

THIS LEASE AGREEMENT WITH OPTION TO PURCHASE (this "Agreement"), is made and entered into this \_\_\_ day of April, 2018, by and between the Alice King Community School Foundation, a New Mexico nonprofit corporation ("Lessor") and Alice King Community School, a New Mexico public charter school ("Lessee").

#### RECITALS

A. The Alice King Community School Foundation was organized to support Alice King Community School, specifically for the purpose of providing a school facility for Lessee pursuant to Section 22-8B-4.2(D)(2)(b)(2) NMSA 1978. Upon occupancy by Lessee under this Agreement, and upon the approval of the New Mexico Public School Facilities Authority ("PSFA"), the school facility leased to Lessee pursuant to this Agreement will meet educational occupancy standards required by applicable New Mexico construction codes, and be in compliance with applicable statewide adequacy standards developed pursuant to the Public School Capital Outlay Act, Chapter 22, Article 24 NMSA 1978.

B. Lessee is a public charter school authorized by the Albuquerque Public Schools and duly organized and validly existing under the Charter Schools Act, Sections 22-8B-1 through 22-8B-17.1 NMSA 1978 (the "Act"), and Lessee is authorized by Section 22-8B-4(D) NMSA 1978 to contract with any third party for the use of a school facility.

C. Lessor is a nonprofit corporation organized, existing and in good standing under the Nonprofit Corporation Act, Chapter 53, Article 8 NMSA 1978; is an organization described in Section 501(c)(3) of Title 26 of the Internal Revenue Code; is duly qualified to do business in the State of New Mexico; and is authorized under its articles of incorporation, bylaws, official action of its board of directors and applicable law to own and manage its properties, to conduct its affairs in the State of New Mexico, to lease the School Site to Lessee, and to otherwise act in the manner provided herein.

D. In order to, among other things, finance the cost of acquiring, renovating and equipping buildings located at 8100 Mountain Road N.E. and at 8009 Mountain Road Place N.E. in Albuquerque, New Mexico for use as an educational facility, Lessor has entered into a Loan and Security Agreement, dated as of April 1, 2016 (the "Loan and Security Agreement"), with the Wisconsin-based Public Finance Authority (the "Authority") pursuant to which the Authority will loan to Lessor proceeds from its Educational Facility Revenue Bonds ("Alice King Community School Project") Series 2016 (the "Series 2016 Bonds"), issued under an Indenture of Trust, dated as of April 1, 2016 (the "Indenture"), by and between the Authority and BOKF, NA, part of BOK Financial Corporation, a domestic financial holding company, solely in its capacity as trustee thereunder (the "Trustee"). Lessee is not a party to or an obligor under either the Loan and Security Agreement or the Indenture.

E. The Authority is a "commission" created in accordance with Section 66.0304 of the Wisconsin Statutes Annotated (2013) for the purpose of issuing conduit revenue bonds. The Authority is a unit of government, and a body corporate and politic, separate and distinct from, and independent of, the State of Wisconsin and the political subdivisions which are parties to the agreement creating the Authority.

F. Lessor, as the holder of a lease purchase arrangement within the meaning of Section 22-26A-3(A) NMSA 1978, has assigned all of this Agreement<sup>1</sup> to the Authority consistent with Section 22-26A-5.1(A) NMSA 1978, prior to the approval of this Agreement by the Department pursuant to Section 22-26A-4(B) NMSA 1978, and by the PSFA pursuant to Section 22-20-1(A)(2) NMSA 1978. The Authority in turn has assigned this Agreement to the Trustee as security for the Series 2016 Bonds.

G. Lessor has granted a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of April 29, 2016 (the "Deed of Trust"), to Stewart Title of Albuquerque, New Mexico, as deed of trust trustee, for the benefit of the Trustee. Lessee is not a party to or a beneficiary under the Deed of Trust.

H. The Base Rent and Operating Expenses (both as hereinafter defined) payable by Lessee hereunder shall constitute currently appropriated expenditures of Lessee and shall not constitute a debt or a multiple Fiscal Year direct or indirect obligation whatsoever of Lessee or a mandatory charge or requirement against Lessee in any Fiscal Year (as hereinafter defined) beyond the Fiscal Year for which such payments have been appropriated.

I. The execution, delivery and performance of this Agreement by Lessee are in the best interest of Lessee, serve a public purpose and have been duly authorized by the governing body of Lessee.

J. Lessor desires to lease the School Site to Lessee and Lessee desires to lease the School Site from Lessor, pursuant to the terms and conditions and contingencies and for the purposes set forth in this Agreement, subject ~~in all respects~~ to the liens evidenced by the Loan and Security Agreement and the Deed of Trust.

K. This Agreement, once fully executed by the parties, replaces and supersedes the Lease Agreement between Lessor and Lessee dated April 29, 2016.

#### ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement and all appertaining exhibits and documents, have the meanings herein specified.

"Agreement" means this Lease Agreement with Option to Purchase.

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<sup>1</sup> "... [A] Lease Agreement, dated as of April 29, 2016, as may be amended, restated, modified and/or replaced from time to time, including, without limitation, as may be replaced by a lease agreement with option to purchase as contemplated by such existing Lease Agreement (the "Lease"), by and between the Corporation ["Lessor" herein] and the Charter School ["Lessee" herein]." See, the factual recitation at page 2 of the Loan and Security Agreement between the Public Finance Authority and the Alice King Community School Foundation, dated as of April 1, 2016.  
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"Agreement Payment" means any payment due from Lessee to Lessor under this Agreement.

"Base Rent" means the amount of total base rent as shown on Exhibit B hereto for each month of this Agreement.

"Capital Outlay Act" means the Public School Capital Outlay Act, Chapter 22, Article 24 NMSA 1978.

"Deed of Trust" shall have the meaning ascribed to it in the above recitals.

"Department" means the New Mexico Public Education Department.

"Event of Default" shall have the meaning ascribed to it in Section 11.1 of this Agreement.

"Event of Non appropriation" shall have the meaning ascribed to it in Section 4.3 of this Agreement.

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

"Improvements" means the building and other facilities in on or under the School Site.

"Indenture" shall have the meaning ascribed to it in the above recitals.

"Land" means the real property described in Exhibit A hereto.

"Lessee's Representative" means the president of Lessee's governing body or other designated person delegated the authority to act on behalf of Lessee under or with respect to this Agreement as evidenced by a document conferring such authority executed by Lessee's governing body and delivered to Lessor or Lessor's Representative.

"Lessor's Representative" means the person acting with proper authority to administer and transfer property with respect to this Agreement as evidenced by a document conferring such authority executed by an officer of Lessor, given to Lessee or a Lessee Representative.

"Loan and Security Agreement" shall have the meaning ascribed to it in the above recitals.

"Net Proceeds" means any insurance proceeds or condemnation award paid with respect to the School Site, remaining after payment therefrom of all costs and expenses incurred in the collection thereof.

"Operating Expenses" shall have the meaning ascribed to it in Section 7.1 of this Agreement.

"Option Date" shall have the meaning ascribed to it in Section 6.2 of this Agreement.

"Option to Purchase" means the right of Lessee to purchase the School Site in accordance with the terms of Article VI of this Agreement and the relevant provisions of the Public School Lease Purchase Act.

"Capital Outlay Council" means the New Mexico Public School Capital Outlay Council.

"PSFA" shall have the meaning ascribed to it in the above recitals.

"Purchase Price" shall have the meaning ascribed to it in Section 6.5 of this Agreement.

"Requirements of Law" means any material federal, state, or local statute, ordinance, rule, or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any applicable common law doctrine, any provision or condition of any permit required to be obtained or maintained, or any other binding determination of any governmental authority relating to the ownership or operation of property, including any ~~of~~-relating to environmental, health, or safety matters.

"School Site" means the certain parcel of land as described in Exhibit A and the Improvements thereon.

"Statewide Adequacy Standards" means the standards set forth in 6.27.30 NMAC (09/01/2002, as amended through 08/31/2005), and any subsequent amendments thereto promulgated by the Capital Outlay Council, applicable to the School Site, and any variances from those standards granted to Lessee by the Capital Outlay Council in accordance with Section 22-8B-4.2(F)(2) NMSA 1978.

"Term" means the term of this Agreement set forth in Section 4.1 hereof.

"Trustee" shall have the meaning ascribed to it in the above recitals.

#### Section 1.2 Exhibits.

The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A - Legal Description of Land

Exhibit B - Base Rent Payment Schedule

Exhibit C - Statement of Source of Funds

Exhibit D - Copies of the Department's and the PSFA's separate approvals of this Agreement.

ARTICLE II  
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1. Representations, Warranties and Covenants of Lessee. Lessee represents, warrants and covenants as follows:

(a) Lessee is a public charter school duly organized and validly existing under the Charter Schools Act, and so long as the Series 2016 Bonds are outstanding, Lessee will use its best efforts to comply with the Charter Schools Act. Lessee is authorized: (i) to lease the School Site from Lessor pursuant to this Agreement, and (ii) to execute, deliver and perform its obligations under this Agreement, in accordance with the relevant sections of the Public School Lease Purchase Act, Chapter 22, Article 26A NMSA 1978, and with the provisions of other New Mexico statutes applicable to a lease purchase arrangement, as this term is defined in Section 22-26A-3(A) NMSA 1978.

(b) The execution, delivery, and performance of this Agreement has been duly authorized by Lessee and this Agreement is enforceable against Lessee in accordance with its terms and the laws of the State of New Mexico, subject only to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally and equitable principles, whether considered at law or in equity.

(d) The execution, delivery, and performance of this Agreement are in the best interests of Lessee and serve a public purpose. The School Site is necessary and essential to Lessee's operations, and Lessee will recognize economic and other benefits by leasing the School Site.

(e) To the knowledge of Lessee, there is no litigation or proceeding currently pending or threatened against Lessee or any other person affecting the right of Lessee to execute and deliver this Agreement, the ability of Lessee to make the payments required hereunder, or the ability of Lessee otherwise to comply with its obligations under this Agreement.

(f) The School Site will be operated in accordance with all Requirements of Law.

(g) To the knowledge of Lessee: (i) the School Site has at all times been operated in substantial compliance with all Requirements of Law; (ii) all permits required by Requirements of Law in respect of the School Site have been obtained and are in full force and effect; (iii) there is no pending litigation, investigation, administrative or other proceeding of any kind before or by any governmental authority or other person or entity relating to, or alleging, any violation of any Requirements of Law in connection with the School Site and there are no grounds on which any such litigation, investigation or proceedings might be commenced; (iv) the School Site is not subject to any judgment, injunction, writ, order, or agreement respecting any Requirements of Law; (v) there is no hazardous substance (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, any applicable state law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, any applicable state law or regulations promulgated under either), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in, or under the School Site in Lease Agreement with Option to Purchase - Page 5 of 29

violation of any Requirements of Law during Lessee's actual possession of the School Site; (vi) there has been no disposal of any of the items referred to in clause (v) on, from, into, or out of the School Site in violation of any Requirements of Law; and (vii) there has been no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing, or dispersing of any of the items referred to in clause (v) into the indoor or outdoor environment from, into, or out of the School Site including the movement of any such items through or in the air, soil, surface water, ground water from, into, or out of the School Site or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into, or out of the School Site in violation of any Requirements of Law.

(h) Lessee agrees to keep the School Site in: (a) as reasonably safe condition as the operations there permit; and (b) good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof, as required by Section 6.01 of the Loan and Security Agreement, to which written agreement Lessee is not a party, or under which it is not an obligor.

(i) Lessee's governing body has complied fully with all the provisions in Section 22-26A-6 NMSA 1978 and those in the Open Meetings Act, Chapter 10, Article 15 NMSA 1978 applicable to the actions of Lessee with respect to this Agreement and acquisition of the School Site through a lease purchase arrangement.

(j) Except as provided in Section 6.13 of this Agreement and Section 22-26A-5(K) NMSA 1978, Lessee will not transfer, lease, assign, mortgage or encumber this Agreement or the School Site.

(k) Lessee will use and occupy the School Site for the primary purpose of a public school and activities directly related thereto and for such other public purposes as may be authorized or permitted by Lessee under the laws of the State of New Mexico.

(l) Lessee will conform and comply with all applicable municipal, state and federal ordinances, laws, rules and regulations in using the School Site, and Lessee will not use or suffer to be used the School Site in any manner which contravenes any applicable municipal, state or federal ordinance, law, rule or regulation, so as to create or cause to exist any nuisance or hazardous condition.

(m) Notwithstanding any other provisions of this Agreement, Lessee's governing body represents, ~~and~~ warrants and covenants that it has not directly or indirectly undertaken Lessor's debt under the Loan and Security Agreement, nor has Lessee pledged, transferred, or granted a security interest in, or assigned to any private third party, public funds, monies, grants, or other distributions received, or to be received, by Lessee from or through the State of New Mexico, for the purpose of securing the payment of Lessor's financial obligations under the Loan and Security Agreement, in violation of Article IX, Section 14 of the New Mexico Constitution, or in violation of Article IX, Section 11 of the New Mexico Constitution.

Section 2.2. Representations, Warranties and Covenants of Lessor. Lessor represents, warrants and covenants as follows:

(a) Lessor is a nonprofit corporation duly organized, existing and in good standing under the laws of the State of New Mexico and has full and complete power to enter into this Agreement and to enter into and carry out the transactions contemplated hereby, and to carry out its obligations under this Agreement; and is possessed of full power to own and hold real and personal property, and to lease the same and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or will result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party.

(c) Lessor warrants that it is in good standing pursuant to the terms of any underlying mortgage or financial obligations affecting title to or ownership of the School Site.

(d) To the best of Lessor's knowledge, Lessor has not received any notice that the School Site and/or the present use and condition of the School Site violates any applicable deed restrictions or other covenants, restrictions or agreements, mortgages or conditions of title or ownership, site plan approval, zoning or subdivision regulations, urban development plans, the laws statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions or requirements of any authorities governing or regulating the use and operation, or otherwise applicable to the School Site.

(e) Except as specifically provided in this Agreement, Lessor will not assign this Agreement, its rights to payments from Lessee or its duties and obligations hereunder or thereunder to any other person, firm, or corporation so as to impair or violate the representations, warranties and covenants contained herein.

(f) Lessor will not incur additional indebtedness, other than that directly related to the Series 2016 Bonds, for the purpose of financing the acquisition of the School Site.

(g) To the knowledge of Lessor: (i) the School Site has at all times been operated in substantial compliance with all Requirements of Law; (ii) all permits required by Requirements of Law in respect of the School Site have been obtained and are in full force and effect; (iii) there is no pending litigation, investigation, administrative or other proceeding of any kind before or by any governmental authority or other person or entity relating to, or alleging, any violation of any Requirements of Law in connection with the School Site and there are no grounds on which any such litigation, investigation or proceedings might be commenced; (iv) the School Site is not subject to any judgment, injunction, writ, order, or agreement respecting any Requirements of Law; (v) there is no hazardous substance (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, any applicable state law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, any applicable state law or regulations promulgated under either), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in, or under the School Site in Lease Agreement with Option to Purchase - Page 7 of 29

violation of any Requirements of Law; (vi) there has been no disposal of any of the items referred to in clause (v) on, from, into, or out of the School Site in violation of any Requirements of Law; and (vii) there has been no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing, or dispersing of any of the items referred to in clause (v) into the indoor or outdoor environment from, into, or out of the School Site including the movement of any such items through or in the air, soil, surface water, ground water from, into, or out of the School Site or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into, or out of the School Site in violation of any Requirements of Law.

### ARTICLE III AUTHORIZATION OF AGREEMENT

Section 3.1. Agreement. Lessor hereby leases the School Site to Lessee, and Lessee hereby leases the School Site from Lessor with an option to purchase it, upon the terms and conditions set forth in this Agreement, and in accordance with the laws of the State of New Mexico. This Agreement, once fully executed, supersedes any prior Lease Agreement for the School Site, between the parties.

Section 3.2. Possession and Enjoyment. Lessor hereby covenants with respect to the School Site, to provide Lessee during the Term with quiet use and enjoyment of the School Site, and Lessee shall during the Term peaceably and quietly have and hold and enjoy the School Site, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement.

Section 3.3. Lessor's Access to School Site. Lessee agrees that during the Term of this Agreement, Lessor shall have the right during Lessee's normal working hours on Lessee's normal working days, upon compliance with any security requirements imposed by Lessee and upon reasonable notice, to enter on and examine and inspect the School Site for the purpose of assuring that the School Site is being properly maintained, preserved and kept in good repair and condition. Lessee further agrees that Lessor shall have such rights of access to the School Site as may be reasonably necessary to cause the proper maintenance of the School Site in the event of failure by Lessee to perform its obligations hereunder, provided that at no time shall Lessor be compelled or required to make any improvements, alterations or additions to the School Site.

Section 3.4. Need for School Site. Lessee hereby declares its current need for the School Site and further determines and declares its expectation that the School Site will adequately serve the needs for which it is being leased throughout the stated term of this Agreement. Lessee hereby agrees and determines that the Base Rent and the obligation to pay Operating Expenses during the Term of this Agreement represents not more than the fair market value of the use of the School Site during the Term. In making such declarations and determinations, Lessee has given consideration to the uses and purposes for which the School Site will be employed by Lessee, the benefit to Lessee by reason of the School Site, and the use and occupancy of the School Site pursuant to the terms and provisions of this Agreement.

Section 3.5 Use of School Site. The School Site shall be used and occupied only for education and related purposes and for no other purpose. No portion of the School Site shall be used for sectarian or religious purposes, except as provided in the Equal Access Act of 1984, 20 Lease Agreement with Option to Purchase - Page 8 of 29



U.S.C. § 4071, *et seq.*, or in any other pertinent federal law. Lessee shall comply with all applicable state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services.

ARTICLE IV  
TERM OF AGREEMENT

Section 4.1. Term of Agreement. The Term of this Agreement shall commence upon the later of April 20, 2018, or the date on which Lessee receives approval from both the Department and the PSFA (the "Commencement Date"), with a final lease payment date hereunder not exceeding thirty (30) years after the date of execution of this Agreement, unless this Agreement is terminated earlier pursuant to Section 4.2 hereof.

Section 4.2. Termination of Agreement. This Agreement shall terminate upon the occurrence of the first of the following events:

- (a) the purchase of the School Site by Lessee pursuant to Article VI of this Agreement;
- (b) a default by Lessee and Lessor's election to terminate this Agreement pursuant to Article XI hereof;
- (c) a default by Lessor and Lessee's election to terminate this Agreement pursuant to Article XI hereof; or
- (d) an Event of Nonappropriation and notice from Lessee in accordance with Section 4.3 hereof.
- (e) Lessee's determination, in any Fiscal Year, not to continue this Agreement from year to year or to purchase the School Site, in accordance with Section 22-26A-5(I) NMSA 1978. Lessee shall give Lessor notice of such determination no later than May 1st in each year of the remaining term.

Section 4.3. Termination Due to Nonappropriation.

(a) An "Event of Nonappropriation" shall be (i) if sufficient money is not available to meet any current lease payment under this Agreement; or (ii) a failure by Lessee to appropriate sufficient amounts to proceed under Section 8.3 hereof, following the occurrence of an event described in Section 8.1 hereof.

(b) In the event that during any Fiscal Year, any Operating Expenses shall accrue in excess of amounts included in a duly authorized appropriation for the payment of Operating Expenses, then, in the event that monies are not specifically authorized and directed by this Agreement to be used to pay such Operating Expenses by the earlier of the last Business Day of the Fiscal Year in which such Operating Expenses accrue or ninety (90) days subsequent to the date upon which such Operating Expenses accrues, an Event of Nonappropriation shall be deemed to have occurred, upon due notice to such effect by Lessee to Lessor.

(c) If this Agreement terminates due to an Event of Nonappropriation, effective on June 30 of any Fiscal Year, Lessee shall give written notice of such determination to Lessor not later than May 1 of the Fiscal Year.

(d) Any decision to terminate this Agreement shall be made solely by Lessee's governing body and not by any other department, agency or official of Lessee, except through the exercise of the powers or duties, whether general or specific, of the Secretary of Public Education or the Department, or both, under the Public School Code, Chapter 22 [except Article 5A] NMSA 1978. Lessee shall in any event furnish Lessor proof of appropriation relating to Base Rent and Operating Expenses under this Agreement promptly upon the adoption thereof by Lessee as evidenced by a resolution of Lessee made and delivered to Lessor no later than May 31 of each Fiscal Year. Such resolution shall be signed by an authorized representative of Lessee, provided that this Agreement has not been previously terminated and that Lessee is not in default under the terms of this Agreement at the time.

(e) If an Event of Nonappropriation occurs, Lessee shall not be obligated to pay the Base Rent or Operating Expenses or any other payments provided for herein beyond the amounts specifically appropriated by Lessee for the Fiscal Year during which such Event of Nonappropriation occurs; provided, however, Lessee shall continue to be liable for Base Rent and Operating Expenses, to the extent payable from legally available monies, allocable to any period during which Lessee continues to occupy or retain possession of the School Site.

(f) Lessee shall in all events vacate the School Site and surrender the School Site to Lessor by the thirtieth (30th) calendar day following an Event of Nonappropriation.

Section 4.4. Effect of Termination of Agreement. Upon termination of this Agreement:

(a) All unaccrued obligations of Lessee hereunder shall terminate, but all obligations of Lessee that have accrued hereunder prior to such termination shall continue until they are discharged in full, subject to Section 22-2-2(C) NMSA 1978 under which the Department's School Budget and Finance Analysis Bureau has both the authority and responsibility to immediately take over the control and management of Lessee's assets and finances, as well as the powers and duties of Lessee's governing body designated as a board of finance under Section 22-8B-6(L)(4) NMSA 1978; and

(b) If the termination occurs because of an Event of Nonappropriation or an Event of Default as set forth in Article XI of this Agreement, (i) Lessee's right to possession of the School Site hereunder shall terminate; (ii) Lessee shall, within ninety (90) days, vacate the School Site; and (iii) if and to the extent Lessee has appropriated funds for payment of Base Rent and Operating Expenses payable during, or with respect to Lessee's use of the School Site during, the period between termination of the Term and the date the School Site is vacated, Lessee shall pay such Base Rent and Operating Expenses to Lessor or, in the case of Operating Expenses, the other person entitled thereto, subject to the provisions of Section 22-8B-12.1(C) NMSA 1978, and those of Section 22-2-2(C) NMSA 1978, under which the Department may assume control and management of Lessee's assets and finances, and over the powers and duties of Lessee's governing body designated as a board of finance under Section 22-8B-6(L)(4) NMSA 1978. If

termination occurs because of non-renewal or revocation of Lessee's charter, Base Rent shall be paid through the last day of occupancy, as provided herein.

Section 4.5. Continuation of Agreement. In accordance with Article IX, Section 11 of the New Mexico Constitution and Sections 22-26A-5(I) and (J) NMSA 1978, Lessor acknowledges and agrees that there is no legal obligation for Lessee to continue this Agreement from year to year or to purchase the School Site, and that this Agreement shall be terminated if sufficient money is not available to meet any current lease payments.

Section 4.6. Budgeting. In any Fiscal Year that this Agreement is in effect, such officer of Lessee responsible for the preparation of the annual budget shall include in the budget proposal for the ensuing Fiscal Year an amount equal to one hundred percent (100%) of the Base Rent and one-hundred five percent (105%) of the estimated Operating Expenses hereunder for such ensuing Fiscal Year, provided that the decision whether to extend the term of this Agreement and whether to appropriate such amounts shall remain within the sole discretion of Lessee's governing body.

Section 4.7. Access to Records. The public financial records of the Charter School shall, upon reasonable prior request, be made available to the Lessor for inspection and copying in accordance with Lessor's right of access to the Site and Lessee's obligations for budgeting, insurance and other financial obligations pursuant to this Lease.

#### ARTICLE V LEASE PAYMENTS

##### Section 5.1. Lease Payments.

(a) Lessee agrees to pay Lessor and Lessor agrees to accept as full lease payment for the School Site a sum equal to the total Base Rent as provided in Exhibit B, payable monthly on the fifteenth (15th) day of the first month following the Commencement Date and each succeeding month throughout the term of this Agreement. Any partial month will be calculated on a pro rata basis.

(b) A portion of each payment of Base Rent is paid as, and represents payment of, interest as shown on Exhibit B hereto, which sets forth the principal and interest component of each lease payment, in accordance with Section 22-26A-5(F) NMSA 1978. Upon receipt by Lessor of each payment of Base Rent, Lessor shall apply the amount of each Base Rent payment to principal and interest as shown on Exhibit B, thereby reducing the purchase price to be paid on and after the Option Date. Lessor and Lessee agree that the interest component of each payment and the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act, Sections 6-14-1 through 6-14-3 NMSA 1978.

(c) The parties both agree that the periodic lease payments to be made by Lessee to Lessor as the holder of this Agreement under Section 22-26A-3(A) NMSA 1978 are sufficient to secure a release of the security interest held by the Authority or its assignee in the School Site, and to transfer title to the School Site to Lessee for nominal consideration, after either (i) the final periodic lease payment, or (ii) payment of the Option Price as set forth in Section 6.4 of this Lease Agreement with Option to Purchase - Page 11 of 29

Agreement, together with Lessee's payment of the expenses of transfer of title under Section 6.6 hereof.

Section 5.2. Manner of Payment.

(a) From and after the Commencement Date, Lessee shall pay Base Rent to Lessor or to a person or entity (i) designated by Lessor as Lessor's representative for lease payment collection purposes, or (ii) assigned the right to collect such Base Rent, on the fifteenth (15th) day of each month during the Term from legally available funds, including per pupil operating revenues payable to Lessee.

(b) Operating Expenses owed to third parties by Lessee shall be paid directly from Lessee to such third parties as and when due. Any Operating Expenses payable to Lessor shall be paid directly to Lessor or to a person or entity designated by Lessor as Lessor's representative for lease payment collection purposes, on the fifteenth (15th) day of each month of the Term from any and all legally available funds, including per pupil operating revenues payable to Lessee.

(c) The obligation of Lessee to pay the Base Rent and Operating Expenses required under this Agreement shall not be abated through accident or unforeseen circumstances. Lessee shall, during the Term, make all payments of Base Rent and Operating Expenses when due and shall not withhold any Base Rent or Operating Expenses nor shall Lessee assert any right of set off or counter claim against its obligation to make such payments required hereunder; provided, however, that the making of such payments shall not constitute a waiver by Lessee of any rights, claims, or defenses which Lessee may assert. No action or inaction on the part of Lessor shall affect Lessee's obligation to pay Base Rent and Operating Expenses of this Agreement.

(d) Periodically, at the sole discretion of Lessor, Lessor shall reimburse Lessee any excess funds resulting from the collection of more funds than required to pay the Operating Expenses.

Section 5.3. Nature of Lease Payments. Lessor and Lessee acknowledge and agree that the Base Rent and Operating Expenses hereunder shall constitute currently appropriated expenditures of Lessee and may be paid from any legally available funds as set forth in Section 22-26A-7 NMSA 1978. Lessee's obligations under this Agreement shall not constitute a mandatory charge or requirement for payment of any amounts in excess of amounts appropriated for any Fiscal Year beyond the Fiscal Year for which such appropriation has been made. No provision of this Agreement shall be construed or interpreted as creating a debt or multiple Fiscal Year direct or indirect debt or other financial obligation whatsoever of Lessee within the meaning of any constitutional or statutory limitation or requirement. No provision of this Agreement shall be construed or interpreted as creating a delegation either of governmental powers or as a donation by or a lending of the credit of Lessee within the meaning of any constitutional or statutory limitation or requirement. This Agreement does not directly or indirectly obligate Lessee to make any payments beyond those appropriated for any Fiscal Year for which such payments have been appropriated.

ARTICLE VI  
OPTION TO PURCHASE

Section 6.1. Option to Purchase. Lessor grants to Lessee the option to purchase the School Site at the time, for the consideration, and upon the terms and conditions set forth in this Agreement.

Section 6.2. Accelerated Sale and Transfer. Lessee may purchase the School Site at any time on or after the Option Date. The term "Option Date" shall mean July 1, 2026, or any earlier date on which the Series 2016 Bonds are subject to redemption.

Section 6.3. Notice of Sale and Transfer. Lessee's election to proceed to sale and transfer of the School Site on or after the Option Date must be evidenced by a written notice addressed to Lessor, sent by registered or certified mail to Lessor's office or to any other place designated by Lessor by written notice to Lessee. Such written notice must be given not less than twelve (12) months before the date on which the option is to be exercised and sale and transfer is to occur.

Section 6.4. Option Price. The Option Price shall be the greater of \$1.00 or the remaining balance of the agreed upon Purchase Price as defined in Section 6.5 of this Agreement.

Section 6.5. Purchase Price on Exercise of Option. The price to be paid by Lessee to Lessor for the School Site on or after the Option Date shall be the unpaid principal balance of the Series 2016 Bonds as of the date of the closing on the transfer of the School Site, plus any accrued and unpaid interest, and expenses described in Section 6.6 hereof (the "Purchase Price").

Section 6.6. Expenses of Transfer. The Purchase Price to be paid to Lessor, as provided above, shall include all expenses in connection with the transfer of the School Site, including, but not limited to, title insurance, recording fees, documentary stamps, and all other closing costs and shall be paid by Lessee unless otherwise agreed to between Lessor and Lessee. The Purchase Price shall be paid by Lessee in cash to Lessor concurrently with the conveyance of the School Site by Lessor to Lessee.

Section 6.7. Transfer of Title. Except as provided below, at closing Lessor shall convey the School Site to Lessee free and clear of any mortgage, indenture or other encumbrances. Any such transfer shall be effectuated by a special warranty deed from Lessor to Lessee.

Section 6.8. First Mortgage. Lessee's rights under this option are and shall be subject to any mortgage (including a consolidated mortgage), indenture or deed of trust under which Lessor is the sole obligor, constituting a first lien on the School Site, or any part thereof, whether such mortgage, indenture or deed of trust has heretofore been, or may hereafter be, placed upon the School Site to secure Lessor's indebtedness to any savings bank, bank, trust company, or other institutional lender, private or public for the purchase of the School Site and the construction of the Improvements on the Land, and to any renewal, modification, consolidation, replacement, or extension of any such mortgage or deed of trust. This subordination is limited and relates only to a first mortgage securing an indebtedness that will not at any time on after the Option Date exceed the price at which this option may then be exercised on that date, as herein provided. This subordination shall be self-operative and no further instrument of subordination shall be required. Lessor will cause any such mortgage or deed of trust to contain provisions requiring the holder of the indebtedness secured by mortgage or deed of trust to mail to Lessee by registered Lease Agreement with Option to Purchase - Page 13 of 29

mail, addressed to Lessee at its office as set forth in this Agreement, a copy of each notice of breach of covenant, default, or foreclosure given under such mortgage or deed of trust to Lessor. Notwithstanding the provisions of Section 6.2 hereof, Lessee may, upon receiving notice of breach of covenant, default, or foreclosure under any such mortgage or deed of trust as herein provided exercise this option by paying the then-outstanding principal amount of the debt secured by the mortgage, indenture or deed of trust plus any accrued and unpaid interest.

Section 6.9. Performance of Lease. The right to exercise this option is conditioned upon the faithful performance by Lessee of all its covenants, conditions, and agreements under this Agreement, and the payment by Lessee of all Base Rent, Operating Expenses and other special payments as provided in this Agreement to the date of the completion of the purchase of the School Site by Lessee.

Section 6.10. Adjustments. Adjustments and proration of taxes, water rents, insurance premiums, and similar items shall be made as of the date of the closing of title, in accordance with the practice approved by the parties.

Section 6.11. Security Deposit. The parties stipulate that no security deposit was paid by Lessee as part of this agreement and none is required.

Section 6.12. Priority. During the term of the Lease, this option shall be a covenant running with the land described above, and no conveyance, transfer, easement, or encumbrance of such land shall defeat or adversely affect this option. Upon exercise of Lessee's option or upon termination of the Lease by either party, the covenant shall automatically terminate without the necessity for any additional action.

Section 6.13. Assignment of Option, Binding Effect. With the prior written approval of Lessor, which shall not be unreasonably withheld, the option to purchase under this Agreement is assignable, without cost to Lessee, and with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to another charter school, a school district, the State of New Mexico or one of its institutions, instrumentalities or other political subdivisions.

## ARTICLE VII MAINTENANCE AND INSURANCE

Section 7.1. Absolute Net Lease. Lessee shall pay as additional rent during the Term of this Agreement as herein provided all expenses related to possession, maintenance and operation of the School Site. This Agreement is intended to be and shall be construed consistently with it being an absolute net lease with Lessee paying all expenses related to the School Site, including without limitation, (i) the cost of insurance premiums for insurance required by this Agreement or otherwise deemed necessary or desirable; (ii) the cost of taxes, utility charges, maintenance, upkeep, and repair costs; (iii) all other costs associated with operation, repair and maintenance of the School Site; and (iv) all costs of Lessor for administering this Agreement, to the extent permitted by law. All or any portion of such operating expenses may be paid by Lessee directly to the third parties who are owed the amounts included in Operating Expenses (e.g., insurance companies, taxing authorities, utility companies). All such expenses described in this Section 7.1 shall be defined as "Operating Expenses."

Section 7.2. Removal of Improvements. Lessee hereby agrees and covenants with Lessor that any and all alterations, additions, and improvements, except moveable furniture, equipment, portable or modular buildings and such other items of personal property that are removable from the wall, ceiling and floor surfaces without causing damage to such surfaces, shall become a permanent part of the School Site at the termination of this Agreement, if not removed by Lessee. Lessee agrees that if such Improvements are removed at the termination hereof, it will repair or restore the area of such surface, if removal of Lessee's personal property creates an unsightly condition, by capping any electrical outlets and concealing any surface areas where personal property, such as counters or shelving, may have been stabilized by attachment to such surfaces.

Section 7.3. Lessee's Insurance Obligations.

(a) Liability Insurance. Beginning upon the Commencement Date, Lessee shall procure and maintain or cause to be carried and maintained in full force and effect during the term of this Agreement and any extension thereof at Lessee's sole cost and expense and as additional rent above the Base Rent hereunder, such public liability insurance covering bodily injury, disease, illness or death and property damage liability, as is available from and provided by the New Mexico Public Schools Insurance Authority ("NMPSIA") or its successor with limits of coverage not less than \$300,000 for each person for all past and future medical and medically-related expenses arising out of a single occurrence and \$400,000 in the aggregate for all claims other than medical or medically-related expenses arising out of a single occurrence, and \$100,000 for each accident for property damage liability for the benefit of both Lessee and Lessor as protection against all liability claims arising from activities on the School Site, causing Lessor to be named as an additional-named insured on such policy of insurance, and delivering a copy thereof to Lessor upon the commencement of the term of this Agreement. Lessee shall adjust such minimum coverage limits annually or as necessary to conform to the minimum coverage limits required for local public bodies pursuant to Sections 41-4-19 and 41-4-20 NMSA 1978, and Sections 22-29-1 through 22-29-11 NMSA 1978.

(b) Property Insurance. Subject to the availability of such coverage from NMPSIA, Lessee shall also carry and maintain or cause to be carried and maintained in full force and effect during the term of this Agreement and any renewal thereof, at Lessee's sole cost and expense, fire and extended coverage insurance upon the School Site, including all buildings, alterations, additions and improvements in an amount equal to their replacement values. Lessor shall be named as additional insured and loss payee on the property insurance policy and shall be provided with a copy of this policy annually on the anniversary date of the policy. In the event that the School Site should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, Lessee shall have the option to either continue this Agreement and use the insurance proceeds to replace or repair the School Site and on Lessor's behalf, or terminate this Agreement and tender to Lessor all such insurance proceeds attributable to the loss or damage to the School Site. If for any reason Lessee is prohibited by law or regulation from carrying such insurance, Lessor may obtain such insurance, and Lessee shall pay the premiums of such insurance as Operating Expenses.

Section 7.4. Worker's Compensation Insurance. If required by New Mexico state law as of the Commencement Date, Lessee shall carry worker's compensation insurance covering all of its respective employees on, in, near or about the School Site and upon request, shall furnish certificates to Lessor evidencing such coverage.

Section 7.5. Liens. Except as otherwise expressly provided in this Agreement, neither Lessee or Lessor shall directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Improvements, other than the respective rights of Lessor and Lessee as herein provided. Except as otherwise expressly provided in this Article and Section 9.3 hereof, Lessor and Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time, during the respective party's control of the School Site and each party shall reimburse the other for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim which arose during the control of the School Site.

#### ARTICLE VIII

#### DAMAGE, DESTRUCTION, OR CONDEMNATION; USE OF NET PROCEEDS

Section 8.1 Damage, Destruction or Condemnation. If, during the Term, (i) the School Site or any portion thereof shall be destroyed in whole or in part, or damaged by fire or other casualty; (ii) title to, or the temporary or permanent use of, the School Site or any portion thereof or the estate of Lessee or Lessor in the School Site or any portion thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; (iii) breach of warranty or any material defect with respect to the School Site shall become apparent; or (iv) title to or the use of all or any portion of the School Site shall be lost by reason of defect in the title thereto, then, Lessee shall be obligated, subject to the other provisions in this Agreement, to continue to pay the amounts specified in Section 8.2 hereof and, to the extent of amounts specifically appropriated by Lessee, to pay Base Rent and Operating Expenses.

Section 8.2. Repair and Replacement. To the extent not contrary to applicable New Mexico law, Lessors shall cause such Net Proceeds to be deposited in a separate trust fund held by Lessor. All Net Proceeds of any insurance, performance bonds, or condemnation awards owed to either Lessee or Lessor shall be applied to the prompt repair, restoration, modification, improvement, or replacement of the Improvements. Any repair, restoration, modification, improvement, or replacement paid for in whole or in part out of Net Proceeds shall be the property of Lessor, subject to this Agreement, and shall be included as part of the School Site under this Agreement.

Section 8.3. Insufficiency of Net Proceeds for School Site. If there occurs an event described in Section 8.1 hereof, and if any Net Proceeds received as a consequence of such event are insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the School Site required under Section 8.2 hereof, Lessee shall elect one of the following options:



(a) Lessee may, to the extent permitted by law, in accordance with Section 8.2 hereof, repair, restore, modify, or improve the School Site or replace the School Site (or portion thereof) with property of a value equal to or in excess of the School Site, and pay as Operating Expenses any cost in excess of the amount of the Net Proceeds, to the extent the amounts for Operating Expenses which have been specifically appropriated by Lessee are available for the payment of such costs, and Lessee agrees that, if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any Operating Expenses payments pursuant to the provisions of this paragraph, Lessee shall not be entitled to any reimbursement therefor from Lessor, nor shall Lessee be entitled to any diminution of the Base Rent and Operating Expenses. Notwithstanding the forgoing, Lessor may in its discretion reimburse Lessee for all or part of such Operating Expenses.

(b) If, by June 30th of the Fiscal Year in which an event described in Section 8.1 hereof occurs (or June 30th of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve, or replace the School Site become apparent), Lessee has not appropriated amounts sufficient to proceed under clause (i) of this Subsection, Lessee shall proceed in accordance with Section 4.4 hereof, and Lessor may then pursue remedies as provided in Sections 4.4 and 11.2 hereof, as applicable.

Section 8.4. Cooperation. Lessor and Lessee shall cooperate fully with ~~the~~ each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 8.1 hereof, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the School Site or any portion thereof; and in the prosecution of any action relating to defaults or breaches of warranty under any contract relating to the School Site. In no event shall either party voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to defaults or breaches of warranty under any contract relating to the School Site or any portion thereof without the written consent of the other party. Each party shall be responsible for their respective fees and expenses incurred under this section.

#### ARTICLE IX LESSEE'S IMPROVEMENTS, EQUIPMENT AND WARRANTIES

Section 9.1. Improvements to School Site. Lessee, at its own expense, may remodel, or make additions, modifications or improvements to, the School Site, provided that (a) such remodeling, modifications and additions (i) shall not in any way damage the School Site as it existed prior thereto, and (ii) shall become part of the School Site, subject to the provisions of Section 9.3 hereof; (b) the value of the School Site after such remodeling, modifications and additions shall be at least as great as the value of the School Site prior thereto; and (iii) the School Site, after such remodeling, modifications and additions, shall continue to be used as provided in and shall otherwise be subject to the terms of this Agreement. If Lessee makes and pays for improvements to the School Site, there shall be no additional financial obligations to Lessee without written approval by the Department, in accordance with Section 22-26A-5(L) NMSA 1978.

Section 9.2. Installation of Lessee's Equipment. Lessee may at any time and from time to time in its sole discretion and at its own expense, install items of movable machinery, standard office partitions, railings, doors, gates, counters, cabinets, lighting fixtures, signs and such other furnishings and equipment as may in Lessee's judgment be necessary for its purposes in or upon the School Site. All such items shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the School Site resulting from the installation, modification or removal of any such items upon termination of this Agreement for any reason other than purchase of the School Site by Lessee. Nothing in this Agreement shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the School Site.

Section 9.3. Lien on Improvements by State, School District or Lessee. In accordance with Section 22-26A-5(H) NMSA 1978, if the State of New Mexico's, Albuquerque Public Schools' or Lessee's funds, above those required for lease payments, are used to construct or acquire improvements, the cost of the improvements shall constitute a lien on the School Site in favor of the Albuquerque Public Schools or Lessee and then, if this Agreement is terminated prior to the final payment and the release of the security interest or the transfer of title, at the option of the school district or charter school: (1) Albuquerque Public Schools or Lessee may foreclose on the real estate lien; or (2) the current market value of the School Site at the time of termination, as determined by an independent appraisal certified by the New Mexico Taxation and Revenue Department, in excess of the outstanding principal due under this Agreement shall be paid to the Albuquerque Public Schools or Lessee, in proportion to their respective lienhold interests.

Section 9.4. Warranties. Upon acceptance and purchase of the School Site by Lessee pursuant to Article VI hereof, Lessor will assign to Lessee, all of its interest, if any in all warranties and guarantees or other contract rights against architects, builders, contractors, subcontractors, suppliers, materialmen or manufacturers for the School Site, express or implied, issued on or applicable to the School Site, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessee's sole remedy for the breach of such warranties and guarantees shall be against the provider of such work, service, equipment or materials made to or on the School Site and not against Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder.

Section 9.5. Disclaimer of Warranties. Upon acceptance of the School Site by Lessee, Lessor makes no warranty or representation except as stated in Section 9.4 hereof, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by Lessee of the School Site, or any other representation or warranty with respect to the School Site. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any portion of the Improvements provided for in this Agreement.

ARTICLE X  
ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 10.1. Assignment. Subject to the other provisions in this Agreement, neither party shall assign its interests in this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld or delayed. Any consent by a party to any assignment shall not operate as consent to any further assignment, and any further assignment shall be subject to the prior written consent of the other party in accordance with the provisions of Section 10.1 hereof. Unless otherwise agreed in writing, no assignment permitted hereunder shall relieve a party from liability for the performance of its obligations under this Agreement for the remainder of the then current term.

Notwithstanding any other provisions in this Agreement, with the prior approval of Lessor, which shall not be unreasonably withheld, this Agreement is assignable, without cost to either Albuquerque Public Schools or Lessee, and with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to: (1) a school district or charter school; or (2) the State of New Mexico or one of its institutions, instrumentalities or other political subdivisions, all in accordance with Section 22-26A-5(K) NMSA 1978.

Nothing in Section 10.1 herein shall be deemed to prohibit, limit or restrict Lessee's ability to enter into joint powers agreements for shared use of the School Site, provided that each party to such agreement is a "public agency" as defined in the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7 NMSA 1978, and that both public agencies are authorized by their legislative or other governing bodies to jointly exercise any power common to the contracting parties as provided by law.

Section 10.2. Restriction on Mortgage or Sale of School Site by Lessee. Prior to closing on the purchase of the School Site, Lessee will not mortgage, sell, assign, transfer or convey the School Site or any portion thereof without the written consent of Lessor, which consent shall not be unreasonably withheld or delayed.

Section 10.3. Conditional Consent to Assignment; Subordination of Statutory Lien. Lessee consents to the assignment by Lessor to the Authority, pursuant to the Loan and Security Agreement and the Deed of Trust, respectively, of all rights, title and interest of Lessor in, to and under this Agreement; provided, however, that in the event that Lessee's consent under this section is in conflict with or contrary to any provision of this Agreement, the Public School Lease Purchase Act or other applicable statutory or common law in the State of New Mexico, Lessee's consent hereunder shall be null and void in all respects, and shall be of no further force or effect, either at law or in equity.

The statutory lien arising under this Agreement shall be subordinate to the liens of the Loan and Security Agreement and the Deed of Trust and any liens or security interests created under the Indenture and any other mortgage, deed of trust (now or hereafter placed upon the School Site) and to any and all advances made under any mortgage or deed of trust and to all renewals, modifications, replacements or extensions thereof; provided, however, that in the event of foreclosure on the Deed of Trust caused by Lessor's default under this Agreement, Lessee

shall continue to have the right to possess the School Site or otherwise enjoy its rights under this Agreement provided that it fully performs its obligations hereunder.

ARTICLE XI  
EVENTS OF DEFAULT AND REMEDIES

Section 11.1. Events of Default. Any one of the following shall constitute an "Event of Default" under this Agreement: (i) failure by Lessee to pay any specifically appropriated Base Rent during the Term of this Agreement on, before, or within five (5) days of the applicable due date or to pay Operating Expenses which become due during the Term of this Agreement as and when due, up to the amount specifically appropriated for the payment of Operating Expenses in accordance with the provisions hereof; (ii) failure by Lessee to timely pay any other amounts due by Lessee under the terms of this Agreement within ten (10) days' written demand therefore by Lessor; (iii) failure by Lessee to observe and perform any covenant, condition, or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied shall be given to Lessee by Lessor, unless Lessor shall agree in writing, prior to the expiration of the thirty-day period, to an extension of no more than ninety (90) days; provided, however, that if the failure stated in the notice cannot be corrected within the original thirty-day period, Lessor shall not withhold its consent to an extension of up to ninety (90) days if corrective action shall be instituted by Lessee within such time period and diligently pursued until the default is corrected; (iv) failure by Lessee to maintain its charter under the Charter Schools Act, with all appeals taken within the proscribed time period having been determined; (v) failure by Lessee to vacate the School Site by the thirtieth (30th) calendar day following an Event of Nonappropriation; (vi) Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of its creditors, or shall fail to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing; (vii) an involuntary case or other proceeding shall be commenced against Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary lease or other proceeding shall remain undismissed and unstayed for a period of one hundred twenty (120) days; or (viii) the estate or interest of Lessee in the School Site shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within ninety (90) days after such levy or attachment, unless Lessee shall be contesting such levy or attachment in accordance with the requirements of this Agreement.

The foregoing provisions of this Section are subject to the following limitations: (i) Lessee shall be obligated to pay the Base Rent and Operating Expenses during the Term of this Agreement, except as otherwise expressly provided in this Agreement; and (ii) if, by reason of force majeure, Lessee is unable in whole or in part to carry out any of its obligations under this Lease Agreement with Option to Purchase - Page 20 of 29

Agreement and until the termination or end of the Term of this Agreement, Lessee shall not be deemed in default during the continuance of such inability. Lessee agrees, however, to remedy, as promptly as legally and reasonably possible, and subject to the sufficiency of available appropriations, the cause or causes preventing Lessee from carrying out such obligations; provided that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of Lessee.

Section 11.2. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, Lessor may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) terminate this Agreement and give notice to Lessee to vacate the School Site within one-hundred twenty days (120) days from the date of such notice.

(b) without further demand or notice, reenter and take possession of the School Site, repossess the same, expel Lessee and those claiming through or under Lessee, and remove the effects of both or either, using such force for such purposes as may be lawful and necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Base Rent, Operating Expenses or other amounts payable under this Agreement or as a result of any preceding breach of covenants or conditions;

(c) pursue any and all other rights and remedies available under New Mexico law, at law or in equity;

(d) lease all or any portion of the real property included in the School Site;

(e) recover from Lessee: (i) to the extent the recovery thereof is permitted by New Mexico law, the fair rental value of the use of the School Site during any period beyond the thirtieth (30th) day following the occurrence of the Event of Default; and (ii) Base Rent and Operating Expenses, to the extent amounts for such Operating Expenses have been specifically appropriated in accordance with the provisions of hereof, which would otherwise have been payable by Lessee hereunder during the remainder, after Lessee vacates the School Site, of the Fiscal Year in which such Event of Default occurs.

(f) take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the School Site under this Agreement.

Section 11.3. Force Majeure. The provisions of Sections 11.1 and 11.2 of this Agreement are subject to the following limitations: if by reason of force majeure Lessee or Lessor is unable in whole or in part to carry out its obligations under this Agreement, Lessor or Lessee shall not be deemed in default during the continuance of such inability or during any other delays which are a direct consequence of the force majeure inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military authority other than Lessee or Lessor; insurrections; riots; earthquakes; fires; storms; drought; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other Lease Agreement with Option to Purchase - Page 21 of 29

cause or event not reasonably within the control of Lessor or Lessee and not resulting from the negligence of the party claiming a force majeure event. Lessor and Lessee agree, however, to remedy with all reasonable dispatch the cause or causes preventing them from carrying out their respective obligation under this Agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall not be required if in the judgment of the party raising the defense of force majeure, acceding to the demands of the person or persons creating the strike, lockout or industrial disturbance, would be injurious to such party.

Section 11.4. Remedies Cumulative. The above-provided rights and remedies are cumulative, and not exclusive, of all other rights and remedies to which a party may be entitled in the event of breach or threatened breach by a party in default of any of the terms, conditions and provisions contained herein.

Section 11.5. No Additional Waiver Implied by One Waiver. The failure, neglect or omission of a non-defaulting party to terminate this Agreement for any breach or default shall not be deemed a consent by the non-defaulting party of such breach or default and shall not stop, bar or prevent the non-defaulting party from thereafter terminating this Agreement, either for such violation of for prior or subsequent violation of any covenant hereof. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.6. Dispute Resolution. The parties shall endeavor to resolve all disputes arising as to this Agreement by mediation before a mutually agreed mediator the cost of which shall be shared by the parties. In the event mediation is unsuccessful, arbitration in accordance with the terms of this Section shall be used to resolve any and all claims, disputes or disagreements arising under this Agreement, except for (i) matters requiring immediate exigent relief, including without limitation unlawful detainer; and (ii) all claims by either party which (y) seek anything other than enforcement of rights under this Agreement, or (z) are primarily founded upon matters of fraud, willful misconduct or any other allegations of tortious action, and seek the award of punitive or exemplary damages, which disputes shall be resolved by suit filed in the Second Judicial District Court, Bernalillo County, New Mexico, the decision of which court shall be subject to appeal pursuant to applicable law. The parties hereby agree to conduct themselves in strict, full, complete and timely accordance with the terms of this Section.

(a) Any dispute to be arbitrated pursuant to the provisions of this Section shall be determined by binding arbitration before a single arbitrator (the "Arbitrator") under the auspices of the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration shall be initiated by either party, within thirty days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to AAA. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The parties may agree on the selection of an Arbitrator.

(b) The arbitration shall be conducted in the greater Albuquerque or Bernalillo County metropolitan area and, unless otherwise agreed by the parties must be completed within 180 days. Any party may be represented by counsel or other authorized representative. In rendering a

decision, the Arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of New Mexico and the terms and provisions of this Agreement. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the Second Judicial District Court, Bernalillo County, New Mexico in accordance with the New Mexico Uniform Arbitration Act. The Arbitrator may award costs, including without limitation, attorney's fees, and expert and witness costs, to the prevailing party, if any as determined by the Arbitrator in his or her discretion. A party shall be determined by the Arbitrator to be the prevailing party if its proposal for the resolution of the dispute in the discretion of the Arbitrator was closest to that adopted by the Arbitrator.

## ARTICLE XII

### TITLE: TAX-EXEMPT STATUS OF BONDS

Section 12.1. Public Property. Upon approval of this Agreement by the Department and the PSFA, and execution of this Agreement by the parties, the School Site shall be considered to be a public property pursuant to Section 22-26A-5.1(B) NMSA 1978.

Section 12.2. Subject to the other provisions of this Agreement, the parties hereby covenant and agree as follows:

a. Upon execution of this Agreement, Lessee, a governmental entity as this term is used in the relevant sections of the Internal Revenue Code (Part III of Subchapter B of Chapter 1 of Subtitle A of Title 26 of the United States Code), will acquire an equitable ownership interest in the School Site, and Lessor thereafter will hold bare legal title to the School Site, and then only to the extent of Lessee's lease payments obligations hereunder.

(b) The Series 2016 Bonds were issued to finance the costs of (i) acquiring, renovating, and equipping buildings located at 8100 Mountain Road NE and at 8009 Mountain Place Road NE in Albuquerque, New Mexico for use as an educational facility (collectively, the "Facility"); (ii) funding a bond reserve fund for the Series 2016 Bonds; (iii) funding capitalized interest on the Series 2016 Bonds, and (d) paying the costs of issuance of the Series 2016 Bonds.

(c) Lessor will not claim depreciation or any federal or state tax credit with respect to the School Site.

(d) Neither Lessor nor Lessee will allow an assignment or sublease of the School Site pursuant to this Agreement to any person or entity without an opinion of nationally recognized bond counsel that such assignment or sublease will not adversely affect the tax-exemption of interest on the Series 2016 Bonds.

(e) Lessor and Lessee shall facilitate the transfer of all of Lessor's right, title and interest in the School Site to Albuquerque Public Schools in the event that Lessee ceases to operate as a charter school as this term is defined in Section 22-1-2(B) NMSA 1978-Aet, in the manner and to the extent allowed under the Charter Schools Act.

ARTICLE XIII  
HAZARDOUS MATERIALS LAWS

Section 13.1. Compliance with all Hazardous Materials Laws. As of the Commencement Date, Lessee, shall at all times keep and maintain the School Site in compliance with and shall not cause or permit the School Site or any activities conducted thereon to be in violation of any federal, state or local law, ordinance or regulation relating to commercial or industrial hygiene, environmental safety or the environmental conditions on, under or about the School Site, including, but not limited to, air, soil, subsurface and ground water conditions. Neither party shall permit any subtenant or other occupant of the School Site, except in accordance with applicable Hazardous Materials laws as hereinafter defined, to use, generate, manufacture, store, produce, release, discharge, dispose of or otherwise permit the presence of, on, under or about the premises or transport to or from the School Site any explosives (flammable or otherwise), radioactive materials, pollutants, contaminants, hazardous wastes, hazardous air pollutants, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous pollutants" or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials"). Hazardous materials shall include petroleum products. Upon request of either party, the other party will prepare and provide such reports as will evidence compliance by the party with Hazardous Materials laws, and which will evidence that the School Site and the uses thereon are in compliance with Hazardous Materials Laws. Either party shall immediately advise the other party in writing of its discovery of or receipt of notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws, ordinances, regulations, orders or publications relating to any Hazardous Materials affecting the School Site ("Hazardous Materials Laws"); (ii) any use, generation, manufacture, production, release, discharge, storage or disposal of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the School Site; (iii) all claims made or threatened by any third party against a party or the School Site relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (iii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iv) any occurrence or condition on any property adjoining or in the vicinity of the School Site that could cause the School Site to be subject to any restrictions on the ownership, completion, transferability or use of the premises under any Hazardous Materials Law.

Section 13.2. Lessee's Responsibility. Lessee shall be solely responsible to pay or otherwise satisfy any claim, written notice or demand, penalty, fine, settlement, loss, damage, cost, expense or liability made against Lessor or Lessee directly or indirectly arising out of or attributable to the violation by Lessee of any Hazardous Materials Law, orders, written notice or demand of governmental authorities, or the use, generation, manufacture, storage, release, threatened release, discharge, disposal, production, abatement or presence of Hazardous Materials on, under or about the premises including, without limitation: the costs of any required or necessary investigation, repair, cleanup or detoxification of the School Site, and the preparation and implementation of any closure, abatement, containment, remedial or other required plan and shall to the extent allowable by law applicable to public schools, indemnify Lessor and hold Lessor harmless from any such claim, demand, penalty, fine, settlement, loss,

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damage, cost, expense or liability subject to the limitations and waivers contained in the New Mexico Tort Claims Act and any insurance coverage issued pursuant thereto.

Section 13.3. Remedial Action Required. Without the other party's prior written consent, which shall not be unreasonably withheld, a party shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the School Site, nor enter into any settlement agreement, consent decree, or other compromise in response to any Hazardous Materials claim, which remedial action, settlement, consent or compromise might, in the other party's reasonable judgment, impair the value of party's fee interest in the School Site; provided, however, that prior consent shall not be necessary in the event that: (i)(a) the presence of Hazardous Materials on, under, or about the School Site either poses an immediate threat or is of such a nature that an immediate remedial response is necessary; or (b) any delay in taking such remedial action would result in the imposition of periodic or daily fines; and (c) such action is required by government order; and (ii) it is not possible to obtain the other party's consent before taking such action; provided that in such event notice shall be given as soon as practicable of any action so taken. Each party agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) the party establishes to the reasonable satisfaction of the other party that there is no reasonable alternative to such remedial action that would result in less impairment to the value of the party's interest in the School Site.

Section 13.4. Survival of Lessee's Obligations and Liabilities. Lessee's obligations and liabilities hereunder with respect to Hazardous Materials Claims arising from Lessee's actions shall survive the expiration or other termination of this Agreement.

#### ARTICLE XIV LIMITATION OF LIABILITY

Section 14.1. Limitation of Liability. Neither party shall be liable for special or consequential damages arising from a breach of this Agreement.

#### ARTICLE XV THIRD-PARTY RIGHTS

Section 15.1. Third-Party Rights. Unless otherwise expressly provided in this Agreement, nothing herein is intended to confer any rights or remedies on anyone other than the parties to this Agreement and their respective successors, representatives and assigns. The provisions of this Agreement shall not entitle any person not a signatory to this Agreement to any rights as a third-party beneficiary, or otherwise, it being the specific intention of the parties to this Agreement to preclude any and all non-signatory parties from any such third-party beneficiary rights, or any other rights of any nature.

#### ARTICLE XVI ORDER OF PRECEDENCE; CONFLICT BETWEEN PROVISIONS

Section 16.1. Order of Precedence; Conflict between Provisions. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and Lease Agreement with Option to Purchase - Page 25 of 29

conditions hereof, nor the consummation of the transactions contemplated hereby, shall conflict with or result in a breach of the terms, conditions, or provisions of any material restriction or any agreement or instrument to which Lessee is a party; provided, however, that in the event of any conflict or inconsistency between the provisions of this Agreement and those in any of the private placement bond documents related to the issuance and repayment of the Series 2016 Bonds, the provisions of this Agreement shall govern in all respects, and shall be construed as to not result in any material breach by Lessee of the terms and conditions of this Agreement.

Section 16.2. Nothing in this Agreement shall be construed as diminishing, unlawfully delegating, or otherwise restricting any legal authority of Lessee or its governing body under the laws of the State of New Mexico, including the Public School Lease Purchase Act and the Charter Schools Act.

#### ARTICLE XVII ADMINISTRATION PROVISIONS

Section 176.1. Notices. All notices required under this Agreement shall be in writing, signed by the party or agent sending them, and (i) delivered personally, (ii) sent by registered or certified mail, (iii) sent by a recognized overnight express mail carrier, or (iv) sent by facsimile or electronic mail, if a copy is sent by one of methods (i), (ii) or (iii) as soon as practicable thereafter, addressed to Lessor or Lessee, as the case may be, at the following addresses (or such other addresses as either party may give by notice conforming with this Section 15.1), and such notices shall be effective on the date of receipt thereof.

Lessor:

Alice King Community School Foundation,  
1905 Mountain Road, N.W.  
Albuquerque, New Mexico 87104  
Attn: President  
Facsimile No.: 505-344-0789  
Email: [foundation@akcs.org](mailto:foundation@akcs.org)

With a copy to:

Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
P.O. Box 2168  
Albuquerque, New Mexico 87103  
or  
500 Fourth Street N.W. Suite 1000  
Albuquerque, New Mexico 87102  
Attn: Christopher Muirhead  
Facsimile No.: (505) 848-9710  
Email: [chris.muirhead@modrall.com](mailto:chris.muirhead@modrall.com)

Lessee:

Alice King Community School  
8100 Mountain Rd PINE,  
Albuquerque, NM 87110

Attn: Head Administrator  
Facsimile: (505) 344-0789  
Email: [www.akcs.org](http://www.akcs.org)

With a copy to:  
Cuddy & McCarthy, LLP  
1701 Old Pecos Trail  
Santa Fe, New Mexico 87505  
Attn: Charlotte Hetherington  
Facsimile: (888) 977-3814

Section 17.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective administrators, successors and assigns.

Section 17.3. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect. Nothing in this section shall in any way limit or affect the right of the parties to amend this Agreement.

Section 17.4. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by a written amendment authorized and executed by both Lessee and Lessor. Amendments to this Agreement shall be approved by the Department as may be required under Section 22-26A-5(L) NMSA 1978.

Section 17.5. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, if necessary, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed purpose of this Agreement.

Section 17.6. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 17.7. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of New Mexico, without regard to conflict of laws rules.

Section 17.8. Lessor and Lessee Representatives. Whenever under the provisions of this Agreement the approval of Lessor or Lessee is required, or Lessor or Lessee is required to take some action at the request of the other, such approval of such request may be given for Lessor by a Lessor Representative and for Lessee by a Lessee Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 17.9. Integration. This Agreement contains all of the agreements of Lessee and Lessor respecting the subject matters hereof, and all prior negotiations are merged herein.

Section 17.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 17.11. Business Days. If the day upon which any action required by the Agreement shall fall on a Saturday, Sunday or banking holiday, then such actions shall be deemed timely if made or taken on the next succeeding business day.

Section 17.12. Memorandum of Lease with Option to Purchase. Either party may record a memorandum of this Agreement in the real property records of Bernalillo County, New Mexico, and the other party will cooperate in signing such a memorandum for recordation.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer, as of the date first written above.

Lessor:  
Alice King Community School Foundation

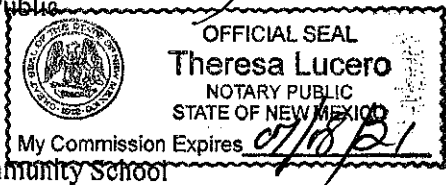
By: [Signature]  
Name: Carlos Romero  
Title: President

STATE OF NEW MEXICO )  
 ) SS.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me this 7th day of June, 2018, by Carlos Romero President of the Alice King Community School Foundation, a New Mexico nonprofit corporation.

[Signature]  
Notary Public

My Commission Expires: 07/08/21



Lessee:  
Alice King Community School

By: [Signature]  
Name: Aaron Kugler  
Title: Board President

STATE OF NEW MEXICO )  
 ) SS.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me this 8th day of June, 2018,  
by Liam Hugel as Board President of Alice King Community School, a New  
Mexico public charter school.

*David B. Coover*  
Notary Public

My Commission Expires: 9/20/18

