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**GUARANTY AGREEMENT**

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**Dated as of August 1, 2016**

**Delivered: August 26, 2016**

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**By**

**SOUTH TEXAS EDUCATIONAL TECHNOLOGIES, INC.**

**in favor of**

**REGIONS BANK**

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**This Guaranty Agreement was prepared by David B. Ringelstein II, Esq. of Balch & Bingham LLP, 1901 6<sup>th</sup> Avenue North, Suite 1500, Birmingham, Alabama 35203-4642**

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## **GUARANTY AGREEMENT**

THIS **GUARANTY AGREEMENT** (this "Guaranty Agreement") is executed as of August 1, 2016 and delivered August 26, 2016, by **SOUTH TEXAS EDUCATIONAL TECHNOLOGIES, INC.**, a nonprofit corporation under the laws of the State of Texas (the "Borrower"), and **REGIONS BANK**, an Alabama corporation (the "Lender").

### **Recitals**

Pursuant to and for the purposes of financing educational facilities as authorized in Chapter 53 of the Texas Education Code (the "Enabling Law"), the Lender, Crawford Higher Education Finance Authority, a non-member, non-stock, public education facilities finance corporation of the City of Crawford, Texas organized under the laws of the State of Texas (the "Issuer"), and the Borrower have entered into that certain Financing and Loan Agreement dated as of August 1, 2016 (the "Financing Agreement") pursuant to which the Issuer has issued its \$1,745,000 principal amount Special Project Revenue Note (South Texas Educational Technologies, Inc. Series 2016) dated the date of delivery (the "Obligation"). The Lender has advanced the proceeds of the Obligation to the Issuer for the benefit of the Borrower to refinance the property and interests in property more particularly described in the Financing Agreement as the Project (the "Project"), for use by the Borrower.

In consideration of, and in satisfaction of certain conditions of the Lender precedent to, the delivery of the Financing Agreement by the Lender and the advance of funds thereunder to the Issuer for the benefit of the Borrower, the Borrower and the Lender have entered into this Guaranty Agreement simultaneously with the delivery of the Financing Agreement intending to be legally bound hereby.

In addition to the Obligation, the Lender shall also simultaneously provide a taxable credit facility to Borrower pursuant to that certain Credit Agreement dated as of August 26, 2016 (the "Taxable Loan Agreement"), and in connection therewith the Borrower shall execute and deliver in favor of the Lender a [\$150,000] Taxable Promissory Note, Series 2016-B (the "Taxable Promissory Note"), to memorialize the indebtedness created thereby and that certain [\$150,000] maximum principal amount MTI Promissory Note, Series 2016-B, executed by Borrower in favor of Regions Bank, in its capacity as trustee under the Master Trust Indenture (the "Taxable MTI Note").

### **Agreement**

NOW THEREFORE, in consideration of the foregoing Recitals and to induce the Lender to enter into the Financing Agreement and to acquire the Obligation, the Borrower and the Lender hereby covenant and agree as follows:

## ARTICLE I

### Definitions

#### SECTION 1.01 Definitions.

For all purposes of this Guaranty Agreement:

(1) Capitalized terms used herein without definition shall have the meaning assigned to them in the Recitals hereto or in the Financing Agreement.

(2) Singular terms shall include the plural as well as the singular, and vice versa.

(3) All references in this instrument to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(4) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Guaranty Agreement as a whole and not to any particular Article, Section or other subdivision.

(5) The following terms shall have the following meanings:

**Access Laws** shall mean and include the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 (if applicable), all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

**Act of Insolvency** shall mean, with respect to any Person, the appointment of a receiver, liquidator or trustee of such Person or any of its Property or assets; or a general assignment by such Person for the benefit of the creditors thereof; or the commencement of proceedings by or against such Person under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or any jurisdiction, now or hereafter in effect.

**Adjusted Revenues** shall have the meaning ascribed to it in the Master Trust Indenture.

**Applicable Law** means all applicable provisions of all constitutions, statutes, rules, regulations and all binding orders, judgments and decrees of any Governmental Authority.

**Borrower Obligations** shall have the meaning assigned in Section 2.01 hereof.

**Capitalized Lease** shall mean, as to any Person, any lease of property by such Person as lessee that would be capitalized on a balance sheet of such Person prepared in conformity with GAAP.

**Capitalized Lease Obligation** shall mean, as to any Person, the capitalized amount of the obligations of such Person under all Capitalized Leases.

**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Contingent Obligation** shall mean, as to any Person, any contingent obligation calculated in conformity with GAAP, and in any event shall include (without duplication) all indebtedness, obligations or other liabilities of such Person guaranteeing or in effect guaranteeing the payment or performance of any indebtedness, obligation or other liability, whether or not contingent (collectively, the “primary obligations”), of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any indebtedness, obligation or other liability of such Person, (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (2) to advance or supply funds (a) for the purchase or payment of any such primary obligation or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency

of the primary obligor, (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (4) otherwise to assure or hold harmless the owner of such primary obligation against loss with respect thereto.

**Debt** shall mean, as to any Person, all items that in conformity with GAAP would be shown on the balance sheet of such Person as a liability and in any event shall include (without duplication) (1) indebtedness for borrowed money or for notes, debentures or other debt securities, (2) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (3) current liabilities in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (4) reimbursement obligations in respect of letters of credit issued for the account of such Person (including any such obligations in respect of any drafts drawn thereunder), (5) liabilities for all or any part of the deferred purchase price of property or services, (6) liabilities secured by any Lien on any Property owned or held by such Person regardless of whether the indebtedness secured thereby shall have been assumed by or is a primary liability of such Person, (7) Capitalized Lease Obligations, (8) Contingent Obligations, and (9) following termination of any interest rate swap, or hedge, agreement, any amounts owed as a termination penalty which remain unpaid; provided, however, that “Debt” shall not include (i) trade payables and similar unsecured current obligations incurred in the ordinary course of business, or (ii) deferred compensation payables.

**Default** shall mean an event or condition the occurrence of which would, with or without the lapse of time or the giving of notice or both, be an Event of Default.

**EBITDAR** refers to the financial measurement of the Borrower’s earnings without regard to Interest Expense, Taxes, depreciation, amortization, or rent costs.

**Environmental Laws** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Asset Conservation, Bank Liability, and Deposit Insurance Act of 1996, 42 U.S.C. §9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U. S. C. §9601 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11001 et seq.; the Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq.; the National Environmental Policy Act of 1975, 42 U.S.C. §4321; the Rivers and Harbours Act of 1899, 33 U.S.C. §401 et seq.; the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §651 et seq.; and the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) et seq.; and all rules, regulations and guidance promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, those relating to (i) releases, discharges, emissions or disposals to air, water, land or groundwater, (ii) to the use, handling or disposal of polychlorinated biphenyls (PCB’s), asbestos or urea formaldehyde, (iii) to the treatment, storage, disposal or management of Hazardous Substances (including, without limitation, petroleum, crude oil or any fraction thereof), and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Property of the Borrower or the adjacent or surrounding property, (iv) to the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances, and (v) to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

**Event of Default** shall mean an event as defined in Section 6.01.

**Financing Agreement** shall mean the Financing and Loan Agreement of even date herewith between the Issuer, the Lender and the Borrower, including any amendments or supplements to such instrument from time to time entered into pursuant to the applicable provisions thereof.

**Financing Documents** shall mean collectively the following documents as any of the same may be amended, supplemented or restated:

- (1) the Financing Agreement;

- (2) the Obligation;
- (3) this Guaranty Agreement;
- (4) the Mortgage;
- (5) the Note;
- (6) the Taxable Loan Agreement;
- (7) the Taxable Promissory Note; and
- (8) the Taxable MTI Note.

**Financing Participants** shall mean the parties to the Financing Documents.

**Fiscal Year** shall mean the twelve (12) month period ending on the last day of August of each year of the Borrower.

**GAAP** shall mean generally accepted principles of accounting in effect from time to time in the United States applied in a manner consistent with those used in preparing such financial statements as have theretofore been furnished to the Lender by the Borrower.

**Governmental Authority** shall mean any federal, state, county, municipal, or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

**Guarantee** shall mean any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for the purpose of assuring in any other manner the obligee of such indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

**Guaranty Agreement** shall mean this Agreement.

**Hazardous Substances** shall mean and include any and all hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants (including without limitation, petroleum and polychlorinated biphenyls) and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans.

**Interest Expense** shall mean, for any period, the aggregate interest expense and amortization of deferred loan costs of the Borrower for such period (calculated without regard to any limitations on the payment thereof), imputed interest on Capitalized Leases, commissions, discounts and other fees and charges owed with respect to letters of credit and unused commitments and net costs under interest rate protection agreements, all as determined in conformity with GAAP.

**Investment** shall mean the making of any loan, advance, extension of credit or capital contribution to, or the acquisition of any stock, bonds, notes, debentures or other obligations or securities of, or the acquisition of any other interest in or the making of any other investment in, any Person.

**Issuer** shall mean the Crawford Education Finance Authority, a non-member, non-stock, public cultural education facilities finance corporation existing under the laws of the State of Texas, and its successors and assigns.

**Lien** shall mean, as to any asset, (1) any lien, charge, claim, mortgage, security interest, pledge, hypothecation or other encumbrance of any kind with respect to such asset, (2) any interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease or other title retention agreement relating to such asset, (3) any reservation, exception, encroachment, easement, right-of-way, covenant, condition, restriction, lease or other title exception affecting such asset, or (4) any assignment, deposit, preference, priority or other security agreement

or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable law of any jurisdiction).

**Master Trust Indenture** shall refer to that certain Amended and Restated Master Trust Indenture and Security Agreement dated as of August 26, 2016, between the Borrower and Regions Bank, as trustee, amending and restating that certain Master Trust Indenture and Security Agreement by and between the Borrower and Wells Fargo Bank, National Association, as trustee, dated as of December 22, 2011.

**Material Adverse Effect** shall mean any act or circumstance or event which (i) causes an Event of Default or Default, (ii) otherwise might be material and adverse to the financial condition or business operations of the Borrower, or (iii) may adversely affect the validity or enforceability of any of the Financing Documents.

**Mortgage** shall mean that certain Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing of even date herewith, executed by the Borrower in favor of the Lender.

**Note** refers to that certain \$1,745,000 maximum principal amount MTI Promissory Note, Series 2016-A, executed by Issuer in favor of Regions Bank, in its capacity as trustee under the Master Trust Indenture.

**Obligation** shall mean the Special Project Revenue Note (South Texas Educational Technologies Project Series 2016-A) of the Issuer in the maximum principal amount of \$1,745,000 executed and delivered pursuant to the Financing Agreement.

**Obligor** shall mean collectively the Borrower and any other Person at any time liable for payment in whole or in part of the Borrower Obligations and the respective successors and assigns thereof.

**Outstanding Parity Obligations** shall collectively refer to that certain Taxable Education Revenue Bond, Series 2014, issued by the Texas Public Finance Authority Charter School Finance Corporation (South Texas Educational Technologies, Inc. Qualified School Construction Bond – Direct Pay Project) dated December 30, 2014, issued in the original principal amount of \$4,600,000, and that certain Promissory Note, Series 2015-A, dated December 18, 2015, issued by the Borrower in favor of Lender, issued in the original principal amount of \$293,250.

**Person** shall mean and include an individual, a partnership, a joint venture, a corporation, a limited liability company or partnership, an association, a trust, an unincorporated organization and a government or any department, agency or political subdivision thereof.

**Project** shall have the meaning assigned in the Financing Agreement.

**Property** shall mean any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**Remedial Work** shall mean investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind reasonably necessary or desirable under an applicable Environmental Law.

**Series 2011 Obligations** refers to that certain San Juan Higher Education Finance Authority (Horizon Montessori Schools) Revenue Bonds, Series 2011, issued by the Issuer in the original principal amount of \$2,500,000, and currently outstanding in the principal amount of \$1,745,000.

**State** shall mean the State of Texas.

**Taxes** shall mean such federal and state taxes as shall be imposed on the Borrower and included in the determination of EBITDAR for purposes of this Agreement.

**Tribunal** shall mean any state, commonwealth, federal, foreign, district, territorial, or other court or governmental department, board, bureau, agency or instrumentality having jurisdiction over Borrower.

## ARTICLE II

### **Borrower Obligations**

#### **SECTION 2.01 Promise to Pay Borrower Obligations.**

(a) The Borrower hereby absolutely and unconditionally promises the punctual payment and performance when due, in lawful money of the United States of America, of all of the following (collectively the “Borrower Obligations”) with full recourse to the Borrower and without regard to, and without limitation by reason of, provisions of Article IV of the Financing Agreement with respect to the nonrecourse liability of the Issuer under the Financing Documents and the exemption of the State from liability under the Financing Documents:

(1) all Financing Payments becoming due and payable under the Financing Agreement in accordance with the terms thereof and all payments becoming due and payable under any of the Financing Documents;

(2) all payments of principal of or interest on the Note, Obligation, Taxable Promissory Note, and Taxable MTI Note when and as the same become due and payable;

(3) all late charges and all interest on late payments becoming due and payable under the Financing Agreement or any Financing Document(s) in accordance with the terms thereof;

(4) all amounts becoming due and payable under the Financing Agreement or any Financing Document(s) in accordance with the terms thereof upon the occurrence and continuance of an Event of Default;

(5) all other obligations of the Borrower and Issuer under the Financing Documents and all other amounts payable to the Lender under the Financing Documents;

(6) all other indebtedness, obligations and liabilities of the Borrower to the Lender or Regions Equipment Finance Corporation of every kind and description whatsoever, arising directly between the Borrower and the Lender or Regions Equipment Finance Corporation or acquired outright, as a participation or as collateral security from another by the Lender or Regions Equipment Finance Corporation, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same;

(7) all renewals and extensions of any or all the obligations of the Issuer or the Borrower described in paragraphs (1) through (6) above, whether or not any renewal or extension agreement is executed in connection therewith.

(b) The payment obligations of the Borrower described in this Section are absolute and irrevocable promises of payment and are in no way conditioned or contingent upon any attempt to collect from any other Person, or to realize upon any Property subject to the Lien of the Financing Documents, or upon any other direct or indirect security for the Borrower Obligations, or resort to any other remedies.

(c) Each default in payment of any amount of the Borrower Obligations shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

#### **SECTION 2.02 Character of Borrower Obligations Hereunder.**

(a) Upon the purchase by the Lender of the Obligation as described in the Financing Agreement, all obligations of the Borrower under this Guaranty Agreement and the Financing Agreement are unconditional, primary, absolute and irrevocable under any and all circumstances. Without limiting the generality of the foregoing,

to the fullest extent permitted under applicable law, the obligations of the Borrower hereunder shall not be subject to or impaired by:

(i) any inability or failure on the part of any Person (other than Lender) to perform or comply with the Financing Documents;

(ii) any invalidity or irregularity in any statutory or other proceedings relating to the formation or existence of any of the Financing Participants, or to the execution and delivery of any Financing Document;

(iii) to the extent permitted by applicable law, any invalidity or unenforceability of, or any impairment, modification or release of liability of any party under, or any impossibility, impracticability, illegality or frustration of performance by any party of, any of the Financing Documents, for any reason whatsoever, including, without limitation, any decision by any court invalidating or otherwise affecting the obligations of any party under or in connection with any of the Financing Documents;

(iv) any inability or failure or default on the part of any of the Financing Participants to perform or comply with any agreement, term or provision of the Financing Documents;

(v) any invalidity or unenforceability of, or any impairment, modification or release of liability of the Borrower under, or any impossibility, impracticability, illegality or frustration of performance by the Borrower of, this Guaranty Agreement;

(vi) the voluntary or involuntary liquidation, dissolution, merger, consolidation, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of debt of, or other similar proceedings affecting, any of the Financing Participants (other than Lender);

(vii) any waiver, consent, extension, indulgence or other action or inaction in respect of any Financing Document, including any modification, amendment or supplement to any of the foregoing, the renewal or extension of the Financing Agreement, the release of any Property subject to the Lien of the Financing Documents, or any other similar act;

(viii) any right of setoff, counterclaim or defense, or any act, omission or breach on the part of the Borrower, or any of the other Financing Participants, as against any Financing Participant or other Person;

(ix) any claim whatsoever against the Borrower or any of the other Financing Participants;

(x) any defect in the title, compliance with specifications, value, condition, design, operation, merchantability, quality, durability or suitability of, consequences of use or misuse of, or unfitness for use of, the Project or any part thereof, any abandonment, destruction, noncompletion, requisition, condemnation, foreclosure of or damage to the Project or any part thereof, or any event of force majeure relating to the Project or any part thereof;

(xi) any breach of any representation or warranty relating to the Financing Documents or the Project (except for a breach by the Lender);

(xii) any release, extinguishment or satisfaction of the Borrower's obligations to make payments of Borrower Obligations until there shall have been paid to the Lender in lawful currency of the United States an amount sufficient to pay all Borrower Obligations (including interest on overdue amounts of Borrower Obligations including, to the extent permitted by applicable law, interest) that would have been due and owing to the Lender by the Borrower had the Borrower Obligations not been so released, extinguished or satisfied;



(xiii) the failure to give notice to the Borrower of the occurrence of any default or event of default under any of the Financing Documents;

(xiv) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of any of the other Financing Participants under the Financing Documents;

(xv) any assignment, pledge or mortgage of all or any part of the interest of any of the Financing Participants in the Project;

(xvi) any waiver of the payment, performance or observance by any of the Financing Participants of any obligation, agreement or covenant of any of them contained in the Financing Documents;

(xvii) the extension of the time for payment of any amount of the Borrower Obligations or any part thereof or of the time for performance of any other obligations, agreements or covenants of any of the Financing Participants under the Financing Documents;

(xviii) the modification or amendment (whether material or otherwise) of any obligation, agreement or covenant contained in the Financing Documents;

(xix) any failure, omission, or delay on the part of any of the Financing Participants to enforce, assert or exercise any right, power or remedy conferred upon any of them by the Financing Documents;

(xx) the release or discharge of any one or more of the Financing Participants by operation of law, to the extent that such release or discharge may be lawfully avoided, from the performance or observance of any agreement or covenant contained in the Financing Documents;

(xxi) the invalidity or unenforceability of the Financing Documents or of any provision of such instruments; or

(xxii) any other matter that might otherwise be raised in avoidance of, or in defense against, an action to enforce the obligations of the Borrower under this Guaranty Agreement.

(b) The Borrower acknowledges that this Guaranty Agreement is executed for the benefit of the Lender and that the Financing Documents will be executed and delivered in reliance on this Guaranty Agreement.

### **ARTICLE III**

#### **General Terms Regarding Borrower Obligations and Security**

##### **SECTION 3.01 Payments.**

(a) All payments by the Borrower to the Lender hereunder and under the Financing Agreement shall be made in lawful currency of the United States of America and in immediately available funds to the Lender in the manner provided in Section 8.02 of the Financing Agreement and this Guaranty Agreement.

(b) The Borrower will pay interest (separate and apart from any late fees set forth in the Financing Agreement and Taxable Loan Agreement) on any amounts of the Borrower Obligations which shall not have been paid when due at a rate which is the lesser of (i) a variable per annum rate of interest equal to the Prime Rate plus 3%, or (ii) the highest non-usurious rate of interest permitted by applicable law, upon demand therefor by Lender.

### **SECTION 3.02 Waivers.**

(a) To the full extent permitted by law, the Borrower hereby waives all of the following and all defenses, counterclaims, or offsets which the Borrower may have by reason thereof: (1) notice of acceptance hereof, notice of any action taken or omitted in reliance hereon, notice of any defaults by the Borrower in the payment of any amounts, and notice of the creation, renewal, or accrual of any liability of the Borrower, (2) any presentment, demand, notice or protest of any kind, (3) any right (i) to require the Lender to forthwith bring suit against any of the other Financing Participants, and (ii) to require that the Lender obtain any judgment against any of the other Financing Participants in connection with the enforcement of any rights against the Borrower hereunder, and (4) any other act or thing (including without limitation alteration of the Financing Documents or debt evidenced thereby or security therefor), or omission or delay to do any other act or thing which may, by operation of law or otherwise, in any manner or to any extent vary the risk of the Borrower or which might otherwise operate as a discharge of the Borrower.

(b) To the full extent permitted by law, the Borrower hereby waives, as to the enforcement of this Guaranty Agreement, (1) all rights of exemption that it may have under the constitution and laws of any state as to any levy on and sale of property and (2) presentation and demand for payment (or protest of nonpayment) of Borrower Obligations or any part thereof.

### **SECTION 3.03 Termination; Reinstatement.**

(a) This Guaranty Agreement shall remain in full force and effect without reference to future changes in conditions, including, to the extent permitted by applicable law, changes in law, until the Lender shall have been indefeasibly paid in full any and all sums due under the terms and provisions of the Borrower Obligations and the Financing Documents, and until such sums are not subject to rescission or repayment upon any Act of Insolvency affecting the Borrower, the Issuer, or any of the other Financing Participants (excluding the Lender).

(b) In the event any payment on the Borrower Obligations (whether such payment is remitted by the Issuer, the Borrower, or any other person, from realization on collateral, through setoff or otherwise) must be refunded, paid over or otherwise released by the Lender as a result of such payment being (1) a preference or fraudulent transfer under the Bankruptcy Code of 1978, as amended, or other state or federal law or (2) disallowed as a permanent and irrevocable payment on the Borrower Obligations for any other reason, then in each such event this Guaranty Agreement shall thereupon, ipso facto, be reinstated and revived to the full extent of such refunded, paid over or released payment.

### **SECTION 3.04 Note and Taxable Promissory Note as Parity Obligations.**

(a) As security for repayment of the Note, the Obligation, the Taxable Promissory Note, and Taxable MTI Note and the performance of the Borrower's other obligations under this Guaranty Agreement, the Financing Agreement, and the other Financing Documents, the Borrower hereby acknowledges that the Note and Taxable MTI Note are each being issued as additional parity obligations (referred to as "Direct Debt Obligations") pursuant to Article IV of the Master Trust Indenture and hereby pledges, sets over, assigns and grants a security interest in and to all of the assets and Properties of the Borrower pledged pursuant to the terms of the Master Trust Indenture in favor of said Note and Taxable MTI Note, and any additional parity obligations hereafter issued pursuant to Article IV of the Master Trust Indenture.

(b) The Borrower and the Lender acknowledge that pursuant to the Master Trust Indenture, the Borrower has heretofore pledged and granted a lien on and security interest in all Adjusted Revenues as security for the Outstanding Parity Obligations, and that the Note and Taxable MTI Note will be issued (pursuant to Article IV of the Master Trust Indenture) as an additional parity obligations payable from said Adjusted Revenues on a *para passu* basis with the and any additional parity obligations hereafter issued pursuant to Article IV of the Master Trust Indenture.

### **SECTION 3.05 Conditions Precedent to Closing.**

The obligation of the Lender to purchase the Obligation is subject to the satisfaction by the Borrower of each of the conditions precedent listed on *Exhibit 3.05*.

## ARTICLE IV

### **General Representations and Warranties**

The Borrower represents and warrants to the Lender as follows:

#### **SECTION 4.01 Organization, Corporate Powers.**

(1) The Borrower is duly organized and in good standing as a nonprofit corporation under the laws of the State and is not in default under any of the provisions contained in its articles of incorporation, as amended, or bylaws or in the laws of the State.

(2) The Borrower has the corporate power and authority to own its properties, carry on the business in which it is presently engaged, and consummate the transactions contemplated by the Financing Documents to which it is a party.

(3) The Borrower intends to use the Project in such a manner that it will comply with the Enabling Law.

(4) The Financing Documents are necessary to promote and further the financial and economic interests of the Borrower and the assumption by the Borrower of its obligations hereunder will result in direct financial benefits to the Borrower.

(5) (a) The Borrower (i) has been determined to be and is exempt from Federal income taxes under Section 501(a) of the Code by virtue of being an organization described in Section 501 (c)(3) of the Code and is not a “private foundation,” as such term is defined under Section 509(a) of the Code, (ii) has received a determination letter (the “Determination Letter”) from the Internal Revenue Service (the “IRS”) to that effect, (iii) has done nothing to impair its status as an exempt organization and (iv) continues to meet the requirements of the Code necessary not to be a “private foundation” under Section 509(a) of the Code.

(b) The Borrower has not operated in a manner materially different from the purposes, activities and methods of operation that formed the basis for the Determination Letter that the Borrower is an organization described in Section 501(c)(3) of the Code. The Borrower has not diverted a substantial part of its income or assets for purposes other than those for which the Borrower is organized and operated, as described in Section 4.01(5)(a).

(c) As of the date hereof, the Borrower has not received any notice from the Internal Revenue Service to the effect that (i) it is actively considering a modification or revocation of the Borrower’s tax-exempt status under Section 501(c)(3) of the Code or (ii) that the Internal Revenue Service has determined to audit the Borrower or its activities.

(d) The Borrower has timely and properly filed with the Internal Revenue Service all annual reports, tax returns and other matters required to be filed by the Borrower since its date of incorporation, such reports, returns and other matters are accurate and complete, and the Borrower has paid or has caused to be paid all taxes as shown on said returns or on any assessment received by the Borrower to the extent that such taxes have become due.

#### **SECTION 4.02 Authorization.**

The execution, delivery and performance of those Financing Documents to which the Borrower is a party (a) have been duly authorized by all requisite corporate action (including any necessary action by the board of directors or members of the Borrower), and (b) will not violate any provision of law, any order of any court or other agency of government, the documents of organization of the Borrower or any indenture, agreement or other instrument to which the Borrower is a party (including without limitation the Master Trust Indenture), or by which the Borrower or any of the Properties or assets of the Borrower are bound, or result in a breach of or constitute (with due notice or lapse of time or both) a default under, any such indenture, agreement or other instrument, or result in

the creation or imposition of any Lien whatsoever upon any of the Properties of the Borrower, except as contemplated by the Financing Agreement and this Guaranty Agreement.

**SECTION 4.03 Financial Condition.**

The Borrower has heretofore furnished to the Lender such financial information and statements as requested thereby. Such financial statements were prepared in conformity with GAAP consistently applied throughout the periods involved, are in accordance with the books and records of the Borrower, are correct and complete and present fairly the financial condition of the Borrower as of the date of such balance sheet and the results of operations for the period covered by such statements of income and changes in financial position and, since the date of such financial statements, no material adverse change in the financial condition, business or operations of the Borrower has occurred. There is no liability, direct or contingent, of the Borrower which is material in amount and which is not reflected in the above-described financial statements and on a customary title insurance policy.

**SECTION 4.04 Title to Properties.**

(a) The Borrower has good and marketable title to all the Properties reflected on the balance sheet referred to in Section 4.03 hereof except for such Properties as have been disposed of since the date of said balance sheet as no longer used or useful in the conduct of the business of the Borrower or as have been disposed of in the ordinary course of the business thereof.

(b) All such Properties are free and clear of Liens except as otherwise permitted or required by the provisions hereof, as shown on said financial statements.

**SECTION 4.05 Litigation; Defaults to any Tribunal.**

(a) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Borrower) pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower, at law or in equity or by or before any Tribunal which involve any of the transactions contemplated in the Financing Documents or the possibility of any judgment or liability that may result in any Material Adverse Effect.

(b) The Borrower is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any Tribunal.

**SECTION 4.06 Agreements; Restrictions in Articles of Incorporation or Bylaws.**

(a) The Borrower is not a party to any agreement or instrument, or subject to any restrictions in its articles of incorporation or bylaws or other corporate restriction, materially and adversely affecting the business, properties or assets, operations or condition, financial or otherwise, of the Borrower.

(b) The Borrower is not a party to any contract or agreement which requires consent of any creditor of the Borrower or other party thereto to the right or ability of the Borrower to incur debt or guarantee indebtedness, including the obligations of the Borrower under the Financing Documents.

(c) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Borrower is a party, which default would have a Material Adverse Effect.

**SECTION 4.07 Full Disclosure.**

No written statement furnished by the Borrower to the Lender contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which the Borrower has not disclosed to the Lender in writing which has a Material Adverse Effect or, so far as the Borrower can now foresee, will have a Material Adverse Effect.

#### **SECTION 4.08 Securities and Banking Laws and Regulations.**

(a) The use of the proceeds of the Obligation shall not directly or indirectly violate or result in a violation of the Securities Act of 1933 or the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including without limitation Regulations U, T or X of the Board of Governors of the Federal Reserve System. The Borrower is not engaged in the business of extending credit for the purpose of the purchasing or carrying "margin stock" within the meaning of those regulations. No part of the proceeds of the Obligation shall be used to purchase or carry any margin stock or to extend credit to others for such purpose.

(b) The Borrower is not an investment company within the meaning of the Investment Company Act of 1940, as amended, nor is it, directly or indirectly, controlled by or acting on behalf of any Person which is an investment company within the meaning of that Act.

#### **SECTION 4.09 Compliance with Laws.**

The Borrower is not in violation of any statute, rule or regulation of any Governmental Authority (including, without limitation, any statute, rule or regulation relating to employment practices or to environmental, occupational and health standards and controls) the violation of which would have a Material Adverse Effect. Borrower has obtained all licenses, permits, franchises, and other governmental authorizations necessary for the ownership of its properties and the conduct of its business. The Borrower is current with all reports and documents required to be filed with any Governmental Authority.

#### **SECTION 4.10 Governmental Consent.**

No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the Borrower is required in connection with the execution and delivery of the Financing Documents.

#### **SECTION 4.11 ERISA.**

To the best knowledge of the Borrower, (a) the execution and delivery of the Financing Documents as contemplated hereby will not involve any prohibited transaction within the meaning of ERISA or Section 4975 of the Internal Revenue Code, as amended; (b) based upon ERISA and the regulations and published interpretations thereunder, the Borrower is in compliance in all material respects with the applicable provisions of ERISA; and (c) no "Reportable Event" as defined in Section 4043(b) of Title IV of ERISA, has occurred with respect to any plan maintained by the Borrower.

#### **SECTION 4.12 Compliance With Legislation Regulating Environmental Quality.**

(a) To the best knowledge of the Borrower, all properties owned by the Borrower have been maintained in compliance in all material respects with all Environmental Laws.

(b) The Borrower has not received any written notification from any Person with respect to existing violations of any Environmental Laws.

(c) To the best knowledge of the Borrower, there has not been, at any location owned or used by the Borrower, any "Release" of any "Hazardous Substance," in each case as defined in the Comprehensive Environmental Response of Compensation and Liability Act (42 U.S.C. § 6901, et seq.) ("CERCLA") (without giving effect to the exclusion of any petroleum products from the definition of Hazardous Substance).

(d) To the best knowledge of the Borrower, the Borrower has not sent or arranged for the transportation or disposal of Hazardous Substances or wastes to a site which, pursuant to CERCLA or any similar state law (i) has been placed or is proposed (by the Environmental Protection Agency or relevant state authority) to be placed, on the "National Priorities List" of hazardous waste sites or its state equivalent, or (ii) is subject to a claim, an administrative order or other request to take "removal" or "remedial" action (in each case as defined in CERCLA) by any person.

#### **SECTION 4.13 Solvency.**

The Borrower is not, and will not be upon the delivery of the Financing Documents, insolvent in that the sum of the Debt of the Borrower is not greater than all of the Property of the Borrower at a fair valuation, and no (a) proceedings or action for the enforcement of creditors' rights against the Borrower or (b) Act of Insolvency with respect to the Borrower, are pending or have ever been taken under any applicable state or federal law or rule of law.

#### **SECTION 4.14 Adequate Assets: Franchises.**

The Borrower possesses adequate assets, franchises, licenses, patents, patent applications, copyrights, trademarks, trademark applications, and trade names, as may be required to continue to conduct its business as heretofore conducted by it.

### **ARTICLE V**

#### **General Covenants**

The Borrower covenants and agrees that from the date hereof and until payment in full of the Borrower Obligations, unless the Lender shall otherwise consent in writing:

#### **SECTION 5.01 Maintenance of Legal Existence and Properties.**

The Borrower will

(a) except as provided herein, do or cause to be done all things necessary to preserve and keep in full force and effect the legal existence of the Borrower as (1) a nonprofit corporation under the laws of the State, and (2) an organization described in Section 501(c)(3) of the Code and exempt from federal income taxation under Section 501(a) of the Code;

(b) comply with all Applicable Laws;

(c) qualify and remain qualified to do business in each jurisdiction in which such qualification is necessary in view of the Borrower's business or operations;

(d) at all times maintain, preserve and protect all franchises, rights and trade names, including, without limitation, the Borrower's authorization to operate charter schools, and preserve all of the Property of the Borrower used or useful in the conduct of the business of the Borrower and keep the same in good repair, working order and condition, and from time to time make, or cause to be made, all needful and proper repairs, renewals and replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times;

(e) promptly pay or otherwise satisfy and discharge all obligations, indebtedness, taxes, governmental charges, demands and claims as and when the same become due and payable, other than any thereof whose validity, amount or collectibility is being contested in good faith by appropriate proceedings;

(f) at all times comply with all terms, covenants and provisions contained in any Liens at any time existing upon its Properties or any part thereof securing any indebtedness incurred or assumed by the Borrower.

#### **SECTION 5.02 Financial Statements, Reports.**

The Borrower will furnish to the Lender:

(a) As soon as available but in no event more than 150 days after the end of each Fiscal Year, audited financial statements of the Borrower as of the end of such year including the balance sheet and related statements of income and changes in financial position of the Borrower for such Fiscal Year,

together with supporting schedules, all on a comparative basis with the prior Fiscal Year, in reasonable detail prepared in accordance with GAAP consistently applied throughout the periods involved, and audited by independent certified public accountants of recognized standing selected by the Borrower and satisfactory to the Lender (the form and substance of such financial statements also to be satisfactory to the Lender), showing the financial condition of the Borrower at the close of such year and the results of the operations of the Borrower during such year;

(b) With the statements submitted under paragraphs (a) of this Section 5.02, a certificate signed by the principal financial officer of the Borrower to the effect that no Event of Default, nor any event which, upon notice or lapse of time or both, would constitute an Event of Default, has occurred or, if any such Event of Default or event has occurred, specifying the nature and extent thereof;

(c) Within the first thirty (30) days of each Fiscal Year, an annual operating and capital budget of the Borrower for such ensuing Fiscal Year approved by the governing body of the Borrower;

(d) Promptly upon request by the Lender, copies of all other reports, management letters and other documents submitted to the Borrower by independent accountants in connection with any annual or interim audit of the books of the Borrower made by such accountants;

(e) Promptly upon receipt thereof, copies of all other reports, letters and other communications from the Texas Department of Education regarding the Borrower's charter to operate as a charter school at each of its campus locations;

(f) if requested by Lender, within 30 days after the end of each fiscal quarter, a report of the current enrollment at the Borrower's schools;

(g) As soon as practical, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower as the Lender may reasonably request.

### **SECTION 5.03 Notices.**

The Borrower shall provide to the Lender:

(a) Notice of Default. Prompt notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default or Default.

(b) ERISA. Promptly after becoming aware of the occurrence of any "reportable event", or of any "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA) in connection with any Plan or any trust created thereunder, a written notice signed by the chief executive officer or chief financial officer of the Borrower specifying the nature thereof, what action the Borrower is taking or proposes to take with respect thereto and, when known, any action proposed to be taken by any Governmental Authority with respect thereto.

(c) Litigation. Prompt written notice of all actions, suits and proceedings before any Governmental Authority, domestic or foreign, against (i) the Borrower or (ii) Property of the Borrower which, if such litigation were determined adversely, could have a Material Adverse Effect.

(d) Material Adverse Effect. Prompt written notice of any event which has or is reasonably anticipated to have a Material Adverse Effect.

(e) Claimed Default. Promptly upon receipt of any notice from, or the taking of any action by, the holder of any Debt of any Obligor with respect to a claimed default, copies of such notice or a report of such action.

#### **SECTION 5.04 Visitation.**

The Borrower shall permit, any employees, agents or other representatives of the Lender and any attorneys, accountants or other agents or representatives designated by the Lender to (a) have access to and visit and inspect any of the accounting systems, books of account, financial records and Property, of the Borrower, (b) examine and make abstracts from any such accounting systems, books and records, and (c) discuss the affairs, finances and accounts of the Borrower with the Borrower's officers, employees or agents, all at such reasonable business times as the Lender deems necessary or advisable to protect its interests.

#### **SECTION 5.05 Insurance.**

(a) The Borrower shall maintain insurance on the Property of the Borrower, its business, and with respect to itself, which insurance shall be of such type and in such amounts or in excess of such amounts as (i) are customarily carried by and insure against such risks as are customarily insured against by businesses of like size and character to the Borrower and (ii) shall be satisfactory to the Lender.

(b) There shall be furnished to the Lender an ACORD certificate or certificates of the respective insurers originally executed by the authorized agent(s) attesting the fact that the insurance required by this Section is in full force and effect and reflecting all coverages, amounts and deductibles. At least fifteen (15) days prior to the expiration of any such policy, the Borrower shall furnish the Lender evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

(c) The Borrower shall not self-insure for property damage.

#### **SECTION 5.06 Environmental Covenants.**

The Borrower will keep the Property in compliance with all Environmental Laws.

#### **SECTION 5.07 Consolidation, Merger, Sale or Conveyance.**

(a) The Borrower covenants that it will not merge or consolidate with any other corporation or sell or convey all or substantially all its assets to any Person unless:

(1) the corporation resulting from such merger or consolidation or the transferee (the "Successor") shall expressly agree in a written instrument delivered to the Lender to assume the due and punctual payment of all the Borrower Obligations and the due and punctual performance and observance of all the covenants and conditions of the Financing Agreement and this Guaranty Agreement to be performed and observed by the Borrower,

(2) immediately after such merger, consolidation, sale or conveyance no Event of Default or any condition which, after notice or lapse of time or both, would become an Event of Default, shall exist under this Guaranty Agreement and the Financing Agreement, and

(3) the Lender shall consent in writing thereto.

(b) In case of any such consolidation, merger, sale or conveyance the, Successor shall succeed to and be substituted for the Borrower, with the same effect as if it had been named herein is the Borrower.



#### **SECTION 5.08 Debt Service Coverage Ratio.**

The Borrower will maintain a Debt Service Coverage Ratio, of at least 1.10 to 1.00, to be tested in arrears annually within 60 days after the close of Borrower's Fiscal Year, commencing with the Fiscal Year that ended August 31, 2016 (or upon receipt by Borrower of its audited financial statements, if later). For purposes of this provision, the term Debt Service Coverage Ratio shall mean, the quotient of the following: (A) the Borrower's EBITDAR for the Fiscal Year, less non-recurring income; divided by (B) the sum of Interest Expense, plus current maturities of long-term Debt, plus rent and lease expense for the test period being measured.

#### **SECTION 5.09 Guaranties.**

The Borrower will not

(a) Guarantee, endorse, become surety for or otherwise in any way become or be responsible for obligations of any other Person whether by agreement to purchase the indebtedness of any other person, or agreement for the furnishing of funds to any other Person (directly or indirectly, through the purchase of goods, supplies or services or by way of stock purchase, capital contribution, working capital maintenance agreement, advance or loan) or for the purpose of paying or discharging the indebtedness of any other person, or otherwise, or

(b) Enter into or be a party to any contract for the purchase of merchandise, materials, supplies or other property if such contract provides that payment for such merchandise, materials, supplies or other property shall be made regardless of whether delivery of such merchandise, materials, supplies or other property is ever made or tendered; except for the endorsement of negotiable instruments by the Borrower in the ordinary course of business for collection.

#### **SECTION 5.10 Investments, Loans.**

The Borrower will not purchase or hold beneficially any stock, other securities or evidences of indebtedness of, or make or permit to exist any loans or advances to, or make any investment or acquire any interest whatsoever in, any other Person except that the Borrower may invest in obligations or securities now or hereafter authorized as investments under the Public Funds Investment Act, Chapter 2267, Texas Government Code.

#### **SECTION 5.11 General Negative Covenants.**

The Borrower will not

(a) engage in any business other than providing educational services and facilities and operating charter schools, or make any other material change in the manner in which the Borrower conducts its business;

(b) enter into any transaction which materially and adversely affects the Borrower's ability to repay the Borrower Obligations; or

(c) materially change the Borrower's legal structure such that the Borrower no longer qualifies to be a 501(c)(3) tax-exempt entity under the federal tax laws.

#### **SECTION 5.12 Tax Exemption.**

The Borrower shall not take any action, or omit to take any action, which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Obligation, and in the event of such action or omission will promptly, upon receiving notice thereof, take all lawful actions, based on advice of counsel, as may be possible to rescind or otherwise to negate the effect of such action or omission.

### **SECTION 5.13 Banking Relationship and Charter Compliance.**

(a) The Borrower agrees to make all scheduled payments on the Obligation and Taxable Promissory Note utilizing automatic funds withdrawal (ACH).

(b) The Borrower agrees that, prior to the issuance of the Obligation by the Issuer, the Borrower has transferred or will transfer at least 95% of its entire banking relationship to the Bank, including all depository accounts, merchant accounts, insurance, and trust accounts. The Borrower shall keep all such relationships with the Bank so long as either the Obligation or the Taxable Promissory Note remains outstanding.

(c) The Borrower agrees to maintain its charter to operate in compliance with the laws of the State and proactively manage any requests for renewals of said charter upon the purported expiration of its charter such that all request paperwork is timely submitted to the appropriate governing body in the State of Texas for Borrower's school charter to be renewed.

(d) The Borrower agrees to cooperate with and participate in annual evaluations and review by the State of Texas Financial and Accountability Systems.

(e) Upon request of the Lender, the Borrower agrees to provide Lender with copies of all reports, submissions, filings, and correspondence in connection with charter renewal or the status thereof as it pertains to any of Borrower's campuses in existence or prospective.

(f) The Borrower shall maintain authorization and accreditation as an open-enrollment charter school from the State. In the event Borrower fails to meet the TEA academic or financial accounting standards for the first occurrence, the Borrower agrees that it shall provide to the Lender within thirty (30) days of notification of such failure by the TEA a detailed written report of all action(s) taken or to be taken to address and correct such deficiency. In the event the Borrower fails to meet the TEA academic or financial accounting standards for the second consecutive time, the Borrower agrees that in the event it has not already engaged a consultant (at Borrower's expense) as may be required by the TEA, the Lender shall have the right to require the Borrower to (i) engage an independent consultant with expertise in the operation and management of the academic and financial affairs of charter schools, (ii) within sixty (60) days of the notification of such failure by the TEA, provide to the Lender, a detailed written report of such independent of all action taken or to be taken to address and correct such deficiency. The Borrower agrees that its failure to implement or to begin to implement, as applicable, all of the recommendations of the independent consultant within thirty (30) days after the receipt of the consultant's report shall result in the Lender having the right to require the outstanding principal amount of the Obligation and Taxable Promissory Note to be due and payable immediately. This provision is separate and apart from any and all other remedies available to Lender upon an Event of Default as defined herein.

### **SECTION 5.14 Further Assurances.**

The Borrower will upon request of the Lender, duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper in the opinion of the Lender or its counsel to carry out more effectively the provisions and purposes of the Financing Documents.

## ARTICLE VI

### **Events of Default and Remedies**

#### **SECTION 6.01 Events of Default.**

An “Event of Default” shall exist under this Guaranty Agreement if any of the following occurs and is continuing (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Borrower fails to observe and perform any covenant, condition or agreement on the part thereof to be observed or performed pursuant to this Guaranty Agreement (other than a covenant, condition or agreement a default in the performance or a breach of which is elsewhere in this Section specifically described); or

(b) Any warranty, representation or other statement by or on behalf of the Borrower contained in this Guaranty Agreement, or in any instrument furnished in compliance with or in reference to this Guaranty Agreement, is false or misleading in any material respect (without regard to any knowledge qualifier) and action which eliminates such falsity or misleading character is not completed for a period of thirty days after the Lender has given written notice thereof to the Borrower or the Borrower becomes aware of such false or misleading statement; or

(c) An Act of Insolvency occurs with respect to any Obligor; or

(d) Final judgment or judgments for the payment of money in excess of an aggregate of \$100,000 shall be rendered against any Obligor and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed or bonded; or

(e) Any material provision of any of the Financing Documents shall at any time for any reason cease to be the legal, valid and binding obligation of the Borrower or shall cease to be in full force and effect, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Borrower, or the Borrower shall renounce the same or deny that it has any further liability hereunder or thereunder; or

(f) The independent certified public accountant retained by the Borrower delivers an opinion on the financial statements of the Borrower which describes conditions which, in the reasonable judgment of the Lender, will have a material adverse effect on the Borrower’s ability to continue to operate as a going concern; or

(g) The Borrower shall (i) fail to make any payment or payments of any Debt (other than the Borrower Obligations) of the Borrower when due [whether by scheduled maturity (including extensions by the obligee), required prepayment, acceleration, demand or otherwise] and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, or (ii) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument, if, in either case, the effect of such failure to perform or observe is to accelerate, or to cause the acceleration or mandatory redemption of, the maturity of any Debt (other than the Borrower Obligations) of the Borrower in excess of \$50,000; or

(h) The occurrence under any of the Financing Documents of an Event of Default (as defined in any thereof) and the expiration of any applicable grace period; or

(i) The occurrence of an event of default under and as defined in any other agreement or contract under which the Borrower is at any time obligated to the Lender or to the Bank, and the expiration of any applicable grace period with respect thereto; or

(j) The Borrower shall fail to keep in full force and effect any material permit, operating charter, or approval issued by any Governmental Authority and such failure could have, in reasonable judgment of the Lender, a Material Adverse Effect; or

(k) The Borrower acts in any manner that may cause Lender to reasonably believe that such Obligor has engaged in or intends to engage in any suspicious activity as described in or contemplated under the Bank Secrecy Act, the USA Patriot Act, or any other similar or related law, whether now or hereafter in effect, or under any regulation issued pursuant to any such law, or if the name of any Obligor (or a derivation thereof) appears on a list of suspects issued to financial institutions by the Office of Foreign Assets Control, the Financial Crimes Enforcement Network, the Federal Reserve Board, or any other Governmental Authority; or

(l) The revocation or rejection of the renewal of the Borrower's charter from the Texas Department of Education to operate charter schools within the State of Texas; or

(m) The Borrower fails to have its charter renewed by the Texas Department of Education upon its expiration (said existing charter expected to be up for renewal in fiscal year 2022 or such other fiscal year stated in the Borrower's existing charter).

#### **SECTION 6.02 Remedies.**

(a) All Remedies Available. If an Event of Default exists, the Lender may exercise all remedies provided in the Financing Documents and may proceed to protect its rights by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Borrower herein contained or in aid of the exercise of any power or remedy granted to the Lender under any of the other Financing Documents. The Lender may proceed directly against the Borrower hereunder without resorting to any other remedies which it may have and without proceeding against any other security held by the Lender.

(b) Specific Enforcement of Covenants. The Borrower agrees that a breach of the covenants in this Agreement shall cause irreparable injury to the Lender, and the Lender shall have no adequate remedy at law in respect of such breach, and, as a consequence, each and every covenant contained herein shall be specifically enforceable by the Lender against the Borrower, and, to the full extent permitted by law, the Borrower hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants instituted upon an Event of Default except for a defense that no Event of Default has occurred, or that the Lender has not reasonably reached such conclusions, giving rise to the Borrower Obligations becoming due and payable prior to their stated maturities; provided, however, that the Borrower reserves the right to any and all defenses to any claims for any damages.

#### **SECTION 6.03 Rights and Remedies of Lender in the Event of Bankruptcy of Borrower.**

In case of any Act of Insolvency relative to the Borrower, the Lender (irrespective of whether there has been a default under this Guaranty Agreement or any of the other Financing Documents) shall be entitled and empowered to intervene in such proceedings, to file and prove a claim or claims for the whole amount owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Lender (including any claim for reasonable compensation to the Lender, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities reasonably incurred, and all advances made, by the Lender except as a result of its negligence or bad faith) allowed in such judicial proceedings, to collect and receive any moneys or other property payable or deliverable on any such claims, and to take such other action therein as the Lender may deem necessary or appropriate to protect its interests.

#### **SECTION 6.04 Set-off.**

Upon the occurrence and during the continuance of any Event of Default, the Lender are hereby authorized at any time and from time to time, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender or Regions Equipment Finance Corporation to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under any of the Financing Documents, irrespective of whether or not the Lender shall have made any demand therefor and although such obligations may be unmatured. The Lender agrees promptly to notify the Borrower before and after any such set-off and application (which notice shall be in writing), provided that the failure to give either of such notices shall not affect the validity of such set-off and application. The rights of the Lender and the Bank under this Section 6.04 are in addition to all other rights and remedies (including, without limitation, other rights of set-off or pursuant to any banker's lien) which the Lender or Regions Equipment Finance Corporation may have.

#### **SECTION 6.05 Agreement to Pay Attorneys' Fees.**

In the event the Borrower should default under any of the provisions of this Guaranty Agreement or any of the other Financing Documents and the Lender should employ attorneys or incur other expenses for the collection of any payments due hereunder or the enforcement of performance or observance of any agreement or covenant on the part of the Borrower herein contained, the Borrower will on demand therefor pay to the Lender the reasonable fees of such attorneys and such other reasonable expenses so incurred.

#### **SECTION 6.06 Waivers.**

(a) The Lender may waive any past default hereunder and its consequences. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Guaranty Agreement but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

(b) If any agreement contained in this Guaranty Agreement should be breached by the Borrower and thereafter waived by the Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(c) Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege under this Guaranty Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

#### **SECTION 6.07 Remedies Subject to Applicable Law.**

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Guaranty Agreement invalid or unenforceable.

#### **SECTION 6.08 Continuance of Proceedings.**

In case the Lender shall proceed to invoke any right, remedy or recourse permitted hereunder and shall thereafter elect to discontinue or abandon the same for any reason, the Lender shall have the unqualified right so to do and, in such event, the Borrower and the Lender shall be restored to their former positions with respect to the Obligation, and otherwise, and the rights, remedies, recourse and powers of the Lender hereunder shall continue as if the same had never been invoked.

### **ARTICLE VII**

#### **Provisions of General Application**

#### **SECTION 7.01 Survival of Representations, Warranties and Covenants.**

The representations, warranties and covenants of the Borrower contained in this Guaranty Agreement, and any other document, instrument and agreement referred to or contemplated by this Guaranty Agreement, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Lender or any other Person, or (ii) execution and delivery of the Financing Documents.

#### **SECTION 7.02 Enforceability.**

If any provision in this Guaranty Agreement shall be invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect and shall operate and be construed in favor of the Lender to effectuate the purposes and terms of such provisions.

#### **SECTION 7.03 Waiver of Jury Trial; Arbitration.**

(a) **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE BORROWER AND THE LENDER AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE BORROWER AND THE LENDER TO ENTER INTO THIS AGREEMENT AND THAT THE EXECUTION AND DELIVERY OF THE FINANCING DOCUMENTS BY THE BORROWER AND THE LENDER, THE PURCHASE OF THE OBLIGATION BY THE LENDER, AND THE MAKING OF THE BORROWER LOAN BY THE LENDER IS MADE IN RELIANCE UPON SUCH WAIVER. THE BORROWER AND THE LENDER EACH FURTHER WARRANT AND REPRESENT THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE BY EACH PARTY HERETO, FOLLOWING CONSULTATION WITH THEIR RESPECTIVE LEGAL COUNSEL.**

(b) The waivers made pursuant to this Section shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

(c) Subject to the provisions of the next paragraph below, any controversy, claim, dispute or disagreement arising out of, in connection with or relating to (1) the negotiation, execution, collateralization, administration, repayment, modification, extension or collection of this Guaranty Agreement, the Obligation, the Note, and/or the Financing Documents, or any of them, or (2) an alleged tort relating in any way to this Guaranty Agreement, the Obligation, the Note, or any Financing Document shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The Expedited Procedures of those

rules shall apply in any dispute where the aggregate of all claims and the aggregate of all counterclaims each is an amount less than \$500,000. Judgment upon any award rendered by the arbitrator(s) in any such arbitration may be entered in any Court having jurisdiction thereof. Any demand for arbitration under this Guaranty Agreement shall be made no later than the date when any judicial action upon the same matter would be barred by any applicable statute of limitations. The locale of any arbitration proceedings under this Guaranty Agreement shall be in Dallas, Texas, unless the Borrower and the Lender mutually agree otherwise. The Borrower and the Lender specifically acknowledge and agree that this Guaranty Agreement and the other Financing Documents evidence, and the Obligation, the Note, and the transactions provided for in the Financing Documents, constitute a "transaction involving commerce" under the Federal Arbitration Act, and the Borrower and the Lender hereby waive and relinquish any right to claim otherwise.

(d) Neither anything contained in the preceding paragraph nor the exercise of any right to arbitrate shall limit the right of any person to (1) foreclose or otherwise exercise any remedies against any personal property collateral by the exercise of any power hereunder or under applicable law; (2) exercise any self-help remedies such as setoff or repossession; or (3) obtain provisional or remedies such as an action to take possession of the Project (including without limitation, ejectment, unlawful detainer and actions to take possession under Article 2A of the UCC), replevin, injunctive relief, attachment, or appointment of a receiver from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding. This arbitration provision shall not be interpreted to require that any such remedies be stayed, abated or otherwise suspended pending any arbitration or request for arbitration. The exercise of a remedy shall not waive the right of the Borrower or the Lender to resort to arbitration.

#### **SECTION 7.04 Benefit of the Agreement.**

This Guaranty Agreement is entered into by the Borrower for the benefit of the Lender. The Borrower agrees to pay all reasonable and necessary costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Lender in enforcing or attempting to enforce this Guaranty Agreement pursuant to the provisions hereof, whether the same shall be enforced by suit or otherwise.

#### **SECTION 7.05 Notices.**

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Guaranty Agreement to be made upon, given or furnished to, or filed with, the Borrower or the Lender shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Guaranty Agreement) either (i) delivered personally to the party or, if such party is not an individual, to an officer, or other legal representative of the party to whom the same is directed (provided that any document delivered personally to the Lender must be delivered at its principal office during normal business hours) at the address specified below or (ii) mailed by first-class, registered or certified mail, postage prepaid and addressed as so specified:

If to the Borrower:	South Texas Educational Technologies, Inc. Attn: Alim Ansari or then serving Superintendent 519 S. Texas Boulevard Weslaco, Texas 78596
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If to the Lender:	Regions Bank Attn: Mr. Oscar Davis 1717 McKinney Avenue, Suite 1100 Dallas, Texas 75202
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(b) Either party may change the address for receiving any such notice or document by giving notice of the change to the other party as provided in this Section.

(c) Notices or other communications shall be deemed to have been duly given or made (1) upon personal delivery, (2) when sent by facsimile (confirmation of receipt received), (3) on the third (3rd) day after the date of mailing, or (4) on the day after the date of delivery to a nationally recognized courier service, as the case may be. Rejection, refusal to accept or inability to deliver because of a changed address of which no notice was

given shall not affect the validity of any notice or other communication given in accordance with the provisions of this Financing and Loan Agreement.

**SECTION 7.06 Reproduction of Documents.**

The Borrower hereby agrees that any Financing Document and all documents relating thereto, including, without limitation, (a) supplements, consents, waivers and modifications which may hereafter be executed, and (b) financial statements, certificates and other information previously or hereafter furnished to the Lender, may be reproduced by the Lender by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and they may destroy any original document so reproduced.

**SECTION 7.07 Reliance on Warranties, Representations and Covenants.**

All warranties, representations and covenants made by the Borrower herein or on any certificate or other instrument delivered by or on behalf of the Borrower under this Guaranty Agreement shall be considered to have been relied upon by the Lender regardless of any investigation made by it or on its behalf. All statements in any such certificate or other instrument shall constitute warranties and representations by the Borrower hereunder.

**SECTION 7.08 Successors and Assigns**

All covenants and agreements in this Guaranty Agreement by the Lender and the Borrower shall inure to the benefit of and be binding upon the respective successors and assigns thereof.

**SECTION 7.09 Entire Agreement; Counterparts.**

This Guaranty Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**SECTION 7.10 Governing Law.**

This Guaranty Agreement shall be governed by and construed in accordance with the laws of the State.

**SECTION 7.11 Effect of Headings and Table of Contents.**

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**SECTION 7.12 Costs.**

The Borrower shall promptly reimburse the Lender for any and all reasonable costs, out-of-pocket expenses and attorneys' fees which the Lender may reasonably incur in connection with (1) the preparation of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated) and the other Financing Documents, (2) the issuance of the Obligation, (3) the enforcement of the rights of the Lender in connection with this Agreement including but not limited to, the reasonable fees and disbursements of counsel to the Lender, (4) the protection or perfection of the Lender's rights and interest under the Financing Documents, including, but not limited to, the cost of filing or recording the Mortgage, financing statements, continuation statements and termination statements, (5) the exercise by or for the Lender of any of the rights or powers herein conferred upon the Lender and (6) in the prosecution or defense of any action or proceeding by or against the Lender or the Borrower, any Obligor, or any of them, concerning any matter arising out of, connected with or related to this Agreement or any of the Borrower Obligations.



### **SECTION 7.13 Indemnity.**

(a) In addition to any other indemnifications provided herein or in any of the other Financing Documents the Borrower will protect, defend, indemnify and hold harmless the Lender and the Issuer (and each officer, director, employee or agent thereof) from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Lender by reason of:

- (1) ownership of or any interest in the Project;
- (2) any accident, injury to or death of persons or loss of or damage to Project occurring in, on or about the Project or any part thereof or on the adjoining sidewalks, curbs, adjacent Project or adjacent parking areas, streets or ways;
- (3) any use, nonuse or condition in, on or about the Project or any part thereof or on adjoining sidewalks, curbs, adjacent Project or adjacent parking areas, streets or ways;
- (4) any failure on the part of the Borrower to perform or comply with any of the terms of any of the Financing Documents;
- (5) performance of any labor or services or the furnishing of any materials or other property in respect of the Project or any part thereof;
- (6) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or asbestos on, from or affecting the Project;
- (7) any personal injury (including without limitation wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or asbestos;
- (8) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or asbestos;
- (9) any violation of the Environmental Laws that are based upon or in any way related to such Hazardous Substance or of any state or federal law, rule or regulation governing asbestos, including without limitation the costs and expenses of any Remedial Work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses;
- (10) any failure of the Project to comply with any Access Laws;
- (11) any representation or warranty made in the Financing Agreement or any of the other Financing Documents being false or misleading in any material respect as of the date such representation or warranty was made.

(b) Any amounts payable to the Lender by reason of the application of this Section shall become immediately due and payable and shall bear interest at the lesser of: (i) a variable interest rate equal to 3% in excess of the Prime Rate in effect from time to time, or (ii) the maximum non-usurious rate allowed by applicable law, from the date loss or damage is sustained by the Lender until paid.

(c) The Borrower hereby agrees that the Lender and the Issuer shall not incur any liability to the Borrower, and shall be indemnified against all liabilities, in exercising or refraining from asserting, maintaining or exercising any right, privilege or power of the Lender under any of the Financing Documents if the Lender and/or the Issuer is acting in good faith and without willful misconduct or in reliance upon a written request by the Borrower.

(d) If the Lender or the Issuer shall be obligated to pay any claim, liability or loss, and if in accordance with all applicable provisions of this paragraph the Borrower shall be obligated to indemnify and hold

the Lender and the Issuer harmless against such claim, liability or loss, then, in such case, the Borrower shall have a primary obligation to pay such claim, liability or loss on behalf of the Lender or the Issuer and may not defer discharge of its indemnity obligation hereunder until the Lender or the Issuer shall have first paid such claim, liability or loss and thereby incurred actual loss.

(e) The obligations and liabilities of the Borrower under this Section shall survive the termination, satisfaction, or assignment of the Financing Documents and the exercise by the Lender of any of its rights or remedies thereunder, and shall remain in full force and effect until the commencement of an action with respect thereto shall be prohibited by law.

IN WITNESS WHEREOF, the Borrower has caused this Guaranty Agreement to be executed in its name by an officer thereof duly authorized thereunto, and the Lender has executed this Guaranty Agreement by causing its name to be hereunto subscribed by one of its duly authorized officers, all as of the day and year first above written.

**SOUTH TEXAS EDUCATIONAL  
TECHNOLOGIES, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Accepted:

**REGIONS BANK**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT 3.06

### Conditions Precedent to Closing

- (1) Financing Documents. An executed counterpart of each of the Financing Documents.
- (2) Opinion of Counsel for Borrower. (a) An opinion of counsel for the Borrower regarding the incorporation of the Borrower, execution and delivery of the Financing Documents, the enforceability of the Financing Documents, and to the effect that the Note and Taxable MTI Note each constitutes an additional parity obligation within the meaning of the Master Trust Indenture.
- (3) Organization of Borrower and Approvals. A certified copy of (i) the incorporation and organization papers of the Borrower and (ii) all corporate action taken by the Borrower approving the Financing Documents, and the consummation of the transactions contemplated thereby (including, without limitation, a certificate or proceedings setting forth the resolutions of the members of the Borrower for such purpose).
- (4) Certificate of Borrower. A certificate by the Borrower to the effect that, as of the date of the purchase of the Obligation and the making of the Borrower Loan, and after giving effect thereto: (i) no Event of Default shall have occurred and be continuing; (ii) no event shall have occurred and be continuing which, with notice or lapse of time or both, would constitute an Event of Default under this Guaranty Agreement or any of the other Financing Documents, (iii) the representations and warranties made by the Borrower in this Guaranty Agreement and the other Financing Documents shall be true on and as of such date with the same force and effect as if made on and as of such date, and (iv) any and all certifications required by the Master Trust Indenture for the Note and Taxable MTI Note to be issued as an additional parity obligations under the Master Trust Indenture.
- (5) Governmental Approvals. The Lender shall receive copies of any authorizations and other governmental approvals required for the Obligation and the Note.
- (6) Additional Evidence. Such additional legal opinions, certificates, proceedings, instruments and other documents as the Lender or its counsel may reasonably request to evidence (i) compliance by the Borrower with legal requirements, (ii) the truth and accuracy, as of the date of delivery of the purchase of the Obligation of the representations of the Borrower contained in the Financing Documents, and (iii) the due performance or satisfaction by the Borrower, at or prior to the date of the purchase of the Obligation by the Lender, of all agreements then required to be performed and all conditions then required to be satisfied by the Borrower pursuant to the Financing Documents.