# LEASE AGREEMENT

This Lease Agreement ("Lease") is made effective as of July 1, 2019 ("Effective Date"), by and between NIDOS, LLC, ("Landlord"), and Roots and Wings Community School, a New Mexico public charter school ("Tenant"). The parties agree as follows:

1. **PREMISES.** Landlord leases to Tenant the real property commonly referred to as 35 La Lama Road, Questa, County of Taos, New Mexico 87556 that is comprised of two school buildings, as described in Exhibit A attached hereto (collectively referred to hereafter as the "Premises").

2. **TERM**. The Lease Term shall commence on July 1, 2019 ("Commencement Date") and will terminate on June 30, 2022. This Lease may terminate early upon final execution of a Lease Purchase Arrangement by the Parties pursuant to NMSA 1978, §22-26A-1, *et seq.* In said event, this Lease will be cancelled and have no further effect as of the date rent commences under the Lease Purchase Arrangement.

3. **LEASE PAYMENTS**. Beginning on the Commencement Date, Tenant shall pay to Landlord rent of $3561.56 per month through June 30, 2022. Rent shall be postmarked by the first (1st) day of each month unless otherwise requested in writing by landlord. Invoices must be received from the landlord no later than the 25th of each month. Tenant shall maintain accurate records of all invoices received. Lease payments shall be made to Landlord at P.O. Box 820, El Prado, New Mexico 87556, which location may be changed, in writing by Landlord, with a minimum of seven (7) days advanced notice to Tenant. For each payment that is not paid within ten (10) days after its due date, Tenant shall pay a late fee of $10.00 per day, beginning with the day after the due date.

4. **DELIVERY OF PREMISES**. Tenant currently is in possession of the Premises and shall remain in possession thereof pursuant to this Lease beginning on the Commencement Date. Tenant shall yield possession to Landlord on the last day of the Lease Term, unless otherwise agreed by both parties in writing. At the expiration of the Lease Term, Tenant shall remove all of its property and effects within thirty (30) days, weather permitting, and peaceably yield up the Premises to Landlord in as good condition as when delivered to Tenant, ordinary wear and tear excepted.

5. **SECURITY DEPOSIT AMOUNT**. Landlord currently holds a security deposit paid by Tenant pursuant to obligations of previous leases in the amount of $6,700.00. The Security deposit is for the performance of this Lease and not as a prepayment of rent. If Tenant defaults under this Lease, Landlord may apply all or any part of the Security Deposit for the payment of rent or other sums in default, the repair of any damage to the Premises caused by Tenant, the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If Tenant performs all of its obligations under this Lease and returns the Premises to Landlord at the end of the Lease Term, Landlord shall return all of the remaining Security Deposit to Tenant within thirty (30) days after the end of the Lease Term and account for any unreturned amounts.

6. **TERMINATION**. Either party may terminate this lease upon sixty (60) days written notice. Upon termination, this Lease shall be of no further force or effect.

7. **SURRENDER**. At the end of the Lease term or in the event the Tenant terminates this Lease pursuant to the provisions herein, the Landlord acknowledges that the Tenant may remove any and all improvements made to the property at the Tenant's expense including, but not limited to, the roof solar

panels and associated system, playground equipment, and perimeter fencing. Tenant will have thirty (30) days, with allowances made for inclement weather, to remove such improvements; after this time period, such improvements become the property of the Landlord. If such improvements are not desired by the Landlord, the Landlord has the right to remove such improvements.

8. **USE OF PREMISES**. Tenant shall occupy and use the Premises as a school for grades K-8 and related purposes.

9. **PROPERTY INSURANCE.**

TENANT shall maintain the following coverage:

a. **Liability Insurance**: Tenant shall procure and maintain or cause to be carried and maintained in full force and effect during the term of this Lease and any extension thereof at Tenant's sole cost and expense, 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, $400,000 for bodily injury (excluding Medical Expenses) and $750,000 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 Tenant and Landlord as protection against all liability claims arising from activities on the Premises, causing Landlord to be named as an additional-named insured on such policy of insurance, and delivering a copy thereof to Landlord upon the commencement of the term of this Lease. Tenant 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, as amended.

b. **Property Insurance**. Tenant shall also carry and maintain or cause to be carried and maintained in full force and effect during the term of this Lease and any renewal thereof, at Tenant's sole cost and expense, fire and extended coverage insurance upon the Premises, including all buildings, alterations, additions and improvements, in an amount equal to their replacement values. Landlord and lending institution(s) of record, if such information is provided to Tenant, shall be named as additional insureds and loss payees on the property insurance policy. Landlord shall be provided with a copy of this policy annually on the anniversary date of the policy. In the event that the Premises should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, Tenant shall have the option to either continue this Lease and use the insurance proceeds to replace or repair the Premises on Landlord's behalf, or terminate this Lease and tender to the Landlord all such insurance proceeds attributable to the loss or damage to the Premises.

LANDLORD shall maintain the following coverage:

Landlord shall carry and maintain or cause to be carried and maintained in full force and effect at Landlord's sole cost and expense, public liability insurance covering bodily injury, disease, illness or death and property damage liability, with limits of coverage not less than $1,000,000 for each person for all past and future medical and medically-related expenses arising out of a single occurrence and $2,000,000 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 Landlord and Tenant as protection against all liability claims arising from activities on the Premises, causing Tenant to be named as an additional named insured on such policy of insurance, and delivering a copy thereof to Tenant.

10. **DAMAGE CAUSED BY TENANT**. If any damage to the property shall be caused by Tenant's acts or neglect, the Tenant shall forthwith repair such damage at its own expense.

11. **MAINTENANCE AND REPAIRS.**

Repairs and Maintenance by Landlord.
(a) During the Lease Term, Landlord shall be responsible for maintaining in good condition (to Educational Occupancy Standards and Statewide Adequacy Standards, as applicable), including repairs and replacements, the roof, HVAC system, foundations and exterior walls of the Buildings housing the Premises, and electrical, plumbing and drainage systems servicing the Premises, and all of the Common Areas, including parking areas, landscaping and exterior lighting, and damage due to fire or casualty, to the extent this Lease requires Landlord to insure against such fire or casualty. All repairs and maintenance to be made by Landlord shall be at Landlord's risk and expense.

(b) If, within seven (7) days after written notice by Tenant to Landlord (or such shorter time as may be required in an emergency or pursuant to the Requirements of Law), Landlord fails to provide any of the maintenance, repairs or replacements required of Landlord in order to remain compliant with Educational Occupancy Standards and Statewide Adequacy Standards, and/or fails to complete the same with reasonable diligence, then Tenant may, at its option, provide such maintenance, repairs or replacements and the costs thereof shall be deducted from succeeding Base Rent and Additional Rent, if any, payable hereunder. Tenant shall send a detailed invoice to Landlord prior to deducting any amount from rents. In case of emergencies that affect the health and safety of students or staff and where notice to Landlord is not practical or possible, Tenant may make repairs immediately and offset from future rents all costs and expenses related to such repairs.

Repairs and Maintenance by Tenant. Subject to the obligations of Landlord set forth in the previous paragraph, Tenant shall be responsible for ensuring the interior of the Premises are kept in good condition, including ordinary repairs and replacements, and providing for janitorial services, with reasonable wear and tear and loss due to casualty and eminent domain excepted. Tenant shall also be liable for maintenance, repair and replacement obligations arising as a result of the tortious conduct of Tenant, its employees, students, agents or representatives, subject to the waiver of subrogation provided for herein. Tenant shall be responsible for keeping sidewalks and the courtyard free of snow and ice, plowing snow from parking lot and entry, maintaining and repairing Tenant's solar panels and solar system, replacing and making repairs to windows.

12. **UTILITIES AND SERVICES.** Tenant shall be responsible for all utilities and services in connection with the Premises for the term of this Lease including propane gas, electricity, heat, power, internet and servers, telephone systems, fire alarm services, audio and video systems, public address systems, security alarms, pest control and other utility charges incurred in connection with the Premises. The Landlord shall be responsible to provide continuous potable water to the Premises and to maintain the septic system and leach field currently servicing the Premises to the standards required by the New Mexico Environment Department or such other applicable governmental authority.

13. **TAXES.** Landlord shall pay all real property taxes and assessments, any tax or excise on rents, and any tax or charge for governmental services on the Premises, if any.

14. **CONDITION OF PREMISES.** To the best of Landlord's knowledge the Landlord warrants that:

a. They have not received any notice that the Premises and/or the present use of the Premises 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 Premises.

b. To the best of Landlord's knowledge, there are no underground storage tanks at the Premises other than the propane tank installed by the Tenant and, to the best of Landlord's knowledge, Landlord has not used the Premises to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource Conservation and Recovery Act (42 U.S.C.A. §§6901 et seq.) as amended, the comprehensive Environmental Response Compensation and Liability Act (42 U.S.C.A. §§9601 et seq.) as amended, or any other related Legal Requirement, and to the best of Landlord's knowledge, Landlord has not caused, and has no knowledge of the leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any hazardous substances on or off the Premises on adjacent properties.

15. **DEFAULTS**. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provision of law to the contrary, if Tenant fails to cure or to commence to cure any obligation under this lease within ten (10) days after written notice of such default provided by Landlord to Tenant, Landlord may elect to cure such default and the cost of such action shall be invoiced to the Tenant. Tenant shall pay for all reasonable charges within thirty (30) days of receipt of the invoice.

16. **HOLDOVER**. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord lease payment(s) during the Holdover Period at a rate equal to 100% of the most recent rate preceding the Holdover Period. Such holdover shall constitute a month-to-month extension of this Lease.

17. **NON-SUFFICIENT FUNDS**. Tenant shall be charged for the actual fee charged to Landlord not to exceed $50.00, plus $10.00 for handling fees by Landlord for each check that is returned to Landlord for lack of sufficient funds.

18. **CONDITION OF PREMISES; TENANT IMPROVEMENTS.** Landlord agrees that it shall make such improvements, at no cost to Tenant, that are required to maintain the facility in compliance with New Mexico Statewide Adequacy Standards (NMSA 1978, §22-8B-4.2(F) and 6.27.30 NMAC) as applicable to Tenant, a New Mexico public charter school as determined by the Public School Facilities Authority. Tenant and Landlord have been informed by the New Mexico Public School Facilities Authority that as of April 20, 2016 the Premises meets the average New Mexico weighted condition index. Tenant, consistent with law, may construct such fixtures on the Premises, at Tenant's expense, that appropriately facilitate its use as a public school. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of Landlord, which shall not be unreasonably withheld. At the end of the lease term, Tenant shall be entitled to remove, or at the request of Landlord, shall remove such fixtures, and shall restore the Premises to substantially the same condition of the Premises at the commencement of this Lease. Landlord shall not be required to repair or maintain Tenant improvements.

19. **ACCESS BY LANDLORD TO PREMISES**. Subject to Tenant's consent, which shall not be unreasonably withheld, Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. Landlord shall comply with Tenant's security policies at all times while on the Premises. Landlord may enter the

Premises without Tenant's consent in case of an emergency. Tenant will provide keys to the property to Landlord within 24 hours of any change of the building's external door-locks, or any other locked door to which the Landlord may need emergency access.

20. **DANGEROUS MATERIALS**. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

21. **MECHANIC'S LIENS**. Tenant shall not directly or indirectly, create, incur, assume or suffer any lien, charge, encumbrance or claim with respect to the Premises or any improvements made. Tenant, at its own expense, will take such action as may be necessary duly to discharge or remove any such lien, charge, encumbrance or claim, if the same shall arise at any time during the Lease Term.

22. **SUBORDINATION OF LEASE**. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises. However, the Lease shall be enforceable against any subsequent purchaser of the Premises.

23. **INDEMNIFICATION**.

a. Indemnification by Tenant. Landlord releases and discharges Tenant and its "public employees" as defined in the Tort Claims Act from any and all claims, damages and causes of action arising out of any damage to or destruction of the Premises where such damage or destruction was not caused by the willful act of Tenant or any of its volunteers and public employees. Within the limits and subject to the provisions of the Tort Claims Act, Tenant shall protect, defend, indemnify, and save harmless Landlord from all claims, actions, demands, liability and expense of loss of life, damage, or injury to persons or property, proximately caused by Tenant, its employees and volunteers acting within the scope of their duties pursuant to this Lease, except to the extent caused by the negligent or intentional acts or omissions of Landlord, its agents, representatives and employees. Nothing hereby shall be construed to waive or in any way abrogate immunities of the Tenant preserved by the Tort Claims Act.

b. Indemnification by Landlord. Except to the extent caused by the negligent maintenance of the Premises by the Tenant, its employees and volunteers acting within the scope of their duties, Landlord shall protect, defend, indemnify, and save harmless Tenant, its employees and volunteers acting within the scope of their duties from all claims, actions, demands, liability, and expense of loss of life, damage, or injury to persons or property, arising out of the negligent or intentional acts or omissions of Landlord, its agents, representatives, and employees.

24. **ASSIGNABILITY/SUBLETTING**. Tenant may not assign or sublease any interest in the Premises, nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld. Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations under this Lease and in the Premises without the consent of Tenant; provided that such transfer or assignment shall not adversely affect any rights of Tenant under the Lease.

25. **NOTICE**. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed to the party at the appropriate address set forth below. Such addresses may be changed from time to time by either party by providing notice as set forth below. Notices mailed in accordance with these provisions shall be deemed received on the third day after posting.

**LANDLORD:**

NIDOS, LLC
P.O Box 820
El Prado, New Mexico 87529

**TENANT:**

Roots and Wings Community School
35 La Lama Rd
Questa, NM 87556

26. **GOVERNING LAW**. This Lease shall be construed in accordance with the laws of the State of New Mexico.

27. **ENTIRE AGREEMENT/AMENDMENT**. This Lease contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by both parties.

28. **SEVERABILITY**. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

29. **WAIVER**. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

30. **BINDING EFFECT**. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

31. **DISPUTE RESOLUTION**. Except as otherwise expressly stated in a Lease Amendment, disputes on any matter relating to this Agreement shall be discussed and resolved by authorized representatives of each party who have the authority to bind the party that they represent. The parties shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute within a reasonable time period as determined by the representatives, the parties may pursue any other legal means, such as mediation, for resolving disputes that may arise from or under this Agreement.

32. **SUFFICIENT APPROPRIATIONS**. The terms of this Lease are contingent upon sufficient appropriations and authorizations being made by the Tenant and, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorization are not made in this or future fiscal years, this Lease shall terminate upon written notice being given by Tenant to Landlord and Tenant shall have no duty to reimburse Landlord for expenditures made in the performance of this Agreement incurred after written notice to Landlord is provided by the Tenant pursuant to this paragraph. Tenant is expressly not committed to expend any funds until such time as they are

programmed, budgeted, encumbered and approved for expenditure by the Tenant.

33. **EARLY TERMINATION.** This Lease will be terminated upon nonrenewal or revocation of the Tenant's charter. In said event, the Lease termination date under this provision shall be the final effective date of the nonrenewal or revocation and this Lease and all of its terms shall be cancelled without further obligations of the Tenant, its authorizer or the State of New Mexico.

**IN WITNESS WHEREOF** the consideration stated herein, the Landlord and Tenant have duly approved and executed this Lease as of the dates written below.

**TENANT:**

_____ Date: 5-8-2019

Michael Rael, President RWCS Governing Council
Roots and Wings Community School

**LANDLORD:**

_____ Date: 5·8·2019

NIDOS, LLC. Registered Agent