refuse disposal service than the usual and ordinary office use of such service, then Landlord may bill Tenant for the additional cost of such increased use.

Failure by Tenant to promptly pay Landlord's proper charges for excess water or refuse services shall give Landlord, upon not less than thirty (30) days written notice, the right, in addition to any other remedies available to Landlord, to discontinue furnishing the services, and no such discontinuance shall be deemed an eviction or disturbance of Tenant's use of the Premises or render Landlord liable for damages or relieve Tenant from performance of Tenant's obligations under this Lease.

Tenant agrees that Landlord and its employees and agents shall not be liable in damages, by abatement of Rent or otherwise, for failure to furnish or for delay in furnishing any service or performing any other term of this Lease when such failure or delay is occasioned, in whole or in part, by repairs, renewals or improvements, or by any cause beyond the reasonable control of Landlord.

**7.3 RIGHTS RESERVED TO LANDLORD** Landlord reserves the following rights, exercisable without notice and without any liability to Tenant whatsoever, and without effecting any eviction or disturbance of Tenant's use or possession, or giving rise to any claim for set-off or abatement of Rent, or affecting any of Tenant's obligations under this Lease:

- (a) To change the name or street address of the Building.
- (b) To install and maintain signs on the exterior and interior of the Building.
- (c) To prescribe the location and style of the suite number and identification sign or lettering for the Premises.
- (d) To retain at all times, and to use in appropriate instances, pass keys to the Premises, subject to Tenant's Access Requirements.



(e) To grant to anyone the right to conduct any business or render any service in the Building or Project, unless such business or service materially adversely affects Tenant's permitted use;

(f) Subject to Landlord's compliance with Tenant's Access Requirements, to exhibit the Premises at reasonable hours to Landlord's lender or purchasers, and to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy at any time after Tenant vacates or abandons the Premises without any intention of re-occupying the space and without payment of Rent. Tenant will use commercially reasonable efforts to notify Landlord if it anticipates vacating the Premises (with the intent of returning and re-occupying) for more than thirty (30) consecutive days. In addition, if Tenant vacates the Premises (with the intent of returning and re-occupying) for more than fourteen (14) consecutive days, it will use commercially reasonable efforts to inspect the Premises during such period of time until it re-occupies the Premises.

(g) Subject to Landlord's compliance with Tenant's Access Requirements, and provided that reasonable access to the Premises shall be maintained and the business of Tenant shall not be interfered with, to make repairs and alterations, structural or otherwise, in or to the Building, including the Premises, and any part of the Project, and may for such purposes erect scaffolding and other structures reasonably required, and during such operations may enter upon the Premises and interrupt or temporarily suspend any services or facilities agreed to be furnished by Landlord, all without the same causing an eviction of Tenant in whole or in part, and without abatement of Rent by reason of loss or interruption of the business of Tenant or otherwise.

(h) Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants and restrictions, so long as such easements, rights, dedications, maps, covenants and restrictions do not unreasonably interfere with the use of the Premises by Tenant. If the foregoing do not adversely affect Tenant's rights hereunder or the ability of Tenant to conduct its business within the Premises, Tenant shall sign, without any cost or liability to Tenant, and upon reimbursement for Tenant's reasonable attorneys' fees and costs in connection with the review thereof, any of the aforementioned documents upon at least twenty (20) days prior written request of Landlord and failure to do so shall constitute a breach of this Lease.

**7.4 LANDLORD'S RIGHT OF ENTRY** Subject to Landlord's compliance with Tenant's Access Requirements, Landlord reserves the right at all reasonable times during the term of this Lease for Landlord or Landlord's agents to enter the Premises for the purpose of inspecting and examining the same, and to show the same to prospective purchasers (or tenants during the last 120 days of the Lease term), and to make such repairs, alterations, as Landlord may deem reasonably necessary or desirable. During the one hundred twenty (120) days prior to the expiration of the term of this Lease or any renewal term, Landlord may exhibit the Premises to prospective tenants or purchasers, and place upon the Premises the usual notices advertising the Premises for sale or lease, as the case may be, which notices Tenant shall permit to remain thereon without molestation. In order to secure Landlord's right of entry hereunder, Tenant agrees to make no changes in the exterior locks of the Premises and shall not re-key the present access locks without Landlord's prior written consent. Tenant acknowledges that Landlord, in the event of an emergency, may need access to the entire Premises and solely with respect to Landlord's need for such access due to an emergency, Tenant will provide Landlord with keys to all areas of the Premises; however, Landlord expressly agrees that it will not use such key or access areas within the Premises where Tenant's proprietary or confidential information may be kept, except in the event of an emergency. Notwithstanding the foregoing, except in the case of an emergency, Landlord agrees to use commercially reasonable efforts to minimize interruption or impact on Tenant's use and occupancy of the Premises in exercising its rights or performing its obligations under this Lease. Landlord hereby acknowledges and agrees that Tenant keeps privileged and confidential student records and information at the Premises and that Landlord has no right to access such student information and that if Landlord has such access to the Premises, Landlord shall comply with all requirements of the Family Educational and Privacy Rights Act; provided that Tenant provides Landlord with a copy of the applicable requirements. In addition, Landlord shall comply with Tenant's reasonable security measures with respect to Landlord's access to the Premises (which may include being accompanied by a Tenant representative (except in an emergency)) wherever such access right is granted in this Lease. Tenant will provide Landlord with its security requirements upon request of Landlord. All of the foregoing, collectively, "Tenant's Access Requirements."

**7.5 SECURITY MEASURES** Tenant hereby acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or any other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of Tenant, its agents and invitees from acts of third parties.

## ARTICLE VIII INDEMNITY AND INSURANCE

**8.1 INDEMNITY OF LANDLORD** Except as provided in the section entitled "Waiver of Subrogation", each party agrees to exonerate, hold harmless, protect and indemnify the other party from and against any and all losses, damages, claims, suits or actions, judgments and costs (including reasonable attorney's fees) which may arise or grow out of injury or attributable to the negligence or willful acts or omissions of the indemnifying party, its employees or agents.

**8.2 NOTICE OF CLAIM OR SUIT** Both Tenant and Landlord agree to promptly notify the other party of any known claim, action, proceeding or suit instituted or threatened against either party. In the event either party is made a party to any action for damages for which either party has the obligation to indemnify the other party, then such party shall pay all costs and shall provide effective counsel in such litigation.

8.3 TENANT'S INSURANCE During the Lease term and any renewals thereof Tenant agrees to maintain, at its expense, at all times the following insurance coverage:

A. General commercial liability insurance including coverage for bodily injury, property damage and contractual liability, in an amount of not less than \$1,000,000 per occurrence limit. Such insurance shall include the Landlord, Landlord's agent, Landlord's property manager, and the Landlord's lender (if requested by Landlord) as additional insured. Landlord may, from time to time, reasonably require, increased limits not in no event without first providing Tenant at least 90 days prior written notice.

B. "All risk" physical damage insurance including fire, sprinkler leakage, vandalism and extended coverage for the full replacement cost of all additions, improvements and alterations to the Premises (except to the extent the same are part of building standard work performed by Landlord pursuant to Exhibit A, if any, attached hereto) and of all office furniture, trade fixtures, office equipment, merchandise and all other items of Tenant's property on the Premises;

C. Worker's Compensation and Employer's Liability insurance, in form and amount required by law; and

D. [Intentionally Deleted]

8.4 TENANT'S INSURANCE POLICIES Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least B plus, or such other rating as may be required by a mortgage lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Tenant shall deliver to Landlord prior to occupancy a certificate of insurance for the coverage provided herein and shall deliver to Landlord or Landlord's agent prior to occupancy. As soon as reasonably practicable upon renewal of such insurance, Tenant shall furnish Landlord with certificates of insurance.

8.5 FAILURE TO PROCURE INSURANCE In the event Tenant shall fail to procure insurance required under this Article and fail to maintain the same in force continuously during the term, Landlord, upon ten (10) days prior written notice, may procure the same and Tenant shall immediately reimburse Landlord for such premium expense, which amount shall be payable as additional rent hereunder upon demand by Landlord.

8.6 INCREASE IN FIRE INSURANCE PREMIUM Tenant agrees not to keep upon the Premises any articles or goods that may be prohibited by the standard form of fire insurance policy. It is agreed between the parties that in the event the insurance rates applicable to fire and extended coverage insurance covering the Premises shall be increased by reason of any use of the Premises made by the Tenant, then Tenant shall pay to Landlord such increase in insurance as shall be occasioned by said use, as additional rent hereunder, due upon demand by Landlord.

8.7 PROPERTY OF TENANT Tenant agrees that all property owned by it, on or about the Premises shall be maintained at the sole risk and hazard of the Tenant. Landlord shall not be liable or responsible for any loss or damage to Tenant, or anyone claiming under or through Tenant, or otherwise, whether caused by or resulting from a peril required to be insured hereunder, or from water, steam, gas, leakage, plumbing, electricity or electrical apparatus, pipe or apparatus of any kind, the elements or other similar or dissimilar causes, and whether or not originating in the original Premises or elsewhere, provided such damage or loss is not the result of negligence or an intentional or willful act of Landlord, its agents, employees or contractors.

8.8 WAIVER OF SUBROGATION Landlord shall obtain insurance for the Building of which the Premises are a part, and Tenant shall insure as provided in the Lease. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant, for themselves and their respective insurers, agree to and do hereby release each other of and from any and all claims, demands, actions and causes of action that each may have claim to have against the other for loss or damage to property, both real and personal, caused by or resulting from casualties customarily insurable, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties hereto or their respective employees or agents.

#### ARTICLE IX DESTRUCTION OR DAMAGED PREMISES

9.1 PARTIAL DESTRUCTION In the event the Premises becomes partially destroyed by fire or other casualty to the extent that the cost of restoration or repair is less than one-third (1/3) of the total reasonable costs of replacement of all improvements included in the Premises and such repair and restoration cannot be accomplished within ninety (90) days (both of the foregoing as reasonably estimated by Landlord), then either Landlord or Tenant shall have the option (which option shall be exercised in writing within fifteen (15) days of the date of loss) to terminate this Lease and neither party shall have any further obligations or liability hereunder. If the time for repair and restoration is fewer than ninety (90) days, then Landlord, within thirty (30) days of such loss or damage, shall commence repairs of the damage and restore the Premises to the condition existing immediately prior to the date of loss or casualty. If Landlord fails to complete the repair or restoration within ninety (90) days, or fails to commence restoration within forty-five (45) days, then Tenant may, at its election, terminate this Lease. If either party elects to terminate this Lease, all obligations hereunder, including rent, shall cease as of the date of partial destruction, but shall not affect obligations prior to partial destruction. If Landlord repairs, the rental hereunder shall abate as hereinafter provided until such time as that part of the Premises are restored to substantially their previous condition; provided, however, if the Premises is only partially damaged but Tenant cannot conduct its business for the permitted use hereunder, even if only a portion of the Premises shall be damaged, the rent shall abate in its entirety during any period of repair and restoration. Landlord shall promptly proceed to have said repairs made and said Premises so restored at its own expense, and this Lease shall remain in full force and effect subject only to the abatement of rent as set forth above.

**9.2 TOTAL OR EXTENSIVE DAMAGE** If the Premises are partially or totally destroyed, to the extent that the cost of restoration or repair would exceed one-third (1/3) of the total reasonable cost of replacement (as reasonably estimated by the Landlord) of all the improvements on the Premises, then either Landlord or Tenant may elect to terminate this Lease within thirty (30) days of the date of loss or casualty. If neither party terminates the Lease, Landlord shall promptly and diligently pursue restoration of the Premises at its own expense. In the event either party terminates, neither party shall have any further liability to the other under This Lease and all rental due shall terminate as of the date of the damage, injury or destruction. Any prepaid rental (including the security deposit) shall be rebated to Tenant within thirty (30) days from date of such loss or casualty. In the event Landlord restores or repairs the Premises, the same shall be commenced within thirty (30) days of damage, injury or destruction and shall be completed with due diligence. If Landlord fails to restore the Premises within one hundred twenty (120) days from the date of loss or casualty, Tenant may terminate this Lease upon written notice to Landlord and Landlord's failure to complete the repair and restoration within ten (10) days from the date of Tenant's notice. The Rent hereunder will abate until the Premises are restored to substantially the same condition immediately preceding the loss or casualty. Tenant shall be responsible, at its own expense to do such work as may be necessary to place that portion of the Premises not so damaged or destroyed in a condition to permit Tenant to continue to carry on the approved use as of the date of loss and Tenant shall continue that use to the extent reasonably possible (as determined by Tenant). Tenant shall not be entitled to any additional abatement or deduction of rent from any business interruption caused by such damage or destruction or by the necessity for Tenant to do work on the portion of the Premises not damaged provided Tenant can, and actually does, conduct business for the permitted use during such period of repair and restoration.

**9.3 NO COMPENSATION TO TENANT** In the event of Partial or Total Damage or Destruction as provided above Tenant shall not be entitled to obtain a share in any fire or extended coverage insurance proceeds on property owned by Landlord in any manner, but all such proceeds shall be payable to Landlord or Landlord's mortgagee as they shall agree between them.

#### ARTICLE X EMINENT DOMAIN

**10.1 DEFINITIONS** For purposes of this paragraph, the following terms shall have the following meanings:

- A. A "taking" shall mean a taking by eminent domain which is either permanent or for a duration of more than three (3) months;
- B. "Substantially all the Premises" shall mean a taking, or a sale under threat of eminent domain, of such portion of the Premises or a restriction placed on the Premises by other governmental actions such that the portion not so taken or sold or affected is not reasonably usable by the Tenant for the uses permitted by this Lease as of the date of taking; and
- C. "Date of taking" shall mean the date legal title to, or the right to possess, the Premises or substantially all the Premises is vested in the condemning authority.

**10.2 TOTAL OR SUBSTANTIAL TAKING** If all or substantially all the Premises are taken or sold or affected under threat of eminent domain or other governmental action during the term of this Lease or any renewal thereof, this Lease will terminate on the date of taking without further liability of Landlord to Tenant under the Lease and accrual of rent hereunder shall cease on the date of taking. Any prepaid rental or security deposit shall be rebated to Tenant within thirty (30) days from Landlord's notice of election provided Tenant is otherwise in compliance with the terms of this Lease.

**10.3 PARTIAL TAKING** If less than substantially all the Premises is taken or sold under threat of eminent domain or other governmental action during the term of this Lease or any renewal hereof, this Lease shall nonetheless continue in force and effect except as to the portion of the Premises so taken or sold, and the amount of Base Rent payable hereunder from and after the date of such partial taking shall be reduced by the percentage of that portion of the original Premises covered by this Lease which was so partially taken or sold provided that Tenant can continue to conduct its business within the remaining portion of the Premises (as reasonably determined by Tenant).

**10.4 NOTICE OF TENANT** If and when Landlord learns of a threat of a taking or partial taking, Landlord will immediately notify Tenant of such threat.

**10.5 NO COMPENSATION TO TENANT** In the event of any taking or partial taking during the term of this Lease or any renewal thereof, Tenant shall not be entitled to obtain or share in any condemnation award or proceeds of sale under threat of condemnation, whether or not such taking results in a full or partial termination of this Lease or the leasehold estate created hereunder but Tenant shall be entitled to any separate award given to Tenant for its moving and relocation expenses.

#### ARTICLE XI COMPLIANCE WITH HAZARDOUS MATERIALS LAW

**11.1 HAZARDOUS MATERIALS** Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials on or about the Premises. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Premises, any such materials or substances except to use in the ordinary course of Tenant's business. Without limitation,

hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any escape, disposal or release of hazardous substances or materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional rent if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence, escape, disposal or release of hazardous substances or materials on the Premises. Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous substances or materials on the Premises to the extent caused by or persons acting under Tenant. The within covenants shall survive the expiration or any earlier termination of the term of this Lease. Landlord hereby represents and warrants that there are no unabated Hazardous Materials or mold or mold conditions in, about, within or on the Building, the land on which it is located, the Project, and the Premises and that it has no actual knowledge that there is any violation of any law governing Hazardous Materials with respect to the Premises, Building or Project. Landlord shall keep or cause the Building and Project to be kept free (excluding other tenants but Landlord shall use commercially reasonable efforts to enforce any obligations of other tenants with respect to any Hazardous Materials) of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Landlord shall not knowingly cause or permit the Building or Project to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process hazardous materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Landlord cause or permit, as a result of any intentional or unintentional act or omission on the part of Landlord a release of hazardous materials on or into the Property. If Hazardous Materials are discovered on or about the Premises, Building or Project which were not caused by Tenant, then Landlord shall indemnify, defend and hold harmless Tenant, its officers, partners, employees, agents, and invitees from, and shall be liable for and costs, expenses, remediation, losses, claims, causes of action, fines, suits, and liability to the same extent and in the same manner Tenant is obligated to indemnify Landlord as set forth herein. In addition, any asbestos, mold or Hazardous Materials in, about, or on the Building, Project or Premises shall be removed or abated by Landlord in accordance with applicable law.

## ARTICLE XII TRANSFERS OF INTEREST

**12.1 RESTRICTION ON TRANSFER** It is agreed that Tenant shall not have the right to sublease, assign, transfer, mortgage or encumber any part of Tenant's interest in this Lease without the prior written approval of Landlord, which said approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall consider factors including the proposed use, parking requirements and financial strength of the sublessee or assignee in determining whether to approve a sublease or assignment. Any attempted or purported change of Tenant's interest without Landlord's prior written consent shall be void and shall confer no rights upon any third party. Nothing herein contained shall relieve Tenant from its covenants and obligations under this Lease. Tenant agrees to reimburse Landlord for Landlord's reasonable attorneys' fees, costs and expenses incurred in conjunction with the processing and documentation of any such requested change of Tenant's interest not to exceed \$1,000 per request.

**12.2 FORM OF TRANSFER** Each change of Tenant's interest to which there has been consent shall be by an instrument in writing in form reasonably satisfactory to Landlord, and shall be executed by the transferor, assignor, sublessor, licensor, concessionaire, hypothecator or mortgagor and the transferee, assignee, sublessee, licensee, concessionaire or mortgagee shall agree in writing for the benefit of the Landlord herein to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant, including the payment of all amounts due or to become due under this Lease directly to Landlord. One executed copy of such written instrument shall be delivered to Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this Article shall operate to prevent any such change of Tenant's interest from becoming effective. Consent by Landlord to one change of Tenant's interest shall not constitute a waiver of Landlord's right to consent to subsequent changes of Tenant's interest.

**12.3 RENT UPON TRANSFER** In the event Tenant shall assign its interest in this Lease, or sublet the Premises (other than to an Affiliate), then any amount received by Tenant in excess of the Base Rent specified in Article I shall be shared equally by Landlord and Tenant and Tenant shall promptly remit such excess after actually received by any such subtenant or assignee, after deduction of any reasonable costs incurred by Tenant associated with such assignment or sublease, including without limitation, broker commissions and professional fees.

**12.4 TRANSFER OF STOCK INTEREST** If Tenant hereunder is a corporation which, under the then current laws of the State of New Mexico, is not deemed a public corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of twenty-five percent (25%) shall be deemed an assignment within the meaning and provisions of this Article.

**12.5 BANKRUPTCY** Neither this Lease, nor any interest therein, nor any estate created hereby, shall pass to any trustee or receiver in bankruptcy, or to any other receiver or assignee for the benefit of creditors or otherwise by operation of law. In the event of bankruptcy or assignment for the benefit of creditors, Landlord shall be entitled to retain the security deposit and shall be deemed a secured creditor as to the next six months' rental to the extent permitted by the applicable federal or state laws unless a tenant paying at least the amount due from Tenant shall be procured in said period in which case the actual rent collected during that six (6) month period shall reduce the amount of secured debt. As to any additional loss of rent, Landlord shall be entitled to file as a general creditor. The rights herein are cumulative of and in addition to any other rights provided by law.

**12.6 SALE OF PREMISES BY LANDLORD** In the event of any sale or exchange of the Premises by Landlord and assignment by Landlord of this Lease, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or exchange and assignment, provided such purchaser or assignee shall expressly assume said covenants and obligations of Landlord.

### ARTICLE XIII DEFAULT

**13.1 LANDLORD'S ELECTIONS UPON DEFAULT** Should Tenant at any time be in default with respect to any rental payments or other charges payable by Tenant, and should such default continue for a period of five (5) days after written notice from Landlord to Tenant; or should Tenant be in default in the prompt and full performance of any other of its other promises, covenants or agreements herein contained and should such default or breach of performance continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant specifying the particulars of such default or breach of performance; provided, however, that if such default cannot reasonably be cured within 30 days and Tenant has commenced and is diligently pursuing the cure of such breach within the foregoing 30-day period, Tenant shall have such additional time as is reasonably necessary to cure such default (but in no event beyond 60 days in the aggregate), or should Tenant vacate or abandon the Premises (without payment of Rent); then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Landlord and by law provided, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person:

- (a) The right of Landlord to declare the term hereof ended, to terminate this Lease and to reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or
- (b) The right of Landlord without declaring this Lease ended to reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and to collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or
- (c) The right of Landlord, even though it may have reentered the Premises, to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

**13.2 ELECTION TO REENTER** Should Landlord have reentered the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice of unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of Tenant.

**13.3 ELECTION TO TERMINATE** Should Landlord elect to terminate this Lease pursuant to the provisions of subparagraph (a) or (c) above, Landlord may recover from Tenant as damages, the following:

- (i) The worth at the time of award of any unpaid rental which had been earned at the time of such termination; plus
- (ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus
- (iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (a) in retaking possession of the Premises, including reasonable attorney's fees therefor, (b) maintaining or preserving the Premises after such default, (c) reasonably preparing the Premises for reletting to a new tenant, including repairs to the Premises for such reletting, (d) leasing commissions, or (e) any other costs necessary or appropriate to relet the Premises.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank at the time of the award, plus one percent (1%).

For all purposes of this Article XIII, the term "rental" shall be deemed to be the Base Rental and all other sums required to be paid by Tenant pursuant to the terms of this Lease.

**13.4 USE OF TENANT'S PROPERTY** In the event of default, and in addition to other rights of Landlord hereunder, all of Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the Premises and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive

possession of same and to use same, rent or charge free, until all defaults are cured or, at its option, at any time during the term of this Lease, to require Tenant to forthwith remove same.

**13.5 NONMONETARY DEFAULT PERIOD FOR REMEDY** Notwithstanding any other provisions of this Article, Landlord agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Tenant within such period shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

**13.6 SUPPLEMENTAL REMEDIES** The remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under laws then in force.

**13.7 NON-WAIVER BY LANDLORD** The failure by Landlord to enforce any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rental hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rental. No covenant, term, or condition of this lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord.

**13.8 RELETTING THE PREMISES** Upon entering and taking possession of the Premises without terminating the Lease and, without prejudice or waiver of its rights to sue and collect unpaid rent and any other damages from Tenant, Landlord may relet the Premises in the name of Landlord and for such term and on such conditions and provisions as Landlord shall determine in its discretion (including the granting of reasonable amounts of free rent and other concessions reasonably required to effect such reletting) and may collect and receive the rents from such reletting. Such reletting may be for a term greater than the term then remaining under this Lease but in any event shall operate to preempt Tenant from any right to repossess the Premises. Landlord shall also not be liable or responsible to Tenant for any failure to collect rent payable upon reletting by Landlord. The proceeds of any such reletting, less all costs and expenses of reletting (including any attorneys' fees) shall be applied to unpaid rents, damages and other sums due and payable by Tenant to Landlord for Tenant's breaches of Lease and other wrongful conduct.

**13.9 LANDLORD'S OPTION TO REMEDY** Landlord at its option may, but in no event shall be obligated to, and subject to any required notice requirements and cure periods, advance and pay any sums and do such other things, which may include entering into the Premises to do such other things, which may be necessary to cure, discharge or satisfy any monetary or nonmonetary defaults of Tenant under this Lease. Should Landlord elect to do so, all sums advanced and paid by Landlord in connection therewith (including attorneys' fees), together with interest thereon until repaid to Landlord at the rate of twelve (12%) per annum, shall be considered as additional rent payable hereunder and shall be due and payable by Tenant upon demand of Landlord to Tenant.

**13.10 OPTIONAL ARBITRATION** In the event of any dispute between the parties hereto as to any matter in controversy under the Lease either party shall have the option (but not the obligation) to submit the dispute to binding arbitration by delivering to the other party a written demand therefor. Said arbitration shall take place before an arbitrator chosen by the parties, or if they are unable to agree within fifteen (15) days of the date of the written demand for arbitration, by a judge of the state district court for the district in which the Premises are located. The cost of the arbitrator shall be split evenly by the parties. The arbitration shall take place within sixty (60) days of the date of the written demand therefor except that the arbitrator may grant minimal continuances as justice requires. There shall be only such discovery allowed by the arbitrator, which would not postpone the date of arbitration. The arbitration shall be controlled by the rules and laws of procedure and the evidence applicable in state district court where the Premises are located except as specifically provided for herein. The decision of the arbitrator shall be final and unappealable. The arbitrator shall decide all factual and legal issues. The prevailing party shall be entitled to an award of attorney's fees, expenses and costs.

**13.11 ALLOCATION OF PAYMENTS** Any payment received from Tenant may be applied by Landlord at any time against any obligation due and owing by Tenant under this Lease, notwithstanding any statement appearing on or referred to in any remittance from Tenant or any prior application of such payment.

**13.12 DEFAULT UNDER OTHER LEASES** [Intentionally Deleted]

**13.13 LANDLORD DEFAULT.** In the event of any alleged default on the part of Landlord, Tenant shall give written notice to Landlord and afford Landlord a reasonable opportunity to cure such default not to exceed sixty (60) days in the aggregate unless there is an emergency. Tenant shall also use commercially reasonable efforts to notify any holder of a mortgage and/or deed of trust affecting the Building in which the Premises is located provided prior to such notice Tenant has been given written notice of the name and address of such holder or mortgagee (collectively, "Mortgagee") of such Landlord default. If Landlord fails to cure such default within the time periods set forth herein, then Mortgagee shall have an additional 30 days following such period of time within which to cure such default. Tenant's sole remedy will be equitable relief or actual damages but in no event is Landlord or any Mortgagee responsible for consequential damages or lost profit incurred by Tenant as a result of any default by Landlord. If a Mortgagee, or transferee under such Mortgage (hereafter defined), succeeds to Landlord's interest as a result of foreclosure or otherwise, such party shall not be: (a) liable for any default, nor subject to any setoff or defenses that Tenant may have against

Landlord, or (b) bound by payment of Rent in advance of more than 30 days. Tenant agrees to pay rent (and will receive credit under this Lease) as directed in any Mortgagee's written notice of Landlord's default under the Mortgage reciting that Mortgagee is entitled to collect Rent.

#### ARTICLE XIV SECURITY FOR TENANT'S PERFORMANCE

[Intentionally Deleted]

#### ARTICLE XV SUBORDINATION & ESTOPPEL

15.1 SUBORDINATION. Once Tenant has received written notice identifying the name and address of any lender (a "Lender") holding a mortgage or deed of trust (a "Mortgage") on the Property of which these premises form a part (the "Property"), Tenant agrees to use commercially reasonable efforts to also notify such Lender by certified mail, return receipt requested, with postage prepaid, of any default on the part of Landlord under this Lease, and Tenant further agrees that, notwithstanding any provisions of this Lease, no cancellation or termination of this Lease and no abatement or reduction of the rent payable hereunder shall be effective unless Tenant has given notice and opportunity to a Mortgagee as set forth in Section 13.13 herein.

Tenant agrees that if a Lender shall succeed to the interest of Landlord under this Lease, neither the Lender nor its successors or assigned shall be liable for any prior act or omission of Landlord: subject to any claims, offsets, credits or defenses which Tenant might have against any landlord prior landlord (including Landlord); or bound by any assignment (except as otherwise expressly permitted hereunder); or obligated to make any payment to Tenant or liable for refund of all or any part of any security deposit or other prepaid charge to Tenant held by Landlord for any purpose unless the Lender shall have come into exclusive possession of such deposit or charge. In addition, if a Lender shall succeed to the interest of Landlord under this Lease, the Lender shall have no obligation, not incur any liability, beyond its then equity interest (but including any sale, insurance or condemnation proceeds), if any, in the Project.

In the event that a Lender (or any person or entity to who the Mortgage may subsequently be assigned) notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under this Lease to the Lender, Tenant shall honor such demand without inquiry and pay its rent and all other sums due under this Lease directly to the Lender or as otherwise required pursuant to such notice and shall not thereby incur any obligation or liability to Landlord.

Tenant agrees and acknowledges that this Lease is subordinate to the lien of any Mortgage, but that, at the Lender's election, this Lease may be made prior to the lien of any mortgage, and in the event a Lender succeeds to the interest of the Landlord under this Lease, then at the Lender's election (A) Tenant shall be bound to the Lender under all of the terms, covenants and conditions of this Lease for the remaining balance of the term hereof, with the same force and effect as is the Lender were the lesser hereunder, and Tenant does hereby agree to attorn to the Lender as its lesser without requiring the execution of any further instruments immediately upon the Lender succeeding to the interest of Landlord under this Lease; provided, however, that Tenant agrees to execute and deliver to the Lender any instrument reasonably requested by it to evidence such attornment; and (B) subject to the observance and performance by Tenant of all the terms, covenants and conditions of this Lease on the part of Tenant to be observed and performed, the Lender shall recognize the leasehold estate of tenant under all of the terms and conditions of this Lease for the remaining balance of the term with the same force and effect as if the Lender were the lessor under the Lease.

15.2 ESTOPPEL CERTIFICATE. Tenant, without any cost to Tenant, shall at any time upon not less than ten (10) business days' prior written notice from Landlord, or any lender of Landlord, execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser of or existing or prospective lender on the security of the Premises.

Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that no rent has been paid in advance except as may be represented by Landlord.

If Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant hereby agrees to deliver to any prospective lender or purchaser designated by Landlord such financial statements of Tenant as may be reasonably required by such lender or purchaser. Such statements shall include the past three (3) years' financial statements of Tenant. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. All such financial statements shall be received by Landlord and such prospective lender or purchaser in confidence and shall be used only for the purposes herein set forth. Notwithstanding the foregoing, if Tenant provides Landlord with copies of its audit reports, as prepared in the ordinary course of, and within the usual time periods, for Tenant's business, Tenant shall be deemed to have fulfilled its obligations under this Section 15.2 and no further or other financial reports or statements shall be required.



**ARTICLE XVI  
GENERAL PROVISIONS**

**16.1 TIME IS OF THE ESSENCE** Time is of the essence in respect to the performance by Tenant of all its monetary and non-monetary obligations hereunder and also in respect to Tenant's exercise of any options or rights granted to Tenant hereunder, including but not limited to options and rights to renew or to terminate this Lease.

**16.2 NOTICES** All notices by either party to the other shall be made to the locations indicated in Article I hereof or at such other address as the party may from time to time designate in writing to the other Party to this Lease, by depositing such notices in the certified mail/return receipt requested of the United States of America, and such notice shall be deemed to have been served on the date of receipt or refusal of such receipt unless otherwise provided.

**16.3 ATTORNEYS' FEES** In the event that during the term of this Lease or any renewal hereof (but Tenant shall not be required to pay any fees or costs in connection with any amendment to the lease for its exercise of any right, option or renewal expressly provided for in the Lease), Tenant shall request Landlord to execute any instrument pertaining to this Lease, whether or not required to be executed by Landlord hereunder, Tenant agrees to reimburse Landlord, within thirty (30) days of written demand by Landlord, for such reasonable attorneys' fees and other out-of-pocket expenses and disbursements which Landlord actually incurs and pays in processing such request of Tenant, but such costs shall not exceed \$1,000.00 per Tenant request. In the event of any litigation between the parties, the prevailing party shall be entitled to attorneys' fees, costs and expenses.

**16.4 NO PARTNERSHIP** It is understood that Landlord does not in any way or purpose become a partner or joint venturer with Tenant in the conduct of Tenant's business.

**16.5 AUTHORITY** If Tenant is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Tenant is a corporation, trust or partnership, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord reasonable evidence of such authority.

**16.6 INTEREST ON AMOUNTS DUE** Unless otherwise specifically provided, all amounts owed by Tenant to Landlord pursuant to any provision of this Lease shall bear interest from the date due until paid at the annual rate equal to three percentage points in excess of the rate of interest announced from time to time by the First National Bank of Chicago at Chicago, Illinois, or any successor thereto, as its corporate base rate, changing as and when said corporate base rate changes, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged.

**16.7 PARTIAL INVALIDITY** If any term or condition of this Lease or the application thereof to any person or events shall to any extent be invalid and unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or events other than those to which it is held invalid or unenforceable, shall not be affected and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**16.8 SUCCESSORS** The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, successors and assigns of each of the parties, except that no assignment or subletting by Tenant without the written consent of Landlord shall vest any right in the assignee or sublessee of Tenant.

**16.9 ENTIRE AGREEMENT - AMENDMENT** This Lease constitutes the entire agreement between the parties. Oral agreements in conflict with any of the terms of this Lease shall be without force and effect, all amendments to be in writing, executed by the parties or their respective successors in interest.

**16.10 DEFINITION OF LANDLORD.** The term "Landlord" as used in this Lease, so far as covenants or agreements on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners of the Landlord's interest in this Lease at the time in question, and in the event of any transfer or transfers of such interest, the Landlord herein named (and in case of any subsequent transfer, then transferor) shall be automatically freed and relieved from and after the date of such transfer of all liability as respects the performance of any covenants or agreements on the part of the Landlord contained in this Lease thereafter to be performed provided that Landlord has transferred to the new owner the Tenant's Security Deposit and any prepaid Rent.

**16.11 BROKERS.** Landlord and Tenant represent and warrant to each other that no broker or agent negotiated or was instrumental in the negotiation or consummation of this Lease, except Landlord's Broker and any Tenant's Broker specified in the Fundamental Lease Provisions above, if any. Landlord shall, at its sole cost and expense, pay to Landlord's Broker and Tenant's Broker a commission pursuant to separate written agreements between Landlord and Landlord's Broker and Landlord and Tenant's Broker. Landlord and Tenant agree to indemnify and hold each other harmless from and against any and all commissions, fees, and expenses and all claims therefore, by any broker, salesperson or other party in connection with or arising out of the parties' entering into this Lease, claiming by, through or under the indemnifying party, except for the commissions of Landlord's Broker and Tenant's Broker, which commissions Landlord shall be obligated to pay.

**16.12 NO MERGER.** The termination or mutual cancellation of this Lease will not work a merger, and such termination or cancellation will at the option of Landlord either terminate all subleases or operate as an automatic assignment to Landlord of such subleases.



16.13 INDEPENDENT COVENANTS. This Lease is to be construed as though the covenants between Landlord and Tenant are independent and not dependent and Tenant is not entitled to any setoff of the Rent against Landlord if Landlord fails to perform its obligations; provided, however, the foregoing does not impair Tenant's right to commence a separate suit against Landlord for any default by Landlord so long as Tenant complies with Section 22.

16.14 CONSTRUCTION. The parties waive any rule of construction that ambiguities are to be resolved against the drafting party. Any words following the words "include," "including," "such as," "for example," or similar words or phrases shall be illustrative only and are not intended to be exclusive, whether or not language of non-limitation is used.

16.15 SEVERABILITY. If there is more than one party, which is the Tenant, the obligations imposed upon Tenant are joint and several.

16.16 LENDER'S REQUIREMENTS. [Intentionally Deleted]

16.17 EFFECTIVENESS. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option to lease and it is not effective unless and until execution and delivery by both Landlord and Tenant.

16.18 NON-RELIANCE. Tenant confirms it has not relied on any statements, representations, or warranties by Landlord or its representatives except as set forth herein.

16.19 RECORDING OF LEASE. This Lease shall not be recorded by either Landlord or Tenant without the prior written consent of the other.

16.20 EXCULPATION. Notwithstanding anything to the contrary contained herein, Landlord's liability under this Lease shall be limited strictly to its interest in the Building.

#### 16.21 MISCELLANEOUS

A. If the Tenant is more than one person, the obligations of Tenant shall be joint and several obligations of such persons.

B. In construing this Lease, "Landlord" and "Tenant" shall include the plural as well as singular, and the neuter gender shall include the masculine and/or feminine, when the context so requires.

C. Each party agrees to execute and deliver any instruments in writing, which may be necessary and appropriate to carry out the terms, conditions, provisions and purposes of this Lease when requested by the other party.

D. The paragraph and sub-paragraph headings contained in this Lease are for convenience only and shall not be relied on in construing this Lease.

E. This Lease shall be construed and enforced in accordance with the laws of the state where the Premises are located.

F. Any rights, reserved or granted to Landlord hereunder may be exercised by Landlord, or the manager or agent for the Project or their respective agents, employees, contractors or designees.

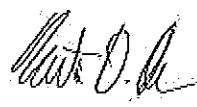
G. This Lease, the Guaranty and all exhibits attached hereto are hereby incorporated herein by reference and shall be construed together.

H. Owner(s) of the Premises hereunder are Licensed New Mexico Real Estate Brokers.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

This Lease consisting of 27 pages, including the page on which these signatures appear, the Addendum, and Exhibit(s) A, B, C and D attached hereto, are entered into this 12 day of June, 2013.

LANDLORD:

By: 

Its: Member

TENANT:

By: 

Its: NMCA, Norel President 6/11/2019

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EXHIBIT A

DESCRIPTION OF PREMISES

4001 Office Court

4001 Office Court Drive, Suites 201-204

Santa Fe, NM 87505

Containing Approximately Three Thousand Seven Hundred Fifty One (3,751) Square Feet

**EXHIBIT B**

**Floor Plan  
(Not to Scale)**

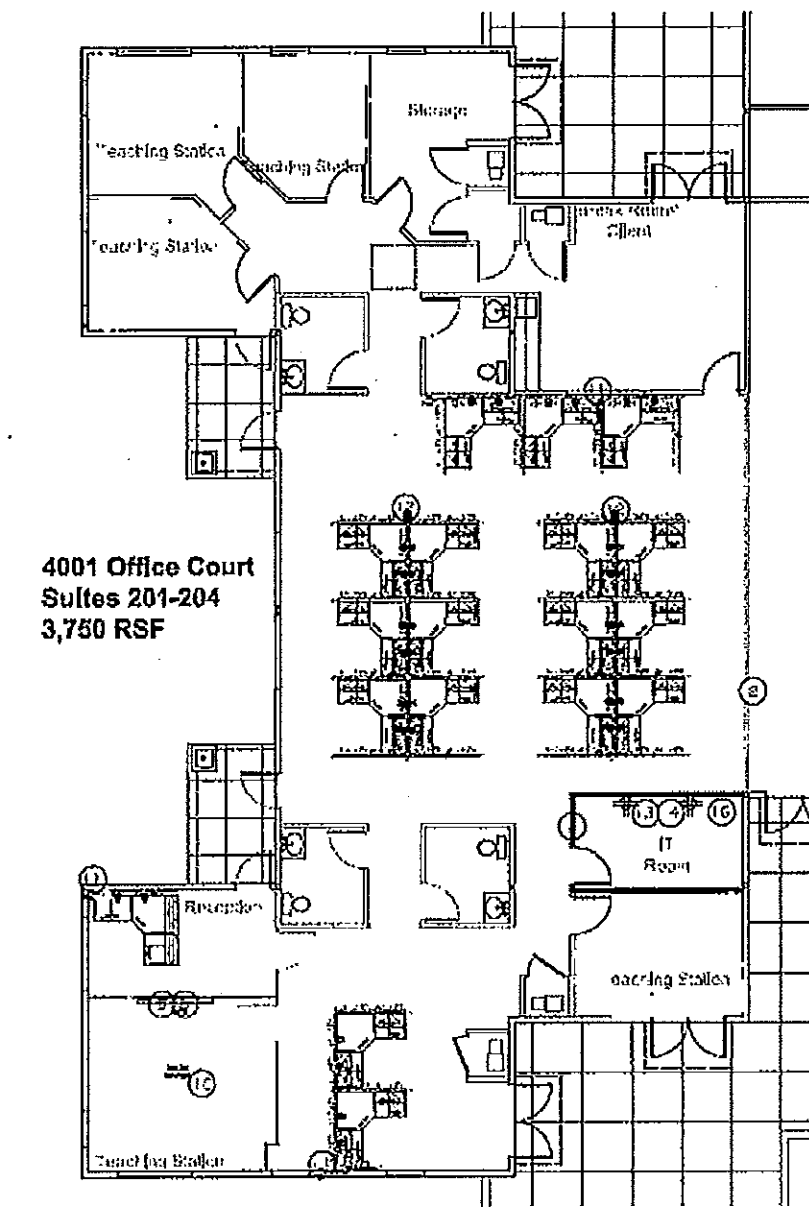


EXHIBIT C

**RULES AND REGULATIONS**

**1. Building Directory:** The directory of the Building shall display Tenant's name, which shall fit on one line of the directory and will be provided at the expense of Landlord. Any additional names other than Tenant's name requested by Tenant to be displayed in the directory must be approved by Landlord in writing, and, if so approved, will be provided at the sole expense of the Tenant.

**2. Signs:** Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction on any part of the outside or inside of the Building, or any part of the outside of the Premises, or on any part of the inside of the Premises which can be seen from the outside of the Premises, without the prior written consent of Landlord, and then only such name or names or content and in such color, size, style, character, material and manner of affixing as may be first approved by Landlord in writing. Landlord reserves the right to remove at Tenant's expense all sign matter not consented to or approved by Landlord.

**3. Compliance with Laws:** Tenant shall comply with all applicable laws, ordinances, governmental orders and regulations and applicable orders and directions from any public office or body having jurisdiction, with respect to the Premises or the Building and the use or occupancy thereof. Tenant shall not make or permit any use of the Premises or the Building which directly or indirectly is forbidden by law, ordinance, governmental regulation or order or direction of applicable public authority, or which may be dangerous to person or property.

**4. Hazardous Materials:** Tenant shall not use or permit to be brought into the Premise or the Building any flammable oils or fluids, or any explosive or other articles deemed hazardous to persons or property, or do or permit to be done anything in or upon the Premises, or bring or keep anything herein, which shall not comply with all rules, orders, regulations or requirements of any organization, bureau, department, or body having jurisdiction with respect thereto (and Tenant shall at all times comply with all such rules, orders, regulations or requirements), or which shall invalidate or increase the rate of insurance on the Building, its appurtenances, contents or operation.

**5. Defacing and Altering Premises and Overloading:** Tenant shall not place anything or allow anything to be placed in the Premises near the glass of any door, partition, wall or window which may be unsightly from outside the Premises, and Tenant shall not place or permit to be placed any article of any kind on any window ledge or on the outside of the exterior walls of the Premises or the Building. Shades, awnings or other forms of outside window ventilators or similar devices, shall not be placed in or about the outside windows in the Premises. No blinds, shades, draperies or other forms of inside window covering other than those accepted by Landlord may be installed in the Premises. Tenant shall not deface any part of the Premises or Building. Tenant shall not overload any floor or part thereof in the Premises in excess of the live load therefore.

**6. Obstruction of Public Areas:** Tenant shall not, whether temporarily, accidentally or otherwise, allow anything to remain in, place or store anything, in, or obstruct in any way, any sidewalk, court, passageway, entrance, exit, loading or shipping area. Tenant shall lend its full cooperation to keep such areas free from all obstruction and in a clean and sightly condition, and move all supplies, furniture and equipment as soon as received directly to the Premises, and shall move all such items and waste that are at any time being taken from the Premises directly to the areas designated for disposal. All courts, passageways, entrances, exits, loading or shipping areas, and roofs are not for the use general public and Landlord shall in all cases retain the right to control

and prevent access thereto by all persons whose presence in the judgment of Landlord shall be prejudicial to the safety or security of the Building or its occupants. No tenant and no employee, agent, licensee, invitee or contractor of Tenant shall enter into areas reserved for the exclusive use of Landlord or its agents, employees, licensees or invitees.

**7. Keys and Additional Locks:** Tenant shall not attach or permit to be attached locks or similar devices to any door or window, or change existing locks or the mechanisms thereof. Upon termination of this Lease or of Tenant's possession, Tenant shall surrender all keys to the Premises and all keys for offices which have been furnished to Tenant or which Tenant shall have made, and in the event of loss of any keys so furnished, Tenant shall pay Landlord therefore.

**8. Toilet Rooms:** The toilet rooms, urinals, wash bowls and the other bathroom apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever including paper towels or sanitary napkins shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, agents, licensees, invitees or contractors, shall have caused it.

**9. Nuisances and Certain Other Prohibited Uses:** Tenant shall not (i) install or operate any internal combustion engine, boiler, or machinery, in or about the Premises; (ii) sell any article, thing or service except those ordinarily embraced within the permitted use of the premises specified in Section 4; (iii) use the Premises for housing, lodging or sleeping purposes; (iv) place any radio or television antennae on the roof or on or in any part of the inside or outside of the Building other than the inside of the Premises; (v) operate any electrical device from which may emanate electrical waves which may interfere with or impair radio or television broadcasting or reception from or in the Building or elsewhere; (vi) bring or permit to be in the Building any dog (except in the company of a blind or deaf person) or other animal or bird; (vii) make or permit any objectionable noise or odor to emanate from the Premises; (viii) disturb, solicit or canvass any occupant of the Building.

**10. Freeze Up:** Tenant shall at all times, whether or not it is currently using the Premises, leave its heating system on at a temperature sufficient to prevent freeze up of any water pipes in the Premises or the walls or ceiling space near the Premises.

**11. Vermin:** If the Premises demised to Tenant becomes infested with vermin, Tenant, at its sole cost and expense shall cause the Leased Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such exterminators as shall be approved by Landlord.

**12. Non-Smoking Building:** The Buildings are non-smoking Buildings and no smoking shall be permitted within the Buildings or at any time. The expense of any cleaning, ventilation, carpeting, painting or other refurbishment to the Buildings or Premises due to smoking by Tenant or Tenant's employees or visitors shall be borne by Tenant.

**13. Amendments:** Landlord reserves the right to make reasonable amendments, modifications, and additions to the rules and regulations heretofore set forth, and to make additional reasonable rules and regulations, as in Landlord's sole judgment may from time to time be needed for the safety, care, cleanliness, and preservation of good order of the Buildings.



**ADDENDUM**

This Addendum ("Addendum") is attached to, incorporated by reference, and constitutes a part of the attached Lease dated May \_\_, 2013, by and between Office Court Development III, LLC, a New Mexico Limited Liability Company (hereafter, the "Landlord") and New Mexico Connections Academy a New Mexico Limited Liability Company (hereafter, the "Tenant") for 4001 Office Court Drive, Suites 201-204 consisting of approximately Three Thousand Seven Hundred Fifty One (3,751) square feet (hereafter the Premises). To the extent any term or provision in the Lease and this Addendum conflict or are inconsistent, the terms and provisions of this Addendum shall govern and control.

1. **CONDITION OF PREMISES:** Landlord represents that as of the date on or before the date of Substantial Completion, the Premises, including any Landlord's Work (as defined below), and any common areas in the Building or under the Lease, shall be in good condition and repair and the Premises and the Building shall be in compliance with all laws and regulations, including the Americans with Disabilities Act ("ADA"). Landlord's Work shall be performed in a good and workmanlike manner with good materials in accordance with the Approved Plans (as hereinafter defined), and the equipment and Building systems serving the Premises are in good working order. Landlord shall maintain compliance in the common areas with all laws, and regulations, including the ADA, throughout the term of the Lease and any renewals. Receipt of a Building Permit by Landlord, a Certificate of Occupancy and Business License by Tenant for the Premises shall be sufficient evidence that the Premises is in compliance with ADA and is in good working order pursuant to the Lease.
2. **LANDLORD'S WORK:** Landlord shall, at Landlord's sole cost and expense, provide a turn-key build-out in accordance with the plans and specifications attached hereto as Exhibit B which have been approved by both Landlord and Tenant (the "Approved Plans") Except as otherwise set forth in the Approved Plans, the Landlord's Work shall be performed and installed using Tenant's choice of "Building Standard Finishes". Landlord shall use commercially reasonable efforts to deliver the Premises with Landlord's Work Substantially Complete by July 1, 2013 (the "Target Delivery Date"). If Landlord fails to deliver the Premises with Landlord's Work Substantially Complete by July 15, 2013, the commencement date for payment of Base Rent and any additional rent shall be postponed and Tenant shall be entitled to a day-for-day rent abatement for each day of delay in delivery of the Premises to Tenant with Landlord's Work Substantially Complete beyond August 1, 2013. If Landlord fails to deliver the Premises as required hereunder by September 1, 2013, Tenant shall have the right, at its sole election, to terminate this Lease by written notice to Landlord and upon such election and neither Landlord nor Tenant shall have any further liability hereunder. For purposes of this Lease, "Substantial Completion," "Substantially Complete" and other similar words shall mean the date upon which: (i) all Landlord's Work has been completed except for minor items commonly known as "punch list" items which will be completed within seven (7) days of the date of Substantial Completion and the completion of which will not interfere with Tenant's use under the Lease, and (ii) a Certificate of Occupancy has been issued to Landlord and/or Tenant which provides that the Premises may be occupied and used for Tenant's business. Completion of any punch list items will be completed subject to Landlord's compliance with Tenant's Access Requirements (as defined in the Lease). Notwithstanding the above timeframes and dates, if Tenant does not execute and deliver the Lease by May 15, 2013, the foregoing dates and timeframes shall be extended on a day-for-day basis so that Landlord has forty-five (45) days from the date of Lease execution by Tenant to achieve Substantial Completion of Landlord's Work and no penalties or rent abatement shall apply until and beyond such 45-

day period. Upon execution of the Lease by Tenant, Tenant shall have early access to the Premises solely for purposes of installation of its furniture and equipment and otherwise preparing the Premises for its use and occupancy, including without limitation, Tenant's installation of its voice/data, surveillance, access and audio/visual systems which Landlord has approved (collectively, "Tenant's Systems") (hereinafter, "Tenant's Work"), without payment of any rent due hereunder, and which early access period may be concurrent with Landlord's performance of Landlord's Work. Tenant shall have the right to use existing telecom conduits and pathways or construct new conduits, install cables, equipment and other related telecommunications facilities for Tenant's network into the Building subject to reasonable approved by Landlord of method and location. Landlord makes no representation or warranty regarding the integrity or utility of any existing telecom conduits, pathways or other related telecom facilities or equipment for Tenant's Systems. Landlord and Tenant shall cooperate and coordinate their joint occupancy and access during the early occupancy period and Tenant shall not unreasonably interfere with Landlord's performance of the Landlord's Work during such early occupancy period.

3. **ASSIGNMENT & SUBLET:** Pursuant to Article XII of the Lease, Tenant (including any Related Entity) shall have the right to sublease and assign all or any portion of the Premises, subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in Article XII or in this Addendum, Tenant may assign or sublet the Premises, or any portion thereof, without Landlord's consent, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from the merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes, in full, the obligations of Tenant under this Lease (a "Related Entity").
4. **RIGHT OF FIRST REFUSAL:** Tenant (including any Related Entity) shall have an ongoing Right of First Refusal on all contiguous space in Building 200 ("ROFR Space"). Upon receipt by Landlord of a bona fide offer to lease space in Building 200, Landlord shall notify Tenant in writing of the terms related thereto, including a copy of the offer, Tenant shall have three (3) business days to respond, and Tenant shall have thirty (30) days to lease the space set forth in the offer. Notwithstanding the foregoing, Landlord shall lease Tenant the ROFR space at the lower rate of either (i) the then current terms of the Lease, or (ii) upon the terms and conditions of the bona fide offer, including a tenant improvement allowance similar to the allowance provided under the Lease or such offer. The term of any contiguous space shall be co-terminus with the Lease Term, however if Tenant exercises this Right of First Refusal during the last twelve (12) months of the then current Lease Term, Tenant shall extend all then current lease terms by at least one additional year but in no event shall such additional year extend beyond August 31 in any such year. Landlord represents and warrants to Tenant that there are no pre-existing rights of other tenants in the Building with respect to the ROFR Space and Tenant's right with respect thereto shall have priority over any other future tenant's right with respect to such space.
5. **TERMINATION OPTION:** Tenant shall have an ongoing right to terminate this Lease if and only if, absent a default by Landlord, Tenant's agreement with the School District (and all other applicable governmental bodies) in the State of New Mexico or its assigns or successors ("Authorizer"), the authorizer of the Tenant's (including its successors or assigns) right to operate a school or funding to operate the school is suspended, revoked, non-renewed, substantially limited or conditioned as to make Tenant's business unviable, voided or terminated. Tenant may invoke the right to an early termination of the Lease upon ninety (90) days written notice to Landlord and shall pay to Landlord a termination fee equal to the then unamortized amount of any initial Tenant Improvements ("Landlord's Work") and real estate commissions (amortized over the initial term at the rate of 8% per annum)

(the "Termination Payment") pursuant to the amortization schedule attached hereto as Exhibit E to this Lease. In no event will the Termination Payment exceed [\$\_\_\_\_\_].

6. SIGNAGE: Tenant shall be granted Building Standard and suite signage on the Building monument sign and building directory at Landlord's sole expense. Tenant may place either Building Standard white Helvetica lettering on its entry(s), or a custom vinyl logo subject to Landlord's approval which shall not be unreasonably withheld.
7. ACCESS TO PREMISES: Tenant shall have access to the Premises 24 hours/day, 7 days/week.

AGREED:

By:

Mark D. De  
Office Court Development III, LLC

Its:

Member

Date:

6-12-2013

By:

Franky P. P. P.  
New Mexico Connections Academy

Its:

NMCA, PIANO PIANO PIANO

Date:

6/10/2013

EXHIBIT D

Amortization Schedule



EXHIBIT D

Inputs	
Square Feet	3,751
Transaction Costs Per SF	\$10.79
Interest Rate	8.00%
Term	3.17 Years

Amount Financed	\$40,463	Payment	\$1,209
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Month	Date	Payment	Interest	Principal	Principal Balance
					\$40,463
1	Jul-13	\$1,209	\$270	939	\$39,524
2	Aug-13	\$1,209	\$263	945	\$38,579
3	Sep-13	\$1,209	\$257	952	\$37,627
4	Oct-13	\$1,209	\$251	958	\$36,669
5	Nov-13	\$1,209	\$244	964	\$35,704
6	Dec-13	\$1,209	\$238	971	\$34,734
7	Jan-14	\$1,209	\$232	977	\$33,756
8	Feb-14	\$1,209	\$225	984	\$32,772
9	Mar-14	\$1,209	\$218	990	\$31,782
10	Apr-14	\$1,209	\$212	997	\$30,785
11	May-14	\$1,209	\$205	1,004	\$29,781
12	Jun-14	\$1,209	\$199	1,010	\$28,771
13	Jul-14	\$1,209	\$192	1,017	\$27,754
14	Aug-14	\$1,209	\$185	1,024	\$26,730
15	Sep-14	\$1,209	\$178	1,031	\$25,699
16	Oct-14	\$1,209	\$171	1,038	\$24,661
17	Nov-14	\$1,209	\$164	1,045	\$23,617
18	Dec-14	\$1,209	\$157	1,051	\$22,565
19	Jan-15	\$1,209	\$150	1,058	\$21,507
20	Feb-15	\$1,209	\$143	1,066	\$20,441
21	Mar-15	\$1,209	\$136	1,073	\$19,369
22	Apr-15	\$1,209	\$129	1,080	\$18,289
23	May-15	\$1,209	\$122	1,087	\$17,202
24	Jun-15	\$1,209	\$115	1,094	\$16,108
25	Jul-15	\$1,209	\$107	1,102	\$15,006
26	Aug-15	\$1,209	\$100	1,109	\$13,897
27	Sep-15	\$1,209	\$93	1,116	\$12,781
28	Oct-15	\$1,209	\$85	1,124	\$11,657
29	Nov-15	\$1,209	\$78	1,131	\$10,526
30	Dec-15	\$1,209	\$70	1,139	\$9,388
31	Jan-16	\$1,209	\$63	1,146	\$8,241
32	Feb-16	\$1,209	\$55	1,154	\$7,087
33	Mar-16	\$1,209	\$47	1,162	\$5,926
34	May-16	\$1,209	\$40	1,169	\$4,756
35	Jun-16	\$1,209	\$32	1,177	\$3,579
36	Jul-16	\$1,209	\$24	1,185	\$2,394
37	Aug-16	\$1,209	\$16	1,193	\$1,201
38	Sep-16	\$1,209	\$8	1,201	(\$0)

Transaction Costs Calculation		
Landlord Rep Commission	N/A	\$0.00
Tenant Rep Commission		\$5,524.11
TI Allowance		\$34,939.14
Unamortized Total		\$40,463.25
PSF		\$10.79

## LEASE AMENDMENT

This lease amendment (hereafter Amendment) is entered into by and between **Office Court Development IV, LLC** (hereafter Landlord) and **New Mexico Connections Academy**, a New Mexico Limited Liability Company (hereafter Tenant), on this **24** day of **November 2015**.

WHEREAS, on or about June 20, 2012 the parties entered into a commercial lease for **Suite 201-204** located at **4001 Office Court Drive**, Santa Fe, New Mexico 87507 (hereafter Lease), consisting of approximately Three Thousand Seven Hundred Fifty One (**3,751**) square feet (hereafter the Premises) and;

WHEREAS, the parties are mutually desirous of amending the Lease; and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein the undersigned hereby agree, covenant and contract as follows:

1. The Lease Term shall be extended for One (1) additional year from September 1, 2016 through August 31, 2017.
2. Effective September 1, 2016, the Rent due under the Lease pursuant to this Amendment shall be Five Thousand One Hundred Fifty Seven and 63/100 Dollars (\$5,157.63) per month for the extended term.
3. All other terms and conditions of the Lease shall remain in full force and effect.

### AGREED:

#### LANDLORD

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

Office Court Development IV, LLC

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

Member

Date: \_\_\_\_\_

3-15-2016

#### TENANT

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

New Mexico Connections Academy

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

Board President

Date: \_\_\_\_\_

3/14/2016 | 9:28 AM MT

## SECOND AMENDMENT TO LEASE

This Second Amendment to Lease (hereafter "Second Amendment") is entered into by and between **Office Court Development IV, LLC** (hereafter "Landlord") and **New Mexico Connections Academy**, a New Mexico Limited Liability Company (hereafter "Tenant") as of March \_\_, 2017.

### RECITALS

WHEREAS, Landlord and Tenant entered into that certain Office Lease Agreement dated as of June 20, 2012, as amended by that certain Lease Amendment dated as of November 24, 2015 (as amended, collectively, the "Lease") pursuant to which Landlord leases to Tenant certain premises to Tenant consisting of approximately Three Thousand Seven Hundred Fifty One (3,751) square feet, designated as Suite 201-204, in the building located at 4001 Office Court Drive, Santa Fe, New Mexico 87507, consisting of approximately (hereafter the "Premises"); and

WHEREAS, the current Lease term expires on August 31, 2017;

WHEREAS, the parties are mutually desirous of extending the current term of the Lease and amending the Lease to, among other things, reflect the extension of the Lease term and the Base Rent during such extended term, subject to and on the terms and conditions set forth in this Second Amendment;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein the undersigned hereby agree, covenant and agree as follows:

### AGREEMENTS

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given such terms in the Lease.
2. Term. The Lease Term shall be extended for ten (10) additional months from September 1, 2017 ("Extended Term Commencement Date") through and including June 30, 2018 (the "Expiration Date") (the "Extended Term"). Tenant shall continue to pay Base Rent through the Extended Term Commencement Date in accordance with the Lease.
3. Rent. Beginning on Extended Term Commencement Date, the Base Rent due under the Lease during the Extended Term shall be Five Thousand Three Hundred Twelve and 36/100 Dollars (\$5,312.36) per month.
4. Option to Renew. Tenant shall have the right, at its option, by giving Landlord written notice at least one hundred twenty (120) days prior to the expiration of the Extended Term ("Tenant's Option Notice"), to renew the term for this Lease for one additional term of three (3) years to commence immediately following the expiration of the Extended Term (the "Second Extended Term"). The Base Rent during the Second Extended Term shall increase by 3% in accordance with the terms of the Lease.

5. Ratification; Full Force and Effect. Except as expressly modified in this Second Amendment, all other terms and conditions of the Lease remain unmodified and in full force and effect. Landlord and Tenant each hereby ratify and reaffirm all other terms and provisions of the Lease.
6. Conflicts. Any inconsistencies or conflicts between the terms and provisions of the Lease and the terms and provisions of this Second Amendment shall be resolved in favor of the terms and provisions of this Second Amendment.
7. Counterparts. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
8. Governing Law. This Second Amendment shall be governed, construed and interpreted in accordance with the laws of the state in which the Premises are located.

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Second Amendment to Lease as of the date and year first above written.

**LANDLORD**

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

Office Court Development IV, LLC

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

*[Signature]*

**TENANT**

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

New Mexico Connections Academy

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

*[Signature]*  
Principal



## **APPENDIX D-5**

### **CERTIFICATION B – NO PUBLIC FACILITY AVAILABLE**

**CERTIFICATION B**  
**No Public Facility Available**

The undersigned hereby certify under penalty of perjury that (insert name of charter school) has diligently sought space in public buildings and that such public buildings are not available or have been determined not to be adequate for the education program of (insert name of charter school).

In addition, the undersigned hereby certify under penalty of perjury that the owner of the facility is fully be responsible for maintaining the facility to the statewide adequacy standards applicable to charter schools, at no cost to the lessee school or to the state, as set forth in NMSA 1978 Section 22-8B-4.2(D)(2)(a), or a successor statute.

**Charter School Governing Board**

By: [Signature]  
Print Name: Mark Barton  
Print Title: PRESIDENT, NMCA MINDY  
Date: 9-26-17

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF (insert county) )

On this 26th day of Sept, 2017, before me, the undersigned officer, personally appeared Mark Barton, known to me to be the person whose name is subscribed to the within instrument, and acknowledged executing the same for the purpose therein contained.



[Signature]  
Notary Public

**Charter School Principal / Administrator**

By: [Signature]  
Print Name: Ramonita Garcia  
Print Title: Principal  
Date: 9/27/17

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF Santa Fe )

On this 27 day of September, 2017, before me, the undersigned officer, personally appeared Ramonita Garcia, known to me to be the person whose name is subscribed to the within instrument, and acknowledged executing the same for the purpose therein contained.



[Signature]  
Notary Public