

LAND AND BUILDING LEASE AGREEMENT

LANDLORD:

San Diego Charter School Development, LLC,
a California limited liability company

TENANT:

SAMPLE CHARTER SCHOOL
a California non-profit public benefit corporation and public charter schools operator

PREMISES LOCATION:

NORTHWEST CORNER OF 30TH AND ISLAND
SAN DIEGO, CA

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Exhibit “A” - Legal Description of Real Property

Exhibit “B” - Memorandum of Lease

Exhibit “C” - Work Letter

Exhibit “D” - Subordination, Non-disturbance and Attornment Agreement

LAND AND BUILDING LEASE AGREEMENT

This Land and Building Lease Agreement (this “Lease”), dated for reference purposes only as of _____, is made by and between SAN DIEGO CHARTER SCHOOL DEVELOPMENT, LLC, a California limited liability company (“Landlord”) and SAMPLE CHARTER SCHOOL, a California nonprofit public benefit corporation and operator of public charter schools (“Tenant”), with reference to the recitals set forth below.

RECITALS

A. Landlord is the owner of (or, in the alternative, has entered into or will enter into a contract to acquire fee ownership of) that certain real property, together with all the improvements now or subsequently located thereon and all easements, rights, privileges and appurtenances thereunto belonging, including a two story building with a partially finished basement, containing approximately 18,750 square feet suitable for occupancy by not less than 375 public middle school students attending a public charter school (the “**Building**”) to be constructed on the real property by Landlord pursuant to that certain Work Letter attached hereto as **Exhibit “C”** and made a part hereof (the real property and any such improvements and appurtenances to be referred to herein collectively as the “**Premises**”). The legal description of the real property is attached hereto and incorporated herein as **Exhibit “A,”** and the Premises shall be located at the Northwest corner of 30th and Island, San Diego, California.

B. Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord pursuant to the provisions of this Lease.

1. PREMISES

1.1 Demising

Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, subject to the terms and conditions herein. Such lease is upon, and subject to, the terms, covenants and conditions herein set forth, and each party covenants, as a material part of the consideration for this Lease, to keep and perform their respective obligations under this Lease.

1.2 Landlord’s Work

Landlord, at its own expense and cost, shall construct and complete “**Landlord’s Work**” (as defined in the Work Letter) with diligence and in accordance with all the plans and specifications referenced in the Work Letter and in compliance with applicable laws, regulations and ordinances. Upon completion of Landlord’s Work, Landlord shall provide to Tenant “as-built” plans, copies of all construction cost schedules, construction contracts, building permits, inspection reports and proof of payment of all labor and materials.

1.3 Warranty

Landlord shall deliver the Premises to Tenant on the Commencement Date (as defined in Section 2.1 of the Lease) clean and free of debris with all items of Landlord’s Work completed, in accordance with the terms of the Work Letter. Landlord warrants to Tenant that

the Building is in compliance with all governmental laws, ordinances and codes (including, without limitation, all building codes and zoning ordinances) applicable to the Building for the use described in paragraph 4 hereof and that the roof, plumbing, fire sprinkler system, lighting, heating, ventilation and air conditioning systems and electrical systems in the Premises, shall be in good operating condition on the Commencement Date and during the initial twelve (12) months of the Term. In the event of a non-compliance with such warranty, Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth the nature and extent of such non-compliance, rectify same at Landlord's cost and expense. Further, in connection with the construction of the Building and the items of Landlord's Work, Landlord shall obtain customary warranties and guaranties from the contractor(s) performing such work and/or the manufacturers of equipment installed therein, but shall be under no obligation to incur additional expense in order to obtain or extend such warranties. If Tenant is required to make repairs to any component of the Premises or any of its systems not covered by the Landlord's warranty contained in this Section 1.3 but for which Landlord has obtained a contractor's or manufacturer's warranty, then Landlord shall, upon request by Tenant, use its good faith efforts to pursue its rights under any such warranties for the benefit of Tenant. Tenant's acceptance of the Premises shall be subject to the foregoing and to the provisions of this Lease regarding delivery of possession and completion by Landlord of all Punch-list items.

2. TERM

2.1 Primary Term

This Lease shall be effective (the "**Effective Date**") as of the date of full execution and delivery of same by Landlord and Tenant. The "**Delivery Date**" shall be the latter of the date upon which (i) Landlord's Work, including all signage, is substantially complete pursuant to the terms of such Work Letter, except for such items as may be set forth on the "**Punchlist**" (as defined in the Work Letter), and (ii) Landlord has delivered possession of the Premises to Tenant. The "**Commencement Date**" shall be the date of issuance of a final certificate of occupancy by the governmental authority having jurisdiction over the Premises. The expiration date of the term (the "**Term**") shall be last day of the month Twenty (20) Lease Years (as defined below) following the Commencement Date. On or after the Commencement Date, a Memorandum of Lease, the form of which is attached hereto and incorporated herein as Exhibit "B" shall be recorded by Tenant. For the purposes of this Lease, the term "Lease Year" shall mean the first twelve (12) full calendar months after the "commencement date" and each subsequent twelve (12) month period thereafter during the term and any extensions. If the Commencement Date is other than the first day of the month, then the first Lease Year also will include the partial month in which the Commencement Date occurs.

2.2 Surrender of Premises

On the expiration or earlier termination of this Lease, Tenant shall quit and surrender the Premises, together with all alterations, vacant and free of all tenancies and any leasehold rights therein and in good condition and repair, normal wear and tear and depreciation arising from lapse of time without fault or liability of Tenant, including without limitation damage by fire or other casualty as well as condemnation excepted. Tenant shall remove all Tenant's equipment (excluding telecommunications wiring and cabling), trade fixtures, furniture, supplies,

wall decorations and other personal property from the Premises. Tenant shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes and vaults, if any, in the Premises. If Tenant does not do so, then after expiration of this Lease, it will be a tenancy at will upon the applicable conditions of this Lease. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

3. BASE MONTHLY RENT

3.1 Net-Net-Net Lease

This is a net-net-net lease. Except as otherwise specifically set forth in this Lease, it is the intention of Landlord and Tenant that the “Base Monthly Rent” and all other sums and charges provided herein shall be absolutely net to Landlord, and that Tenant shall pay, as additional rent, all costs, charges, obligations, assessments, and expenses of every kind and nature against or relating to the Premises or the use, occupancy, area, possession, leasing, operation, management, maintenance or repair thereof, which may arise or become due during the term hereof, or which may pertain to this transaction, whether or not now customary or within the contemplation of the parties hereto, and which, except for the execution and delivery of this Lease, would have been payable by Landlord.

3.2 Base Monthly Rent

Tenant shall pay to Landlord as base monthly rent (“**Base Monthly Rent**”) as set forth below. Base Monthly Rent shall be payable by Tenant to Landlord in advance in equal monthly installments commencing upon the Commencement Date and on the first day of each calendar month thereafter, without prior notice, invoice, demand, deduction, or offset whatsoever. Landlord shall have the right to accept all rent and other payments, whether full or partial, and to negotiate checks and payments thereof without any waiver of rights, irrespective of any conditions to the contrary sought to be imposed by Tenant. All rent shall be paid to Landlord at the address to which notices to Landlord are given. Base Monthly Rent for any partial month shall be prorated based upon a thirty (30) day month. Any amounts payable to by Tenant to Landlord under this Lease other than Base Monthly Rent shall be designated as “**Additional Rent**”.

<u>Term</u>	<u>Monthly Rent</u>
Commencement Date to the last day of the First Lease Year	\$29,000.00
First day of the Second Lease Year to the Last day of the Second Lease Year	\$36,500.00
First day of the Third Lease Year to the Last day of the Third Lease Year	\$38,500.00

From the first day of the fourth Lease Year and at the commencement of each Lease Year thereafter, the Base Monthly Rent will be changed by multiplying the Base Rent for the preceding Lease Year (i.e., \$38,500.00/month) will be multiplied by a fraction, the numerator of which is the Index (defined below) for the last period for which the Index is published and ends

before the commencement of the Lease Year for which the calculation is being made and the denominator of which is the Index for the same calendar period immediately preceding the Commencement Date. As used herein, the term "Index" is that which is published by the United States Department of Labor, Bureau of Labor Statistics in the Consumer Price Index for all Urban Consumers (CPI-U): San Diego, 1982-84 Base. The Base Monthly Rent as so adjusted will be paid in accordance with the provisions of Section 3.2 of this Lease. Notwithstanding the foregoing, the maximum increase for Base Rent for any Lease Year shall not exceed three percent (3%) of the Base Rent for the preceding Lease Year. If the Bureau of Labor Statistics discontinues the publication of the Index or publishes the Index less frequently or alters the Index in some manner, then Landlord will adopt a substitute index or substitute procedure which reasonably reflects and monitors changes in consumer prices subject to Tenant's reasonable approval.

4. USE OF THE PREMISES; COMPLIANCE

4.1 Use of the Premises

Tenant shall use the Premises for the operation of a charter school, as authorized by the Education Code of the State of California and related and general office purposes, and for such uses as may be contemplated under the Civic Center Act. Notwithstanding any provision in this Lease to the contrary, it is expressly acknowledged by Landlord that this Lease contains no implied or express covenant for Tenant to conduct business in the Premises, continuously or otherwise, or to operate during any particular hours or in any particular manner. Furthermore, Landlord represents to Tenant that as of the Commencement Date, the Premises are located within a zoning and land use classification which permits Tenant's intended use of the Premises.

4.2 Compliance

As of the Commencement Date, Landlord represents that the Premises comply in all material respects with all applicable statutes, ordinances, rules, regulations, orders, covenants, restrictions of record, and requirements in effect which regulate the use of the Premises, including without limitation, the Americans with Disabilities Act. Subject to Landlord's representation, Tenant, at Tenant's sole expense, promptly shall comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Tenant of the Premises, including without limitation all applicable requirements of the San Diego Unified School District Charter and State of California regulations.

4.3 Capital Expenditures Relating to Compliance

Notwithstanding the foregoing, in the event Tenant's obligations under Section 4.2 require Tenant to make a capital expenditure to the Premises, and providing the capital expenditure is not required for reasons primarily relating to Tenant's use of the Premises, and no uncured Event of Default exists under the Lease, Tenant shall receive a credit upon the expiration of the Lease, which credit shall be calculated by: (i) dividing the remaining useful life of the capital improvement upon Lease expiration by the total useful life of the capital improvement, and then (ii) multiplying the result obtained in (i) above by the reasonable and actual cost of the capital expenditure. "Capital expenditure" as used herein shall mean those expenditures which, in accordance with generally accepted accounting principles are not fully

chargeable to current expense in the year the expenditure is incurred. Any credit due Tenant pursuant to the terms hereof shall be paid by Landlord to Tenant within sixty (60) days of the expiration of the Lease. Landlord's obligations under this Section shall survive the expiration or earlier termination of this Lease.

5. PROPERTY TAXES, OTHER CHARGES, ASSESSMENTS AND UTILITIES

5.1 Tenant's Required Payments

Tenant shall, commencing on the Commencement Date, (i) pay before the date of delinquency and as additional rent, all **"Property Taxes"** (as defined in Section 5.1.1) and **"Other Charges"** (as defined in Section 5.1.2) that accrue during or are otherwise allocable to the term of this Lease; and (ii) concurrently provide Landlord with evidence of payment thereof. Property taxes and Other Charges together are referred to herein as **"Taxes"**; **provided that Landlord shall cooperate fully in assisting Tenant in obtaining any applicable exemptions from Property Taxes, and shall timely file applications for exemption from Property Taxes per Revenue & Taxation Code § 202 and other applicable provisions of law. Landlord and Tenant anticipate that because Tenant will be occupying the entire Building for public school purposes, Tenant shall be entitled to an exemption from Property Taxes under and a pass-through of any Property Taxes refunded or cancelled as a result of Tenant's occupancy pursuant to Revenue & Taxation Code § 202.2.**

5.1.1 **"Property Taxes"** shall mean all taxes, assessments, excises, levies, fees, and charges (and any tax, assessment, excise, levy, fee, or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed on or against, or otherwise with respect to, the Premises or any part thereof or any personal property used in connection with the Premises. It is the intention of Landlord and Tenant that all new and increased taxes, assessments, levies, fees and charges be included within the definition of Property Taxes for the purpose of this Lease.

5.1.2 **"Other Charges"** shall mean all taxes, assessments, excises, levies, fees, and charges (including common area maintenance charges, charges relating to the cost of providing facilities or services), whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed upon, or measured by, or reasonably attributable to (a) the Premises; (b) the cost or value of Tenant's furniture, fixtures, equipment, or personal property located in the Premises or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord; (c) Base Monthly Rent and additional rent payable under the Lease, including, if applicable, Property Taxes, Other Charges, insurance, maintenance, and other costs incurred by Tenant by which Landlord may benefit, including sales and use tax, but excluding any gross

income tax or excise tax levied by any public or government authority with respect to the receipt of any such rents and costs; and (d) the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises.

5.2 Payments Not Required by Tenant

Tenant shall not be required to pay (i) any state or federal income or franchise taxes of Landlord, (ii) any state or federal estate, succession, inheritance, or transfer taxes of Landlord, or (iii) any environmental assessments, charges or liens arising in connection with the remediation of Hazardous Materials from the Premises or Land, the causation of which arose prior to the Delivery Date of this Lease, or to the extent caused by Landlord, its agents, employees or contractors; (iv) any assessments levied prior to the Delivery Date for the purpose of funding any portion of the costs of construction; or (v) any increase of, or reassessment in, real property taxes and assessments resulting from either (a) any sale, transfer, or other change in ownership of the Land during the Lease Term or from major alterations, improvements, modification or renovations to the Building, or (b) any action, including, without limitation judicial action or action by initiative, which serves to repeal, modify and/or limit the application of Article XIII A of the California Constitution otherwise known as Proposition 13).

5.3 Assessments

If any assessment for a capital improvement made by a public or governmental authority shall be levied or assessed against the Premises, and the assessment is payable either in a lump sum or on an installment basis, then Tenant shall have the right to elect the basis of payment; provided, however, throughout the entire term of this Lease, Tenant shall only pay those assessments (or portions thereof) that accrue during or are otherwise equitably allocable to the term of this Lease.

5.4 Utility Payments

Tenant shall promptly pay when due all charges for water, gas, electricity, and all other utilities furnished to or used upon the Premises, including all charges for installation, termination, and relocations of such service. Landlord, at its option, may require Tenant to furnish Landlord with evidence of payment of such charges.

5.5 Tenant's Right to Contest Utility Charges, Contest Taxes and Seek Reduction of Assessed Valuation of the Premises

Subject to section 5.1, Tenant, at Tenant's sole cost and expense, shall have the right, at any time, to seek a reduction in the assessed valuation of the Premises or to contest any taxes or utility charges that are to be paid by Tenant; provided however, Tenant shall (i) give Landlord written notice of any such intention to contest at least thirty (30) days before any delinquency could occur; (ii) indemnify and hold Landlord harmless from all liability on account of such contest; (iii) take such action as is necessary to remove the effect of any lien which attached to the Premises or the improvements thereon due to such contest, or in lieu thereof, at Landlord's election, furnish Landlord with adequate security for the amount of the Taxes due plus interest and penalties; and (iv) in the event of a final determination adverse to Tenant, prior to enforcement, foreclosure or sale, pay the amount involved together with all penalties, fines, interest, costs, and expenses which may have accrued. Tenant may use any means allowed by statute to protest Taxes or utility charges as defined in this Section 5 as long as Tenant remains

current as to all other terms and conditions of this Lease. If Tenant seeks a reduction or contests any Taxes or utility charges, the failure on Tenant's part to pay the Taxes or utility charges shall not constitute a default as long as Tenant complies with the provisions of this Section.

5.6 Landlord Not Required to Join in Proceedings or Contest Brought by Tenant

Subject to section 5.1, Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of the law require that the proceeding or contest be brought by or in the name of Landlord or the owner of the Premises. In that case, Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name as long as Landlord is not required to bear any cost. Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all costs, charges, interest, and penalties incidental to the decision or judgment.

5.7 Tax Period and Adjustment of Taxes

Subject to section 5.1 and applicable provisions of the Revenue & Taxation Code providing for cancellation of Property Taxes paid, for the purpose of this Lease, the calculation of Taxes payable by Tenant for any particular Lease Year shall be based upon the Taxes actually due and payable in accordance with applicable law during such Lease Year even though such Taxes may relate to a different period of time (such as the taxing authority's fiscal year). [For example, if Taxes are payable on or before September 30 of each year with respect to the fiscal period beginning on the immediately preceding July 1 and ending on the immediately succeeding June 30, then, for all purposes of this Lease, Taxes for Lease Year "X" refers to the Taxes due and payable on September 30 of such Lease Year even though the same may relate in part to both such Lease Year and the succeeding Lease Year.] The parties hereby understand that, notwithstanding the foregoing, Taxes payable by Tenant in accordance with the terms of this Lease shall be appropriately adjusted for any partial Lease Year.

5.8 Monthly Installments of Property Taxes

In the event Tenant fails to timely pay an installment of Taxes due, then at Landlord's option, at any time upon written notice to Tenant and without in any way limiting Tenant's obligations under this Lease, Property Taxes shall be paid by Tenant as additional rent to Landlord in monthly installments for the remaining Term of this Lease on the same day that Base Monthly Rent is due hereunder. Such monthly installments shall be an estimated amount equal to one-twelfth (1/12) of the Property Taxes for the immediate preceding year, subject to adjustment when the actual amount of Property Taxes is determined. At such time as the actual amount of Property Taxes is determined, Landlord shall furnish to Tenant a statement indicating the actual amount of Property Taxes. Within thirty (30) days after receipt of such statement by Tenant, Tenant shall pay to Landlord any deficiency due. Any surplus paid by Tenant shall, at Tenant's option, be credited against the next installment(s) of Base Monthly Rent or other charges due from Tenant or be refunded to Tenant forthwith. Landlord's obligation to refund any surplus of Property Taxes paid by Tenant pursuant to this Section 5 shall survive expiration or termination of this Lease.

6. FURNITURE, FIXTURES AND EQUIPMENT

6.1 Furniture, Fixtures, and Equipment

During the term Tenant may, at Tenant's expense, place or install such furniture, trade fixtures, equipment, machinery, furnishings, face plates of signage and other articles of movable personal property (collectively, **“Tenant's Personal Property”**) on the Premises as may be needed for the conduct of Tenant's business. It is expressly understood that the term Tenant's Personal Property as used herein shall in no event extend to leasehold improvements, fixtures or similar “vanilla shell” items such as light fixtures, HVAC equipment, or other fixtures and equipment which are permanently affixed to the Premises.

6.2 Landlord's Lien Waiver

Landlord acknowledges Tenant's right to finance and to secure under the Uniform Commercial Code, inventory, furnishings, furniture, equipment, machinery, leasehold improvements and other personal property located in or at the Premises, and Landlord agrees to execute waiver forms releasing liens in favor of any purchase money seller, lessor or lender who has financed or may finance in the future such items. Without limiting the effectiveness of the foregoing, provided that no default shall have occurred and be continuing, Landlord shall, upon the request of Tenant, and at the Tenant's sole cost and expense, execute and deliver any instruments necessary or appropriate to confirm any such grant, release, dedication, transfer, annexation or amendment to any person or entity permitted under this paragraph including landlord waivers with respect to any of the foregoing.

6.3 Removal of Tenant's Personal Property at Expiration of Lease

At the expiration or earlier termination of the Lease, providing there is no material uncured Event of Default, Tenant's Personal Property may be removed at the option of Tenant. In the alternative, at the expiration or earlier termination of the Lease, Landlord may require Tenant to remove Tenant's Personal Property within a reasonable time following receipt of written notice from Landlord. Tenant immediately shall make such repairs and restoration of the Premises as may be necessary to repair any damage to the Premises from the removal of Tenant's Personal Property, provided that Landlord does not intend to demolish the Premises at the expiration or termination of this Lease. Any of Tenant's Personal Property not so removed shall be deemed abandoned, and Landlord may cause such property to be removed from the Premises and disposed of, but the reasonable cost of any such removal shall be borne by Tenant. The provisions of this paragraph shall survive the expiration or termination of this Lease.

6.4 Right to Affix Signs

Tenant shall have the right to decorate the Premises and affix signs customarily used in its business upon the windows, doors, interior and exterior walls of the Premises. Landlord shall install those pylon and/or monument free-standing signs that constitute a portion of Landlord's Work, if any. Upon the expiration or earlier termination of the Lease, Tenant shall remove its signage plates within a reasonable time following receipt of written notice from Landlord. Tenant promptly shall make such repairs and restoration of the Premises as are necessary to repair any damage to the Premises from the removal of the signs.

6.5 Limitation on Landlord

Landlord acknowledges that Tenant shall have exclusive possession and control of the Premises during the term of this Lease, therefore, Landlord shall have no right to place or install any Landlord-revenue generating improvements, signage or equipment on the Premises, including but not limited to, cell towers, communication devices, public telephones, newspaper machines or vending machines.

7. MAINTENANCE AND REPAIRS OF THE PREMISES

7.1 Maintenance and Repair of the Premises

The Building shall be maintained and repaired to the standard of similar first-class office buildings in the geographical area of the Building and in compliance with all applicable laws and regulations.

- 7.1.1 Landlord shall maintain in good condition and repair in a prompt and diligent manner (i) all portions of the Building which are not a part of the Premises, including but not limited to all elevators, electrical, mechanical, plumbing, sewage, heating, ventilating and air conditioning systems serving the Premises and the Building; (ii) all portions of the roof, roof structures and supports (including Tenant's interior ceiling), and all structural portions of the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, subfloors and floors (but not floor coverings), gutters, downspouts and exterior doors; (iii) all utilities to the Premises; (iv) all driveways, sidewalks, parking areas and all other Common Areas and facilities thereof; (v) all defects in the Premises as well as any damage to the Premises caused by the willful act or the negligence of the Landlord or its agents; and (vi) the heating, ventilating and air conditioning system serving the Premises.
- 7.1.2 In the event of an emergency Tenant shall be empowered to undertake immediate repairs of such nature as would be Landlord's responsibility and notify Landlord promptly after such repairs have been undertaken. If Landlord fails to proceed to repair or maintain the Premises with due diligence or within the ten (10) day period provided herein, or if Tenant undertakes emergency repairs as above stated, Tenant may in addition to any other remedies Tenant may have at law or in equity, perform the repairs or maintenance and deduct the cost thereof from the Base Monthly Rent next coming due.
- 7.1.3 Tenant shall, at all times during the Term hereof and at Tenant's sole cost and expense, keep the Building and every part thereof (except as provided in subparagraph (b) below) in good and sanitary condition and repair. Without limiting the generality of the foregoing:
 - (i) Tenant shall maintain in good condition and to the highest standard of cleanliness its signs (whether within or outside

of the Premises), metal work, walls, partitions, floors, doors and the interior and exterior of all windows in the Premises.

- (ii) Tenant shall provide its own janitorial service at its sole cost and expense. Tenant shall store all refuse and other waste materials within the Premises in closed containers and shall cause such refuse and waste materials to be removed from the Premises daily to such location in the Building as may be designated from time to time by Landlord. Tenant shall not place or discard waste materials in any part of the Building, except the designated collection area.
- (iii) Tenant shall retain the services of a licensed pest control contractor to maintain the Premises free of rodents, roaches and other vermin and to maintain in the same condition adjacent areas affected by rodents, roaches and other vermin attracted to the Premises.

7.2 Capital Expenditures

Notwithstanding the foregoing, in the event Tenant makes a capital expenditure pursuant to its maintenance and repair obligations under Section 7.1, Tenant shall receive a credit upon the expiration of the Lease, which credit shall be calculated by: (i) dividing the remaining useful life of the capital improvement upon Lease expiration by the total useful life of the capital improvement and then (ii) multiplying the result obtained in (i) above by the reasonable and actual cost of the capital expenditure. Any credit due Tenant pursuant to the terms hereof shall be paid by Landlord to Tenant within sixty (60) days of the expiration of the Lease. Landlord's obligations to credit Tenant pursuant to this Section 7.2 shall survive expiration or termination of this Lease.

7.3 Obligation to Keep the Premises Clear

Tenant shall keep the Premises, including sidewalks adjacent to the Premises and loading area allocated for the use of Tenant, clean and free from rubbish and debris at all times. Tenant shall store all trash and garbage within the Premises and arrange for regular pickup and cartage of such trash and garbage at Tenant's expense.

8. ALTERATIONS AND IMPROVEMENTS

8.1 Right to Make Alterations

At all times during the term of this Lease, except as provided in Section 13, Tenant shall have the right to make alterations, additions and improvements ("**Alterations**") to the interior or exterior of the Premises and parking areas adjacent to the Premises. Nevertheless, any Alterations that are over One Hundred Thousand Dollars (\$100,000) in the aggregate per project (subject to a thirty percent (30%) increase every five (5) Lease Years provided there were no material Events of Default during those five (5) Lease Years), or are structural in nature, shall not be made by Tenant without prior written consent of Landlord. Any Alterations which may

be made or installed by Tenant shall remain upon the Premises and, at the expiration or earlier termination of this Lease, shall be surrendered with the Premises to Landlord. All Alterations shall be accomplished by Tenant in a good workmanlike manner, in conformity with applicable laws, regulations and covenants, conditions and restrictions encumbering the Premises, and by a licensed contractor; and with respect to Alterations requiring Landlord's consent, the contractor shall be approved by Landlord. Prior to commencement of any such work, Tenant shall provide to Landlord copies of all required permits and governmental approvals. Upon completion of any such work, Tenant shall provide to Landlord "as-built" plans, copies of all construction contracts, building permits, inspection reports and proof of payment of all labor and materials. Tenant shall pay when due all claims for such labor and materials and shall give Landlord at least ten (10) days' prior written notice of the commencement of any such work. Landlord may enter upon the Premises, escorted by a representative of Tenant, in such case, for the purpose of posting appropriate notices, including, but not limited to, notices of non-responsibility.

8.2 Tenant Shall Not Render Premises Liable For Any Lien

Tenant shall have no right, authority or power to bind Landlord, or any interest of Landlord in the Premises, nor to render the Premises liable for any lien or right of lien for the payment of any claim for labor, material, or for any charge or expense incurred to maintain, to repair or to make Alterations to the Premises. Tenant shall in no way be considered the agent of Landlord in the construction, erection, modification, repair, or alteration of the Premises. Notwithstanding the above, Tenant shall have the right to contest the legality or validity of any lien or claim filed against the Premises. No contest shall be carried on or maintained by Tenant after the time limits in the sale notice of the Premises for any such lien or claim unless Tenant (i) shall have duly paid the amount involved under protest; (ii) shall have procured and recorded a lien release bond from a bonding company acceptable to Landlord in an amount not less than one and one-half (1-1/2) times the amount involved; or (iii) shall have procured a stay of all proceedings to enforce collection. Upon a final adverse determination of any contest, Tenant shall pay and discharge the amount of the lien or claim determined to be due, together with any penalties, fines, interest, cost, and expense which may have accrued, and shall provide proof of payment to Landlord.

9. INDEMNITY AND INSURANCE

9.1 Indemnification

A. Tenant Indemnity. Tenant shall indemnify, defend, and protect Landlord, and hold Landlord harmless from any and all loss, cost, damage, expense and/or liability (including court costs and reasonable and actual attorneys' fees) incurred in connection with or arising at any time and from any cause whatsoever on the Premises which occurs during the term of this Lease, other than damages proximately caused by reason of the negligence or willful misconduct of Landlord or its agents, contractors and employees, including, without limiting the generality of the foregoing: (i) any default by Tenant in the observance or performance of any of the terms, covenants, or conditions of this Lease on Tenant's part to be observed or performed; (ii) the use or occupancy of the Premises by Tenant or any person claiming by, through, or under Tenant; (iii) the condition of the Premises or any occurrence or happening on the Premises from any cause whatsoever; or (iv) any acts, omissions, fraud or negligence of Tenant or any person claiming by, through, or under Tenant, or of the contractors, agents, servants, employees, visitors, or licensees of Tenant or any such person on the Premises, including any acts,

omissions, or negligence in the making or performance of any alterations. Tenant further agrees to indemnify and hold harmless Landlord, Landlord's agents, and the landlord or landlords under all ground or underlying leases, from and against any and all loss, cost, liability, damage, and expense (including reasonable and actual attorneys' fees) incurred in connection with or arising from any claims by any persons by reason of injury to persons or damage to property occasioned by any use, occupancy, condition, occurrence, happening, act, omission, or negligence referred to in the preceding sentence. The provisions of this Section shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination, and shall not be limited by reason of any insurance carried by Landlord and Tenant.

B. Landlord Indemnity. Except to the extent of any loss or damage resulting from the acts or omissions of Tenant, its agents, contractors, licensees or employees, Landlord shall indemnify, defend, and protect Tenant, and hold Tenant harmless from any and all loss, cost, damage, expense and/or liability (including court costs and reasonable and actual attorneys' fees) incurred in connection with: (i) a breach of this Lease by Landlord; (ii) the negligence, fraudulent or intentional misconduct of Landlord; (iii) the condition of the Premises or any occurrence or happening on the Premises from any cause whatsoever that occurs prior to the Delivery Date. The provisions of this Section shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination, and shall not be limited by reason of any insurance carried by Landlord and Tenant.

9.2 Insurance Company Requirement

Insurance required by this Lease shall be issued by companies holding a general policyholder's rating of B++-VI or better as set forth in the most current issue of Best's Insurance Guide and authorized to do business in the state in which the Premises are located. If this publication is discontinued, then another insurance rating guide or service generally recognized as authoritative shall be substituted by Landlord.

9.3 Insurance Certificate Requirements

9.3.1 Tenant shall deliver to Landlord evidence of the existence and amounts of the insurance with additional insured endorsements and loss payable clauses as required herein. Tenant shall deliver to Landlord certificates of insurance in connection with Tenant's liability policy(ies), and evidence of property insurance in an form reasonably acceptable to Landlord in connection with Tenant's property policy(ies). No policy shall be cancelable or subject to reduction of coverage or other modification except after at least ten (10) days' prior notice to Landlord. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of Tenant arising under or out of this Lease.

9.3.2 The insurance required to be maintained herein may be carried under blanket policies. The insurance shall provide for payment of loss jointly to Landlord and Tenant.

9.4 Minimum Acceptable Insurance Coverage Requirements

- 9.4.1 Tenant shall, at Tenant's expense, obtain and keep in full force during the term of this Lease a policy of combined single limit bodily injury and property damage insurance written on an occurrence basis insuring Tenant (with Landlord as an additional insured) against any liability arising out of ownership, use, occupancy, or maintenance of the Premises and all of its appurtenant areas. The insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence; provided however, following receipt of notice from Landlord the limits of such insurance shall be increased from time to time during the term of the Lease to such amount as may be commercially reasonable. The policy shall provide blanket contractual liability coverage. However, the limits of the insurance shall not limit the liability of Tenant. In addition, Tenant shall, at Tenant's expense, obtain and keep in full force during the term of this Lease an umbrella liability policy in an amount not less than Two Million Dollars (\$2,000,000) in excess of primary insurance. The insurance to be maintained by Tenant pursuant to this Section 9.4.1 shall be primary and not contributory to any other insurance maintained by Landlord.
- 9.4.2 Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a **“Special Purpose”** (as such term is used in the insurance industry) policy of insurance covering loss or damage to the Premises. The insurance shall be in an amount not less than eighty percent (80%) of the full guaranteed replacement cost of the building(s) (less slab, foundation, supports and other customarily excluded improvements). The policy shall contain only standard printed exclusions; include an agreed value endorsement waiving any co-insurance penalty, and an ordinance or law coverage endorsement covering increased costs resulting from changes in laws or codes, and demolition and removal of the damaged structure. In no event shall any deductible payable in connection with such policy, together with any other form of self-insurance, exceed Ten Thousand Dollars (\$10,000). In addition, if the Premises is located in flood zone A or V (including any flood zones commencing with the letters A or V) as defined by the Federal Emergency Management Agency (FEMA), or earthquake zone 1, 2, or 3 as defined by the Insurance Services Office (ISO), Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage due to earthquake and flood with respect to the Premises.
- 9.4.3 Tenant shall also obtain and keep in force during the term of this Lease worker's compensation coverage, insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the State of California.

9.5 Additional Insureds

Tenant shall name as additional insureds and loss payees on all insurance, Landlord, and to the extent acceptable to the insurance carrier(s), Landlord's successor(s) and/or, assignee(s) and any lender whose name and contact information has been provided in writing to Tenant.

9.6 Mortgage Endorsement

If requested by Landlord, the policies of insurance required to be maintained hereunder shall bear a standard first mortgage endorsement in favor of any holder or holders of a first mortgage lien or security interest in the property with loss payable to such holder or holders as their interests may appear.

9.7 Renewals, Lapses or Deficiencies

Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewal certificates of insurance or renewal binders. Should Tenant fail to provide to Landlord the renewals or renewal binders, or in the event of a lapse or deficiency of any insurance coverage specified herein for any reason, Landlord may immediately replace the deficient insurance coverage with a policy of insurance covering the Premises of the type and in the limits set forth above. Upon notice from Landlord of the placement of insurance, Tenant shall immediately pay to Landlord, as additional rent, an amount equal to the total cost of premiums and expense of such insurance placement. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies. If Tenant does or permits to be done anything which shall increase the cost of the insurance policies, then upon Landlord's demand Tenant shall immediately pay to Landlord, as additional rent, an amount equal to the additional premiums attributable to any acts or omissions or operations of Tenant causing the increase in the cost of insurance.

10. PARTIAL AND TOTAL DESTRUCTION OF THE PREMISES

10.1 Damage or Destruction of the Premises

If the Premises, or any portion of the Premises, shall be damaged by fire or other casualty that would be covered by the insurance carried by Tenant hereunder or required to be carried by Tenant hereunder (whether or not actually maintained by Tenant), and the cost of repairing such damage is not greater than fifty percent (50%) of the then full replacement cost thereof, Tenant shall repair the Premises (including all leasehold improvements) to substantially the condition prior to the casualty.

If the Premises shall be damaged by fire or other casualty to an extent greater than fifty percent (50%) of the then full replacement cost thereof, then Tenant shall have the option to either (i) repair or reconstruct the same to substantially the same condition as immediately prior to such fire or other casualty, or (ii) terminate this Lease by so notifying Landlord within sixty (60) days after the date of such fire or other casualty, such termination to be effective as of the date of such notice. In the event Tenant shall elect to repair or reconstruct in accordance with subclause (i) of this Section, Tenant shall so notify Landlord in writing within thirty (30) days after the date of such casualty. Furthermore, notwithstanding anything to the contrary contained herein, if the Premises or the Project should be so damaged by fire or other casualty such that the damage cannot, in Landlord's and Tenant's reasonable opinion, be repaired within one hundred

twenty (120) days after such casualty, then Landlord shall notify Tenant of same (the “**Major Damage Notice**”) whereupon either Landlord or Tenant may terminate this Lease by delivering written notice to the other party within thirty (30) days after receipt of the Major Damage Notice.

The Base Monthly Rent required to be paid hereunder shall be abated in proportion to the portions of the Premises, if any, which are unusable by Tenant for the operation of its business by fire or other casualty hereunder until repairs of the Premises are completed, or if the Premises are not repaired, until the termination date hereunder. Other than such Rent abatement, no damages, compensation or claim shall be payable by Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience, loss of business, or annoyance arising from any such repair and reconstruction. If any portion of Rent is abated under this Section, Tenant shall have the option to extend the expiration date of this Lease for a period equal to the length of the abated period.

If the damage results from default or negligence of Tenant, its agents, employees, licensees or invitees, then Tenant shall not be entitled to any abatement or reduction of any Rent or other sums due hereunder and, if the cost to repair such damage is not fully covered by Landlord's insurance, such damage shall be repaired by Tenant, or at Landlord's option by Landlord at Tenant's expense (to the extent Landlord is not reimbursed by insurance). If this Lease is terminated as provided above, all Base Monthly Rent shall be apportioned and paid up to the termination date. Landlord shall not be required to repair or replace any furniture, furnishings or other personal property which Tenant may be entitled to remove from the Premises or any property constructed and installed by or for Tenant in the Premises.

Notwithstanding anything to the contrary in this Section, Tenant shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Section occurs during the last Two (2) Lease Years of the Term.

10.2 Application of Insurance Proceeds

All insurance proceeds payable under any fire or other casualty insurance policy maintained by Tenant covering the Premises or any leasehold improvements and covering Tenant's personal property at the Premises, shall be payable solely to Tenant and Landlord shall have no interest therein. All insurance proceeds payable under any fire or other casualty insurance policy maintained by Tenant and covering Tenant's personal property, including without limitation Tenant's inventory, furniture, trade fixtures, and equipment, shall be payable solely to Tenant and Landlord shall have no interest therein. All insurance proceeds payable under the Insurance policy maintained by Tenant, covering Landlord's Work, any leasehold improvements or alterations shall be used to restore such Landlord's Work, improvements and alterations at the Premises at any time that the Premises are restored by Tenant pursuant to this Section 10. Any proceeds from any such Insurance policy covering any Landlord's Work, leasehold improvements or alterations installed by Tenant at Tenant's expense and not applied to such restoration shall be payable to Landlord and Tenant as their respective interest in such Landlord's Work, improvements and alterations may exist at such time, based upon the amortization of the cost of such improvements and alterations over the Lease Term, using a ten percent (10%) discount factor, with Tenant entitled to one hundred percent (100%) of such

proceeds at the commencement of the Lease Term and Landlord entitled to one hundred percent (100%) of such proceeds upon the expiration of the Lease Term.

11. CONDEMNATION

11.1 Condemnation Damages

In the event of the taking or conveyance of the whole or any part of the Premises by reason of condemnation by any public or quasi-public body (“**Condemnation**”), Landlord and Tenant shall represent themselves independently in seeking damages before the condemning body. Each party shall be entitled to the amount awarded respectively to each. Landlord shall be entitled to the entirety of the award with the exception of the following:

- 11.1.1 Any portion of the award attributable to Tenant's leasehold improvements made to the Premises by Tenant in accordance with this Lease, which improvements Tenant has the right to remove from the Premises upon the expiration or termination of the Lease pursuant to the provisions of this Lease, but elects not to remove;
- 11.1.2 Any portion of the award attributable to Tenant's furniture, fixtures and equipment (“**FF&E**”) installed in the Premises in accordance with this Lease, which FF&E Tenant has the right to remove from the Premises upon the expiration or termination of the Lease pursuant to the provisions of this Lease, but which are to remain in the Premises as a result of such taking;
- 11.1.3 Any portion of the award attributable to: (i) removing Tenant's FF&E; (ii) damage or loss to Tenant's business and good will and (iii) moving and relocation expenses; and
- 11.1.4 Any portion of the award attributable to the unexpired portion of Tenant's interest in the leasehold estate created by this Lease.

11.2 Termination of Lease Due to Condemnation

In the event the Condemnation materially adversely affects the use of the Premises as defined in Section 4, Tenant may terminate the Lease by giving Landlord notice of termination within sixty (60) days of receipt of notice of the Condemnation; provided, however, if such notice fails to substantially disclose the material nature, scope and extent of the Condemnation, then such 60-day notice period shall only commence to run on such later date that Tenant obtains such disclosures. The effective date of the termination shall be the date upon which fee simple interest is vested in the condemning authority. In the event of termination hereunder, Tenant shall be released from further obligations or liabilities arising under the Lease thereafter. In the event of termination, Base Monthly Rent, Property Taxes, Other Charges and any other items of additional rent (collectively, “**Rent and Charges**”) shall be prorated based upon the actual number of days in the period to be prorated. Within thirty (30) days following the termination, Landlord shall refund to Tenant any Rent and Charges paid to Landlord in advance of the termination. In the event of a Condemnation that does not result in the termination of this Lease, Base Monthly Rent shall be equitably reduced as of the effective date of the Condemnation. Landlord’s obligations pursuant to this Section shall survive termination of this Lease.

12. ASSIGNMENT AND SUBLETTING

12.1 Tenant's Right of Assignment and Subletting

Subject to Section 12.5, Tenant shall not voluntarily or by operation of law assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use any part of the Premises, without first obtaining the consent of Landlord which consent shall not be unreasonably conditioned, withheld or delayed; provided that no consent shall be required for a sublease to the San Diego Unified School District or any church, public school, college or university for educational purposes. Any assignment, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default.

12.2 Landlord's Option to Preserve Subtenancies

In the event of Tenant's surrender of this Lease or the termination of this Lease in any other manner, Landlord may, at its option, either terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord thereunder. No merger shall result from Tenant's sublease of the Premises under this Section, Tenant's surrender of this Lease, or the termination of this Lease in any other manner.

12.3 Continuing Obligation of Tenant

Subject to Section 12.5, No transfer permitted by this Section 12 shall release Tenant from its liability to pay the rent and to perform all other obligations of Tenant under this Lease. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed not directly against Tenant. Landlord shall not consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

12.4 Assignments and/or Subletting Not Requiring Landlord's Consent

Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, without Landlord's consent, to assign or transfer this Lease, or sublet the Premises:

12.4.1 To any parent, subsidiary, division or affiliate of Tenant; provided, however, Tenant shall provide Landlord with a copy of the sublease or assignment no later than thirty (30) days after the subtenant or assignee takes possession of the Property.

12.4.2 In connection with a merger, sale, consolidation, reorganization or acquisition involving the Tenant (whether or not Tenant is the surviving entity); or to any entity acquiring all or substantially all of the assets of Tenant; provided that: (a) the assignee assumes all of Tenant's obligations hereunder in writing and agrees to perform all of the obligations of Tenant under this Lease; (b) Tenant promptly shall notify Landlord in writing of the occurrence of any of the foregoing events, and shall provide such documentation supporting or evidencing said event as may be reasonably requested by Landlord; and (c) a true and

correct copy of the assignment and assumption agreement is delivered to Landlord.

13. DEFAULT AND TERMINATION

13.1 Event of Default

The occurrence of any of the following events (each an “**Event of Default**”) shall constitute a default by Tenant:

- 13.1.1 Failure by Tenant to pay rent within Three (3) business days of written notice from Landlord that such amount is past due; provided, however, for up to two (2) times during any twelve (12) consecutive month period, if any payment of rent is not received when due, Landlord shall notify Tenant in writing (a “**Late Notice**”), and Tenant shall have ten (10) days from the date of receipt of the Late Notice to make full payment of the rent. If the late rent is not paid within the ten (10) day period, or if any subsequent rent during that twelve (12) consecutive month period is not received when due after Landlord has delivered to Tenant the two (2) Late Notices as hereinabove required, then Tenant shall be in default of this Lease.
- 13.1.2 Failure by Tenant to perform or comply with any provision of this Lease (other than as set forth in Section 13.1.1) if the failure is not cured within sixty (60) days after notice has been given by Landlord to Tenant. If, however, the failure cannot reasonably be cured within the 60 day cure period, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure.
- 13.1.3 To the extent permitted by law, a general assignment by Tenant for the benefit of creditors, or the filing by or against Tenant of any proceeding under any insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant, unless possession is restored to Tenant or such guarantor within (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days.

13.2 Landlord's Remedies

Landlord shall have any one or more of the following remedies after the occurrence of a default by Tenant. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law, in equity, or otherwise:

- 13.2.1 Declare the Term of this Lease ended and re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or

13.2.2 Without declaring this Lease ended, re-enter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect the rent and any other rent that may thereafter become payable; or

Should Landlord have re-entered the Premises under the provisions above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay rent thereafter to accrue, or its liability for damages under any of the provisions hereof, by any such re-entry or by any action in unlawful detainer, or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time or at any time subsequent to the serving of such notices and such election be evidenced by a written notice to tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of Tenant.

Should Landlord elect to terminate this Lease under the provisions of Subsections 13.2.1 or 13.2.2 above, Landlord may recover from Tenant as damages:

- (a) the worth at the time of award of any unpaid rent which have been earned at the time of such termination; plus
- (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in maintaining or preserving the Premises after such default, preparing the Premises for such reletting, leasing commissions, or any other costs necessary or appropriate to relet the Premises; plus
- (e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law.

As used in Subsection (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the maximum lawful rate ("Interest Rate"). As used in Subsection (c) above, the "worth at the time of award" is computed by discounting such amount at the then existing discount rate of the Federal Reserve Bank, San Francisco, California.

13.3 Late Charge

If Tenant fails to pay when due any payment of rent or other charges which Tenant is obligated to pay to Landlord under this Lease, there shall be a late charge, immediately payable by Tenant as additional rent, in the amount of two percent (2%) of each such obligation. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for accounting and administrative expenses incurred by Landlord. In addition to the late charge, any and all rent or other charges which Tenant is obligated to pay to Landlord under this Lease which are unpaid shall bear interest at the rate set forth in Section 13.6 from the date of Landlord's Late Notice to Tenant until paid, said interest to be payable by Tenant as additional rent. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for the loss of the use of funds. Notwithstanding the foregoing, in the event Landlord shall have provided written notice to Tenant in accordance with Section 13.1.1, Tenant shall not be obligated to pay the late charge and interest otherwise due pursuant to this Section 13.3 unless ten (10) days shall have lapsed following Tenant's receipt of said notice and the delinquent amount(s) shall not have been paid. In addition to the foregoing, if any check tendered by Tenant to Landlord is dishonored by the financial institution upon which the check is drawn (e.g., insufficient funds, uncollected funds, account closed, payment stopped, etc.), Tenant shall pay to Landlord the greater of Twenty Dollars (\$20.00) or the actual service fee charged by Landlord's financial institution in connection with such dishonored check.

13.4 Surrender of Premises

No act or thing done by Landlord or any agent or employee of Landlord during the Lease term shall be deemed to constitute an acceptance by Landlord or a surrender of Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord and, notwithstanding such delivery, Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been terminated properly. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

13.5 Interest Charges

Any amount not paid by one party to the other when due to the other party will bear interest from the date of the Late Notice with respect to any Tenant's monetary obligations or with respect to Landlord, from the date due at the lesser of (i) the prime commercial rate being charged by the Bank of America N.A. in effect on the date due per annum; or (ii) the maximum rate permitted by law to be paid by California local public agencies. If Bank of America N.A. is no longer in existence, then another comparable bank or financial institution shall be substituted by Landlord.

13.6 Tenant's Default

If Tenant is in material default of the Lease beyond all applicable notice and cure periods, then:

- 13.6.1 For so long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant will have the right to assign or sublet its interest in the Lease, but Tenant will not be released from liability.
- 13.6.2 No structural changes to the building at any cost shall be permitted without the prior written approval of Landlord.
- 13.6.3 All costs of removing Tenant's signage of the Premises shall be paid by Tenant whether or not Landlord terminates this Lease.

13.7 Default by Landlord

Landlord shall be in default if Landlord fails to perform any provision of this Lease required of it and the failure is not cured within thirty (30) days after notice has been given to Landlord. If, however, the failure cannot reasonably be cured within the cure period, Landlord shall not be in default of this Lease if Landlord commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure. If Landlord shall at any time default beyond the applicable notice and cure period, Tenant shall have the right to cure such default on Landlord's behalf. Subject to Section 13.5, any sums expended by Tenant in doing so, and all reasonably necessary incidental costs and expenses incurred in connection therewith, shall be payable by Landlord to Tenant within thirty (30) days following demand therefor by Tenant; provided, however, that Tenant shall not be entitled to any deduction or offset against any rent otherwise payable to Landlord under this Lease, and in no event may Tenant terminate this Lease in the event of a default by Landlord.

13.8 Notices of Default

Notices given under this Section 13 shall specify the alleged default or breach, the cure period and the applicable Lease provision(s).

14. RIGHT OF INSPECTION

Landlord and Landlord's authorized representatives shall have the right (but not the obligation) after forty-eight (48) hours prior notice to Tenant, to enter upon the Premises at all reasonable hours for the purpose of inspecting the Premises or of making repairs, additions, or alterations in or upon the Premises, and, for the purpose of exhibiting the Premises to prospective tenants in the last six (6) months of the terms, prospective purchasers, and/or lenders; provided that Landlord shall comply with applicable laws regarding confidentiality of student records. Provided Tenant is not in default beyond any applicable cure period, Landlord shall not exhibit any "for sale" or "for lease" signs during the term of the Lease. Tenant's authorized representatives shall have the right but not the obligation to accompany Landlord or Landlord's representatives during any entry by Landlord or its authorized representatives unto the Premises and Landlord and its authorized representatives shall strictly comply with any of Tenant's risk management procedures (for example sign-in procedures).

15. WAIVER OF BREACH

No waiver by either party of any breach of any one or more of the terms, covenants, conditions, or agreements of this Lease shall be deemed to imply or constitute a waiver of any succeeding or other breach. Failure of either party to insist upon the strict performance of any of

the terms, conditions, covenants, and agreements of this Lease shall not constitute or be considered as a waiver or relinquishment of the party's rights to subsequently enforce any default, term, condition, covenant, or agreement, which shall all continue in full force and effect. The rights and remedies of the parties under this Lease shall be cumulative and in addition to any and all other rights and remedies which each party has or may have.

16. NOTICES

16.1 Notice Requirements

All notices, requests, consents, approvals or demands herein provided to be given or made, or which may be given or made by either party to the other, shall be given or made only in writing and shall be deemed to have been duly given: (i) when delivered personally at the address set forth below, or to any agent of the party to whom notice is being given, or if delivery is rejected when delivery was attempted; or (ii) on the date delivered when sent via Overnight Mail, properly addressed and postage prepaid; or (iii) on the date sent via facsimile transmission; or (iv) upon delivery, or if delivery is rejected when delivery was attempted of properly addressed first class mail, postage prepaid with return receipt requested. The proper address to which notices, requests, or demands may be given or made by either party shall be the address set forth at the end of this Section or to such other address or to such other person as any party shall designate. Such address may be changed by written notice given to the other party in accordance with this Section.

If to Landlord:

San Diego Charter School Development, LLC

Attn: _____

Phone: _____

Fax: _____

If to Tenant:

Sample Charter School
Attn:CEO
707 Broadway, Suite 905
San Diego, California 92101
Phone: _____
Fax: _____

With a copy to:

Procopio, Cory, Hargreaves & Savitch LLP
Attn: Gregory V. Moser
530 B Street, Suite 2100
San Diego, California 92101
Phone: (619) 515-3208
Fax: (619) 235-0398

16.2 Payments Under Lease

Rent and all other payments due to Landlord under this Lease shall be paid in lawful money of the United States of America without offset or deduction except as set forth herein, to the name and at the address set forth in Section 16.1 above or to such other persons or parties or at such other places as Landlord may from time to time designate in writing.

17. RELATIONSHIP OF THE PARTIES

This Lease shall not be deemed or construed by the parties, nor by any third party, as creating the relationship of (i) principal and agent, (ii) partnership, or (iii) joint venture between the parties. Neither the method of computation of rent nor any other provision of this Lease, nor any acts of the parties are other than in the relationship of landlord and tenant.

18. SUBORDINATION, ATTORNMENT AND ESTOPPEL

18.1 Subordination and Non-Disturbance

Subject to the provisions of this Section, this Lease and the leasehold estate created hereby shall be, at the option and upon written declaration of Landlord, subject, subordinate, and inferior to the lien and estate of any liens, trust deeds, and encumbrances (“**Mortgages**”), and all renewals, extensions, or replacements thereof, now or hereafter imposed by Landlord upon the Premises; provided, however, that Landlord covenants to obtain from each holder of a Mortgage and this Lease shall not be subordinate to any Mortgage arising after the date of this Lease, or any renewal, extension, or replacement thereof, unless and until Landlord provides Tenant with an agreement (“**Non-Disturbance Agreement**”), which shall provide that so long as Tenant is not in default hereunder, Landlord’s and Tenant’s rights and obligations hereunder shall remain in force and Tenant’s right to possession shall be upheld. The Non-Disturbance Agreement shall be substantially in the form of **Exhibit “D,”** attached hereto and incorporated hereby, in recordable form, including such commercially reasonable modifications as may be requested by such holder. The Non-Disturbance Agreement may contain additional provisions as are

customarily requested by secured lenders with liens encumbering real property security similar to the Premises, including, without limitation, Tenant's agreement to attorn as set forth in Section 18.2. Tenant shall, promptly following a request by Landlord and after receipt of the Non-Disturbance Agreement, execute and acknowledge a subordination agreement or other documents commercially reasonably required to establish of record the priority of any such encumbrance over this Lease, so long as such agreement does not otherwise increase Tenant's obligations or diminish Tenant's rights hereunder.

18.2 Attornment

In the event of foreclosure of any Mortgage, whether superior or subordinate to this Lease, then (i) this Lease shall continue in force; (ii) Tenant's quiet possession shall not be disturbed if Tenant is not in default hereunder; and (iii) Tenant shall attorn to and recognize the mortgagee or purchaser at foreclosure sale ("**Successor Landlord**") as Tenant's landlord for the remaining term of this Lease. Tenant's obligation to so attorn to any Successor Landlord is expressly conditioned upon Tenant's prior receipt from such Successor Landlord of a Non-Disturbance Agreement.

18.3 Estoppel Certificate

Landlord and Tenant shall, at any time upon not less than thirty (30) days prior written notice, execute and deliver to a prospective new landlord, lender, or assignee or subtenant of Tenant, or other appropriate third party, as the case may be, a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (b) the date to which the rent and other charges are paid in advance, if any and (c) acknowledging that there are not, to the party's best knowledge, any uncured defaults or unfulfilled obligations on the part of the other party hereunder, or specifying such defaults or unfulfilled obligations if any are claimed.

19. FINANCIAL COVENANTS

19.1 Financial Statements.

Tenant shall furnish to Landlord, annual unqualified audited financial statements within One Hundred Eighty (180) days of Tenant's fiscal year end. Landlord agrees to maintain the confidentiality of all financial information furnished by Tenant hereunder. Within thirty (30) days from the end of Tenant's fiscal quarter, Tenant shall provide quarterly internal budget statements and semi annual enrollment figures including waiting lists and attrition, corresponding with the required reporting to its charter authorizer.

19.2 Tenant's Deposit Accounts.

Tenant shall use its best efforts to cause San Diego County Office of Education to transfer from Tenant's operating accounts only with the San Diego County Office of Education Tenant's entitlement revenues into governmental depository accounts with California Bank and Trust on a monthly basis. Notwithstanding the foregoing, Landlord acknowledges that Tenant is

a nonprofit public benefit corporation that participates in grant programs or philanthropic awards whereby the funds received by Tenant may be subject to specific banking stipulations and guidelines (collectively, “**Non Entitlement Funds**”), and accordingly, any Non Entitlement Funds received by Tenant shall be excluded from the obligations of this Section 19.2.

19.3 Financial Manager

Tenant shall maintain a management contract with a qualified charter school management consultant or an in house business manager with qualifications acceptable to Landlord’s lender to oversee Tenant’s financial operations.

20. ATTORNEYS' FEES

20.1 Recovery of Attorneys' Fees and Costs of Suit

In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party in such action shall be entitled to recover from the non-prevailing party therein reasonable attorneys’ fees and costs incurred in such action (including, without limitation, all costs of appeal) and such amount shall be included in any judgment rendered in such proceeding. For purposes of this Lease a party shall be considered the “**prevailing party**” to the extent that (1) such party initiated the litigation and substantially obtained the relief which it sought)whether by judgment, voluntary agreement or action of the other party, trial or alternative dispute resolution process), (2) such party did not initiate the litigation and did not receive judgment in its favor, but the party receiving the judgment did not substantially obtain the relief which it sought, or (3) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking.

21. CONSENT

Except as otherwise expressly set forth in this Lease, any consents or approvals required of either party hereunder shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in the event a party fails to respond within thirty (30) days of receipt of a request for consent or approval, such failure shall be deemed to be that party’s consent or approval of the matter that is the subject of the notice.

22. AUTHORITY TO MAKE LEASE; COVENANT OF QUIET ENJOYMENT

22.1 Full Power and Authority to Enter Lease

The parties covenant and warrant that each has full power and authority to enter into this Lease.

22.2 Quiet Enjoyment

Landlord covenants and warrants that Tenant shall have and enjoy full, quiet, and peaceful possession of the Premises, its appurtenances and all rights and privileges incidental thereto during the term, as against all persons claiming by, through, or under Landlord, subject to the provisions of this Lease and any title exceptions in existence on the Commencement Date.

Landlord shall defend, indemnify, and hold harmless Tenant from any costs or expenses incurred from a breach of this covenant.

22.3 No Violation of Covenants and Restrictions

Tenant leases the Premises subject to all encumbrances, covenants, conditions, restrictions, easements, rights of way, and all other matters of record affecting the Premises. Tenant shall not violate, permit a violation, or cause Landlord to violate any recorded covenants and restrictions affecting the Premises. Tenant shall defend, indemnify, and hold harmless Landlord from any costs or expenses incurred from such a violation.

23. HAZARDOUS MATERIAL

23.1 Environmental Compliance

To Landlord's actual knowledge as of the date of this Lease, Landlord represents that there are no Hazardous Materials (as the same is defined under "Laws" defined below) on the Premises. Landlord shall indemnify and hold Tenant harmless from any and all claim, loss or damage incurred by Tenant, due to Landlord's breach of the foregoing representation. From and after the date of delivery of possession of the Premises to Tenant, (i) Landlord shall be responsible for its own acts relating to Hazardous Materials on the Premises; and (ii) Tenant shall be responsible for its own acts relating to Hazardous Materials on the Premises. Each party shall indemnify and hold harmless the other party from any and all loss and damage arising from such party's acts relating to Hazardous Materials on the Premises.

Landlord and Tenant shall at all times and in all respects comply with all Laws (as defined below) relating to industrial hygiene, environmental protection, and the use, analysis, generation, emission, manufacture, storage, disposal or transportation of any Hazardous Material in, on, under or about the Premises, respectively.

Without limiting the foregoing, if the presence of any Hazardous Material on the Premises is caused or permitted by Tenant and results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material. Provided, however, Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Premises nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

As used herein, the term "**Laws**" means applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Material affecting the Premises, whether in effect as of the date hereof or hereinafter enacted including, without limitation, Proposition 65 of the State of California, and the laws, ordinances, and regulations referred to above.

24. CONSTRUCTION CONTINGENCY

If Landlord has not delivered possession of the Premises with all of Landlord's Work Substantially Complete (as defined below) by the date which is twelve (12) months following the Effective Date, subject to force majeure, then Tenant may terminate this Lease upon thirty (30) days written notice to Landlord at any time thereafter until Landlord delivers possession of the Premises. Provided, however, Landlord may nullify such termination if Landlord delivers possession of the Premises within such 30-day period. Notwithstanding the foregoing, Tenant may not terminate the Lease if Landlord is diligently working to complete the Landlord's Work in the Premises.

25. GENERAL PROVISIONS

25.1 Gender; Number

The use of (i) the neuter gender includes the masculine and feminine and (ii) the singular number includes the plural, whenever the context requires.

25.2 Captions

Captions in this Lease are inserted for the convenience of reference only and do not define, describe, or limit the scope or the intent of this Lease or any of its terms.

25.3 Exhibits

All attached exhibits are a part of this Lease and are incorporated in full by this reference. Except as specifically provided herein, if any provision contained in any exhibit hereto is inconsistent or in conflict with any provisions of this Lease, the provisions of this Lease shall supersede the provisions of such exhibit and shall be paramount and controlling.

25.4 Entire Agreement

This Lease contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Lease.

25.5 Drafting

This Lease shall not be construed more strictly against one party than the other because it may have been drafted by one of the parties or its counsel, each having contributed substantially and materially to the negotiation and drafting hereof. Unless the context clearly requires otherwise, (i) the plural and singular members are each deemed to include the other, (ii) the masculine, feminine and neuter genders are deemed to include the others, (iii) "shall", "will" and "agrees" are mandatory and "may" is permissive, (iv) "or" is not exclusive, and (v) "includes" and "including" are not limiting.

25.6 Modification

No modification, waiver, amendment, discharge, or change of this Lease shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge, or change is or may be sought.

25.7 Joint and Several Liability

If any party consists of more than one person or entity, the liability of each such person or entity signing this Lease shall be joint and several.

25.8 Governing Law

This Lease shall be construed and enforced in accordance with the laws of the State of California. In the event any provision contained in this Lease is inconsistent or in conflict with local law, custom, or practice, the provisions of this Lease shall supersede and shall be paramount and controlling.

25.9 Time of Essence

Time is of the essence of every provision of this Lease.

25.10 Severability

In the event any term, covenant, condition, or provision of this Lease is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, or provision is invalid, void, or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, or provision of this Lease.

25.11 Successors and Assigns

Except as otherwise provided herein, all terms of this Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and assigns.

25.12 Limitation of Landlord's Liability

Notwithstanding anything contained in this Lease to the contrary, Landlord shall not incur any liability beyond Landlord's interest in the Premises upon a breach of this Lease, and Tenant shall look exclusively to such interest in the Premises for the payment and discharge of any obligations imposed upon Landlord under this Lease. The provisions of this Section shall not apply (i) in the event of Landlord's gross negligence, fraudulent or willful misconduct, and (ii) prior to the Delivery Date.

25.13 Further Assurances

Each party hereto shall perform all further acts and shall execute and deliver all further documents which may be reasonably necessary or required to accomplish the purposes of this Agreement.

THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY.

25.14

Counterparts

This Lease may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement. Any signature on a copy of this Lease or any document necessary or convenient thereto sent by facsimile shall be binding upon transmission by facsimile and the facsimile copy may be utilized for the purposes of this Lease.

LANDLORD:

San Diego Charter School Development, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

Date: _____

TENANT:

Sample Charter School,
a California nonprofit public benefit
corporation and public charter school

By: _____
Name: R. Scott Priest
Its: Manager

Date: _____

LAND AND BUILDING LEASE AGREEMENT

EXHIBIT “A”

LEGAL DESCRIPTION OF REAL PROPERTY

PREMISES LOCATION: _____

LAND AND BUILDING LEASE AGREEMENT

EXHIBIT "B"

Recording requested by, and
after recording return to:

Procopio, Cory, Hargreaves & Savitch LLP
Attn: Gregory V. Moser
530 B Street, Suite 2100
San Diego, California 92101

MEMORANDUM OF LEASE

This Memorandum of Lease is made and entered into as of _____
by and between San Diego Charter School Development Properties, LLC, a California limited
liability company ("**Landlord**") and Sample Charter School, a California nonprofit public
benefit corporation ("**Tenant**") who agree as follows:

1. Terms and Premises. Landlord leases to Tenant and Tenant leases from Landlord
that certain real property, together with all the improvements thereon and appurtenances
thereunto belonging (the "**Premises**"), which legal description is attached hereto and
incorporated herein as **Exhibit "A,"** commonly known as:

for a term of TWENTY (20) years, commencing on _____.

(THE REMAINDER OF THIS INTENTIONALLY LEFT BLANK)

2. Purpose of Memorandum of Lease. This Memorandum of Lease is prepared for the purpose of recordation and does not modify the provisions of the lease dated _____ and entered into by and between Landlord and Tenant (the “**Lease**”). The Lease is incorporated herein by reference. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail.

LANDLORD:

San Diego Charter School Development, LLC,
a California limited liability company

By: _____

Name: R. Scott Priest _____

Its: Manager _____

Date: _____

TENANT:

Sample Charter School,
a California nonprofit public benefit
corporation

By: _____

Name: _____

Its: _____

Date: _____

ATTACH A NOTARY ACKNOWLEDGMENT FOR ALL SIGNATURES.

WORK LETTER
EXHIBIT “C”

To be attached.

LAND AND BUILDING LEASE AGREEMENT

EXHIBIT "D"

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT (this "**Agreement**"), made as of the _____ day of _____, _____, by and among Sample Charter School, a California nonprofit public benefit corporation having an office at _____ ("**Tenant**"), _____, a _____ having an address at _____ ("**Lender**") and San Diego Charter School Development, LLC, a California limited liability company having an office at _____ ("**Landlord**").

WITNESSETH:

WHEREAS, Lender is the holder of a certain mortgage (the "**Mortgage**") executed and delivered by Landlord and recorded in the _____ County, State of _____, which Mortgage secures a certain note of even date with the Mortgage made by Landlord to Lender in the principal sum of _____, and which Mortgage conveys and constitutes a lien on a certain estate and interest in and to the premises described on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**"); and

WHEREAS, Tenant has entered into a certain lease dated _____ (said lease as heretofore or hereafter modified, amended and supplemented is hereinafter called the "**Lease**"), with Landlord for the Premises; and

WHEREAS, Lender has agreed to enter into a non-disturbance agreement with Tenant recognizing Tenant's rights under the Lease and Tenant has agreed to subordinate the Lease and attorn to Lender, upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Subject to the terms, conditions and other provisions hereof, the Lease and any extensions, renewals, replacements or modifications made after the date hereof, and all of the right, title and interest of Tenant in and to the Premises are and shall be subject and subordinate to the Mortgage and to all of the terms, covenants and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof. Lender approves of the Lease and agrees that Tenant shall not be disturbed in its use, possession or occupancy of the Premises, nor shall its rights under the Lease be disturbed or diminished during the term of the Lease or any extension thereof, unless and until such time that Tenant defaults under the Lease

beyond any applicable notice and curative period and the Lease and/or Tenant's right to possession of the Premises shall have been terminated in accordance with the Lease.

2. Provided that Tenant is not in default under the Lease beyond any applicable notice and curative period so as to permit Landlord to terminate the Lease or Tenant's right to possession of the Premises, Lender agrees that (a) in the event of foreclosure of the Mortgage, Tenant shall not be named as a party in any action or proceeding to enforce the Mortgage, (b) in the event Lender or any other party comes into possession or acquires title to the Premises as a result of the enforcement or foreclosure of the Mortgage, or as a result of any other means, Lender agrees that Tenant shall not be disturbed in its possession or occupancy of the Premises, and (c) upon such foreclosure of the Mortgage or other acquisition of the Premises in lieu of foreclosure, Lender will recognize the Lease and Tenant's rights thereunder.

3. Upon any foreclosure of the Mortgage or other acquisition of the Premises in lieu of foreclosure, Tenant shall attorn to Lender or any other party ("**Other Party**") acquiring said property or so succeeding to Landlord's rights and shall recognize Lender or such Other Party (as the case may be) as its landlord under the Lease and Tenant shall promptly execute and deliver any instrument that Lender may reasonably request in writing to evidence further said attornment.

4. Upon such foreclosure of the Mortgage or other acquisition of the Premises in lieu of foreclosure, and upon such attornment, the Lease shall continue as a direct lease between the Lender and Tenant upon all of the terms, covenants and conditions of the Lease.

In the event of foreclosure of the Mortgage, or upon a sale of the Premises pursuant to any power of sale contained therein, or upon a transfer of the Premises by conveyance in lieu of foreclosure, then:

Lender, or any purchaser at a trustee's or sheriff's sale or any successor owner of the Premises shall not be:

(i) liable for any act, omission, misrepresentation, or default arising prior to the date Lender takes possession of Landlord's interest in the Lease or becomes a mortgagee in possession, except to the extent such act or omission is of a continuing nature, such as, for example, a repair obligation; or

(ii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except to the extent that Lender has received the benefit of the act of Tenant giving rise to any such rights, such as, for example, relief of an obligation that would otherwise have been paid by Lender, as the landlord under the Lease; or

(iii) bound by, or liable for the return of, any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or bound by, or liable for the return of, any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or

(iv) bound by any agreement or modification of the Lease made after the date hereof without the written consent of Lender.

Notwithstanding the foregoing, nothing contained herein shall be deemed to vitiate Lender's obligations as landlord from and after the date it becomes landlord under the Lease.

5. Lender and Landlord acknowledge and agree that Landlord has agreed to the Mortgage and in the assignment of leases and rents (“**Assignment**”) that the rentals payable under the Lease shall be paid directly by Tenant to Lender upon the occurrence of a continuing default by Landlord beyond the applicable notice and curative period under the Mortgage. Accordingly, after notice (“**Rent Payment Notice**”) is given by Lender to Tenant that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender in accordance with the directions of Lender as set forth in the Rent Payment Notice, all rentals and other moneys due and to become due to Landlord under the Lease, or amounts equal thereto. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Mortgage or the Assignment. Landlord hereby waives any right, claim or demand it may now or hereafter have against Tenant by reason of any such payment to Lender, and any such payment to Lender shall discharge the obligations of Tenant to make such payment to Landlord. Landlord shall look solely to Lender with respect to any claims Landlord may have on account of any incorrect or wrongful Rent Payment Notice.

6. Lender agrees that fire insurance proceeds and condemnation awards shall be applied towards restoration of the Premises subject to and in accordance with the terms and conditions of the Lease.

7. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, (a) the term “**Tenant**” shall include any subtenant of the entirety of the Premises, successors and/or assigns of Tenant named herein; (b) the words “**foreclosure**” and “**foreclosure sale**” shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and (c) the word “**Lender**” shall include the Lender herein specifically named and any of its successors and assigns, and shall include anyone or any entity who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage or as a result of any other means in lieu of foreclosure and/or claiming by, through or under Lender's interest in the Premises.

8. Subject to the terms and conditions of this Agreement, in the event that Lender shall acquire title to the Premises, Lender shall have no obligation, nor incur any liability, beyond Lender's then interest, if any, in the Premises and Tenant shall look exclusively to such interest of Lender, if any, in the Premises for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease and Lender is hereby released or relieved of any other liability hereunder and under the Lease (except as otherwise herein specifically set forth). Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Lender, Tenant shall look solely to the estate or interest owned by Lender in the Premises and Tenant will not collect or attempt to collect any such judgment (i) from any officer, director, shareholder, partner, employee, agent or representative of Lender, or (ii) out of any assets of Lender other than Lender's estate and/or right and interest in the Premises and/or the revenue derived therefrom and/or the proceeds from the sale thereof. Nothing contained herein shall in any way, (a)

limit any right that Tenant might otherwise have to obtain injunctive relief or specific performance of landlord's covenants, conditions, agreements or other obligations under the Lease against landlord or landlord's successors or assigns, or with respect to any other action or remedy (not involving the personal liability of landlord's partners (general or limited), joint venturers, officers, directors, shareholder's or anyone claiming by, through or under landlord's interest in the Lease) which may be accorded Tenant by law or under the terms of the Lease, (b) excuse any default or other breach on landlord's part under the Lease, or (c) render Tenant liable for the obligations or other liabilities of Landlord or the holder of landlord's interest under the Lease to others. Notwithstanding anything to the contrary contained herein, this Section shall not apply to, and there shall be no limitation of liability with respect to, misapplication or misappropriation of insurance proceeds and/or condemnation awards.

9. Tenant acknowledges and agrees that:

(i) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right until it has given written notice of such act or omission to Lender and, provided Lender notifies Tenant within ten (10) business days after it receives such notice whether Lender shall elect to cure such default, until the same period of time as is given to Landlord under the lease to cure such act or omission shall have elapsed following such giving of notice to Lender, provided that no such cure period shall exceed the time given Landlord under the Lease.

(ii) Except as otherwise set forth in the Lease, Tenant has no right or option of any nature whatsoever, to purchase the Premises, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage.

10. Wherever used herein, the singular shall include both the singular and the plural and the use of any gender shall apply to all genders.

11. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises shall be located applicable to similar agreements made and to be performed entirely within said State. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

12. This Agreement shall not be modified or amended except in writing signed by all parties hereto.

13. All notices and other communications provided for hereunder shall be in writing and mailed (registered or certified mail, return receipt requested, postage prepaid), hand delivered or sent by nationally recognized overnight courier (prepaid), if to Lender, at its address above stated, Attention: _____, _____, with a copy similarly delivered to _____, and if to Tenant, at its address above stated, Attention: Urgent Real Estate Notice, with a copy similarly delivered to _____, or at such other _____

address as may from time to time be given by such person in a written notice to the others. All such notices and such communications shall be effective when received at the address specified as aforesaid (refusal by the addressee of such communication shall be deemed to constitute such addressee's receipt thereof).

14. Each entity executing and delivering this Agreement represents and warrants to the other that the individuals executing this Agreement on behalf of such entity, are duly empowered and authorized to do so on behalf of such entity.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

TENANT:

Sample Charter School,
a California nonprofit public benefit corporation

By: _____

Name:

Title:

LENDER:

By: _____

Name:

Title:

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under Mortgage or the Lease. The above Agreement satisfies any obligations of Lender under the Mortgage and related loan documents to enter into a non-disturbance agreement with Tenant.

LANDLORD:

San Diego Charter School Development, LLC,
a California limited liability company

By: _____

Name: R. Scott Priest

Title: Manager

