

LEASE AGREEMENT

Dated as of June _____, 2023,

by and between

B.H. 4201 DEL REY BOULEVARD, LLC,
a California limited liability company

and

EXPLORE ACADEMY – LAS CRUCES,
A New Mexico state-authorized public charter school.

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into by and between B.H. 4201 Del Rey Boulevard, LLC, a California limited liability company ("Lessor"), as lessor, and Explore Academy – Las Cruces, a New Mexico public charter school ("Charter School"), as lessee, effective as of June ____, 2023 (the "Effective Date").

RECITALS

A. Lessor owns real property located at 4201 Del Rey Boulevard, Las Cruces, NM, consisting of approximately 8.25 acres ("Land") containing an approximately 45,761 square-foot building ("Building"), and more particularly described on Exhibit A (together, the "Property" and sometimes the "Premises").

B. Under the terms of the Lease, the Lessor shall renovate the Property to all applicable Educational Occupancy and NMPSFA state adequacy standards applicable to New Mexico charter schools, and shall make certain Improvements to the Property described in Exhibit B hereto (collectively, the "Improvements") so that it may be used by the Charter School as a public charter school and for related uses.

C. As of the Rental Commencement Date (as hereinafter defined) the entire Property shall meet educational occupancy requirements of the governmental authorities with jurisdiction and the Statewide Adequacy Standards for New Mexico public schools as contemplated by NMSA 1978, §22-8B-4.2(D)(2), the improvements of which are based on the Plans and Specifications (defined below).

D. The Charter School is a public charter school authorized by the New Mexico Public Education Commission and duly organized and validly existing pursuant to the New Mexico Charter Schools Act, NMSA 1978, §§ 22-8B-1, *et seq.* (the "Act"), and the Charter School is authorized by Section 22-8B-4(D) of the Act to contract with any third party for the use of a school building and grounds.

E. Lessor is a limited liability company, organized, existing, and in good standing under the laws of the State of California and is authorized under its articles of incorporation, bylaws, 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 Property to the Charter School, and to otherwise act in the manner contemplated herein.

F. The Base Rent and Additional Rent (both as hereinafter defined) payable by the Charter School hereunder shall constitute currently appropriated expenditures of the Charter School and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the Charter School, or a mandatory charge or requirement against the Charter School in any fiscal year (as hereinafter defined) beyond the fiscal year for which such payments have been appropriated.

G. The Lessor herein agrees to extend to the Charter School or its nonprofit assignee, an option to purchase the Property after January 1, 2026 and prior to March 31, 2026, the terms of which Purchase Option shall be based upon the terms and conditions outlined in Exhibit C, Purchase Option.

H. The execution, delivery and performance of this Lease by the Charter School are in the best interest of the Charter School, serve a public purpose, and have been duly authorized by the governing board of the Charter School.

I. The Lessor desires to lease the Property to the Charter School and the Charter School desires to lease the Property from the Lessor, pursuant to the terms and conditions and contingencies and for the purposes set forth in this Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following terms shall have the meaning set forth below:

"Additional Rent" means all amounts due by the Charter School under the terms of this Lease, except Base Rent.

"Agreement" or "Lease" means this Lease Agreement, dated as of the Effective Date, by and between the Lessor and the Charter School and any amendments or supplements hereto, including all exhibits hereto and thereto.

"Base Rent" means the amount of "Base Rent" shown on Exhibit D attached hereto for each month of this Lease.

"Business Day" means any day other than a Saturday, Sunday or a day on which banking institutions in the State of New Mexico are authorized to be closed.

"Building" means the existing 45,761 +/- square foot structure located at 4201 Del Rey Blvd., Las Cruces, NM, as part of the leased Property covered by this Agreement.

"Commencement Date" means the date of execution of this Agreement by the parties.

"Event of Default" shall have the meaning ascribed to it in Section 8.1.

"Extended Term" shall have the meaning ascribed to it in Section 5.

“Property” means, collectively, the Land, Building, Improvements, and furnishings and equipment, if any, leased by the Lessor to the Charter School under this Agreement.

"Fiscal year" means the Charter School's fiscal year, which begins on July 1 of any year and ends on June 30 of the following calendar year.

"Force Majeure" means 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 of the State or any of their departments, agencies, or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other causes not within the control of the Charter School or the Lessor. Other than in the event of a Non- appropriation (defined below), financial incapacity of a party shall not be claimed as a Force Majeure event, nor shall a Force Majeure event be construed so as to affect either party's obligations to make any monetary payment to the other party under this Lease.

“Improvements” – as defined in the recitals and Exhibit B.

"Initial Term" shall have the meaning ascribed to it in Section 4.

"Land" means the approximately 8.25 acres located at 4201 Del Rey Blvd., Las Cruces, New Mexico, as part of the leased Property covered by this Agreement.

“Net Proceeds” means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys' fees) incurred in the collection of such gross proceeds.

"Non-appropriation" means a failure by the State legislature or Public Education Department to appropriate or distribute sufficient funds to the Charter School to make the Base Rent and Additional Rent payments required by this Lease.

"Possession Date" and/or “Rental Commencement Date” means the latter of January 1, 2024 or the date on which all Improvements mutually agreed between the Lessor and the Charter School have been substantially completed and a certificate of occupancy or temporary certificate of occupancy (either, a “Certificate of Occupancy”) has been issued for the entire Property.

“Public Education Department” means the New Mexico Public Education Department.

“PSFA” means the New Mexico Public School Facilities Authority.

"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.

"State" means the State of New Mexico.

"Statewide Adequacy Standards" means the standards set forth in Title 6, Chapter 27, Part 30 NMAC, and any subsequent versions thereof, subject to any variances granted to Lessee by the Public Charter School Capital Outlay Council pursuant to Section 22-8B-4.2(F)(2) NMSA 1978.

"Term " or "term of this Lease" shall mean the Initial Term and all Extended Terms as provided in Sections 4.1 and 4.2 hereof.

Section 1.2 Exhibits.

Exhibit A Legal Description

Exhibit B Work Letter

Exhibit C Purchase Option

Exhibit D Base Rent Schedule

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants, and Warranties of the Charter School. The Charter School represents, covenants, and warrants as follows:

(a) Lessee is a duly authorized and chartered charter school by the New Mexico Public Education Commission under the provisions of the Charter Schools Act, NMSA 1978, §22-8B-1, *et seq.*

(b) The Charter School is, and will use its best efforts to remain, a charter school duly organized and validly existing under the Act. The Charter School is authorized: (i) to lease the Property from Lessor pursuant to this Lease; and (ii) to execute, deliver, and perform its obligations under this Lease subject to the limitations and conditions stated herein and the availability of sufficient appropriations and revenues therefor.

(c) The Charter School has full power and authority to execute, deliver, lease, operate, maintain, and perform the requirements of the Lease and this Lease is enforceable against the Charter School in accordance with its terms.

(d) Nothing in this Lease shall be construed as diminishing, unlawfully delegating, or otherwise restricting any legal authority of the Charter School.

(e) The execution, delivery, and performance of this Lease are in the best interests of the Charter School and serve a public purpose.

(f) None of the execution and delivery of this Lease, the fulfillment of or compliance with the terms and conditions of this Lease, or the consummation of the transactions contemplated by this Lease, conflicts with or results in a breach of the terms, conditions, or provisions of any material restriction or any agreement or instrument to which the Charter School is now a party or by which the Charter School is bound, or constitutes a default under any of the foregoing or, except as specifically provided in this Lease, results in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the Charter School.

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

(h) The Property will be operated in accordance with all Requirements of Law. As used herein, "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.

(i) The Property is necessary and essential to the Charter School's operations.

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

(a) Lessor is a limited liability company, duly organized, existing, and in good standing under the laws of California, is possessed of full power to purchase, own, hold, and lease (as owner and landlord) real and personal property, has all necessary power to lease the Property to the Charter School pursuant to this Lease, and to execute, deliver, and perform its obligations under this Lease and has duly authorized the execution, delivery, and performance of its obligations under this Lease.

(b) Lessor shall at all times maintain its corporate existence and will use its commercially reasonable efforts to maintain, preserve, and renew its status and all the rights and powers provided to it under its articles of incorporation, bylaws, action of its board of directors, and applicable law.

(c) This Lease is enforceable against Lessor in accordance with its respective terms, 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 Improvements will be based on the Plans and Specifications and constructed to educational occupancy standards, will meet all applicable state adequacy standards, and at the time of completion, the Property will meet or exceed the statewide condition index for public schools maintained by the New Mexico Public Charter Schools Facilities Authority ("PSFA"). The Property will be leased by Lessor in accordance with all Requirements of Law (as defined hereinafter), and Lessor shall maintain the Property to all applicable state adequacy standards at no additional cost to the Charter School or the State of New Mexico.

(e) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions, and provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound or constitutes a default under any of the foregoing.

(f) Except as specifically provided in this Lease and except as may be provided between the parties, the Lessor may assign the Lease, its rights to payments from the Charter School or its duties and obligations hereunder or thereunder to any other person, firm, or

corporation so long as said assignment does not impair or violate the representations, covenants, and warranties contained herein.

(g) To the knowledge of Lessor, there is no litigation or proceeding pending or threatened in writing against Lessor or any other person affecting the right of Lessor to execute and deliver this Lease, or the ability of Lessor otherwise to comply with its obligations under this Lease.

(h) To the Lessor's knowledge, the Lessor has not received any notice that the Property or its present use and condition 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 Property.

(i) To the actual knowledge of Lessor: (i) Lessor has not received written notice that the Property has not 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 Property (but not the operations of Lessee) have been obtained; (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 Property and there are no grounds on which any such litigation, investigation or proceedings might be commenced; (iv) the Property 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 Property or the Improvements in 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 Property or the Improvements 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 Property or the Improvements including the movement of any such items through or in the air, soil, surface water, ground water from, into, or out of the Property or the Improvements or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into, or out of the Property or the Improvements in violation of any Requirements of Law.

(j) Lessor represents and warrants that the heating, air conditioning and mechanical equipment, the lighting equipment, the plumbing equipment, and the electrical equipment all serving the Property are in good working order and condition as of the Rent Commencement Date.

Lessor's knowledge and similar phrases are defined as the current actual knowledge of Bill Hardy without duty of inquiry or the imputation of knowledge from any other party or source.

EXCEPT AS MAY BE SPECIFICALLY SET FORTH HEREIN, THE PREMISES ARE BEING LEASED “AS IS,” “WHERE IS” AND “WITH ALL FAULTS”; AND LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PREMISES (EXCEPT AS MAY BE SPECIFICALLY SET FORTH HEREIN, LESSOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE HABITABILITY OR FITNESS OF THE PREMISES).

Lessor is not currently the owner in fee simple of the Premises as of the Effective Date, but rather Lessor is currently a party to a certain purchase and sale agreement (the “Underlying PSA”) wherein Lessor has contracted to purchase the Premises. Notwithstanding anything contained in this Lease to the contrary: (a) Lessor shall lease the Premises to Lessee as set forth in this Lease, subject to and conditioned upon the acquisition of the fee simple interest in the Premises by Lessee pursuant to the Underlying PSA, (b) this Lease is, and all agreements, instruments and documents to be executed and delivered by the parties to this Lease shall be, valid and legally binding upon such parties and enforceable in accordance with their respective terms, contingent upon Lessor acquiring fee simple ownership of the Premises by the Underlying PSA, and (c) Lessor shall have no liability whatsoever to Lessee if Lessor does not acquire the Premises by the Underlying PSA (all of the foregoing being the “Acquisition Contingency”). If the Acquisition Contingency has not been satisfied by August 15, 2023, either party may terminate this Lease without any further obligation to the other party.

Notwithstanding anything contained in this Lease to the contrary: (a) Lessee shall lease the Premises from Lessor as set forth in this Lease, subject to and conditioned upon Lessee obtaining approval from its board of directors and the State board of directors (the foregoing being collectively being the “Board Approval Contingency”), (b) this Lease is, and all agreements, instruments and documents to be executed and delivered by the parties to this Lease shall be, valid and legally binding upon such parties and enforceable in accordance with their respective terms, contingent upon satisfaction of the Board Approval Contingency, and (c) Lessee shall have no liability whatsoever to Lessor if Lessee does not satisfy the Board Approval Contingency. If the Board Approval Contingency has not been satisfied by June 19, 2023, either party may terminate this Lease without any further obligation to the other party. Lessee shall use its good faith efforts to satisfy the Board Approval Contingency.

ARTICLE III AGREEMENT TO LEASE

Section 3.1 Lease. Lessor hereby leases the Property to Charter School, and the Charter School hereby leases the Property from Lessor, upon the terms and conditions set forth in this Agreement, provided that the terms and conditions herein are not in contravention of any applicable laws. This Agreement, once fully executed, shall supersede any prior written agreement between the parties regarding the Property.

Section 3.2 Possession and Enjoyment. During the Term of this Agreement, Lessor shall provide Charter School with quiet use and enjoyment of the Property and during such term

Charter School shall peaceably and quietly have and hold and enjoy the Property, without suit, trouble, or hindrance from Lessor, except as expressly set forth herein. Lessor will, at the request of Charter School and at Charter School's cost, join in any legal action in which Charter School asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so. Notwithstanding the foregoing, Lessor shall have the right to inspect the Property as provided in Section 3.3 hereof.

Section 3.3 Lessor's Access to Property. Charter School further agrees that Lessor shall have such rights of access to the Property upon compliance with any security requirements imposed by Charter School as may be reasonably necessary to complete the Improvements and to cause the proper maintenance of the Property in the event of failure by Charter School 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 Property for which it is not obligated to do so according to the terms of this Agreement.

Section 3.4 Use. Subject in all cases to Section 6.6, the Property shall be used and occupied only for educational and related purposes, and for no other purpose. No portion of the Property shall be used primarily for pervasively sectarian purposes. The Charter School will comply with all applicable state and federal laws concerning discrimination on the basis of disability, physical or mental handicap, serious medical conditions, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services, or any other state or federally protected classification of persons.

Section 3.5 Security Deposit. On August 1, 2024, Charter School shall provide a deposit as security for the faithful performance of this Lease by Charter School in the amount equal to the Base Rent payable for the first month of this Lease (\$30,000.00). This deposit shall be returned to the Charter School in full at the expiration/termination of the Lease, less deductions permitted under this Lease.

ARTICLE IV TERM OF AGREEMENT

Section 4.1 Initial Term. The Initial Term of this Lease shall commence on the Rent Commencement Date and end on the date that is the twelfth (12th) anniversary thereof ("Initial Term"), unless sooner terminated pursuant to any provision of this Lease or in the event the Charter School and Lessor enter into a Lease Purchase Arrangement or exercises its option to purchase the property outright, which Lease Purchase Arrangement or outright purchase will supersede and replace this Lease. **Notwithstanding the length of the Initial Term, however, Lessor acknowledges and agrees that the Charter School's charter(s) are granted for up to five years at a time and are subject to renewal and revocation by the Charter School's charter authorizer. By entering into this Lease, the Charter School does not guarantee or represent that it will continue to exist for the full length of the Initial Term, though it will make best efforts to do so. Lessor further acknowledges and agrees that, should the Charter School's**

charter be revoked or non-renewed, Lessor shall, subject to the requirements of the Act, only be entitled to payments for the Charter School's obligations described in this Lease for the remainder of the Charter School's then-current fiscal year, and not through the remainder of the Term (as defined herein). This Lease is contingent upon sufficient appropriations being made by the State of New Mexico for performance of this Lease. If sufficient appropriations and authorizations are not made by the State of New Mexico, as determined in the sole discretion of the Charter School, this Lease may terminate prior to the end of the Term.

Section 4.2 Extended Terms. The Charter School shall be entitled to extend the term of this Lease beyond the Initial Term for one additional five-year term ("Extended Term"), commencing on July 1st of a given year and ending on June 30th of the following year, provided that this Lease has not been previously terminated and that the Charter School is not in default under the terms of this Lease at the time of such extension. The Charter School shall give written notice of the intent to extend at least nine (9) months prior to the expiration of the Initial Term. The Charter School is under no obligation to extend the term of this Lease at any time, and the Charter School shall have no further right to extend the term of this Lease beyond the expiration of the extensions provided for above. The Initial Term and any Extended Term shall hereinafter be known collectively as (the "Term"). The Extended Term shall be upon the same terms and conditions as contained in this Lease, except that (i) Tenant will accept the Premises on an "as is" basis at the commencement of the Extended Term, except with regard to Lessor's duty to maintain the facility to applicable state adequacy standards at no additional cost to the School or the State, which obligation shall continue (ii) there shall be no further right of renewal except as stated above, and (iii) the annual Minimum Rent for the renewal term shall be as detailed on Exhibit ____.

Section 4.3 Purchase Option. The parties agree that Charter School or its nonprofit assignee shall have the option to purchase and close on the Property no earlier than January 1, 2026, or within 30 days of the end of the Due Diligence Period referenced in Exhibit C-Purchase Option hereto. , with written notice given by the School to Lessor of intent to purchase between November 1, 2025 and March 31, 2026. The terms of the purchase and closing date shall be based upon the terms and conditions contained in Exhibit C - Purchase Option hereto.

Section 4.4 Holding Over. The Charter School will have the right to hold over after expiration of the Initial Term or the Extended Term at the then-current Base Rent rate, for up to six (6) months. If Lessee holds over thereafter, with or without the express or implied consent of Lessor, such tenancy shall constitute a tenancy at sufferance, and not a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a rental in the amount of one hundred fifty percent (150%) of the Base Rent in effect as of the last month of the Term hereof and at the time specified in this Lease, and such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein. The foregoing shall not, however, be construed as a consent by Lessor to any holding over by Lessee and Lessor reserves the right to require Lessee to surrender possession of the Property and Premises upon expiration of such additional time period stated immediately above.

ARTICLE V RENT AND EXPENSES

Section 5.1 Rental Commencement Date. The Charter School shall not be obligated to pay any Base Rent until the Rental Commencement Date. The Rental Commencement Date shall be the date the Certificate of Occupancy is issued by the governmental authority with jurisdiction after completion of the Improvements, but no sooner than January 1, 2024.

Section 5.2 Base Rent. From and after the Rental Commencement Date and during the Term of this Lease, the Charter School shall pay Base Rent directly to Lessor, or to any person designated by Lessor as Lessor's representative for rent collection purposes, on the fifteenth (15th) day following the Rental Commencement Date of each month of the Term. The Base Rent for this Lease for the Initial and any Extended Term shall be in the monthly amounts set forth in Exhibit D hereto. Any partial month will be calculated on a *pro rata* basis. Landlord will utilize up to \$274,566.00 of any unused portion of Lessor's maximum allowable expenditure for Improvements described in Section 6.1 herein, to credit and apply such amounts to Charter School's Base Rent payments due from the beginning of the Lease period.

Section 5.3 Additional Rent. In addition to Base Rent, Charter School shall pay additional rent ("Additional Rent") during the Term, which shall be estimated annually by the Lessor and provided to the School prior to the School's preparation and approval of its annual budget (April of each year) for the ensuing School fiscal year. Estimated amounts shall be in an amount sufficient to pay the following costs during the next ensuing fiscal year (all of the following being considered Additional Rent): (i) the reasonable fees and expenses of the Lessor related to the Property including but without limitation, fees related to its administration and management of this Agreement; (ii) the cost of insurance premiums for insurance deemed necessary or desirable in Lessor's reasonable discretion; and (iii) all other costs expressly required to be paid by the Lessee hereunder, if any. Charter School shall include estimated amounts for Additional Rent in each year's budget, provided estimated amounts are timely submitted by Lessor. The Charter School's obligation under this Lease to pay Additional Rent during each School fiscal year shall be limited to the amount so appropriated for Additional Rent and any amounts subsequently appropriated by supplemental appropriations for payment of Additional Rent during such fiscal year; provided, however, Lessee shall use its best efforts to ensure that any shortfall in such amount shall be included in the appropriations for the following year and immediately remitted to Lessor as soon as practicable thereafter, to the extent allowable by New Mexico law. Additional Rental obligations in excess of the amounts so appropriated shall in no event be due or owing from the Charter School.

Section 5.4 Nature of Payment. The Charter School and Lessor acknowledge and agree that the Base Rent and Additional Rent hereunder shall constitute currently appropriated expenditures of the Charter School and may be paid from any legally available funds. The Charter School's obligations under this Lease 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 Lease shall be construed or interpreted as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Charter School within the meaning of any constitutional or statutory limitation or requirement. No provision of this Lease shall be construed or interpreted as creating a delegation either of governmental powers or as a donation by or a leading of the credit of the

Charter School within the meaning of any constitutional or statutory limitation or requirement. This Lease does not directly or indirectly obligate the Charter School to make any payments beyond those appropriated for any fiscal year for which payments have been appropriated.

Section 5.5 Manner of Payment. The Base Rent and any Additional Rent shall be paid, commencing on the Rental Commencement Date and continuing on the fifteenth (15th) day of every month of the Term thereafter by lawful money of the United States of America. The Charter School shall, during the Initial Term (and any Extended Term) of this Lease, make all payments of Base Rent and Additional Rent when due and shall not withhold any Base Rent or Additional Rent, nor shall the Charter School 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 the Charter School of any rights, claims, or defenses which the Charter School may assert. No action or inaction on the part of Lessor shall affect the Charter School's obligation to pay Base Rent and Additional Rent of this Lease. The obligation of Lessee to pay Base Rent and Additional Rent and the obligations of Lessee to perform other covenants and duties hereunder constitute independent and unconditional obligations of Tenant to be performed at all times as provided hereunder, except as specifically provided for herein.

Section 5.6 Budgeting. In any fiscal year that this Lease shall be in effect, such officer of the Charter School responsible for the preparation of the annual budget shall include in the budget proposal to the Public Education Department for the ensuing fiscal year an amount equal to one-hundred percent (100%) of the total annual Base Rent and one-hundred five percent (105%) of the estimated Additional Rent hereunder for such ensuing fiscal year, provided that the decision whether to extend the term of this Lease shall remain solely within the discretion of the Charter School. The Base Rent and Additional Rent and other obligations payable by Charter School under this Agreement shall constitute currently appropriated expenditures of Charter School and shall not constitute a debt or multiple fiscal year direct or indirect obligations whatsoever of Charter School or a mandatory charge or requirement against Charter School in any fiscal year beyond the fiscal year for which such payments have been approved.

Section 5.7 Taxes and Assessments. During the Term, if the Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments, charges, levy, license fee, license tax, business license fee, business license tax, commercial rental tax, penalty or similar imposition lawfully made by any governmental body, the Charter School shall pay, as Additional Rent the amount of all such taxes, assessments, and governmental charges then due. Taxes shall not include, however, any tax on the income of Lessor. With respect to special assessments or other governmental charges that may be lawfully paid in installments over a period of years, the Charter School shall be obligated to provide only for such installments as are required to be paid during the Term of this Lease. The Charter School shall not allow any liens for taxes, assessments, or governmental charges to exist with respect to the Property or Improvements or any portion thereof (including any taxes levied thereon which, if not paid, will become a charge on the rentals and receipts from the Property or any portion thereof, or any interest therein, including the interest Lessor) or the rentals and revenues derived therefrom or hereunder. If the Charter School shall first notify Lessor of the intention of the Charter School to do so, the Charter School may, at the expense and in the name of the Charter School, in good faith contest any such tax, assessment, and

other charges. In the event of any such contest, Lessee may permit the tax, assessment, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify the Charter School that by nonpayment of any such items, the Property or the Improvements or any portion thereof will be subject to loss or forfeiture, or Lessor will be subject to liability, in which event such tax, assessment, or other charges shall be paid promptly or secured by posting a bond with Lessor in form satisfactory to Lessor (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, or other charges). Lessor shall cooperate in any efforts by Charter School to contest any taxes or assessments. Lessee shall indemnify and hold Lessor harmless from and against any liability caused as a result of Lessee's contesting taxes as aforesaid.

Section 5.9 Utilities. During the Term, the Charter School shall pay, as the same respectively become due, all gas, water, electricity, heat, power, utility, sewer and waste disposal, and other utility charges incurred in the maintenance and upkeep of the Property, and the Charter School shall place all such utilities in its name. LESSOR SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE FOR ANY FAILURE OR INTERRUPTION OF ANY UTILITY SERVICE BEING FURNISHED TO THE PREMISES OR ANY PORTION OF THE PROPERTY, EXCEPT TO THE EXTENT CAUSED BY LESSOR'S GROSS NEGLIGENCE OR INTENTIONALLY WRONGFUL ACT. NO SUCH FAILURE OR INTERRUPTION SHALL ENTITLE LESSEE TO TERMINATE THIS LEASE OR TO ABATE PAYMENT OF ANY PORTION OF THE RENT OR ANY OTHER CHARGES DUE HEREUNDER.

Section 5.10 Late Payment. In the event that Lessee shall fail to pay to Lessor when due any Rent, or other sums owing to Lessor, said late payment shall bear interest at fifteen percent (15%) per annum or the maximum rate allowed by New Mexico law and, in addition, for the second and every subsequent late payment of Rent in any calendar year that is not paid within ten (10) days after the date the same was due, Lessee shall pay to Lessor a charge equal to five percent (5%) thereof. Lessee acknowledges and agrees that such late payment by Lessee will cause Lessor to incur costs and expenses not contemplated by this Lease, the exact amounts of which will be extremely difficult to ascertain, and that such service charge represents a fair estimate of the costs and expenses which Lessor would incur by reason of Lessee's late payment. Lessee further agrees that such service charge shall neither constitute a waiver of Lessee's default with respect to such overdue amount nor prevent Lessor from exercising any other right or remedy available to Lessor.

ARTICLE VI IMPROVEMENTS AND MAINTENANCE

Section 6.1 Improvements. As soon as reasonably practicable after execution of this Lease, Lessor shall commence the Improvements described in the Work Letter, Exhibit B. Lessor shall make all Improvements in the Work Letter, the cost allocation of which is as set forth in Exhibit B, using properly licensed, insured and bonded contractors, in accordance with plans and specifications approved by the Charter School, PSFA, and all other required governmental authorities. The Improvements shall be based on the Plans and Specifications which are designed and constructed to meet all requirements for Educational Occupancy ("E-Occupancy") in the International Building Code, and to meet all applicable Statewide Adequacy Requirements. The

Improvements shall be constructed by the date set forth on Exhibit B, ready for certification for Charter School's occupancy by all required authorities. Upon completion of the Improvements and issuance of a Certificate of Occupancy, the Charter School shall take possession of the Improvements and all construction warranties shall be assigned to the Charter School.

LESSEE ACKNOWLEDGES AND AGREES THAT THE PLANS AND SPECIFICATIONS WILL BE PREPARED JOINTLY WITH LESSOR, AND THAT IT HAS BEEN AFFORDED THE FULL OPPORTUNITY TO COMMENT ON AND APPROVE THE PLANS AND SPECIFICATIONS. WITH REGARD TO THE IMPROVEMENTS DESCRIBED IN EXHIBIT B AND CONSTRUCTED BY LESSOR, LESSEE WAIVES ITS RIGHT TO RECOVER FROM, AND FOREVER RELEASES AND DISCHARGES THE LESSOR PARTIES (DEFINED BELOW) FROM ANY AND ALL CLAIMS (DEFINED BELOW) THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY BE CONNECTED WITH THE CONSTRUCTION OF THE BUILDING OR IMPROVEMENTS IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS, INCLUDING, BY WAY OF EXAMPLE ONLY AND WITHOUT LIMITATION, THAT THE BUILDING, IMPROVEMENTS OR PROPERTY OR ANY PART THEREOF (A) IS NOT IN COMPLIANCE WITH ANY RULE OR REGULATION IMPOSED BY THE PSFA AT THE TIME OF CONSTRUCTION, (B) DOES NOT MEET EDUCATIONAL OCCUPANCY REQUIREMENTS OF THE GOVERNMENTAL AUTHORITIES WITH JURISDICTION AND THE STATEWIDE ADEQUACY STANDARDS FOR NEW MEXICO PUBLIC SCHOOLS AS CONTEMPLATED BY NMSA 1978, §22-8B-4.2(D)(2), AT THE TIME OF CONSTRUCTION (C) DOES NOT MEET ALL E-OCCUPANCY REQUIREMENTS OR (D) DOES NOT SATISFY ALL APPLICABLE STATEWIDE ADEQUACY REQUIREMENTS (THE FOREGOING A-D BEING THE "BUILDING STANDARDS"). LESSOR SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE FOR ANY FAILURE OF THE BUILDING OR IMPROVEMENTS OR PROPERTY TO COMPLY WITH THE BUILDING STANDARDS AND NO SUCH FAILURE SHALL ENTITLE LESSEE TO TERMINATE THIS LEASE OR TO ABATE PAYMENT OF ANY PORTION OF THE RENT OR ANY OTHER CHARGES DUE HEREUNDER.

Section 6.2 Maintenance. During the period of Lessor's construction of the Improvements hereunder, Lessor shall maintain, preserve and keep the portion of the Property on which the Improvements are being constructed, at its expense; the remainder of the Property shall be maintained, preserved and kept by the Charter School during construction of the Improvements as set forth herein. After the Certificate of Occupancy has been issued for the Improvements, the Charter School shall maintain, preserve and keep the Improvements as described herein. Thereafter, and for the remainder of the Term, the Charter School agrees to maintain, preserve, and keep the entire Property or cause the Property to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair, working order, and condition, subject to normal wear and tear, and that the Charter School will from time to time make or cause to be made all necessary and proper repairs. Provided, however, that during the Initial Term and any Extended Term of this Lease, Lessor shall make all extraordinary repairs and replacements to the Property which are considered to be "capital improvements" under applicable New Mexico law, including but not limited to HVAC, fire safety systems, mechanical equipment, electrical and plumbing systems, structural systems, roofing systems and components thereof, provided that said repairs/replacements are not required due to the gross negligence or willful misconduct of Charter

School. The Lessor shall maintain the Property to all applicable Statewide Adequacy Standards applicable to charter schools, at no additional cost to the Charter School or the State of New Mexico as set forth in NMSA 1978, §22-8B-4.2(D)(2)(a) or a successor statute. Except as expressly set forth in this Lease, Lessor shall not have any other responsibility for the making of any additions, modifications, or replacements to the Property or the Improvements during the Term of this Lease. As used in this Lease, except as otherwise defined by applicable New Mexico law, “maintain, preserve and keep” (or similar words of like import) shall mean and include the obligation to keep in good order, condition and repair (including replacements if necessary, whether of a capital nature or otherwise) the same, regardless of whether the need for such repairs occurs as a result of Lessee use, any prior use, the elements, or the age of such portion of the Premises or Improvements, or otherwise), but not if caused by the gross negligence or intentional act of Lessee.

Section 6.3 Modifications. During the Term of this Lease, with Lessor’s prior written consent, the Charter School may remodel or make substitutions, additions, modifications, or improvements to the Property, and the same (if permanently affixed) shall be part of the Property, subject to, and shall be included under the terms of this Lease; provided, however, that (i) such remodeling, substitutions, additions, modifications, and improvements shall not in any way damage the Property; and (ii) the Property, as remodeled, improved, or altered, upon completion of such remodeling, or such making of substitutions, additions, modifications, and improvements, shall be of a value not less than the value of the Improvements immediately prior to such remodeling or such making of substitutions, additions, modifications, and improvements.

Section 6.4 Equipment. The Charter School may, from time to time in its sole discretion and at its own expense, install equipment and personal property in the Property. All such equipment and personal property shall remain the sole property of the Charter School in which Lessor shall not have any interest; provided, however, that any such equipment and personal property which becomes permanently affixed shall become part of the Property, subject to this Lease and shall be included under the terms of this Lease. Upon termination of the Lease, subject to the terms of this Lease, the Charter School may remove its equipment and personal property, but shall be responsible for all damage caused by said removal. Charter School shall repair the Property or pay for all damages within sixty (60) days of vacating the Property.

Section 6.5 Title to the Property. Any improvements permanently affixed to the Property shall become part of the Property. The Charter School shall have no right, title, or ownership interest in the Property or any permanent additions and modifications thereto or replacements thereof by virtue of this Lease.

Section 6.6 Compliance with Law. The Charter School shall at all times operate the Property, or cause the Property to be used and operated, such that (a) the Property at all times shall be operated in substantial compliance with all Requirements of Law; (b) all permits required by Requirements of Law in respect of the Property shall be obtained and maintained in full force and effect and the Charter School shall substantially comply with the material terms and conditions of such permits; (c) there shall be no hazardous substance, pollutant or contaminant (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 Property in violation of any Requirements of Law; (d) there shall be no disposal of any of the items referred to in clause (c) on, from, into or out of the Property or on, from, into or out of the Improvements in violation of any Requirements of Law; and (e) there shall be 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 (c) into the indoor or outdoor environment from, into, or out of the Property including the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Property or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into or out of the Property in violation of any Requirements of Law.

ARTICLE VII INSURANCE; INDEMNITY; WAIVERS

Section 7.1 Charter School's Insurance.

(a) Liability Insurance. Beginning upon the Commencement Date, the Charter School 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 Charter School'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 Charter 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 \$200,000 for each accident for property damage liability for the benefit of Charter School and the Lessor as protection against all liability claims arising from activities on the Property, causing the Lessor to be named as additional insured or additional-named insureds on such policy of insurance, and delivering a copy thereof to the Lessor upon the commencement of the term of this Lease. Lessee's liability coverage described herein shall not contain any exclusion for sexual abuse and molestation and such coverage must be primary and non-contributory. The Charter School shall adjust such minimum coverage limits annually or as necessary to conform to the minimum coverage limits required for local public bodies pursuant to NMSA 1978, §§41-4-19 and 41-4-20 and NMSA 1978, §§22-29-1 through 22-29-11, as amended. If Lessor determines that such coverages detailed in this Section 7.1(a) are commercially reasonably inadequate, it may obtain additional such reasonable coverages and Lessee shall reimburse Lessor for the costs therefor as Additional Rent.

(b) Property Insurance. Subject to the availability of such coverage from NMPSIA, the Charter School 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 Charter School's sole cost and expense, fire and extended coverage insurance upon the Property and Improvements, including all buildings, alterations, and additions in an amount equal to their replacement values. The Lessor and financing entity(ies) of record shall be named as additional insureds and loss payees on the Property Insurance Policy and shall be provided with a copy of the policy. In the

event that the Property should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, the provisions of Section 7.3, below, shall apply. If for any reason the Charter School is prohibited by law or regulation from carrying such insurance, it shall immediately notify Lessor and the Lessor may obtain such insurance, and Charter School shall pay the premiums of such insurance as Additional Rent. Lessee shall also obtain and maintain flood coverage with a limit equal to the full replacement cost of the Property and Improvements.

(c) Business Personal Property Insurance. Subject to the availability of such coverage from NMPSIA, the Charter School shall also carry and maintain Business Personal Property Insurance. Special form insurance for perils on all business personal property on the Property including fixtures, machinery and equipment installed by the Charter School, and such other insurance as the Lessor may require if available to the Charter School by NMPSIA. Such insurance to be in an amount equal to one hundred percent (100%) of the insurable value thereof, if available by NMPSIA.

(d) Business Interruption Insurance. Charter School shall obtain Business Interruption Insurance with sufficient coverage to provide for payment of rent and other fixed costs during any interruption of the Charter School's operations by reason of fire or other casualties contemplated in Section 7.1(b), above, plus an extended period of indemnity thereafter for a period of twelve (12) months.

(e) Worker's Compensation Insurance. If required by state law as of the Commencement Date, the Charter School shall carry worker's compensation insurance covering all of its respective employees on, in, near or about the Property and upon request, shall furnish certificates to the Lessor evidencing such coverage.

Section 7.2 Lessor's Insurance. The Lessor shall, from the date of approval of this Lease, obtain and maintain during the Term the following coverage:

(i) Reserved.

(ii) Commercial general liability insurance with coverage limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

Section 7.3 Damage, Destruction, or Condemnation; Use of Net Proceeds.

(a) Damage, Destruction, or Condemnation. If, during the Term of this Lease, (i) the Property, Improvements, 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 Property or any portion thereof or the estate of the Charter School, the City, the County, or Lessor in the Property 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 Property shall become apparent; or (iv) title to or the use of all or any portion of the Property shall be lost by reason of defect in the title thereto, then, the Charter School shall be obligated, subject to the provisions of Subsection (c) hereof, to continue to pay the amounts specified in Subsection (b) hereof and, to the extent of amounts specifically appropriated by the Charter School, to pay Base Rent and Additional Rent.

(b) *Repair and Replacement.* To the extent not contrary to applicable law, the Charter School and, to the extent such Net Proceeds are within its control, the Lessor, shall cause such Net Proceeds to be deposited in a separate trust fund held by the Lessor. Except as set forth in Subsection (c) hereof, all Net Proceeds of any insurance, performance bonds, or condemnation awards owed to either the Charter School or Lessor shall be applied to the prompt repair, restoration, modification, improvement, or replacement of the Property or the Improvements, as the case may be, by the Charter School upon receipt of requisitions acceptable to Lessor setting forth: (i) the requisition number; (ii) the name and address of the person, firm, or corporation to whom payment is due or has been made; (iii) the amount to be paid or reimbursed; and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. Lessor shall cooperate with the Charter School in the administration of such fund and shall not unreasonably withhold its approval of requisitions under this Section. Any repair, restoration, modification, improvement, or replacement of the Property or Improvements paid for in whole or in part out of Net Proceeds of the Charter School's Insurance shall be the property of Lessor, subject to this Lease, and shall be included as part of the Property or the Improvements under this Lease.

(c) *Insufficiency of Net Proceeds for Property.* If there occurs an event described in Subsection (a) hereof, and if any Net Proceeds received as a consequence of such event shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the Property required under Subsection (b) hereof, the Charter School shall elect one of the following options:

(i) The Charter School may, to the extent permitted by law, in accordance with Subsection (b) hereof, repair, restore, modify, or improve the Property or replace the Property (or portion thereof) with property of a value equal to or in excess of the Property, and pay as Additional Rent any cost in excess of the amount of the Net Proceeds. To the extent the amounts for Additional Rent, which have been specifically appropriated by the Charter School, are available for the payment of such costs, and the Charter School agrees to make Additional Rental payments pursuant to the provisions of this paragraph and to the extent permitted by law, the Charter School shall not be entitled to any reimbursement therefor from Lessor, nor shall the Charter School be entitled to any diminution of the Base Rent and Additional Rent.

(ii) If, by June 30th of the fiscal year in which an event described in Subsection (a) 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 Property become apparent), the Charter School has not appropriated amounts sufficient to proceed under clause (i) of this Subsection, the Charter School may make demand on the Lessor to make up the insufficiency in the Net Proceeds and if the Lessor refuses, the Charter School may terminate the Lease, in which case all Net Proceeds actually obtained by Lessee shall be held in trust for Lessor and all such Net Proceeds shall be delivered promptly to Lessor after its receipt of the same.

(d) *Insufficiency of Net Proceeds for Improvements.* If there occurs an event described in Subsection (a) hereof, and if any Net Proceeds received as a consequence of such

event shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the Improvements required under Subsection (b) hereof, the Charter School shall elect one of the following options:

(i) The Charter School may, to the extent permitted by law, in accordance with Subsection (b) hereof, repair, restore, modify, or improve the Improvements or replace the Property (or portion thereof) with property of a value equal to or in excess of the Property, and pay as Additional Rent any cost in excess of the amount of the Net Proceeds. To the extent the amounts for Additional Rent, which have been specifically appropriated by the Charter School, are available for the payment of such costs, and the Charter School agrees to make Additional Rental payments pursuant to the provisions of this paragraph and to the extent permitted by law, the Charter School shall not be entitled to any reimbursement therefor from Lessor, nor shall the Charter School be entitled to any diminution of the Base Rent and Additional Rent.

(ii) If, by June 30th of the fiscal year in which an event described in Subsection (a) 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 Property become apparent), the Charter School has not appropriated amounts sufficient to proceed under clause (i) of this Subsection, the Charter School may make demand on the Lessor to make up the insufficiency in the Net Proceeds and if the Lessor refuses, the Charter School may terminate the Lease, in which case all Net Proceeds actually obtained by Lessee shall be held in trust for Lessor and all such Net Proceeds shall be delivered promptly to Lessor after its receipt of the same.

(e) *Cooperation.* The parties to this Lease shall cooperate fully with the other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Subsection (a) hereof, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Property or the Improvements or any portion thereof, and in the prosecution of any action relating to defaults or breaches of warranty under any contract relating to the Property or the Improvements. 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 Property or the Improvements 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.

Section 7.4 Indemnification; Waiver; Subrogation.

(a) **Indemnification by Lessee.** TO THE EXTENT, IF AT ALL, ALLOWABLE BY NEW MEXICO LAW, AND SUBJECT TO AND WITHOUT WAIVING THE LIMITATIONS AND IMMUNITIES CONTAINED WITHIN THE NEW MEXICO TORT CLAIMS ACT, LESSEE SHALL INDEMNIFY, DEFEND, AND HOLD LESSOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS AND DIRECTORS (FOR PURPOSES OF THIS SECTION 7.4, "LESSOR PARTIES"), HARMLESS OF AND FROM ANY LOSS, ATTORNEY'S FEES, EXPENSES, CLAIMS, FINES, SUITS, COSTS AND LIABILITY OF EVERY KIND (COLLECTIVELY, "CLAIM") ARISING BECAUSE OF ANY BODILY

INJURY, DEATH AND/OR DAMAGE TO PROPERTY OCCURRING ON OR ABOUT THE PROPERTY, EVEN IF SUCH CLAIM IS THE RESULT OF THE SOLE OR CONCURRENT NEGLIGENCE, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF, LESSOR PARTIES. SUBJECT TO AND WITHOUT WAIVING THE LIMITATIONS AND IMMUNITIES CONTAINED WITHIN THE NEW MEXICO TORT CLAIMS ACT, IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST LESSOR PARTIES IN CONNECTION WITH ANY CLAIM, LESSEE, ON NOTICE FROM LESSOR PARTIES, SHALL DEFEND SUCH ACTION OR PROCEEDING, AT LESSEE'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO LESSOR PARTIES. THE OBLIGATIONS OF LESSEE CONTAINED IN THIS SUBSECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

(b) **Indemnification by Lessor.** LESSOR SHALL INDEMNIFY, DEFEND, AND HOLD LESSEE, ITS SUBLESSEES, LICENSEES AND CONCESSIONAIRES (WHERE PERMITTED PURSUANT TO THIS LEASE), AND THEIR RESPECTIVE EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS AND DIRECTORS (HEREIN "LESSEE PARTIES") HARMLESS OF AND FROM ANY CLAIM ARISING BECAUSE OF ANY BODILY INJURY, DEATH AND/OR DAMAGE TO TANGIBLE PERSONAL PROPERTY OCCURRING AT THE PROPERTY RESULTING FROM ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR PARTIES EXCEPT TO THE EXTENT OF ANY COSTS, EXPENSES, CLAIMS OR OTHER LIABILITIES OCCASIONED BY THE NEGLIGENCE OR WILLFUL WRONGFUL ACTS OR OMISSIONS OF LESSEE PARTIES. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST LESSEE PARTIES IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, LESSOR, ON NOTICE FROM LESSEE PARTIES, SHALL DEFEND SUCH ACTION OR PROCEEDING, AT LESSOR'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO LESSEE PARTIES. THE OBLIGATIONS OF LESSOR SET FORTH IN THIS SUBSECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

(c) **Waiver of Liability.** BOTH PARTIES AGREE TO WAIVE ALL CLAIMS FROM THE OTHER PARTY AS SUCH CLAIMS RELATE TO (A) ALL PERSONAL PROPERTY, FIXTURES OR IMPROVEMENTS MADE TO THE PREMISES BY LESSEE, WHICH PROPERTY SHALL BE AT THE RISK OF LESSEE, AND, EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, LESSOR SHALL NOT BE LIABLE FOR ANY LOSS OF OR DAMAGE TO PROPERTY (OF WHATEVER NATURE) OF LESSEE OR OF ANY OTHER LESSEE PARTY, OR OF OTHERS, REGARDLESS OF WHETHER SUCH PROPERTY IS ENTRUSTED TO EMPLOYEES OF THE PREMISES, OR SUCH LOSS OR DAMAGE IS OCCASIONED BY CASUALTY, THEFT, FAILURE OF LESSOR TO MAINTAIN THE STRUCTURAL PORTIONS OF THE PREMISES, OR ANY OTHER CAUSE OF WHATSOEVER NATURE, IT BEING THE RESPONSIBILITY OF LESSEE TO SECURE AND MAINTAIN NECESSARY INSURANCE COVERAGE FOR SUCH PROPERTY, OR (B) ALL REAL PROPERTY COMPRISING THE PREMISES, THE COMMON AREAS OR THE PROPERTY, OR ANY PERSONAL PROPERTY OWNED BY LESSOR, WHICH PROPERTY SHALL BE AT THE RISK OF LESSOR, AND LESSEE SHALL NOT BE LIABLE FOR ANY LOSS OF OR DAMAGE TO PROPERTY (OF WHATEVER NATURE) OF LESSOR, ITS EMPLOYEES, AGENTS, CUSTOMERS, INVITEES, OR TO OTHERS, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS OCCASIONED BY CASUALTY, THEFT,

FAILURE OF LESSEE TO MAINTAIN THE PREMISES, OR ANY OTHER CAUSE OF WHATSOEVER NATURE, IT BEING THE RESPONSIBILITY OF LESSOR TO SECURE AND MAINTAIN NECESSARY INSURANCE COVERAGE FOR SUCH PROPERTY.

(d) **Waiver of Subrogation.** Lessor and Lessee hereby waive and relinquish any right or claim against each other's property at or on the Premises or the Property by way of subrogation or assignment. Lessee and Lessor agree to have their respective insurance policies endorsed to waive the carrier's right of recovery under subrogation and a certificate of insurance shall be available to either party on request verifying such waiver.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default. Any one of the following shall constitute an "Event of Default" under this Lease: (i) failure by the Charter School to pay any specifically appropriated Base Rent during the Initial Term (and any Extended Terms) of this Lease on, before, or within five (5) days of the applicable due date or to pay Additional Rent which become due during the Initial Term (and any Extended Terms) of this Lease, up to the amount specifically appropriated for the payment of Base Rent and Additional Rent in accordance with the provisions hereof; (ii) failure by the Charter School or the Lessor 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, unless the party giving such notice shall agree in writing, prior to the expiration of the thirty-day period, to an extension of no more than sixty (60) days. Provided, however, that if the failure stated in the notice cannot be corrected within the original thirty-day period, the party giving such notice shall not withhold their consent to an extension of up to sixty (60) days if corrective action shall be instituted by the defaulting party within such time period and diligently pursued until the default is corrected; (iii) failure by the Charter School to maintain its charter under the Act; or (iv) Lessee shall abandon, desert or vacate, or shall commence to abandon, desert or vacate, the Premises, or any portion thereof, or at any time prior to the last month of the Term of this Lease shall remove or attempt to remove, without the prior written consent of Lessor, all or a substantial amount of Lessee's goods, wares, equipment, fixtures, furniture, or other personal property. The foregoing provisions of this Section are subject to the following limitations: (i) the Charter School shall be obligated to pay the Base Rent and Additional Rent during the Term of this Lease, except as otherwise expressly provided in this Lease; and (ii) if, by reason of Force Majeure, the Charter School shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the Charter School contained herein and until the termination or end of the Term of this Lease, the Charter School shall not be deemed in default during the continuance of such inability. The Charter School agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the Charter School from carrying out its agreement; provided that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the Charter School.

Section 8.2 Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the non-defaulting party may, without any further demand or notice, take one

or any combination of the following remedial steps, in addition to all other rights or remedies provided herein or at law or in equity:

(a) Terminate the Term of this Lease and give notice to the other party to vacate or of the intent to vacate the Property within one-hundred twenty days (120) days from the date of such notice.

(b) Lease or sublease all or any portion of the Property or Improvements.

(c) Recover from the Charter School: (i) to the extent the recovery thereof is permitted by law, the fair rental value of the use of the Property during any period beyond the thirtieth (30th) day following the occurrence of the Event of Default; and (ii) Base Rent and Additional Rent, which would otherwise have been payable by the Charter School hereunder during the remainder of the term (to wit, accelerate such Base Rent obligation), after the Charter School vacates the Property, of the fiscal year in which such Event of Default occurs.

(d) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Property under this Lease.

(e) Do or cause to be done whatever Lessee is obligated to do under the terms of this Lease, and recover as Additional Rent, the actual cost thereof ; provided, however, such actual costs charged as Additional Rent shall not include consequential, speculative or punitive damages (including, without limitation, any claims for lost profits or lost business opportunities).

Section 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy it shall provide such notice as may be required in this Lease.

ARTICLE IX MISCELLANEOUS

Section 9.1 Signage. Charter School shall have the right to place building signage on the Building, subject to the prior approval of Lessor (not to be unreasonably withheld, conditioned, or delayed), provided that said signage conforms to and complies with City of Las Cruces code requirements. However, by its approval, Lessor makes no representation or warranty that Lessee's proposed signage complies with applicable law.

Section 9.1 Further Assurances and Corrective Instruments. Lessor and the Charter School agree that so long as this Lease is in full force and effect and no Event of Default shall have occurred, Lessor and the Charter School shall have full power to carry out the acts and agreements provided herein and they will, so far as it may be authorized by law, from time to time, 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 correcting any inadequate or incorrect description of the Property hereby leased or intended so to be, or for otherwise carrying out the intention of or facilitating the performance of this Agreement.

Section 9.2 Compliance with Requirements of Law. During the Term of this Lease, the Charter School and Lessor shall observe and comply promptly with all current and future Requirements of Law applicable to the Property (including those set forth in NMSA 1978, §22-8B-4(D)(2)) and the Improvements or any portion thereof and all current and future requirements of all insurance companies writing policies covering the Property or any portion thereof.

Section 9.3 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Charter School and their respective successors and permitted assigns.

Section 9.4 No Individual Liability. All covenants, stipulations, promises, agreements, and obligations of the Charter School or Lessor, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the Charter School or Lessor, as the case may be, and not of any member, director, officer, employee, or other agent of the Charter School or Lessor in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement, or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, or other agent of the Charter School or Lessor or any natural person executing this Lease or any related document or instrument. If Lessee recovers any judgment against Lessor for a default by Lessor of this Lease, the judgment shall be satisfied only out of the interest of Lessor in the Property as the same may be encumbered from time to time and neither Lessor nor any of its partners, officers, employees or agents shall be personally liable for any such default or for any deficiency. In no event shall Lessor be liable for any consequential, speculative or punitive damages (including, without limitation, any claims for lost profits or lost business opportunities). All covenants and agreements to be performed by Lessee under this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any offset to or abatement of Rent

Section 9.5 Waiver. No term of this Lease shall be deemed waived unless such waiver is in writing signed by the party making the waiver. No delay or omission by either party in exercising or enforcing any right or power hereof shall impair such right or power or be construed to be a waiver thereof. No custom or practice that may evolve between the parties shall be construed to lessen the right of a party to require the performance of the other party in strict accordance with the terms of this Lease. A waiver by one party of a failure of the other party to fully comply with any of the terms of this Lease shall not be construed to be a waiver of any subsequent failure to comply or any other failure to comply.

Section 9.6 Assignment and Subleasing. This Lease may not be assigned by the Charter School for any reason, whether by operation of law or pursuant to any contract, unless the assignment be to a nonprofit organization organized for the purpose of providing a facility to the Charter School, to which assignment the Lessor hereby consents in advance. However, the Property may be subleased, as a whole or in part, by the Charter School, with the consent of Lessor, which consent will not be unreasonably withheld; subject to each of the following conditions: (i) this Lease, and the obligations of the Charter School hereunder, shall, at all times during the Term of this Lease, remain direct obligations of the Charter School; (ii) no additional lease shall change the use of the Property; and (iii) the terms of this Lease shall remain in full force and effect and

the assignee assumes all obligations of the Lessors hereunder. In the event of a sublease approved by Lessor pursuant to the terms hereof, Lessor shall be entitled to receive one half of any profit in rent or other consideration paid to Lessee directly or indirectly by any subtenant or any other amount received by Lessee from or in connection with any subletting.

Section 9.7 Subordination; Estoppel Certificate. This Lease and the Charter School's rights under this Lease are and shall be subject and subordinate to any mortgage (including a consolidated mortgage), indenture or deed of trust constituting a first lien on the Property, or any part thereof, whether such mortgage, indenture or deed of trust has heretofore been, or may hereafter be, placed upon the Property to secure an indebtedness to any savings bank, bank, trust company, or other institutional lender, private or public, or to any bond issuer, trustee or holder for the purchase of the Property and the construction of any of the improvements on the Property, and to any renewal, modification, consolidation, replacement, or extension of any such mortgage or deed of trust. This subordination shall be self-operative and no further instrument of subordination shall be required. The Charter School shall, nevertheless, execute and deliver, from time to time, any instrument and certificate affirming and confirming such subordination that Lessor may reasonably request. 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 the Charter School by certified mail, addressed to the Charter School at its address as set forth in this Lease, a copy of each notice of breach of covenant, default, or foreclosure given by the holder or the trustee under such mortgage or deed of trust to Lessor.

Lessee shall from time to time, within ten (10) days after prior written notice from Lessor, execute, acknowledge and deliver to Lessor a statement in writing in such form as may be reasonably required by Lessor's mortgagee or any prospective purchaser of the Property (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if they are claimed, and (iii) containing such other matters as are set forth in such form, all subject to the requirement that such mortgagee or prospective purchaser acknowledge Lessee's continuing rights under the Lease. In connection with any such acknowledgements by Lessee, mortgagee/purchaser shall provide a duly-executed non-disturbance acknowledgment. Any such statement may be conclusively relied upon by Lessor and any prospective purchaser or Mortgagee of the Premises.

Section 9.8 Amendments, Changes, and Modifications. This Lease shall not be altered, changed, or amended other than by a written instrument executed by the parties.

Section 9.9 Notices. All notices and communications required or permitted under this Lease (including change of address and facsimile or telephone number set forth below) shall be in writing and shall be deemed given to, and received by, the receiving party: (i) when hand-delivered to the street address of the receiving party set forth below; (ii) when sent by facsimile transmission to the facsimile number of the receiving party set forth below with a receipt showing delivery; (iii) when sent by electronic mail to the email address set forth below with a receipt showing delivery; (iv) one (1) day after deposit with a national overnight courier addressed to the receiving party at

the street address set forth below; or (v) three (3) days after deposit in the U. S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

Lessor:

B.H. 4201 DEL REY BOULEVARD, LLC
P.O. Box 49993
Los Angeles, CA 90049
Attn: Arsalan Gozini

The Charter School: EXPLORE ACADEMY – LAS CRUCES

Las Cruces, NM
Attention: Head Administrator
Telephone: (505) _____

With a copy to:

Matthews Fox, P.C.
1925 Aspen Dr., Ste 301A
Santa Fe, NM 87505
Attn: Susan Fox
Telephone: (505) 473-3020
sfox@matthewsfox.com

Section 9.10 Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, *i.e.*, including Saturdays, Sundays, and holidays as observed by the State of New Mexico; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or such observed holiday, the day for such act shall be the first day following such Saturday, Sunday, or observed holiday that is not a Saturday, Sunday, or such observed holiday.

Section 9.11 Interpretation. The captions and paragraph headings of this Lease are not necessarily descriptive, or intended or represented to be descriptive, of all the terms thereunder, and shall not be deemed to limit, define, or enlarge the terms of this Lease. Whenever used herein, unless otherwise indicated by the context, the singular shall include the plural, the plural shall include the singular, the use of any gender shall include all genders, and the use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but" not [be] limited to" were annexed thereafter. The parties were, or had ample opportunity to be represented by counsel, and as such this Lease shall not be interpreted for or against either party based on authorship.

Section 9.12 Incorporation. Each and all of the recitals set forth at the beginning of this instrument and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.

Section 9.13 Applicable Law. Each party shall perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect. This Lease shall be governed by the laws of the State of New Mexico (without giving effect to the State of New Mexico's choice of law provisions). All legal proceedings arising from unresolved disputes under this Lease shall be brought in Las Cruces before the Third Judicial District Court of the State of New Mexico.

Section 9.15 Severability. In the event that any provision of this Lease, other than the requirement of the Charter School to pay Base Rent and Additional Rent, the requirement of Lessor to provide quiet enjoyment of the Property, and the requirement that the obligations of the Charter School to pay Base Rent and Additional Rent under this Lease are conditioned upon the prior specific appropriation by the Charter School of amounts for such purposes in accordance with the requirements of State law, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.16 Counterparts. This Lease 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 9.17 Surrender. On expiration or termination of this Lease, Lessee shall surrender to Lessor the Premises, and all Lessee's improvements thereto and alterations thereof, broom clean and in good condition (except for ordinary wear and tear occurring after the last necessary maintenance made by Lessee), and shall remove all of its personal property including any signs, notices and displays and any leasehold improvements required by Lessor to be removed. Lessee shall perform all restoration made necessary by the removal of any such improvements or alterations or personal property, prior to the expiration of the Term, including without limitation thereto, repairing the floor and patching and painting the walls where damaged by the removal of improvements, alterations or personal property to Lessor's reasonable satisfaction, all at Lessee's sole cost and expense. If any such removal would damage the Premises, Lessee shall give Lessor prior written notice thereof and Lessor may elect to make such removal at Lessee's expense or otherwise to require Lessee to post security for such restoration. If Lessee fails to surrender the Premises to Lessor on expiration or termination of this Lease as required by this Section, Lessee shall indemnify, defend and hold Lessor harmless from all damages, loss, cost and expense (including attorneys' fees) arising out of or in connection with Lessee's failure to surrender the Premises. The obligations of Lessee set forth in this subsection shall survive expiration or earlier termination of this Lease.

Section 9.18 Broker. Except for Sun Vista Commercial Real Estate, LLC and NAI 1st Valley ("Lessee's Broker") and Landlord - NAI 1st Valley ("Lessor's Broker"), to whom commissions shall be paid pursuant to separate written agreements executed by Lessor with Lessee's Broker and Lessor's Broker (singularly and collectively, the "Brokerage Agreement"), Lessor and Lessee represent and warrant that no brokerage fee is due in connection with this Lease. To the extent, if at all, allowable by New Mexico law, and without waiving the immunities and limits applicable to the Lessee pursuant to the New Mexico Tort Claims Act, each party shall indemnify and hold the other party harmless from all damages (including attorneys' fees and costs) resulting from any claims that may be asserted by any broker, finder, or other person claiming by,

through or under the party (except that Lessor shall pay the Broker in accordance with the Brokerage Agreement). Lessee represents that neither Lessee's Broker nor any related party has a beneficial interest in Lessee or any Lessee affiliate, and that no employee of Lessee shall receive any monetary compensation from Lessee's Broker (or any related party) or otherwise in connection herewith, except as part of such employee's compensation from Lessee.

Section 9.19 WAIVER OF JURY TRIAL. LESSOR AND LESSEE DESIRE AND INTEND THAT ANY DISPUTES ARISING BETWEEN THEM WITH RESPECT TO OR IN CONNECTION WITH THIS LEASE BE SUBJECT TO EXPEDITIOUS RESOLUTION IN A COURT TRIAL WITHOUT A JURY. THEREFORE, LESSOR AND LESSEE EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS COMPLAINT IN ANY ACTION, PROCEEDING OR OTHER HEARING BROUGHT BY EITHER LESSOR AGAINST LESSEE OR LESSEE AGAINST LESSOR OR ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE RELATIONSHIP OF LESSOR AND LESSEE, LESSEE'S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

Section 9.20 Merger/Prior Agreements. THIS LEASE CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES AND IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES' AGREEMENT ON THE MATTERS CONTAINED HEREIN. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS LEASE ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS LEASE. THE PROVISIONS OF THIS LEASE MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS LEASE, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY, EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS LEASE. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS LEASE OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.

Section 9.21 **ENTRY BY LESSOR.** Subject to School's visitation policies and procedures on days/time when students are present, Lessor and its authorized representatives shall, upon reasonable prior notice to Lessee, have the right to enter the Premises at all reasonable times during normal business hours and at any time without prior notice in case of an emergency (i) to determine whether the Premises are in good condition and whether Lessee is complying with its obligations under this Lease, (ii) to maintain or to make any repair or restoration to the Premises that Lessor has the right or obligation to perform, (iii) to install any meters or other equipment which Lessor may have the right to install, (iv) to serve, post, or keep posted any notices required or allowed under the provisions of this Lease, (v) to post "for sale" signs at any time during the Term and to post "for rent" or "for lease" signs and to exhibit the Premises to prospective Lessees during the last three (3) months of the Term, (vi) to show the Premises to prospective brokers, agents, buyers, or persons interested in an exchange, and (vii) to do any other act or thing reasonably necessary for the safety or preservation of the Premises. On School days and hours

when students are present, Lessor and its agents/representatives agree to be accompanied at all times by a representative of the Lessee, and shall give the Lessee reasonable notice of Lessor's intent to access the Premises. Lessor shall have the right to use any and all means which Lessor may deem proper to gain entry in an emergency, and any entry to the Premises obtained by Lessor by any of said means shall not be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Lessee from the Premises or any portion thereof. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business and any loss of occupancy or quiet enjoyment of the Premises by reason of Lessor's exercise of its rights of entry in accordance with this Section and Lessee shall not be entitled to an abatement or reduction of Rent in connection therewith.

Section 9.21 COSTS OF SUIT. If allowed by applicable law, if either party brings action for relief against the other related to this Lease, the unsuccessful party shall pay the successful party its commercially reasonable costs incurred in connection with and in preparation for said action, including its attorneys' fees. If Lessor, without fault on its part, is made a party to any action instituted by Lessee or a third party against Lessee or by or against any person holding under or using the Premises by sublease or license of Lessee (where permitted under this Lease), or for the foreclosure of any lien for labor or material furnished to or for Lessee or any such other person, or otherwise arising out of or resulting from any act or omission of Lessee or of any such other person, If allowed by applicable law, Lessee shall indemnify, defend and hold Lessor harmless from any judgment rendered in connection therewith and all costs and expenses (including attorneys' fees) incurred by Lessor in connection with such action.

Section 9.22 Submittal of Financial Statement. At any time and from time to time, but not more frequently than once per calendar year, within fifteen (15) days after request therefor by Lessor, Lessee shall supply to Lessor and/or any mortgagee of Lessor, a current financial statement or such other financial information as may reasonably be required by any such party, subject to and as may be limited by applicable New Mexico laws applicable to charter school financial information and release of audits.

[Signatures on following page.]

IN WITNESS WHEREOF, _____ and _____, each acting through their duly authorized agent or legal representative, have made and executed this Agreement as of the date first written above.

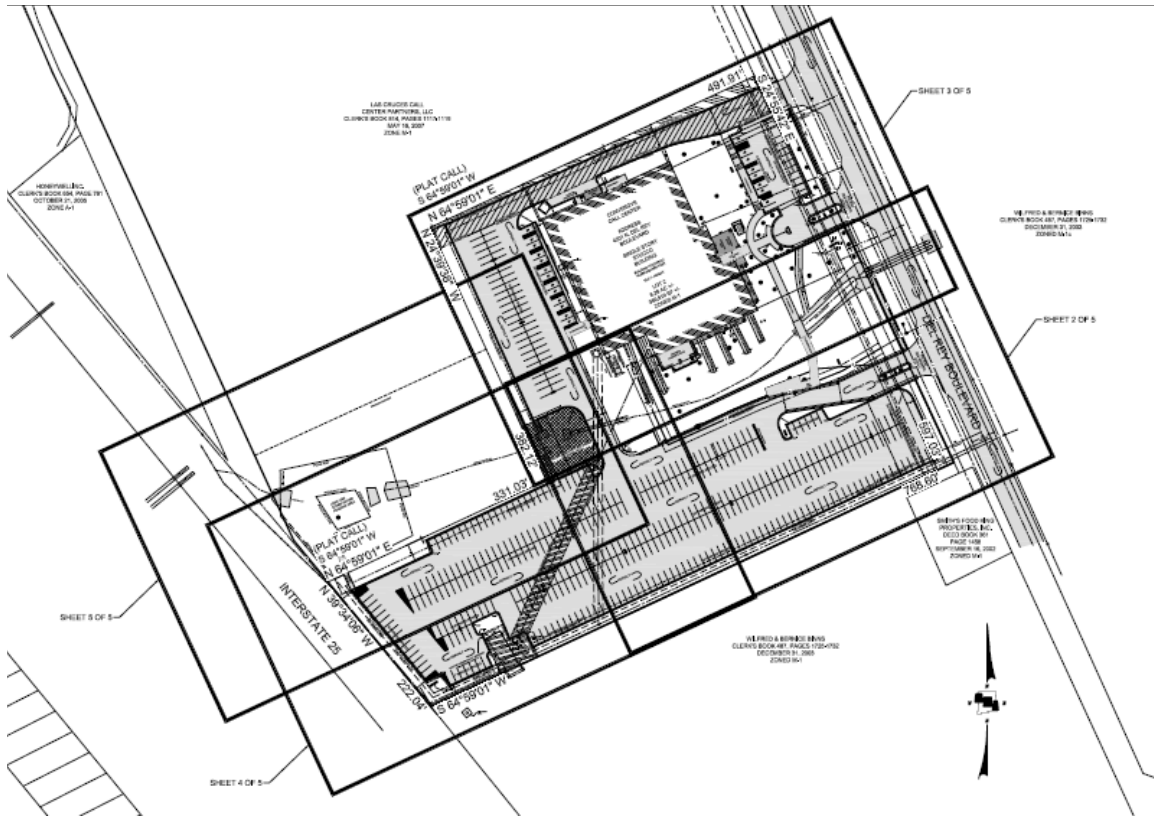
EXPLORE ACADEMY -LAS CRUCES, a New Mexico public charter school

By: _____
Name: _____
Title: Governing Council President

B.H. 4201 Del Rey Boulevard, LLC, a California limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION



The land referred to herein below is situated in the County of Dona Ana, State of NM, and is described as follows:

LOT 2, WESTMONT HEIGHTS ADDITION, REPLAT NO. 1 AS FILED IN PLAT [BOOK 22, PAGES 498-499](#), ON MAY 29, 2008 IN THE OFFICE OF THE COUNTY CLERK, DONA ANA COUNTY, NEW MEXICO AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF THE TRACT HEREIN DESCRIBED, MARKED BY A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED LS8081, BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF DEL REY BOULEVARD;

THENCE, FROM THE POINT OF BEGINNING, LEAVING THE SOUTHERLY RIGHT-OF-WAY OF THE ABOVE MENTIONED DEL REY BOULEVARD, S 64°59'01" W A DISTANCE OF 768.60 FEET TO THE SOUTHERLY MOST CORNER OF THE TRACT HEREIN DESCRIBED, MARKED BY A FOUND 1/2 INCH IRON ROD UNCAPPED, WITH A BRASS TAG MARKED "LS 8081", BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY OF U.S. INTERSTATE 25;

THENCE, ALONG THE NORTHERLY RIGHT-OF-WAY OF THE ABOVE MENTIONED U.S. INTERSTATE 25, N 39°34'06" W A DISTANCE OF 222.04 FEET TO THE WESTERLY MOST CORNER OF THE TRACT HEREIN DESCRIBED, MARKED BY A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED "LS 8081".

THENCE, LEAVING THE NORTHERLY RIGHT-OF-WAY OF THE ABOVE MENTIONED U.S. INTERSTATE 25, N 64°59'01" E A DISTANCE OF 331.03 FEET TO AN ANGLE POINT OF THE TRACT HEREIN DESCRIBED, MARKED BY A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED "LS 8081";

THENCE N 24°39'38" W A DISTANCE OF 382.12 FEET TO AN ANGLE POINT OF THE TRACT HEREIN DESCRIBED, MARKED BY A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED "LS 8081";

THENCE N 64°59'01" E A DISTANCE OF 491.91 FEET TO THE NORTHERLY MOST CORNER OF THE TRACT HEREIN DESCRIBED, MARKED BY A FOUND 1/2 INCH IRON ROD WITH PLASTIC CAP MARKED "LS 8081", BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF THE ABOVE MENTIONED DEL REY BOULEVARD;

THENCE, ALONG THE SOUTHERLY RIGHT-OF-WAY OF THE ABOVE MENTIONED DEL REY BOULEVARD, S 24°55'52" E A DISTANCE OF 597.03 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
WORK LETTER FOR IMPROVEMENTS

This Exhibit is attached to and made a part of the Lease by and between B.H. 4201 Del Rey Boulevard, LLC, a California limited liability company ("*Lessor*"), as lessor, and Explore Academy – Las Cruces, a New Mexico public charter school ("*Charter School*").

A. Definitions. Each term used in this Work Letter shall have the meaning hereinafter set forth:

1. "Architect" shall mean the New Mexico licensed architect selected by Lessor and reasonably approved by Charter School and responsible for the drafting of the Plans and Specifications and shall coordinate and supervise with the Contractor the construction of the leasehold improvements.

2. "Construction Costs" shall mean all costs incurred in the construction of the leasehold improvements in accordance with the Plans and Specifications, as modified from time to time in accordance with the provisions of this Work Letter. Such costs shall include all hard costs and soft costs to complete the improvements. Hard costs shall include such costs as labor and materials. Soft costs shall include such cost as architectural and engineering fees, but shall exclude any interest incurred on funds expended during the course of the construction.

3. "Construction Manager" shall be Nick Wood (Lessor's Director of Construction).

4. "Contractor" shall mean the contractor selected and engaged by the Lessor and responsible for the construction of leasehold improvements.

5. "Plans and Specifications" shall mean the final plans and specifications for the construction of leasehold improvements mutually agreed upon by Lessor and Charter School, in accordance with the provisions of Section B. 1 of this Work Letter.

6. "Work" shall mean the construction of leasehold improvements on the Premises in accordance with the Plans and Specifications.

B. Construction of Premises. Lessor shall cause the Work to be constructed substantially in accordance with the Plans and Specifications, at Lessor's sole expense, to a maximum of \$50/square foot (\$2,288,050.00) (the "Allowance Amount"). Lessor shall charge the Allowance Amount to the Lessee and the same shall be amortized at the rate of nine percent (9.0%) per annum over the Initial Term and paid to Lessor in equal additional monthly installments of Rent commencing with the Rent payment in July of 2024 over the Initial Term. Additionally, in the event that the Construction costs exceed the total amount of the Allowance Amount, Lessor shall charge such excess to the Lessee and the same shall

be amortized at the rate of nine percent (9.0%) per annum over the Initial Term and paid to Lessor in equal additional monthly installments of Rent commencing with the Rent payment in July of 2024 over the Initial Term. Charter School shall cooperate at all stages to promote the efficient and expeditious completion of the Work. Upon approval of the Plans and Specifications, as hereinafter described, Lessor shall enter into a construction contract with the Contractor. Lessor makes no representations or warranties as to the Work, except that it shall be performed in accordance with all applicable requirements of the local jurisdiction and shall conform to all educational occupancy and state adequacy requirements required for public school occupation, and except for the foregoing shall have no liability therefor; Lessor shall enforce any warranty from the Contractor with respect to the Work.

1. Construction of the Work. Following full execution of this Lease the Contractor shall commence construction of the Work with all due diligence until substantial completion, so that subject to unavoidable delays the Charter School may occupy the Premises, subject to any punch list items, by no later than _____, 202____. Within 10 days following the date of invoice, Lessee shall, for supervision and administration of the construction and installation of the Work, pay Lessor a construction management fee equal to 3% of the aggregate contract price for the Work, which shall not be invoiced more frequently than monthly, however, such construction management fee payable by Lessee shall in no event exceed the aggregate amount of \$60,000.00. Subject to the \$60,000 limitation herein, Lessee may not take occupancy until all such invoiced construction management fees have been paid to Lessor, the payment of which shall constitute Additional Rent.

2. Unavoidable Delays. Charter School and Lessor acknowledge that there may be unavoidable delays in the construction of the Work. The term "unavoidable delays" shall mean Force Majeure events, Tenant Delays or continued possession by prior Charter Schools or occupants.

3. Changes. If Charter School requests a change, alteration or addition after the final Plans and Specifications have been approved, Charter School shall submit same in writing to Lessor and to the Architect; any delay in the construction of the Improvements resulting therefrom shall be considered a Tenant Delay and any increase in the cost of the construction of the Improvements resulting therefrom shall be the sole responsibility of Lessee, and shall be charged as Additional Rent over the Term. If Lessor approves such change, Lessor shall obtain from the Contractor and provide Charter School with an estimate of the cost of such change. Charter School shall notify Lessor within three (3) business days if Charter School elects to proceed with the change, in which event, Lessor shall incorporate the change into the Plans and Specifications. The cost of such change shall also be incorporated in the calculation of the Construction Costs. If Lessor disapproves of such change, it shall immediately notify Charter School in writing specifying the reasons for such disapproval and the construction shall proceed in accordance with the previously approved, final Plans and Specifications.

4. Governmental Regulations. Lessor shall be solely responsible for causing the

construction of the Work to conform to any and all requirements of applicable building, plumbing, electrical and fire codes and the requirements of any authority having jurisdiction over the Work, as such codes and requirements may from time to time be amended or supplemented, including but not limited to educational occupancy requirements and applicable PSFA state adequacy requirements, it being acknowledged and understood by the parties the same shall be deemed if the Work is completed in substantial compliance with the Plans and Specifications approved by the Lessee.

5. Entry by Charter School. During the course of construction of the Work, Charter School may enter the Premises for purposes of inspecting the Work, installing trade fixtures, erecting signs, stocking merchandise and such other Work as may be necessary or desirable to prepare to occupy and conduct its business from the Premises, provided that (i) Charter School assumes the risk of injury to person and damage to its property, (ii) any entry shall be subject to the provisions of this Lease, except that the Lease Term shall not commence and rent shall not be due, and (iii) Charter School shall not unreasonably interfere with the construction of the Work on the Premises. Charter School shall also provide evidence of insurance prior to any such entry. If such entry shall interfere with the construction of the Work, then the same shall be considered a Tenant Delay and Charter School shall immediately leave upon the request of Lessor.

C. Delivery of the Premises. Subject to unavoidable delays, the Work is estimated to be substantially completed, including receipt of all certificates of occupancy required for Lessee's occupation and use of the Premises, for delivery of the Premises to Charter School by date set forth in Section B(1) above. If an unavoidable delay will prevent the substantial completion of the Work prior to such date, then Lessor will notify Charter School in writing. Upon substantial completion of the Work, Lessor will notify Charter School in writing and afford Charter School an opportunity to inspect the Premises prior to delivery. At the inspection, Lessor and Charter School will prepare and agree upon a punch list of any items that remain to be completed.

If the Work is substantially completed to permit delivery of the Premises prior to the date set forth in Section B(1) above, Lessor shall notify Charter School in writing and, should Charter School elects to take occupancy early, then Charter School may inspect the Premises and prepare, with Lessor, a punch list prior to delivery.

Should Lessor be delayed in completing the Work as a result of (i) Lessee's failure to timely furnish any information, approve plans, specifications, changes, cost estimates and other items within the time limits specified therefor set forth in this exhibit, or (ii) any change by Lessee in said plans, specifications, or other items after the expiration of such time limits, (iii) any change described in Section B(1) of this exhibit, (iv) and interference by Lessee described in Section B(5) of this exhibit, (v) Lessee failing to perform timely any obligation in this exhibit as may be required or scheduled hereunder in connection with the preparation or completion of any construction documents or in connection with the performance of the Work or (vi) any other delay caused by Lessee, its agents, employees or contractors (collectively, "Tenant Delays"), then, in any or all such instances and without limitation as to any other right or remedy available to Lessor, Lessor may

determine in its reasonable discretion that the substantial completion of the Work is the date that the Work would have been substantially completed, including all occupancy permits received, but for such delay.

D. Limitation. This Exhibit shall not be deemed applicable to any additional space added to the original Premises or, in the event of a renewal of the Lease Term, to the original Premises, itself, during the renewal term, unless expressly so provided in the Lease or any amendment thereto.

E. Plans and Specifications

- a) Lessee shall provide Lessor with a scope of work for Lessor 's use in preparing the Plans and Specifications within 60 days following the Effective Date.
- b) Landlord will prepare Plans and Specifications and deliver these to Lessee for review and approval within 45 days after receipt of the scope of work.
- c) Upon receipt, Lessee shall, in writing, accept or notify Lessor of its objections to said plans and specifications within ten (10) days after receipt. Should there be objections, Lessor shall respond to any objections within ten (10) days of receipt of Lessee's written review. Lessee shall, in writing, review the revised plans within ten (10) days after receipt. The process will continue using the above timeframes until the Plans and Specifications. Any delay in Lessee's acceptance of the Plans and Specifications after two revisions thereof by Lessor shall be considered a Tenant Delay.

EXHIBIT C
PURCHASE OPTION TERMS AND CONDITIONS

Purchase Price: (a) **Nine Million Dollars (\$9,000,000) plus (b) an amount equal to the construction cost of the Work in excess of the Allowance Amount, if any, (demonstrated by verified invoices and evidence of payment by Lessor) amortized on a straight line basis over the amount of time remaining in the Term at the time of the Closing Date below.**

Earnest Money: **No earnest Money Depots.** The purchaser is a Tenant in the building leasing space.

**Due Diligence
Period:**

The Due Diligence Period shall be for a period of thirty (30) days from the date of full execution of a Purchase Agreement between the parties.

If Purchaser gives written notice to Seller during this period by 4:00 p.m. MST of the final date of the Due Diligence Period of Purchaser's dissatisfaction for any reason with any item discovered or brought to their attention during their investigation of the property, Purchaser may withdraw the Purchase Agreement and Purchaser shall have no further obligation to Seller under the Purchase Agreement and Seller shall have no further obligation under the Purchase Agreement to Purchaser and the Title Company shall return all Earnest money to Purchaser. After the expiration of the Due Diligence Period the earnest money shall be non-refundable.

**Seller's Due
Diligence
Information.**

Seller shall deliver to Purchaser, at Seller's expense, within twenty (20) days after execution of a Purchase Agreement the following documents pertaining to the Premises to the extent the Seller possesses.

- Existing Phase I Environmental Report.
- Existing ALTA Survey
- Contracts, and other such agreements, if any, affecting the Property
- Title Binder
- Copy of building plans, including AutoCAD CD of working drawings if available.
- All existing warranties, including but not limited to, roof and mechanical.

- Any notices or reports, including but not limited to Association documents, within the Seller's possession, and any reports that have been received from governmental authorities.

Title Insurance: At closing, Seller is to provide Purchaser with an Owner's Title Insurance Policy with standard exceptions 1, 2, 3, 4, & 5 removed.

1031 Exchange: Purchaser and Seller shall reasonably cooperate with each other to assign their interest to facilitate a 1031 Exchange, if desired by the parties; provided, however, that the cooperating party does not incur any additional costs, liabilities or delays in connection with such assignment.

Formal Purchase Agreement: The formal purchase agreement and related documents shall be prepared by the Seller's attorney, at Seller's expense, and subject to acceptance by Purchase and/or Purchaser's attorney. Each party shall pay their own attorney's fees.

Closing Cost: Purchaser to pay Title Insurance one-half of document preparation fees and one-half of title company closing fees. Seller to pay for one-half of document preparation fee, one-half of title company closing fees, and any and all other customary closing costs involved in this transaction.

Closing Date: Purchaser shall close upon the Premises within thirty (30) days after ending of Due Diligence Period.

EXHIBIT D

BASE RENT SCHEDULE

Months	Base Rent (\$/SF/MO)	Base Rent (\$/SF/Yr)	Base Rent (\$/MO)
1-12	\$1.00	\$12.00	\$45,761.00
13-24	\$1.03	\$12.36	\$47,134.00
25-36	\$1.06	\$12.73	\$48,548.00
37-48	\$1.09	\$13.11	\$50,004.00
49-60	\$1.13	\$13.51	\$51,504.00
61-72	\$1.16	\$13.91	\$53,050.00
73-84	\$1.19	\$14.33	\$54,641.00
85-96	\$1.23	\$14.76	\$56,280.00
97-108	\$1.27	\$15.20	\$57,969.00
109-120	\$1.30	\$15.66	\$59,708.00
121-132	\$1.34	\$16.13	\$61,499.00
133-144	\$1.38	\$16.61	\$63,344.00