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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Joe Dominguez- Deputy Chief of Facilities Planning & Management
Andrea Epps – Attorney, Office of the General Counsel

Board Meeting Date September 27, 2017

Subject **Authorizing the filing of a Notice of Exemption and approving Project under the California Environmental Quality Act ("CEQA") for the Lafayette Elementary School Site**

Action Requested Adoption by the Board of Education of Resolution No. 1718-0025 authorizing KIPP Bridge Academy to file a Notice of Exemption and approving Project for development of the Lafayette Elementary School site, located at 1700 Market Street, Oakland, CA, in accordance with applicable law.

Background and Discussion In June 2016, the District entered into a Ground Lease – Joint Use Agreement with KIPP Bay Area Schools ("Charter School") authorizing the Charter School's use of the District's existing facilities at the Lafayette Elementary School site, located at 1700 Market Street, Oakland, CA 94607 for the operation of Charter School's KIPP Bridge Academy school. The Joint Use Agreement permitted the Charter School to make or perform improvements, alterations or additions ("Improvements") to the Premises after obtaining all necessary environmental and governmental approvals and permits at its sole cost and expense.

The Charter School developed a proposal and requested District approval to make Improvements to the Lafayette Site including constructing a new two-story, 21,326-square-foot building consisting of 10 classrooms, administrative offices, a cafeteria and related facilities to accommodate the KIPP Bridge Academy's sixth through eighth grade students.

District staff reviewed the Project description and associated Project plans and studies and determined that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15332's Class 32 exemption for in-fill development projects, and that no exception to the exemption, as set forth in CEQA Guidelines section 15300.2, applies to the Project.

Once a project is determined to be exempt, the project is no longer subject to either the procedural or substantive requirements of CEQA, and construction of the project can begin upon its approval.



KIPP Bridge Academy has signed a letter indemnifying the District against any and all claims arising under CEQA with respect to the improvements of the Lafayette Site.

Should the Board adopt the Resolution, KIPP Bridge Academy will file a Notice of Exemption with the Alameda County Clerk.

Recommendation

Adoption by the Board of Education of Resolution No. 1718-0025 authorizing KIPP Bridge Academy to file a Notice of Exemption and approving project under CEQA for development of the Lafayette Elementary School site, located at 1700 Market Street, Oakland, CA, in accordance with applicable law.

Fiscal Impact

N/A

Attachments

- Resolution No. 1718-0025
- Michael Baker International Environmental Report
- Notice of Exemption
- Facilities Use Agreement
- Letter of Indemnification

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 1718-0025**

**DETERMINING THAT THE KIPP BRIDGE ACADEMY CAMPUS PROJECT IS CATEGORICALLY
EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING THE PROJECT
AND AUTHORIZING THE DISTRICT TO FILE A NOTICE OF EXEMPTION**

WHEREAS, the Oakland Unified School District (“District”) entered into a Ground Lease – Joint Use Agreement (“Use Agreement”) with Kipp Bay Area Schools (“Charter School”) in June, 2016, authorizing Charter School’s use of the District’s existing facilities at the Lafayette Elementary School site, located at 1700 Market Street, Oakland, CA 94607 (“Premises”) for the operation of Charter School’s Kipp Bridge Academy school; and

WHEREAS, the Use Agreement also permitted Charter School to make or perform improvements, alterations or additions (“Improvements”) to the Premises after obtaining all necessary environmental and governmental approvals and permits at its sole cost and expense. One such approval required by the Use Agreement was District approval, for which the District agreed to act as the lead agency for purposes of California Environmental Quality Act (“CEQA”) compliance associated with the District’s approval of any such Improvements. At the time the District and Charter School entered into the Use Agreement, no specific Improvements were proposed; and

WHEREAS, subsequently, Charter School developed a proposal and requested District approval to make Improvements to the Premises entailing the constructing a new two-story, 21,326-square-foot building consisting of 10 classrooms, administrative offices, a cafeteria and related facilities to accommodate the Charter School’s Kipp Bridge Academy school’s sixth through eighth grade students (the “Project”); and

WHEREAS, the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), Section 21084, states that the CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.) shall list those classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from CEQA; and

WHEREAS, pursuant to that authority, CEQA Guidelines Sections 15300-15333 list the categorical exemptions promulgated by the California Office of Planning and Research and adopted by the Secretary of the California Natural Resources Agency for those classes of Projects which have been determined not to have a significant effect on the environment; and

WHEREAS, District staff has reviewed the Project description and associated Project plans and studies and determined that the Project meets the criteria for and thus is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15332’s Class 32 exemption for in-fill development projects, and that no exception to the exemption, as set forth in CEQA Guidelines section 15300.2, applies to the Project; and

WHEREAS, the District’s Board of Education has considered the potential environmental effects of the Project, and

WHEREAS, the District’s Board of Education held a duly noticed public meeting and considered the written record for the Project as well as public comment; and

WHEREAS, the District’s Board of Education, using its independent judgment, has determined that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15332 (Class 32, In-Fill Development Projects) which consists of projects: that are consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; that occur within city limits on a project site of no more than 5 acres substantially surrounded by urban uses; on a site that has no value as habitat for endangered, rare or threatened species; that would not result in any significant effects relating to traffic, noise, air quality, or water quality; and that can be adequately served by all required utilities and public services.

NOW, THEREFORE, it is found, determined and resolved by the District’s Board of Education (“Board”) using its independent judgment as follows, for good and sufficient cause based on the entire record of proceedings:

1. The above recitals are true and correct.
2. The Project meets the criteria of the Class 32 Categorical Exemption for in-fill development projects.
3. No exceptions to the Class 32 exemption as set forth in CEQA Guidelines Section 15300.2 apply.
4. All applicable CEQA requirements have been fulfilled for the Project.

BE IT FURTHER RESOLVED, that the Board hereby determines that the Project is categorically exempt from CEQA.

BE IT FURTHER RESOLVED, that the Board hereby approves the Project.

BE IT FURTHER RESOLVED, that the Superintendent and the Superintendent’s designee are hereby authorized and directed to file a Notice of Exemption documenting this categorical exemption determination for the Project with the Clerk-Recorder’s Office of the County of Alameda.

Enacted this 27th day of September, 2017, by the Oakland Unified School District Governing Board of Education, by the following vote:

AYES: Jumoke Hinton Hodge, Jody London, Aimee Eng, Roseann Torres, Shanthi Gonzales, Vice President Nina Senn, President James Harris

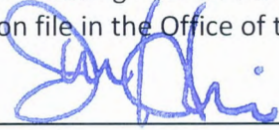
NOES: None

ABSTAIN: None

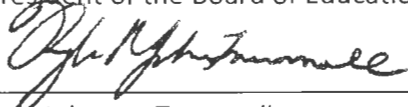
ABSENT: None

CERTIFICATION

We, James Harris, President, and Kyla Johnson-Trammell, Secretary of the Governing Board of the Oakland Unified School District, respectively, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said District at its Regular Meeting held on the 27th day of September, 2017, with a copy of the Resolution being on file in the Office of the Board of Education of the District.



James Harris
President of the Board of Education



Kyla Johnson-Trammell
Secretary, Board of Education

Attachments:

Exhibit A-1 – Calculation of Unhoused Pupils, American Indian Public High School

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: Alameda
1106 Madison St
Oakland, CA 94607

From: (Public Agency): Oakland Unified School District
1000 Broadway, Suite 150
Oakland, CA 94602
(Address)

Project Title: KIPP Bridge Academy

Project Applicant: Pacific Charter School Development

Project Location - Specific:
1700 Market Street, Oakland, CA, 94607

Project Location - City: Oakland Project Location - County: Alameda

Description of Nature, Purpose and Beneficiaries of Project:
The project would include the construction of a two story, 21,326 square foot building consisting of 10 classrooms, administrative offices, and a cafeteria. The maximum capacity of the school would be increased by 270 to 870 total students. The project would also include a turnout area for loading and unloading students

Name of Public Agency Approving Project: Oakland Unified School District

Name of Person or Agency Carrying Out Project: Oakland Unified School District

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 32, Section 15332
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:
The proposed project is categorically exempt from environmental review under CEQA because the project site is less than 5 acres, is surrounded by urban areas, and would be consistent with existing zoning in the City of Hayward. Additionally, it would not have any significant impacts on the environment.

Lead Agency
Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: _____

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

OAKLAND UNIFIED SCHOOL DISTRICT
KIPP BRIDGE ACADEMY PROJECT
CLASS 32, CATEGORICAL EXEMPTION ANALYSIS

Prepared for:

OAKLAND UNIFIED SCHOOL DISTRICT

Prepared by:

Michael Baker
INTERNATIONAL

SEPTEMBER 2017

CATEGORICAL EXEMPTION ANALYSIS

PROJECT LOCATION

The KIPP Bridge Academy campus is located at 1700 Market Street in Oakland, California, on the site of the former Lafayette Elementary School campus. Oakland is the largest city in Alameda County, which is one of the nine counties that make up the San Francisco Bay Area (**Figure 1, Regional Vicinity**). The San Francisco Bay is about 2.5 miles west of the KIPP Bridge Academy. Interstate 980 (I-980), a north-south freeway connecting Interstate 880 (I-880) to Interstate 580 (I-580), is located approximately 500 feet east of the campus.

The project site is located on the east side of the KIPP Bridge Academy campus, where the existing playground is located. The campus is bordered by Market Street to the west, 18th Street to the north, 17th Street to the northeast, West Street to the east, and 16th Street to the south (**Figure 2, Project Location**). The KIPP Bridge Academy is a charter school run by KIPP Bay Area Schools (KBAS). Pacific Charter School Development (PCSD) is the developer of the project. The Oakland Unified School District (OUSD) is the authorizing charter and leases the KIPP Bridge Academy facilities to KBAS.

Surrounding Land Uses

The campus is in a residential neighborhood, surrounded primarily by single-family homes. To the north and east are single-family homes along 18th Street and West Street. To the south is Marston Campbell Park, a public park consisting of a large field, a playground, and a community garden. Market Street, to the west, comprises multi-family residences, commercial development, and the Greater St. John Missionary Baptist Church. The I-980 on-ramp is one block east, on Brush Street between 16th Street and 17th Street.

EXISTING SETTING

The project site is approximately 0.5 acre and is currently occupied by a blacktop playground and play structure (**Figure 3, Conceptual Site Plan**). The project site is located in the southeast corner of the campus, adjacent to 17th and West streets and the existing blacktop playground.

A fence borders the project site on three sides. Approximately three small trees border the project site to the east. The south side is bordered by a row of mature redwoods, approximately four, at the edge of Marston Campbell Park. The project site's main access point is a driveway on 18th Street.

Existing Zoning

According to the City of Oakland (2016) Zoning Map, the project site is zoned as Mixed Housing Type Residential-2 (RM-2) and Historic Preservation District (S-20). The intent of the RM-2 zone is to create, maintain, and enhance residential areas characterized by a mix of single-family homes, duplexes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Community education facilities are permitted in the RM-2 zone with the approval of a conditional use permit.

The intent of the S-20 zone is to preserve and enhance the cultural, educational, aesthetic, environmental, and economic value of structures, other physical facilities, sites, and areas of special importance due to historical association, basic architectural merit, the embodiment of a style or special type of construction, or other special character, interest, or value. This combining zone is typically appropriate to selected older locations in the city. The regulations for the S-20 zone include design review criteria but do not include land use requirements or specify types of permitted/unpermitted uses.

The project site's General Plan Designation is Mixed Housing Type Residential (Oakland 2015). This neighborhood housing classification is intended to create, maintain, and enhance residential areas typically near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. While development within this classification is primarily residential, the Land Use and Transportation Element of the Oakland General Plan expressly identifies schools as one of the other desired uses. (Oakland 1998).

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Figure 1, Regional Vicinity

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Figure 2, Project Location

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Figure 3, Conceptual Site Plan

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PROJECT OVERVIEW

The KIPP Bridge Academy Project (project) would expand the capacity of the existing school facilities to accommodate additional students. Kipp Bridge Academy has a current enrollment of 594 students in grades K-8, with an approximate maximum capacity of 650 students. The project would construct a two-story, 21,326-square-foot building consisting of 10 classrooms, administrative offices, and a cafeteria. The proposed facility would accommodate sixth through eighth grade students and would increase the expected enrollment to 815. The maximum capacity of the school would be increased to 870 students.

The building would be constructed in a U shape, with a courtyard and exterior covered pathways in the center. All of the classrooms on the first floor would open out to the courtyard, and the exterior covered pathway would connect the cafeteria to the classrooms. A portion of the courtyard would be covered by a shade awning extending from the south wall of the cafeteria.

The first floor of the building would include a lobby, administrative offices, a cafeteria, restrooms, three science classrooms, and two standard classrooms. The second floor would include four equal-sized standard classrooms, a special education classroom and a teacher lounge (**Figures 4a and 4b, Conceptual Floor Plan**). The second floor would be accessed from the first floor by two sets of stairs—one interior set at the northeast corner of the building, and one exterior set at the southwest corner of the building—as well as by one elevator. The project components are shown in **Table 1, Project Components and Floor Area**. All of the classrooms would have visual display boards, computer work areas with wireless internet access, cabinets for storage, and full-height windows on the exterior walls. **Figure 5, Project Rendering** shows a visual rendering of the proposed project facing toward the southwest.

TABLE 1
PROJECT COMPONENTS AND FLOOR AREA

Project Component	Floor Area (square feet)
Administrative Offices	1,575
Cafeteria	3,022
Standard Classrooms (6)	5,394
Science Classrooms (3)	2,745
Special Education Classroom (1)	716
Restrooms (4)	720
Storage/Other	1,966
Exterior Covered Areas	5,188
Total Building Area	21,326

Source: LCA Architects 2017

Additional site improvements would include concrete flatwork to create a front entry plaza and an exterior patio behind the cafeteria and asphalt paving to connect the project site to the existing playground. The existing play structure would be removed and relocated approximately 30 feet to the west. Project lighting would consist of recessed LED fixtures on the building exterior, and would match the existing level of lighting on the campus. Consistent with the City of Oakland's Standard Aesthetics Condition of Approval 18 project lighting would be adequately shielded to prevent unnecessary glare to adjacent properties (Oakland 2017b).

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Figure 4a, Conceptual Floor Plan

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Figure 4b, Conceptual Floor Plan

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Figure 5, Project Rendering

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Construction

Project construction would take place over approximately 10 months. The State Architect has the power of approval over district building design, and the project would obtain such permissions prior to construction.

Construction equipment would include a compactor, concrete mixer and pump, scraper, front loader, jackhammer, pile driver, and electric lift. Construction would take place during the school year; however, all efforts would be made to reduce disturbance to students from potential noise, dust, or other construction activities.

Construction activities would generally take place between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and between the hours of 9:00 a.m. and 8:00 p.m. on Saturdays, in accordance with the City of Oakland (2017) construction noise requirements. Construction would not take place on Sundays or holidays.

Construction vehicles would access the site via existing school site access. Roads would not be closed during construction, and all road access would be maintained. Signage would be used to warn motorists approaching 18th Street from Market Street and West Street.

EXEMPT STATUS

The project qualifies for a California Environmental Quality Act (CEQA) Categorical Exemption under Section 15332, In-Fill Development Projects (Class 32).

REASON WHY THE PROJECT IS EXEMPT

CEQA Guidelines Article 19, Categorical Exemptions, lists classes of projects that are exempt from CEQA requirements. This section provides an analysis of why this project meets the conditions for a Class 32 Categorical Exemption along with the reasons why the possible exceptions to categorical exemptions, found in Section 15300.2, Exceptions, do not apply to this project. The statutory language of each condition and possible exception is printed in bold italics, followed by the project-related analysis for each condition and exception.

Categorical Exemption Analysis

The project qualifies under Section 15332, In-fill Development Projects (Class 32). Below is a description of the categorical exemption categories and an explanation of why the project qualifies for exemptions under this category.

15332, In-Fill Development Projects (Class 32)

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (1) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.*
- (2) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban areas.*
- (3) The project site has no value as habitat for endangered, rare or threatened species.*
- (4) Approval of the project would not result in any significant effects related to traffic, noise, air quality or water quality.*
- (5) The site can be adequately served by all required utilities and public services.*

The proposed project meets all of these conditions as indicated below.

- (1) According to the City of Oakland (2016) Zoning Map, the project site is zoned Mixed Housing Type Residential-2 (RM-2) and Historic Preservation District (S-20). Community education facilities are permitted in the RM-2 zone as a conditional use. The project is consistent with approved uses in the RM-2 and S-20 zones and would not require a zoning amendment. The project is consistent with City of Oakland General Plan goals and would not require a General Plan amendment, as schools are identified as a desired future use within the Mixed Housing Type Residential description in the Land Use and Transportation Element Oakland General Plan (Oakland 1998).
- (2) As described above, the project site is approximately 0.5 acre, in Oakland, and is surrounded by urban residential and parkland development.
- (3) Please see Section C, Exceptions to Categorical Exemption Analysis, item (c) below for an analysis of biological resources.

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- (4) Please see Section C, Exceptions to Categorical Exemption Analysis, item (c) below for an analysis of impacts related to air quality, noise, traffic, and water quality.
 - (5) The site can be adequately served by utilities and public services. The project site is located on an existing school campus that is currently adequately served by all necessary utilities.

Conclusion

As outlined above, the proposed project qualifies for the exemption category under Section 15332, In-Fill Development Projects (Class 32) under CEQA.

EXCEPTIONS TO CATEGORICAL EXEMPTION ANALYSIS

Technical analyses for air quality, biological resources, transportation, and hazardous materials that support the determination of no exceptions to the categorical exemption are included as **Attachments A** through **F**.

15300.2 Exceptions

Exception (a) only applies to Classes 3, 4, 5, 6, and 11 and as such, it is not discussed further.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

This exception does not apply to the proposed project. The project would increase student capacity at the KIPP Bridge Academy campus to allow for growth in the number of students in grades 6–8 to full enrollment. No other similar projects are planned on the project site or in the project vicinity. Further, as discussed below, the project would not result in any significant environmental impacts and would not contribute to any cumulative environmental impacts. Therefore, this exception would not apply to the proposed project.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

This exception does not apply to the proposed project. No unusual circumstances at the project site or planned project operations would result in the possibility of significant effects on the environment. Project implementation would comply with City of Oakland regulations as they relate to construction, like the City's noise ordinance and the City's Standard Conditions of Approval as they pertain to construction. Because the project site is in a residential area and the project would require about 10 months of construction, an analysis was performed of the potential impacts on the following resources: air quality, biological resources, noise, transportation, and water quality. A summary of findings is presented below, and technical analyses are included in **Attachments B** through **E** for air quality, biological resources, transportation, and hazardous materials.

Additionally, the project site is located in a seismically active areas. As such, a project site specific geotechnical investigation was performed and is included as Attachment A. The report concluded that the project site is in a seismically active area and that there is low potential for any associated geological hazards to occur at the project site, which is typical of project sites in California. Additionally, the project would comply with City of Oakland Standard Condition of Approval 35, which requires that all recommendations contained in the geotechnical report be implemented during project design and construction (Oakland 2017b). The project would also undergo DSA approval of all project plans, which

would ensure compliance with CA Building Code regulations as well as any other project specific recommendations.

Air Quality

The project could result in short-term air quality impacts associated with emissions generated from the demolition of an existing 0.5-acre blacktop playground and the construction of 21,326 square feet of school building space. Operation of the new school building would also generate air pollutant emissions. The California Emissions Estimator Model (CalEEMod), version 2016.3.1, computer program was used to estimate the project's air pollutant emissions from construction of the proposed improvements.

As shown in **Table 3, Maximum Daily Construction Emissions Summary**, projected emissions resulting from the project fall below the construction-related significance thresholds developed by the Bay Area Air Quality Management District (BAAQMD), the air pollution control agency for the region.

TABLE 3
MAXIMUM DAILY CONSTRUCTION EMISSIONS SUMMARY (POUNDS PER DAY)

Construction Emissions	ROG	NO_x	Exhaust PM₁₀	Exhaust PM_{2.5}	Fugitive Dust PM₁₀	Fugitive Dust PM_{2.5}
Maximum Daily Emissions	7.62	22.71	1.38	1.28	3.07	0.50
BAAQMD Potentially Significant Impact Threshold	54	54	82	54	Basic Construction Mitigation Measures	Basic Construction Mitigation Measures
Exceed BAAQMD Threshold?	No	No	No	No	No	No

Source: CalEEMod version 2016.3.1. See **Attachment B** for emission model outputs.

As shown in **Table 4, Maximum Daily Operational Emissions Summary**, operation of the new school building would also generate air pollutant emissions. However, projected emissions resulting from the project fall below the operational significance thresholds developed by the BAAQMD.

TABLE 4
MAXIMUM DAILY OPERATIONAL EMISSIONS SUMMARY (POUNDS PER DAY)

School Operations	ROG	NO_x	Total PM₁₀	Total PM_{2.5}	CO
Summer					
Area Source	0.60	0.00	0.00	0.00	0.00
Energy	0.01	0.09	0.01	0.01	0.08
Mobile	0.98	3.75	2.16	0.60	9.87
Total	1.59	3.84	2.17	0.61	9.95
Winter					
Area Source	0.60	0.00	0.00	0.00	0.00
Energy	0.01	0.09	0.01	0.01	0.08
Mobile	0.86	3.97	2.16	0.60	10.12
Total	1.47	4.06	2.17	0.61	10.20
Thresholds					

School Operations	ROG	NOx	Total PM ₁₀	Total PM _{2.5}	CO
BAAQMD Potentially Significant Impact Threshold	54	54	82	54	—
Exceed BAAQMD Threshold?	No	No	No	No	N/A

Source: CalEEMod version 2016.3.1. See Attachment B for emission model outputs.

As demonstrated, projected emissions would fall below all significance thresholds developed by the BAAQMD during both construction and operations. Therefore, the project would not result in a violation of any air quality standard or contribute substantially to an existing or projected air quality violation. Furthermore, by its very nature, air pollution is largely a cumulative impact. According to the BAAQMD, no single project is sufficient in size, by itself, to result in nonattainment of ambient air quality standards. Instead, a project’s individual emissions contribute to existing cumulatively significant adverse air quality impacts. In developing thresholds of significance for air pollutants, the BAAQMD considered the emission levels for which a project’s individual emissions would be cumulatively considerable. According to the BAAQMD, if a project exceeds the district’s identified significance thresholds, the project’s impacts would be cumulatively considerable. As demonstrated, the proposed project would not exceed thresholds for air pollutant emissions during construction or operations. Therefore, since the project would not exceed significance thresholds, it would result in no cumulative impacts.

The BAAQMD is responsible for preparing plans to attain ambient air quality standards in the San Francisco Bay Area Air Basin. The BAAQMD prepares ozone attainment plans and clean air plans to achieve national air pollutant standards under the Clean Air Act. These plans include local guidance for the State Implementation Plan (SIP), which provides the framework for air quality basins to achieve attainment of federal ambient air quality standards. As shown in **Table 5, Annual Construction and Operational Emissions**, projected emissions resulting from the project fall below the US Environmental Protection Agency’s (EPA) Conformity Determination thresholds.

TABLE 5
ANNUAL CONSTRUCTION AND OPERATIONAL EMISSIONS (METRIC TONS PER YEAR)

School Project	ROG	NOx	Total PM ₁₀	Total PM _{2.5}	CO	SO ₂
Project Construction	0.5	1.9	0.2	0.1	1.4	0.0
Project Operations	0.2	0.5	0.3	0.1	1.3	0.0
Thresholds						
EPA Conformity Determination Thresholds (40 CFR 93.153)	50	100	100	100	100	100

Source: CalEEMod version 2016.3.1. See Attachment B for emission model outputs.

Note: ROG and NOx thresholds are based on the San Francisco Bay Area Air Basin’s “marginal” nonattainment status for ozone. The SO₂, CO, and PM₁₀ thresholds are for air basins classified as attainment for those pollutants. The EPA only has one threshold for PM_{2.5}, regardless of attainment status.

Biological Resources

The project site is located in an area surrounded by urban development. Currently, the site is covered in asphalt pavement and contains no natural vegetation. Marston Campbell Park, to the south, contains landscaped trees, concrete paths, a play structure, picnic tables, and routinely mowed grass. As shown in

Attachment C, upon a qualified biologist's review of the database searches and evaluation of the project site's habitat, it was determined that there is no suitable habitat present for special-status species or other biological resources. Further, there is no designated critical habitat for any special-status species in the project vicinity.

While the project site does not contain any suitable habitat for special-status species, there are several large trees just south of the project site. Trees would not be removed as part of the project actions, and as shown in Attachment F, the project's use of the following standard tree management practices will ensure their safety during project construction:

1. Protect designated trees and plants with a temporary 4'-0" high Safety Fence enclosure.
2. Locate fencing as follows:
 - a. Tree Masses: around entire tree mass at the dripline (edge of tree canopy).
 - b. Single Trees: around drip line of tree.
3. Erect temporary fencing before commencing any construction work.
4. Maintain fencing during full construction period.
5. Remove temporary fencing when no
6. longer needed or when acceptable to Owner's Representative.

Additionally, the project would comply with the Migratory Bird Treaty Act. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Compliance with the regulations of the MBTA would ensure that the project would not impact resources on the project site. Regulations include pre-construction surveys no more than 14 days prior to initiation of construction to survey for active nests, and nest relocation procedures if an active nest is identified. Therefore, the project would have no impact on biological resources.

Noise

The major noise sources in the project vicinity are related to vehicular traffic, including automobile and truck traffic on I-980, West Street, Market Street, and 18th Street and noise associated with nearby residential and commercial development. The noise descriptors most often encountered when dealing with traffic, community, and environmental noise include an overall frequency-weighted sound level in decibels that approximates the frequency response of the human ear (A-weighted decibels, or dBA).

City of Oakland Municipal Code Section 17.120.050, Noise, outlines criteria and guiding policies for establishing acceptable noise levels. The project site is zoned RM-2 and S-20, and is bordered by single-family homes to the west and south. As noted in Municipal Code Table 17.120.01, Maximum Allowable Receiving Noise Level Standards, Residential and Civic, the noise levels for residential properties between 7:00 a.m. and 10:00 p.m. may not exceed 60 dBA for more than 20 minutes and may not exceed a maximum of 80 dBA. Noise levels for residential properties between 10:00 p.m. and 7:00 a.m. may not exceed 45 dBA for more than 20 minutes and may not exceed a maximum of 65 dBA. The S-20 Historic Preservation District noise regulations do not differ from those required in RM-2.

Construction Noise

Short-term noise related to project construction would temporarily increase noise levels in the project vicinity. Site preparation activities, which include excavation and grading, tend to generate the highest noise levels due to the use of earth-moving equipment. Earth-moving equipment includes excavating machinery such as backhoes, bulldozers, and earth-moving and compacting equipment, which includes compactors, scrapers, and graders..

The nearest existing noise-sensitive receptors are the single-family homes bordering the project site. The homes are located across West and 17th Street, approximately 135 feet away from the project site. During project construction, noise levels could affect the nearest existing noise-sensitive receptors in the project vicinity. Noise levels generated by individual pieces of construction equipment typically range from approximately 74 dBA to 85 dBA L_{max} at 50 feet (FTA 2006).¹ Operating cycles for typical construction equipment may involve one or 2 minutes of full power operation followed by 3 to 4 minutes at lower power settings. Other primary sources of acoustical disturbance would be due to random incidents, which would last less than 1 minute (such as dropping large pieces of equipment or the hydraulic movement of machinery lifts). Additionally, the highest noise generating equipment, like graders and excavators, would only be used during the initial construction phases and not throughout the whole duration of construction. Table 17.120.04 of the Oakland Planning Code allows for temporary construction noise to reach 80dBA for residential properties for short-term operations between 7 am and 7 pm on weekdays. Table 17.120.03 allows for up to 85 dBA L_{max} for one minute of operation and up to 80 dBA L_{max} for five minute of operation. Assuming an average noise attenuation rate of 6 dB per doubling of distance from the source center the short term noise generated during construction would not impact the nearest sensitive receptors.

This impact would be temporary and would cease fully when construction is complete. The project would be subject to City of Oakland construction noise requirements (Municipal Code Section 17.120.050), which limit construction to the hours between 7:00 a.m. and 7:00 p.m. Monday through Friday and between 9:00 a.m. and 8:00 p.m. on Saturday and Sunday. Considering the short term duration of noise generation equipment usage, and the construction hour limitation construction activities would not impact sensitive receptors. As such, the project would not have a significant impact on ambient noise levels due to project construction.

Operational Noise

The project would increase the total number of students present on the school campus. The students would use the existing KIPP Bridge Academy outdoor space, which includes a blacktop playground.

The use of these outdoor facilities would generate noise, particularly during physical education classes, recess, and lunch periods. There would be no nighttime uses as a result of the project, as the school is generally closed after sunset. The noise levels would vary depending on the level of activity taking place at any one time. Noise levels associated with exterior recreational activities, such as recess and physical education activities, average less than 60 dBA at 50 feet from the acoustical center of the source, decreasing with distance (Ambient 2011), and lowering as the acoustical center gets farther away. .

The nearest existing noise-sensitive receptors are the single-family homes bordering the project site. While the project site has a playground, its use would be limited to physical education classes, recess, and lunch during school hours. Further, the project site is already in use as a school facility and the existing noise environment includes operational noise from KIPP Bridge Academy. As such, the project would not introduce any noise conditions that would exacerbate existing conditions over the identified significant impact of a 70 dBA exposure for daytime activities and 60 dBA for nighttime activities. Therefore, project operation would not result in a substantial change in ambient noise levels at nearby noise-sensitive receptors.

Transportation

Construction Traffic

¹ L_{max} describes the maximum sound level.

Construction equipment would include heavy equipment such as a compactor, concrete mixer and pump, scraper, front loader, jackhammer, pile driver, and electric lift. Construction crews would vary in size and would comprise approximately anywhere from 10 to 30 construction workers, depending on the construction phase. Construction traffic would be temporary. Construction traffic would also vary, depending on the stage of construction, and would be intermittent and temporary. Based on the small size of the project site and the proposed project it was approximated that the project would add approximately 128 haul trips over the overall construction timeline. The addition of construction traffic would be minimal and would not impact existing traffic levels. No roads would be closed during construction, and equipment would be parked on the site and would not impact parking availability in the project area. Because project construction traffic would be minimal and temporary, the project would not have a significant impact on transportation due to construction traffic.

Operational Traffic

The project would add space for an enrollment increase of 270 students. To be conservative, the traffic impact analysis (TIA) prepared for the project (**Attachment D**) modeled the impact from an increase of 280 students. The increase in traffic attributable to the project would be approximately 453 daily trips, with 151 AM peak-hour trips and 46 PM peak-hour trips.

A project's impact on traffic operations is based on an intersection's level of service (LOS). LOS is a qualitative description of intersection operation. Levels of service range from LOS A, meaning little to no delay at the intersection, to LOS F, meaning severe congestion at the intersection. Based on the TIA, the project would not significantly impact traffic operations at the nearby intersections of Market Street and 18th Street, Market Street and 16th Street, West Street and 18th Street, and West Street and 17th Street. All four intersections would continue to operate at an acceptable LOS A or LOS B after the addition of project traffic to existing conditions. Project traffic would increase delay at each intersection between 0.0 and 0.2 seconds. Therefore, the project would not have a significant impact on transportation due to operational traffic.

Additionally, the project site is located in an area that is below the regional Vehicle Miles Traveled (VMT). Based on the guidelines for the initial screening criteria, a detailed VMT analysis is not required because the proposed project is located within a low-VMT area. Since the City of Oakland is an urban area with the bay serving as physical barrier, it is assumed that most of the students live within a one-mile radius of the school with an average trip length of 0.8 mile. Based on the total trip generation of the project which will generate 356 additional daily trips with 280 new students, the additional daily VMT for the project is 284.8 VMT which is approximately 1.02 daily VMT per student. The additional daily VMT is very low and is considered insignificant. Additionally, as shown in Appendix D, the project would not contribute to a significant project impact at the study intersections for Cumulative 2040 conditions based on City's threshold criteria. Based on the screening criteria and the thresholds of significance, the project would not cause a traffic impact in the study area.

Water Quality

Surface water runoff on the project site flows via the paved surfaces to nearby surface storm drain inlets or infiltrates through the unpaved areas. The project would not increase the amount of impervious surface at the project site because the project would be constructed on the site of an existing asphalt playground. The project site is currently connected to the municipal storm drain and water systems. In compliance with existing regulation cited below, the project would include adequate stormwater drainages to convey runoff into the municipal storm drains. The project area would drain to the municipal water system once the project is constructed (Attachment F).

Construction Water Quality Impacts

Project construction activities would disturb and expose soils to erosion, potentially increasing the amount of silt and debris entering downstream waterways. In addition, refueling and parking of construction equipment and other vehicles on site during construction could result in oil, grease, or related pollutant leaks and spills that may discharge into storm drains. Improper handling, storage, or disposal of fuels and materials or improper cleaning of machinery close to on-site drainages could cause water quality degradation.

The project would be designed to comply with City Municipal Code Chapter 13.16, Creek Protection, Storm Water Management and Discharge Control, which is intended to protect the water quality of water bodies in Oakland. The ordinance implements the legal requirements of the National Pollutant Discharge Elimination System (NPDES) permit issued to the City of Oakland by the San Francisco Bay Regional Water Quality Control Board (Permit No. CAS0029831). The ordinance requires implementation of best management practices (BMPs) during construction, such as site preparation and management, erosion control, runoff control, and sediment retention, which would prevent unwanted material from entering storm drains in the project vicinity. The effectiveness of BMPs has been recognized in the California Stormwater Quality Association's Stormwater Best Management Practice Handbooks.

Operational Water Quality Impacts

Project operation could result in direct surface water quality impacts from landscaping activities associated with the use of fertilizers, herbicides, and pesticides, as well as from motor vehicle operation.

The project would not increase impervious surfaces at the site. Therefore, it would not increase peak runoff rates, and no expansion of the existing off-site facilities would be required. However, additional drainage could result in an increase of urban runoff pollutants and other chemicals from landscaped areas. These constituents could result in water quality impacts on on- and off-site drainage flows to area waterways.

The project would be required to comply with the San Francisco Bay Municipal Regional Stormwater Permit (MRP) (Order R2-2009-0074; NPDES Permit No. CAS612008) administered by the San Francisco Bay Regional Water Quality Control Board. The MRP ensures attainment of applicable water quality objectives and protection of the beneficial uses of receiving waters and associated habitat. It requires that discharges not cause exceedances of water quality objectives nor cause certain conditions to occur that create a condition of nuisance or water quality impairment in receiving waters. Provision C.3 of the MRP requires new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface to implement measures to protect water quality and prevent erosion. These measures reduce sediment and pollutants in site runoff so that post-project runoff would not exceed pre-project stormwater rates and flow durations. The goal of Provision C.3 is to include appropriate source control, site design, and stormwater treatment measures in new development and adaptive reuse projects to address both soluble and insoluble stormwater runoff pollutant discharges and prevent increases in runoff flows from new development and adaptive reuse projects. Provision C.3 (Appendix A, Sheet C,4-1) would reduce potential water quality impacts associated with the proposed project.

City Municipal Code Chapter 13.16 requires for all development projects to include post-construction BMP stormwater treatment measures to reduce the water quality impacts of urban runoff from the entire project site for the life of the project. These measures include limiting pesticide use, cleaning storm drain inlets, and maintaining streets and sidewalks.

Compliance with the NPDES permits and the City's Municipal Code would reduce surface water quality impacts associated with the project. Therefore, the project would not have a significant impact on water quality.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

This exception does not apply to the proposed project. There are no designated state scenic highways in the project vicinity (Caltrans 2016). As such, the project would not impact any scenic resources within an officially designated state scenic highway.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

This exception does not apply to the proposed project. Government Code Section 65962.5, the Cortese List, contains locations of hazardous materials release sites in California that meet certain criteria. These sites are compiled from the EnviroStor database, the GeoTracker database, and other state and local agency lists. A search of the EnviroStor database (DTSC 2017a), the GeoTracker database (SWRCB 2017), and the Cortese List site (DTSC 2017b) was conducted in March 2017 for the project site. A review of the records indicate that the project would not be located on a site which is included on the Cortese List.

Additionally, a Phase I Environmental Site Assessment (ESA) was conducted by Cornerstone Earth Group (**Attachment E**) to identify existing or potential hazardous materials on the project site. Cornerstone reviewed regulatory agency database searches conducted by Environmental Data Resources (EDR) and reviewed local regulatory agency files for additional information regarding the sites identified in the EDR results. The Phase I ESA confirmed that the project site was not listed on the Cortese List. However, the Phase I report indicated that the project site was previously occupied by structures. Due to the age of the former buildings on the site, it is likely they were painted with lead-based paint. According to the Phase I report, soil adjacent to structures with lead-containing paint can become contaminated with lead as a result of the peeling of painted surfaces. Construction activities that disturb materials or paints containing any amount of lead may be subject to certain OSHA requirements of the lead standard contained in 29 CFR 1910.1025 and 1926.62, and asbestos standards contained in 29 CFR 1926.1101. As such, and with compliance with existing regulations the project would not result in any significant impacts due to hazardous materials.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

This exception does not apply to the proposed project.

Archaeological Resources

Although the project would include ground-disturbing activities such as grading and excavation, the possibility of discovering any cultural resources is low. The project site is located in a previously disturbed area that is currently covered in asphalt. Therefore, there would be no impact on cultural resources and this exception would not apply. In the case of discovery of unknown cultural materials during construction, stop work procedures would be implemented in accordance with federal, state, and local regulations until a qualified archaeologist is able to inspect the site. For example, in the case of discovery of human remains Health and Safety Code Section 7050.5(b) specifies protocol including stop work and documentation measures. Additionally, the City of Oakland General Plan (Objective 4: Archeological Resources and Policy 4.1: Archeological Resources) makes provision for protection of

archeological resources. With implementation of such policies the project would not impact archeological resources.

Historic Resources

The project site is located in the Oak Center Historic District, a locally designated historic district, zoned as S-20 on the City’s Zoning Map (Oakland 2016). The Oak Center Historic District is a well-preserved Victorian residential neighborhood with “outstanding examples of Italianate, Stick, Queen Anne, Colonial, and Shingle architecture representing Oakland’s prosperous garden suburbs of the late 19th and early 20th century” (Oakland 2014). The district is bounded by 18th Street to the north, 10th Street to the south, I-980 to the east, and Mandela Parkway to the west. The neighborhood of over 600 properties achieved historic district designation in 2002. Several properties are also designated individually as city landmarks.

The following designated historic properties are located within 0.25 mile of the KIPP Bridge Academy campus.

**TABLE 6
DESIGNATED HISTORIC PROPERTIES WITHIN 0.25 MILE**

Property Name	Address	Designation
Hume-Wilcutt House	918 18th Street	City Landmark
Campbell House	1014 16th Street	City Landmark
Holland-Canning House	954 16th Street	City Landmark
Gladding-Chickering House	970 16th Street	City Landmark
Reed-Henshaw House	974 16th Street	City Landmark
Quinn House	1004-06 16th Street	City Landmark
Metcalf House	750 14th Street	City Landmark

The project would construct a building on an existing school campus. The building would match the design and aesthetic of the existing building and campus and would not substantially change the character of the project site. The project would comply with City Municipal Code Section 17.100B, S-20 Historic Preservation District Combining Zone Regulations, which requires that a design review process be completed for proposals in the S-20 zone to ensure the proposal would not substantially impair the visual, architectural, or historic value of the affected site or facility. Therefore, the project would not have a significant impact on historic resources.

REFERENCES

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- Caltrans (California Department of Transportation). 2016. Officially Designated State Scenic Highways. Alameda County. Accessed March 2017.
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LETTER AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT and KIPP BAY AREA SCHOOLS (ON BEHALF OF KIPP BRIDGE CHARTER SCHOOL) REGARDING 1700 MARKET ST, OAKLAND CA

WHEREAS, in _____ of 2016, the Oakland Unified School District (“District”) and KIPP BAY AREA SCHOOLS, on behalf of KIPP BRIDGE CHARTER SCHOOL (hereafter “Charter School,”) entered into a “Ground-Lease – Joint Use Agreement, Kipp Bridge Charter School, for the use of Lafayette Elementary School, 1700 Market St., Oakland, CA 94607 (“Agreement”); and

WHEREAS, under the Agreement, Charter School is permitted to make certain improvements to the site at 1700 Market St., Oakland, CA (“Site”) as set forth therein; and

WHEREAS, the Charter School is preparing a Categorical Exemption under the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.* and 14 CCR 15332 (“In-Fill Development Projects”).

NOW, THEREFORE, for and in consideration of the covenants and agreements herein set forth to be kept and performed by both parties, the parties agree as follows:

1. The provisions under Section 10 (“Indemnification and Waiver”) of the Agreement between the District and Charter School shall apply to any and all claims in connection with, arising from, or asserting any legal theory under CEQA with respect to the improvements to the Site set forth in the Agreement.
2. The parties agree that any and all other provisions of the Agreement that support the application of Charter School’s indemnification requirements contained in Section 10 shall also apply to any and all claims in connection with, arising from, or asserting any legal theory under CEQA with respect to the improvements to the Site set forth in the Agreement.
3. This Letter Agreement shall constitute an amendment under Section 25.2 of the Agreement.
4. Nothing in the terms or enforcement of this Letter Agreement shall be construed so as to impair, limit, mitigate or curtail Charter School’s indemnification obligations under the Agreement for all other claims not addressed herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

OAKLAND UNIFIED SCHOOL DISTRICT

By: _____
Title: _____
Date: _____

KIPP BRIDGE CHARTER SCHOOLS By:


Title: DIRECTOR RETC ESTATE

Date: 8/31/17

Board Office Use: Legislative File Info.	
File ID Number	16-1442
Introduction Date	6/8/16
Enactment Number	16-0823
Enactment Date	6/8/16



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

OFFICE OF THE GENERAL COUNSEL

Memo

To Board of Education

From David Montes, Deputy Chief
Jacqueline P. Minor, General Counsel

Board Meeting Date June 8, 2016

Subject **AMENDMENT OF GROUND LEASE – JOINT USE AGREEMENT
KIPP BRIDGE CHARTER SCHOOL FOR THE USE OF
LAFAYETTE ELEMENTARY SCHOOL**

Action Requested **APPROVAL OF AMENDMENT OF GROUND LEASE – JOINT
USE AGREEMENT KIPP BRIDGE CHARTER SCHOOL FOR
THE USE OF LAFAYETTE ELEMENTARY SCHOOL**

Background and Discussion

By Board Enactment 16-1137, the Board approved the Ground Lease – Joint Use Agreement KIPP Bridge Charter School For The Use Of Lafayette Elementary School commencing on July 1, 2016. The Board also directed that KIPP and District enter into discussions that could potentially amend this Agreement to reflect certain policies of the Board of Education such Local Hire, using Union labor, using CHPS (Collaborative High Performance Schools standards) and rent increases. The Parties met and have agreed to the following amendments to the Ground Lease: KIPP will pay prevailing wages for work on the Project, (2) the fee escalation provision in the same as other charter agreements (e.g., OMI), (3) KIPP will consider and is being urged to consider the incorporation of CHPS standards into the Project design, (4) KIPP has agreed to 25% local hire/local participation on the Project, and (5) KIPP will ensure community engagement and to designate a community liaison for the Project (who will be paid a stipend).

KIPP has reaffirmed its requirements of the term of the Ground Lease in order to use bond financing for the Project. See the attached letter. The District’s Project Labor Agreement is directly tied to the Measure B bond program (voter approved bonds). The KIPP project is NOT a project under the District’s Project Labor Agreement.

Recommendation **APPROVAL OF AMENDMENT OF GROUND LEASE – JOINT
USE AGREEMENT KIPP BRIDGE CHARTER SCHOOL FOR
THE USE OF LAFAYETTE ELEMENTARY SCHOOL**



OFFICE OF THE GENERAL COUNSEL

Fiscal Impact

Lease payments are credited against improvements

Attachment

Ground Lease-Joint Use Agreement

September 3, 2015

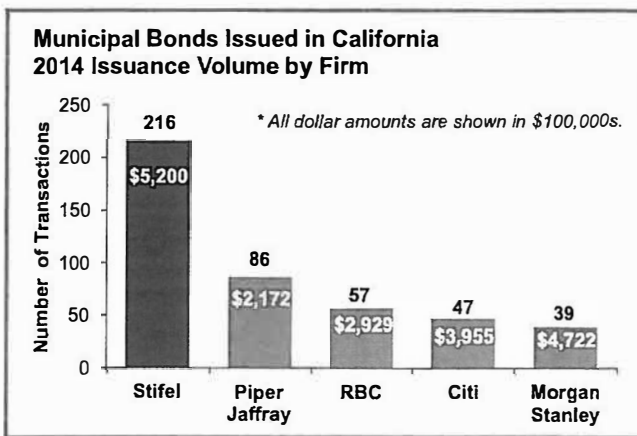
Mr. Adam Kaye
 Director of Real Estate
 KIPP Bay Area Schools
 1404 Franklin Street, Suite 500
 Oakland, CA 94612
 E-mail: adam.kaye@kippbayarea.org

Re: Charter School Bond Market Requirements for Ground Leases

Dear Mr. Kaye,

Stifel, Nicolaous & Company, Incorporated (“Stifel”) is a publicly traded company (NYSE: “SF”) and national investment banking firm which specializes in bond financing for charter schools. Stifel routinely serves as a bond underwriter to charter schools in issuing Charter School Revenue Bonds (“Bonds”) related to financing the acquisition, construction and rennovation of existing and new school facilities.

Charter School Revenue Bonds are a common form of long-term financing used by California charter schools. The typical financing term for Bonds is 30-35 years. The Bonds are secured by a pledge of a charter school’s net revenues and a mortgage placed on the school facilities to be financed. The mortgage on the school facilities can be structured with either a fee simple interest or leasehold interest (subject to a ground lease) in the property.



If the Bonds are secured by a leasehold mortgage, bond investors require that the term of the underlying ground lease between the charter school (as tenant) and the property owner (as landlord) be at least 10 years beyond the financing term. In other words, if a charter school issues Bonds with a 30-year financing term (that are secured by a leasehold mortgage), then the underlying ground lease term must be a minimum of 40 years. The longer the ground lease term is, the more marketable the Bonds will be to bond investors which can lead to lower interest rates for the transaction.

The reasons why a ground lease must be 10 years longer than the bond financing term are as follows:

1. **Additional Time is Needed to Protect Bond Investors Against Potential Bond Payment Shortfalls** – During the financing term, if a charter school misses or makes a partial Bond payment, those shortfalls must be paid back from the charter school’s future net revenues. Often times, this will require the financing term of the Bonds to be extended by one or more years to enable the charter school to pay back any shortfalls over time in an affordable manner. This is a critical security feature that bond investors require when purchasing Charter School Revenue Bonds which enables them to recoup potential payment shortfalls in a reasonable manner. If there is no additional time cushion on the ground lease (relative to the bond financing term), the Bonds would not be marketable to bond investors.
2. **Reducing the Ground Lease Term Will Also Lead to Lower Appraised Values Which Hurt a Bond’s Marketability and Can Lead to Higher Interest Costs** - Bond investors require an appraisal be completed on the mortgaged facilities and that the appraised value be publicly disclosed prior to the sale of the Bonds. The higher the appraised value is, the more secure a potential Bond is in the eyes of bond investors which generally leads to lower interest rate costs. For facilities subject to a ground lease, an appraiser will ascribe more value to a facility the longer the ground lease term is.

3. **Reducing the Financing Term Significantly Increases the Bond Payments a Charter School Has to Make Annually** – Taking into account the requirement discussed in Reason (1) on the prior page, if a charter school is limited to a 30-year ground lease term, the Bonds issued under those conditions will be limited to a 20-year bond financing term. Shortening the financing term for a Bond in this way can dramatically increase the bond payments by as much as 20% annually.

The table below compares the annual bond payments for a charter school bond issue for a hypothetical \$10 million project, assuming a 40-year vs. 30-year ground lease term.

HYPOTHETICAL BOND FINANCING FOR A \$10 MILLION PROJECT COST

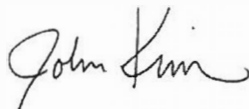
Ground Lease Term	40 Years	30 Years	Increase in Annual Costs
Bond Financing Term	30 Years	20 Years	
Hypothetical Interest Rate	6.00%	5.75%	
Average Annual Payment	\$893,388	\$1,070,000	\$176,612
Annual Cost Per Student*	\$1,787	\$2,140	\$353

* Calculated by taking the "Average Annual Payment" and dividing by 500 students.

For the reasons cited above, in our professional opinion, a ground lease term that is at least 10 years longer than the bond financing term is a critically important feature that is required when issuing Charter School Revenue Bonds.

Please let me know if you have any questions regarding the information provided above. I can be reached at 415-999-4779 if you have any questions.

Sincerely,



John Kim
Managing Director
Head of the National Charter School Practice

**GROUND LEASE – JOINT USE AGREEMENT
KIPP BRIDGE CHARTER SCHOOL**

**FOR THE USE OF
Lafayette Elementary School
1700 Market St, Oakland, CA 94607**

This GROUND LEASE /JOINT USE AGREEMENT (the "Agreement") is made by and between OAKLAND UNIFIED SCHOOL, a school district formed and existing under the laws of the State of California ("OUSD"), and KIPP BAY AREA SCHOOLS, ("CHARTER SCHOOL"), a California nonprofit 501(c)(3) public benefit corporation which operates KIPP BRIDGE Charter School ("KIPP BRIDGE"). This Agreement includes the terms and conditions of CHARTER SCHOOL'S use of the Lafayette Elementary School site, located at 1700 Market St, Oakland, CA 94607, during the 2016-17 and 2017-18 school years and the construction of new school facilities on the Lafayette campus and the planned occupancy by CHARTER SCHOOL commencing in July 2018 (the 2018-19 school year).

RECITALS

WHEREAS, District is the owner of certain real property, known as Lafayette Elementary School located at 1700 Market St, Oakland, CA 94607("Premises");

WHEREAS, CHARTER SCHOOL currently provides educational and recreational activities for its students on a portion of the West Oakland Middle School campus, also known as the Lowell Campus located at 991 14th Street, Oakland CA 94607;

WHEREAS, by Enactment # 16-0268, on February 10, 2016, the Board of Education approved Material Revisions in the Charter for KIPP BRIDGE authorizing KIPP BRIDGE to serve Grades TK-8, effective for the 2016-17 school year;

WHEREAS, under the Charter revisions, in 2016-17, the CHARTER SCHOOL will serve approximately 325 students in grades TK-4th, in addition to its existing 5th-8th program, and grow to serve approximately 835 students in TK-8th at full capacity in 2020-2021 (475 of which would be TK-4th grade students).

WHEREAS, the Lafayette building has capacity to hold 680 students and the student enrollment at Lafayette for the 2015-16 school year is 220 students, and the projected enrollment for the 2016-17 school year is 202 students;

WHEREAS, CHARTER SCHOOL AND OUSD, in collaboration with the school communities and school leaders at KIPP BRIDGE, Lafayette Elementary School and West Oakland Middle School have agreed that KIPP BRIDGE will locate its entire TK-8 program to the Lafayette campus, and Lafayette School and West Oakland Middle School will occupy the West Oakland Middle School campus, also known as the Lowell Campus;

WHEREAS, CHARTER SCHOOL requires classrooms and facilities for its in-district students for the purposes of operating its educational program in accordance with KIPP BRIDGE's charter ("Program" or "Activities") which includes the provision of recreational Activities on the Premises for students residing in the District;

WHEREAS, this Agreement is entered into by the Parties as an "in-lieu" facilities Agreement pursuant to the requirements of California Education Code section 47614, which allows the District and CHARTER SCHOOL to collaborate on the terms for use of the Premises for KIPP BRIDGE, outside of the provisions of Proposition 39 and its implementing regulations ("Prop 39");

WHEREAS, this Agreement is further entered into pursuant the provisions of Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") in support of the joint action by District and CHARTER SCHOOL to organize, promote, and conduct programs in order to improve the health and general welfare of the citizens of the City of Oakland and students residing in the District to cultivate the development of good citizenship by provision for adequate programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state; and

WHEREAS, under the provisions of Education Code section 17534 (b), the requirement that the term of any agreement for joint use must not exceed five (5) years, does not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as CHARTER SCHOOL; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and CHARTER SCHOOL agree as follows:

AGREEMENT

1. USE OF PREMISES

- 1.1 District hereby leases to CHARTER SCHOOL, and CHARTER SCHOOL hereby leases from District, the Premises for the Term and upon the covenants and conditions set forth in this Agreement. District agrees to allow use of the Premises by CHARTER SCHOOL for purposes of operating a public charter school providing educational instruction to public school students consistent with the terms of CHARTER SCHOOL's Charter Petition so long as CHARTER SCHOOL is the tenant of the Premises, and in the event CHARTER SCHOOL is not the occupant for any reason, for the purposes of operating a public charter school, and incidental related uses ("Activities").
- 1.2 Use of the Premises shall be for the sole purpose of operating a charter educational program in accordance with all applicable federal, state and local regulations relating to the Premises, and to the operation of the educational program, including summer school and programs procured through third party entities, e.g. child-care and after-school program providers. CHARTER SCHOOL shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District, which consent shall not be unreasonably withheld.
- 1.3 CHARTER SCHOOL shall not commit, or suffer to be committed, any waste upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or knowingly place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
- 1.4 Any uses which involve the serving and/or sale of alcoholic beverages are prohibited on the Premises. CHARTER SCHOOL shall prohibit the use of tobacco products and e-cigarettes on the Premises at all times.
- 1.5 CHARTER SCHOOL shall not intentionally do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises.

- 1.6 CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Premises accessible to members of the community. The Parties understand that the Premises is to be used primarily for educational programs and activities and as such, any use of the Premises by the Community shall not interfere with CHARTER SCHOOL's educational program.

2. CONDITION OF PREMISES

- 2.1 The Premises are leased to CHARTER SCHOOL on an "AS IS" basis. Except as expressly provided herein, District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises.
- 2.2 CHARTER SCHOOL acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for CHARTER SCHOOL's Activities, except as set forth herein. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or CHARTER SCHOOL, and District and CHARTER SCHOOL expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

3. TITLE TO SCHOOL SITE(S) /CLASSROOM BUILDINGS

- 3.1 The Parties acknowledge that title to the Premises is held by District. Title to improvements at the Premises constructed by CHARTER SCHOOL shall be owned by CHARTER SCHOOL until expiration or the earlier termination of the term of this Agreement. All improvements on the Premises at the expiration of the term of this Agreement, or any options or mutually agreed to extensions shall become District's property. The improvements constructed by CHARTER SCHOOL shall be DSA approved or capable of being utilized for adaptive re-use under the standards set forth in the Division of State Architect's "FEASIBILITY GUIDELINES FOR SELECTION OF EXISTING NON-CONFORMING FACILITIES FOR REHABILITATION TO PUBLIC SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES"¹ (or comparable standards).

4. **EVALUATION PERIOD:** CHARTER SCHOOL shall have a 180 day Evaluation Period commencing on July 1, 2016 and ending on January 2, 2017 to satisfy or waive the contingencies described below (the "Evaluation Period"). During the Evaluation Period, CHARTER SCHOOL shall have the right to conduct such investigations and testing, seek and obtain financing satisfactory to CHARTER SCHOOL, and otherwise evaluate whether the Premises and their condition are suitable and feasible for CHARTER SCHOOL's purposes. If CHARTER SCHOOL gives District written notice of cancellation within the Evaluation Period, then this Lease shall be cancelled and terminated and the parties will be relieved of all further obligations hereunder (save only such obligations as are expressly stated to survive termination of the Agreement or except as otherwise provided herein). Upon execution hereof, Tenant shall pay District the sum of \$100.00 which shall be nonrefundable in all circumstances, as and for consideration for District's holding the Premises available and allowing CHARTER SCHOOL the foregoing Evaluation Period.

- 4.1 The term ("Initial Term") of this Agreement shall commence on July 1, 2016 for twenty (20) years and shall end on June 30, 2036; the term ~~may shall~~ be extended for two additional terms of 10 years each ~~upon CHARTER SCHOOL's written exercise of option in each case given not less than 180 days before the then~~

¹ http://www.documents.dqs.ca.gov/dsa/pubs/feasibility_pub_dsa_reh_01.pdf

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~~existing Term ends~~, unless subject to earlier termination under any provision of this Agreement, including but not limited to the following reasons:

- 4.1.1 CHARTER SCHOOL'S program ceases to operate after a revocation, nonrenewal or surrender of the charter, and all appeals have been exhausted;
- 4.1.2 CHARTER SCHOOL fails to construct significant capital outlay improvements on the Premises within five (5) years of the Commencement Date of this Agreement, in which case the term of this Agreement shall only be for five (5) years, until June 30, 2021;
- 4.1.3 CHARTER SCHOOL's default under the terms and conditions herein and CHARTER SCHOOL's failure to complete any cure of such default as provided herein.

4.2 Option to Terminate.

CHARTER SCHOOL at its option, and without any penalties, damages or other compensation to the District, may elect not to proceed with the new construction project contemplated by Section 8 of this Agreement. CHARTER SCHOOL acknowledges and understands that if it exercises the option not to proceed with the new construction project contemplated by Section 8, this Agreement shall terminate effective June 30, 2021 and that no extensions or exceptions to this requirement will be granted by the District. Provided however, the Parties by mutual agreement may negotiate a new agreement for use of the Lafayette site. In the event that CHARTER SCHOOL determines, in its reasonable judgment, that it is not feasible for CHARTER SCHOOL to proceed with the new construction project contemplated by Section 8, then CHARTER SCHOOL may elect to terminate this Lease without penalties, damages, or other compensation to the District, effective on the next July 1st, by written notice to District. In the event that CHARTER SCHOOL so elects, then CHARTER SCHOOL agrees that it will not request any further facilities from District under Proposition 39 for KIPP BRIDGE school for the remainder of the five year Term of this Lease.

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If during the Evaluation Period, it is determined by CHARTER SCHOOL that the existing school buildings are not habitable for school purposes due to health and safety issues, then the District shall (1) upgrade the existing school buildings to ensure habitability, safety, and health at District's expense to allow use for the entire 2016-2017 school year; or (2) terminate this Lease and provide CHARTER SCHOOL with an alternate equivalent facility pursuant to Proposition 39.

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5. EARLY OCCUPANCY

- 5.1 The Parties acknowledge that OUSD currently occupies the Premises. The District anticipates the students and the employees will be relocated no later than June ~~20~~, 2016 and that CHARTER SCHOOL shall have early access to the Premises no later than June ~~20~~, 23, 2016 to conduct deferred maintenance and repairs related to environmental, life and fire safety, and to make minor improvements to finishes, fixtures, wiring and paint, and to install furniture, carpet and equipment. The Parties acknowledge that CHARTER SCHOOL needs access to the Premises as soon as possible in order to begin needed repairs and maintenance. ~~The District will work with CHARTER SCHOOL to develop a schedule of staged work such that some identified repairs and maintenance may begin before June 23, 2016.~~

6. FACILITY USE FEE

For and in consideration of the use of the Premises, CHARTER SCHOOL shall pay the following facility use fee to District:

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- 6.1 **Initial Year (2016-17):** Subject to the credit provided for in Section 7.1 below, during the 2016-17 school year, CHARTER SCHOOL shall pay a facility use fee of \$4.73 per square foot, for the square footage of the building which is approximately 53,000 square feet. The first year rent is therefore \$250,690.
- 6.2 **Year Two (2017-18):** CHARTER SCHOOL anticipates adding 5 additional portables to the site for the 2017-18 school year in order to meet enrollment requirements pending completion of the Improvements provided for in Section 8 of this Agreement. CHARTER SCHOOL shall assume the cost and expense of the lease and installation of the portables, if necessary, for Year Two. Subject to the credit provided for in Section 7.1 below, the Year Two Facility Use Fee payable to the District shall be the facility use fee based upon the 2016-17 Prop 39 rate times 53,000 square feet -- therefore \$250,690.
- 6.3 **Facility Use Fee After Completion of New Construction:** As provided in Section 8 of this Agreement, but subject to CHARTER SCHOOL's right to terminate as provided in Section 4.2 above, CHARTER SCHOOL intends to make significant improvements to the Premises at its sole cost and expense. At the end of the Facility Use Agreement, as provided in Section 3.1, the Improvements shall become the property of the District. The Parties therefore agree that as consideration for the construction of the Improvements on District's property that shall become the property of the District, after completion of the Improvements, the District will credit to CHARTER SCHOOL as credit against the facility use payments the amount of the actual construction costs of such Improvements, which is estimated to be \$9.9 million (and the credit will not exceed \$9.9 million). During the remaining term after completion of the new construction, the ~~Facility use fee will be set at \$4.73 per square foot with a cost of living increase not to exceed a total of 7.5% every 5 years.~~ annual Facility Use Fee shall increase by ten thousand dollars (\$10,000.00) at the beginning of year five (5) and on each subsequent five (5) year anniversary thereafter, including any option period.
- 6.4 Rent shall be paid quarterly as follows:
- July 1 -
 - October 1 -
 - January 1 -
 - April 1 -
- 6.5 CHARTER SCHOOL shall pay promptly to District, the Rent when due during the Term, without deduction, setoff, prior notice or demand.
- 6.6 Rent does not include the utility charges for the Premises. CHARTER SCHOOL shall pay for all utilities charges for the Premises. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. Utility charges shall not be included in the credit received by CHARTER SCHOOL, described in Section 7 below. CHARTER SCHOOL shall be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Premises, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, telephone, trash collection, sewage disposal, janitorial and interior and exterior Premises security services. CHARTER SCHOOL shall pay the cost of all utilities and other services directly to the applicable utility or service provider. OUSD shall include the Premises on OUSD's bulk energy contracts upon request by CHARTER SCHOOL.

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- 6.6.1 Except to the extent the discontinuance, failure or interruption is caused or permitted by OUSD's negligence or willful misconduct, CHARTER SCHOOL agrees that OUSD shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of CHARTER SCHOOL's use and possession of the Premises or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Agreement. Notwithstanding anything herein to the contrary, OUSD shall use its good faith efforts to assist CHARTER SCHOOL in restoring such services so long as OUSD is not required to incur any costs or expenses.
- 6.7 CHARTER SCHOOL acknowledges that late payment by CHARTER SCHOOL to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from CHARTER SCHOOL by 4:00 p.m. within ten (10) days after such amount is due, CHARTER SCHOOL shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by CHARTER SCHOOL. Acceptance of any late charge by District shall in no event constitute a waiver of CHARTER SCHOOL's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 6.8 Taxes; Assessments. CHARTER SCHOOL shall pay any assessment on the Premises, including any improvements which CHARTER SCHOOL constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or CHARTER SCHOOL's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon CHARTER SCHOOL's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

7. MAINTENANCE, REPAIRS, AND TENANT IMPROVEMENTS:

7.1 Initial Maintenance and Repair Prior to the start of the 2016-17 School Year

The Parties have identified certain maintenance and repairs that are necessary to make the premises usable by CHARTER SCHOOL for its intended purpose. The repairs are delineated on Exhibit A-1, which is incorporated into this Agreement. With respect to the repairs on Exhibit A-1 the Parties agree as follows:

- 7.1.1 The District will agree to deduct from the rent the cost of improvements identified by CHARTER SCHOOL as necessary to make the Premises usable by CHARTER SCHOOL (the "credit"), not to exceed two year's rent, using the 2016-17 Proposition 39 annual rate. The credit may be used for tenant improvements, repairs, maintenance, furnishings, furniture and technology upgrades, products

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and services an amount. This rent credit covers the cost of improvements for the 2016-17 and 2017-18 school years.

- 7.1.2 All improvement work undertaken and completed by CHARTER SCHOOL against the credit shall be with licensed contractors, selected by CHARTER SCHOOL and/or supervised by licensed contractors and performed according to applicable California law. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of CHARTER SCHOOL's Improvements to the extent such approval is required by law.
- 7.1.3 All construction must meet code requirements, including fire.
- 7.1.4 CHARTER SCHOOL is responsible for the cost of compliance with CEQA, if applicable.
- 7.2 Ongoing Maintenance and Repair After Completion of Repairs Provided for in Section 7.1
 - 7.2.1 Except as provided in Section 7.1, and except as to warranties made by District herein, CHARTER SCHOOL agrees to provide, at its own cost and expense, any and all maintenance for the Premises. Maintenance to be provided by CHARTER SCHOOL shall be consistent with the normal maintenance levels and shall insure safe and healthful use. Except as expressly provided herein, District shall have no maintenance or repair obligations with respect to the Premises. CHARTER SCHOOL hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of the Civil Code.

8. NEW CONSTRUCTION

8.1 CHARTER SCHOOL may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises ("Improvements"), provided that any Improvements requiring approval of the Division of the State Architect shall require prior written notice and approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. If District fails to respond within thirty (30) days after CHARTER SCHOOL's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act ("CEQA") and regulations promulgated thereunder.

~~8.1~~

8.2 All contractors and subcontractors of CHARTER SCHOOL, if any, shall be duly licensed in the State of California. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of CHARTER SCHOOL's Improvements to the extent such approval is required by law. State Prevailing wage laws as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771 apply to the Project.

8.3 The District encourages CHARTER SCHOOL to incorporate Collaborative for High-Performing Schools standards into the design (www.chps.net).

~~8.2~~

8.4 CHARTER SCHOOL shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California

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Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies. However, the District agrees to act as the Lead Agency for any required CEQA approvals or proceedings, provided, that CHARTER SCHOOL shall reimburse District for any costs associated with serving as Lead Agency. In addition to the public notice and participation requirements in CEQA, the CHARTER SCHOOL agrees to ensure community knowledge and participation in the new Project and Improvements and to designate a community liaison for the Project.

8.5 In order to provide economic opportunity for residents and businesses and stimulate economic development, the District encourages CHARTER SCHOOL to adopt a local hiring and local small business participation program. CHARTER SCHOOL has agreed to at least 25% local hiring/local business participation for this Project.

~~8-3~~

~~8-48.6~~ Except as to warranties made by District herein, CHARTER SCHOOL shall be solely responsible for maintaining the Premises and CHARTER SCHOOL's Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

~~8-58.7~~ CHARTER SCHOOL shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. CHARTER SCHOOL shall administer and resolve any claims or disputes that may arise in connection with the design and construction of the Improvements.

~~8-68.8~~ CHARTER SCHOOL and any person performing work for construction of the Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the Premises and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of CHARTER SCHOOL by reason of the exercise of privileges given in this section. CHARTER SCHOOL shall indemnify and hold District harmless from any damage caused by the CHARTER SCHOOL's activities authorized in this section, except to the extent such damage was caused by District's negligence or willful misconduct. CHARTER SCHOOL shall either reimburse the District for any damage or destruction to the Premises, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.

~~8-78.9~~ The Improvements shall be made by CHARTER SCHOOL at its sole expense. OUSD shall have no obligation to provide to CHARTER SCHOOL additional funding for the construction of any improvements, funding to pay or settle outstanding debts and/or liens attaching to the Improvements such as, but not limited to, mechanic's liens, taxes or assessments, or funding to operate the charter school.

~~8-88.10~~ Within 30 days of the completion of work, CHARTER SCHOOL shall cause a Notice of Completion to be recorded in the office of the Recorder of Alameda County in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and CHARTER SCHOOL shall deliver to OUSD within 30 days of the recordation of the Notice of Completion a reproducible copy of the "as built" drawings, which will be prepared by the architect to include the initial drawings stamped by the California Division of State Architect plus any subsequent

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field changes, plus any subsequent approvals from the California Division of State Architect, if applicable.

~~8.98.11~~ Compliance with Field Act and OUSD Consent. CHARTER SCHOOL agrees that all Improvements constructed under this Section 8, including any mechanical, electrical, plumbing or HVAC facilities or systems shall be in compliance with the Field Act.

~~8.108.12~~ CHARTER SCHOOL shall, during the term hereof, keep the Premises free from any liens or encumbrances arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL, and shall protect, defend, indemnify and hold OUSD harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement. The foregoing indemnity shall not apply to any liability, cost, obligation, expense or claim of lien to the extent arising from the negligence or willful misconduct of OUSD.

~~8.10.18.12.1~~ CHARTER SCHOOL shall remove any such lien or encumbrance by bond or otherwise as soon as reasonably possible after receipt of written notice by OUSD but in any event CHARTER SCHOOL shall commence the necessary action to remove such lien or encumbrance within 30 days of CHARTER SCHOOL having knowledge of such lien or encumbrance and diligently prosecute to completion the removal of such lien or encumbrance. If CHARTER SCHOOL fails to commence the action as required in the foregoing sentence or OUSD believes that the removal of such lien or encumbrance is not being prosecuted diligently, OUSD may provide written notice to CHARTER SCHOOL and if CHARTER SCHOOL cannot cause the lien or encumbrance to be removed within 30 days its receipt of this second notice: (i) OUSD may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof; (ii) The amount so paid and OUSD's actual costs and expenses in handling this matter culminating in OUSD's payment and release of the lien or encumbrance shall be paid by the CHARTER SCHOOL without dispute; and (iii) such lien or encumbrance, regardless of whether it is paid by OUSD, shall constitute a default under this Agreement (but the remedy for such default shall be solely in damages and such shall not be a ground to terminate this Lease). Nothing contained in this Agreement shall authorize CHARTER SCHOOL to do any act which shall subject the title to the Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Improvements arising in connection with any such work or respecting the Premises not performed by or at the request of OUSD shall be null and void, or at OUSD's option shall attach only against CHARTER SCHOOL's interest in the Improvements and shall in all respects be subordinate to the title to the Improvements held in trust by OUSD.

9. HAZARDOUS SUBSTANCES

9.1 CHARTER SCHOOL shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. CHARTER SCHOOL shall not use Hazardous Substances on, under or about the Premises; provided, however, that CHARTER SCHOOL may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and

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supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that CHARTER SCHOOL may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. CHARTER SCHOOL shall not, nor shall CHARTER SCHOOL allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement. District represents that the Premises are safe for operations as a TK-8 public school, that there are no Hazardous Substances on the Premises, and District shall be responsible for the remediation of any Hazardous Substances that were present at the Premises prior to CHARTER SCHOOL's occupancy thereof.

- 9.2 Notice. CHARTER SCHOOL will promptly notify District in writing if CHARTER SCHOOL has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. District has disclosed in writing, prior to execution of this Lease, the District's knowledge, if any, of any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or otherwise exists on the Premises as of the date of delivery of possession to CHARTER SCHOOL. District will promptly notify CHARTER SCHOOL in writing if District acquires new notice or knowledge during the term of this Lease that any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or otherwise exists on the Premises. CHARTER SCHOOL shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. CHARTER SCHOOL shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by CHARTER SCHOOL to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. CHARTER SCHOOL shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 9.3 Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to CHARTER SCHOOL (except in the event of an emergency, in which case, only such notice as shall be reasonable under the circumstances will be required), inspect the Premises to determine whether CHARTER SCHOOL is complying with CHARTER SCHOOL's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and CHARTER SCHOOL may agree.
- 9.4 Mutual Indemnification. CHARTER SCHOOL shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District from and against any and all Claims arising from any breach of CHARTER SCHOOL's covenants under this Section, except to the extent caused by

the negligence or willful misconduct of District. District shall indemnify, defend (by counsel reasonably approved in writing by CHARTER SCHOOL), protect, release, save and hold harmless CHARTER SCHOOL from and against any and all Claims arising from any breach of District's covenants under this Section, except to the extent caused by the negligence or willful misconduct of CHARTER SCHOOL.

10. INDEMNIFICATION AND WAIVER

- 10.1 CHARTER SCHOOL agrees that OUSD, its Board of Education, State Trustee, its officers, employees, agents, consultants and independent contractors (collectively, "OUSD Parties") shall not be liable for, and are hereby released from any responsibility for, any death or injury to person or damage to or destruction of property or resulting from the loss of use thereof, which damage is sustained by CHARTER SCHOOL or by other persons claiming through CHARTER SCHOOL; provided, that the foregoing release shall not apply to the negligence or willful misconduct of the OUSD Parties or OUSD's breach of any obligation or warranty under this Agreement.
- 10.2 CHARTER SCHOOL shall indemnify, defend, protect, and hold harmless the OUSD Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Improvements, any violation of any of the requirements, ordinances, statutes, regulations or other laws, including, without limitation, any environmental laws, by CHARTER SCHOOL, or any breach of the terms of this Agreement by CHARTER SCHOOL either prior to, during, or after the expiration of the Agreement Term; PROVIDED THAT the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of the OUSD Parties or OUSD's breach of any obligation or warranty under this Agreement.
- 10.3 Should OUSD be named as a defendant in any suit brought against CHARTER SCHOOL in connection with or arising out of CHARTER SCHOOL's construction of the Improvements or any, or its occupancy or use of the Premises, CHARTER SCHOOL shall pay to OUSD its costs and expenses incurred in such suit, including without limitation, its actual reasonable professional fees such as appraisers', accountants' and attorneys' fees; provided, however, that CHARTER SCHOOL shall not be liable for any costs or expenses arising from OUSD's negligence or willful misconduct.
- 10.4 Further, CHARTER SCHOOL's agreement to indemnify OUSD is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by CHARTER SCHOOL pursuant to the provisions of this Agreement or the requirements and conditions required by OUSD as the school district approving the petition of CHARTER SCHOOL, to the extent such policies cover the matters subject to CHARTER SCHOOL's indemnification obligations.
- 10.5 The provisions of this Section 10 shall survive the expiration or sooner termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement.

11. INSURANCE

- 11.1 CHARTER SCHOOL, at its sole cost and expense, shall observe and comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated herein by reference.

12. DAMAGE AND DESTRUCTION

- 12.1 Repair of Premises. CHARTER SCHOOL shall promptly notify OUSD of any damage to the Premises resulting from fire, earthquake or any other casualty. In the case

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of damage or destruction, regardless of the nature of the casualty, CHARTER SCHOOL, at its sole cost and expense but solely to the extent that insurance proceeds are available to pay the cost of rebuilding shall restore, repair, replace, rebuild or alter all aspects of the Premises and improvements located thereon to as nearly as possible to their value, condition and character immediately prior to such damage or destruction. CHARTER SCHOOL shall commence such restoration, repairs, replacements, rebuilding or alterations within 90 days following the occurrence of such damage or destruction and prosecute to completion with due diligence and in good faith.

- 12.2 OUSD shall not be liable for any inconvenience or annoyance to CHARTER SCHOOL or its visitors, or injury to CHARTER SCHOOL's business resulting in any way from such damage or the repair thereof; provided, that the foregoing sentence shall not apply to the extent OUSD's negligence or willful misconduct is the cause of such damage or destruction. CHARTER SCHOOL shall not be entitled to any compensation or damages from OUSD for loss of use of the whole or any part of the Premises, or CHARTER SCHOOL's personal property used or located at the Premises, or for any inconvenience or annoyance occasioned by such damage or destruction; provided, that the foregoing sentence shall not apply to any damage or destruction caused by the negligence or willful misconduct of OUSD.
- 12.3 Disbursement of Insurance Proceeds. All property insurance proceeds, from policies obtained and maintained by CHARTER SCHOOL, recovered on account of damage or destruction to the Premises (the "Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the Improvements so damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to OUSD and under the exclusive control of CHARTER SCHOOL (the "Depository"). If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work CHARTER SCHOOL may deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"), or re-scope the repairs so that they can be covered by Proceeds. The Depository shall disburse the Proceeds and CHARTER SCHOOL's Funds, if applicable, during the course of reconstruction in accordance with customary construction disbursements, including a percentage retention that CHARTER SCHOOL and OUSD shall mutually agree. If there are funds remaining after the completion of the Reconstruction work in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL. If OUSD is required to obtain any of the property insurance on behalf of and CHARTER SCHOOL is paying or has paid OUSD for said property insurance policy(ies), all insurance proceeds recovered on account of damage or destruction to the Improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Restoration. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, CHARTER SCHOOL shall be responsible for the payment of same. The rights hereunder shall be subject to and subordinate to the rights of a Leasehold Mortgagee with regard to rebuilding and insurance proceeds.
- 12.3.1 If OUSD is required to or voluntarily obtains any of the property insurance that CHARTER SCHOOL is required to obtain under this Agreement and CHARTER SCHOOL is not paying, has not paid or is disputing the payment or acquisition of said property insurance policy(ies) (the "**OUSD Acquired Policy**"), any act or event damaging or destroying all or a portion of the Improvements shall cause

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to expire immediately any right of CHARTER SCHOOL to cure the default of not obtaining or maintaining the required insurance or cure the payment for said OUSD Acquired Policy. All proceeds recovered on account of damage or destruction to the Improvements from said OUSD Acquired Policy shall be considered the property of OUSD, and OUSD shall determine the use of such proceeds.

- 12.4 Destruction As a Release Event. If there is destruction of or damage to the Improvements or any part thereof or the Premises or any part thereof by earthquake, fire or any other cause, and if the reasonably estimated cost to restore and repair the damage is more than 50% of the replacement cost of the entire Premises with Improvements, and if insurance proceeds are insufficient to pay at least 90% of the reasonably estimated cost of repair and restoration, then by notice in writing to District, CHARTER SCHOOL may terminate this Agreement and such shall relieve CHARTER SCHOOL from its obligation to pay all fees, premiums, if applicable, charges, Hold Over Rent, if applicable, or other amounts due and owing under this Agreement or from any of its other obligations under this Agreement. If CHARTER SCHOOL so terminates, it shall pay over to District all Proceeds received as a result of the damage or destruction, and assign to District all Proceeds to be so received. .
- 12.5 Waiver of Statutory Provisions. The provisions of this Agreement, including this Section, constitute an express agreement between OUSD and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the Improvements, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Agreement or any damage or destruction to all or any part of the Improvements.

13. CONDEMNATION

CHARTER SCHOOL hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

- 13.1 Condemnation of Entire Premises. In the event the Premises and Improvements are taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if OUSD shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for the Premises and Improvements (any such events to be referred to herein as a "Full Taking"), this Agreement shall automatically terminate on that date, whichever shall first occur, when: (i) CHARTER SCHOOL completely vacates the Premises and such vacation has been mutually agreed upon by CHARTER SCHOOL, OUSD and the condemning authority; or (ii) a court of competent jurisdiction over the condemnation proceeding issues an Order for Prejudgment Possession ("OPP") or similar order granting possession of the Premises to the condemning entity and the condemning entity exercises its right to possession of the Premises; or (iii) if an OPP is not obtained, the condemnation proceeding is concluded.
- 13.2 Condemnation of a Portion of the Premises. In the event any portion of the Premises is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner so as to require the use, reconstruction, or remodeling of the Premises, or any portion thereof, or if OUSD shall grant a deed or other

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instrument in lieu of any such taking by eminent domain or condemnation for said portion of the Premises (any such events to be referred to herein as a "Partial Taking") the following shall apply:

- 13.3 Abatement. Any fees and other amounts due and owing to OUSD under this Agreement shall be abated or reduced as a result of any Partial Taking in direct proportion to the square footage taken by the condemning entity. The abatement or reduction shall not apply to: any insurance premiums or other fees, charges or amounts due and owing that do not correspondingly decrease with the reduction in the size of the Premises.
- 13.4 Right to Terminate. If the remaining portion of the Premises is such that CHARTER SCHOOL cannot reasonably operate its educational programs, CHARTER SCHOOL may terminate this Agreement by providing written notice to OUSD of its intention to do so. CHARTER SCHOOL may exercise this right of termination at any time after the condemning entity has commenced action to acquire a portion of the Premises and up to six (6) months after the occurrence of Section 13.1 or 13.2 above. OUSD discloses that it is allowing CHARTER SCHOOL the ability to terminate this Agreement for a period of six (6) months after the occurrence of Section 13.1 or 13.2 to allow CHARTER SCHOOL to make a good faith effort to adapt its educational programs to the remaining portion of the Premises. CHARTER SCHOOL's written notice of termination shall set forth the date when CHARTER SCHOOL shall vacate the remaining portion of the Premises. CHARTER SCHOOL's notice of termination shall effectuate a termination of any right to redeem provided in this Agreement and OUSD may proceed to observing the requirements of Section 17078.62(b)(2) through (5) inclusive.
- 13.5 Award and Payments.
 - 13.5.1 Real Property. Regardless of whether it is a Full Taking or Partial Taking, OUSD shall be entitled to receive the entire award or payment in connection with the real property underlying the Premises.
 - 13.5.2 Premises/Improvements. OUSD shall receive the entire award or payment in connection with the Premises/Improvements (excluding the underlying real property) and shall tender to CHARTER SCHOOL the award or payment less any actual costs or expenses incurred by OUSD arising from the Full Taking or Partial Taking, except that CHARTER SCHOOL shall be entitled to any part of the award intended to compensate it for the unamortized value of its improvements.
 - 13.5.3 Personal Property. CHARTER SCHOOL shall be entitled to any separate award or payment designated by the condemning entity, including, without limitation, for the Full Taking or Partial Taking of CHARTER SCHOOL's personal property, interruption to CHARTER SCHOOL's business, and relocating expenses.

14. ASSIGNMENT AND SUBLETTING

- 14.1 Transfers. Except as provided in Exhibit C and Article 24, CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Premises or Improvements or any part thereof, or otherwise permit the occupancy or use of the Premises or Improvements or any part thereof by any persons other than CHARTER SCHOOL and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"),

without first procuring the written consent of OUSD. Notwithstanding anything in this Section to the contrary, CHARTER SCHOOL shall have the right to enter into license or concession agreements for the provision of services or goods to the educational programs operated by CHARTER SCHOOL without the consent of OUSD and such license or concession agreement shall not be deemed a Transfer.

- 14.2 Any Transfer made without the prior written consent of OUSD shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Agreement. Any Transferee approved by OUSD, shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Premises for the purposes set forth in this Agreement. Whether or not OUSD consents to any proposed Transfer, CHARTER SCHOOL shall pay OUSD's, if applicable, reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) actually incurred (which shall include the costs or expenses of the party's employees performing the review and processing if said party does not retain a third party to do so) by the party, within 10 business days of CHARTER SCHOOL's receipt of the invoice setting forth the expenses.
- 14.3 CHARTER SCHOOL shall have the right, without consent from District, to Transfer to an Affiliate. As used herein, an "Affiliate" is provided the subtenant is a non-profit entity, or a limited liability company that is an entity that is disregarded as separate entity from CHARTER SCHOOL for federal and state income tax purposes, or an organization described in Section 509(a)(3) of the Internal Revenue Code that supports CHARTER SCHOOL, or an entity which controls, or is controlled by, or is under common control with CHARTER SCHOOL.
- 14.4 The rights of District under this Section 14 shall be subject to the rights reserved to any Leasehold Mortgagee, including those set forth in Article 24 and the attached Exhibit C.
- 14.5 The District shall not unreasonably withhold, condition, or delay its consent to any Transfer upon receipt of request from CHARTER SCHOOL..

15. NONWAIVER

- 15.1 No provision of this Agreement shall be deemed waived by either party hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of any fee or other amounts due and owing under this Agreement by OUSD shall not be deemed to be a waiver of any preceding breach by CHARTER SCHOOL of any term, covenant or condition of this Agreement. No receipt of monies by OUSD from CHARTER SCHOOL after the termination of this Agreement shall in any way alter the length of the Term or of CHARTER SCHOOL's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given CHARTER SCHOOL prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, OUSD may receive and collect any fees or other amounts due and owing under this Agreement, and the payment of said amount(s) shall not waive or affect said notice, suit or judgment.

16. NON-TERMINABILITY

- 16.1 Except as otherwise expressly set forth in this Agreement to the contrary, this Agreement and the rights and obligations of OUSD or CHARTER SCHOOL hereunder shall not be affected by any event or for any reason, including the following:
- (i) any damage to or theft, loss or destruction of any portion of the Premises,
 - (ii) any condemnation of any portion of the Premises, (iii) any latent or other defect in any portion of the Premises, (iv) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting OUSD, (v) the exercise of any remedy, including foreclosure, under any mortgage or assignment, (vi) any action with respect to this Agreement (including the disaffirmance hereof) which may be taken by OUSD, any trustee, receiver or liquidator of OUSD or any court under the Federal Bankruptcy Code or otherwise, (vii) any interference with CHARTER SCHOOL's use of the Premises, provided such interference is not caused or permitted by OUSD, or (viii) market or economic changes.

17. SURRENDER OF FACILITIES; OWNERSHIP AND REMOVAL OF FIXTURES

- 17.1 Surrender of Premises. No act or thing done by OUSD or any agent or employee of OUSD during the Agreement Term shall be deemed to constitute an acceptance by OUSD of a surrender of the Premises unless such intent is specifically acknowledged in writing by OUSD. The delivery of keys to the Premises to OUSD or any agent or employee of OUSD shall not constitute a surrender of the Premises or effect a termination of this Agreement, whether or not the keys are thereafter retained by OUSD, and notwithstanding such delivery CHARTER SCHOOL shall be entitled to the return of such keys at any reasonable time upon request until this Agreement shall have been properly terminated. The voluntary or other surrender of this Agreement by CHARTER SCHOOL, whether accepted by OUSD or not, or a mutual termination hereof, shall not work a merger, and at the option of OUSD shall operate as an assignment to OUSD of all sub-Agreements or sub-tenancies affecting the Premises or terminate any or all such sublessees or subtenancies.
- 17.2 Removal of Personal Property by CHARTER SCHOOL. Upon the expiration of the Term, or upon any earlier termination of this Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Premises to OUSD in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, reasonable wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to OUSD, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Premises but can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL.

18. HOLDING OVER

- 18.1 If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of OUSD, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case rent for such hold over period shall be 150% of the then current rent for the Premises (the "Hold Over Rent"). Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Section shall be construed as consent by OUSD to any holding over by CHARTER SCHOOL, and OUSD expressly reserves the right to require CHARTER SCHOOL to surrender

possession as provided in this Agreement upon the expiration or other termination of this Agreement. If CHARTER SCHOOL fails to surrender the Premises upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to OUSD accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold OUSD harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding CHARTER SCHOOL founded upon such failure to surrender and any losses to OUSD resulting therefrom; provided, that the foregoing indemnification shall not apply to the negligence or willful misconduct of OUSD.

19. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute a default of this Agreement by CHARTER SCHOOL:

- 19.1 Notwithstanding any provision in this Agreement, any failure by CHARTER SCHOOL to pay any fee, premium, if applicable, charge or other amounts due and owing under this Agreement, or any part thereof, when due unless such failure is cured within 10 calendar days after CHARTER SCHOOL's receipt of written notice of default from the District; or
- 19.2 Any failure by CHARTER SCHOOL to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by CHARTER SCHOOL where such failure continues for 30 days after written notice of default from OUSD to CHARTER SCHOOL; provided, that if the nature of such default is that the same cannot reasonably be cured within a 30 day period, CHARTER SCHOOL shall not be deemed to be in default if within said 30 day period it submits to OUSD its plan and a timeline reasonably acceptable to OUSD to cure said default and diligently commences and prosecutes to completion such cure; or
- 19.3 To the extent permitted by law, a general assignment by CHARTER SCHOOL or any guarantor of this Agreement for the benefit of creditors, or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, or the filing by or against CHARTER SCHOOL or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against CHARTER SCHOOL or any guarantor the same is dismissed within 60 days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of CHARTER SCHOOL or any guarantor, unless possession is restored to CHARTER SCHOOL or such guarantor within 60 days, or any execution or other judicially authorized seizure of all or substantially all of CHARTER SCHOOL's assets located upon the Premises or of CHARTER SCHOOL's interest in this Agreement, unless such seizure is discharged as soon as possible within 60 days; or
- 19.4 Abandonment of all or a substantial portion of the Premises or Improvements by CHARTER SCHOOL; or
- 19.5 The failure by CHARTER SCHOOL to maintain a current and active charter petition following written notice of default and the time provided in Section 19.2 to cure (after exhaustion of all appeals and remedies under the Education Code).

20. REMEDIES UPON DEFAULT

- 20.1 Upon the occurrence of any event of default by CHARTER SCHOOL and after the expiration of all notice and cure periods as provided in this Agreement, OUSD shall have, in addition to any other remedies available to OUSD at law or in equity (all of

which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

- 20.1.1 Terminate this Agreement, in which event CHARTER SCHOOL shall immediately surrender the Premises to OUSD, and if CHARTER SCHOOL fails to do so, OUSD may, without prejudice to any other remedy which it may have for possession or arrearages, enter upon and take possession of the Premises and expel or remove CHARTER SCHOOL and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and OUSD may recover from CHARTER SCHOOL the full amount of any fees, charges or other amounts due under this Agreement.
- 20.1.2 Subject to the rights of the Leasehold Mortgagee set forth herein and in Exhibit C, OUSD shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Agreement in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if OUSD does not elect to terminate this Agreement on account of any default by CHARTER SCHOOL, OUSD may, from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement, including the right to recover all rent as it becomes due.
- 20.1.3 OUSD shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available hereinabove, or any law or other provision of this Agreement), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision hereof.

21. COVENANT OF QUIET ENJOYMENT

- 21.1 OUSD covenants that CHARTER SCHOOL, on paying the fees, charges and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of CHARTER SCHOOL to be kept, observed and performed, shall, during the Term, exclusively, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through OUSD. The foregoing covenant is in lieu of any other covenant express or implied.

22. COMPLIANCE WITH LAW

- 22.1 CHARTER SCHOOL shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, but not limited to, (i) any such measures promulgated by the Department of State Architecture, the Department of Toxic Substance Control, and/or the State Department of Education, (ii) any such measures promulgated under the California Environmental Quality Act ("CEQA") or arising from any CEQA proceedings, and (iii) any such measures which relate to CHARTER SCHOOL's use of the Premises as a school or which are applicable to the Premises by reason of CHARTER SCHOOL being an educational institution. At its sole cost and expense, CHARTER SCHOOL shall promptly comply with all such governmental measures, regardless of whether such measures may require structural or non-structural alterations or improvements to the Premises.

Should any standard or regulation now or hereafter be imposed on OUSD or CHARTER SCHOOL in connection with the Premises by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, school districts or charter schools, then CHARTER SCHOOL agrees, at its sole cost and expense, to comply promptly with such standards or regulations. CHARTER SCHOOL shall be responsible, at its sole cost and expense, to make all improvements and alterations to the Premises as are required to comply with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

23. SIGNAGE

- 23.1 CHARTER SCHOOL may install signage at the School Site including one sign at the CHARTER SCHOOL's main entrance stating the CHARTER SCHOOL name and other pertinent information, a sign indicating the main office of the CHARTER SCHOOL, and other directional signs as appropriate. At the termination of this Agreement, CHARTER SCHOOL shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

24. LEASEHOLD MORTGAGE RIGHTS.

24.1 Definitions.

24.1.1The term "**Leasehold Mortgagee**" shall mean the holder of the beneficial interest of a Leasehold Deed of Trust, who has given written notice to District of its name and address for notices, as further defined in **Exhibit "C"** hereof.

24.1.2The term "**Leasehold Deed of Trust**" shall mean any encumbrance of this Lease, by a deed of trust, mortgage or other security instrument including, without limitation, assignments of rents, issues and profits from the Property, to secure repayment of loans made to, or obligations of, CHARTER SCHOOL.

24.1.3The term "**Property**" shall mean the improvements constructed on the Premises identified in **Exhibit A** and leased to CHARTER SCHOOL pursuant to the Lease.

24.1.4The term "**Leasehold Estate**" shall mean all CHARTER SCHOOL's interest in the assets conveyed by this Lease, including but not limited to the Property.

24.2 CHARTER SCHOOL's Right to Encumber Leasehold. The Parties acknowledge and agree that CHARTER SCHOOL intends to finance construction of improvements on the Premises. To accomplish this financing, CHARTER SCHOOL intends to encumber its interests under this Lease through a Leasehold Mortgage (as defined herein). Terms related to the Leasehold Mortgage are attached hereto as **Exhibit "C"** and CHARTER SCHOOL shall have the right to pledge its leasehold estate as security for indebtedness whether by deed of trust, mortgage, collateral assignment or other document (a "**Leasehold Mortgage**") on terms acceptable to CHARTER SCHOOL in its sole discretion, so long as the provisions of this Lease are observed.

24.3 Notice to and Service on Leasehold Mortgagee. District shall mail to Leasehold Mortgagee a duplicate copy of any and all notices District may from time to time give to or serve on CHARTER SCHOOL pursuant to or relating to this Lease. Any notices or other communications permitted by this or any other Section of this Lease or by law to be served on or given to Leasehold Mortgagee by District shall be deemed duly served on or given to Leasehold Mortgagee by deposit in the United States mail, certified, return receipt requested or by overnight courier, return receipt, addressed to Leasehold Mortgagee at the last mailing address for Leasehold Mortgagee furnished in writing to District by CHARTER SCHOOL or Leasehold Mortgagee. The date of notice shall be five (5) days after deposit in

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the U.S. mail or two (2) business days after deposit with a reputable national overnight carrier such as UPS or Federal Express.

24.4 Rights of Leasehold Mortgagee. The Leasehold Mortgagee shall have the rights and obligations set forth in **Exhibit "C,"** including its rights to cure, consent to assignment of and/or modifications to the Lease, and remedies in the event of a default by CHARTER SCHOOL.

24.5 Lease Binding on Leasehold Mortgagee and Its Successors. The Leasehold Mortgagee, the purchaser at a foreclosure sale, or the purchaser from the Leasehold Mortgagee shall be subject to all the terms and conditions of this Lease except that (i) the time for performance of any unperformed acts required by Section ___ [ref default section] of this Lease shall be extended for that period equal to the delay in performance of the act caused by CHARTER SCHOOL's inability or failure to perform the act and the time required to transfer the Lease to the purchaser at a foreclosure sale and/or to the purchaser from Leasehold Mortgagee, and (ii) the performance of any acts required by Section ___ [ref default section] of this Lease that have already been performed shall be deemed satisfied.

24.6 Estoppel Certificates. District shall provide to the Leasehold Mortgagee, on request, an estoppel certificate pursuant to the provisions of this Lease and **Exhibit "C,"** certifying to such matters, including, without limitation, the status of Rent payments, satisfaction of conditions, and defaults, and other matters reasonably requested by the Leasehold Mortgagee.

24.7 District states for the benefit of both CHARTER SCHOOL and Leasehold Mortgagees who may encumber the CHARTER SCHOOL's Lease that District has not encumbered or borrowed on the security of the Property, and that District will not do so during the term of this Lease, unless District provides to CHARTER SCHOOL and all Leasehold Mortgagees a Subordination and Non-Disturbance Agreement acceptable in the reasonable opinion of counsel for CHARTER SCHOOL and Leasehold Mortgagees, providing that so long as the CHARTER SCHOOL and their successors, including Leasehold Mortgagees should they come into ownership of the Lease, do not commit a default (beyond any applicable notice and cure period) allowing termination of this Lease, they will not be disturbed in their possession and control of the Property and will be recognized and attorn to the District or the District's successor in interest should either become the owner of the Premises. Such an Agreement shall be in recordable form, contain commercially reasonable provisions, and be recorded in the County records.

24.8 CHARTER SCHOOL agrees that District's fee interest shall at all times be and remain unsubordinated to any Leasehold Mortgage which may be imposed upon CHARTER SCHOOL's leasehold interest hereunder or upon the improvements, and that nothing contained in this Lease shall be construed as an agreement by District to subject its fee interest to any lien. Nothing in this Section or in any other provision of this Lease shall be construed as an agreement by District to subordinate its fee interest in the Premises to any Leasehold Mortgage or other lien or right.

24.9 Developer. Tenant has the right to use a third party as a development consultant or developer of the buildings to be constructed on the Premises. In the event that, in return for its contribution, said developer provides financing or other consideration, such an arrangement may require that the developer own the Improvements to be constructed on the site for a period of time. Such ownership will be subject at all times to the rights of District as set forth herein. District and Tenant will work together to enter into a Lease Amendment to satisfy reasonable needs of a developer engaged by Tenant so long as any changes do not reduce

Districts substantive rights under this Lease or increase District's substantive obligations.

25. MISCELLANEOUS PROVISIONS

- 25.1 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to OUSD or any other person, are granted to CHARTER SCHOOL by this Agreement.
- 25.2 **Modification of Agreement.** This Agreement may only be modified or amended by written instrument executed by CHARTER SCHOOL and OUSD.
- 25.3 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.
- 25.4 **No Warranty.** In executing and delivering this Agreement, CHARTER SCHOOL has not relied on any representations, warranties or statements of OUSD which is not set forth herein or in one or more of the exhibits attached hereto.
- 25.5 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement constitutes the parties' entire agreement with respect to the use and occupancy of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by OUSD to CHARTER SCHOOL with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement.
- 25.6 **Force Majeure.** Notwithstanding anything to the contrary contained in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, a "Force Majeure"), shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure; provided, however, that this Force Majeure exception to timely performance shall not apply to any obligations imposed with regard to amounts due under this Agreement to be paid by CHARTER SCHOOL.
- 25.7 **Authority.** If CHARTER SCHOOL is a corporation, trust or partnership, each individual executing this Agreement on behalf of CHARTER SCHOOL hereby represents and warrants that CHARTER SCHOOL is a duly formed and existing entity qualified to do business in California and that CHARTER SCHOOL has full right and authority to execute and deliver this Agreement and that each person signing on behalf of CHARTER SCHOOL is authorized to do so. In such event, CHARTER SCHOOL shall, within 10 days after execution of this Agreement, deliver to OUSD satisfactory evidence of such authority and, if a corporation, upon demand by OUSD, also deliver to OUSD satisfactory evidence of (i) good standing in CHARTER SCHOOL's state of incorporation and (ii) qualification to do business in California.
- 25.8 **Drug-Free Workplace.** CHARTER SCHOOL's employees shall comply with the District's policy of maintaining a drug free workplace by enacting its own policy to maintain a drug free workplace. Neither CHARTER SCHOOL nor CHARTER SCHOOL's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not

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limited to, marijuana, heroin, cocaine, and amphetamines, at the Site. If CHARTER SCHOOL or any employee of CHARTER SCHOOL is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the Site, CHARTER SCHOOL within five (5) days thereafter shall notify the District. Violation of this provision shall constitute a material breach of this Agreement, but District's remedies for such a violation shall be limited to damages and shall not result in dispossession of CHARTER SCHOOL.

- 25.9 **Inspection of Premises.** District shall have the right to enter the Premises as set forth in Section 9.3 to conduct inspections of the Premises to insure that proper pest management control and maintenance is being conducted on the Premises. District will act reasonably during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.
- 25.10 **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

District:

Office of Charter Schools
Oakland Unified School District
1000 Broadway, 6th Floor
Oakland, CA 94607
Silke.bradford@ousd.k12.ca.us

With copy to:

Deputy Chief, Facilities
Department of Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94604

CHARTER SCHOOL:

Fill in

With copy to:

John Collins
2775 Park Avenue
Santa Clara, CA 95050

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Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

- 25.11 **Proposition 39.** In consideration for the District entering into this multi-year agreement in full satisfaction of the provisions of Proposition 39, CHARTER SCHOOL hereby agrees to waive any further right to petition the District for additional space under Proposition 39 for KIPP BRIDGE until the school year prior to the termination of this Agreement, such that CHARTER SCHOOL retains the ability to petition under Proposition 39 for the school year after the termination of the Agreement.
- 25.12 **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.
- 25.13 **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>.
- 25.14 **Memorandum of Lease/Further Identification of Premises.** Following execution of this Lease, the parties agree that Tenant will, at its sole cost and expenses, prepare, and the parties will thereafter execute, acknowledge and record (at Tenant's expense) in the Official Records of Alameda County a short form or memorandum of this Lease in form satisfactory to both Landlord and Tenant, setting forth the required information relating to the Lease and attaching the property description.

KIPP BAY AREA SCHOOLS

Title

OAKLAND UNIFIED SCHOOL DISTRICT

President, Board of Education

| Redline After BOE meeting of 5.11.16

Oakland Unified School District

Secretary, Board of Education
Oakland Unified School District

Approved as to Form

Jacqueline Minor, General Counsel

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

[TO BE PROVIDED]

EXHIBIT A-1

[TO BE INSERTED]

EXHIBIT B

INSURANCE

A. Throughout the Term of the Agreement, CHARTER SCHOOL shall secure and maintain, as a minimum, all of the insurance as set forth below with insurance companies acceptable to OUSD and with a rating of A.M. Best A-, VII or better:

1. Worker's Compensation Insurance in accordance with provisions of the California Labor Code, adequate to protect CHARTER SCHOOL from claims under Workers' Compensation Acts which may arise from its operations, including Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000.

2. Commercial General Liability coverage of not less than \$5,000,000 for each occurrence. The policy shall be endorsed to name OUSD and the Board of Education of the Oakland Unified School District as additional insurers and shall provide specifically that any insurance carried by OUSD which may be applicable to any claims or loss shall be deemed excess and CHARTER SCHOOL's insurance primary despite any conflicting provisions in CHARTER SCHOOL's policy. Coverage shall be maintained with no self-insured retention above \$25,000 without approval of OUSD.

3. Commercial Auto Liability coverage with limits of \$1,000,000 combined single limit unless CHARTER SCHOOL operates bus services for students; provided, that if CHARTER SCHOOL is providing any bus services for students, CHARTER SCHOOL shall maintain coverage limits not less than \$5,000,000 combined single limit.

4. Fidelity Bond coverage shall be maintained by CHARTER SCHOOL to cover all CHARTER SCHOOL employees who handle, process, or otherwise have responsibility for CHARTER SCHOOL funds, supplies, equipment or other assets. Minimum amount of Fidelity Bond coverage shall be \$50,000 per occurrence, with no self-insured retention.

5. Professional Educators Errors and Omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the CGL or by separate policy) with minimum limits of \$3,000,000 per occurrence.

6. Excess/Umbrella insurance with limits of not less than \$10,000,000 required of all high schools and any school which participates in competitive interscholastic or intramural sports programs.

7. Insurance covering the loss, damage or destruction of the Premises for 100% of the full replacement cost of the Premises, which shall provide protection against all perils including, but not limited to, fire, extended coverage, vandalism, malicious mischief and causes of loss-special form.

B. CHARTER SCHOOL agrees that the following terms and conditions shall also apply to its obligations to secure and maintain insurance coverage during the Term of the Agreement:

1 CHARTER SCHOOL understands and agrees that OUSD may review the insurance coverage maintained by CHARTER SCHOOL and/or the insurance requirements of this **Exhibit B** at any time during the Term of the Agreement, and may adjust the insurance

requirements as OUSD, in its reasonable discretion, deems appropriate. Upon receipt of written notice of any adjustment in the insurance coverage required under this Agreement, CHARTER SCHOOL shall deliver evidence of compliance with said insurance requirements within 10 days of CHARTER SCHOOL's receipt of the written notice.

2 **No coverage shall be provided to CHARTER SCHOOL by OUSD under any of OUSD's self-insured programs or commercial insurance policies. OUSD shall not have any obligation to secure insurance coverage for CHARTER SCHOOL.**

3 CHARTER SCHOOL's insurance coverage shall be primary and any insurance carried by OUSD that may be applicable to any claims or loss shall be deemed excess despite any conflicting provisions in the insurance coverages maintained by CHARTER SCHOOL.

4 Coverages and limits of insurance may be accomplished through individual primary policies or through a combination of primary and excess policies.

5 Within 10 days of CHARTER SCHOOL's execution of the Agreement, CHARTER SCHOOL shall furnish to OUSD's Risk Management and Insurance Services evidence of insurance in compliance with this **Exhibit B**. If CHARTER SCHOOL fails to submit evidence of insurance in compliance with this **Exhibit B** or OUSD Risk Management determines that CHARTER SCHOOL has not complied with the insurance requirements set forth in this **Exhibit B**, OUSD and/or the STATE may deny the occupancy and use of the Premises until CHARTER SCHOOL provides satisfactory evidence of compliance or OUSD and/or the STATE may declare CHARTER SCHOOL in default of the Agreement.

Thereafter, CHARTER SCHOOL shall furnish to the OUSD Risk Management within 30 days of all new policies inception, renewals or changes, certificates of such insurance signed by an authorized representative of the insurance carrier.

CHARTER SCHOOL will use its best efforts to have certificates endorsed as follows:

The insurance afforded by this policy shall not be suspended, cancelled, reduced in coverage or limits, or non-renewed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Oakland Unified School District (Attn: Director, Office of Risk Management).

6 Nothing in this Exhibit B shall prohibit CHARTER SCHOOL, at its sole cost and expense, from purchasing and maintaining additional insurance coverage for damage or theft to the Premises, personal property, business interruption, employee or student property, for student accident or any other type of insurance coverage not listed above in 1 through 7, inclusive.

Exhibit C

EXHIBIT C

**Rights/Duties/Provisions relating to Leasehold Mortgages
and Leasehold Mortgagees**

- A. **Right to Encumber.** Tenant shall have the right to pledge its leasehold estate as security for indebtedness, whether by deed of trust, mortgage, collateral assignment, or other document (hereafter a "**Leasehold Mortgage**") subject to the following terms and conditions: (a) one or more Leasehold Mortgages may be recorded against the leasehold estate at any one time; (b) the Leasehold Mortgage and all rights acquired under it shall be expressly subject to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interests of Landlord; (c) the mortgagee or beneficiary under the Leasehold Mortgage (the "**Leasehold Mortgage**") may be any person, corporation, organization, institutional lender or the corporate trust department of a bank, for or on behalf of one or more persons, corporations, organizations, institutional lenders or accredited investors; (d) Tenant shall give Landlord prior notice of any such Leasehold Mortgage including without limitation the name and address of the expected Leasehold Mortgagee and true and correct copies of the note, Leasehold Mortgage, and other related agreements; (e) the Leasehold Mortgage shall not affect or become a lien on the Landlord's fee estate in the Property; (f) the Leasehold Mortgage shall provide that the term of the loan secured by the Leasehold Mortgagee shall not exceed, and that all amounts secured thereby shall be paid by no later than, the end of the Lease Term; and (g) immediately after recordation of the Leasehold Mortgage, Tenant shall, at its own cost and expense, cause to be recorded in the official record of the county in which the Property is located a request that Landlord receive written notice of any default and/or notice of sale under the Leasehold Mortgage.
- B. **Leasehold Mortgagee Protections.** The following provisions apply as to any Leasehold Mortgage until the earlier of such time that (i) all obligations of Tenant under the Leasehold Mortgage have been satisfied or (ii) the Leasehold Mortgage is reconveyed or otherwise terminated in accordance with its terms:
- a. **Lease Modification.** Except as to any right or remedy accorded to Landlord under the Lease including but not limited to the right to terminate the Lease upon Tenant's default, and subject to the protection of the Leasehold Mortgagee contained herein, Landlord and Tenant shall not, without the prior written consent of the Leasehold Mortgagee, cancel or surrender the Lease or enter into any modification of any term of the Lease that would materially affect the Leasehold Mortgage or the Leasehold Mortgagee's rights under the Leasehold Mortgage or that is not otherwise permitted under the terms of the Lender Documents [defined as loan agreement, indenture, letter of credit, etc.].
- b. **Request for Notice of Default.** Landlord shall serve a copy of any notice of Tenant default under this Lease upon the Leasehold Mortgagee, and no such notice shall be binding upon or affect the Leasehold Mortgagee unless a copy is given pursuant to this section.
- c. **Leasehold Mortgagee's Right to Cure.**

- i. **General Right to Cure.** Subject to subsections (c)(ii)-(vi) below, and provided that nothing herein shall be construed to allow the Leasehold Mortgagee to enter the Property prior to taking possession of the Property from Tenant, the Leasehold Mortgagee shall have the right at any time during the Lease Term, or any Extension Terms if the Leasehold Mortgage remains in effect, to do any act or thing required of Tenant hereunder, whenever failure to do such act or thing would constitute a default hereunder, or to proceed to diligently pursue cure of any such defaults, and all such acts or things done and performed by the Leasehold Mortgagee shall be as effective to prevent a forfeiture of Tenant's rights hereunder as if done by Tenant.
- ii. **Monetary Defaults.** With respect to a default by Tenant in the payment of Rent or other sums due to the Landlord under the Lease ("**Monetary Default**"), any election of Landlord to terminate this Lease or Tenant's right to possession following a Monetary Default shall be of no force or effect if such Monetary Default is cured by or on behalf of the Leasehold Mortgagee within ten (10) business days after the later of (a) the giving of such notice of default by the Lessor to the Leasehold Mortgagee and (b) the expiration of the applicable cure or grace period provided to Tenant hereunder.
- iii. **Non-Monetary Default.** With respect to any default by Tenant other than a Monetary Default ("**Non-Monetary Default**"), any election of Landlord to terminate this Lease or Tenant's right to possession following an Non-Monetary Default shall be of no force or effect if such default is cured by or on behalf of the Leasehold Mortgagee within thirty (30) calendar days after the later of (a) the giving of such notice of default by the Landlord to the Leasehold Mortgagee and (b) the expiration of the applicable cure or grace period provided to Tenant hereunder, or, if a Non-Monetary Default is of such nature that it cannot reasonably be remedied within the time provided, then such Leasehold Mortgagee shall have such additional time as is reasonably necessary to cure such default, provided that it commences the curing of such default within said thirty (30) day period and thereafter diligently continues the curing of the same to completion, provided such period shall not, except in the case of Force Majeure, exceed 120 consecutive calendar days.

Cure of Non-Monetary Defaults. There shall be no termination affecting the rights of any Leasehold Mortgagee for failure to perform the non-monetary terms of the Ground Lease so long as the Leasehold Mortgagee is proceeding diligently to obtain possession to the extent required to cure the default, beginning within thirty (30) days after written notice that Tenant has failed to cure the default during the notice period provided in the Lease, and thereafter proceeds to complete the cure within a reasonable period of time, and further provided that the rent is being paid as it comes due throughout the period while cure is being pursued.

- iv. **Possession Default.** Notwithstanding the foregoing, if the Leasehold Mortgagee cannot cure a Non-Monetary Default unless it obtains possession of the Property or acquires Tenant's interest under this Lease (any such default requiring such

possession or acquisition to cure hereafter referred to as a “**Possession Default**”), then Landlord shall not terminate this Lease or Tenant’s right to possession for any such Possession Default as long as (i) Leasehold Mortgagee cures all other defaults within the period of time provided in subsections (c)(ii) and (iii) above; (ii) all Rent and other sums due Landlord under this Lease are paid and kept current by the Leasehold Mortgagee; (iii) all other terms of this Lease are performed when and as required under this Lease; and (iv) the Leasehold Mortgagee takes prompt and diligent steps to institute, prosecute, and complete foreclosure proceedings or otherwise acquire Tenant’s interest under this Lease, and, upon obtaining possession or acquiring Tenant’s interest under this Lease, immediately cures all then-existing Possession Defaults within thirty (30) days.

- v. **Personal Defaults.** Notwithstanding the foregoing, any election of Landlord to terminate this Lease or Tenant’s right to possession shall be of no force or effect solely on account of a default that can be cured only by Tenant and is not susceptible to cure by the Leasehold Mortgagee (such as the filing of a bankruptcy proceeding by Tenant) (“**Personal Default**”) so long as (1) Leasehold Mortgagee cures all other defaults within the period of time provided above; (2) all Rent and other sums due Landlord under this Lease are paid and kept current by the Leasehold Mortgagee; (3) all other terms of this Lease are performed when and as required under this Lease; and (4) the Leasehold Mortgagee takes prompt and diligent steps to institute, prosecute, and complete foreclosure proceedings or otherwise acquire Tenant’s interest under this Lease.
- vi. **No Modification of Option Provisions.** Notwithstanding anything to the contrary herein, the provisions of this Exhibit C shall not be construed to provide any additional time for the exercise of any option to extend the Lease Term (an “**Option**”), to permit the Leasehold Mortgagee to cure any default of Tenant for the purposes of exercising or maintaining such Option, or to modify any provisions relating to such Option.

d. **Foreclosure by the Leasehold Mortgagee.**

- i. **Right to Foreclose.** The Leasehold Mortgagee shall have the right to realize on the security afforded by the Leasehold Mortgage by exercising foreclosure proceedings or power of sale, or accepting an assignment or deed in lieu thereof, or other remedy afforded in law or in equity, all to the extent allowed by the Leasehold Mortgage (collectively referred to as “**Foreclosure Sale**”) and to transfer, convey, or assign the title of Tenant to the Leasehold estate created hereby to any purchaser at any such Foreclosure Sale (such purchaser including, if applicable, the Leasehold Mortgagee, hereinafter referred to as the “**Foreclosure Purchaser**”), and to acquire and succeed to the interest of Tenant hereunder by virtue of any such Foreclosure Sale; provided that the Leasehold Mortgagee has given all notices and opportunities to cure to Landlord and Tenant required hereunder and/or by applicable law. Notwithstanding the foregoing, the Leasehold Mortgagee (i) shall not be entitled to conduct any

auction, foreclosure, or other sale at or upon the Property; (ii) shall not remove any fixtures, furnishings, equipment, or other property on or at the Property whether or not affixed thereto; and (iii) shall conduct a unified sale of the leasehold interest, all other real property collateral, and all personal property collateral to a single purchaser.

- ii. **Attornment and Non-Disturbance.** Upon any acquisition by the Foreclosure Purchaser of the leasehold interest in the Property, the Foreclosure Purchaser shall be bound to the Landlord, and the Landlord shall be bound to the Foreclosure Purchaser under the terms, covenants, and conditions of the Lease with the same force and effect as if the Foreclosure Purchaser were the original Tenant under the Lease, except that the Foreclosure Purchaser shall not be bound to cure Personal Defaults of Tenant and except that, if the Foreclosure Purchaser is the Leasehold Mortgagee, its liability shall cease upon a Foreclosure Purchaser Assignment as defined in the next subsection.
 - iii. **Foreclosure Purchaser Assignment.** If the Foreclosure Purchaser is the Leasehold Mortgagee, it may assign the leasehold interest (including any Extension Terms and all other real and/or personal property transferred to such purchaser) in accordance with Section __ [ref assignment and subletting provisions] of this Lease, except that the Leasehold Mortgagee shall not be obligated to obtain Landlord's prior written consent.
- e. **New Lease to Mortgagee.** In the event of termination of the Lease for any reason, Landlord shall, at the Leasehold Mortgagee's written request, enter into a new lease (the "**New Lease**") with the Leasehold Mortgagee or its nominee covering the Property if the Leasehold Mortgagee (i) gives the notice of request within thirty (30) days after the termination, (ii) accompanies the notice with a written instrument unconditionally guaranteeing that, upon execution of the New Lease, it will cure all Monetary Defaults of Tenant under the Lease and pay to Landlord all costs including without limitation attorneys' fees incurred by Landlord in connection with or resulting from any Tenant default, the termination, and the New Lease, (iii) remedies all existing defaults under the Lease immediately upon execution of the Lease for Monetary Defaults and within thirty (30) days after execution for Non-Monetary Defaults; and (iv) accepts the Property in their then "as-is" condition without warranty of any kind from Landlord. The New Lease (i) shall be executed no later than thirty (30) days after delivery of the notice of request; (ii) shall be for the remainder of the Lease Term; (iii) shall be effective as of the date of termination with possession to occur upon execution; and (iv) and shall include the right of the Leasehold Mortgagee or its nominee to exercise the Tenant's options to extend or renew the Lease as set forth herein; shall be at the Rent and on the covenants, agreements, conditions, provisions, restrictions, and limitations contained in the terminated Lease. As long as Leasehold Mortgagee cures all defaults other than any Personal Defaults, then any Personal Default shall no longer be deemed to be a default or breach under the New Lease. The New Lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of said New Lease other than those created or suffered by Tenant to which Tenant and the Leasehold Mortgagee have consented or subordinated to, and shall be free of any

and all rights of Tenant hereunder. The provisions of the immediately preceding sentence shall be self-executing, and Landlord shall have no obligation to do anything, other than to execute said New Lease as herein provided, to assure said Leasehold Mortgagee or the Tenant under the New Lease good title to the Leasehold estate granted thereby.

- f. **Landlord's Interest Subject to Leasehold Mortgage.** Any mortgage or financial encumbrance on Landlord's fee estate (a "**Fee Mortgage**") shall be subject to this Lease. Landlord shall not enter into any Fee Mortgage that violates the previous sentence.
- g. **Limits on Leasehold Mortgagee's Liability.** No Leasehold Mortgagee shall be liable to perform Tenant's obligations under this Lease until such Leasehold Mortgagee takes possession of the Property or any part thereof or acquires Tenant's rights by foreclosure, assignment in lieu of foreclosure, or otherwise, subject, however, to the Leasehold Mortgagee's right hereunder to cure any defaults of Tenant under the Lease.
- h. **Estoppel Certificates.** At reasonable intervals, the Leasehold Mortgagee shall have the right to obtain estoppel certificates from Landlord stating whether the Lease is in full force and effect, whether the Rent and other charges have been duly and fully paid in accordance with the terms of the Lease, whether Tenant is in default under any of the terms, covenants, or conditions contained in the Lease, or whether any event has occurred which would, with the passage of time or giving of notice or both, constitute a default under any of the terms, covenants or conditions contained in the Lease, and other matters reasonably requested by the Leasehold Mortgagee.
- i. **No Merger.** If this Lease and the fee estate in the Property are ever commonly held, then they shall remain separate and distinct estates and shall not merge without consent by all Leasehold Mortgagees.
- j. **Notices.** In the event that Leasehold Mortgagee issues any demand for payment, default notice, or other document under which, if Tenant does not perform, there would be a right to terminate this Lease or take possession of the Premises, Leasehold Mortgagee shall give a copy of such notices to Landlord concurrently.
- k. **Amendments.** Upon Tenant's request, Landlord will enter into such amendments or modifications of this Lease as may be reasonably required by Tenant's lender in order for Tenant to obtain a Leasehold Mortgage, so long as such changes do not deprive Landlord of the substantial benefit hereof or reduce the sums due to Landlord hereunder or change the permitted uses of the Premises. Landlord will not unreasonably withhold, delay, or condition such an amendment.
- l. **Permitted Period for Restoration of Improvements.** There shall be no termination of the Lease as against the rights of any Leasehold Mortgagee as a result of damage or destruction of the Improvements (as defined in the Lease) so long as the Rent is paid on a current basis and all other obligations under the Lease are timely performed, and the

Tenant and/or Leasehold Mortgagee is diligently pursuing restoration of the Improvements.

- m. **Insurance.** A standard mortgagee clause naming the Leasehold Mortgagee as an insured may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant pursuant to the provisions of this Lease.

**GROUND LEASE – JOINT USE AGREEMENT
KIPP BRIDGE CHARTER SCHOOL**

**FOR THE USE OF
Lafayette Elementary School
1700 Market St, Oakland, CA 94607**

This GROUND LEASE /JOINT USE AGREEMENT (the "Agreement") is made by and between OAKLAND UNIFIED SCHOOL, a school district formed and existing under the laws of the State of California ("OUSD"), and KIPP BAY AREA SCHOOLS, ("CHARTER SCHOOL"), a California nonprofit 501(c)(3) public benefit corporation which operates KIPP BRIDGE Charter School ("KIPP BRIDGE"). This Agreement includes the terms and conditions of CHARTER SCHOOL'S use of the Lafayette Elementary School site, located at 1700 Market St, Oakland, CA 94607, during the 2016-17 and 2017-18 school years and the construction of new school facilities on the Lafayette campus and the planned occupancy by CHARTER SCHOOL commencing in July 2018 (the 2018-19 school year).

RECITALS

WHEREAS, District is the owner of certain real property, known as Lafayette Elementary School located at 1700 Market St, Oakland, CA 94607("Premises");

WHEREAS, CHARTER SCHOOL currently provides educational and recreational activities for its students on a portion of the West Oakland Middle School campus, also known as the Lowell Campus located at 991 14th Street, Oakland CA 94607;

WHEREAS, by Enactment # 16-0268, on February 10, 2016, the Board of Education approved Material Revisions in the Charter for KIPP BRIDGE authorizing KIPP BRIDGE to serve Grades TK-8, effective for the 2016-17 school year;

WHEREAS, under the Charter revisions, in 2016-17, the CHARTER SCHOOL will serve approximately 325 students in grades TK-4th, in addition to its existing 5th-8th program, and grow to serve approximately 835 students in TK-8th at full capacity in 2020-2021 (475 of which would be TK-4th grade students).

WHEREAS, the Lafayette building has capacity to hold 680 students and the student enrollment at Lafayette for the 2015-16 school year is 220 students, and the projected enrollment for the 2016-17 school year is 202 students;

WHEREAS, CHARTER SCHOOL AND OUSD, in collaboration with the school communities and school leaders at KIPP BRIDGE, Lafayette Elementary School and West Oakland Middle School have agreed that KIPP BRIDGE will locate its entire TK-8 program to the Lafayette campus, and Lafayette School and West Oakland Middle School will occupy the West Oakland Middle School campus, also known as the Lowell Campus;

WHEREAS, CHARTER SCHOOL requires classrooms and facilities for its in-district students for the purposes of operating its educational program in accordance with KIPP BRIDGE'S charter ("Program" or "Activities") which includes the provision of recreational Activities on the Premises for students residing in the District;

WHEREAS, this Agreement is entered into by the Parties as an "in-lieu" facilities Agreement pursuant to the requirements of California Education Code section 47614, which allows the District and CHARTER SCHOOL to collaborate on the terms for use of the Premises for KIPP BRIDGE, outside of the provisions of Proposition 39 and its implementing regulations ("Prop 39");

WHEREAS, this Agreement is further entered into pursuant the provisions of Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") in support of the joint action by District and CHARTER SCHOOL to organize, promote, and conduct programs in order to improve the health and general welfare of the citizens of the City of Oakland and students residing in the District to cultivate the development of good citizenship by provision for adequate programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state; and

WHEREAS, under the provisions of Education Code section 17534 (b), the requirement that the term of any agreement for joint use must not exceed five (5) years, does not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as CHARTER SCHOOL; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and CHARTER SCHOOL agree as follows:

AGREEMENT

USE OF PREMISES

District hereby leases to CHARTER SCHOOL, and CHARTER SCHOOL hereby leases from District, the Premises for the Term and upon the covenants and conditions set forth in this Agreement. District agrees to allow use of the Premises by CHARTER SCHOOL for purposes of operating a public charter school providing educational instruction to public school students consistent with the terms of CHARTER SCHOOL's Charter Petition so long as CHARTER SCHOOL is the tenant of the Premises, and in the event CHARTER SCHOOL is not the occupant for any reason, for the purposes of operating a public charter school, and incidental related uses ("Activities").

Use of the Premises shall be for the sole purpose of operating a charter educational program in accordance with all applicable federal, state and local regulations relating to the Premises, and to the operation of the educational program, including summer school and programs procured through third party entities, e.g. child-care and after-school program providers. CHARTER SCHOOL shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District, which consent shall not be unreasonably withheld.

CHARTER SCHOOL shall not commit, or suffer to be committed, any waste upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or knowingly place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.

Any uses which involve the serving and/or sale of alcoholic beverages are prohibited on the Premises. CHARTER SCHOOL shall prohibit the use of tobacco products and e-cigarettes on the Premises at all times.

CHARTER SCHOOL shall not intentionally do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises.

CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Premises accessible to members of the community.

The Parties understand that the Premises is to be used primarily for educational programs and activities and as such, any use of the Premises by the Community shall not interfere with CHARTER SCHOOL's educational program.

CONDITION OF PREMISES

The Premises are leased to CHARTER SCHOOL on an "AS IS" basis. Except as expressly provided herein, District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises.

CHARTER SCHOOL acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for CHARTER SCHOOL's Activities, except as set forth herein. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or CHARTER SCHOOL, and District and CHARTER SCHOOL expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

TITLE TO SCHOOL SITE(S) /CLASSROOM BUILDINGS

The Parties acknowledge that title to the Premises is held by District. Title to improvements at the Premises constructed by CHARTER SCHOOL shall be owned by CHARTER SCHOOL until expiration or the earlier termination of the term of this Agreement. All improvements on the Premises at the expiration of the term of this Agreement, or any options or mutually agreed to extensions shall become District's property. The improvements constructed by CHARTER SCHOOL shall be DSA approved or capable of being utilized for adaptive re-use under the standards set-forth in the Division of State Architect's "FEASIBILITY GUIDELINES FOR SELECTION OF EXISTING NON-CONFORMING FACILITIES FOR REHABILITATION TO PUBLIC SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES" (or comparable standards).¹¹

EVALUATION PERIOD: CHARTER SCHOOL shall have a 180 day Evaluation Period commencing on July 1, 2016 and ending on January 2, 2017 to satisfy or waive the contingencies described below (the "Evaluation Period"). During the Evaluation Period, CHARTER SCHOOL shall have the right to conduct such investigations and testing, seek and obtain financing satisfactory to CHARTER SCHOOL, and otherwise evaluate whether the Premises and their condition are suitable and feasible for CHARTER SCHOOL's purposes. If CHARTER SCHOOL gives District written notice of cancellation within the Evaluation Period, then this Lease shall be cancelled and terminated and the parties will be relieved of all further obligations hereunder (save only such obligations as are expressly stated to survive termination of the Agreement or except as otherwise provided herein). Upon execution hereof, Tenant shall pay District the sum of \$100.00 which shall be nonrefundable in all circumstances, as and for consideration for District's holding the Premises available and allowing CHARTER SCHOOL the foregoing Evaluation Period.

The term ("Initial Term") of this Agreement shall commence on July 1, 2016 for twenty (20) years and shall end on June 30, 2036; the term shall be extended for two additional terms of 10 years each unless subject to earlier termination under any provision of this Agreement, including but not limited to the following reasons:

CHARTER SCHOOL'S program ceases to operate after a revocation, nonrenewal or surrender of the charter, and all appeals have been exhausted;

CHARTER SCHOOL fails to construct significant capital outlay improvements on the Premises within five (5) years of the Commencement Date of this Agreement, in

¹¹ http://www.documents.dgs.ca.gov/dsa/pubs/feasibility_,_pub_dsa_reh_01.pdf

which case the term of this Agreement shall only be for five (5) years, until June 30, 2021;

CHARTER SCHOOL's default under the terms and conditions herein and CHARTER SCHOOL's failure to complete any cure of such default as provided herein.

Option to Terminate.

CHARTER SCHOOL at its option, and without any penalties, damages or other compensation to the District, may elect not to proceed with the new construction project contemplated by Section 8 of this Agreement. CHARTER SCHOOL acknowledges and understands that if it exercises the option not to proceed with the new construction project contemplated by Section 8, this Agreement shall terminate effective June 30, 2021 and that no extensions or exceptions to this requirement will be granted by the District. Provided however, the Parties by mutual agreement may negotiate a new agreement for use of the Lafayette site. In the event that CHARTER SCHOOL determines, in its reasonable judgment, that it is not feasible for CHARTER SCHOOL to proceed with the new construction project contemplated by Section 8, then CHARTER SCHOOL may elect to terminate this Lease without penalties, damages, or other compensation to the District, effective on the next July 1st, by written notice to District. In the event that CHARTER SCHOOL so elects, then CHARTER SCHOOL agrees that it will not request any further facilities from District under Proposition 39 for KIPP BRIDGE school for the remainder of the five year Term of this Lease.

If during the Evaluation Period, it is determined by CHARTER SCHOOL that the existing school buildings are not habitable for school purposes due to health and safety issues, then the District shall (1) upgrade the existing school buildings to ensure habitability, safety, and health at District's expense to allow use for the entire 2016-2017 school year; or (2) terminate this Lease and provide CHARTER SCHOOL with an alternate equivalent facility pursuant to Proposition 39.

EARLY OCCUPANCY

The Parties acknowledge that OUSD currently occupies the Premises. The District anticipates the students and the employees will be relocated no later than June 20, 2016 and that CHARTER SCHOOL shall have early access to the Premises no later than June 23, 2016 to conduct deferred maintenance and repairs related to environmental, life and fire safety, and to make minor improvements to finishes, fixtures, wiring and paint, and to install furniture, carpet and equipment. The Parties acknowledge that CHARTER SCHOOL needs access to the Premises as soon as possible in order to begin needed repairs and maintenance.

FACILITY USE FEE

For and in consideration of the use of the Premises, CHARTER SCHOOL shall pay the following facility use fee to District:

Initial Year (2016-17): Subject to the credit provided for in Section 7.1 below, during the 2016-17 school year, CHARTER SCHOOL shall pay a facility use fee of \$4.73 per square foot, for the square footage of the building which is approximately 53,000 square feet. The first year rent is therefore \$250,690.

Year Two (2017-18): CHARTER SCHOOL anticipates adding 5 additional portables to the site for the 2017-18 school year in order to meet enrollment requirements pending completion of the Improvements provided for in Section 8 of this Agreement. CHARTER SCHOOL shall assume the cost and expense of the lease and installation of the portables, if necessary, for Year Two. Subject to the credit provided for in Section 7.1 below, the Year

Two Facility Use Fee payable to the District shall be the facility use fee based upon the 2016-17 Prop 39 rate times 53,000 square feet -- therefore \$250,690.

Facility Use Fee After Completion of New Construction: As provided in Section 8 of this Agreement, but subject to CHARTER SCHOOL's right to terminate as provided in Section 4.2 above, CHARTER SCHOOL intends to make significant improvements to the Premises at its sole cost and expense. At the end of the Facility Use Agreement, as provided in Section 3.1, the Improvements shall become the property of the District. The Parties therefore agree that as consideration for the construction of the Improvements on District's property that shall become the property of the District, after completion of the Improvements, the District will credit to CHARTER SCHOOL as credit against the facility use payments the amount of the actual construction costs of such Improvements, which is estimated to be \$9.9 million (and the credit will not exceed \$9.9 million). During the remaining term after completion of the new construction, the annual Facility Use Fee shall increase by ten thousand dollars (\$10,000.00) at the beginning of year five (5) and on each subsequent five (5) year anniversary thereafter, including any option period.

Rent shall be paid quarterly as follows:

- July 1 -
- October 1 -
- January 1 -
- April 1 -

CHARTER SCHOOL shall pay promptly to District, the Rent when due during the Term, without deduction, setoff, prior notice or demand.

Rent does not include the utility charges for the Premises. CHARTER SCHOOL shall pay for all utilities charges for the Premises. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. Utility charges shall not be included in the credit received by CHARTER SCHOOL, described in Section 7 below. CHARTER SCHOOL shall be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Premises, including, but not limited to heating, ventilation and airconditioning, gas, electricity, water, telephone, trash collection, sewage disposal, janitorial and interior and exterior Premises security services. CHARTER SCHOOL shall pay the cost of all utilities and other services directly to the applicable utility or service provider. OUSD shall include the Premises on OUSD's bulk energy contracts upon request by CHARTER SCHOOL.

Except to the extent the discontinuance, failure or interruption is caused or permitted by OUSD's negligence or willful misconduct, CHARTER SCHOOL agrees that OUSD shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of CHARTER SCHOOL's use and possession of the Premises or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Agreement. Notwithstanding anything herein to the contrary, OUSD shall use its good faith efforts to assist CHARTER SCHOOL in restoring such services so long as OUSD is not required to incur any costs or expenses.

CHARTER SCHOOL acknowledges that late payment by CHARTER SCHOOL to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by

this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from CHARTER SCHOOL by 4:00 p.m. within ten (10) days after such amount is due, CHARTER SCHOOL shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by CHARTER SCHOOL. Acceptance of any late charge by District shall in no event constitute a waiver of CHARTER SCHOOL's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

Taxes; Assessments. CHARTER SCHOOL shall pay any assessment on the Premises, including any improvements which CHARTER SCHOOL constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or CHARTER SCHOOL's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon CHARTER SCHOOL's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

MAINTENANCE, REPAIRS, AND TENANT IMPROVEMENTS:

Initial Maintenance and Repair Prior to the start of the 2016-17 School Year

The Parties have identified certain maintenance and repairs that are necessary to make the premises usable by CHARTER SCHOOL for its intended purpose. The repairs are delineated on Exhibit A-1, which is incorporated into this Agreement. With respect to the repairs on Exhibit A-1 the Parties agree as follows:

The District will agree to deduct from the rent the cost of improvements identified by CHARTER SCHOOL as necessary to make the Premises usable by CHARTER SCHOOL (the "credit"), not to exceed two year's rent, using the 2016-17 Proposition 39 annual rate. The credit may be used for tenant improvements, repairs, maintenance, furnishings, furniture and technology upgrades, products and services an amount. This rent credit covers the cost of improvements for the 2016-17 and 2017-18 school years.

All improvement work undertaken and completed by CHARTER SCHOOL against the credit shall be with licensed contractors, selected by CHARTER SCHOOL and/or supervised by licensed contractors and performed according to applicable California law. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of CHARTER SCHOOL's Improvements to the extent such approval is required by law.

All construction must meet code requirements, including fire.

CHARTER SCHOOL is responsible for the cost of compliance with CEQA, if applicable.

Ongoing Maintenance and Repair After Completion of Repairs Provided for in Section 7.1

Except as provided in Section 7.1, and except as to warranties made by District herein, CHARTER SCHOOL agrees to provide, at its own cost and expense, any and all maintenance for the Premises. Maintenance to be provided by CHARTER SCHOOL shall be consistent with the normal maintenance levels and shall insure safe and

healthful use. Except as expressly provided herein, District shall have no maintenance or repair obligations with respect to the Premises. CHARTER SCHOOL hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of the Civil Code.

NEW CONSTRUCTION

CHARTER SCHOOL may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises ("Improvements"), provided that any Improvements requiring approval of the Division of the State Architect shall require prior written notice and approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. If District fails to respond within thirty (30) days after CHARTER SCHOOL's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act ("CEQA") and regulations promulgated thereunder.

All contractors and subcontractors of CHARTER SCHOOL, if any, shall be duly licensed in the State of California. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of CHARTER SCHOOL's Improvements to the extent such approval is required by law. State Prevailing wage laws as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771 apply to the Project.

The District encourages CHARTER SCHOOL to incorporate Collaborative for High-Performing Schools standards into the design (www.chps.net).

CHARTER SCHOOL shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies. However, the District agrees to act as the Lead Agency for any required CEQA approvals or proceedings, provided, that CHARTER SCHOOL shall reimburse District for any costs associated with serving as Lead Agency. In addition to the public notice and participation requirements in CEQA, the CHARTER SCHOOL agrees to ensure community knowledge and participation in the new Project and Improvements and to designate a community liaison for the Project.

In order to provide economic opportunity for residents and businesses and stimulate economic development, the District encourages CHARTER SCHOOL to adopt a local hiring and local small business participation program. CHARTER SCHOOL has agreed to at least 25% local hiring/local business participation for this Project.

Except as to warranties made by District herein, CHARTER SCHOOL shall be solely responsible for maintaining the Premises and CHARTER SCHOOL's Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

CHARTER SCHOOL shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. CHARTER

SCHOOL shall administer and resolve any claims or disputes that may arise in connection with the design and construction of the Improvements.

CHARTER SCHOOL and any person performing work for construction of the Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the Premises and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of CHARTER SCHOOL by reason of the exercise of privileges given in this section. CHARTER SCHOOL shall indemnify and hold District harmless from any damage caused by the CHARTER SCHOOL's activities authorized in this section, except to the extent such damage was caused by District's negligence or willful misconduct. CHARTER SCHOOL shall either reimburse the District for any damage or destruction to the Premises, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.

The Improvements shall be made by CHARTER SCHOOL at its sole expense. OUSD shall have no obligation to provide to CHARTER SCHOOL additional funding for the construction of any improvements, funding to pay or settle outstanding debts and/or liens attaching to the Improvements such as, but not limited to, mechanic's liens, taxes or assessments, or funding to operate the charter school.

Within 30 days of the completion of work, CHARTER SCHOOL shall cause a Notice of Completion to be recorded in the office of the Recorder of Alameda County in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and CHARTER SCHOOL shall deliver to OUSD within 30 days of the recordation of the Notice of Completion a reproducible copy of the "as built" drawings, which will be prepared by the architect to include the initial drawings stamped by the California Division of State Architect plus any subsequent field changes, plus any subsequent approvals from the California Division of State Architect, if applicable.

Compliance with Field Act and OUSD Consent. CHARTER SCHOOL agrees that all Improvements constructed under this Section 8, including any mechanical, electrical, plumbing or HVAC facilities or systems shall be in compliance with the Field Act.

CHARTER SCHOOL shall, during the term hereof, keep the Premises free from any liens or encumbrances arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL, and shall protect, defend, indemnify and hold OUSD harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement. The foregoing indemnity shall not apply to any liability, cost, obligation, expense or claim of lien to the extent arising from the negligence or willful misconduct of OUSD.

CHARTER SCHOOL shall remove any such lien or encumbrance by bond or otherwise as soon as reasonably possible after receipt of written notice by OUSD but in any event CHARTER SCHOOL shall commence the necessary action to remove such lien or encumbrance within 30 days of CHARTER SCHOOL having knowledge of such lien or encumbrance and diligently prosecute to completion the removal of such lien or encumbrance. If CHARTER SCHOOL fails to commence the action as required in the foregoing sentence or OUSD believes that the removal of such lien or encumbrance is not being prosecuted diligently, OUSD may provide written notice to CHARTER SCHOOL and if CHARTER SCHOOL cannot cause the lien or encumbrance to be removed within 30 days its receipt of this second notice: (i) OUSD may pay the amount necessary to remove such lien or encumbrance,

without being responsible for investigating the validity thereof; (ii) The amount so paid and OUSD's actual costs and expenses in handling this matter culminating in OUSD's payment and release of the lien or encumbrance shall be paid by the CHARTER SCHOOL without dispute; and (iii) such lien or encumbrance, regardless of whether it is paid by OUSD, shall constitute a default under this Agreement (but the remedy for such default shall be solely in damages and such shall not be a ground to terminate this Lease). Nothing contained in this Agreement shall authorize CHARTER SCHOOL to do any act which shall subject the title to the Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Improvements arising in connection with any such work or respecting the Premises not performed by or at the request of OUSD shall be null and void, or at OUSD's option shall attach only against CHARTER SCHOOL's interest in the Improvements and shall in all respects be subordinate to the title to the Improvements held in trust by OUSD.

HAZARDOUS SUBSTANCES

CHARTER SCHOOL shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. CHARTER SCHOOL shall not use Hazardous Substances on, under or about the Premises; provided, however, that CHARTER SCHOOL may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that CHARTER SCHOOL may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. CHARTER SCHOOL shall not, nor shall CHARTER SCHOOL allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement. District represents that the Premises are safe for operations as a TK-8 public school, that there are no Hazardous Substances on the Premises, and District shall be responsible for the remediation of any Hazardous Substances that were present at the Premises prior to CHARTER SCHOOL's occupancy thereof.

Notice. CHARTER SCHOOL will promptly notify District in writing if CHARTER SCHOOL has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. District has disclosed in writing, prior to execution of this Lease, the District's knowledge, if any, of any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or otherwise exists on the Premises as of the date of delivery of possession to CHARTER SCHOOL. District will promptly notify CHARTER SCHOOL in writing if District acquires new notice or knowledge during the term of this Lease that any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or otherwise exists on the Premises. CHARTER SCHOOL shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. CHARTER SCHOOL shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by CHARTER SCHOOL to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal

authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. CHARTER SCHOOL shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.

Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to CHARTER SCHOOL (except in the event of an emergency, in which case, only such notice as shall be reasonable under the circumstances will be required), inspect the Premises to determine whether CHARTER SCHOOL is complying with CHARTER SCHOOL's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and CHARTER SCHOOL may agree.

Mutual Indemnification. CHARTER SCHOOL shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District from and against any and all Claims arising from any breach of CHARTER SCHOOL's covenants under this Section, except to the extent caused by the negligence or willful misconduct of District. District shall indemnify, defend (by counsel reasonably approved in writing by CHARTER SCHOOL), protect, release, save and hold harmless CHARTER SCHOOL from and against any and all Claims arising from any breach of District's covenants under this Section, except to the extent caused by the negligence or willful misconduct of CHARTER SCHOOL.

INDEMNIFICATION AND WAIVER

CHARTER SCHOOL agrees that OUSD, its Board of Education, State Trustee, its officers, employees, agents, consultants and independent contractors (collectively, "OUSD Parties") shall not be liable for, and are hereby released from any responsibility for, any death or injury to person or damage to or destruction of property or resulting from the loss of use thereof, which damage is sustained by CHARTER SCHOOL or by other persons claiming through CHARTER SCHOOL; provided, that the foregoing release shall not apply to the negligence or willful misconduct of the OUSD Parties or OUSD's breach of any obligation or warranty under this Agreement.

CHARTER SCHOOL shall indemnify, defend, protect, and hold harmless the OUSD Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Improvements, any violation of any of the requirements, ordinances, statutes, regulations or other laws, including, without limitation, any environmental laws, by CHARTER SCHOOL, or any breach of the terms of this Agreement by CHARTER SCHOOL either prior to, during, or after the expiration of the Agreement Term; PROVIDED THAT the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of the OUSD Parties or OUSD's breach of any obligation or warranty under this Agreement.

Should OUSD be named as a defendant in any suit brought against CHARTER SCHOOL in connection with or arising out of CHARTER SCHOOL's construction of the Improvements or any, or its occupancy or use of the Premises, CHARTER SCHOOL shall pay to OUSD its costs and expenses incurred in such suit, including without limitation, its actual reasonable professional fees such as appraisers', accountants' and attorneys' fees; provided, however, that CHARTER SCHOOL shall not be liable for any costs or expenses arising from OUSD's negligence or willful misconduct.

Further, CHARTER SCHOOL's agreement to indemnify OUSD is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by

CHARTER SCHOOL pursuant to the provisions of this Agreement or the requirements and conditions required by OUSD as the school district approving the petition of CHARTER SCHOOL, to the extent such policies cover the matters subject to CHARTER SCHOOL's indemnification obligations.

The provisions of this Section 10 shall survive the expiration or sooner termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement.

INSURANCE

CHARTER SCHOOL, at its sole cost and expense, shall observe and comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated herein by reference.

DAMAGE AND DESTRUCTION

Repair of Premises. CHARTER SCHOOL shall promptly notify OUSD of any damage to the Premises resulting from fire, earthquake or any other casualty. In the case of damage or destruction, regardless of the nature of the casualty, CHARTER SCHOOL, at its sole cost and expense but solely to the extent that insurance proceeds are available to pay the cost of rebuilding shall restore, repair, replace, rebuild or alter all aspects of the Premises and improvements located thereon to as nearly as possible to their value, condition and character immediately prior to such damage or destruction. CHARTER SCHOOL shall commence such restoration, repairs, replacements, rebuilding or alterations within 90 days following the occurrence of such damage or destruction and prosecute to completion with due diligence and in good faith.

OUSD shall not be liable for any inconvenience or annoyance to CHARTER SCHOOL or its visitors, or injury to CHARTER SCHOOL's business resulting in any way from such damage or the repair thereof; provided, that the foregoing sentence shall not apply to the extent OUSD's negligence or willful misconduct is the cause of such damage or destruction. CHARTER SCHOOL shall not be entitled to any compensation or damages from OUSD for loss of use of the whole or any part of the Premises, or CHARTER SCHOOL's personal property used or located at the Premises, or for any inconvenience or annoyance occasioned by such damage or destruction; provided, that the foregoing sentence shall not apply to any damage or destruction caused by the negligence or willful misconduct of OUSD.

Disbursement of Insurance Proceeds. All property insurance proceeds, from policies obtained and maintained by CHARTER SCHOOL, recovered on account of damage or destruction to the Premises (the Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the Improvements so damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to OUSD and under the exclusive control of CHARTER SCHOOL (the "Depository"). If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work CHARTER SCHOOL may deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"), or re-scope the repairs so that they can be covered by Proceeds. The Depository shall disburse the Proceeds and CHARTER SCHOOL's Funds, if applicable, during the course of reconstruction in accordance with customary construction disbursements, including a percentage retention that CHARTER SCHOOL and OUSD shall mutually agree. If there are funds remaining after the completion of the Reconstruction work in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL. If OUSD is required to obtain any of the property insurance on behalf of and CHARTER SCHOOL is paying or has paid OUSD for said property insurance policy(ies), all

insurance proceeds recovered on account of damage or destruction to the Improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Restoration. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, CHARTER SCHOOL shall be responsible for the payment of same. The rights hereunder shall be subject to and subordinate to the rights of a Leasehold Mortgagee with regard to rebuilding and insurance proceeds.

If OUSD is required to or voluntarily obtains any of the property insurance that CHARTER SCHOOL is required to obtain under this Agreement and CHARTER SCHOOL is not paying, has not paid or is disputing the payment or acquisition of said property insurance policy(ies) (the "**OUSD Acquired Policy**"), any act or event damaging or destroying all or a portion of the Improvements shall cause to expire immediately any right of CHARTER SCHOOL to cure the default of not obtaining or maintaining the required insurance or cure the payment for said OUSD Acquired Policy. All proceeds recovered on account of damage or destruction to the Improvements from said OUSD Acquired Policy shall be considered the property of OUSD, and OUSD shall determine the use of such proceeds.

Destruction As a Release Event. If there is destruction of or damage to the Improvements or any part thereof or the Premises or any part thereof by earthquake, fire or any other cause, and if the reasonably estimated cost to restore and repair the damage is more than 50% of the replacement cost of the entire Premises with Improvements, and if insurance proceeds are insufficient to pay at least 90% of the reasonably estimated cost of repair and restoration, then by notice in writing to District, CHARTER SCHOOL may terminate this Agreement and such shall relieve CHARTER SCHOOL from its obligation to pay all fees, premiums, if applicable, charges, Hold Over Rent, if applicable, or other amounts due and owing under this Agreement or from any of its other obligations under this Agreement. If CHARTER SCHOOL so terminates, it shall pay over to District all Proceeds received as a result of the damage or destruction, and assign to District all Proceeds to be so received. .

Waiver of Statutory Provisions. The provisions of this Agreement, including this Section, constitute an express agreement between OUSD and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the Improvements, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Agreement or any damage or destruction to all or any part of the Improvements.

CONDEMNATION

CHARTER SCHOOL hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

Condemnation of Entire Premises. In the event the Premises and Improvements are taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if OUSD shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for the Premises and Improvements (any such events to be referred to herein as a "Full Taking"), this Agreement shall automatically terminate on that date, whichever shall first occur, when: (i) CHARTER SCHOOL completely vacates the Premises and such vacation has been mutually agreed upon by CHARTER SCHOOL, OUSD and the condemning authority; or (ii) a court of competent jurisdiction over the condemnation proceeding issues an Order for Prejudgment Possession ("OPP") or similar order granting possession of the Premises to the condemning entity and the condemning entity exercises its right to possession of the Premises; or (iii) if an OPP is not obtained, the condemnation proceeding is concluded.

Condemnation of a Portion of the Premises. In the event any portion of the Premises is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner so as to require the use, reconstruction, or remodeling of the Premises, or any portion thereof, or if OUSD shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for said portion of the Premises (any such events to be referred to herein as a "Partial Taking") the following shall apply:

Abatement. Any fees and other amounts due and owing to OUSD under this Agreement shall be abated or reduced as a result of any Partial Taking in direct proportion to the square footage taken by the condemning entity. The abatement or reduction shall not apply to: any insurance premiums or other fees, charges or amounts due and owing that do not correspondingly decrease with the reduction in the size of the Premises.

Right to Terminate. If the remaining portion of the Premises is such that CHARTER SCHOOL cannot reasonably operate its educational programs, CHARTER SCHOOL may terminate this Agreement by providing written notice to OUSD of its intention to do so. CHARTER SCHOOL may exercise this right of termination at any time after the condemning entity has commenced action to acquire a portion of the Premises and up to six (6) months after the occurrence of Section 13.1 or 13.2 above. OUSD discloses that it is allowing CHARTER SCHOOL the ability to terminate this Agreement for a period of six (6) months after the occurrence of Section 13.1 or 13.2 to allow CHARTER SCHOOL to make a good faith effort to adapt its educational programs to the remaining portion of the Premises. CHARTER SCHOOL's written notice of termination shall set forth the date when CHARTER SCHOOL shall vacate the remaining portion of the Premises. CHARTER SCHOOL's notice of termination shall effectuate a termination of any right to redeem provided in this Agreement and OUSD may proceed to observing the requirements of Section 17078.62(b)(2) through (5) inclusive.

Award and Payments.

Real Property. Regardless of whether it is a Full Taking or Partial Taking, OUSD shall be entitled to receive the entire award or payment in connection with the real property underlying the Premises.

Premises/Improvements. OUSD shall receive the entire award or payment in connection with the Premises/Improvements (excluding the underlying real property) and shall tender to CHARTER SCHOOL the award or payment less any actual costs or expenses incurred by OUSD arising from the Full Taking or Partial Taking, except that CHARTER SCHOOL shall be entitled to any part of the award intended to compensate it for the unamortized value of its improvements.

Personal Property. CHARTER SCHOOL shall be entitled to any separate award or payment designated by the condemning entity, including, without limitation, for the Full Taking or Partial Taking of CHARTER SCHOOL's personal property, interruption to CHARTER SCHOOL's business, and relocating expenses.

ASSIGNMENT AND SUBLETTING

Transfers. Except as provided in Exhibit C and Article 24, CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Premises or Improvements or any part thereof, or otherwise permit the occupancy or use of the Premises or Improvements or any part thereof by any persons other than CHARTER SCHOOL and its employees and contractors (all of the foregoing are hereinafter sometimes

referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"), without first procuring the written consent of OUSD. Notwithstanding anything in this Section to the contrary, CHARTER SCHOOL shall have the right to enter into license or concession agreements for the provision of services or goods to the educational programs operated by CHARTER SCHOOL without the consent of OUSD and such license or concession agreement shall not be deemed a Transfer.

Any Transfer made without the prior written consent of OUSD shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Agreement. Any Transferee approved by OUSD, shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Premises for the purposes set forth in this Agreement. Whether or not OUSD consents to any proposed Transfer, CHARTER SCHOOL shall pay OUSD's, if applicable, reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) actually incurred (which shall include the costs or expenses of the party's employees performing the review and processing if said party does not retain a third party to do so) by the party, within 10 business days of CHARTER SCHOOL's receipt of the invoice setting forth the expenses.

CHARTER SCHOOL shall have the right, without consent from District, to Transfer to an Affiliate. As used herein, an "Affiliate" is provided the subtenant is a non-profit entity, or a limited liability company that is an entity that is disregarded as separate entity from CHARTER SCHOOL for federal and state income tax purposes, or an organization described in Section 509(a)(3) of the Internal Revenue Code that supports CHARTER SCHOOL, or an entity which controls, or is controlled by, or is under common control with CHARTER SCHOOL.

The rights of District under this Section 14 shall be subject to the rights reserved to any Leasehold Mortgagee, including those set forth in Article 24 and the attached Exhibit C.

The District shall not unreasonably withhold, condition, or delay its consent to any Transfer upon receipt of request from CHARTER SCHOOL..

NONWAIVER

No provision of this Agreement shall be deemed waived by either party hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of any fee or other amounts due and owing under this Agreement by OUSD shall not be deemed to be a waiver of any preceding breach by CHARTER SCHOOL of any term, covenant or condition of this Agreement. No receipt of monies by OUSD from CHARTER SCHOOL after the termination of this Agreement shall in any way alter the length of the Term or of CHARTER SCHOOL's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given CHARTER SCHOOL prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, OUSD may receive and collect any fees or other amounts due and owing under this Agreement, and the payment of said amount(s) shall not waive or affect said notice, suit or judgment.

NON-TERMINABILITY

Except as otherwise expressly set forth in this Agreement to the contrary, this Agreement and the rights and obligations of OUSD or CHARTER SCHOOL hereunder shall not be

affected by any event or for any reason, including the following: (i) any damage to or theft, loss or destruction of any portion of the Premises, (ii) any condemnation of any portion of the Premises, (iii) any latent or other defect in any portion of the Premises, (iv) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting OUSD, (v) the exercise of any remedy, including foreclosure, under any mortgage or assignment, (vi) any action with respect to this Agreement (including the disaffirmance hereof) which may be taken by OUSD, any trustee, receiver or liquidator of OUSD or any court under the Federal Bankruptcy Code or otherwise, (vii) any interference with CHARTER SCHOOL's use of the Premises, provided such interference is not caused or permitted by OUSD, or (viii) market or economic changes.

SURRENDER OF FACILITIES; OWNERSHIP AND REMOVAL OF FIXTURES

Surrender of Premises. No act or thing done by OUSD or any agent or employee of OUSD during the Agreement Term shall be deemed to constitute an acceptance by OUSD of a surrender of the Premises unless such intent is specifically acknowledged in writing by OUSD. The delivery of keys to the Premises to OUSD or any agent or employee of OUSD shall not constitute a surrender of the Premises or effect a termination of this Agreement, whether or not the keys are thereafter retained by OUSD, and notwithstanding such delivery CHARTER SCHOOL shall be entitled to the return of such keys at any reasonable time upon request until this Agreement shall have been properly terminated. The voluntary or other surrender of this Agreement by CHARTER SCHOOL, whether accepted by OUSD or not, or a mutual termination hereof, shall not work a merger, and at the option of OUSD shall operate as an assignment to OUSD of all sub-Agreements or sub-tenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

Removal of Personal Property by CHARTER SCHOOL. Upon the expiration of the Term, or upon any earlier termination of this Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Premises to OUSD in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, reasonable wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to OUSD, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Premises but can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL.

HOLDING OVER

If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of OUSD, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case rent for such hold over period shall be 150% of the then current rent for the Premises (the "Hold Over Rent"). Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Section shall be construed as consent by OUSD to any holding over by CHARTER SCHOOL, and OUSD expressly reserves the right to require CHARTER SCHOOL to surrender possession as provided in this Agreement upon the expiration or other termination of this Agreement. If CHARTER SCHOOL fails to surrender the Premises upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to OUSD accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold OUSD harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding CHARTER SCHOOL founded upon such failure to surrender

and any losses to OUSD resulting therefrom; provided, that the foregoing indemnification shall not apply to the negligence or willful misconduct of OUSD.

EVENTS OF DEFAULT

The occurrence of any of the following shall constitute a default of this Agreement by CHARTER SCHOOL:

Notwithstanding any provision in this Agreement, any failure by CHARTER SCHOOL to pay any fee, premium, if applicable, charge or other amounts due and owing under this Agreement, or any part thereof, when due unless such failure is cured within 10 calendar days after CHARTER SCHOOL's receipt of written notice of default from the District; or

Any failure by CHARTER SCHOOL to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by CHARTER SCHOOL where such failure continues for 30 days after written notice of default from OUSD to CHARTER SCHOOL; provided, that if the nature of such default is that the same cannot reasonably be cured within a 30 day period, CHARTER SCHOOL shall not be deemed to be in default if within said 30 day period it submits to OUSD its plan and a timeline reasonably acceptable to OUSD to cure said default and diligently commences and prosecutes to completion such cure; or

To the extent permitted by law, a general assignment by CHARTER SCHOOL or any guarantor of this Agreement for the benefit of creditors, or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, or the filing by or against CHARTER SCHOOL or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against CHARTER SCHOOL or any guarantor the same is dismissed within 60 days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of CHARTER SCHOOL or any guarantor, unless possession is restored to CHARTER SCHOOL or such guarantor within 60 days, or any execution or other judicially authorized seizure of all or substantially all of CHARTER SCHOOL's assets located upon the Premises or of CHARTER SCHOOL's interest in this Agreement, unless such seizure is discharged as soon as possible within 60 days; or

Abandonment of all or a substantial portion of the Premises or Improvements by CHARTER SCHOOL; or

The failure by CHARTER SCHOOL to maintain a current and active charter petition following written notice of default and the time provided in Section 19.2 to cure (after exhaustion of all appeals and remedies under the Education Code).

REMEDIES UPON DEFAULT

Upon the occurrence of any event of default by CHARTER SCHOOL and after the expiration of all notice and cure periods as provided in this Agreement, OUSD shall have, in addition to any other remedies available to OUSD at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

Terminate this Agreement, in which event CHARTER SCHOOL shall immediately surrender the Premises to OUSD, and if CHARTER SCHOOL fails to do so, OUSD may, without prejudice to any other remedy which it may have for possession or arrearages, enter upon and take possession of the Premises and expel or remove CHARTER SCHOOL and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and OUSD may recover from CHARTER SCHOOL the full amount of any fees, charges or other amounts due under this Agreement.

Subject to the rights of the Leasehold Mortgagee set forth herein and in Exhibit C, OUSD shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Agreement in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if OUSD does not elect to terminate this Agreement on account of any default by CHARTER SCHOOL, OUSD may, from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

OUSD shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available hereinabove, or any law or other provision of this Agreement), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision hereof.

COVENANT OF QUIET ENJOYMENT

OUSD covenants that CHARTER SCHOOL, on paying the fees, charges and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of CHARTER SCHOOL to be kept, observed and performed, shall, during the Term, exclusively, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through OUSD. The foregoing covenant is in lieu of any other covenant express or implied.

COMPLIANCE WITH LAW

CHARTER SCHOOL shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, but not limited to, (i) any such measures promulgated by the Department of State Architecture, the Department of Toxic Substance Control, and/or the State Department of Education, (ii) any such measures promulgated under the California Environmental Quality Act ("CEQA") or arising from any CEQA proceedings, and (iii) any such measures which relate to CHARTER SCHOOL's use of the Premises as a school or which are applicable to the Premises by reason of CHARTER SCHOOL being an educational institution. At its sole cost and expense, CHARTER SCHOOL shall promptly comply with all such governmental measures, regardless of whether such measures may require structural or nonstructural alterations or improvements to the Premises. Should any standard or regulation now or hereafter be imposed on OUSD or CHARTER SCHOOL in connection with the Premises by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, school districts or charter schools, then CHARTER SCHOOL agrees, at its sole cost and expense, to comply promptly with such standards or regulations. CHARTER SCHOOL shall be responsible, at its sole cost and expense, to make all improvements and alterations to the Premises as are required to comply with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

SIGNAGE

CHARTER SCHOOL may install signage at the School Site including one sign at the CHARTER SCHOOL's main entrance stating the CHARTER SCHOOL name and other pertinent information, a sign indicating the main office of the CHARTER SCHOOL, and other directional

signs as appropriate. At the termination of this Agreement, CHARTER SCHOOL shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

LEASEHOLD MORTGAGE RIGHTS.

24.1 Definitions.

24.1.1The term "**Leasehold Mortgagee**" shall mean the holder of the beneficial interest of a Leasehold Deed of Trust, who has given written notice to District of its name and address for notices, as further defined in **Exhibit "C"** hereof.

24.1.2The term "**Leasehold Deed of Trust**" shall mean any encumbrance of this Lease, by a deed of trust, mortgage or other security instrument including, without limitation, assignments of rents, issues and profits from the Property, to secure repayment of loans made to, or obligations of, CHARTER SCHOOL.

24.1.3The term "**Property**" shall mean the improvements constructed on the Premises identified in **Exhibit A** and leased to CHARTER SCHOOL pursuant to the Lease.

24.1.4The term "**Leasehold Estate**" shall mean all CHARTER SCHOOL's interest in the assets conveyed by this Lease, including but not limited to the Property.

24.2 CHARTER SCHOOL's Right to Encumber Leasehold. The Parties acknowledge and agree that CHARTER SCHOOL intends to finance construction of improvements on the Premises. To accomplish this financing, CHARTER SCHOOL intends to encumber its interests under this Lease through a Leasehold Mortgage (as defined herein). Terms related to the Leasehold Mortgage are attached hereto as **Exhibit "C"** and CHARTER SCHOOL shall have the right to pledge its leasehold estate as security for indebtedness whether by deed of trust, mortgage, collateral assignment or other document (a "**Leasehold Mortgage**") on terms acceptable to CHARTER SCHOOL in its sole discretion, so long as the provisions of this Lease are observed.

24.3 Notice to and Service on Leasehold Mortgagee. District shall mail to Leasehold Mortgagee a duplicate copy of any and all notices District may from time to time give to or serve on CHARTER SCHOOL pursuant to or relating to this Lease. Any notices or other communications permitted by this or any other Section of this Lease or by law to be served on or given to Leasehold Mortgagee by District shall be deemed duly served on or given to Leasehold Mortgagee by deposit in the United States mail, certified, return receipt requested or by overnight courier, return receipt, addressed to Leasehold Mortgagee at the last mailing address for Leasehold Mortgagee furnished in writing to District by CHARTER SCHOOL or Leasehold Mortgagee. The date of notice shall be five (5) days after deposit in the U.S. mail or two (2) business days after deposit with a reputable national overnight carrier such as UPS or Federal Express.

24.4 Rights of Leasehold Mortgagee. The Leasehold Mortgagee shall have the

rights and obligations set forth in **Exhibit "C,"** including its rights to cure, consent to assignment of and/or modifications to the Lease, and remedies in the event of a default by CHARTER SCHOOL.

24.5 Lease Binding on Leasehold Mortgagee and Its Successors. The Leasehold Mortgagee, the purchaser at a foreclosure sale, or the purchaser from the Leasehold Mortgagee shall be subject to all the terms and conditions of this Lease except that (i) the time for performance of any unperformed acts required by Section ___ [ref default section] of this Lease shall be extended for that period equal to the delay in performance of the act caused by CHARTER SCHOOL's inability or failure to perform the act and the time required to transfer the Lease to the purchaser at a foreclosure sale and/or to the purchaser from Leasehold Mortgagee, and (ii) the performance of any acts required by Section ___ [ref default section] of this Lease that have already been performed shall be deemed satisfied.

24.6 Estoppel Certificates. District shall provide to the Leasehold Mortgagee, on request, an estoppel certificate pursuant to the provisions of this Lease and **Exhibit "C,"** certifying to such matters, including, without limitation, the status of Rent payments, satisfaction of conditions, and defaults, and other matters reasonably requested by the Leasehold Mortgagee.

24.7 District states for the benefit of both CHARTER SCHOOL and Leasehold Mortgagees who may encumber the CHARTER SCHOOL's Lease that District has not encumbered or borrowed on the security of the Property, and that District will not do so during the term of this Lease, unless District provides to CHARTER SCHOOL and all Leasehold Mortgagees a Subordination and Non-Disturbance Agreement acceptable in the reasonable opinion of counsel for CHARTER SCHOOL and Leasehold Mortgagees, providing that so long as the CHARTER SCHOOL and their successors, including Leasehold Mortgagees should they come into ownership of the Lease, do not commit a default (beyond any applicable notice and cure period) allowing termination of this Lease, they will not be disturbed in their possession and control of the Property and will be recognized and attorn to the District or the District's successor in interest should either become the owner of the Premises. Such an Agreement shall be in recordable form, contain commercially reasonable provisions, and be recorded in the County records.

24.8 CHARTER SCHOOL agrees that District's fee interest shall at all times be and remain unsubordinated to any Leasehold Mortgage which may be imposed upon CHARTER SCHOOL's leasehold interest hereunder or upon the improvements, and that nothing contained in this Lease shall be construed as an agreement by District to subject its fee interest to any lien. Nothing in this Section or in any other provision of this Lease shall be construed as an agreement by District to subordinate its fee interest in the Premises to any Leasehold Mortgage or other lien or right.

Developer. Tenant has the right to use a third party as a development consultant or developer of the buildings to be constructed on the Premises. In the event that, in return for its contribution, said developer provides financing or other consideration, such an arrangement may require that the developer own the Improvements to be constructed on the site for a period of time. Such ownership will be subject at all times to the rights of District as set forth herein. District and Tenant will work together to enter into a Lease Amendment to satisfy reasonable needs of a developer engaged by Tenant so long as any

changes do not reduce District's substantive rights under this Lease or increase District's substantive obligations.

MISCELLANEOUS PROVISIONS

No Air Rights. No rights to any view or to light or air over any property, whether belonging to OUSD or any other person, are granted to CHARTER SCHOOL by this Agreement.

Modification of Agreement. This Agreement may only be modified or amended by written instrument executed by CHARTER SCHOOL and OUSD.

Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

No Warranty. In executing and delivering this Agreement, CHARTER SCHOOL has not relied on any representations, warranties or statements of OUSD which is not set forth herein or in one or more of the exhibits attached hereto.

Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement constitutes the parties' entire agreement with respect to the use and occupancy of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by OUSD to CHARTER SCHOOL with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement.

Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, a "Force Majeure"), shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure; ~~provided, however,~~ that this Force Majeure exception to timely performance shall not apply to any obligations imposed with regard to amounts due under this Agreement to be paid by CHARTER SCHOOL.

Authority. If CHARTER SCHOOL is a corporation, trust or partnership, each individual executing this Agreement on behalf of CHARTER SCHOOL hereby represents and warrants that CHARTER SCHOOL is a duly formed and existing entity qualified to do business in California and that CHARTER SCHOOL has full right and authority to execute and deliver this Agreement and that each person signing on behalf of CHARTER SCHOOL is authorized to do so. In such event, CHARTER SCHOOL shall, within 10 days after execution of this Agreement, deliver to OUSD satisfactory evidence of such authority and, if a corporation, upon demand by OUSD, also deliver to OUSD satisfactory evidence of (i) good standing in CHARTER SCHOOL's state of incorporation and (ii) qualification to do business in California.

Drug-Free Workplace. CHARTER SCHOOL's employees shall comply with the District's policy of maintaining a drug free workplace by enacting its own policy to maintain a drug free workplace. Neither CHARTER SCHOOL nor CHARTER SCHOOL's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the Site. If CHARTER SCHOOL or any employee of CHARTER SCHOOL is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the Site, CHARTER SCHOOL within five (5) days thereafter shall notify the District. Violation of

this provision shall constitute a material breach of this Agreement, but District's remedies for such a violation shall be limited to damages and shall not result in dispossession of CHARTER SCHOOL.

Inspection of Premises. District shall have the right to enter the Premises as set forth in Section 9.3 to conduct inspections of the Premises to insure that proper pest management control and maintenance is being conducted on the Premises. District will act reasonably during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

District:

Office of Charter Schools
Oakland Unified School District
1000 Broadway, 6th Floor
Oakland, CA 94607
Silke.bradford@ousd.k12.ca.us

With copy to:

Deputy Chief, Facilities
Department of Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94604

CHARTER SCHOOL:

Fill in

KIPP Bay Area Schools
1404 Franklin St Suite 500
Oakland, CA 94612

With copy to:

John Collins
2775 Park Avenue
Santa Clara, CA 95050

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

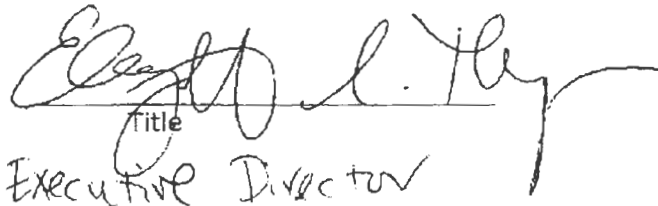
Proposition 39. In consideration for the District entering into this multi-year agreement in full satisfaction of the provisions of Proposition 39, CHARTER SCHOOL hereby agrees to waive any further right to petition the District for additional space under Proposition 39 for KIPP BRIDGE until the school year prior to the termination of this Agreement, such that CHARTER SCHOOL retains the ability to petition under Proposition 39 for the school year after the termination of the Agreement.

California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

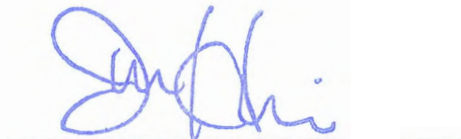
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>.

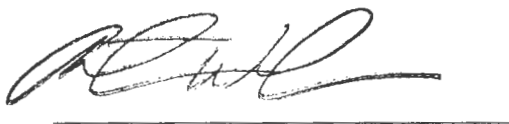
Memorandum of Lease/Further Identification of Premises. Following execution of this Lease, the parties agree that Tenant will, at its sole cost and expenses, prepare, and the parties will thereafter execute, acknowledge and record (at Tenant's expense) in the Official Records of Alameda County a short form or memorandum of this Lease in form satisfactory to both Landlord and Tenant, setting forth the required information relating to the Lease and attaching the property description.

KIPP BAY AREA SCHOOLS


Title
Executive Director

OAKLAND UNIFIED SCHOOL DISTRICT


President, Board of Education
Oakland Unified School District



Secretary, Board of Education
Oakland Unified School District

Approved as to Form



Jacqueline Minor, General Counsel

File ID Number: 16-1442
Introduction Date: 6/8/16
Enactment Number: 16-0823
Enactment Date: 6/8/16
By: CA

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

[TO BE PROVIDED]

EXHIBIT A-1

[TO BE INSERTED]

EXHIBIT B

INSURANCE

A. Throughout the Term of the Agreement, CHARTER SCHOOL shall secure and maintain, as a minimum, all of the insurance as set forth below with insurance companies acceptable to OUSD and with a rating of A.M. Best A-, VII or better:

1. Worker's Compensation Insurance in accordance with provisions of the California Labor Code, adequate to protect CHARTER SCHOOL from claims under Workers' Compensation Acts which may arise from its operations, including Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000.
2. Commercial General Liability coverage of not less than \$5,000,000 for each occurrence. The policy shall be endorsed to name OUSD and the Board of Education of the Oakland Unified School District as additional insurers and shall provide specifically that any insurance carried by OUSD which may be applicable to any claims or loss shall be deemed excess and CHARTER SCHOOL's insurance primary despite any conflicting provisions in CHARTER SCHOOL's policy. Coverage shall be maintained with no self-insured retention above \$25,000 without approval of OUSD.
3. Commercial Auto Liability coverage with limits of \$1,000,000 combined single limit unless CHARTER SCHOOL operates bus services for students; provided, that if CHARTER SCHOOL is providing any bus services for students, CHARTER SCHOOL shall maintain coverage limits not less than \$5,000,000 combined single limit.
4. Fidelity Bond coverage shall be maintained by CHARTER SCHOOL to cover all CHARTER SCHOOL employees who handle, process, or otherwise have responsibility for CHARTER SCHOOL funds, supplies, equipment or other assets. Minimum amount of Fidelity Bond coverage shall be \$50,000 per occurrence, with no self-insured retention.
5. Professional Educators Errors and Omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the CGL or by separate policy) with minimum limits of \$3,000,000 per occurrence.
6. Excess/Umbrella insurance with limits of not less than \$10,000,000 required of all high schools and any school which participates in competitive interscholastic or intramural sports programs.
7. Insurance covering the loss, damage or destruction of the Premises for 100% of the full replacement cost of the Premises, which shall provide protection against all perils including, but not limited to, fire, extended coverage, vandalism, malicious mischief and causes of loss-special form.

B. CHARTER SCHOOL agrees that the following terms and conditions shall also apply to its obligations to secure and maintain insurance coverage during the Term of the Agreement:

- 1 CHARTER SCHOOL understands and agrees that OUSD may review the insurance coverage maintained by CHARTER SCHOOL and/or the insurance requirements of this **Exhibit B** at any time during the Term of the Agreement, and may adjust the insurance

requirements as OUSD, in its reasonable discretion, deems appropriate. Upon receipt of written notice of any adjustment in the insurance coverage required under this Agreement, CHARTER SCHOOL shall deliver evidence of compliance with said insurance requirements within 10 days of CHARTER SCHOOL's receipt of the written notice.

2 No coverage shall be provided to CHARTER SCHOOL by OUSD under any of OUSD's self-insured programs or commercial insurance policies. OUSD shall not have any obligation to secure insurance coverage for CHARTER SCHOOL.

3 CHARTER SCHOOL's insurance coverage shall be primary and any insurance carried by OUSD that may be applicable to any claims or loss shall be deemed excess despite any conflicting provisions in the insurance coverages maintained by CHARTER SCHOOL.

4 Coverages and limits of insurance may be accomplished through individual primary policies or through a combination of primary and excess policies.

5 Within 10 days of CHARTER SCHOOL's execution of the Agreement, CHARTER SCHOOL shall furnish to OUSD's Risk Management and Insurance Services evidence of insurance in compliance with this **Exhibit B**. If CHARTER SCHOOL fails to submit evidence of insurance in compliance with this **Exhibit B** or OUSD Risk Management determines that CHARTER SCHOOL has not complied with the insurance requirements set forth in this **Exhibit B**, OUSD and/or the STATE may deny the occupancy and use of the Premises until CHARTER SCHOOL provides satisfactory evidence of compliance or OUSD and/or the STATE may declare CHARTER SCHOOL in default of the Agreement.

Thereafter, CHARTER SCHOOL shall furnish to the OUSD Risk Management within 30 days of all new policies inception, renewals or changes, certificates of such insurance signed by an authorized representative of the insurance carrier.

CHARTER SCHOOL will use its best efforts to have certificates endorsed as follows: :

The insurance afforded by this policy shall not be suspended, cancelled, reduced in coverage or limits, or non-renewed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Oakland Unified School District (Attn: Director, Office of Risk Management).

6 Nothing in this Exhibit B shall prohibit CHARTER SCHOOL, at its sole cost and expense, from purchasing and maintaining additional insurance coverage for damage or theft to the Premises, personal property, business interruption, employee or student property, for student accident or any other type of insurance coverage not listed above in 1 through 7, inclusive.

Exhibit C

EXHIBIT C

**Rights/Duties/Provisions relating to Leasehold Mortgages
and Leasehold Mortgagees**

- A. **Right to Encumber.** Tenant shall have the right to pledge its leasehold estate as security for indebtedness, whether by deed of trust, mortgage, collateral assignment, or other document (hereafter a “**Leasehold Mortgage**”) subject to the following terms and conditions: (a) one or more Leasehold Mortgages may be recorded against the leasehold estate at any one time; (b) the Leasehold Mortgage and all rights acquired under it shall be expressly subject to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interests of Landlord; (c) the mortgagee or beneficiary under the Leasehold Mortgage (the “**Leasehold Mortgagee**”) may be any person, corporation, organization, institutional lender or the corporate trust department of a bank, for or on behalf of one or more persons, corporations, organizations, institutional lenders or accredited investors; (d) Tenant shall give Landlord prior notice of any such Leasehold Mortgage including without limitation the name and address of the expected Leasehold Mortgagee and true and correct copies of the note, Leasehold Mortgage, and other related agreements; (e) the Leasehold Mortgage shall not affect or become a lien on the Landlord’s fee estate in the Property; (f) the Leasehold Mortgage shall provide that the term of the loan secured by the Leasehold Mortgagee shall not exceed, and that all amounts secured thereby shall be paid by no later than, the end of the Lease Term; and (g) immediately after recordation of the Leasehold Mortgage, Tenant shall, at its own cost and expense, cause to be recorded in the official record of the county in which the Property is located a request that Landlord receive written notice of any default and/or notice of sale under the Leasehold Mortgage.
- B. **Leasehold Mortgagee Protections.** The following provisions apply as to any Leasehold Mortgage until the earlier of such time that (i) all obligations of Tenant under the Leasehold Mortgage have been satisfied or (ii) the Leasehold Mortgage is reconveyed or otherwise terminated in accordance with its terms:
- a. **Lease Modification.** Except as to any right or remedy accorded to Landlord under the Lease including but not limited to the right to terminate the Lease upon Tenant’s default, and subject to the protection of the Leasehold Mortgagee contained herein, Landlord and Tenant shall not, without the prior written consent of the Leasehold Mortgagee, cancel or surrender the Lease or enter into any modification of any term of the Lease that would materially affect the Leasehold Mortgage or the Leasehold Mortgagee’s rights under the Leasehold Mortgage or that is not otherwise permitted under the terms of the Lender Documents [defined as loan agreement, indenture, letter of credit, etc.].
- b. **Request for Notice of Default.** Landlord shall serve a copy of any notice of Tenant default under this Lease upon the Leasehold Mortgagee, and no such notice shall be binding upon or affect the Leasehold Mortgagee unless a copy is given pursuant to this section.
- c. **Leasehold Mortgagee’s Right to Cure.**

- i. **General Right to Cure.** Subject to subsections (c)(ii)-(vi) below, and provided that nothing herein shall be construed to allow the Leasehold Mortgagee to enter the Property prior to taking possession of the Property from Tenant, the Leasehold Mortgagee shall have the right at any time during the Lease Term, or any Extension Terms if the Leasehold Mortgage remains in effect, to do any act or thing required of Tenant hereunder, whenever failure to do such act or thing would constitute a default hereunder, or to proceed to diligently pursue cure of any such defaults, and all such acts or things done and performed by the Leasehold Mortgagee shall be as effective to prevent a forfeiture of Tenant's rights hereunder as if done by Tenant.
- ii. **Monetary Defaults.** With respect to a default by Tenant in the payment of Rent or other sums due to the Landlord under the Lease ("**Monetary Default**"), any election of Landlord to terminate this Lease or Tenant's right to possession following a Monetary Default shall be of no force or effect if such Monetary Default is cured by or on behalf of the Leasehold Mortgagee within ten (10) business days after the later of (a) the giving of such notice of default by the Lessor to the Leasehold Mortgagee and (b) the expiration of the applicable cure or grace period provided to Tenant hereunder.
- iii. **Non-Monetary Default.** With respect to any default by Tenant other than a Monetary Default ("**Non-Monetary Default**"), any election of Landlord to terminate this Lease or Tenant's right to possession following an Non-Monetary Default shall be of no force or effect if such default is cured by or on behalf of the Leasehold Mortgagee within thirty (30) calendar days after the later of (a) the giving of such notice of default by the Landlord to the Leasehold Mortgagee and (b) the expiration of the applicable cure or grace period provided to Tenant hereunder, or, if a Non-Monetary Default is of such nature that it cannot reasonably be remedied within the time provided, then such Leasehold Mortgagee shall have such additional time as is reasonably necessary to cure such default, provided that it commences the curing of such default within said thirty (30) day period and thereafter diligently continues the curing of the same to completion, provided such period shall not, except in the case of Force Majeure, exceed 120 consecutive calendar days.

Cure of Non-Monetary Defaults. There shall be no termination affecting the rights of any Leasehold Mortgagee for failure to perform the non-monetary terms of the Ground Lease so long as the Leasehold Mortgagee is proceeding diligently to obtain possession to the extent required to cure the default, beginning within thirty (30) days after written notice that Tenant has failed to cure the default during the notice period provided in the Lease, and thereafter proceeds to complete the cure within a reasonable period of time, and further provided that the rent is being paid as it comes due throughout the period while cure is being pursued.

- iv. **Possession Default.** Notwithstanding the foregoing, if the Leasehold Mortgagee cannot cure a Non-Monetary Default unless it obtains possession of the Property or acquires Tenant's interest under this Lease (any such default

requiring such possession or acquisition to cure hereafter referred to as a “**Possession Default**”), then Landlord shall not terminate this Lease or Tenant’s right to possession for any such Possession Default as long as (i) Leasehold Mortgagee cures all other defaults within the period of time provided in subsections (c)(ii) and (iii) above; (ii) all Rent and other sums due Landlord under this Lease are paid and kept current by the Leasehold Mortgagee; (iii) all other terms of this Lease are performed when and as required under this Lease; and (iv) the Leasehold Mortgagee takes prompt and diligent steps to institute, prosecute, and complete foreclosure proceedings or otherwise acquire Tenant’s interest under this Lease, and, upon obtaining possession or acquiring Tenant’s interest under this Lease, immediately cures all then-existing Possession Defaults within thirty (30) days.

- v. **Personal Defaults.** Notwithstanding the foregoing, any election of Landlord to terminate this Lease or Tenant’s right to possession shall be of no force or effect solely on account of a default that can be cured only by Tenant and is not susceptible to cure by the Leasehold Mortgagee (such as the filing of a bankruptcy proceeding by Tenant) (“**Personal Default**”) so long as (1) Leasehold Mortgagee cures all other defaults within the period of time provided above; (2) all Rent and other sums due Landlord under this Lease are paid and kept current by the Leasehold Mortgagee; (3) all other terms of this Lease are performed when and as required under this Lease; and (4) the Leasehold Mortgagee takes prompt and diligent steps to institute, prosecute, and complete foreclosure proceedings or otherwise acquire Tenant’s interest under this Lease.
- vi. **No Modification of Option Provisions.** Notwithstanding anything to the contrary herein, the provisions of this Exhibit C shall not be construed to provide any additional time for the exercise of any option to extend the Lease Term (an “**Option**”), to permit the Leasehold Mortgagee to cure any default of Tenant for the purposes of exercising or maintaining such Option, or to modify any provisions relating to such Option.

d. **Foreclosure by the Leasehold Mortgagee.**

- i. **Right to Foreclose.** The Leasehold Mortgagee shall have the right to realize on the security afforded by the Leasehold Mortgage by exercising foreclosure proceedings or power of sale, or accepting an assignment or deed in lieu thereof, or other remedy afforded in law or in equity, all to the extent allowed by the Leasehold Mortgage (collectively referred to as “**Foreclosure Sale**”) and to transfer, convey, or assign the title of Tenant to the Leasehold estate created hereby to any purchaser at any such Foreclosure Sale (such purchaser including, if applicable, the Leasehold Mortgagee, hereinafter referred to as the “**Foreclosure Purchaser**”), and to acquire and succeed to the interest of Tenant hereunder by virtue of any such Foreclosure Sale; provided that the Leasehold Mortgagee has given all notices and opportunities to cure to Landlord and Tenant required hereunder and/or by applicable law. Notwithstanding the foregoing, the Leasehold Mortgagee (i) shall not be entitled to conduct any

auction, foreclosure, or other sale at or upon the Property; (ii) shall not remove any fixtures, furnishings, equipment, or other property on or at the Property whether or not affixed thereto; and (iii) shall conduct a unified sale of the leasehold interest, all other real property collateral, and all personal property collateral to a single purchaser.

ii. **Attornment and Non-Disturbance.** Upon any acquisition by the Foreclosure Purchaser of the leasehold interest in the Property, the Foreclosure Purchaser shall be bound to the Landlord, and the Landlord shall be bound to the Foreclosure Purchaser under the terms, covenants, and conditions of the Lease with the same force and effect as if the Foreclosure Purchaser were the original Tenant under the Lease, except that the Foreclosure Purchaser shall not be bound to cure Personal Defaults of Tenant and except that, if the Foreclosure Purchaser is the Leasehold Mortgagee, its liability shall cease upon a Foreclosure Purchaser Assignment as defined in the next subsection.

iii. **Foreclosure Purchaser Assignment.** If the Foreclosure Purchaser is the Leasehold Mortgagee, it may assign the leasehold interest (including any Extension Terms and all other real and/or personal property transferred to such purchaser) in accordance with Section ___ [ref assignment and subletting provisions] of this Lease, except that the Leasehold Mortgagee shall not be obligated to obtain Landlord's prior written consent.

e. **New Lease to Mortgagee.** In the event of termination of the Lease for any reason, Landlord shall, at the Leasehold Mortgagee's written request, enter into a new lease (the "New Lease") with the Leasehold Mortgagee or its nominee covering the Property if the Leasehold Mortgagee (i) gives the notice of request within thirty (30) days after the termination, (ii) accompanies the notice with a written instrument unconditionally guaranteeing that, upon execution of the New Lease, it will cure all Monetary Defaults of Tenant under the Lease and pay to Landlord all costs including without limitation attorneys' fees incurred by Landlord in connection with or resulting from any Tenant default, the termination, and the New Lease, (iii) remedies all existing defaults under the Lease immediately upon execution of the Lease for Monetary Defaults and within thirty (30) days after execution for Non-Monetary Defaults; and (iv) accepts the Property in their then "as-is" condition without warranty of any kind from Landlord. The New Lease (i) shall be executed no later than thirty (30) days after delivery of the notice of request; (ii) shall be for the remainder of the Lease Term; (iii) shall be effective as of the date of termination with possession to occur upon execution; and (iv) shall include the right of the Leasehold Mortgagee or its nominee to exercise the Tenant's options to extend or renew the Lease as set forth herein; shall be at the Rent and on the covenants, agreements, conditions, provisions, restrictions, and limitations contained in the terminated Lease. As long as Leasehold Mortgagee cures all defaults other than any Personal Defaults, then any Personal Default shall no longer be deemed to be a default or breach under the New Lease. The New Lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of said New Lease other than those created or suffered by Tenant to which Tenant and the Leasehold Mortgagee have consented or subordinated to, and shall be free of any

and all rights of Tenant hereunder. The provisions of the immediately preceding sentence shall be self-executing, and Landlord shall have no obligation to do anything, other than to execute said New Lease as herein provided, to assure said Leasehold Mortgagee or the Tenant under the New Lease good title to the Leasehold estate granted thereby.

- f. **Landlord's Interest Subject to Leasehold Mortgage.** Any mortgage or financial encumbrance on Landlord's fee estate (a "Fee Mortgage") shall be subject to this Lease. Landlord shall not enter into any Fee Mortgage that violates the previous sentence.
- g. **Limits on Leasehold Mortgagee's Liability.** No Leasehold Mortgagee shall be liable to perform Tenant's obligations under this Lease until such Leasehold Mortgagee takes possession of the Property or any part thereof or acquires Tenant's rights by foreclosure, assignment in lieu of foreclosure, or otherwise, subject, however, to the Leasehold Mortgagee's right hereunder to cure any defaults of Tenant under the Lease.
- h. **Estoppel Certificates.** At reasonable intervals, the Leasehold Mortgagee shall have the right to obtain estoppel certificates from Landlord stating whether the Lease is in full force and effect, whether the Rent and other charges have been duly and fully paid in accordance with the terms of the Lease, whether Tenant is in default under any of the terms, covenants, or conditions contained in the Lease, or whether any event has occurred which would, with the passage of time or giving of notice or both, constitute a default under any of the terms, covenants or conditions contained in the Lease, and other matters reasonably requested by the Leasehold Mortgagee.
- i. **No Merger.** If this Lease and the fee estate in the Property are ever commonly held, then they shall remain separate and distinct estates and shall not merge without consent by all Leasehold Mortgagees.
- j. **Notices.** In the event that Leasehold Mortgagee issues any demand for payment, default notice, or other document under which, if Tenant does not perform, there would be a right to terminate this Lease or take possession of the Premises, Leasehold Mortgagee shall give a copy of such notices to Landlord concurrently.
- k. **Amendments.** Upon Tenant's request, Landlord will enter into such amendments or modifications of this Lease as may be reasonably required by Tenant's lender in order for Tenant to obtain a Leasehold Mortgage, so long as such changes do not deprive Landlord of the substantial benefit hereof or reduce the sums due to Landlord hereunder or change the permitted uses of the Premises. Landlord will not unreasonably withhold, delay, or condition such an amendment.
- l. **Permitted Period for Restoration of Improvements.** There shall be no termination of the Lease as against the rights of any Leasehold Mortgagee as a result of damage or destruction of the Improvements (as defined in the Lease) so long as the Rent is paid on a current basis and all other obligations under the Lease are timely performed, and the

Tenant and/or Leasehold Mortgagee is diligently pursuing restoration of the Improvements.

- m. **Insurance**. A standard mortgagee clause naming the Leasehold Mortgagee as an insured may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant pursuant to the provisions of this Lease.