

LEASE WITH OPTION TO PURCHASE ARRANGEMENT

by and between

EAST MOUNTAIN HIGH SCHOOL FOUNDATION,

a New Mexico nonprofit corporation, and

EAST MOUNTAIN,

a New Mexico public charter school

DATED AS OF \_\_\_\_\_, 2026

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## LEASE WITH OPTION TO PURCHASE ARRANGEMENT

This Lease with Option to Purchase Arrangement (“*Agreement*”) is entered into by and between East Mountain High School Foundation, a New Mexico nonprofit corporation (formerly known as East Mountain High School and Cultural Center) (the “*Foundation*”), as lessor, and East Mountain, a New Mexico public charter school (formerly known as East Mountain High School) (the “*School*”), as lessee, as of \_\_\_\_\_, 2026.

### RECITALS

THE PARTIES HERETO enter into this Lease on the basis of the following facts, understandings, and intentions:

A. The Foundation is the owner of approximately 26.0 acres of real property subject to any permitted encumbrances more particularly described on Exhibit A (the “*Land*”) on which are currently constructed approximately \_\_\_\_\_ (*current buildings*) square feet of charter school improvements including \_\_\_\_\_ (*description of current facility*) and related public school improvements for use as a high school, located at 25 La Madera Road, Sandia Park, New Mexico (the “*Existing Improvements*” and collectively with the Land, the “*Existing Property*”).

B. The Foundation was organized to support the School, and for the specific purpose of providing the School with a facility pursuant to Section 22-8B-4.2(D)(2)(b)(2) NMSA 1978 and, the property leased to the School pursuant to this Lease will meet standards required by applicable New Mexico construction codes and be in compliance with applicable adequacy standards adopted pursuant to the Public School Capital Outlay Act, Section 22-24-1, *et seq.* NMSA 1978.

C. The School is a New Mexico public charter school authorized by the Board of Education, Albuquerque Public School District No. 12 (“*APS*”), and duly organized and validly existing under the New Mexico Charter Schools Act, Section 22-8B-1 *et seq.*, NMSA 1978, as amended (the “*Act*”), and the School is authorized by Section 22-8B-4(D) and, subject to Section 22-8B-4.2 of the Act, to contract with any third party for the use of a school building and grounds.

D. The Foundation is a nonprofit corporation organized, existing, and in good standing under the laws of the State of New Mexico (the “*State*”); is duly qualified to do business in the State; and is authorized under its articles of incorporation, bylaws, action of its board of directors, and applicable law, to own and manage its properties, to conduct its affairs in the State, to lease the Property to the School, and to otherwise act in the manner contemplated herein.

E. The School is authorized to enter into “lease purchase arrangements” under the New Mexico Public School Lease Purchase Act, Section 22-26A-1, *et seq.* NMSA 1978 (the “*Lease Purchase Act*”), subject to approval by the New Mexico Public Education Department (the “*Department*”) and approval by the Public Schools Facility Lender (the “*PSFA*”) pursuant to Section 22-20-1 NMSA 1978. This Lease is intended to be a “lease purchase arrangement” within the meaning of the Lease Purchase Act.

F. The Foundation has entered into a Loan and Security Agreement, dated as of March \_\_\_\_\_, 2026 (the “**Loan Agreement**”), with Equitable Facilities Fund, Inc. a nonprofit social impact fund (the “**Lender**”) pursuant to which the Lender has loaned to the Foundation the principal amount of **Twenty-One Million, Four Hundred Thousand Dollars (\$21,400,000)**. The Landlord entered into a “Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement, Fixture Filing and Other Real Property Related Financing Statement Filing” with Centrix Title & Escrow Company, as Trustee and Lender, dated March \_\_\_\_\_, 2026 and filed of record the same date with the Bernalillo County Clerk’s Office as Document # \_\_\_\_\_ (“**Deed of Trust**”), to secure Landlord’s indebtedness under the Loan Agreement and related Promissory Note (the “**Note**”), and any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases thereof. The School is not a party to or a borrower/trustor under the Loan Agreement, Deed of Trust or the Note. Under the Deed of Trust, the Landlord has (a) mortgaged to Trustee for the benefit of Lender, the Property, and (b) granted an assignment of leases and rents between the Foundation and the School, and any subsequent lease purchase arrangements, this Agreement included, to Lender.

G. The Foundation will use the proceeds of such loan to finance the cost of (i) providing funds to make certain additional improvements to the Existing Property, including the acquisition, construction, development, renovation, furnishing and equipping of an approximately 27,302 square-foot addition that will include classrooms, 2 small classrooms and 14 medium classrooms, administrative offices, performance and assembly space, library and learning commons, and music and practice rooms, and other related and ancillary educational facilities in accordance with the Site Plans and Development Plans attached hereto as Exhibit “F” (collectively, the “**New Improvements**” and, together with the Existing Improvements, the “**Improvements**” and, together with the Existing Property, the “**Property**”).

I. The Base Rent and Additional Rent (both as hereinafter defined) payable by the School hereunder shall constitute currently appropriated expenditures of the School, and School shall for the term of this Agreement authorize and appropriate the payments required hereunder for such years. No obligation for payment hereunder shall constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the School or a mandatory charge or requirement against the School in any Fiscal Year (as hereinafter defined) beyond the Fiscal Year for which such payments have been appropriated. Lessee’s governing body has agreed that it has not formally promised or undertaken to provide as security for the debt or financial obligations of either a private nonprofit entity specifically organized under Section 22-8B-4.2(D)(2)(b)(2), NMSA 1978, or a limited liability company as defined in Section 53-19-2(I), NMSA 1978, any public education funds, or other state or federal funds, received, or to be received, from or through the State of New Mexico, relative to this Agreement.

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

K. The Foundation desires to lease the Property to the School and the School desires to lease the Property from the Foundation, pursuant to the terms and conditions and contingencies and for the purposes set forth in this Lease, subject in all respects to the liens evidenced by the Loan Agreement and all other related loan documents executed by the Landlord.

L. Upon approval and execution of this Agreement, the parties intend that the Lease Agreement between the parties entered into as of February 1, 2012 (“Prior Lease”), be terminated, replaced and superseded by this Agreement.

## AGREEMENT

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

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

(a) “**Agreement**,” means this Lease with Option to Purchase Arrangement and for all purposes herein and as to all appertaining exhibits and documents, has the same legal meaning and effect as either the term “lease purchase arrangement” or “financing agreement,” as these latter two terms are defined in Section 22-26A-3(A), NMSA 1978, whether capitalized herein or not.

(b) “**Lender**” has the meaning ascribed to it in the recitals.

(c) “**Additional Rent**” means all amounts due by the School under the terms of this Lease, except Base Rent.

(d) “**Base Rent**” means the amount of “Base Rent” shown on Exhibit B attached hereto for each month of this Lease.

(e) “**Annual Debt Service Requirements**” means the total principal and interest required to be paid on all Debt in a Fiscal Year.

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

(g) “**Days Cash on Hand**” means, (A) the cash requirements of School and the Foundation during such Fiscal Year related to or payable from revenues attributable to School and the Foundation (excluding from such calculation all depreciation and other non-cash items), and including within such calculation on behalf of School and the Foundation (i) all School Operating Expenses and the Foundation Operating Expenses for such Fiscal Year, and (ii) the maximum Base Rent and Additional Rent payable under the Lease, interest expense or any rent or other amounts due under any lease for that year, divided by (B) 365. For the avoidance of doubt, any proceeds of any Outstanding (as defined under the Loan Agreement) Debt, regardless of maturity, whose proceeds were drawn for the payment of School Operating Expenses and the Foundation Operating Expenses or the funding of cash shall not be considered cash for the purposes of Days Cash on Hand.

(h) “**Continuing Disclosure Agreement**” has the meaning ascribed to it in Section 30.

(i) **“Debt”** means all: (i) indebtedness incurred or assumed by a Person for borrowed money or for the acquisition, construction or improvement of property other than goods that are acquired in the ordinary course of business of such Person; (ii) lease obligations of the Person that, in accordance with generally accepted accounting principles, are shown on the liability side of a balance sheet; (iii) all indebtedness (other than indebtedness otherwise treated as Debt hereunder) for borrowed money for the acquisition, construction or improvement of property or capitalized lease obligations guaranteed, directly or indirectly, in any manner by the Person, or in effect guaranteed, directly or indirectly, by the Person through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise; and (iv) all indebtedness secured by any mortgage, lien, charge, encumbrance, pledge or other security interest upon property owned by the Person whether or not the Person has assumed or become liable for the payment thereof. For the purpose of computing “Debt”, there shall be excluded any particular Debt if upon or prior to the maturity thereof, there shall have been deposited with the proper depository in trust the necessary funds (or evidences of such Debt or investments that will provide sufficient funds, if permitted by the instrument creating such Debt) for the payment, redemption or satisfaction of such Debt; and thereafter such funds, evidences of Debt and investments so deposited shall not be included in any computation of the assets of the Person, and the income from any such deposits shall not be included in the assets of the Person.

(j) **“Deed of Trust”** has the meaning ascribed to it in the recitals.

(k) **“Department”** has the meaning ascribed to it in the recitals.

(l) **“Effective Date”** means the first day of the first calendar month after the later of the execution of this Lease by the Foundation and the School and the written approvals of this Lease by the Department and the PSFA as provided in the Lease Purchase Act. Copies of such approvals shall be attached as Exhibit E.

(m) **“Event of Default”** has the meaning ascribed to it in Section 27.

(n) **“Event of Nonappropriation”** has the meaning ascribed to it in Section 7.

(o) **“Existing Improvements”** has the meaning ascribed to it in the recitals.

(p) **“Existing Property”** has the meaning ascribed to it in the recitals.

(q) **“Extended Term”** means, in the first instance, the period of time from July 1, 20\_\_\_\_ until the following June 30, and thereafter, the twelve month period commencing on July 1 of each year and ending on June 30 of the following calendar year.

(r) **“Fiscal Year”** means the School’s fiscal year, which begins on July 1 of any year and ends on June 30 of the following year.

(s) **“Force Majeure”** means acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other causes not within the control of the School or the Foundation.

(t) **“Gross School Revenues”** means, for any period of calculation, the total of all operating and nonoperating revenues of the School, including but not limited to revenues received from the State, pursuant to its Charter, federal and local funds for school lunches and other food programs, special education, gifts, bequests or donations and income thereon, and transportation, including accounts receivable and rights to receive the same plus investment and other income or loss of the School for such period; provided, however, that no determination thereof shall take into account (a) income derived from Defeasance Obligations that are irrevocably deposited in escrow to pay the principal of or interest on Debt, (b) any gains or losses resulting from the early extinguishment of Debt, or the reappraisal, reevaluation or write-up of assets, (c) gifts, grants (excluding grants from the State), bequests or donations and income thereon restricted as to use by the donor or grantor for a purpose inconsistent with the payment of debt service on Debt (i.e., unrelated to the purposes for which such obligations were issued), (d) non-cash items and (e) net unrealized gain (losses) on investments.

(t) **“Loan Documents”** has the meaning ascribed to it in the recitals.

(u) **“Independent”** when used with respect to any specified Person, means such a Person who (i) is in fact independent, (ii) does not have any direct financial interest or any material indirect financial interest in the School, and (iii) is not connected with the School as an officer, employee, promoter, trustee, partner, director or person performing similar functions. Whenever it is provided that any Independent Person’s opinion or certificate shall be furnished to the Lender, such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning hereof

(v) **“Management Consultant”** means a firm of Independent professional management consultants, or an Independent school management organization, knowledgeable in the operation of public or private schools and having a favorable reputation for skill and experience in the field of public or private school management consultation.

(w) **“Initial Term”** has the meaning ascribed to it in Section 4.

(x) **“Lease”** means this Lease with Option to Purchase Agreement, dated as of \_\_\_\_\_, 2026, by and between the Foundation and the School, and any amendments or supplements hereto, including all exhibits hereto and thereto, and is used interchangeably herein with “Agreement”.

(y) **“Lease Purchase Act”** has the meaning ascribed to it in the recitals.

(z) **“Loan Agreement”** has the meaning ascribed to it in the recitals

(aa) **“Land”** has the meaning ascribed to it in the recitals.

(aa) **“Landlord’s Work”** means any construction, beneficial additions or changes to the Land and/or Property described in Exhibit “F” to this Agreement, whether permanent or not, made by or for the benefit of School. Landlord’s Work will be completed in two phases, with Tenant taking possession of Phase One and Rent Commencement upon Substantial Completion of Phase One; Tenant will take possession of Phase Two upon Substantial Completion of Phase Two.

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

(cc) **“Net School Revenues”** means for any period of determination thereof, the amount of excess (deficit) of Gross School Revenues less School Operating Expenses for such period, plus any gifts, grants, requests or donations and income thereon restricted as to use by the donor or grantor for the sole purpose of paying School Operating Expenses, but less: (a) unrealized pledges for such period to make a donation, gift, or other charitable contribution, (b) insurance (other than business interruption) and condemnation proceeds, and (c) any other extraordinary gains or losses.

(dd) **“New Improvements”** has the meaning ascribed to it in the recitals.

(ee) **“NMPSIA”** has the meaning ascribed to it in Section 25.

(ff) **“Operating Expenses”** means, for any period of time for which calculated, the total of all operating and non-operating expenses or losses incurred during such period by the School as determined in accordance with GAAP, including without limitation (i) salaries and administrative expenses, (ii) the cost of supplies and materials, (iii) insurance premiums, (iv) professional services, (v) interest expense, and (vi) any rental payments made for operating leases, other than any lease for facilities; provided however, there shall be excluded from the School Operating Expenses (a) any non-cash expenses resulting from depreciation, amortization or the write down of existing assets, (b) expenses incurred for capital improvements and capital leases, (c) expenses paid from grants from state, federal, local sources, or from any Person, provided that such grants were not included as part of Gross Tenant Revenues, and (d) any principal and interest paid under or with respect to any Debt.

(gg) **“Person”** means firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

(hh) **“Prior Lease”** means the Lease Purchase Agreement effective as of February 1, 2012 by and between EMHS Foundation, the predecessor to the Foundation and The East Mountain High School, the predecessor to the School, and any amendments or supplements thereto, including all exhibits thereto.

(ii) **“Property”** has the meaning ascribed to it in the recitals.

(jj) **“PSFA”** has the meaning ascribed to it in the recitals.

(kk) **“Punchlist Items”** means (i) elements of the Landlord’s Work, the non-completion of which will not materially interfere with School’s use and occupancy of the Property for the Permitted Use and (ii) items that, in accordance with good construction practice, must be performed after Substantial Completion.

(ll) **“Rent Commencement Date”** means the date of Substantial Completion of Phase One of Landlord’s Work, or the date that occupancy permits allowing School’s occupancy of Phase One have been obtained from the relevant regulatory authorities

(mm) **“Requirements of Law”** means any material federal, state, or local statute, ordinance, rule, or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any applicable common-law doctrine, any provision or condition of any permit required to be obtained or maintained, or any other binding determination of any governmental authority relating to the ownership or operation of property, including any of relating to environmental, health, or safety matters.

(nn) **“School Lease Payment Coverage Ratio”** means, for the Fiscal Year in question, the ratio obtained by dividing (i) Net School Revenues for such Fiscal Year by (ii) the sum of the Annual Debt Service Requirement of the School, Base Rent payable under the Lease, and any actual rent or other amounts due under any facility lease, for such period.

(oo) **“School’s Representative”** means the chair of Tenant’s governing body or any other person duly authorized by Tenant to act on its behalf under or with respect to this Agreement.

(pp) **“School Site”** means the parcel of land and any building(s) identified in Exhibit A to this Agreement, and Landlord’s Work made thereto/thereon described in Exhibit F.

(qq) **“State”** means the State of New Mexico.

(rr) **“Statewide Adequacy Standards”** mean the standards set forth in Title 6, Chapter 27, Part 30 NMAC (12/17/19), and any subsequent amendments thereto promulgated by the Public School Capital Outlay Council and applicable to the School Site, subject to any variances granted to Tenant by the Public School Capital Outlay Council pursuant to Section 22-8B-4.2(F)(2), NMSA 1978.

(ss) **“Substantial Completion”** means the date upon which Landlord’s Work, (i) temporary or permanent certificates of occupancy (or the equivalent) and other governmental permits or approvals for New Improvements have been obtained, in each case if and to the extent required for Tenant to occupy the completed portion of the Property for the Permitted Use, and (ii) the New Improvements are completed in all material respects in accordance with the respective phase of the Development Plans, excluding Punchlist Items.

(tt) **“Term of this Lease”** or “term of this Lease” means the Initial Term and all Extended Terms, not to exceed thirty (30) years after the date of execution of this Agreement, as specified in Section 22-26A-5(C), NMSA 1978.

(uu) **“Testing Date”** means each June 30 during the Term of this Lease.

(vv) “*Trustee*” has the meaning ascribed to it in the recitals

**2. Demise.** The Foundation hereby leases the School Site to School, and School hereby leases the School Site from Landlord with an option to purchase, upon the terms and conditions set forth in this Agreement, provided that the terms and conditions herein are not contrary to any applicable New Mexico laws. This Agreement, once fully executed by the parties, shall replace and supersede any prior written agreement between the parties for the lease of the Property.

TOGETHER with all right and interest, if any, of Landlord in and to the land lying in the streets and roads in front of and adjoining the School Site and in and to any easement appurtenant to the School Site;

SUBJECT, however, to the Permitted Encumbrances (as stated in Exhibit A).

**3. Possession and Enjoyment.** Following delivery of the School Site upon completion of the Landlord’s Work, the Foundation shall provide School with quiet use and enjoyment of the School Site and during such term School shall peaceably and quietly have and hold and enjoy the School Site, without suit, trouble, or hindrance from the Foundation, except as expressly set forth herein. The Foundation will, at the request of the School and at the School’s cost, join in any legal action in which School asserts its right to such possession and enjoyment to the extent the Foundation may lawfully do so. Notwithstanding the foregoing, the Foundation shall have access to the School Site during the construction of Landlord’s Work. The School agrees that following the Rent Commencement Date of this Agreement as to any portion of the School Site that has been delivered to the School for occupancy, the Foundation during the Term hereof shall have the right during the School’s normal working hours on the School’s normal working days, upon compliance with any school security requirements imposed by the School and upon reasonable notice, to enter on and examine and inspect the School Site for the purpose of assuring that it is being properly maintained, preserved, and kept in good repair and condition; however, the Foundation shall endeavor to schedule any access for days and times where students are not present on the School Site. The School further agrees that the Foundation shall have such rights of access to the School Site as may be reasonably necessary to cause the proper maintenance of the School Site in the event of failure by the School to perform its obligations hereunder, provided that at no time shall the Foundation be compelled or required to make any improvements, alterations, or additions to the School Site. The School agrees that the Foundation shall have unimpeded and unrestricted access to any undelivered portion of the School Site while Landlord’s Work remains ongoing despite the School’s occupancy of any other portion of the School Site.

**4. Need.** The School hereby declares its current need for the Property and further determines and declares its expectation that the Property will (so long as it is subject to the terms hereof) adequately serve the needs for which it is being leased throughout the term of this Lease. The School hereby agrees and determines that the Base Rent and the Additional Rent to be paid during each year of the Term of this Lease represents not more than the fair market value of the use of the Property during each such year. In making such declarations and determinations, the School has given consideration to the uses and purposes for which the Property will be employed by the School, the benefit to the School by reason of use of the Property, and the use and occupancy of the Property pursuant to the terms and provisions of this Lease. It is hereby declared to be the present intention and expectation of the School that this Lease Purchase Arrangement, will be

continued through all Extended Terms, subject to the provisions of Sections 5, 6, and 7 of this Agreement.

**5. Initial Term.** The Initial Term of this Lease shall be for a period commencing on the Effective Date and ending on the following June 30 (“*Initial Term*”), unless sooner terminated pursuant to any provision of this Lease. This Lease is contingent upon sufficient appropriations being made by the State to the School for the performance of its obligations under this Lease. If sufficient appropriations and authorization are not made by the State, this Lease may terminate prior to the end of the term of this Lease. The parties stipulate and agree that there is no legal obligation for Lessee to continue this Agreement from year to year or to purchase the School Site, in accordance with Section 22-26A-5(I), NMSA 1978.

**6. Extended Terms.** The Lease shall be extended beyond the Initial Term for Extended Terms to and including **June 30, 20\_\_**, but in any event not to exceed 30 years after the date of execution of this Lease, unless one of the following occurs:

(a) An Event of Nonappropriation has occurred prior to June 30 in the Initial Term or any Extended Term of this Lease;

(b) An Event of Default followed by termination of this Lease in accordance with Section 28; or

(c) The School determines for any reason not to exercise its annual right to renew.

(d) The effective date of the purchase of the Property by the School pursuant to Section 12.

(e) The School’s charter is revoked by its authorizer and said revocation is not reversed on appeal unless the Foundation has consented to assignment in accordance with this Lease.

**7. Non-renewal Due to Nonappropriation.**

(a) “*Event of Nonappropriation*” means (i) a failure by the State legislature to appropriate sufficient funds to the School to make the Base Rent and Additional Rent payments required by this Lease; (ii) a lack of sufficient money available to the School to meet any current lease payment; or (iii) a failure by the School to appropriate sufficient amounts to proceed under Section 26(c) following the occurrence of an event described in Section 26(a).

(b) In the event that the School determines, for any reason, to exercise its annual right not to renew this Lease because of an Event of Nonappropriation, or otherwise, the School shall give notice within one Business Day of such determination to such effect to the Foundation and the Lender (so long as the Loan is outstanding). The exercise of the School’s annual option to not renew this Lease shall be conclusively determined by (i) the School’s failure, for any reason, to appropriate by June 30 of each Fiscal Year sufficient amounts authorized and directed to be used to pay all Base Rent due in the next ensuing Fiscal Year or (ii) upon the occurrence of any of the other events described in the definition of Event of Nonappropriation herein.

(c) Any decision not to renew this Lease shall be made solely by the governing authority of the School and not by any other department, agency or official of the School except as otherwise provided in the New Mexico Public School Code. The School shall in any event furnish the Foundation and the Lender (so long as the Loan is outstanding) proof of appropriation relating to Base Rent and Additional Rent payable under this Lease promptly upon the adoption thereof by the School as evidenced by a resolution or other appropriate action of the governing authority of the School made and delivered to the Foundation and the Lender (so long as the Loan is outstanding) no later than June 30 of each Fiscal Year. Such resolution or written evidence of other action shall be signed by an authorized representative of the School, provided that this Lease has not been previously terminated and that the School is not in default under the terms of this Lease at the time of each extension.

(d) If, during any Fiscal Year, any Operating Expenses accrue in excess of amounts included in a duly enacted appropriation for the payment of Operating Expenses, then, if moneys are not specifically authorized and directed by the School to be used to pay such Operating Expenses by the earlier of the last Business Day of the Fiscal Year in which such Operating Expenses accrue or 90 days subsequent to the date upon which such Operating Expenses accrue, an Event of Nonappropriation shall be deemed to have occurred upon notice by the School to the Foundation and Lender (so long as the Loan is outstanding) to such effect, such notice to be given within one Business Day of the School's determination with respect thereto.

(e) If an Event of Nonappropriation occurs, the School shall not be obligated to pay the Base Rent or any other payments provided for herein beyond the amounts specifically appropriated by the School for the Fiscal Year during which such Event of Nonappropriation occurs; provided, however, the School shall continue to be liable for Base Rent and Additional Rent, to the extent payable from legally available moneys, allocable to any period during which the School shall continue to occupy or retain possession of the Property.

(f) The School shall in all events vacate the Property and surrender the Property to the Lender so long as the Loan is outstanding, or otherwise to the Foundation, or as otherwise directed by the Foundation by June 30th following an Event of Nonappropriation.

**7. Use.** The Property shall be used and occupied only for educational and related purposes, and for no other purpose. The School will comply with all applicable state and federal laws concerning discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services.

**9. Possession; Rent Commencement.** The School shall possess the Property on the Effective Date and begin paying Base Rent and Additional Rent in accordance with the provisions of Sections 9 and 10.

**10. Base Rent; Additional Rent; Absolute Net Lease.**

(a) The School shall pay Base Rent in the respective installments and on the respective dates of each year as indicated in the monthly rent schedule attached as Exhibit B, commencing on the Effective Date. A portion of each Base Rent payment is paid as, and represents

payment of, interest on principal as shown on the rent schedule, which specifies the principal and interest component of each Base Rent payment made under this Agreement. Upon receipt of each Base Rent payment, the Foundation shall apply the amount of such payment to principal and interest as shown on the rent schedule, thereby reducing the Purchase Price due at each Option Date.

(b) In any School Fiscal Year (July 1 to June 30) that this Agreement is in effect, the School shall include in the budget proposal to the Public Education Department for the ensuing Fiscal Year an amount equal to one hundred percent (100%) of the Lease Payments and other obligations payable by the School under this Agreement, including but not limited to Base Rent and Additional Rent, provided that the inclusion of any such amount is not contrary to New Mexico law. The Lease Payments and other obligations payable by the School under this Agreement shall constitute currently appropriated expenditures of the School and shall not constitute a debt or multiple fiscal year direct or indirect obligations whatsoever of the School or a mandatory charge or requirement against Tenant in any Fiscal Year (July 1 to June 30) beyond that for which such Lease Payments have been approved. The School shall, in a timely manner, make application each year for lease payment assistance funds pursuant to NMSA 1978, Section 22-24-4(I).

(c) In addition to the monthly Lease Payments under this Agreement, the School may make additional payments to be applied to principal without penalty from time to time, at such frequency and in such amounts as the School's governing body may determine in its sole discretion, subject to, among other considerations, the School's existing capital and operational needs, and subject to the prepayment limitations contained herein. Any additional payments made by the School pursuant to this Subsection (c) shall result in the Foundation generating and providing to the School a revised Exhibit B, showing the payment(s) applied to principal

(d) In addition to Base Rent, the School shall pay as Additional Rent during the Term of this Lease as herein provided all expenses related to possession, maintenance and operation of the Property, including without limitation: (a) the cost of insurance premiums for insurance required by this Lease or the Loan Documents or otherwise deemed necessary or desirable by the Lender; (b) the cost of taxes, utility charges, maintenance, upkeep, and repair costs; (c) all other costs associated with operation, repair and maintenance of the Property (to the extent not paid through permitted withdrawals from the Repair and Replacement Fund created under the Indenture); (d) all costs of the Foundation for administering this Lease and the Loan and the cost of an annual audit of the Foundation's financial statements to the extent allocable to the Foundation's activities directly relating to the Property and as permitted by law; and (e) administrative and legal expenses, miscellaneous operating expenses, advertising and promotion costs, payroll expenses (including taxes), the cost of material and supplies used for current operations of the School, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the School not otherwise mentioned herein, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with generally accepted accounting principles, all in such amounts as reasonably determined by the School. All or any portion of such operating expenses shall be paid by the School directly to the third parties who are owed the amounts included in Operating Expenses (e.g. insurance companies, taxing authorities, utility companies). All such foregoing expenses described in this Section 10 are included in "*Operating Expenses*";

provided, however, that for purposes of calculating School Lease Payment Coverage Ratio, Operating Expenses shall exclude Base Rent. Commencing with the Effective Date, this Lease is intended to be and shall be construed consistently with it being an absolute net lease with the School paying all expenses related to the Property.

**11. Nature of Payment.** The School and the Foundation acknowledge and agree that the Base Rent and Operating Expenses hereunder shall constitute currently appropriated expenditures of the School and may be paid from any legally available funds. The School's obligations under this Lease shall not constitute a mandatory charge or requirement for payment of any amounts in excess of amounts appropriated for any Fiscal Year beyond the Fiscal Year for which such appropriation has been made. No provision of this Lease shall be construed or interpreted as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the School within the meaning of any constitutional or statutory limitation or requirement. No provision of this Lease shall be construed or interpreted as creating a delegation either of governmental powers or as a donation by or a lending of the credit of the School within the meaning of any constitutional or statutory limitation or requirement.

**12. Manner of Payment.**

(a) The School shall pay Base Rent, to the extent it is able to do so using commercially reasonable efforts, through a system of automatic debits from the School's bank accounts to a person or entity (i) designated by the Foundation as the Foundation's representative for rent collection purposes) or (ii) assigned the right to collect such Base Rent by paying Base Rent no later than the 20th day of each month from any and all legally available sources of revenue, including per pupil operating revenues payable to the School. Each such payment of Base Rent shall be transmitted via the Federal Automated Clearing House electronic network for financial transactions in the United States.

(b) Operating Expenses owed to third parties by the School shall be paid directly by the School to such third parties as and when due, except to the extent otherwise provided in Section 6(e). Any Operating Expenses payable to the Foundation shall be paid directly to the Foundation or to a person or entity designated by the Foundation as the Foundation's representative for rent collection purposes, on the 20th day of each month from any and all legally available sources of revenue, including per pupil operating revenues payable to the School.

(c) The obligation of the School to pay the Base Rent and Additional Rent required under this Lease shall not be abated through accident or unforeseen circumstances. The School shall, during the Term of this Lease, make all payments of Base Rent and Additional Rent when due and shall not withhold any Base Rent or Additional Rent nor shall the School assert any right of set-off or counter-claim against its obligation to make such payments required hereunder; provided, however, that the making of such payments shall not constitute a waiver by the School of any rights, claims, or defenses which the School may assert. No action or inaction on the part of the Foundation shall affect the School's obligation to pay Base Rent or Additional Rent of this Lease.

(d) The Base Rent and Additional Rent have been set at the fair market rental value of the Property and the amount necessary to pay (i) debt service of the Foundation on the

loan to the Foundation from the Lender of the proceeds of the Loan and other amounts due with respect thereto, and (ii) all other amounts due under this Lease Agreement, and Base Rent and Additional Rent shall be used by the Foundation for such purposes.

**13. Option to Purchase.** So long as no Event of Default has occurred and is then continuing, the Foundation grants to the School an option to purchase the Property on any date on or after \_\_\_\_\_, on not less than 60 days' notice to the Foundation by the School of the exercise of such option, at a purchase price shown on Exhibit C corresponding to the purchase date plus any unpaid Base Rent and Additional Rent through that date. Upon such purchase, the Foundation shall convey the Property to the School by warranty deed, subject to all liens and encumbrances then of record, but not subject to the Deed of Trust. The School shall pay all expenses in connection with such purchase including, but not limited to, title insurance, recording fees, documentary stamps, and all other closing costs.

**14. Representations and Covenants of the School.** The School represents and covenants as follows:

(a) The School is a public charter school duly organized and validly existing under the Act and will use its best efforts to comply with said Act. The School is authorized: (i) to lease the Property from the Foundation pursuant to this Lease and (ii) to execute, deliver, and perform its obligations under this Lease.

(b) The execution, delivery, and performance of this Lease has been duly authorized by the School and this Lease is enforceable against the School in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally and equitable principles, whether considered at law or in equity.

(c) Its representatives executing this Agreement have been duly authorized to execute and deliver it in accordance with the terms and provisions of the resolution duly passed and adopted by Charter School's governing body.

(d) Its governing body has complied fully with all the requirements of NMSA 1978, §22-26A-6, and those of NMSA 1978, §10-15-1 applicable to its actions with regard to this Agreement and the acquisition of the Charter School Facility through a lease purchase arrangement.

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

(f) The execution, delivery, and performance of this Lease are in the best interests of the School and serve a public purpose. The Property is necessary and essential to the School's operations, and the school will recognize economic and other benefits by leasing the Property.

(g) None of the execution and delivery of this Lease, the fulfillment of or compliance with the terms and conditions of this Lease, or the consummation of the transactions contemplated by this Lease, conflicts with or results in a breach of the terms, conditions, or

provisions of any material restriction or any agreement or instrument to which the School is now a party or by which the School is bound, or constitutes a default under any of the foregoing or, except as specifically provided in this Lease, results in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the School.

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

(i) The Property will be operated in accordance with all Requirements of Law.

(j) The School will observe and perform all conditions and agreements on its part to be performed as the Lessee.

(k) The School will, on or before June 30 in each year during the Term of this Lease budget for and appropriate sufficient funds to make all scheduled payments under this Lease for the ensuing Fiscal Year and confirm such appropriation by sending notice thereof to the Foundation and the Trustee, unless or until an Event of Nonappropriation occurs.

(l) The School will, in a timely manner, make application each year for lease payment assistance funds pursuant to Section 22-24-4(I) NMSA 1978.

(m) It shall not transfer, lease, assign, mortgage, or encumber all or any portion of its interest under this Agreement, or the Property, except in accordance with the terms and conditions hereunder and as provided by New Mexico law, including NMSA 1978, §22-26A-5(K) with respect to assignment of a lease purchase arrangement to: (i) a school district or charter school; or (ii) the State of New Mexico or one of its institutions, instrumentalities or other political subdivisions

(n) It shall use and occupy the Charter School Facility for the primary purpose of a public charter school and the activities directly related thereto, or for such other public school purposes as may be lawfully authorized or permitted by Charter School or Foundation under state or federal law.

(o) The School currently intends to purchase the Property from the Foundation with funds obtained from lease payment grant assistance from the New Mexico Public School Capital Outlay Council or from other available revenue or funding sources, but in no event later than 30 years from the date the Lease is executed. Notwithstanding the foregoing, nothing in this Lease shall be construed as a legal obligation of the School to continue this Lease from year to year or to purchase the Property, any Improvements or other real property or as a waiver of the School's right to terminate this Lease as provided herein. Notwithstanding any other provisions of this Lease, the School has not directly or indirectly undertaken, nor agreed to directly or indirectly undertake, the Foundation's debt under any agreement, nor has the School pledged, transferred, or granted a security interest in, or assigned to any private third party, public funds, monies, grants or other distributions received, or to be received, by the School from or through the State, for the purpose of securing the payment of the Foundation's financial obligations, in violation of

Article IX, Section 14 of the State Constitution, or in violation of Article IX, Section 11 of the State Constitution.

**15. Representations and Covenants of the Foundation.** The Foundation represents and covenants as follows:

(a) The Foundation is a nonprofit corporation duly organized, existing, and in good standing under the laws of the State, is duly qualified to do business in the State, is possessed of full power to purchase, own, hold, and lease (as owner and landlord) real and personal property, has all necessary power to lease the Property to the School pursuant to this Lease, and to execute, deliver, and perform its obligations under this Lease and has duly authorized the execution, delivery, and performance of its obligations under this Lease.

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

(c) This Lease is enforceable against the Foundation in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally and equitable principles, whether considered at law or in equity.

(d) The Existing Improvements have been constructed, and the New Improvements will be constructed, to educational occupancy standards, will meet all applicable state adequacy standards, and at the time of completion of the New Improvements, the Property will meet or exceed the statewide condition index for public schools maintained by the New Mexico Public Schools Facilities Authority or will meet or exceed the condition index prior to or contemporaneously with the School's occupancy of the Property. Neither the execution and delivery of this Lease, or the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions, and provisions of any restriction or any agreement or instrument to which the Foundation is now a party or by which the Foundation is bound or constitutes a default under any of the foregoing.

(e) Except as specifically provided in this Lease and the Loan Agreement, the Foundation will not assign the Lease, its rights to payments from the School or its duties and obligations hereunder to any person, firm, or corporation other than the Trustee.

(f) There is no litigation or proceeding pending or threatened against the Foundation or any other person affecting the right of the Foundation to execute and deliver this Lease, or the ability of the Foundation otherwise to comply with its obligations under this Lease.

(g) There is no pending or, to the Foundation's knowledge, threatened, litigation, investigation, administrative or other proceeding of any kind before or by any governmental authority or other person or entity relating to, or alleging, any violation of any Requirements of Law in connection with the Property and there are no grounds on which any such

litigation, investigation or proceedings might be commenced, The Property is not subject to any judgment, injunction, writ, order, or agreement respecting any Requirements of Law..

(h) The Foundation will observe and perform all covenants, conditions and agreements on its part to be performed in the Loan Agreement, as well as in all other documents and agreements related to the Loan (as defined in the Loan Agreement) to which the Foundation is a party.

**16. Base Rent Payment Coverage Ratio.** (a) It shall constitute an Event of Default under this Lease (a) if the School Lease Payment Coverage Ratio, as calculated at the end of any Fiscal Year, is less than 1.0, based upon the results of the annual audit. (b) the School shall manage its business such that the School Lease Payment Coverage Ratio calculated at the end of each Fiscal Year, will not be less than 1.10 for such Fiscal Year. In the event School fails to maintain a School Lease Payments Coverage Ratio less than 1.10 for any Fiscal year, such failure shall not constitute an Event of Default so long as the School timely engages an Independent Management Consultant within thirty (30) days. Within sixty (60) days of engaging an Independent Management Consultant, such Independent Management Consultant shall prepare a report with recommendations for meeting the required School Lease Payments Coverage Ratio. As soon as practicable, but no later than thirty (30) days after receipt of such report, School shall consider Consultant's recommendations and, to the extent consistent with and allowable under applicable State and/or federal laws and School's existing contractual obligations, adopt/implement them. Notwithstanding any other provision of this Section, if School fails to maintain the School Lease Payment Coverage Ratio for any Fiscal Year of less than 1.0:1.0, then such failure shall immediately constitute an Event of Default under the Lease

**17. Days Cash On Hand.** The School shall manage its business to maintain not less than sixty (60) Days Cash on Hand in the current Fiscal Year and for each Fiscal Year thereafter. Failure to maintain the sixty (60) Days Cash on Hand as required by this Section shall not constitute an Event of Default so long as the School timely engages an Independent Management Consultant within thirty (30) days. Within sixty (60) days of engaging an Independent Management Consultant, such Independent Management Consultant shall prepare a report with recommendations for meeting the required sixty (60) Days Cash on Hand. As soon as practicable, but no later than thirty (30) days after receipt of such report, the School shall, to the extent legally permissible, implement the Independent Management Consultant's recommendations. Notwithstanding any other provision of this Section 5.11, failure of the School to maintain not less than sixty (60) Days Cash on Hand for two consecutive Fiscal Years shall immediately constitute an Event of Default. If at any time the New Mexico Public Education Department prohibits the School from maintaining sixty (60) Days Cash on Hand in any Fiscal Year, the provisions of this section shall be reduced to forty-five (45) Days Cash on Hand.

**18. Title to the Property.** Any improvements permanently affixed to the Property shall become part of the Property.

**19. Landlord's Work; Budget; Warranties.**

(a) The Foundation shall commence and cause to be completed the Landlord's Work described in the Development Plans. The Foundation shall ensure that the School Site, and

Landlord's Work, when completed, will meet the Educational Occupancy Standards. The construction and completion of the improvement described in the Development Plans (including, but not limited to, installation of Furniture, Fixtures and Equipment ("FF&E"), if part of the Development Plans), is collectively referred to herein as "**Landlord's Work**." Landlord's Work shall be constructed substantially in accordance with the Development Plans, and in accordance with the Educational Occupancy Standards. Landlord shall use commercially reasonable efforts to have the Landlord's Work Substantially Complete not later than **August 31, 2026** for Phase One; and **August 31, 2027** for Phase Two (the "Anticipated Substantial Completion Dates"); provided however that in the event that Landlord is unable to deliver the Landlord's Work in a condition that allows the School to use the applicable phase of the School Site for its intended use, as determined by the School in its reasonable discretion, and with a final or temporary certificate of occupancy for the applicable phase of the Landlord's Work by the governing municipality, the State, and/or other applicable authorities, by such date, the Foundation shall give written notice thereof to the School not later than 30 days prior to the applicable Anticipated Substantial Completion Date.

(c) The Foundation and the School have established an initial Budget for Landlord's Work, which is attached hereto as **Exhibit \_\_\_\_\_**.

(d) Upon taking occupation of each phase of the School Site once certified for occupancy, the Foundation shall assign to the School, all of its interest, if any in all warranties and guarantees or other contract rights against architects, builders, contractors, subcontractors, suppliers, materialmen or manufacturers for the School Site, express or implied, issued on or applicable to the School Site, and the Foundation hereby authorizes the School to obtain the customary services furnished in connection with such warranties and guarantees at the School's expense.

**20. Liens and Encumbrances.** The School shall not directly or indirectly create, incur, or assume any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property. The School shall not permit any mechanic's or other lien to remain against the Property; provided that if the School shall first notify the Foundation of the intention of the School so to do, the School may in good faith contest any mechanic's or other lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Foundation shall notify the School that, in its reasonable judgment, the Foundation's interest in the Property or title to the Improvements may be materially endangered, or the Property or any part thereof will be subject to loss or forfeiture, in which event the School shall promptly pay and cause to be satisfied and discharged all such unpaid items; provided, however, that such payment shall not constitute a waiver by the School of the right to continue to contest such items. The Foundation will reasonably cooperate fully with the School in any such contest, upon the request and at the expense of the School, to the extent that Operating Expenses which have been specifically appropriated by the School are available for the payment of such expenses. If State of New Mexico or the School's charter school funds, above those required for Lease Payments hereunder, are used to construct or acquire improvements, the cost of those improvements shall constitute a lien on the School Site in favor of the School and then, if this Agreement is terminated prior to the final payment and the release of the security interest or the transfer of title, at the option of the School: (1) the School may foreclose on the real estate lien; or (2) the current market value of the School Site at the time

of termination, as determined by an independent appraisal certified by the New Mexico Taxation and Revenue Department, in excess of the outstanding principal due under this Agreement, shall be paid to the School, all in accordance with Section 22-26A-5(H), NMSA 1978. The priority of such statutory lien shall be determined according to New Mexico law, should a legal dispute arise as to the order of satisfaction of valid and enforceable liens against the School Site.

**21. Compliance with Law.** The School shall at all times operate the Property, or cause the Property to be used and operated, such that (a) the Property at all times shall be operated in substantial compliance with all Requirements of Law; (b) all permits required by Requirements of Law in respect of the Property shall be obtained and maintained in full force and effect and the School shall substantially comply with the material terms and conditions of such permits; (c) there shall be no hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, any applicable state law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, any applicable state law or regulations promulgated under either), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Property in violation of any Requirements of Law; (d) there shall be no disposal of any of the items referred to in clause (c) on, from, into or out of the Property or on, from, into or out of the Improvements in violation of any Requirements of Law; and (e) there shall be no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing, or dispersing of any of the items referred to in clause (c) into the indoor or outdoor environment from, into, or out of the Property including the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Property or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into or out of the Property in violation of any Requirements of Law.

**22. Maintenance.** The School shall maintain, preserve, and keep the Property or cause the Property to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair, working order, and condition, subject to normal wear and tear, and that the School will from time to time make or cause to be made all necessary and proper repairs except to the extent as required to be maintained by the Foundation. Except as expressly set forth in this Section 22, the Foundation shall not have any responsibility in any of these matters or for the making of any additions, modifications, or replacements to the Property or the Improvements during any the Term of this Lease.

**23. Modifications; Removal of Improvements.**

(a) During the Term of this Lease, with the Foundation's prior written consent and subject to continuing compliance with the other provisions of this Lease, the School may remodel or make substitutions, additions, modifications, or improvements to the Property subject to the provisions of this Section 22, at its own cost and expense, and the same (if permanently affixed) shall be part of the Property, subject to, and shall be included under the terms of this Lease; provided, however, that (a) such remodeling, substitutions, additions, modifications, and improvements shall not in any way damage the Property; and (b) the Property, as remodeled, improved, or altered, upon completion of such remodeling, or such making of substitutions,

additions, modifications, and improvements, shall be of a value not less than the value of the Property immediately prior to such remodeling or such making of substitutions, additions, modifications, and improvements. There shall be no change in the amount of the Base Rent or purchase price for capital improvements to the Improvements or other real property without a written amendment approved by the Department. If the School's funds, above those required for Base Rent, are used to construct or acquire additional improvements, the cost of the additional capital improvements shall constitute a lien on the additional improvements in favor of the School and then, if this Lease is terminated prior to the transfer of title at the option of the School: (1) the School may foreclose the lien on the additional improvements; or (2) the current market value of the Property or other real property at the time of termination, as determined by an independent appraisal certified by the New Mexico Taxation and Revenue Department, in excess of the outstanding principal due under this Agreement shall be paid to the School.

(b) Except as provided for in this Agreement, the School agrees and covenants with the Foundation that any and all alterations, additions, and improvements, except moveable furniture, equipment, portable or modular buildings and such other items of personal property that are removable from the wall, ceiling and floor surfaces without causing damage to such surfaces, shall become a permanent part of the School Site at the termination of this Agreement, if not removed by the School. The School agrees that if such improvements are removed at the termination hereof, it will repair or restore the area of such surface, if removal of the School's personal property creates an unsightly condition, by capping any electrical outlets and concealing any surface areas where personal property, such as counters or shelving, may have been stabilized by attachment to such surfaces

**24. Equipment.** The School may, from time to time in its sole discretion and at its own expense, place movable equipment and personal property on the Property. All such equipment and personal property shall remain the sole property of the School in which the Foundation shall not have any interest; provided, however, that any such equipment and personal property which becomes permanently affixed to the Property shall become part of the Improvements, subject to this Lease and shall be included under the terms of this Lease. Nothing in this Lease shall prevent the School from purchasing items to be installed pursuant to this Section 24 under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

**25. Taxes and Assessments.** If the Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments, or charges lawfully made by any governmental body, the School shall pay the amount of all such taxes, assessments, and governmental charges then due as Additional Rent, but only to the extent that amounts for Operating Expenses which have been specifically appropriated by the School are available for the payment of such costs. With respect to special assessments or other governmental charges that may be lawfully paid in installments over a period of years, the School shall be obligated to provide only for such installments as are required to be paid during the Term of this Lease. The School shall not allow any liens for taxes, assessments, or governmental charges to exist with respect to the Property or Improvements or any portion thereof (including any taxes levied thereon which, if not paid, will become a charge on the rentals and receipts from the Property or any portion thereof, or any interest therein, including the interest of the Foundation) or the rentals and revenues derived therefrom or hereunder. If the

School shall first notify the Foundation of the intention of the School to do so, the School may, at the expense and in the name of the School, in good faith contest any such tax, assessment, and other charges and, in the event of any such contest, may permit the tax, assessment, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Foundation shall notify the School that, in the opinion of independent counsel whose reasonable fees shall be paid by the School, but only to the extent that amounts which have been specifically appropriated by the School are available for the payment of such costs, by nonpayment of any such items the Property or the Improvements or any portion thereof will be subject to loss or forfeiture, or the Foundation will be subject to liability, in which event such tax, assessment, or other charges shall, to the extent that amounts for Operating Expenses which have been specifically appropriated by the School are available for the payment thereof, be paid promptly or secured by posting a bond with the Foundation in form satisfactory to the Foundation (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, or other charges).

**26. Utilities.** The School shall pay, as the same respectively become due, all gas, water, steam, electricity, heat, power, utility, and other charges incurred in the maintenance and upkeep of the Property.

**27. Insurance.** The School shall, at its own expense, obtain and maintain the following policies of insurance described in subsections (a) through (d) below, which shall meet the following conditions, to the extent allowed by state law or the School's required insurer, the New Mexico Public Schools Insurance Authority ("**NMPSIA**"): (i) any insurance policy may have a deductible clause in an amount not to exceed the greater of (A) \$20,000 or such higher amount as may be required by NMPSIA; (ii) each insurance policy shall name the School, the Foundation, and the Lender, as their respective interests may appear, as additional insured parties and name the Lender as loss payee (while the Loan is outstanding); (iii) each insurance policy shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of the School and the Foundation without first giving written notice thereof to the School, and, the Foundation at least 30 days in advance of such cancellation or modification; (iv) each insurance policy, or each certificate evidencing such policy, shall be deposited with the Foundation upon request; (v) full payment of insurance proceeds under any insurance policy up to the dollar limit required by this Section 25 in connection with damage to the Property or the Improvements shall, under no circumstance, be contingent on the degree of damage sustained at other property owned or leased by the School; and (vi) to the extent the School can control the terms of each insurance policy, each insurance policy shall explicitly waive any coinsurance penalty. The School may, in its discretion, provide any of the insurance required by this Section 25 under blanket insurance policies which insure not only the risks required to be insured hereunder but also other similar risks. The School agrees to pay the premiums for any insurance required by the Foundation, as part of the Operating Expenses.

(a) Casualty and property damage insurance with respect to the Property and the Improvements in an amount equal to the greater of (i) full replacement value of the Property and the Improvements or (ii) the aggregate principal amount of the Loan then outstanding, unless the insurable value is less than the aggregate principal amount of the Loan, in which event in an amount equal to the full replacement value of the Property.

(b) Commercial general liability and automobile liability insurance against claims arising in, on, or about the Improvements, including in, on, or about the sidewalks, parking lots, or premises adjacent to the Improvements so long as on the Property, providing coverage limits not less than the coverage limits allowed by NMPSIA or customarily carried on public school facilities of similar size and character within the State.

(c) Fidelity insurance or bonds on those of its officers and employees who handle funds of the School, both in such amounts and to such extent as are customarily carried by organizations similar to the School and operating properties similar in size and character to the Improvements.

(d) Business or rental interruption insurance in an amount not less than the maximum annual debt service on the Loan in the current Fiscal Year or any future Fiscal Year.

(e) Such other forms of insurance as the School is required by law to provide with respect to the Improvements, including any legally required worker's compensation insurance and disability benefits insurance.

**28. Damage; Destruction, or Condemnation; Use of Net Proceeds.** If, during the Term of this Lease: (i) the Property or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty; (ii) title to, or the temporary or permanent use of, the Property or any portion thereof or the estate of the School or the Foundation in the Property or any portion thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; breach of warranty or any material defect with respect to the Property shall become apparent; or (iii) title to or the use of all or any portion of the Property shall be lost by reason of defect in the title thereto, then, the School shall be obligated, subject to the provisions of subsection (c) of this Section 28, to continue to pay the amounts specified in subsection (b) of this Section 28 and, to the extent of amounts specifically appropriated by the School, to pay Base Rent and Additional Rent.

(a) To the extent not contrary to applicable law, subject to the provisions of subsection (c) of this Section 28, the School (and, to the extent such Net Proceeds are within its control, the Foundation) shall cause such Net Proceeds to be deposited in a separate trust fund held by the Lender and applied in accordance with the terms of the Loan Documents (so long as the Loan is outstanding, and otherwise as directed by the Foundation). Except as set forth in subsection (c) of this Section 28, all Net Proceeds of any insurance, performance bonds, or condemnation awards owed to either the School or the Foundation shall be applied, while the Loan is outstanding, in accordance with the terms of the Loan Documents and, thereafter, to the prompt repair, restoration, modification, improvement, or replacement of the Improvements may be, by the School upon receipt of requisitions acceptable to the Foundation and the Lender setting forth: (i) the requisition number; (ii) the name and address of the person or entity to whom payment is due or has been made; (iii) the amount to be paid or reimbursed; and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Foundation shall cooperate with the School and the Lender in the administration of such fund and shall not unreasonably withhold its approval of requisitions under this Section 26. Any repair,

restoration, modification, improvement, or replacement paid for in whole or in part out of Net Proceeds shall be the property of the Foundation, subject to this Lease, and shall be included as part of the Property or the Improvements under this Lease.

(b) If an event described in subsection (a) of this Section 28, and if any Net Proceeds received as a consequence of such event are insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the Property required under subsection (b) of this Section 28, the School shall elect one of the following options:

(i) The School may, to the extent permitted by law, in accordance with subsection (b) of this Section 28, repair, restore, modify, or improve the Property or replace the Property (or portion thereof) with property of a value equal to or in excess of the Property, and pay as Operating Expenses any cost in excess of the amount of the Net Proceeds, to the extent the amounts for Operating Expenses which have been specifically appropriated by the School are available for the payment of such costs, and the School agrees that, if by reason of any such insufficiency of the Net Proceeds, the School shall make any Operating Expenses payments pursuant to the provisions of this paragraph, the School shall not be entitled to any reimbursement therefor from the Foundation, nor shall the School be entitled to any diminution of the Base Rent and Additional Rent. Notwithstanding the forgoing, the Foundation may in its discretion reimburse the School for all or part of such Operating Expenses.

(ii) If, by June 30th of the Fiscal Year in which an event described in subsection (a) of this Section 28 occurs (or June 30th of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve, or replace the Property become apparent), the School has not appropriated amounts sufficient to proceed under clause (i) of this subsection (c), the School shall proceed in accordance with Section 6, and the Foundation may then pursue remedies as provided in Sections 6 and 28, as applicable.

(c) The parties to this Lease shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in subsection (a) of this Section 28, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Property or the Improvements or any portion thereof, and in the prosecution of any action relating to defaults or breaches of warranty under any contract relating to the Property. In no event shall either party voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to defaults or breaches of warranty under any contract relating to the Property or any portion thereof without the written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Each party shall be responsible for their respective fees and expenses incurred under this Section 26.

**29. Events of Default.** Any one of the following shall constitute an “*Event of Default*” under this Lease: (a) failure by the School to pay any specifically appropriated Base Rent during this Lease on, before, or within five days of the applicable due date or to pay Additional Rent as and

when due, up to the amount specifically appropriated for the payment of Additional Rent in accordance with the provisions hereof; (b) failure by the School to timely pay any other amounts due by the School under the terms of this Lease or perform any covenant hereunder within ten days' written demand therefor by the Foundation; (c) failure by the School to vacate the Property in accordance with Section 6(f) following an Event of Nonappropriation; (d) the School shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of its creditors, or shall fail to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing; (e) an involuntary case or other proceeding shall be commenced against the School seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary lease or other proceeding shall remain undismissed and unstayed for a period of 60 days; (f) the estate or interest of the School in the Property shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within 90 days after such levy or attachment, unless the School shall be contesting such levy or attachment in accordance with the requirements of this Lease; (g) an "event of default" has occurred under the Loan Agreement or Covenant Agreement; or (h) as provided in Section 15. The foregoing provisions of this Section 27 are subject to the following limitation: if, by reason of Force Majeure, the School shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the School contained herein and until the termination or end of the Term of this Lease, the School shall not be deemed in default during the continuance of such inability. The School shall, however, remedy, as promptly as legally and reasonably possible, and subject to the sufficiency of available appropriations, the cause or causes preventing the School from carrying out its agreement; provided that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the School.

**30. Remedies on Default.** Whenever any Event of Default shall have occurred and be continuing, the Foundation or the Trustee, acting for the Foundation so long as the Loan is outstanding may, and, if the Loan is no longer outstanding, the Foundation may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) terminate this Lease and give notice to the School to vacate the Property within 120 days from the date of such notice; provided that termination of this Agreement under the Event of Default set forth herein shall be subject to the supervisory authority of the Public Education Department over all public schools under Section 222-2(C), NMSA 1978 and to the provision of Section 22-8B-12.1(C), NMSA 1978 on a charter school closure.

(b) without further demand or notice, to reenter and take possession of the Property, repossess the same, expel the School and those claiming through or under the School, and remove the effects of both or either, using such force for such purposes as may be lawful and necessary, without being liable for prosecution, without being deemed guilty of any manner of

trespass, and without prejudice to any remedies for arrears of Base Rent, Operating Expenses or other amounts payable under this Lease or as a result of any preceding breach of covenants or conditions;

(c) pursue any and all other rights and remedies available under State law, in law or in equity;

(d) lease all or any portion of the Land included in the Property;

(e) recover from the School: (i) to the extent the recovery thereof is permitted by law, the fair rental value of the use of the Property during any period beyond the 30<sup>th</sup> day following the occurrence of the Event of Default; and (ii) Base Rent and Operating Expenses, to the extent amounts for such Base Rent and Operating Expenses have been specifically appropriated in accordance with the provisions hereof, which would otherwise have been payable by the School hereunder during the remainder of the Fiscal Year in which such Event of Default occurs; or

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

**31. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lender so long as the Loan is outstanding and otherwise to the Foundation is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof; but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Foundation to exercise any remedy it shall not be necessary to give any notice, other than such notice as may be required in this Lease.

**32. Reporting Requirements; Access to Records.** The School shall comply with the reporting requirements set forth on Exhibit D and provide such reporting to the Foundation and the Lender. The School also shall timely provide the Foundation or Lender with information needed to comply with the Covenant Agreement dated as of \_\_\_\_\_, 2025 (the “*Covenant Agreement*”) between the School, Foundation and Lender, relating to the Loan. In addition, to the extent permitted by State law, the School shall permit the Foundation (for so long as this Lease is in effect) and the Lender (so long as the Loan is outstanding) to have access to its books and records during normal business hours upon reasonable prior notice (of no more than five Business Days) unless the reviewing party reasonably believes there is an emergent situation, in which case no such notice shall be required. For purposes of this Section 29, “books and records” shall mean the public records maintained by the School other than those records which are excepted from public inspection pursuant to Section 14-2-1(A) NMSA 1978, which exceptions include: (a) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution; (b) letters of reference concerning employment, licensing or permits; (c) letters or memoranda that are matters of opinion in personnel files or students’ cumulative files; (d) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime, which law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed

investigations to the extent that they contain the information listed in this Section 30; (e) as provided by the Confidential Materials Act, Sections 14-3A-1 and 14-3A-2 NMSA 1978; (f) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting; (g) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and (h) as otherwise provided by law. The School shall participate in conference calls with the holders of the Loan in accordance with the Covenant Agreement.

**33. Further Assurances and Corrective Instruments.** The Foundation and the School agree that so long as this Lease is in full force and effect and no Event of Default shall have occurred, the Foundation and the School shall have full power to carry out the acts and agreements provided herein and they will, so far as it may be authorized by law, from time to time, execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property or the Improvements hereby leased or intended so to be, or for otherwise carrying out the intention of or facilitating the performance of this Lease.

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

**35. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Foundation and the School and their respective successors and permitted assigns.

**36. No Individual Liability.** All covenants, stipulations, promises, agreements, and obligations of the School or the Foundation, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the School or the Foundation, as the case may be, and not of any member, director, officer, employee, or other agent of the School or the Foundation in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement, or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, or other agent of the School or the Foundation or any natural person executing this Lease or any related document or instrument.

**37. Prior Lease.** The Prior Lease is superseded in its entirety by this Lease as of the Effective Date.

**38. Waiver.** No term of this Lease shall be deemed waived unless such waiver is in writing signed by the party granting the waiver. No delay or omission by either party in exercising or enforcing any right or power hereof shall impair such right or power or be construed to be a waiver thereof. No custom or practice that may evolve between the parties shall be construed to lessen the right of a party to require the performance of the other party in strict accordance with the terms of this Lease. A waiver by one party of a failure of the other party to fully comply with any of the

terms of this Lease shall not be construed to be a waiver of any subsequent failure to comply or any other failure to comply.

**39. Assignment and Subletting by School.** This Lease may not be assigned by the School, except as provided for herein, and the School may not sublet its interest in the Property, for any reason, whether by operation of law or pursuant to any contract. Notwithstanding the generality of the foregoing, the School may allow the Property or portions thereof to be used for short term uses by 501(c)(3) organizations and governmental entities so long the use is aligned with the School's educational mission and does not involve sectarian instruction or worship, except as permitted by the Tax Certificate with respect to the Loan. Further, nothing in this Section 37 shall be deemed to prohibit, limit or restrict the School's (i) power, subject to the prior written approval of the Foundation, which shall not be unreasonably withheld, and the receipt by the Lender of an opinion of nationally recognized municipal bond counsel to the effect that the same will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any outstanding tax-exempt bonds, to enter into joint powers agreements as provided in Sections 11-1-1 *et seq.* NMSA 1978, as amended, for shared use of the Property, or (ii) assignment (including without limitation the option to purchase under Section 12), with the prior approval of the Foundation, which shall not be unreasonably withheld, and without cost to the School, with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to: (a) a school district or charter school; or (b) the state or one of its institutions, instrumentalities or other political subdivisions.

**40. Acknowledgement of Loan; Subordination of Lease.** The School acknowledges the issuance of the Loan by the Lender and its execution of the Loan Agreement and agrees to provide the Foundation requested information it deems sufficient to comply with its obligations under the Covenant Agreement. The School acknowledges and consents to the assignment by the Foundation to the Lender, pursuant to the Loan Agreement and the Deed of Trust, pursuant to the Loan Documents, of all rights, title and interest of the Foundation in, to and under this Lease. This Lease and all rights of the School to the Property hereunder are expressly subordinated to the liens of the Deed of Trust given by the Foundation to secure the Loan Agreement and the Loan issued under the Loan Agreement. This Lease shall be subordinate to the liens of the Loan Agreement and the Deed of Trust and any liens or security interests created under the Indenture and any other mortgage, Deed of Trust (now or hereafter placed upon the Property) and to any and all advances made under any mortgage or Deed of Trust and to all renewals, modifications, replacements or extensions thereof; provided, however, that in the event of foreclosure on the Deed of Trust caused by the Foundation's default under this Lease, the School shall continue to have the right to possess the Property or otherwise enjoy its rights under the Lease provided that it fully performs its obligations hereunder. The School agrees, with respect to any of the foregoing documents, that no documentation other than this Lease shall be required to evidence such subordination. Notwithstanding the foregoing, upon the written request of the Foundation or the Lender, the School agrees to deliver a subordination, non-disturbance and attornment agreement in customary form to the holder of the Deed of Trust or to any other holder of any debt incurred in connection with a refinancing of the debt evidenced by the Loan Agreement.

**41. Title to School Site and Improvements.** During the Term hereof, Landlord shall hold title to the School Site and any and all additions which comprise repairs, replacements, substitutions,

or modifications, subject to Tenant's rights, both legal and equitable, under New Mexico statutory and common law.

**42. Public Property.** Upon approval of this Agreement pursuant to the Lease Purchase Act and its execution by the parties, the School Site shall be considered to be a public property in accordance with Section 22-26A-5.1(B), NMSA 1978.

**43. Amendments, Changes, and Modifications.** This Lease shall not be altered, changed, or amended other than by a written instrument executed by the parties, and approved in writing by the Department to the extent permitted by law.

**44. Notices.** All notices and communications required or permitted under this Lease (including change of address and facsimile or telephone number set forth below) shall be in writing, shall be effective upon receipt and shall be deemed given to the receiving party: (a) when hand-delivered to the street address of the receiving party set forth below; (b) by delivery by a national overnight courier addressed to the receiving party at the street address set forth below; or (c) three days after deposit in the U. S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

If to the Foundation:

If to the School:       East Mountain  
                                  25 La Madera Road  
                                  Sandia Park, NM 87047  
                                  Attn: Executive Director

If to the Lender:

With a copy to:

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

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

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

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

**51. Severability.** In the event that any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**52. Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any party may execute this Lease by executing any such counterpart, including by electronic or facsimile signature.

**53. Donation of Property.** Upon payment in full of the Loan, without incurrence of refunding debt by the Foundation secured with an interest in the Property, the Foundation shall transfer to the School all right, title and interest in and to the Property.

**52. Administrative Approval.** Pursuant to Section 22-26A-4(B), NMSA 1978 and Section 22-20-1(A)(2), NMSA 1978, respectively, the parties to this Agreement acknowledge that they have obtained the required statutory approval from both the Department and the PSFA.

**54. Memorandum of Lease.** Upon the request of either party, the parties shall cooperate to record an appropriate memorandum of this Lease in the real property records of the County Clerk of Bernalillo County, New Mexico.

*[Signatures on following pages.]*

IN WITNESS WHEREOF, the parties have entered into this Lease as of the date first written above.

**THE FOUNDATION:**

**EAST MOUNTAIN HIGH SCHOOL FOUNDATION**  
**a New Mexico nonprofit corporation**

By: \_\_\_\_\_  
Name:  
Title: President

**THE SCHOOL:**

**EAST MOUNTAIN**  
**a New Mexico public charter school**

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **LAND AND PERMITTED ENCUMBRANCES**

Tracts A and B, School Site, as the same are shown and designated on the plat entitled, "Plat of Tracts A & B, School Site, Section 18, T. 11 N., R. 6 E., N.M.P.M., Bernalillo County, New Mexico, "filed in the Office of the County Clerk of Bernalillo County, New Mexico, on June 24, 2011, in Plat Book 2011C, Page 63.

### **PERMITTED ENCUMBRANCES**

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.
4. Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).
6. Water rights, claims or title to water.
7. Taxes for the year 2025, and thereafter.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, appearing in the public records .

**EXHIBIT B**

**BASE RENT**

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Base Rent Payments

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Scheduled Payment</u>
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**EXHIBIT C**  
**PURCHASE PRICE**

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Purchase Price

<b><u>Payment Date</u></b> <b><u>On or Before</u></b>	<b><u>Purchase Price</u></b>
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## **EXHIBIT D**

### **REPORTING REQUIREMENTS**

- Quarterly management prepared financial statements, within 30 days of the end of each fiscal quarter
- Audited financial statements, within 10 days following release by the New Mexico State Auditor
- Annual capital and operating budgets within five days of final approval by the School's Governing Council
- Notice of changes in the School's Governing Council and senior management

**EXHIBIT E**  
**DEPARTMENT AND PSFA APPROVALS**  
(SEE ATTACHED)

**EXHIBIT F**

**Site Plans and Development Plans / Specifications / Scope of Work / Budget**

**EXHIBIT G**

**Planned Funding Sources and Budgets to make Lease Payments**

## EXHIBIT H

### Form of Memorandum of Lease Purchase Arrangement

#### MEMORANDUM OF LEASE AGREEMENT AND PURCHASE OPTION RIGHTS

This Memorandum of Lease Agreement and Purchase Option Rights is made as of \_\_\_\_\_, 20\_\_\_, between East Mountain High School Foundation, a New Mexico nonprofit corporation (formerly known as East Mountain High School and Cultural Center) (the “**Foundation**”), as lessor, and East Mountain, a New Mexico public charter school (formerly known as East Mountain High School) (the “**School**”), as lessee, as of \_\_\_\_\_, 2026.

#### WITNESSETH:

Lessor, upon the terms and conditions more particularly set forth in that certain Lease Purchase Arrangement Agreement dated as of even date herewith by and between the Foundation and the School (as amended, the “**Lease Purchase Agreement**”), which terms and conditions are incorporated herein by reference, and in consideration of the rent and covenants therein provided, does hereby lease to the School, and the School hereby accepts that certain property more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”) for an initial term commencing on or about \_\_\_\_\_, 2026, and ending on \_\_\_\_\_, 20\_\_\_, upon the terms and conditions set forth in the Lease Purchase Agreement.

1. The School further has the option to purchase the Property upon the terms and conditions set forth in the Lease Purchase Agreement.
2. The Foundation covenants that Lessee, on paying the rent and performing the covenants set forth in the Lease Purchase Agreement, shall peaceably and quietly have, hold and enjoy the Property.
3. As provided in the Lease Purchase Agreement, notice is hereby given that the Foundation shall not be liable for any labor or materials or services furnished or to be furnished to the School upon credit, and that no mechanic’s or other lien for any such labor, materials or services furnished or to be furnished to the School shall attach to or affect the fee or reversionary or other estate or interest of the Foundation in the Property or in the Lease Purchase Agreement. Prior to commencing any improvements, the School shall execute, deliver to its contractor and record in the public records of Bernalillo County, New Mexico a written instrument providing notice of the existence of the provisions of the preceding sentence in accordance with Section 48-2-11, NMSA 1978, as amended.
4. It is understood that this is a memorandum of the Lease Purchase Agreement, which Lease Purchase Agreement is incorporated herein by reference and shall be a part of this instrument as fully and completely as if the same were set forth herein. In the event of any

inconsistency between this memorandum and the Lease Purchase Agreement, the Lease Purchase Agreement shall govern and control.

5. At any time during the Purchase Option Period (as defined in the Lease Purchase Agreement), the School has the option to purchase the Property (the “**Purchase Option**”), subject to and in accordance with the terms and conditions of the Lease Purchase Agreement and the terms and conditions thereof, dated as of the same date as the Lease Purchase Agreement, by and between the Foundation and the School. The Purchase Option shall automatically expire and be of no further force or effect upon the earlier to occur of the expiration of the Purchase Option Period and the date of termination of the Lease Purchase Agreement.

*[The remainder of this page intentionally left blank. Signature pages to follow.]*

IN WITNESS WHEREOF, the Foundation and the School have signed, sealed and delivered this Memorandum of Lease Agreement and Purchase Option Rights as of the date and year first above written for the purpose of providing recorded notice of the School's rights under the Lease Purchase Arrangement Agreement.

Signed, sealed and delivered  
in the presence of:

**THE FOUNDATION:**

**EAST MOUNTAIN HIGH SCHOOL FOUNDATION**  
**a New Mexico nonprofit corporation**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_,  
by \_\_\_\_\_, \_\_\_\_\_, on behalf thereof.  
He/She is personally known to me or who has produced \_\_\_\_\_ as  
identification.

\_\_\_\_\_  
NOTARY PUBLIC  
(NOTARY SEAL)

Signed, sealed and delivered  
in the presence of:

**THE SCHOOL:**

**EAST MOUNTAIN**  
**a New Mexico public charter school**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf thereof. He/she is  
personally known to me or who has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC  
(NOTARY SEAL)

\_\_\_\_\_

**EXHIBIT I**

**Acknowledgement**

THIS ACKNOWLEDGMENT is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between East Mountain High School Foundation, a New Mexico nonprofit corporation (formerly known as East Mountain High School and Cultural Center) (the “*Foundation*”), as lessor, and East Mountain, a New Mexico public charter school (formerly known as East Mountain High School) (the “*School*”), as lessee, as of \_\_\_\_\_, 2025.

WHEREAS, the Foundation and the School entered into a Lease Purchase Arrangement Agreement dated \_\_\_\_\_, 20\_\_\_\_ (“Lease”) involving the premises located at 25 La Madera Road, Sandia Park, Bernalillo County, New Mexico; and

WHEREAS, the parties desire to establish the Term Commencement Date, Rent Commencement Date, and/or other terms and provisions of the Lease.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged,

**IT IS AGREED AS FOLLOWS:**

1. All capitalized terms shall have the definitions set forth in the Lease, unless otherwise defined herein.

1. The Term Commencement Date is hereby acknowledged to be \_\_\_\_\_, 20\_\_\_\_.

2. The Rent Commencement Date is hereby acknowledged to be \_\_\_\_\_, 20\_\_\_\_.

3. The Initial Term shall terminate on \_\_\_\_\_.

4. Except as herein modified and amended, the remaining terms and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the date first hereinabove set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

## **EXHIBIT H – REPORTING REQUIREMENTS**