

AGENDA ITEM NO.

COUNCIL MEETING 2/27/07

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER

February 27, 2007

FROM: RANDALL L. COOPER, Director
Parks, Recreation and Community Services Department

BY: JERRY HAYNES, Assistant Director 

SUBJECT: APPROVE AGREEMENT FOR THE LEASING OF PROPERTY BY VALLEY ARTS AND SCIENCE ACADEMY (VASA) FROM CITY OF FRESNO FOR THE PURPOSE OF OPERATING A CHARTER SCHOOL

KEY RESULT AREA: Customer Service

RECOMMENDATIONS

It is recommended that the Council approve the attached maximum five-year lease agreement for the improvement and use of vacant property by Valley Arts and Science Academy (VASA) at City-owned property adjacent to the Ted C. Wills Community Center at 770 N. San Pablo in Fresno, California.

EXECUTIVE SUMMARY

For the past ten months the PRCS staff has been in discussion with the VASA to lease property to them for the purpose operating a charter school. The PRCS Department and VASA have reached an agreement on this lease.

Examples of major provisions of the lease include:

1. VASA shall complete the Conditional Use Permit (CUP) process until all requirements have been met and VASA has obtained the Certificate of Occupancy.
2. VASA shall pay the City a monthly rent of \$2,000 for the first year with annual adjustment for the remainder four years being adjusted according to the formula set forth at Section 1.7.4 of the Ground Lease Agreement, rent payment to start when VASA occupies the Premises.
3. VASA shall obtain the Certificate of Occupancy on or before August 12, 2007.
4. VASA shall be responsible for Utilities, Water, Sewage, Waste or Refuse removal and in general responsible for all costs incurred in the day-to-day management of the Premises.

KEY OBJECTIVE BALANCE

Customer Satisfaction: The leasing of this property by the City will save valuable resources for future use by other citizens resulting in additional customer satisfaction.

Employee Satisfaction: Employee pride and enhanced job satisfaction will result from the successful leasing of this property to VASA.

Financial Management: VASA will pay reasonable rent to lease this property.

BACKGROUND

For the past ten months the PRCS staff has been in discussion with the Valley Arts & Science Academy (VASA) to lease property to them for the purpose of operating a charter school. The PRCS Department and VASA have reached an agreement on the lease.

The PRCS staff was approached by members of the Board of VASA, who were interested in leasing the vacant lot adjacent from Ted C. Wills Community Center, to develop the property and erect school rooms to operate the charter school. After discussions with members of the Board of VASA regarding terms and conditions of the lease of the facility, PRCS staff decided to develop a lease agreement with VASA. This decision was based on the fact that the vacant property adjacent to the Ted C. Wills Community Center is not being used and the improvement and use by VASA will be a positive addition and enhance rather than interfere with the many programs presently taking place at the Ted C. Wills Community Center, such as the Head Start Program, all day Senior programs including the provision of a hot meal lunch, and the after school activities for neighborhood kids. The Lease Agreement provides additional source of income for the Department. The Lease Agreement will be for a maximum of five years.

The Lease Agreement is being presented to Council for approval with the understanding that VASA will and has in fact started the process of applying for and completing all of the requirements for the Conditional Use Permit (CUP) and ultimately obtain the Certificate of Occupancy. VASA will pay all of the fees required by the CUP.

FISCAL IMPACT

The fiscal impact on the City's budget is the lease will generate \$24,000 in annual income for the City.

Attachment: Lease Agreement

**GROUND LEASE AGREEMENT
(Regarding VASA Charter School)**

This Ground Lease Agreement (the "**Lease**") is made as of this 1st day of March, 2007 by and between City of Fresno, through its Department of Parks, Recreation and Community Services, a California municipal corporation, ("**Landlord**"), and Valley Arts & Science Academy, a California nonprofit corporation ("**Tenant**" or "**VASA**"), and together with Landlord, the "**Parties**").

RECITALS

WHEREAS Tenant is a charter school duly organized as a nonprofit corporation under the California Non-Profit Public Benefit Corporation Law and is authorized to operate as a charter school pursuant that certain Fresno Unified School District Board ("**FUSD**") approval as of March 22, 2006 (the "**Charter**").

WHEREAS Tenant is developing a charter school for operation in the City of Fresno, California.

WHEREAS Tenant's stated geographic location for service includes the areas of Susan B. Anthony Elementary, Lowell Elementary, and Jefferson Elementary.

WHEREAS Tenant's vision statement is for its students to achieve proficiency in the two core skills of reading and mathematics by providing a program rich in the arts and science, employing active collaborations with the Fresno Metropolitan Museum of Art and Science, Arte Americas, the African-American Museum, KVTP (Valley Public Television), the Fresno City and County Historical Society, and the Fresno County Library.

WHEREAS, Tenant has received approval for operation from FUSD.

WHEREAS Landlord and Tenant desire that Tenant, on an interim basis lease and improve vacant property located on the eastern side of, and adjacent to the Ted C. Wills Community Center at 770 N. San Pablo in Fresno CA, owned by the Landlord, as set forth herein and more particularly described in Exhibit A attached hereto (the "**Leased Premises**") and in Exhibit B attached hereto (the "**Joint-Use Premises**" *(if any)*) and together with the Leased Premises, collectively, the "**Premises**"), upon the terms and conditions herein.

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein and for good and valuable consideration, the Landlord and Tenant do hereby agree as follows:

1 BASIC LEASE TERMS

- | | |
|---------------------------|----------------------|
| 1.1. Lease Effective Date | March 1, 2007 |
| 1.2. Landlord | City of Fresno, PRCS |

- 1.2.1. Legal Entity A California municipal corporation
- 1.3. Tenant Valley Arts & Science Academy (VASA)
 - 1.3.1. Legal Entity A California nonprofit public benefit corporation
- 1.4. Lender To be determined (TBD), its successors and assigns
 - 1.4.1. Legal Entity see above
- 1.5. Premises Depicted on Exhibit A and Exhibit B attached hereto
 - 1.5.1. Address 770 N San Pablo Ave
Fresno, California 93728
- 1.6. Term (Section 4)
 - March 1, 2007 until February 28, 2012, provided Tenant receives a Certificate of Occupancy on or before August 21, 2007
 - 1.6.1. Commencement Date August 21, 2007 if Tenant secures Certificate of Occupancy on or before August 21, 2007
 - 1.6.2. Termination Date August 21, 2012 if Tenant secures Certificate of Occupancy on or before August 21, 2007; or if Tenant fails to secure Certificate of Occupancy, on or before August 21, 2007
- 1.7. Rent (Section 5)
 - 1.7.1. Base Rent \$ 2,000.00 per month, (in the event the number of students enrolled at the Valley Arts and Sciences Academy (VASA) charter school located on the Premises increases by a number requiring additional classroom(s) or other space, the parties shall negotiate in good faith regarding a reasonable increase to the Base Rent), per calendar month as increased on an annual basis per the Annual Rent Adjustment below
 - 1.7.2. Base Year Tenant Fiscal Year, July 1 to June 30.
 - 1.7.3. Supplemental INTENTIONALLY OMITTED.
 - 1.7.4. Annual Rent Adjustment The Base Rent for the second, third, fourth and fifth calendar years of the Term, shall be adjusted yearly on the anniversary of the Commencement Date and shall be the greater of (i) the product of the Base Rent for the immediately preceding calendar year multiplied by 1.025 or (ii) the product of the Base Rent for the immediately preceding calendar year multiplied by COLA, as in effect on the first business day of the each respective calendar year of the Term.

- 1.8. Security Deposit \$2,000.00 to be allocated in accordance with Section 5.8
- 1.9. Terms and Conditions Use (Section 6) As office and classroom space and for other
uses necessary to operate a charter school
- 1.9.1. Parking Allocated as set forth herein
- 1.10. Landlord's Broker None
- 1.11. Landlord's Address for Notices 2326 Fresno Street Rm 101, Fresno CA 93721
Attn: Randall L. Cooper, Director PRCS
- 1.12. Tenant's Address for Notices 1637 W. Morris Ave., Fresno CA 93711
Attn: Brad Huff
- 1.13. Lender's Address for Notices TBD, its successors and assigns
Attn: TBD
- 1.14. Exhibits Exhibit A – Leased Premises
Exhibit B – Joint-Use Premises
Exhibit C - Legal Description of the Property

2 DEFINITIONS

“Abandonment” shall mean the failure to occupy or conduct business within the Premises for ten (10) consecutive days during the Term, other than scheduled holidays including summer vacation.

“ADA” shall have the meaning set forth in Section 13.2.

“Additional Charges” shall mean (i) all other amounts, liabilities, and obligations Tenant assumes or agrees to pay under this Lease; and (ii) in the event of any failure on the part of Tenant to pay any of those items referred to in clause (i) above, Tenant shall also promptly pay and discharge every fine, penalty, interest and cost which may be added for nonpayment or late payment of such items.

“Annual Rent Increase” shall have the meaning set forth in Section 1.7.4.

“Base Rent” shall have the meaning set forth in Section 1.7.1.

“Certificate of Occupancy” shall mean a document issued by the relevant local building department stating that the Premises meet local requirements for occupancy, that it is in proper condition to be occupied and stating the legally permissible use as a school facility, subject to the

conditions contained therein.

“Charter” shall have the meaning set forth in the Recitals.

“Commencement Date” shall have the meaning set forth in Section 1.6.1 and Section 4.

“Condemnation” shall have the meaning set forth in Section 18.1.

“Controlling Person” shall mean, with respect to any Person, the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of such Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise

“COLA” shall mean the Cost of Living Allowance as determined by the State of California.

“Expenses” shall mean all costs and expenses of the ownership, operation, maintenance, repair or replacement, and insurance of the Property, as determined by standard accounting practices, including, by way of illustration only, and not by way of limitation, to the extent they apply to the Property:

- (i) Gross receipts taxes, whether assessed against the Landlord or assessed against the Tenant or Alliance and collected by the Landlord or Alliance, or both;
- (ii) Water, sewage, and waste or refuse removal charges;
- (iii) Utilities;
- (iv) Reasonable costs incurred in the day-to-day management of the Property, including the cost of management personnel, but not including costs associated exclusively with the leasing of another unit of the Property or with the construction of leasehold improvements for another tenant on the Property, such reasonable costs not to exceed three percent (3%);
- (v) Air conditioning & heating (if any);
- (vi) Elevator maintenance (if any);
- (vii) Supplies, materials, labor, equipment, and utilities used in or related to the operation and maintenance of the Property;
- (viii) All maintenance, replacement and repair costs including, without limitation, janitorial, cleaning and repair services relating to the Property and all improvements thereon, including, without limitation, air conditioning systems, landscaping, service areas, building exteriors (including painting), signs and directories, repairing and replacing roofs, walls, janitorial (if any is supplied), capital improvements and upgrades, and cost of compliance with applicable laws;
- (ix) Amortization (along with reasonable financing charges) of capital improvements

made to the Property which may be required by any government authority or which will improve the operating efficiency of the Property;

(x) Real Property Taxes including all taxes, assessments (general and special) and other impositions or charges which may be taxed, charged, levied, assessed or imposed upon all or any portion of the Property or any portion thereof, any leasehold estate in the Property or measured by rent from the Property, including any increase caused by the transfer, sale encumbrance of the Property or any portion thereof; and

(xi) Any other costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Property. Expenses shall not include depreciation on the buildings of which the Premises are a part, or equipment therein, loan payments, executive salaries or real estate brokers' commissions; and,

“Expense Accounting” shall have the meaning set forth in Section 5.4.

“GAAP” shall mean generally accepted accounting principles in the United States as in effect from time to time.

“Hazardous Materials” shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy. Without limiting the generality of the foregoing, the term "**Hazardous Materials**" includes any dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed, identified in or regulated by and under federal, state, or local laws, ordinances, rules, regulations, or policies, and shall include asbestos, urea formaldehyde, polychlorinated biphenyls, petroleum, petroleum products, fuel oil, waste oil, explosives, radioactive materials, nuclear fuel or material, medical waste, pollutants, ignitable materials, corrosive materials, and any other element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment or that are contained on any list that is adopted by the United States Environmental Protection Agency, the State of California, or any political subdivision thereof.

“Joint-Use Premises” shall have the meaning set forth in the Recitals.

“Landlord” shall mean City of Fresno – Parks, Recreation and Community Services Department.

“Leased Premises” shall have the meaning set forth in the Recitals.

“Lender” shall have the meaning set forth in Section 1.4.

“Loan Agreement” shall mean that certain real property secured loan transaction evidenced by that certain Promissory Note dated on or about [_____, 200__], from Tenant to Lender, and that certain Deed of Trust dated on or about [_____, 200__] from Tenant for the benefit of Lender, as each may be amended, modified or supplemented from time to time.

“Material Quiet Enjoyment Default” shall have the meaning set forth in Section 21.2.

“Notice Period” shall have the meaning set forth in Section 8.2.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“Premises” shall have the meaning set forth in the Recitals.

“Prepayment” shall have the meaning set forth in Section 5.1.

“Project” shall mean the project described/depicted in this Agreement and the Exhibits thereto.

“Property” shall mean the entire property of which the Premises are a part, including all structures, parking lots, and other improvements, are located, the legal description of which is attached hereto as Exhibit C.

“Real Property Taxes” shall mean any form of assessment, levy, penalty, charge or tax (other than estate, inheritance, net income, or franchise taxes) imposed by any authority having a direct or indirect power to tax or charge, including, without limitation, any city, county, state federal or any improvement or other district, whether such tax is: (i) determined by the value of the Property or the rent or other sums payable under this Lease; (ii) upon or with respect to any legal or equitable interest of Landlord in the Property or any part thereof; (iii) upon this transaction or any document to which Tenant is a party creating a transfer in any interest in the Property; (iv) in lieu of or as a direct substitute in whole or in part of or in addition to any real property taxes on the Property; (v) based on any parking spaces or parking facilities provided in the Property; or (vi) in consideration for services, such as police protection, fire protection, street, sidewalk and roadway maintenance, refuse removal or other services that may be provided by any governmental or quasi-governmental agency from time to time which were formerly provided without charge or with less charge to property owners or occupants.

Note: Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Tenant under this Lease, Tenant, by its signature hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Lease, Tenant either took a copy of this Lease to the office of the Fresno County tax assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Tenant’s full and complete satisfaction, how much Tenant will be taxed, if at all.

“Retrofit Costs” shall mean any and all costs associated with converting existing structures into classrooms that are eligible for certificates of occupancy, pursuant to which Landlord agrees to make all accountings associated with any and all such costs available to Tenant for inspection upon demand.

“Security Deposit” shall have the meaning set forth in Section 1.8.

“Tenant” shall mean Valley Arts & Science Academy (“VASA”), a California nonprofit public benefit corporation.

“Tenant’s Parties” shall mean any of Tenant’s employees, students, customers, or other invitees that enter upon the Premises.

“Tenant’s Share of Expenses” shall mean Tenant’s pro rata share of those Expenses relating to the day-to-day operation and maintenance of the Property as determined in good faith by the Landlord and Tenant on an on-going basis during the Term, if applicable. By way of illustration only, and not by way of limitation, Tenant’s Share of Expenses shall include Tenant’s pro rata share of insurance premiums, water, gas, heat, light, power, sewer, electricity, other metered services provided to the Property, maintenance and painting of interior walls and interior surfaces of exterior walls, routine maintenance and repair costs including with respect to air conditioning, heating, and exposed plumbing, electrical, sewage and other systems on the Property; provided, however, that in no event shall Landlord’s Obligations (as set forth in Section 14.1 hereof) be included in the calculation of Tenant’s Share of Expenses.

“Tenant’s Property” shall mean all movable prefabricated/modular buildings, partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the buildings of which the Premises are a part, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises.

“Term” shall mean the term of the Lease commencing on the Commencement Date and ending on the Termination Date.

“Termination Date” shall have the meaning set forth in Section 1.6.2.

“Termination Notice Period” shall have the meaning set forth in Section 23.1.3.

“Termination Option” shall have the meaning set forth in Section 4.2.

“Transfer” shall mean any (i) conveyance, sale, assignment, transfer or disposal of any stock or partnership, membership or other interests (whether equity or otherwise) in Tenant (which shall include any conveyance, sale, assignment, transfer or disposition of any stock or partnership, membership or other interests (whether equity or otherwise) in any Controlling Person(s)), if such conveyance, sale, assignment, transfer or disposition results, directly or indirectly, in a change in control of Tenant (or in any Controlling Person(s)), (ii) dissolution,

merger or consolidation of Tenant (which shall include any dissolution, merger or consolidation of any Controlling Person) with any other Person, if such dissolution, merger or consolidation, directly or indirectly, results in a change in control of Tenant or in any Controlling Person(s), (iii) sale, conveyance, assignment, or otherwise transfer all or substantially all of the assets of Tenant (which shall include any sale, conveyance, assignment, or other transfer of all or substantially all of the assets of any Controlling Person(s)) or (iv) enter into or permitting the enter into any agreement or arrangement to do any of the foregoing or to grant any option or other right to any Person to do any of the foregoing.

“Unleased Property” shall have the meaning set forth in Section 8.1.

“Utilities” shall have the meaning set forth in Section 12.1.

3 PREMISES

The approximate square footage of the Leased Premises is depicted on the floor plan attached hereto as Exhibit A. Landlord does not represent or warrant that the actual square footage of the Leased Premises is precisely as shown. Notwithstanding the foregoing, the parties stipulate and agree that the amount of Base Rent, the Tenant’s Share of Expenses, and other charges hereunder represent fair and adequate consideration for Tenant’s use and enjoyment of the Premises.

4 TERM AND POSSESSION

4.1 **Term:** The term of this Lease is for the period set forth in Section 1.6. Landlord shall deliver possession of the Premises to Tenant, subject to the following:

4.1.1 Landlord shall not be obligated to deliver possession to Tenant until Tenant has provided (i) evidence of insurance that is compliant with those requirements set forth in Section 15 and (ii) Tenant has paid to Landlord the Base Rent, Supplemental Rent and other charges required under this Lease.

4.1.1.1 If Tenant is not able to secure a Certificate of Occupancy on or before August 21, 2007, then either party may terminate this Lease upon 30 days written notice to the other, subject to obligations then due and owing and provisions in this Lease which expressly survive.

4.1.2 In the event Landlord permits Tenant to occupy the Premises prior to the Commencement Date, such occupancy shall be subject to the provisions of this Lease, including, without limitation, the insurance provisions. Rent for this period shall **waived in order to permit Tenant to complete the improvements necessary for the use of the Premises** (be payable in advance and shall be prorated on a daily basis of 1/30th of the monthly rent, commencing upon the date of such possession.) Said early possession shall not advance the Termination Date.

4.2 **Options to Terminate:** Tenant shall have the right to terminate this Lease without penalty in the event Tenant loses its charter status as granted by Fresno Unified School District (“FUSD”) (the “**Termination Option**”). Tenant may exercise the Termination Option by providing Landlord with written notice of Tenant’s intent to exercise the Termination Option no later than ninety (90) days prior to the expiration/revocation of Tenant’s current Charter, or within ten (10) days of actual notification of the denial, whichever is later. Such written notice

shall also include sufficient evidence of Tenant's denial of charter status by FUSD or such other local or state entity or government authority responsible for the acceptance or rejection of charter status. Notwithstanding the foregoing, Tenant shall use its best efforts to maintain and renew its current Charter.

4.3 Condition of the Premises: Landlord shall deliver the Premises to Tenant in "As-Is" condition. No representation, express or implied, respecting any matter or thing relating to the Premises, the Property or this Lease (including, without limitation, the condition of the Premises or the Property) have been made to Tenant by Landlord, other than as may be contained in this Lease. Landlord grants to the Tenant (including its agents and contractors) a non-fee, non-exclusive, non-transferable license to enter upon the Property during the period [8 a.m. to 5 p.m.] or other times after the end and before the start of normal business hours and on weekends or holidays as agreed upon by the Landlord in writing in order that Tenant, at Tenant's sole cost, risk and expense, may survey, make test borings and carry out related and reasonably necessary exploratory work related to this Project and for no other purpose. Tenant shall not use or permit any person to use said Property in such manner as to constitute a nuisance or to violate any public law, ordinance or regulation from time to time applicable thereto. The license granted hereunder shall include reasonable ingress and egress rights as may be provided by Landlord in its reasonable discretion. Nothing herein shall waive, limit, release, compromise or settle in any way or to any extent whatsoever claims, damages, rights and/or remedies available to or vested in Landlord against Tenant and/or arising from or related to the conduct of Tenant or its officers, employees, agents, volunteers, invitees, consultants, contractors and subcontractors, all such claims, damages, rights and remedies being expressly and entirely reserved by Landlord. Either Landlord or Tenant may terminate this license at any time with or without cause effective upon delivery to the other of a written notice of termination. If any action of the Tenant or its officers, employees, agents, volunteers, invitees, consultants, contractors and subcontractors, in the exercise of this right of entry results in damage to the Property including improvements, the Tenant will, at its option, either repair such damage or make an appropriate settlement with the Landlord. Tenant agrees to make available to Landlord all data, reports and information resulting from the Tenant's survey and exploration hereunder. Tenant shall cause any consultant, contractor, subcontractor or any other person having responsibility for work on the Property under the license granted hereunder to maintain in full force and effect insurance as required under Article 15, Insurance.

4.4 Entry on Premises: Upon reasonable prior notice to Tenant, Landlord shall at any and all reasonable times have the right to enter the Premises in order to do the following: (i) inspect the Premises; (ii) supply any service to be provided by Landlord to Tenant hereunder; (iii) post a "for lease" or similar sign; (iv) show said Premises to prospective purchasers, lenders, tenants, or other invitees of Landlord; (v) post notices of non-responsibility; and (vi) reinforce, alter, improve or repair the Premises and any portion of the Property as required by law, or otherwise as Landlord may deem necessary or desirable, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that access to the Premises shall not materially be blocked thereby, and further providing that the business of the Tenant shall not be interfered with unreasonably nor shall the Premises be made unsafe by such work. Tenant shall be entitled to a pro rata reduction in Base Rent to the extent Landlord's entry upon the Premise or work in the Property shall materially interfere with Tenant's access to or quiet enjoyment of the Premises for a continuous period in excess of two (2) business days, or to the extent work performed by

Landlord to the Property shall permanently and materially alter or reduce the size of the Premises or alter the configuration of the Premises' demising walls. Landlord shall have the right to use any and all means that Landlord deems reasonable under the circumstances to gain access to the Premises in an emergency without liability to Tenant. Any entry to the Premises by Landlord for the purposes described in this Section 4.4 shall not be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

4.5 Surrender of Possession: Subject to Section 4.2, upon the expiration or termination of this Lease, Tenant shall peaceably vacate and surrender the Premises to the Landlord in good condition (with the exception of ordinary wear and tear and acts of God) and shall surrender all keys to the Premises. Upon Landlord's request, Tenant shall remove Tenant's Property on or before the Termination Date and promptly repair all damage to the Premises caused by such removal. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall remain Tenant's property unless the law or judicial decision of the jurisdiction in which the Premises is located provides otherwise. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including reasonable storage costs and the cost of repairing any damage to the Premises caused by such removal, shall be paid by Tenant.

4.6 No Implied Termination: No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration or termination of this Lease. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

4.7 Holding Over: Subject to Section 4.2, Tenant shall have no right to retain possession of the Premises, or any part thereof, after expiration or termination of this Lease. If Tenant remains in possession of the Premises, or any part thereof, after the expiration of the term hereof, such occupancy shall be a month-to-month tenancy upon all the terms hereof applicable to a month-to-month tenancy. The monthly installment of Base Rent, and Tenant's Share of Expenses shall increase to the greater of: (a) an amount equal to the then fair market rent; or (b) one hundred and ten percent (110%) of the monthly installment of Base Rent, and Tenant's Share of Expenses payable by Tenant at the Termination Date, plus all other charges payable hereunder, calculated on a per diem basis (the greater of (a) or (b), the "**Holdover Rent**"). Tenant's payment Holdover Rent, and Landlord's acceptance thereof, shall not constitute a waiver of any of Landlord's rights or remedies with respect to such holding over and shall not be deemed to be a consent by Landlord to Tenant's continued occupancy or possession of the Premises past the time period covered by such rental payment. Any option(s) or right(s) of first refusal shall terminate upon termination or expiration of this Lease without further notice by Landlord.

5 RENT AND OTHER PAYMENTS

Tenant shall pay, when due, all rent and other charges as set forth herein, without offset or other limit, in lawful currency of the United States by wiring funds to an account designated in writing by the Landlord or in such other form as the parties may from time to time agree. Tenant shall be entitled to a five (5) day grace period to pay rent. The failure of Tenant to make any payment required under this Section 5 when due shall be deemed to be a default in payment of

rent, which shall give Landlord all remedies under California law relating to default in payment of rent. All payments received by Landlord shall be first applied to outstanding late charges, Landlord's attorneys' fees, and other fees and charges owing to Landlord by Tenant, and shall then be applied to outstanding Base Rent, or other outstanding unsatisfied rent obligations beginning with the oldest of such obligations.

5.1 Base Rent: Base Rent shall be payable to Landlord in advance on the first business day of each calendar month. The first month's rent is due and payable thirty (30) days prior to the Commencement Date. If the term begins (or ends) on other than the first (or last) day of a calendar month, Base Rent for the partial month shall be prorated based upon a thirty (30) day month. Tenant may, at its option, prepay any or all portions of the Base Rent in advance of the due date ("**Prepayment**"). Any Prepayment will be applied as agreed upon by the Parties.

5.2 Expenses: All Expenses related to the ownership, repair or replacement of structural systems of the Property are the Tenant's responsibility, including, by way of illustration only, and not by way of limitation, Tenant's Obligations as described in Section 13 hereof. Tenant shall also be responsible for the Tenant's Share of Expenses which Tenant shall pay to Landlord within thirty (30) days after receiving an invoice from Landlord itemizing (with reasonable description) all charges included thereon.

5.3 Accounting: Landlord agrees to provide Tenant with an annual, or more frequent, accounting if the Tenant so requests in writing of the Expenses paid for the current calendar year.

5.4 Disputes: If Tenant disputes the amount of Tenant's Share of Expenses due hereunder, Tenant shall have the right, after reasonable notice and at reasonable times, to inspect Landlord's accounting records relating to Tenant's Share of Expenses at Landlord's accounting office (the "**Expense Accounting**"). If, after such inspection Tenant still disputes the amount of additional rent owed, a certification as to the proper amount shall be made by Landlord's accountant, which certification shall be deemed to be final and conclusive. Landlord shall be permitted to show the same certification to other tenants. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Tenant's Share of Expenses by more than five percent (5%) in which case Landlord shall pay the costs of such certification. No such audit shall be conducted if any other tenant has conducted an audit for the time period Tenant intends to audit and Landlord furnishes to Tenant a copy of the results of such audit. Tenant's right to dispute the amount of Tenant's Share of Expenses shall continue for a period of ninety (90) days following Landlord's delivery of the Expense Accounting, after which the Expense Accounting shall be conclusively presumed to be accurate and binding on the parties hereto.

5.5 Partial Payments: Tenant shall make all payments in full. Payment or receipt of a payment of less than the amount stated in the Lease shall be deemed to be nothing more than a partial payment on that month's account. Under no circumstances shall Landlord's acceptance of a partial payment constitute accord and satisfaction, nor will Landlord's acceptance of a partial payment forfeit Landlord's right to collect the balance due on the account. Landlord may accept any partial payment check with any conditional or restrictive endorsement or memorandum without prejudice to his/her right to recover the balance remaining due or to pursue any other remedy available under this Lease.

5.6 Late Charges: Tenant hereby acknowledges that any late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is difficult to ascertain. Such costs

include, but are not limited to, processing and accounting charges and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or other sum due from Tenant shall not be received in full by Landlord or Landlord's designee on the date said amount is due, then Tenant shall pay to Landlord a late charge equal to interest accrued on such payment at the rate of seven (7%) percent per annum, based upon the full amount of said payment, any partial payment notwithstanding. The parties agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur with respect to such overdue amount, and that receipt of such charges do not prevent Landlord from exercising any of the other rights and remedies granted hereunder. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of \$25.00, and thereafter, Landlord may require Tenant to pay all future payments of rent or other sums due by money order or cashier's check.

5.7 Personal Property Taxes: Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operations. Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures, inventory, merchandise, and personal property located in the Premises; except that which has been paid for by Landlord, and is the standard of the Property. In the event any or all of the Tenant's leasehold improvements, equipment, furniture, fixtures and personal property shall be assessed and taxed with the Property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

5.8 Security Deposit: Tenant shall pay the Security Deposit to Landlord **within five (5) days of the Lease Effective Date**, or concurrently with the execution of this Lease, whichever is later. Landlord shall retain and may draw against the Security deposit in an unsegregated, non-interest earning account to ensure Tenant's performance of its obligations hereunder. In the event of Landlord draws, Tenant shall promptly restore the Security Deposit to its original balance.

6 USE OF PREMISES AND PROPERTY FACILITIES

6.1 **Use:** Tenant shall use the Premises solely for the purposes set forth in this Agreement and for no other purpose inconsistent with that use unless the Parties agree in writing otherwise.

6.2 **Compliance with Laws/Governmental Obligations:** Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the development, construction, condition, use or occupancy of the Premises and the Project.

6.3 **Insurance Hazards:** Tenant shall not use or permit the Premises to be used in any manner that will cause the cancellation of or increase the costs of any fire, liability, or other insurance policy covering the Property or any improvements on the Property. Tenant, at its sole cost and expense, shall comply with any and all requirements for or alterations to the Premises, prior approved by City as provided herein, that any insurance organization or company deems necessary to maintain reasonable fire and public liability insurance rates for the Property.

7 LENDER OBLIGATIONS

This Lease shall be subject to the terms and conditions set forth in the Loan Agreement, if any, as approved by Landlord. In the event there are any inconsistencies in or conflicts between the terms and conditions of this Lease and the terms of conditions of the Loan Agreement, those terms in this lease Agreement will control.

8 FURTHER ACTION

8.1 Landlord shall take no action with respect to the Property, including without limitation, (i) leasing portions of the Property which are not included in the Premises (“**Unleased Property**”), (ii) selling or mortgaging the Premises, (iii) delegating, transferring or assigning its duties and obligations hereunder without first obtaining Tenant’s prior written consent, provided that Tenant shall not withhold its consent so long as such action will not interfere with Tenant’s ability to operate the charter school and provide a safe and secure environment for its students.

8.2 If the Landlord leases the Unleased Property, or any portion thereof, Landlord shall provide Tenant with thirty (30) days notice of its intent to lease the Unleased Property. Tenant shall have, at its sole discretion, the right to lease from Landlord the Unleased Property and shall exercise its right upon delivering written notice to Landlord within fifteen (15) days of receipt of Landlord’s notice (“**Notice Period**”). If Tenant fails to deliver written notice within the Notice Period, Tenant waives its right to lease the Unleased Property. Such waiver shall not affect Landlord’s future attempts to lease the Unleased Property. In the event of such a lease of Unleased Property, any use must be compatible to Tenant’s operation of a charter school.

9 PARTIES’ REPRESENTATIONS AND WARRANTIES

9.1 Each Party represents and warrants that:

(a) It is duly organized and in good standing under the laws of its jurisdiction of organization.

(b) It has been duly authorized by proper action of its Board of Directors (or, in

the case of Landlord, its governing body) to execute and deliver this Lease, and perform the obligations contained herein.

9.2 Tenant represents and warrants that it is a California nonprofit corporation in good standing exempt under Internal Revenue Code (“IRC”) Section 501(c)(3) and exempt from federal taxation under IRC Section 501(a) and exempt from state taxation under (Cal. R.&T.C. 27301 (?).)

10 HAZARDOUS MATERIALS

10.1 **Prohibition on Use in Premises:** Tenant shall not introduce any Hazardous Material in, on or adjacent to the Premises or the Property without complying with all applicable federal, state, and local laws, ordinances, rules, regulations, or policies relating to the release, storage, use, disposal, transportation or clean-up of Hazardous Materials, including, but not limited to, the obtaining of proper permits; provided that (i) the amount of such Hazardous Material does not exceed the normal and customary quantities necessary for the operation and maintenance of the Property in the ordinary course of Tenant’s business and (ii) the use, storage and disposal of such Hazardous Material otherwise strictly complies with all applicable laws, ordinances, rules, regulations and policies. Tenant shall immediately notify Landlord of any release or any inquiry, test, investigation, or enforcement proceeding by or against Tenant or the Premises concerning a Hazardous Material.

10.2 **Emissions:** Tenant shall not discharge, emit or permit to be discharged or emitted, any Hazardous Materials into the atmosphere, the ground or any body of water which is over, under or contiguous to the Property. If Tenant's release, storage, use, disposal or transportation of any Hazardous Material in, on or adjacent to the Premises or the Property, or the soil or surface or groundwater in or about the Property, Tenant shall clean-up all such contamination at its expense.

10.3 **Storage:** Subject to the uses permitted and prohibited to Tenant under this Lease. Tenant shall store all Hazardous Materials in appropriate leak proof containers.

10.4 **Indemnification of Landlord:** Tenant shall indemnify, defend and hold Landlord harmless from and against any loss, liability, claims, suits, causes of action, costs, fees, including reasonable attorneys' fees and costs, arising, out of or in connection with any such contamination, loss or damage to persons or property, clean-up work, inquiry or enforcement proceeding and any Hazardous Materials released, stored, used, disposed of, or transported by Tenant or its officers, employees, agents, volunteers, invitees, consultants, contractors and subcontractors. Tenant's obligations under this paragraph shall survive the termination or expiration of this Lease. Said indemnification shall extend to any fines, liens, injunctions, loss, liability, damage, expense or claim (including reasonable attorneys' fees) resulting from: (a) Tenant’s breach of the foregoing representation; or from (b) any such Hazardous Substances that were brought, or permitted to be brought, onto the Property by Tenant. Tenant shall also defend, indemnify and hold Landlord harmless from any loss, claim, liability or expense, including reasonable attorneys’ fees, expert’s fees, and costs, arising out of or in connection with its failure to observe or comply with the provisions of this Section 10. Tenant’s indemnification shall not extend to any costs or liabilities that Tenant may incur due to the direct and sole willful misconduct or grossly negligent acts or omissions of the Landlord or its officers, officials, employees, agents or volunteers, if any such party causes a release of Hazardous Materials on Property. Notwithstanding anything to the contrary in this Lease, the indemnification created

hereby shall survive the termination or expiration of this Lease.

10.5 Information: Tenant shall provide Landlord with any and all information regarding Hazardous Materials used, stored, released or observed by Tenant in the Premises, or anywhere in or on the Property, including, without limitation, copies of all filings and reports to governmental entities at the time they are originated, and any other information requested by the Landlord. In the event of any accident, spill or other incident involving Hazardous Matter, Tenant shall immediately report the same to Landlord and supply Landlord with all information and reports with respect to the same. All information described herein shall be provided to Landlord regardless of any claim by Tenant that such information is confidential or privileged.

10.6 Compliance with Law: Notwithstanding any other provision in this Lease to the contrary, Tenant shall comply with all laws, statutes, ordinances, regulations, rules and other governmental requirements in complying with its obligations under this Lease, including, without limitation, those relating to the storage, use and disposal of Hazardous Materials.

11 DISPOSAL OF WASTE

11.1 Refuse Disposal: Tenant shall not keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers to be provided by Landlord. Tenant shall regularly and frequently remove same from the Premises in accordance with any procedures, rules and regulations established by Landlord for refuse and rubbish removal. Tenant shall keep all containers or other equipment used for storage or disposal of such materials in a clean and sanitary condition. Tenant shall not keep any trash, garbage, waste, or any property of Tenant in, on or about any portion of the Property other than the Premises, except as may otherwise be provided in any Shared Facilities Agreement.

11.2 Sewage Disposal: Tenant shall properly dispose of all sanitary sewage and shall not use the sewage disposal system for the disposal of anything except sanitary sewage in excess of the amount reasonably contemplated by the uses permitted under this Lease or permitted by any governmental entity, whichever is less. Tenant shall keep the sewage disposal system free of all obstructions and in good operating condition.

11.3 Disposal of Other Waste: Tenant shall properly dispose of all other waste or other matter delivered to, stored upon, located upon or within, used on, or removed from, the Premises in such a manner that it does not, and will not, adversely affect the: (a) health or safety of persons, wherever located, whether on the Premises or elsewhere; (b) condition, use or enjoyment of the Premises or any other real or personal property, wherever located, whether on the Premises or anywhere else; or (c) Premises or any of the improvements thereto or thereon including buildings, foundations, pipes, utility lines, landscaping or parking areas.

11.4 Joint-Use: Tenant's obligations under this Section 11 may be discharged by entering into a Shared Facilities Agreement which, by its terms, shall provide for disposal of waste consistent with the terms hereof.

12 SERVICES AND UTILITIES

12.1 Tenant Obligations: Tenant shall provide for, maintain, repair, and furnish any utilities or utility installations to the Property and the Project, (collectively "**Utilities**"). Tenant shall pay Tenant's Share of Expenses of all water, gas, heat, light, power, sewer, electricity, telephone or other service metered, chargeable or provided to the Property and Project.

12.2 Limitation of Landlord's Liability: Landlord shall not be liable for any losses, whether direct or consequential, arising from any interruption in any utility or service, including, without limitation, any business interruption or data loss, resulting from an interruption in electrical service.

12.3 Separate Meters: Landlord may, if it so elects, separately meter the Leased Premises, the Joint-Use Premises and the Unleased Property and in such event, shall assess Tenant the actual costs of its utility usage insofar as that can be determined. In any case where that cannot be determined, Tenant shall be assessed and pay Tenant's Share of Expenses.

13 REPAIRS AND MAINTENANCE

13.1 Tenant's Obligations: Tenant shall maintain in good condition and repair or, when necessary, replace the roof, foundations, and structural portions of the buildings and the Property, including the exterior walls (but excluding the interior surfaces of said walls), mechanical and building systems, the unexposed electrical, plumbing and sewage systems, including those portions of the systems lying outside the Premises, gutters and down spouts, and the heating, ventilating and air conditioning systems. Tenant shall maintain all necessary reserves for replacement of such items.

13.2 Tenant's Obligations: Except as provided herein, Tenant shall, at Tenant's sole cost and expense, maintain all parts of the Leased Premises and Project improvements in good, clean and secure condition and repair including, without limitation, any necessary repairs with respect to: (a) any carpet or other floor covering; (b) any interior wall surfaces or partitions; (c) any doors, locks, interior windows; (d) all exposed plumbing, plumbing fixtures, pipes, pipe fixtures, electrical wiring, switches and any and all other exposed fixtures; (e) all standard building furnishings and special items and equipment installed by or at the expense of Tenant; (f) the interior side of any demising walls; (g) any telephone and computer or data cabling that serves Tenant's equipment exclusively; (h) all private showers and kitchens, including any plumbing in connection therewith; and (i) any alterations, additions or improvements performed or caused to be performed by Tenant, including, without limitation, any costs, repairs or maintenance associated with the Americans With Disabilities Act, as set forth in 42 U.S.C. §§ 12101 et seq. ("ADA"), seismic laws, asbestos abatement laws, or any other law, ordinance, code or other governmental act requiring any repair, maintenance or remediation in the Premises, regardless whether said requirements exist as of the Commencement Date or arise due to new laws, rules, or regulations enacted after the Commencement Date. Tenant shall also, at Tenant's sole cost and expense, maintain the Joint-Use Premises but may share costs and expenses with Alliance in accordance with the Shared Facilities Agreement.

13.3 Repairs and Alterations Necessitated by Tenant's Acts: Tenant shall be responsible for all repairs and alterations in and to the Premises and the Property, as well as any facilities and systems thereof, including that which arises out of: (a) Tenant's use or occupancy of the Premises, including, but not limited to, any repairs or alterations required as a result of or incident to the application of any law, including, but not limited to, the ADA, to Tenant's use of the Premises; (b) the installation, removal, use or operation of Tenant's Property, as defined in this Lease, in the Premises; (c) the moving of Tenant's Property into or out of the buildings; or (d) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees. If the need for any cost or repair required hereunder is caused in part or in whole by the act, neglect, fault or omission of any duty by Tenant, its agents, servants, employees or invitees,

Tenant shall pay to Landlord the reasonable cost of such maintenance and repairs, plus a reasonable overhead fee.

13.4 Landlord's Rights: If Tenant shall fail to perform Tenant's obligations under this provision, or under any other paragraph of the Lease, Landlord may at its option (but shall not be required to) enter upon the Premises after twenty-four (24) hours' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the legal rate of ten percent (10%) per annum shall become due and payable as additional rental together with Tenant's next installment. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.

14 ALTERATIONS, ADDITIONS OR IMPROVEMENTS

14.1 Landlord's Obligation: Unless specifically provided in this Lease, Landlord shall have no obligation to construct or install any improvements in the Premises, nor shall Landlord be obligated to contribute to the cost or expense of any improvements, including improvements or alterations required by the ADA or seismic requirements or any other applicable law.

14.2 Tenant's Obligation: Without the prior written consent of Landlord, Tenant shall not make or suffer to be made any alterations, additions or improvements to the Premises or any part thereof. If Tenant desires to make any alterations, additions or improvements in the Premises, Tenant shall first deliver plans to Landlord for review. Landlord shall have ten (10) days to review Tenant's plans after they have been submitted to Landlord for review. Tenant shall reimburse Landlord for Landlord's out-of-pocket costs of reviewing Tenant's plans, including without limitation, contractor and attorneys' fees, not to exceed one thousand five-hundred dollars (\$1,500). All work done by Tenant with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, in writing, prior to commencement of the work, and such work shall be diligently completed. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, these shall be made by Tenant at Tenant's sole cost and expense and must be done in accordance with all applicable laws, including, but not limited to, any work or improvements under the ADA and applicable provisions of Title 24 of the United States Code which are required incident to, as a condition of, or as a result of any alterations, improvements, or additions installed or constructed by Tenant, regardless whether such work must be conducted within or outside of the Premises. Tenant acknowledges that Landlord has made no representation or warranty regarding the ability of Tenant to obtain permits or approval to install any additions or improvements in the Premises, nor has Landlord made any representation or warranty regarding the anticipated cost of any addition or improvement, all of which Tenant agrees shall be the responsibility of Tenant to fully investigate at Tenant's sole cost and expense. Tenant may, with the written consent of Landlord, make alterations, additions and improvements to the Joint-Use Premises in accordance with the terms of any Shared Facilities Agreement.

14.3 Indemnification: Tenant shall keep the Premises free and clear of any liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss damage, costs, attorneys' fees and any other expenses incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any

person claiming under Tenant. This obligation shall survive termination or expiration of this lease.

14.4 Removal of Tenant Improvements and Fixtures: Upon the expiration, or sooner termination hereof, Landlord may, by written notice, require Tenant, at Tenant's sole cost and expense, forthwith and with all due diligence to remove any and/or all alterations, additions, or improvements made by Tenant and return Premises to its original condition (which may include removal of telephone and network wiring); and Tenant shall, no later than thirty (30) days after termination, and with all due diligence at its sole cost and expense, repair any damage to the Premises caused by such removal.

14.5 Removal of Trade Fixtures and Personal Property: Tenant's Property shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises or to the Property resulting from such removal.

15 INSURANCE

15.1 Tenant's Insurance: Throughout the life of this Lease, Tenant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by CITY'S Risk Manager. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Offices (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operation, products and completed operations, and contractual liability with limits of liability of not less than 2,000,000 per occurrence for bodily injury and property damage; \$1,000,000 per occurrence for personal and advertising injury; and \$2,000,000 aggregate for products and completed operations.

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Offices (ISO) Commercial General Liability Coverage Form CA 00 00 and include coverage for all owned, hired and non-owned automobiles or other licensed vehicles with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **PROFESSIONAL LIABILITY** insurance (Errors and Omissions) with a limit of liability of not less than \$1,000,000 per claim/occurrence. Only required if Tenant contracts any work on the Property with any consultant, architect, engineer, construction project manager or other design professional.

(iv) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(v) **EMPLOYERS' LIABILITY** insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tenant shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of Landlord of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Lease, Tenant shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Tenant shall file with Landlord a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name Landlord, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Tenant's insurance shall be primary and no contribution shall be required of Landlord. In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a 5 year discovery period, or (ii) the coverage shall be maintained for a minimum of 5 years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Lease. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to Landlord, its officers, officials, agents, employees and volunteers. **Tenant shall have furnished Landlord with the certificate(s) and applicable endorsements for ALL required insurance prior to Landlord's execution of the Lease.** Tenant shall furnish Landlord with copies of the actual policies upon the request of Landlord's Risk Manager at any time during the life of the Lease or any extension, and this requirement shall survive termination or expiration of this Lease.

Any failure to maintain the required insurance shall be sufficient cause for Landlord to terminate this Lease.

If Tenant should contract any work on the Property or subcontract any of its obligations under this Lease, Tenant shall require each consultant, contractor or subcontractor to provide insurance protection in favor of Landlord, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', contractors' and subcontractors' certificates and endorsements shall be on file with Tenant and Landlord prior to the commencement of any work by the consultant, contractor or subcontractor.

15.2 Tenant's Personal Property Insurance: Tenant shall also maintain throughout the term hereof, including any renewal term, property insurance, for full replacement value, relating to all improvements constructed on the Property by Tenant and personal property of Tenant or its officers, employees, agents and volunteers which are located or kept on the Premises. Tenant shall provide Landlord, prior to the commencement of this Lease, with a certificate of insurance evidencing said property insurance.

Tenants and its insurers hereby waive all rights of recovery against Landlord and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Tenant or its officers, employees, agents and volunteers, or its property of others under its care, custody and control, to the extent that such injury, loss or damage is insured against under any insurance policy which may have in force at the time of the injury, loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its

insurance carrier or carriers that this mutual waiver or subrogation is contained in this lease.

16 INDEMNIFICATION

16.1 Tenant will protect, indemnify, defend, and save Landlord, its officers, officials, employees, agents and volunteers harmless from and against any liability to third parties resulting from Tenant's occupation or use of the Premises including, without limitation, any claim, liability, loss, damages, and attorneys' fees and litigation expenses arising from: (a) The death or injury of any person or persons including, without limitation, any person who is an employee, agent, invitee, consultant, contractor or subcontractor of Tenant, or (b) the damage to or destruction of any property including, without limitation, property owned by Tenant or any person who is an employee, agent, invitee, consultant, contractor or subcontractor of Tenant, and caused or allegedly caused by the condition of the Premises, (c) any act or omission of Tenant or any employee, agent, invitee, consultant, contractor or subcontractor of Tenant, or (d) any work done on, or materials furnished to, the Premises at the Tenant's request, or the request of Tenant's employees agents invitees consultants, contractors or subcontractors, or (e) Tenant's failure to perform any provision of this Lease, or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision, relating to the Tenant's use or occupancy of the Premises, or (f) Tenant's use of the Property and any adjoining parking lots or sidewalks. Tenant's obligations under this paragraph shall not include any claims, costs, damages, demands, or liability caused directly and solely from Landlord's willful misconduct or grossly negligent acts or omissions.

Should Tenant contract any work on the Property or subcontract any of its obligations under this Lease, Tenant shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This requirement shall survive termination or expiration of this Lease.

16.2 **Landlord's Obligation:** As material consideration to Landlord, Tenant agrees that Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, and Tenant waives all claims against Landlord for damage to persons or property arising for any reason, except for damage resulting directly and solely from Landlord's willful misconduct or grossly negligent acts or omissions or breach of its express obligations under this Lease which Landlord has not cured within a reasonable time after receipt of written notice of such breach from Tenant.

17 DAMAGE OR DESTRUCTION

17.1 **Partial Damage – Insured:** In the event of damage to the Premises or the Property that is caused by any casualty which is covered under an insurance policy required to be maintained by the provisions above, then Tenant shall diligently commence and execute repair of such damage upon receipt from the insurer of the proceeds, but only to the extent of proceeds actually received by Tenant, and this Lease shall continue in full force and effect.

17.2 **Partial Damage – Uninsured:** In the event of damage to the Premises or the Property which is caused by a casualty not covered under an insurance policy required by this Lease, or for which there is a dispute with an insurer regarding coverage, except those caused by a negligent or willful act or omission of Tenant, Tenant may, at Tenant's option, either:

17.2.1 If said damage materially interferes with Tenant's use and quiet enjoyment of the Premises, terminate the Lease, said termination to be effective on the date of the damage; or

17.2.2 Give written notice to Landlord within thirty (30) days after the date of occurrence of such damage that Tenant will rebuild the Premises, in which event this Lease shall continue in full force and effect, and Tenant shall diligently commence and execute such repairs.

17.3 Total Destruction: If the Premises are totally destroyed during the term of this Lease from any cause whether or not covered by the insurance required under this Lease (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

17.4 Damage Near End of the Term: If the Premises are partially destroyed or damaged during the last six (6) months of the term of this Lease, either party to this Lease may terminate this Lease as of the date of occurrence of such damage by giving written notice to the other of such election to do so within thirty (30) days after the date of occurrence of such damage.

17.5 Tenant's Improvements and Property: Landlord shall not be required to repair or replace any alterations, improvements, or additions installed in the Premises by Tenant, any personal property owned by Tenant or Tenant's Parties, or any improvements or additions subject to reimbursement by Tenant for which full payment has not been made.

17.6 Abatement of Rent, Tenant's Remedies: If the premises are partially destroyed or damaged, the rent payable hereunder shall be abated in proportion to the extent to which Tenant's use of the Premises is impaired. Except for abatement of rent, if any, or to the extent that such casualty is caused by Landlord's gross negligence or willful misconduct, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

18 CONDEMNATION

18.1 If the Premises or any portion thereof are taken under the power of eminent domain, or sold to a public authority under the threat of the exercise of said power (all of which is herein referred to as "**Condemnation**"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If all portions of the Property necessary for reasonable access to the Premises or more than twenty-five percent (25%) of the Premises is taken by condemnation, either Landlord or Tenant may terminate this Lease, as of the date the condemning authority takes possession, by notice in writing of such election within twenty (20) days after Landlord shall have notified Tenant of the taking, or in the absence of such notice then within twenty (20) days after the condemning authority shall have taken possession.

18.2 All awards for the taking of any part of the Premises or any payment made under the threat of the exercise of compensation for diminution of value of a leasehold or for the taking of the fee or as severance damages shall be payable to Landlord; provided, however, that Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property.

18.3 If this Lease is not terminated by either Landlord or Tenant then it shall remain in full force and effect as to the portion of the Premises remaining, provided the Base Rent and Tenant's Pro Rata Share shall be reduced in proportion to the portion of the Premises or Property taken by condemnation. In the event this Lease is not so terminated then Landlord shall, at Landlord's sole cost, but only to the extent of compensation or severance damages actually received by Landlord in connection with such condemnation, restore the Premises or Property, as applicable, to the quality and character as existed prior to the condemnation as soon as reasonably possible. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

19 FINANCIAL COVENANTS; OFFICER CERTIFICATES

19.1 **Statements.** Tenant shall furnish the following statements to Landlord:

(a) On or before June 30 of each year, a copy of the audited consolidated balance sheets of Tenant as of the end of **Tenant's** fiscal year, and related audited consolidated statements of income, changes in common stock and other stockholders' equity and changes in the financial position of Tenant for such fiscal year, prepared in accordance with GAAP applied on a basis consistently maintained throughout the period involved, such consolidated financial statements to be certified by nationally or regionally recognized certified public accountants; provided, however, that if Tenant does not have its financial statements audited, then the foregoing requirement shall only require Tenant to deliver the foregoing as "reviewed" by a nationally or regionally recognized firm of certified public accountants;

(b) Within 120 days after the end of Tenant's fiscal year, and together with the annual audit report furnished in accordance with clause (a) above, an Officer's Certificate stating that to the best of the signer's knowledge and belief after making due inquiry, Tenant is not in default in the performance or observance of any of the terms of this Lease, or if Tenant shall be in default, specifying all such defaults, the nature thereof, and the steps being taken to remedy the same, and Tenant is in compliance with those covenants set forth herein, or if such is not the case, stating the nature of such non-compliance and the corrective actions which Tenant has taken or proposes to take with respect thereto; and

(c) With reasonable promptness, such other information respecting (i) the financial and operational condition and affairs of Tenant, (ii) the physical condition of the Premises and (iii) any suspected Transfer, including the then equity or voting ownership in Tenant or in any Controlling Person(s), in each case as Landlord may reasonably request, in the form of a questionnaire or otherwise, from time to time.

19.2 **Officer's Certificate.** At any time and from time to time upon Tenant's receipt of not less than ten (10) days' prior written request by Landlord, Tenant shall furnish to Landlord an Officer's Certificate/Estoppel Certificate certifying (i) that this Lease is unmodified and in full

force and effect, or that this Lease is in full force and effect as modified and setting forth the modifications; (ii) the dates to which the Rent has been paid; (iii) whether or not, to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge; and (iv) responses to such other questions or statements of fact as Landlord, any ground or underlying Landlord, any purchaser or any current or prospective property mortgagee shall reasonably request. Tenant's failure to deliver such statement within such time shall constitute an acknowledgement by Tenant that this Lease is unmodified and in full force and effect except as may be represented to the contrary by Landlord; Landlord is not in default in the performance of any covenant, agreement or condition contained in this Lease; and the other matters set forth in such request, if any, are true and correct. Any such certificate furnished pursuant to this Section may be relied upon by Landlord and any current or prospective property mortgagee, ground or underlying Landlord or purchaser of the Property.

20 ASSIGNMENT AND SUBLETTING

20.1 Assignment by Tenant: Except as provided below, Tenant shall not mortgage, pledge, hypothecate or encumber this Lease or any interest therein. Tenant shall not assign this Lease or sublet, or suffer any other person (the agents and servants of Tenant excepted) to occupy or use, the Premises, or any part thereof, or any right or privilege appurtenant thereto without the prior written consent of the Lender and prior written consent of the Landlord first had and obtained, which consent shall not unreasonably be withheld or delayed. Landlord and/or Lender's consent to one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting, nor shall Landlord and/or Lender's consent release Tenant from any of its obligations under this Lease unless such consent expressly so provides. Any assignment, subletting, occupation or use without the consent of Landlord and Lender shall be void and, at the option of Landlord and Lender, shall terminate this Lease. Any assignment or sublease of 50% or more of the Premises through the end of the Term shall terminate any option(s) or right(s) of first refusal. Notwithstanding anything to the contrary herein, Tenant shall have a one-time right to assign this Lease to an entity which is a wholly-owned subsidiary of Tenant and/or a supporting organization of Tenant, in either case subject to Tenant's general supervision and control. In no event shall such an assignment release Tenant for any of its obligations under this Lease.

20.1.1 Except as provided in Section, no interest of Tenant in this Lease shall be assignable by involuntary assignment through operation of law (including without limitation the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes proceedings under the Bankruptcy Act in which Tenant is the bankrupt; or if Tenant is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; or (b) if a writ of attachment or execution is levied on this Lease; or (c) if in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

20.1.2 No subletting or assignment (other than as expressly provided herein) shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to

pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Landlord's consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting, nor shall Landlord's consent release Tenant from any of its obligations under this Lease unless such consent expressly so provides. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor.

20.1.3 In no event shall Tenant assign this Lease or sublet the Premises or any portion thereof to any then-existing Tenant of any portion of the Property except as may be provided therefore in any Shared Facilities Agreement..

20.1.4 Either Party may request of the other Party permission to lease or sublease, as the case may be, to a third party certain areas of the Premises or Unleased Property for use after regular school hours. Upon such a request by either Party, the Parties agree to discuss in good faith the viability and terms of any such lease or sublease; provided, however, that either Party may deny such a request in its sole and absolute discretion.

20.2 **Assignment by Landlord:** Other than assignment to the Lender, to which Tenant hereby consents or by the terms of applicable law, the Landlord shall not assign this Lease in whole or in part to any other party, without providing Tenant with prior written notice.

20.3 **Sale by Landlord:** Except as set forth herein, and except as expressly required by the terms of applicable law or the Loan Agreement, the Landlord shall not sell the Premises in whole or in part to any other party without the Tenant's prior written consent. This Lease continues notwithstanding the Landlord's sale of the Premises.

21 DEFAULT

21.1 **By Tenant:** The occurrence of any one or more of the following events shall constitute a default and breach of the Lease by Tenant.

21.1.1 The Abandonment of the Premises by Tenant.

21.1.2 The failure of Tenant timely to vacate and surrender possession of the Premises upon termination or expiration of Tenant's right thereto or expiration or termination of this Lease.

21.1.3 The failure by Tenant to make any payment of Base Rent, Supplemental Rent or any other payment required to be made by Tenant to Landlord hereunder, as and when due, where such failure shall continue for a period of ten (10) business days after written notice thereof by Landlord to Tenant.

21.1.4 The failure of Tenant to make any payment or to perform any obligation owing to Landlord under this Lease, any Shared Facilities Agreement or any other agreement or contract between Landlord and Tenant or to which this Lease are expressly made subject, as and when such payment or performance is due.

21.1.5 Becoming insolvent as defined by applicable California law; or the making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or

reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

21.1.6 The failure of Tenant to timely observe or perform any other covenant, condition or provision of this Lease and such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

21.1.7 The failure of Tenant to maintain its charter to operate as a charter school or otherwise comply with the requirements of the California Education Code and such failure shall continue for a period of thirty (30) days after written notice thereof by the Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

21.2 **By Landlord:** The failure by Landlord to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Landlord shall constitute a default and breach of the Lease by Landlord where such failure shall continue for a period of thirty (30) days after written notice thereof by Tenant. If the nature of Landlord's performance is such that it cannot reasonably be completed within said thirty (30) or five (5) days, as applicable, then Landlord shall not be deemed to be in default if Landlord shall commence and diligently execute such acts within the period herein set forth.

22 LENDER'S CURE RIGHTS

22.1 **Landlord Default.** In the instance of a default by Landlord as set forth above, the Lender has the right to cure any such failure by Landlord for a period of sixty (60) days prior to Tenant pursuing any remedy set forth herein.

22.2 **Tenant Termination.** Tenant will not terminate the Lease because of a default by Landlord unless Tenant shall have first given Lender written notice and a reasonable opportunity to cure such default; and

22.3 If a purchaser other than Lender acquires the Property upon foreclosure of the mortgage, and if such purchaser provides written notice to Tenant that such purchaser shall be bound by this Lease, then such purchaser shall have the same rights as Lender would have if Lender had purchased at the foreclosure sale.

22.4 If Lender (through foreclosure, deed in lieu of foreclosure or otherwise) acquires the Property or any estate therein and/or any interest in the Property senior to that of Landlord's, then notwithstanding the subordination provided for above:

22.4.1 Lender shall have the right, at its sole and absolute discretion, to terminate the Lease, in which case, Tenant shall immediately surrender possession of the Property to

Lender.

22.4.2 Lender shall not be:

- (i) Liable for any act or omission of Landlord or any prior landlord;
- (ii) Subject to any offsets or defenses which Tenant might have against Landlord or any prior landlord;
- (iii) Liable for the return of any security deposit that is not actually turned over to the Lender;
- (iv) Bound to Tenant subsequent to the date upon which Lender transfers its interest in the Property any third party;
- (v) Liable to Tenant under any indemnification provisions set forth in the Lease or for any damages Tenant may suffer as a result of any false representation set forth in the Lease, the breach of any warranty set forth in the Lease, or any act of, or failure to act by any party other than Lender;
- (vi) Liable beyond its equity in the property; or
- (vii) Bound by any option or other right to purchase or sell all or any portion of the Property.

23 REMEDIES IN DEFAULT

23.1 Liability of Tenant: In the event of any such default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand, and without limiting any right or remedy which Landlord may have by reason of such default or breach, now or later allowed by law, exercise any such right or remedy including but not limited to:

23.1.1 If there is a letter of credit, exercise Landlord's rights under the letter of credit;

23.1.2 Recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to: the cost of recovering possession of the Premises; expenses of re-letting, including broker's commissions and necessary renovation and alteration of the Premises, the remaining unamortized value of any Tenant Improvement costs paid by Landlord and any brokerage commission paid in connection with this Lease, amortized over the life of the Term; consequential damages, including damages caused by the loss of a new tenant which is caused by reason of delay in Tenant's surrender of possession or loss of financing which is caused by Tenant's delay in execution of an estoppel certificate or subordination agreement;

23.1.3 Terminate Tenant's right to possession of the Premises by any lawful means and by providing no less than ninety (90) days written notice ("**Termination Notice Period**"), in which case this Lease shall terminate on the last day of the Notice Period and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorney's fees, any real estate commission actually paid; and the worth at the time of award of the amount by which the unpaid Base Rent and Supplemental Rent for the balance of the term after the time

of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided;

23.1.4 Maintain Tenant's right

25 NOTICE

Any notice shall be in writing and served either personally or sent by prepaid certified first class mail, overnight delivery service, fax, e-mail or courier addressed as set forth in Section 1, with a copy sent to Lender. Either party or the Lender may change its address by notification to the other party. Notice by mail shall be deemed to be communicated five (5) business days from the date of mailing. Notice by overnight delivery service shall be deemed to be communicated three (3) business days from the date of shipping. Notice by fax, e-mail or courier shall be deemed to be communicated two (2) business days from the date of transmittal.

26 WAIVER

26.1 No delay or omission in the exercise of any right or remedy by Landlord, Lender or Tenant shall impair either's right or remedy or be construed as a waiver. Neither Landlord or Lender's consent to or approval of any act by Tenant requiring Landlord or Lender's consent or approval nor Tenant's consent to or approval of any act by Landlord or Lender requiring Tenant's consent shall be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant or Tenant's consent to or approval of any subsequent act by Landlord. Any waiver by Landlord or Tenant of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

27 INTENTIONALLY OMITTED

28 GOVERNMENT ENERGY OR UTILITY CONTROLS

In the event of imposition of federal, state or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including, the right of entry into the Premises to effect compliance consistent with the provisions hereof.

29 MISCELLANEOUS PROVISIONS

29.1 **Landlord's Consent:** Except where otherwise stated to the contrary, any consent required by Landlord under this Lease must be granted in writing and may be withheld or conditioned by Landlord in its reasonable discretion.

29.2 **Tenant's Consent:** Except where otherwise stated to the contrary, any consent required by Tenant under this Lease must be granted in writing and may be withheld or conditioned by Tenant in its reasonable discretion.

29.3 **Lender's Rights:** Any remedies and rights provided the Landlord under this Lease are also the remedies and rights of the Lender. The number of days in which the Lender must exercise such rights or remedies shall be two times the number of days allowed under the Lease for the Landlord to exercise such rights and remedies.

29.4 **Landlord's Successors:** In the event of a sale or conveyance by Landlord of the Premises, the same shall operate to release Landlord from any liability under this Lease, except as to any issues arising out of or related to Hazardous Materials, and in such event Landlord's

successor in interest shall be solely responsible for obligations under this Lease.

29.5 Interpretation: This Lease shall be construed and interpreted in accordance with the laws of the state of California. When required by the consent of this Lease, the singular shall include the plural, and the masculine shall include the feminine and/or neuter. "**Party**" shall mean Landlord or Tenant. The enforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal. Any ambiguity shall not be interpreted against any party hereto. Deletions or strike-outs from the original text shall not be used in interpreting the meaning of the remaining text.

29.6 Addenda: If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.

29.7 Landlord's Representations and Warranties: All representations and warranties by Landlord, as well as all agreement by Landlord to indemnify or hold Tenant harmless, shall survive the termination or expiration of this Lease.

29.8 Tenant's Representations and Warranties: All representations and warranties by Tenant, as well as all agreements by Tenant to indemnify or hold Landlord harmless, shall survive the termination or expiration of this Lease.

29.9 Attorneys' Fees: In the event of any action or proceeding brought by either party against the other under this Lease the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees incurred on account of such action or proceeding. Wherever referenced in this Lease, any attorney's fees recoverable by either party shall be reasonable and shall include the attorney's costs and expenses associated therewith.

29.10 The Parties agree that this Lease is subject to California Education Code Sections 17000 et. seq., and 17078.66 et. seq.

29.11 Changes Requested by Lender: Neither Landlord nor Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by the Lender on Landlord's interest, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of the party from whom consent to such charge or amendment is requested.

29.12 Consent: Notwithstanding anything contained in this Lease to the contrary, Tenant does not waive the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction with respect to any obligation requiring such consent under this Lease. In such event, Tenant is entitled to any equitable or legal remedy provided under the law or judicial decision of the State of California.

29.13 Estoppel:

By Tenant. Tenant shall, within ten (10) business days after Landlord's request from time to time, sign and deliver to Landlord a certificate in such form as Landlord shall require in conformity with this paragraph, directed to such person(s) as Landlord shall request, containing any or all of the following statements (identifying in reasonable detail any exceptions that may exist at the time), as requested by Landlord: (a) this Lease has not been amended, constitutes the entire agreement between Landlord and Tenant relating to the Premises, and is in

full force and effect (with a copy of the entire Lease and all amendments attached as exhibit(s), if requested by Landlord); (b) Landlord has fully performed all of Landlord's agreements in this Lease; (c) neither Landlord nor Tenant is in default under this Lease and to the best of Tenant's knowledge no facts or circumstances exist that, with the passage of time or the giving of notice, would constitute defaults under this Lease by Landlord or Tenant, and Tenant has no offsets, defenses, claims, counterclaims or recoupment rights against Landlord's enforcement of this Lease; (d) there are no unfulfilled conditions to Tenant's obligations under this Lease; (e) Tenant has no rights to the Premises except as stated in this Lease; (f) Tenant has paid all rent required to be paid under this Lease; (g) the Commencement Date or any other then-ascertainable date relevant to this Lease; (i) the date when the Term shall expire; (j) confirmation that this Lease is subordinate to any underlying financing; (k) confirmation of the exact location and size (in rentable square feet) of the Premises and that Tenant has entered into occupancy of the Premises; (l) all property attached to the Premises owned by Tenant and (m) such other matters as Landlord or a Lender shall request. Tenant irrevocably appoints Landlord as Tenant's attorney-in-fact to execute such a writing if Tenant shall fail to do so within ten (10) days after Landlord's request.

By Landlord. Upon Notice by Tenant, provided that Tenant is not in default under this Lease, Landlord agrees to deliver to Tenant, within ten (10) Business Days, an estoppel certificate similar in form and scope to the estoppel certificate required of Tenant, to the extent applicable under the circumstances in Landlord's reasonable judgment.

29.14 **Counterparts:** This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.

29.15 **Cumulative Remedies:** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

29.16 **Delay in Enforcement:** The parties may delay the enforcement or fail to enforce any or all of their rights under this Lease without waiving or relinquishing any or all of those rights.

29.17 **Inability to Perform:** This Lease and the obligations of the parties hereunder shall not be affected or impaired because the parties are unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, inability to procure materials, earthquake, failure of power, restrictive governmental law or regulations, riots, insurrection, war, unforeseen concealed conditions, unusually severe weather or other reason of a like nature not the fault of the party so delayed, hindered or prevented from performance. In any event, this Section shall be limited to such parties' inability to perform any such act for a period of one hundred eighty (180) days.

29.18 **Marginal Headings:** The marginal headings and Article titles to the Articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

29.19 **Name:** Tenant shall not use the name of the Property or the development in which the Property is situated for any purpose other than as an address of the business to be conducted by the Tenant in the Premises, or other associated educational purposes.

29.20 **Plats and Riders:** Clauses, plats and riders, if any, signed by the Landlord and the Tenant and endorsed on or affixed to this Lease are a part hereof.

29.21 **Prior Agreements:** This Lease contains all of the agreements of the parties

hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

29.22 **Recordation:** Landlord may record this Lease or a short form memorandum hereof without the prior written consent of the Tenant.

29.23 **Separability:** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

29.24 **Successors and Assigns:** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

29.25 **Traffic Control:** Tenant shall solely be responsible for the preparation of any and all required traffic plans as a result of Tenant's use of the Premises, and for compliance with all city or county traffic issues, including but not limited to, the installation of any and all traffic signals.

29.26 **Signage:** In each case subject to the mutual reasonable approval of Landlord and Tenant and only in compliance with all applicable laws, Tenant shall have the right to erect on the Premises or affix to the buildings a single plaque or other signage necessary or desirable to identify the Premises or buildings as part of a charter school and other signage generally used in the normal course of the operation of a charter school. Unless Landlord and Tenant mutually agree otherwise, any other signage on the Premises is explicitly prohibited. Tenant shall bear the entire cost and expense (including, without limitation, permitting, design, fabrication and installation costs) of Tenant's signage.

(signature page follows)

IN WITNESS WHEREOF, Landlord and Tenant have respectively caused this Lease to be duly executed in their names and on their behalf by their duly authorized representatives and Lender, by its signature, consents to the execution of this Lease.

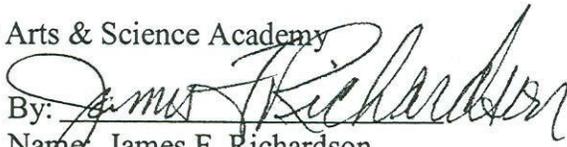
LANDLORD

City of Fresno, Parks, Recreation and Community Services Department

By: _____
Name: Randall L Cooper
Title: Director

TENANT

Valley Arts & Science Academy

By: 
Name: James F. Richardson
Title: Chair, Board of Directors

Attachments/Exhibits:

- Exhibit "A" - Leased Premises
- Exhibit "B" - Joint Use Premises
- Exhibit "C" - School Site Plan Concept

RRC:eb (40235eb/agmt) rvsd RRC2-20-07

RECEIVED
CITY OF FRESNO OFFICE
BY 
DATE



Point: 36°45'10.62"N 119°47'37.60"W elev 2020 Stream: 11111111 100%

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EAST THOMAS AVE

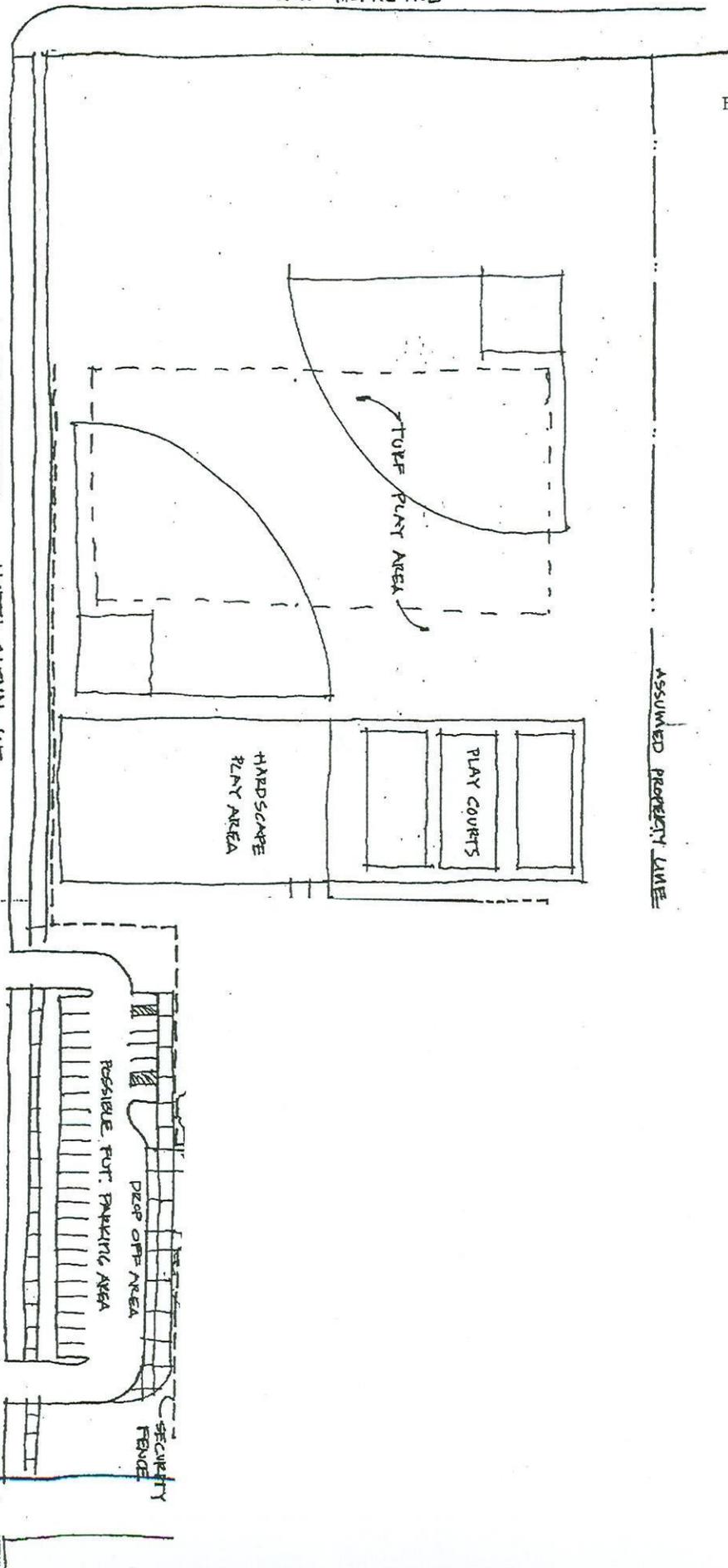
Exhibit "B"

THIS CONCEPT PLAN MAY NOT MEET THE REQUIREMENTS OF CITY PLANNING OR STATE DEPT. OF EDUCATION. ADDITIONAL INVESTIGATION WILL BE REQUIRED TO CONFIRM.

NORTH GLENN AVE

N SCHOOL SITE PLAN CONCEPT VASA

0 20 40 80



ASSUMED PROPERTY LINE

HANDSCAPE PLAY AREA

PLAY COURTS

TOPE PLAY AREA

POSSIBLE FUT. PARKING AREA

DEEP OFF AREA

SECURITY FENCE

EAST THOMAS AVE

Exhibit "C"

THIS CONCEPT PLAN MAY NOT MEET THE REQUIREMENTS OF CITY PLANNING OR STATE DEPT. OF EDUCATION. ADDITIONAL INVESTIGATION WILL BE REQUIRED TO CONFIRM.

NORTH GLENN AVE

SCHOOL SITE PLAN CONCEPT
VASA

