

**RESOLUTION OF EAST MOUNTAIN GOVERNING COUNCIL**

**APPROVING CERTAIN AGREEMENTS RELATING TO FINANCING FOR A MIDDLE SCHOOL FACILITY; AUTHORIZING CERTAIN OFFICERS TO TAKE ADDITIONAL ACTION; AND OTHER MATTERS RELATING THERETO**

This Resolution is adopted this \_\_\_\_\_ day of March, 2026 by the Governing Council of East Mountain (“Governing Council” and “School”), a duly chartered New Mexico public charter school, at a duly called Governing Council meeting, at a public meeting held in compliance with the New Mexico Open Meetings Act, NMSA 1978, §10-15-1, *et seq.*

**WHEREAS**, the Governing Council of School recognizes that East Mountain High School Foundation ("Foundation") is a New Mexico nonprofit corporation with an Internal Revenue Service designation as a 501(c)(3) organization, whose primary purpose is to receive and maintain a fund or funds to acquire real or personal property or both and to use and apply the whole or any part of the income therefrom and the principal thereof for the purpose of supporting the public educational purposes of the School, including providing suitable facilities for the operation of the School.

**WHEREAS**, the Governing Council is aware that the Foundation intends to acquire, construct, expand, remodel, renovate, improve, furnish and equip a new facility for the School to use as a middle school.

**WHEREAS**, the Governing Council has been informed that to facilitate the project, the Foundation has applied for and been approved for a loan from a nonprofit social impact fund, Equitable Facilities Fund, Inc. (“EFF”), whose mission is to help high performing public charter schools. The loan will provide funding for the Foundation to construct and equip an approximately 27,302 square foot new building of multi-purpose space, a new learning commons, and middle school classrooms, and related space for grades six through eight, parking, and related structures (together the "Middle School Facility"). The Foundation's loan to construct the Middle School Facility will be an amount not to exceed \$21,400,000 (the "Loan") and amortized over thirty (30) years with a five-year maturity. In addition, the Loan includes funding for capitalized interest during construction of the Middle School Facility and the costs of issuance of the Loan.

**WHEREAS**, upon completion, the Middle School Facility will meet the Statewide Adequacy Standards required to house a public charter school as the term is defined and as it applies to charter schools according to 6.27.30 NMAC [1.14.2025].

**WHEREAS**, the Foundation has approved the construction of the Middle School Facility, the execution of the Loan Agreement to be entered into between the Foundation and EFF for the Middle School Facility (the “Loan Agreement”), including approving the form of the Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement, Fixture Filing and Other Real Property Related Financing Statement Filing (“Deed of Trust”) as security for the Loan, and related matters.

**WHEREAS**, the Governing Council has been generally informed about the terms and conditions of the financing sought by the Foundation to construct the Middle School Facility.

**WHEREAS**, the Foundation has represented to the School that the Foundation's obligations related to the Loan are solely the obligation of the Foundation and that neither the School, nor the Governing Council or any of its individual members, officers, employees, agents or other representatives of the School, will be obligated for any outstanding debt as contemplated by Art. 9 §11 of the New Mexico Constitution, or be required to give or pledge a guaranty, security or other credit as may be contemplated in Art. 9 §14 of the New Mexico Constitution.

**WHEREAS**, the Council, upon verification by a subsequent review of the closing documents to be signed by the Foundation, intends to lease the Middle School Facility according to a lease agreement (the “Middle School Facility Lease”), which will be separately considered and approved by the Governing Council at or before closing of the Foundation's Loan. The Governing Council has been advised by administration and its business manager that the lease payments, plus additional rents, as projected are reasonable and necessary to provide a facility that meets the needs of the School's educational program and the School's facility obligations as required by NMSA 1978, §22-8B-4.2 (2024).

**WHEREAS**, it is the School's intent to acquire the Middle School Facility by entering a Lease Purchase Arrangement with the Foundation pursuant to the Public School Lease Purchase Act, NMSA 1978, §22-26A-1, *et seq.* (2024), following receipt of approval from the Public Education Department and the Public School Facilities Authority (the “Required Approvals”), which acquisition will ensure that the School has a permanent middle school facility as contemplated by NMSA 1978, §22-8B-4.2. A draft form of the Lease Purchase Arrangement will

be separately considered and approved, subject to the Required Approvals, by the Governing Council at or before closing of the Foundation's Loan.

**WHEREAS**, to further the Council's objective to secure a public middle school facility that meets the School's education program and requirements of state law, the Governing Council agrees, to the extent permitted by law, to cooperate in the Foundation's acquisition of the funding to construct the Middle School Facility.

**NOW THEREFORE BE IT RESOLVED** by the Governing Council of East Mountain as follows:

1. The Middle School Facility described in Exhibit "A" attached hereto is approved as suitable for expansion and use as School facilities.

2. The terms of the Master Covenant Agreement are approved in substantially the form attached hereto as Exhibit "B".

3. The terms of the federal Tax Certificate (the "Tax Certificate") insofar as they apply to the School as user and lessee of the Middle School Facility and Existing Facility are approved in substantially the form attached hereto as Exhibit "C".

4. The terms of the General Certificate (the "General Certificate") are approved in substantially the form attached hereto as Exhibit "D".

5. The source of funds which the School will utilize for the payments to be made under the Middle School Facility Lease is currently appropriated expenditures of the School as set forth in the Middle School Facility Lease, and Master Covenant Agreement but excludes State of New Mexico funding under the Charter Schools Act which is specifically dedicated to the payment of expenses of the School, which do not include the payment of amounts due under the Middle School Facility Lease, and funding for all such operating expenses of the School required under State or federal laws to provide required educational program expenditures.

6. The Governing Council understands that the Foundation intends to fund the Middle School Facility by incurring a debt secured by the Loan Agreement and Deed of Trust encumbering the Middle School Facility. The Governing Council has been advised that to secure the funding described in the Recitals, the Foundation will borrow the proceeds from EFF in accordance with various documents (the "Loan Documents"); however, the Governing Council shall have no financial obligations under the Loan Documents and is not a signatory thereto, other than as provided herein.

7. If financing for the Middle School Facility is approved, at closing the Foundation and the School intend to enter into the Middle School Facility Lease, which will be separately considered by the Governing Council in an open meeting before voting to accept the terms and conditions of the Lease. The School will occupy and pay rent for the Middle School Facility according to the Lease and base rent schedule that will be attached to the Lease and will subsequently take occupancy of the Middle School Facility or portion(s) thereof upon issuance of a certificate of occupancy. The School will be expected to commence rent to the Foundation for the Middle School Facility according to the terms of the Lease.

8. The Governing Council understands that the Foundation is incurring the obligations under the Loan Documents for the benefit of the School for the sole purpose of providing the School a public school facility.

9. The Governing Council has determined that leasing the Middle School Facility from the Foundation is in the School's best interest, and, therefore, the Governing Council hereby agrees to enter into an acceptable lease agreement for the Property, if the Foundation completes the construction of the Middle School Facility. In addition, the Governing Council acknowledges that the Foundation must report certain financial information about the Foundation and the School to the Foundation's lender at such times, in such form and to such designees as set forth in the Loan Documents. The Governing Council and School will cooperate in reporting requirements necessary for the Foundation to secure and comply with the terms of the Loan Documents.

10. Based upon the Recitals above which are incorporated herein and determinations made in this Resolution, the Governing Council authorizes the Officers designated below, in consultation with the School's legal counsel, to review, negotiate, execute and deliver, on behalf of the Governing Council, all certificates and other documents which in such Officer's or Officers' discretion may be necessary and proper to consummate the transactions described in this Resolution, including but not limited to the Master Covenant Agreement, the General Certificate, the Tax Certificate, and such other related documents, certificates or instruments which are consistent with the intent of this Resolution, but in no event shall any document have the consequence of creating a financial obligation to the School, the Governing Council or any of its officers, directors, employees, agents, attorneys or assigns.

11. The Governing Council President, Vice President, and Executive Director, (collectively, "Officers"), and each of them acting alone, is hereby authorized and directed to

review, negotiate, finalize, execute, seal, attest and deliver the documents identified above, and any and all other documents pertaining to this transaction. Any one or more of the Officers may consent to this transaction, or consent to any change or modification in or to the form of documents described herein, as he, she or they deem reasonable and appropriate and such approval shall be conclusively evidenced by his, her or their execution thereof.

12. All actions heretofore taken by the Officers in connection with the Middle School Facility construction and the leasing of the Middle School Facility are hereby ratified and confirmed, including without limitation the employment of legal counsel.

13. This Resolution shall take immediate effect upon its adoption by the Governing Council.

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

APPROVED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2026  
by the Governing Council of East Mountain as follows:

**MEMBERS VOTING IN  
FAVOR OF THE RESOLUTION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MEMBERS VOTING  
AGAINST THE RESOLUTION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MEMBERS ABSTAINING  
FROM THE VOTE ON THE  
RESOLUTION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GOVERNING COUNCIL OF  
EAST MOUNTAIN:**

By: \_\_\_\_\_,  
Dr. Glenn Hushman, President  
and authorized representative

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Governing Council Secretary

Date: \_\_\_\_\_

**PRESIDENT'S CERTIFICATE REGARDING  
GOVERNING COUNCIL RESOLUTION**

I hereby certify that I am the President of the Governing Council of East Mountain, a New Mexico public charter school authorized pursuant to the Charter Schools Act, NMSA 1978, §22-8B-1, *et seq.*, and that the forgoing is a true copy of a resolution duly adopted by the Governing Council of the East Mountain at a meeting held the \_\_\_\_\_ day of March, 2026, at which meeting a quorum was present acting throughout, and that the resolution has not been rescinded or modified and is in full force and effect.

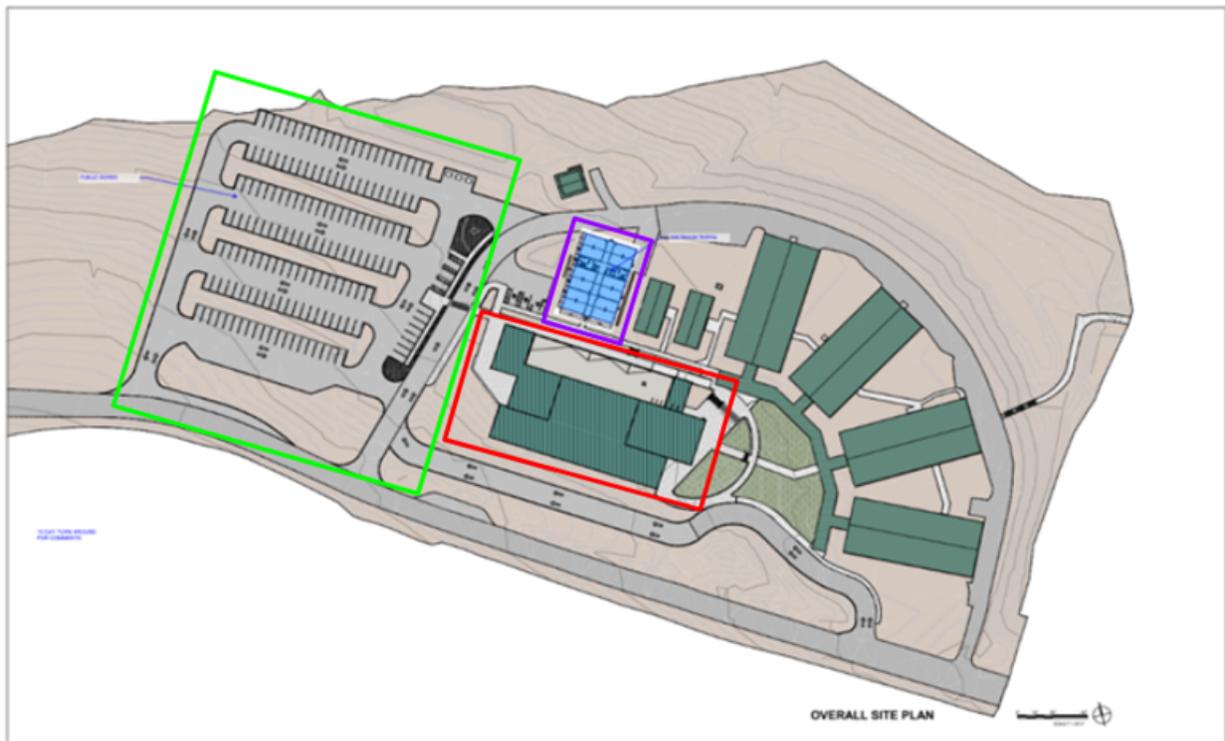
\_\_\_\_\_  
Dr. Glenn Hushman, President

## EXHIBIT A

### Project Description

The Project will construct (i) a ~6,100 sq. ft. prefabricated modular building, and a ~28,700 sq. ft. parking lot (Phase 1 Improvements), and (ii) a new ~27,400 sq. ft. middle school facility (Phase 2 Improvements) at 25 La Madera Road, Sandia Park, New Mexico.

**Figure 1: EMHS Future Site Plan**



Red Box = Middle School Building, Purple Box = Modular Building, and Green Box = Parking Lot

**EXHIBIT B**

**Master Covenant Agreement**

*(See Attached)*

## **MASTER COVENANT AGREEMENT**

THIS MASTER COVENANT AGREEMENT (the “Agreement”), dated as of February \_\_, 2026, is between **EAST MOUNTAIN**, a New Mexico public charter school (“Charter School”), and **EAST MOUNTAIN HIGH SCHOOL FOUNDATION**, a New Mexico nonprofit corporation (“Landlord”).

### RECITALS:

A. Charter School and Landlord have entered into that certain Lease (hereinafter defined) whereby, subject to the terms and conditions contained therein, Landlord has agreed to lease the building and premises more particularly described in Exhibit A hereto (the “Premises”) to Charter School, and to enter, upon receipt of all required approvals, into that Lease Purchase Agreement with an option to purchase pursuant to the terms and requirements of the New Mexico Public School Lease Purchase Act, NMSA 1978 §§ 22-26A-1 et seq. attached to the Lease as Exhibit [\_\_].

B. Landlord has requested that Equitable Facilities Fund, Inc. (“Lender”) finance or refinance the costs of acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of existing and new facilities located at 25 La Madera Road, Sandia Park, New Mexico 87047, that will be leased to and operated by Charter School (referred to herein as the “Project”) pursuant to a loan agreement dated as of February \_\_, 2026 between Lender and Landlord (the “Loan Agreement”) in the amount of \$[\_\_\_\_\_] (the “Loan”). Landlord is the Borrower under the Loan structure.

C. In connection with the Loan, the parties hereto now desire to set forth additional representations, warranties, covenants and agreements that were not originally contemplated in the Lease but that are critical in connection to the Landlord’s receipt of the Loan.

D. Nothing in this Master Covenant Agreement shall be construed as a lending or pledging of Charter School’s credit or the giving of security to any person or entity on the part of Charter School for any of Landlord’s obligations relating to the Loan, or as a guarantee or surety of any of Landlord’s Loan obligations, and Charter School expressly disclaims any responsibility for Landlord’s Loan-related obligations. Charter School’s obligations relating to the Loan transaction described herein are limited to Charter School’s obligations under the Lease between the parties.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### Definitions

**Section 1.1**     **Defined Terms.** As used herein, the following terms shall have the following meanings (all terms, defined in this Article I or in other provisions of this Agreement, in the singular have the same meanings when used in the plural and vice versa):

“*Additional Debt*” means any additional Debt incurred by Landlord.

“*Additional Rent*” has the meaning set forth in the Lease.

“*Affiliate*” of any Person means any other Person directly or indirectly controlling, controlled by, or under common control with, such Person.

“*Agreement*” means this Master Covenant Agreement and any amendments thereto.

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

“*Authorized Representative*” means the Chair of the Charter School Board or the Executive Director of the Charter School, or any other person duly appointed by the Governing Body of Charter School to act on behalf of Charter School, each as evidenced by a written certificate furnished to Lender containing the specimen signature of such person or persons and signed on behalf of Charter School by an authorized officer of Charter School.

“*Base Rent*” means the greater of (i) the Annual Debt Service Requirement due and payable on the Loan or (ii) the amount set forth as Base Rent in the Lease.

“*Cash on Hand*” means the sum of unrestricted cash, cash equivalents, liquid investments, and unrestricted marketable securities (valued at the lower of cost or market), excluding any trustee-held or similar funds held as collateral with respect to any obligations for borrowed money or leases.

“*Charter*” means the charters issued to the Charter School or such other entity incorporated into the Charter School, including the following: (i) that certain Charter Contract between the Charter School and the Albuquerque Public Schools Board of Education dated July 1, 2025, and any amendments or renewals thereof, and (ii) any other charter issued to the Charter School for other charter schools.

“*Chartering Authority*” means the Albuquerque Public Schools Board of Education.

“*Charter School Board*” means the Governing Council of Charter School.

“*Claims*” means all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature brought (whether by way of direct action, counter claim, cross action or impleader) against any Indemnified Party, even if groundless, false, or fraudulent, so

long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, to result from, to relate to or to be based upon, in whole or in part, the duties, activities, acts or omissions of any person in connection with the School's operation, use, occupancy, maintenance or ownership of the Project or any part thereof.

“*Closing Date*” means February \_\_, 2026.

“*Days Cash on Hand*” means (A) the cash requirements of Charter School and Landlord during such Fiscal Year related to or payable from revenues attributable to Charter School and Landlord (excluding from such calculation all depreciation and other non-cash items), and including within such calculation on behalf of Charter School and Landlord (i) all Tenant Operating Expenses and Landlord 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 Tenant Operating Expenses and Landlord Operating Expenses or the funding of cash shall not be considered Cash on Hand for the purposes of Days Cash on Hand.

“*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.

“*Defeasance Obligations*” means any obligations authorized under State law and the related financing documents to be deposited in escrow for the defeasance of any Debt.

“*Enhanced School Improvement Plan*” means a plan prepared by the Independent Management Consultant to address the Charter School’s failure to meet two or more standards for two consecutive academic years.

“*ESRF*” means Equitable School Revolving Fund, LLC, a Delaware limited liability company.

“*Facilities*” means the property and improvements located at 25 La Madera Road, Sandia Park, New Mexico 87047 and leased to and operated by the Charter School, as such are specified, and as may be revised from time to time, pursuant to the terms of the Lease and financed in whole or in part with proceeds of Note.

“*Fiscal Year*” means July 1 to June 30 or such other twelve-month period adopted as the Fiscal Year as designated by Charter School.

“*GAAP*” means generally accepted accounting principles and practices recognized from time to time by the Financial Accounting Standards Board (or any generally recognized successor) consistently applied for all periods to properly reflect the financial condition, and the results of operations and changes in financial position, of the Charter School (and, on a consolidated basis, of the Charter School and its consolidated subsidiaries, if applicable).

“*Gross Tenant Revenues*” means, for any period of calculation, the total of all operating and nonoperating revenues of the Charter School, including but not limited to revenues received from the State, pursuant to its Charters, 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 Charter 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.

“*Hazardous Materials*” means those substances currently included within the definitions of “hazardous waste,” “hazardous substance,” “hazardous constituent,” “toxic substances,” “toxic materials,” “toxic waste,” “pollutant,” “contaminant” or similar term under any federal, state or

local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

“*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 Charter School, and (iii) is not connected with the Charter 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.

“*Indemnified Party*” or “*Indemnified Parties*” means one or more of Landlord, the Board of Directors of Landlord, Charter School Board, the Trustee, Lender and any of their successors, officers, directors, members, employees, agents, servants and any other person acting for or on behalf of any of them, as the case may be, but only to the extent that indemnification is allowed by applicable law.

“*Issuer*” means any municipal issuer of tax-exempt bonds or other debt on behalf of the Lender or ESRF.

“*Landlord 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 Landlord 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 Landlord 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 Pledged Revenues, and (d) any principal and interest paid under or with respect to any Debt.

“*Laws*” means the laws of the United States of America, the State, and any other political subdivision having authority over the Loan (as defined in the Loan Agreement).

“*Lease*” means the Lease Purchase Agreement between Landlord and Charter School, dated [\_\_\_\_], attached as Exhibit B, as may be amended or supplemented, or as superseded by any Lease Purchase Arrangement entered into between the parties pursuant to the New Mexico Public School Lease Purchase Act.

“*Lease Revenues*” means, for any period of time for which calculated, the total of all moneys received by Landlord from the Charter School pursuant to the Lease for the Facilities and any supplements thereto during such period.

“*Lease Payment(s)*” means the amounts set forth in the Lease.

“*Losses*” means losses, costs, damages, expenses, judgments, and liabilities of whatever nature (including, but not limited to, attorney’s, accountant’s and other professional’s fees, litigation and court costs and expenses, amounts paid in settlement and amounts paid to discharge judgments and amounts payable by an Indemnified Party) directly or indirectly resulting from, arising out of or relating to one or more Claims.

“*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.

“*Mortgage*” means the Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement, Fixture Filing and Other Real Property Related Financing Statement Filing, dated as of February \_\_, 2026, executed by the Borrower for the benefit of the Trustee and to be filed in the County Clerk’s Official Public Records of Bernalillo County, New Mexico, as amended, restated, supplemented and/or otherwise modified.

“*Net Tenant Revenues*” means for any period of determination thereof, the amount of excess (deficit) of Gross Tenant Revenues less Tenant 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 Tenant 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.

“*Note*” means Promissory Note in the original principal amount of \$[\_\_\_\_\_] executed by the Landlord for the benefit of the Lender.

“*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.

“*Pledged Revenue*” has the meaning set forth in the Loan Agreement.

“*Project*” means the (i) acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of existing and new facilities located at 25 La Madera Road, Sandia Park, New Mexico, 87047, (ii) funding of capitalized interest on the Loan, and (iii) payment of costs of issuance of the Note.

“*PSFA*” means the New Mexico Public School Facilities Authority.

“*Release*” or “*Released*” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Materials into the environment.

“*School Improvement Plan*” means a plan identifying actions to be taken by the Charter School to address and meet each of the standards not met for one academic year.

“*Similar Schools Methodology*” shall mean a regression forecasting model that compares a school’s prior performance to similar schools based on socio-economic composition and grade configuration (elementary, middle, high, or a combination), in which each school receives a ratio comparing their actual performance to their predicted proficiency, which is then used to rank schools and assign a percentile ranking.

“*State*” means the State of New Mexico.

“*Tax Certificate*” means the Tax Certificate dated as of the Closing Date, together with all exhibits thereto, setting forth, among other matters, certain covenants and representations of the Landlord and the Charter School regarding the Project and the Loan and agreeing to deliver certain certificates and documents at subsequent times as required or requested by the Lender, ESRF, or the Issuer.

“*Tenant 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 Charter 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 Tenant 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.

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

## ARTICLE II

### REPRESENTATIONS, COVENANTS, AND WARRANTIES

**Section 2.1**      **Representations and Covenants of Charter School.** Charter School represents and covenants as follows:

(a) Charter School is a duly formed and validly existing public charter school operating under the laws of the State of New Mexico;

(b) Charter School has full power and authority to execute the Lease and perform its obligations thereunder, subject to obtaining all required approvals from the New Mexico Public

Education Department and the New Mexico Public Schools Facilities Authority;

(c) the execution of the Lease and the performance of its obligations thereunder and compliance with the terms hereof by Charter School will not conflict with, or constitute a default under, any law (including administrative rule), judgment, decree, order, permit, license, agreement, mortgage, lease, or other instrument to which Charter School is subject or by which Charter School or any of its property is bound;

(d) Charter School currently is not in violation of any law, which violation could adversely affect the performance of its obligations under the Lease;

(e) Charter School presently expects to have sufficient revenues or other funds to satisfy its obligations under the Lease, and Charter School will use its best efforts to manage its affairs in such a way as to ensure sufficient revenues, or other similar funds, available to Charter School to pay Lease Payments;

(f) the Lease is the legal, valid, and binding obligation of Charter School, enforceable in accordance with its terms;

(g) Charter School and its invitees will be the sole users of the Project, and Charter School will use the Project during the term of the Lease for the purpose of operating school facilities or for other educational purposes of Charter School as provided within the Lease;

(h) Charter School agrees to keep the Project free and clear of all liens, encumbrances, and security interests (other than the Permitted Encumbrances and those arising under the provisions of the New Mexico Public School Lease Purchase Act); and

(i) once approved by the New Mexico Public Education Department and the PSFA, no further approval, consent, or withholding of objections is required from any governmental authority with respect to the Lease, except for any amendments thereto falling within the requirements of the New Mexico Lease Purchase Act.

### **ARTICLE III**

#### **LEASE PAYMENTS**

**Section 3.1 Charter School's Acknowledgment.** It is understood and acknowledged that the Loan will be sold to Lenders thereof in reliance upon Charter School's commitment to make Lease Payments as provided in the Lease and subject to the terms of the Lease.

### **ARTICLE IV**

#### **THE LOAN**

**Section 4.1**     **Issuance and Sale of the Loan**. Subject to applicable terms, limitations, and procedures, the parties understand that Lender will issue and lend the proceeds of the Loan to Landlord to finance the Project, at such interest rate and/or discount and other terms in accordance with applicable Laws and pursuant to the terms and conditions set forth in the Loan Agreement.

**Section 4.2**     **Cooperation by Charter School**. Charter School shall take the actions contemplated by and in the Lease, and to the extent legally possible and permissible shall cooperate with Landlord and its agents in Landlord's Loan financing, including the delivery of the following documents necessary in connection with the closing of the Loan:

- (i).     the opinion of Cuddy & McCarthy, LLC, Santa Fe, New Mexico, counsel to the Lessee;
- (ii).    certificates of Charter School satisfactory to Lender; and
- (iii).   a duly certified copy of a Charter School Resolution authorizing and approving the execution and delivery of the Lease and this Agreement.

## ARTICLE V

### SPECIAL COVENANTS OF CHARTER SCHOOL

**Section 5.1**     **Removal of Liens**. With the exception of any lien imposed in accordance with the New Mexico Public School Lease Purchase Act, if Charter School shall cause any lien, encumbrance or charge of any kind based on any claim of any kind (including, without limitation, any claim for income, franchise or other taxes, whether federal, state or otherwise) to be asserted or filed against the Pledged Revenue, or any Lease Payment paid or payable by Charter School under or pursuant to the Lease, or any order (whether or not valid) of any court shall be entered with respect to the Pledged Revenue, or any such Lease Payment by virtue of any claim of any kind, in any case so as to:

- (a)     interfere with the due payment of the Lease Payments to Landlord or the due application of such amount by Lender from Landlord pursuant to the applicable provisions of the Lease, the Loan Agreement or any other documents related to the Loan and executed by the Landlord,
- (b)     subject Lender to any obligation to refund any money applied to payment of principal (premium, if any) and interest on the Note, or
- (c)     result in the refusal of Lender to apply the Lease Payments to payment of the Loan as set forth in the Loan Agreement because of its reasonable determination that liability might be incurred if such due application were to be made, then Charter School will promptly take such action (including, but not limited to, the payment of money) as may be necessary to prevent, or to nullify the cause or result of, such interference, obligation or refusal, as the case may be.

## **Section 5.2      Tax Covenants.**

(a) Charter School covenants and agrees that it will at all times do and perform all acts and things permitted by law which are necessary in order to assure that interest paid on any Bonds will be excluded from gross income for federal income tax purposes and will take no action that would result in such interest not being so excluded. Without limiting the generality of the foregoing, Charter School agrees to comply with the provisions of the Tax Certificate and take all actions, deliver all certificates or other documents subsequent to the date hereof, and provide all information required by the Tax Certificate as may be necessary or advisable as determined by Lender, ESRF or the Issuer to maintain exclusion from gross income for federal income tax purposes of the interest on Bonds. This covenant shall survive payment in full or defeasance of Loan.

(b) Charter School covenants and agrees that, in connection with the offering of any Bonds (as defined in the Tax Certificate) by ESRF, upon request of Lender or ESRF, Charter School shall cooperate in reviewing and approving any information related to Charter School in the offering documents related to such Bonds and shall, upon request of Lender or ESRF and prior to the publication of such offering documents, provide a certificate that the information contained therein related to Charter School is, as of such date, true and correct in all material respects. Charter School further agrees that Lender and ESRF may use any information related to Charter School, as provided by Charter School in connection with due diligence and underwriting of the Loan or as uploaded via Municipal Securities Rulemaking Board (the “MSRB”) through the Electronic Municipal Market Access (“EMMA”) System at [www.emma.msrb.org](http://www.emma.msrb.org) in connection with the ongoing obligations to provide information required by the Loan, (i) in the offering documents related to any Bonds issued by ESRF, (ii) to investors in such Bonds issued by ESRF during or after the bond marketing period, and/or (iii) to satisfy ESRF’s continuing disclosure obligations pursuant to the United States Securities Exchange Commission Rule 15c2-12. This covenant shall survive payment in full or defeasance of Loan.

**Section 5.3      Reporting Requirements; Compliance Certificate.** Charter School shall provide to Landlord and Lender each of the following:

(a) Annual Data. As soon as available, and in any event within 180 days after the close of each Fiscal Year of Charter School, (1) the audited financial statements of Charter School and Landlord; provided that if the audited financial statements are delayed due to the fact they have not been released by the New Mexico State Auditor, Charter School shall be deemed to have complied with financial reporting requirements so long as Charter School provides (i) its draft financial statements by January 15 of each year to the extent permitted by applicable laws and regulations, and (ii) its annual audited financial statements (or notice that such audited financial statements of Charter School have been posted and are publicly available on the website of the New Mexico State Auditor) to Lender within ten (10) business days of when such audited financial statements are distributed by the New Mexico State Auditor; and (2) updated data for Charter School for the most recently completed Fiscal Year in compliance with the financial and reporting information required under Exhibit E of the Loan Agreement including:

1. amount of lottery applications;
2. student retention rate;
3. open seats and number of applicants on waiting list by grade;
4. faculty retention;
5. changes in Charter School administration leadership;
6. administration turnover;
7. Board members;
8. historic, current and projected enrollment by grade;
9. student demographics including ethnicity, economically disadvantaged status, ELL, FRL and SPED;
10. Charter School administration leadership demographics including gender, ethnicity and race;
11. State accountability/performance ratings and authorizer reports;
12. charter contract expiration dates; and
13. Charter School aggregated academic performance results, including growth and proficiency scores and, if applicable, high school graduation rate and Charter School aggregated college entrance exam results for the highest grade tested by campus

Charter School shall provide the calculation of the financial covenants in Sections 6.10 and 6.11 of the Loan Agreement in the form prescribed by the Lender.

(b) Interim Data. (1) Quarterly, unaudited income statements and balance sheets and comparison of actual expenditures to budgeted expenditures within forty-five (45) days of the end of each fiscal quarter; and (2) Charter School's annual Fiscal Year budget within sixty (60) days of the commencement of each Fiscal Year.

(c) Amendments. Promptly after the adoption thereof, copies of any amendments of or supplements to the articles of incorporation, by-laws or other organizational documents of Charter School and copies of any amendments to any of the Loan Documents.

(d) Notice. Charter School shall notify Lender and Landlord in writing promptly after obtaining knowledge of any of the following events, specifying in each case the action Charter School has taken or proposes to take with respect thereto: (a) the occurrence of a default under the Lease; (b) any default by the Charter School under any Legal Requirement that results in a Material Adverse Effect (as defined in the Loan Agreement); (c) any Litigation instituted or threatened against Charter School or any development in any such Litigation that results in a Material Adverse Effect; (d) any labor controversy pending or threatened in writing against Charter School or any material development therein that results in a Material Adverse Effect with respect to the Project; (e) any change in Charter School's name, head administrator/superintendent, the chief financial officer, chief academic officer, other officers or campus leadership (e.g., principals or executive director); (f) any material correspondence from the Chartering Authority, including but not limited to: any meetings in which Charter School is required to appear before the Chartering Authority, copies of any Chartering Authority approvals or denials of Charter amendments, review or

revocation notice regarding the Charter and copies of written complaint notifications from the Charter Authority, along with Charter School's responses thereto; and (g) any change in any rating of Charter School's long-term Indebtedness by any rating agency for issues of non-compliance along with the minutes of such meetings and any responses provided by Charter School.

(e) Other Information. Such other information respecting the business, properties or the condition or operations, financial or otherwise, of Charter School as Lender may from time-to-time reasonably request, including without limitation, reports of any governmental audits and inspections.

(f) Compliance Certificate. A Compliance Certificate in the form attached hereto as Exhibit C.

**Section 5.4 Further Assurances and Corrective Instruments; Recordation.** Landlord and Charter School agree that they will, 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 carrying out the intention or facilitating the performance of the Lease.

Charter School agrees that the Lease, and any other instruments in which Charter School is a party as may be required from time to time to be kept, may be recorded and filed in such manner and in such places as may from time to time be required by law.

**Section 5.5 Existence of Charter School.** While the Loan remains Outstanding (as defined in the Loan Agreement), Charter School agrees to take all necessary steps to retain its charter and good standing, including pursuit of any appeals of a revocation/nonrenewal. The Charter School shall notify Landlord of any notice of Charter revocation, vote by the Charter School Board to relinquish its Charter, if the Charter is ending and the Charter School has not taken the necessary action to have the Charter renewed, if the Charter School has provided written notification to the Chartering Authority that it does not intend to renew the Charter or intends to relinquish the Charter, the Chartering Authority revokes the Charter, or acceptance by the Chartering Authority of relinquishment of the Charter, which shall constitute an Event of Default.

**Section 5.6 Lease Payment Coverage Ratio.**

(a) It shall constitute an Event of Default (a) if the Tenant 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 Charter School shall manage its business such that the Tenant 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 Charter School fails to maintain a Tenant Lease Payments Coverage Ratio less than 1.10 for any Fiscal year, such failure shall not constitute an Event of Default so long as Charter 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 Tenant Lease Payments Coverage Ratio. As soon as practicable, but no later than thirty (30) days after receipt of such report, Charter School shall consider Consultant's recommendations and, to the extent consistent with and allowable under applicable State and/or federal laws and Charter School's existing contractual obligations, adopt/implement them. Notwithstanding any other provision of this Section, if Charter School fails to maintain a Tenant 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.

**Section 5.7 Negative Covenants.** While the Loan remains Outstanding (as defined in the Loan Agreement), Charter School shall not:

(a) Liquidate, terminate, consolidate, merge or dissolve, unless directed to do so by the State Public Education Department or State Legislature;

(b) Create, incur, permit or assume any Debt, including Subordinate Indebtedness (as defined in the Loan Agreement) or Short-Term Indebtedness (as defined in the Loan Agreement), without written consent of the Lender, other than (i) non-recourse Debt not to exceed at any time an amount aggregate amount of \$750,000 as tested as of the end of each Fiscal Year and reported on the audited financial statement of the Charter School, and (ii) Debt secured by or paid from Gross Tenant Revenues (including leases for facilities) upon the delivery of a Certificate of the Charter School stating that: (i) for the Charter School's most recently completed Fiscal Year, the Tenant Lease Payment Coverage Ratio equaled at least 1.20 prior to the issuance of the Additional Debt; and (ii) the Tenant Lease Payment Coverage is projected to be at least 1.20 on all Debt Outstanding and the proposed Additional Debt in the first fiscal year following the issuance of the Additional Debt, taking into account certain assumptions as required by Lender; or

(c) Create or suffer to be created any lien, encumbrance easement, use or charge affecting the Facilities or the Gross Tenant Revenues.

**Section 5.8 Continuing Disclosure Agreement.** Upon request of Lender, Charter School will deliver an undertaking of continuing disclosure obligations pursuant to the United States Securities Exchange Commission Rule 15c2-12 (a "Continuing Disclosure Agreement") relating to the dissemination of financial information described above on a quarterly and/or annual basis, substantially in the form set forth in Exhibit D hereto, relating to public securities that may be issued from time to time by Lender or its affiliates for the purpose of reimbursing or refinancing the Loan. Any costs or expenses associated with such continuing disclosure obligations of Charter School will be paid by Lender. Upon request of Lender, Charter School will cooperate with Lender in the production of financial and operating information for purposes of review by one or more rating agencies. Any costs or expenses associated with such rating agency review of Charter School will be paid by Lender within thirty (30) days from Charter School's invoice. If Charter School fails to comply with any of the reporting requirements under the Continuing Disclosure Agreement as required in Exhibit D, Charter School shall, within ten (10) business days, make all its books and records available to Lender or its designee, to complete the disclosure requirements. If Charter School refuses or fails to permit Lender or its designee to obtain the books and records,

whether through a judicial or administrative process, to the extent permitted by law, Charter School hereby waives any objection to the aforementioned enforcement actions or such other remedies Lender determines to be in Lender's best interest. To the extent permitted by law, Charter School shall be responsible for all fees, costs, and other associated expenses related to the Landlord's and Lender's enforcement action. Any costs or expenses associated with such rating agency review of the Landlord under Section 6.13 of the Loan Agreement which are outside of the scope of the Landlord's normal rating agency review for its Loan rating will be paid by the Lender.

**Section 5.9 Academic Covenant.** Commencing 2026-2027 school year, the Tenant covenants that the Tenant shall:

(a) Each year, (a) maintain a minimum weighted average for all students of 70th percentile using the Similar Schools Methodology, in both Math and English Language Arts, calculated separately for each respective subject; or (b) maintain a weighted average proficiency rate for all students, in both Math and English Language Arts, calculated separately, that exceeds 100% of the state's weighted average for all students, in each respective subject; and

(b) Each year the weighted average proficiency rate for all socioeconomically disadvantaged students, in both Math and English Language Arts, calculated separately, shall exceed 100% of the state's weighted average for all socioeconomically disadvantaged students, in each respective subject; and

(c) Each year, at least 90% of students in the school's own 4-year graduating cohort shall graduate, as determined by the state reported data; and

(d) Increase the percentage of students meeting or exceeding the New Mexico statewide average on the SAT and/or ACT English scores by at least 3 percentage points each year until performance exceeds the national benchmark for college readiness, as determined by College Board or alternative acceptable to Lender, and maintain that level; and

(e) Increase the percentage of students meeting or exceeding the New Mexico statewide average on the SAT and/or ACT Math scores by at least 3 percentage points each year until performance exceeds the national benchmark for college readiness, as determined by College Board or alternative acceptable to Lender, and maintain that level; and

(f) Each year, internally reduce the performance gap between FRL and non-FRL students who meet or exceed the SAT and/or ACT national benchmark, as determined by the College Board or an alternative acceptable to the Lender, by at least 10 percentage points until the gap falls below 5 percent.

Beginning in the academic year following the Loan closing, in the event that the Tenant fails to meet two or more designated standards for one academic year, the Tenant agrees that it shall (i) within sixty (60) days of such determination, provide the Lender a plan identifying actions taken or to be taken to address and meet this standard (the "School Improvement Plan");

and (ii) as soon as possible, the Tenant shall implement or begin to implement all the recommendations of the School Improvement Plan, to the extent legally permissible.

If the Tenant fails to meet two or more designated standards for two consecutive academic years, the Tenant agrees that it shall (i) within thirty (30) days of such failure, engage a mutually acceptable Independent Management Consultant (as defined in the Loan Agreement) to assist the Tenant in the preparation of an Enhanced School Improvement Plan; (ii) within sixty (60) days of engaging such consultant, provide to the Lender the enhanced School Improvement Plan (the “Enhanced School Improvement Plan”); and (iii) within forty-five (45) days after receipt of the final Enhanced School Improvement Plan from the consultant, the Tenant shall implement or begin to implement the recommendations of the Enhanced School Improvement Plan, to the extent legally permissible. Notwithstanding any other provision of this Section 5.9, failure of the Tenant to meet the academic goals as outlined herein or otherwise comply with this Section 5.9 shall not constitute an Event of Default under this Agreement.

**Section 5.10 Enrollment Covenant.** The Tenant shall maintain annual enrollment levels, according to the official fall census reported to the State Department of Education, as reported to the Lender no later than November 15 of such year, corresponding to the Enrollment Requirements in Table 1 below. The Tenant further covenants that, in the event it fails to maintain such Enrollment Requirement, it will within sixty (60) days, prepare, share, and discuss with the Lender a detailed plan for enrollment turnaround.

If the enrollment count is ever below the enrollment minimum in Table 1 below, the Tenant shall, at its own expense, timely engage an Independent Management Consultant acceptable to the Lender. Within sixty (60) days of engaging an Independent Management Consultant, such Independent Management Consultant shall prepare a report to Lender with recommendations for meeting the required Enrollment Requirement. As soon as practicable, but no later than thirty (30) days after receipt of such report, the Tenant shall, to the extent legally permissible, implement the Independent Management Consultant’s recommendations. The Enrollment Requirement and Enrollment Minimum shall be reevaluated by the Tenant and Lender should there be any material changes to the Tenant enrollment plans. Notwithstanding any other provision of this Section 5.10, failure of the Tenant to maintain annual enrollment levels above the Enrollment Minimum as reported by the State on each fall census day enrollment count or otherwise comply with this Section 5.10 shall not constitute an Event of Default under this Agreement.

**Table 1: Enrollment Requirements**

Fall Testing Date	Full Enrollment	Enrollment Requirement	Enrollment Minimum
2026 (FY27)	554	500	470
2027 (FY28)	663	600	560
2028 (FY29) and thereafter	755	680	640

**Section 5.11 Environmental Covenants.** The Charter School shall (a) not dispose of any Hazardous Materials at, in or under the Project in violation of applicable environmental laws; (b) keep records of any Hazardous Materials Released by the Charter School or any of its contractors, agents or employees at the Project; (c) comply with any land use restrictions and not impede the effectiveness or integrity of any institutional controls at the Project; (d) take reasonable steps to prevent Releases, stop continuing Releases, and avoid exacerbating any existing Hazardous Materials Released at the Property; (e) reasonably cooperate, assist, and provide access to persons authorized to conduct remediation actions and efforts required by applicable environmental law, and shall not impede the performance of, response actions or natural resource restoration related thereto; (f) comply with all information requests and administrative subpoenas from any Governmental Authority; and (g) provide all required legal notices with respect to the discovery or Release of any Hazardous Materials at the Project in violation of applicable environmental law.

**Section 5.12 Immunity.** To the extent permitted by law that Charter School has acquired or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit, arbitration or other proceeding, from jurisdiction of any court or arbitration panel or from set-off or any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, Charter School hereby irrevocably and unconditionally waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement, the Lease or any document in connection with the Note.

**Section 5.13 Subordination.** Charter School hereby agrees that the Lease now is, and shall at all times continue to be, subject, inferior and subordinate in each and every respect to the lien of the Mortgage and to any and all renewals, amendments, modifications, extensions, substitutions, replacements, increases and/or consolidations of the Mortgage and/or the Note; and the lien of the Mortgage, and any and all renewals, amendments, modifications, extensions, substitutions, replacements, increases and/or consolidations of the Mortgage and/or the Note, shall be and remain, in each and every respect prior and superior to the Lease. This Agreement shall be the whole and only agreement with regard to the subordination of the Lease to the lien of the Mortgage and shall supersede and cancel insofar as same may affect the priority between the Mortgage and the Lease, any prior agreements or provisions relating to the subordination of the Lease to the lien of the Mortgage, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of any Mortgage, mortgage or other security agreement

**Section 5.14 Management Agreements.** Charter School agrees that if Charter School has entered or enters into a management agreement for the payment of facility management fees to Landlord, Affiliate, or any supporting organization of Charter School under Internal Revenue Code Section 509(a)(3), or any of their respective Affiliates, with respect to any Facilities, Charter School shall amend any such management agreement such that, so long as the Loan remains outstanding: (i) the obligation of Charter School to pay facility management fees shall be subordinate to its payment of operating expenses and Base Rent to Landlord under the Lease; (ii) the obligation of Charter School to pay facility management fees shall be suspended for any such

time as the payment of such facility management fees would cause Charter School to fail to meet Sections 5.7 and 5.8 of the Lease and any of the financial covenants contained in the Lease; and (iii) during any period of time when such facility management fees remain unpaid, such fees shall accrue without interest. If Charter School has not engaged a separate facilities manager, Charter School agrees that it shall not apply any Gross Tenant Revenues to costs and expenses of facility management, other than ordinary compensation and benefits of Charter School's managerial employees.

**Section 5.15 Days Cash on Hand.** Charter School and Landlord shall manage their business to maintain not less than consolidated sixty (60) Days Cash on Hand in the current Fiscal Year and for each Fiscal Year thereafter. Failure to maintain the consolidated sixty (60) Days Cash on Hand as required by this Section shall not constitute an Event of Default so long as Charter 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 consolidated sixty (60) Days Cash on Hand. As soon as practicable, but no later than thirty (30) days after receipt of such report, Charter School shall consider the Independent Management Consultant's recommendations and, to the extent consistent with and allowable under applicable State and/or federal laws and Charter School's existing contractual obligations, adopt/implement them. Notwithstanding any other provision of this Section 5.15, failure of Charter School to maintain not less than consolidated 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 Charter School from maintaining consolidated sixty (60) Days Cash on Hand in any Fiscal Year, the provisions of this section shall be reduced to consolidated forty-five (45) Days Cash on Hand.

**Section 5.16 Indemnification.** SUBJECT TO AND WITHOUT WAIVING THE IMMUNITY, LIMITATIONS AND OTHER PROVISIONS OF THE NEW MEXICO TORT CLAIMS ACT, NMSA 1978 SECTION 41-4-1 ET SEQ., AND ONLY TO THE EXTENT ALLOWED, IF AT ALL, BY NEW MEXICO LAW:

(a) **Agreements to Indemnify.** Charter School agrees that it will at all times indemnify and hold harmless each of the Indemnified Parties against any and all Losses other than Losses resulting from fraud, willful misconduct or theft on the part of the Indemnified Party claiming indemnification.

(b) **Release.** None of the Indemnified Parties shall be liable to Charter School for, and Charter School hereby releases each of them from, all liability to Charter School for, any Claim in connection with the Project.

(c) **Subrogation.** Each Indemnified Party, as appropriate, shall reimburse Charter School for payments made by Charter School pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by it from any other source (but not from the proceeds of any claim against any other Indemnified Party) with respect to any Loss to the extent

necessary to prevent a multiple recovery by such Indemnified Party with respect to such Loss. At the request and expense of Charter School, each Indemnified Party shall claim or prosecute any such rights of recovery from other sources (other than any claim against another Indemnified Party) and such Indemnified Party shall assign its rights to such rights of recovery from other sources (other than any claim against another Indemnified Party), to the extent of such required reimbursement, to Charter School.

(d) Notice. In case any Claim shall be brought or, to the knowledge of any Indemnified Party, threatened against any Indemnified Party in respect of which indemnity may be sought against Charter School, such Indemnified Party promptly shall notify Charter School in writing; provided, however, that any failure so to notify shall not relieve Charter School of its obligations under this Section.

(e) Defense. Charter School shall have the right to assume the investigation and defense of all Claims, including the employment of counsel and the payment of all expenses. Each Indemnified Party shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party unless (i) the employment of such counsel has been specifically authorized by Charter School, in writing, (ii) Charter School has failed after receipt of notice of such Claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and Charter School, and the Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to Charter School (in which case, if such Indemnified Party notifies Charter School in writing that it elects to employ separate counsel at Charter School's expense, Charter School shall not have the right to assume the defense of the action on behalf of such Indemnified Party; provided, however, that Charter School shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Indemnified Parties, which firm shall be designated in writing by the Indemnified Parties).

(f) Cooperation; Settlement. Each Indemnified Party shall cooperate with Charter School in the defense of any action or Claim. Charter School shall not be liable for any settlement of any action or Claim without Charter School's consent but, if any such action or Claim is settled with the consent of Charter School or there be final judgment for the plaintiff in any such action or with respect to any such Claim, Charter School shall indemnify and hold harmless the Indemnified Parties from and against any Loss by reason of such settlement or judgment to the extent provided in Subsection (a).

(g) Survival; Right to Enforce. The provisions of this Section shall survive the termination of the Lease, and the obligations of Charter School hereunder shall apply to Losses or Claims under Subsection (a) whether asserted prior to or after the termination of the Lease. In the event of failure by Charter School to observe the covenants, conditions and agreements contained in this Section, any Indemnified Party may take any action at law or in equity to collect amounts

then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Charter School under this Section. The obligations of Charter School under this Section shall not be affected by any assignment or other transfer by Landlord of its rights, titles or interests under the Lease to the Trustee pursuant to the Indenture and will continue to inure to the benefit of the Indemnified Parties after any such transfer. The provisions of this Section shall be cumulative with and in addition to any other agreement by Charter School to indemnify any Indemnified Party.

**Section 5.17 Authority to Reproduce Student Images.** Charter School certifies that, that prior to providing any items containing student images to the Lender, it will have the appropriate written consent, in compliance with applicable state/federal law, from the parents, guardians and/or students served by Charter School to: (1) lawfully furnish images of such students to Lender and ESRF; and (2) authorize Lender and ESRF to use such student images in any marketing or public relations materials and/or to further their business purposes.

**Section 5.18 School Certificate.** The Charter School agrees that, at the time of issuance of any Bond by the Lender, the Charter School shall cooperate in reviewing and approving any information related to the Charter School in the Preliminary Official Statement and Official Statement related to such Bonds and shall provide a certificate that the information contained related to the Charter School is, as of such date, true and correct in all material respects.

**Section 5.19 Ratings.** The Charter School hereby agrees that, upon request of the Lender, the Charter School shall cooperate with the Lender or Standard & Poor's Financial Services LLC (S&P") or substitute rating agency, in the production of financial and operating information, and coordination of site visits or other information gathering activities, for purposes of review by S&P or substitute rating agency in connection with a credit rating on the Loan.

**Section 5.20 Use of Project for Sectarian Use.** Charter School agrees that to the full extent required from time to time by applicable laws and Constitutional provisions of the United States of America and the State in order for the Lease and all other transactions provided for in this Agreement to be made and effected in compliance with such laws and Constitutional provisions, no part of the Project financed in whole or in part with proceeds of the Note shall be primarily used for sectarian instruction or as a place of religious worship or in connection with any part of the program of a school or department of divinity for any religious denomination.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.1 Severability.** In the event any provision of the 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.

**Section 6.2 Applicable Law.** The Lease and this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

**Section 6.3**      **Survival of Representations and Warranties.** The respective agreements, representations and other statements of Charter School and their respective officials or officers set forth herein will remain in full force and effect, regardless of any investigation or statements as to the results thereof, made by or on behalf of Lender, Charter School or Charter School and will survive delivery of and payment for the Loan.

**Section 6.4**      **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of Landlord and Charter School and their respective successors and assigns, except Charter School may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Landlord.

**Section 6.5**      **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but taken together shall constitute only one instrument.

*[signatures begin on next page]*

Executed as of the date first written above.

Charter School:

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Landlord:

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A**

### **The Premises**

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](#).

**EXHIBIT B**

Lease Agreement

[SEE ATTACHED]

**EXHIBIT C**

**FORM OF COMPLIANCE CERTIFICATE**

The undersigned hereby certifies that he or she holds the office set forth below his or her signature EAST MOUNTAIN, a New Mexico public charter school (the “*Tenant*”) and that, as such, he or she is authorized to execute and deliver this Compliance Certificate on behalf of the Tenant pursuant to the Loan Agreement dated as of February \_\_, 2026 (as it may be amended, restated, supplemented and/or otherwise modified from time to time, the “*Loan Agreement*”) by and between the EAST MOUNTAIN HIGH SCHOOL FOUNDATION, and EQUITABLE FACILITIES FUND, INC. (the “*Lender*”), and on behalf of the Tenant further certifies, represents and warrants as follows (each capitalized term used herein having the same meaning given to it in the Loan Agreement unless otherwise specified):

1. Pursuant to Section 6.10 of the Loan Agreement, the Tenant has maintained a Tenant Lease Payment Coverage Ratio of not less than 1.1.

Tenant Lease Payment Coverage Ratio for Fiscal Year Ended 20\_\_: \_\_\_\_\_

2. Pursuant to Section 6.11 of the Loan Agreement, the Tenant and Landlord have maintained consolidated sixty (60) Days Cash on Hand for Fiscal Year \_\_\_\_.

Day Cash on Hand for Fiscal Year ended 20:\_\_: \_\_\_\_\_

3. Hereto attached as Exhibit A is detailed information on the compliance with the Tenant Lease Payment Coverage Ratio and Days Cash on Hand financial covenants set forth in Article VI of the Loan Agreement, and evidence of compliance with the Charter Covenant, Academic Covenant, and Enrollment Covenant for the applicable time periods set forth in Article VI of the Loan Agreement, including the supporting calculations using the Lender-approved annual templates.

EXECUTED AND DELIVERED as of \_\_\_\_\_.

TENANT:

EAST MOUNTAIN,  
a New Mexico public charter school

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO COMPLIANCE CERTIFICATE**

Calculation of Financial Covenants including Tenant Lease Payment Coverage Ratio and Days  
Cash on Hand set forth in Article VI of the Loan Agreement

Evidence of compliance with the Charter Covenant, Academic Covenant, and Enrollment  
Covenant for the applicable time periods set forth in Article VI of the Loan Agreement

**[LENDER TO PROVIDE ANNUAL FORM]**

## EXHIBIT D

### FORM OF CONTINUING DISCLOSURE AGREEMENT OF THE TENANT

This Continuing Disclosure Agreement, dated as of [\_\_\_\_\_, 20\_\_] (the “*Continuing Disclosure Agreement*”), is executed and delivered by and among EAST MOUNTAIN, a New Mexico public charter school (“*East Mountain*”) and [Dissemination Agent], as dissemination agent (the “*Dissemination Agent*”) for the benefit of the Foundation (as defined herein) and in connection with the issuance by [ISSUER] (the “*Issuer*”) of its [BONDS] (collectively, the “*Bonds*”). The Bonds are being issued pursuant to a Master Trust Indenture and Security Agreement, dated as of [\_\_\_\_\_, 20\_\_] (the “*Bond Indenture*”) between the Issuer and U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association, as master trustee (the “*Trustee*”). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Bond Indenture and the Loan Agreement (defined herein).

#### **Section 1. Purpose of Agreement**

Inasmuch as the Bonds are limited obligations of the Issuer, no financial or operating data concerning it is material to any decision to purchase, hold or sell the Bonds, and the Issuer has not covenanted to provide such information. East Mountain has undertaken the responsibilities set forth in that certain Master Covenant Agreement between the East Mountain High School Foundation (“*Foundation*”) and East Mountain wherein East Mountain has agreed to provide continuing disclosure information as it applies to East Mountain to the Foundation’s Lender or its designee as described therein and herein. Neither this Continuing Disclosure Agreement nor the Master Covenant Agreement is intended to create a financial obligation for East Mountain under the Bonds, the Master Trust Indenture and Security Agreement, Loan Agreement, Note or any other debt instrument. No such obligation, indebtedness, or other responsibility shall be implied or inferred as a consequence of East Mountain’s provision of the requested information hereunder.

This Continuing Disclosure Agreement is being executed and delivered by East Mountain at the direction of the Lender for the benefit of the registered owners of the Bonds (for such purpose beneficial owners of the Bonds shall also be considered registered owners of the Bonds) and to assist RBC Capital Markets, or its successors in interest (the “*Underwriter*”) in complying with paragraph (b)(5) of Securities and Exchange Commission (“*SEC*”) Rule 15c2-12 (17 C.F.R. § 240.15c2-12) (the “*Rule*”). This Continuing Disclosure Agreement constitutes the written undertaking required by the Rule to provide certain updated financial information and operating data annually, audited financial statements and timely notice of specified material events, in an electronic format, but only to the extent required of East Mountain as the lessee to that certain Lease between East Mountain and Foundation. Each and every filing made hereunder shall be disseminated by transmission to the Municipal Securities Rulemaking Board (the “*MSRB*”) through the Electronic Municipal Market Access (“*EMMA*”) System at [www.emma.msrb.org](http://www.emma.msrb.org) or any successor system that the MSRB may prescribe. Such filings will be in the format and will be accompanied by the identifying information prescribed by the MSRB.

#### **Section 2. Defined Terms**

“*Annual Report*” means the reports required to be provided pursuant to **Section 3** hereof.

“*Financial Obligation*” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “*Financial Obligation*” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“*Interim Report*” means the reports required to be provided pursuant to **Section 4** hereof.

“*Master Covenant Agreement*” means that certain Master Covenant Agreement, dated as of February \_\_, 2026 by and between East Mountain High School Foundation and East Mountain.

“*Official Statement*” means the Official Statement dated [\_\_\_\_\_, 20\_\_] pertaining to the Bonds.

“State” means the State of New Mexico.

### **Section 3. Annual Reports**

Upon request of the Lender to complete a Continuing Disclosure required by the Rule, East Mountain shall cause the Dissemination Agent to provide for dissemination in the manner required under this Continuing Disclosure Agreement, within 180 days after the end of the immediately preceding Fiscal Year, commencing with the Fiscal Year ending June 30, 20[\_\_\_], an Annual Report for the immediately preceding Fiscal Year which shall include all annual information pertinent to such Fiscal Year as provided below:

(i) Audited Financials: Each Annual Report shall include a copy of the financial statements of East Mountain which shall be audited pursuant to New Mexico state law. As soon as available, and in any event within 180 days after the close of each Fiscal Year of East Mountain, the audited financial statements of East Mountain; provided that if the audited financial statements are delayed due to the fact they have not been released by the New Mexico State Auditor, East Mountain shall be deemed to have complied with financial reporting requirements so long as East Mountain provides (i) its draft financial statements by January 15 of each year to the extent permitted by applicable laws and regulations, and (ii) its annual audited financial statements (or notice that such audited financial statements of the East Mountain have been posted and are publicly available on the website of the New Mexico State Auditor) to Lender within ten (10) business days of when such audited financial statements are distributed by the New Mexico State Auditor. In addition, the Annual Report shall include a calculation of (a) East Mountain’s Lease Payment Coverage Ratio required by Section 5.6 of the Master Covenant Agreement and (b) East Mountain and Foundation’s Days Cash on Hand required by Section 5.15 of the Master Covenant Agreement.

(ii) Updated data for East Mountain for the most recently completed Fiscal Year including:

- amount of lottery applications;
- student retention rate;
- open seats and number of applicants on waiting list by grade;
- faculty retention;
- changes in Charter School administration leadership;
- administration turnover;
- Board members;
- historic, current and projected enrollment by grade;
- student demographics including ethnicity, economically disadvantaged status, ELL, FRL and SPED;
- Charter School administration leadership demographics including gender, ethnicity and race;
- State accountability/performance ratings and authorizer reports;
- charter contract expiration dates;
- Charter School aggregated academic performance results, including growth and proficiency scores; and
- high school graduation rate and Charter School aggregated college entrance exam results for the highest grade tested.

Each Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by specific reference other information provided pursuant to this Continuing Disclosure Agreement. If East Mountain fails to provide any Annual Report within the time periods required hereby, then East Mountain shall promptly send a notice of such failure to the Dissemination Agent and the Dissemination Agent shall promptly file such notice with the MSRB. So long as the Bonds remain outstanding, if East Mountain changes its Fiscal Year, it shall provide notice of such event prior to the next date by which East Mountain otherwise would be required to provide financial information and operating data pursuant to this section.

### **Section 4. Quarterly Reports**

East Mountain intends to voluntarily cause the Dissemination Agent to provide Interim Reports, consisting of copies of:

(i) quarterly, unaudited income statements and balance sheets and comparison of actual expenditures to budgeted expenditures within forty-five days [\_\_\_\_\_, 20[\_\_\_]; and

(ii) annual Fiscal Year budget within sixty days of the commencement of each Fiscal Year.

Each Quarterly Report may be submitted as a single document or as separate documents comprising a package, and may include by specific reference other information provided pursuant to this Agreement. The quarterly reports shall be in the form shown in the Official Statement and shall include a comparison of budgeted and actual results. If East Mountain does not provide the quarterly information contemplated by **clause (i)** or **(ii)** of this Section, it shall not constitute a failure hereunder and shall not give rise to a requirement to provide notice to the MSRB or otherwise.

## **Section 5. Material Events**

East Mountain agrees to provide or cause to be provided, to the extent such information is applicable to East Mountain, in a timely manner (but not in excess of ten business days after the occurrence of the event), notice of the occurrence of any of the following events with respect to the Bonds ("*Reportable Events*"):

- (a) lease payment delinquencies;
- (b) nonpayment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the Bonds, or other events affecting the tax-exempt status of the Bonds;
- (g) modifications to rights of the Registered Owners, if material;
- (h) Bond calls, if material (other than mandatory sinking fund redemptions), and tender offers;
- (i) defeasances;
- (j) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (k) rating changes of East Mountain;
- (l) bankruptcy, insolvency, receivership or similar event of East Mountain;
- (m) the consummation of a merger, consolidation, or acquisition involving East Mountain or the sale of all or substantially all of the assets of East Mountain, other than in the ordinary course of business, the entry into a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (n) appointment of a successor or additional trustee or the change of the name of a trustee, if material;
- (o) incurrence of a Financial Obligation of East Mountain, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of East Mountain, any of which affect security holders, if material; and
- (p) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the Financial Obligation of East Mountain, any of which reflect financial difficulties.

Each material event notice shall be so captioned and shall prominently state the date, title and (to the extent less than all of the Bonds are affected by the related material event) CUSIP numbers of the Bonds.

East Mountain may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above, but East Mountain does not undertake any commitment to provide such notice of any event except those events listed above.

#### **Section 6. Dissemination Agent; Initial Dissemination Agent**

East Mountain has engaged the Dissemination Agent to assist it in disseminating information hereunder. At least 30 calendar days prior to the due date of any Annual Report or Interim Report requested by Lender, the Dissemination Agent shall notify East Mountain of its obligation to file such Annual Report or Interim Report. East Mountain shall be responsible for the content and preparation of the Annual Report, the Interim Report and Reportable Event reports (collectively, the “*Reports*”). The Reports shall be delivered in electronic form suitable to be filed with the MSRB in accordance with its procedures, and shall be deemed to have been delivered upon receipt of electronic mail thereof. The period of review of the Reports by the Dissemination Agent shall commence at the time of such delivery. East Mountain shall send the Reports required by this Continuing Disclosure Agreement to the Dissemination Agent at least 5 business days prior to the date on which such Reports are required to be disseminated by the Dissemination Agent as provided herein. If such Report is an Annual Report, it shall contain the information specified under the caption Annual Report in **Exhibit A** attached hereto. If such Report is an Interim Report, it shall contain the information specified under the caption Interim Report in **Exhibit A**. If such Report is a Reportable Event Report, East Mountain shall specify the Reportable Event. Unless otherwise agreed to, the Dissemination Agent shall, as soon as practicable but not later than 3 business days of receipt of the Annual Reports and Interim Reports review the Annual Reports and Interim Reports to confirm that each of them contains the items under the applicable caption. If the Dissemination Agent determines that an item has not been so included, it will promptly deliver a written request to East Mountain for such item. The Dissemination Agent shall not be responsible for the content of the Reports. The Dissemination Agent shall not be responsible for the failure of East Mountain to provide any the Reports or the failure of East Mountain to respond to a request for an item in any Annual or Interim Report. The Dissemination Agent shall forward the Reports to (i) the MSRB, as described herein and (ii) any Registered or Beneficial Owner of the Bonds who requests such information in writing to the Dissemination Agent or East Mountain.

The initial Dissemination Agent shall be [Dissemination Agent]. East Mountain may discharge the Dissemination Agent or any successor Dissemination Agent, but in such event shall take steps necessary to appoint a successor Dissemination Agent who shall be responsible for undertaking all responsibilities of dissemination hereunder.

The Dissemination Agent will not have any fiduciary duties nor will it have responsibilities or obligations other than those expressly assumed by it in this Continuing Disclosure Agreement. No implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Continuing Disclosure Agreement or otherwise exist against the Dissemination Agent. Without limiting the generality of the foregoing sentences, the use of the term “agent” in this Agreement with reference to the Dissemination Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

If East Mountain does not provide to the Dissemination Agent a copy of an Annual Report or an Interim Report by the applicable dates required herein or an item as described herein relating to such Report, the Dissemination Agent shall send a notice to the MSRB, East Mountain and the Participating Underwriter in substantially the form attached as **Exhibit B** hereto. If East Mountain files any report directly with MSRB, East Mountain shall promptly provide the Dissemination Agent with a certificate or other documentation reasonably required by the Dissemination Agent that the filing of such report was made in a timely manner on or before the date required herein (or if not as of such date, specifying the date of filing) and that such filing contained the information required by this Disclosure Agreement.

#### **Section 7. Termination of Obligations**

Pursuant to paragraph (b)(5)(iii) of the Rule, the obligation of East Mountain to provide financial and operating information of East Mountain and notices of material events, shall terminate in accordance with the Rule.

#### **Section 8. Enforceability and Remedies**

This Continuing Disclosure Agreement is intended to be for the sole benefit of the Foundation to meet its obligations to the Trustee, the Underwriter and the registered owners of the Bonds (for such purpose beneficial owners of the Bonds shall also be considered registered owners of the Bonds) and shall create no rights in any other person or entity.

Any failure by East Mountain to comply with the provisions of this Continuing Disclosure Agreement shall not be an Event of Default under the Bond Indenture.

#### **Section 9. Amendment**

Notwithstanding any other provision of this Continuing Disclosure Agreement, East Mountain and the Dissemination Agent may amend this Continuing Disclosure Agreement, and any provision of this Continuing Disclosure Agreement may be waived, without the consent of the registered owners but with the consent of the Trustee, under the following conditions:

(a) The amendment or waiver may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of East Mountain, or type of business conducted;

(b) This Continuing Disclosure Agreement, as amended or with the provision so waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not materially impair the interest of registered owners of the Bonds, as determined either by parties unaffiliated with East Mountain (which shall include nationally recognized bond counsel, or any other party determined by such counsel to be unaffiliated), or by approving vote of registered owners of the Bonds.

East Mountain shall provide notice of each amendment or waiver for dissemination in the manner specified herein. The initial annual financial or operating information provided by East Mountain after the amendment or waiver shall explain, in narrative form, the reasons for the amendment or waiver and the effect of the change in the type of operating data or financial information being provided.

#### **Section 10. Counterparts**

This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

IN WITNESS WHEREOF, we have set our hands as of the date set forth above.

**EAST MOUNTAIN**

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

[DISSEMINATION AGENT],  
as Dissemination Agent

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**(To Form of Continuing Disclosure Agreement)**

[Dissemination Agent],  
Dissemination Agent  
[Address]

Re: Continuing Disclosure Agreement between EAST MOUNTAIN (the “*School*”) and [Dissemination Agent],  
as Dissemination Agent

Pursuant to the Agreement referred to above the following is delivered to you for filing pursuant to the terms of the Agreement: (Check documents being delivered):

**Annual Report**

- As soon as available, and in any event within 180 days after the close of each Fiscal Year of the School, the audited financial statements of the School and the Borrower; provided that if the audited financial statements are delayed due to the fact they have not been released by the New Mexico State Auditor, the School shall be deemed to have complied with financial reporting requirements so long as the School provides (i) its draft financial statements by January 15 of each year to the extent permitted by applicable laws and regulations, and (ii) its annual audited financial statements (or notice that such audited financial statements of the School have been posted and are publicly available on the website of the New Mexico State Auditor) within ten (10) business days of when such audited financial statements are distributed by the New Mexico State Auditor.
  
- Updated data for the School for the most recently completed Fiscal Year including:
  - amount of lottery applications;
  - student retention rate;
  - open seats and number of applicants on waiting list by grade;
  - faculty retention;
  - changes in Charter School administration leadership;
  - administration turnover;
  - Board members;
  - historic, current and projected enrollment by grade;
  - student demographics including ethnicity, economically disadvantaged status, ELL, FRL and SPED;
  - Charter School administration leadership demographics including gender, ethnicity and race;
  - State accountability/performance ratings and authorizer reports;
  - charter contract expiration dates;
  - Charter School aggregated academic performance results, including growth and proficiency scores; and
  - high school graduation rate and Charter School aggregated college entrance exam results for the highest grade tested.

**Quarterly Reports**

- quarterly, unaudited income statements and balance sheets and comparison of actual expenditures to budgeted expenditures within forty-five (45) days of the end of each fiscal quarter; and

- annual Fiscal Year budget within sixty (60) days of the commencement of each Fiscal Year.

**Event Report**

Specify \_\_\_\_\_

Very truly yours:

**EAST MOUNTAIN**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**  
**(To Form of Continuing Disclosure Agreement)**

**NOTICE TO MSRB OF FAILURE TO FILE REPORT**

Issuer: [ISSUER]  
Issue: [BONDS]  
East Mountain: EAST MOUNTAIN  
Dissemination Agent: [DISSEMINATION AGENT]  
Participating Underwriter: [UNDERWRITER]  
Date of Issue: [\_\_\_\_\_, 20\_\_]

NOTICE IS HERBY GIVEN that East Mountain has not provided the [Annual Report] [Interim Report] with respect to the above-specified Bonds as required by the Continuing Disclosure Agreement, dated as of [\_\_\_\_\_, 20\_\_], by and between East Mountain and the Dissemination Agent.

DATED:

[Dissemination Agent]

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

**EXHIBIT C**

**Tax Certificate**

*(See Attached)*

## TAX CERTIFICATE

### **EAST MOUNTAIN HIGH SCHOOL FOUNDATION AND EAST MOUNTAIN**

The undersigned, each being an authorized representative of East Mountain High School Foundation, a New Mexico nonprofit corporation (the “Lessor” or the “Borrower”), and East Mountain, a New Mexico public charter school (the “School” and, together with the Lessor, the “Lessor/School”) respectively, having responsibilities attributed to each or both of them for the matters set forth herein, DO HEREBY CERTIFY with respect to the loan from Equitable Facilities Fund, Inc., a Delaware nonstock, nonprofit corporation (the “Lender”) to the Lessor in the aggregate principal amount of \$[PAR].00, dated February [26], 2026 (the “Loan”), as follows:

#### **I. GENERAL**

**1.01. Delivery and Reliance.** The Lessor/School is delivering this Borrower Tax Certificate (the “Certificate”) with the understanding that (i) the Lender will rely upon this Certificate in making the Loan, (ii) Orrick, Herrington & Sutcliffe LLP, counsel to the Lender, will rely in part upon this Certificate in advising the Lender that the Loan qualifies for refinancing with one or more series or issues of bonds (the “Bonds”) the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”), (iii) Modrall, Sperling, Roehl, Harris & Sisk, P.A. will rely upon this Certificate in delivering its Borrower’s Counsel Opinion, and (iv) Cuddy McCarthy will rely upon this Certificate in delivering its School’s Counsel Opinion. This Certificate is being delivered for the purposes of (a) establishing the reasonable expectations of the Lessor/School as to the amount and use of the proceeds of the Loan and the use of the property financed and refinanced with proceeds of the Loan, and (b) documenting the Lessor/School’s agreement to deliver certain certificates and documents subsequent to the date hereof as required or requested by the Lender, Equitable School Revolving Fund, a Delaware limited liability company affiliate of the Lender (“ESRF”), or any municipal issuer of the Bonds or other debt on behalf of the Lender or ESRF (the “Issuer”). For purposes of this Certificate, “Bonds” shall refer only to the portion of any issue of Bonds allocable directly and indirectly to the refinancing of the Loan, which Bonds will be generally consistent with the term and debt service structure of the Loan (including retirement or prepayment of a corresponding portion of the Bonds as soon as practicable in the event the Loan is prepaid).

**1.02. Loan Agreement.** The Loan is being made pursuant to that certain Loan Agreement by and between the Lender and the Lessor dated the date hereof (the “Loan Agreement”).

**1.03. Lessor’s Expectations.** This Certificate sets forth the facts, estimates and circumstances now in existence that are the basis for the Lessor’s expectation that the proceeds of the Loan and the facilities financed thereby will not be used in a manner that would cause the interest on the Bonds to be included in gross income for federal income tax purposes. To the best of the Lessor’s knowledge and belief, such expectation is reasonable and there are no other facts, estimates or circumstances that would materially change that expectation. To the best of the Lessor’s knowledge and belief, for federal income tax purposes, the proceeds of the Loan will constitute proceeds of the Bonds upon the issuance of the Bonds and the allocation of the Loan, in

whole or in part, to the Bonds. In making certain warranties, representations and certifications contained herein, the Lessor has consulted with their legal counsel.

## **II. DEFINITIONS**

“Gross Proceeds” shall have the meaning used in Section 1.148-1(b) of the Treasury Regulations, and generally means all proceeds of the Loan and Replacement Proceeds.

“Investment Proceeds” shall mean any amounts actually or constructively received from investing proceeds of the Loan.

“Investment Property” shall mean any security or obligation (other than tax-exempt bonds which are not “specified private activity bonds” as defined in Section 57(a)(5)(C) of the Code), any annuity contract or any other investment-type property within the meaning of Section 1.148-1(b) of the Treasury Regulations.

“Opinion of Bond Counsel” shall mean a written opinion satisfactory to the Lender and the Issuer of counsel nationally recognized in the area of municipal finance to the effect that such action or inaction described in said opinion will not impair the exclusion of interest on the portion of the Bonds that finance or refinance the Loan from gross income for purposes of federal income taxation, treating, for this purpose, such portion as a separate issue for federal income tax purposes.

“Other Replacement Proceeds” shall have the meaning set forth in Section 1.148-1(c)(4) of the Treasury Regulations. Other Replacement Proceeds do not arise for the portion of the Bonds that is to be used to finance or refinance capital projects (within the meaning of Treasury Regulation Section 1.148-1(b)) if that portion of the Bonds does not exceed one-hundred twenty percent (120%) of the average reasonably expected life of the financed capital projects.

“Replacement Proceeds” shall have the meaning set forth in Section 1.148-1(c) of the Treasury Regulations.

“Treasury Regulations” shall mean such regulations (including final, temporary and proposed) promulgated by the United States Department of the Treasury including Treasury Regulations issued pursuant to Section 103 of the Internal Revenue Code of 1954, as amended, and Sections 103 and 141 through 150, inclusive, of the Code.

**III. PURPOSE OF ISSUE.** Proceeds of the Loan will be applied by the Lessor to (i) finance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of existing and new facilities located at facilities located at located at 25 La Madera Road, Sandia Park, New Mexico to be operated by the School (the “Project”), and (ii) pay costs of making the Loan. Unless an Opinion of Bond Counsel is delivered to the Lender with respect to uses of the proceeds of the Loan other than specified in this Article III, the Lessor/School agrees to use the proceeds of the Loan (which, for federal tax purposes, constitute proceeds of the Bonds) solely for the above-described purposes.

## **IV. USE OF PROCEEDS AND YIELD RESTRICTION**

**4.01. Amount and Use of Proceeds.** The total proceeds of the Loan are \$[PAR].00, aggregate principal amount, which shall be used as set forth in this Section 4.01.

(a) Project. Proceeds of the Loan shall be applied as follows to finance the Project: \$[\_\_\_] shall be applied to pay costs of the Project. All of the proceeds of the Loan allocable to the Project are reasonably expected to be spent on the Project within 3 years of the date hereof. Project expenditures of the Lessor incurred prior to the date hereof to be reimbursed with Proceeds of the Loan are consistent with the reimbursement requirements set forth in Section 4.02.

(b) Costs of Issuance. \$[\_\_\_] shall be transferred to the Lessor/School or paid directly to vendors to pay certain costs incident to the issuance of the Loan, which includes title fees.

**4.02. Reimbursement.** The Lessor represents that all reimbursements were for Preliminary Expenditures or costs incurred no more than 60 days prior to [\_\_\_], the date the Lessor adopted a resolution declaring its official intent to finance the Project with debt and to reimburse itself with proceeds of debt, in accordance with the rules set forth in Section 1.150-2(d) of the Treasury Regulations. Preliminary Expenditures means architectural, engineering, surveying, soil testing, costs of issuing the Loan, and similar costs paid with respect to the Project in an aggregate amount not exceeding 20% of the issue price of the Loan. However, Preliminary Expenditures do not include land acquisition, site preparation or similar costs incident to the commencement of construction.

**4.03. Yield Restriction.** All proceeds of the Loan to be allocated to the Project are reasonably expected to be spent within 3 years of the date hereof. The Lessor expects to pay all costs incident to the Loan within 90 days of the date hereof. The Lessor represents and covenants that it will not invest proceeds of the Loan at a yield in excess of the yield on the Bonds, except pursuant to an allowable “temporary period” or other exception to “yield restriction” under applicable Treasury Regulations. The yield on the Bonds will be provided to the Borrower at the time the Bonds are issued.

## **V. DEBT SERVICE ON BONDS**

**5.01. Source of Debt Service; Debt Service Fund.** The Lessor expects to pay debt service on the Loan from rental payments from the School pursuant to a lease agreement entered into between the Lessor and School dated as of February [26], 2026 and the lease with option to purchase agreement to be entered into between the Lessor and the School after the closing of the Loan and following obtaining the requisite governmental approvals (collectively, the “Lease Agreement”). The Lessor will make payments on the Loan on a monthly basis. Any amounts held in the Revenue Fund of the Lessor established under the Master Trust Indenture to be used to pay debt service on the Loan (if applicable, the “Debt Service Fund”) will be depleted within one year from the date of such deposit except for a reasonable carryover amount which will not exceed, in the aggregate, the greater of: (i) the earnings on the Debt Service Fund for the immediately preceding bond year, or (ii) one-twelfth ( $1/12$ ) of the principal and interest payments on the Loan for the immediately preceding bond year. The School will not accumulate and hold funds to be used to pay debt service on the Loan. Thus, no such amounts are reasonably expected to be held for a period longer than the 13-month temporary period provided by Treasury Regulation Section 1.148-2(e)(5)(ii) for a “bona fide debt service fund.” Amounts held in such portion pending application to pay debt service on the Loan will be invested without restriction as to yield.

**5.02. Investment Earnings on Debt Service Fund.** Investment Proceeds held in the Debt Service Fund will be used to pay debt service on the Bonds within one year of receipt.

**5.03. No Other Funds.** Other than the Debt Service Fund as described above in Section 5.01, there are no other funds or accounts of the Lessor or any fund of the School which are reasonably expected to be used to pay debt service on the Loan or which are pledged as collateral for the Loan, for which there is a reasonable assurance that amounts therein or the investment income earned from such funds or accounts will be available to pay debt service on the Loan in the event the Lessor/School encounters financial difficulties.

## **VI. STATUS OF LESSOR/SCHOOL AND USE OF PROJECT**

**6.01. General Representation.** Each of the Lessor and the School represent, warrant and covenant that it will not take any action or inaction, nor fail to take any action or permit any action to be taken, with respect to the Project, the Loan or the Bonds if any action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under Section 103 of the Code, treating, for this purpose, the portion of the Bonds that refinanced the Loan as a separate issue for federal income tax purposes.

**6.02. Status of Lessor and School.** The Lessor represents, warrants and covenants that it is an organization described in Section 501(c)(3) of the Code and is exempt from federal income tax under Section 501(a) of the Code, or corresponding provisions of prior law, as set forth in a determination letter or letters or other notification issued by the Internal Revenue Service to that effect. Since the Lessor's recognition as a supporting organization, said letters with respect to Section 501(c)(3) status have not been modified, limited or revoked. With respect to the Lessor's Section 501(c)(3) status, the Lessor is in substantial compliance with the terms, conditions and limitations, if any, in said letters, and the facts and circumstances that form the basis of the determination that the Lessor is an organization described in Section 501(c)(3) of the Code, as represented to the Internal Revenue Service, continue substantially to exist and no other material facts or circumstances have arisen which could adversely affect such determination in such letters. At all times since its formation, the Lessor has been organized and operated for the benefit of, to perform the functions of, or to carry out the purposes of the School and has only engaged in activities that support or benefit the School. At all times since its formation, the Lessor has been operated, supervised, or controlled by the School pursuant to the terms of its Bylaws, which require that at all times a majority of the Lessor's directors be directors nominated by the Governing Board or Principal of the School. At all times since its formation, the Lessor has not been directly or indirectly controlled by one or more disqualified persons as defined in Section 4946 of the Code other than foundation managers and the School. The Lessor will take all action reasonably necessary to maintain its status as such an organization and its exemption from federal income tax under said Section of the Code or corresponding provisions of future federal income tax laws at all times until the Bonds have been redeemed. No proceedings are pending or, to the knowledge of the Lessor, threatened which, if successful, would adversely affect its status as an organization described in Section 501(c)(3) of the Code, or which would subject any of its income to federal income taxation to such extent as would result in the loss of its tax-exempt status under Section 501(a) of the Code or the loss of the exclusion from gross income of interest on the Bonds for federal income tax purposes under Section 103 of the Code. The ownership and lease of the Project to the School is consistent with the charitable purpose of the Lessor and the determination letter issued by the Internal Revenue Service. Under New Mexico law, the School is treated as a public entity. Accordingly, the School has not sought recognition of status as an organization described in Section 501(c)(3) of the Code but reports as part of a state or local governmental body.

**6.03. Ownership.** The Project is or will be treated as owned for federal tax purposes by the Lessor. The Lessor/School represents that it will not sell or dispose of the Project, in whole or in part, except due to normal wear, tear and obsolescence, before payment in full of the Bonds unless the Lessor/School provides prior written notice to the Lender of its proposed sale and the Lender and the Issuer receive a written Opinion of Bond Counsel with respect to such sale.

**6.04. Unrelated Trade or Business Use.** Except to the extent treated as Private Use within the de minimis limits set forth in Section 6.05(a), the Lessor/School shall not perform any act, enter into any agreement, or use or permit any of the Project (or any portion thereof) to be used for any trade or business unrelated to the exempt purposes of the Lessor (as defined in Section 513(a) of the Code), unless the Lessor provides prior written notice to the Lender of its proposed act, agreement or use and the Lender and the Issuer receive a written Opinion of Bond Counsel with respect to such act, agreement or use.

**6.05. Private Business Use.** The Lessor/School represents, warrants and covenants that so long as the Loan is outstanding, the proceeds of the Loan allocable to the Project will be used in compliance with the following subsections.

(a) No more than five percent (5%) of the proceeds of the Loan allocable to the Project may be used for any activity or activities which constitute a private trade or business or group of private trades or businesses, or any unrelated trade or business use other than any activity or activities substantially related to the exempt purposes of the Lessor (a "Private Use," as hereinafter defined). For purposes of this Certificate, the term "Private Use" means any activity or activities which constitute a private trade or business or group of private trades or businesses, including any unrelated trade or business of the Lessor (or another organization described in Section 501(c)(3) of the Code) other than any activity or activities substantially related to the exempt purposes of the Lessor (or another organization described in Section 501(c)(3) of the Code), and use by a nongovernmental person in a manner that provides such nongovernmental person with special legal entitlements to the Project. The term "Private Use" shall include without limitation the lease of the Project (or any portion thereof) to nongovernmental persons or use pursuant to a management contract that does not satisfy the Guidelines as described in subsection 6.05(b).

(b) Except to the extent treated as Private Use within the de minimis limits set forth in subsection 6.05(a), the Lessor/School has not entered into, does not expect to and will not enter into any agreement (a "Management Contract") with any person or organization (a "Service Provider") which provides for such person or organization to manage, operate or provide services with respect to the Project facilities, unless an Opinion of Bond Counsel is received or the guidelines set forth in Revenue Procedure 2017-13 (the "Guidelines") and as summarized herein are satisfied. A Management Contract will satisfy the Guidelines if and only if the requirements of each of the following subsections is satisfied:

(i) The compensation of the Service Provider under the Management Contract must be reasonable for the services rendered.

(ii) The Management Contract must not provide to the Service Provider a share of net profits from the operation of the Project (for purposes hereof, the "Project" shall include any component or portion thereof). Compensation to the Service Provider will not be treated as providing a share of net profits if no element

of the compensation takes into account, or is contingent upon, either the Project's net profits or both the Project's revenues and expenses for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Further, solely for purposes of determining whether the amount of the compensation meets the requirements of this Section 6.05(b)(ii), any reimbursements of actual and direct expenses paid by the Service Provider to unrelated parties are disregarded as compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the Service Provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this Section 6.05(b)(ii).

(iii) The Management Contract must not, in substance, impose upon the Service Provider the burden of bearing any share of net losses from the operation of the Project. An arrangement will not be treated as requiring the Service Provider to bear a share of net losses if: (A) the determination of the amount of the Service Provider's compensation and the amount of any expenses to be paid by the Service Provider (and not reimbursed), separately and collectively, do not take into account either the Project's net losses or both the Project's revenues and expenses for any fiscal period, and (B) the timing of the payment of compensation is not contingent upon the Project's net losses. For example, a Service Provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the Project's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(iv) The term of the Management Contract, including renewal options, is not longer than the lesser of 30 years or 80 percent of the reasonably expected useful life of the financed property.

(v) The Management Contract requires the Lessor/School (or the School, as applicable) to approve:

(A) The annual budget of the managed property;

(B) Capital expenditures with respect to the managed property (for this purpose, the Lessor/School may show approval of capital expenditures for the managed property by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts);

(C) Each disposition of property that is part of the managed property;

(D) Rates charged for use of the managed property (for this purpose, the Lessor/School may show approval of rates charged for use of the managed property by either expressly approving such rates (or the

methodology for setting such rates) or by including in the Management Contract a requirement that the Service Provider charge rates that are reasonable and customary as specifically determined by or negotiated with an independent third party, e.g., a medical insurance company); and

(E) The general nature and type of use of the managed property (for example, the type of services).

(vi) The Lessor/School bears the risk of loss upon damage or destruction of the managed property (for example, upon force majeure). The Lessor/School does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the Service Provider a penalty for failure to operate the managed property in accordance with the standards set forth in the Management Contract.

(vii) The Service Provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a Service Provider to the Lessor/School (or the School, as applicable) with respect to the managed property.

(viii) The Service Provider may not have a role or relationship with the Lessor/School that, in effect, substantially limits the ability of the Lessor/School to exercise its rights, including cancellation rights, under the Management Contract. Accordingly:

(A) Not more than 20 percent of the voting power of the governing body of the Lessor/School in the aggregate may be vested in the Service Provider and its directors, officers, shareholders, partners, members and employees.

(B) The governing body of the Lessor/School does not include the chief executive officer of the Service Provider or the chairperson (or equivalent executive) of the Service Provider's governing body.

(C) The chief executive officer of the Service Provider is not the chief executive officer of the Lessor/School or any related person to the Lessor/School.

For purposes of this Section 6.05(b)(viii), the phrase Service Provider includes related persons thereto and the phrase "chief executive officer" includes a person with equivalent management responsibilities.

The Guidelines shall not apply to contracts for the janitorial, machine repair, billing services, or other incidental services. In lieu of the Guidelines, with respect to Management Contracts entered into before August 18, 2017 that are not materially modified or extended on or after August 18, 2017, the Lessor/School (or the School, as applicable) may apply the guidelines set forth in Revenue Procedure 97-13, and as modified by Revenue Procedure 2001-39 and as amplified by Notice 2014-67.

**6.06. Joint Ventures.** The Lessor represents, warrants and covenants that it has not entered into and does not expect to enter into any business ventures, partnerships or joint ventures with for-profit organizations or entities (including business ventures in which either the Lessor or the School is a member of any partnership or joint venture) which may adversely affect the status of the Lessor as an organization described in Section 501(c)(3) of the Internal Revenue Code or which partnership or joint venture uses the Project.

**6.07. Tax Questionnaire Response.** The Lessor/School represents that the information provided in its final response to Bond Counsel's Tax Questionnaire, as supplemented, together with all attachments to such responses and supplemental or amendatory letters and information, is, except to the extent modified by the representations contained herein, true, accurate and factually complete on the date hereof and the Lessor/School is not aware of any fact which would cause the representations to not be materially true, and factually accurate and complete.

**6.08. Financing of Loans.** The Lessor represents, warrants and covenants that it has not and will not use any portion of the proceeds of the Loan to make or finance loans to any person.

**6.09. Reasonably Expected Economic Life.** The Lessor represents, warrants and covenants that the remaining reasonably expected economic life of the assets constituting the Project is no less than 30 years. Land was not taken into account in determining the average economic life of the Project.

**6.10. Receipt of Other Funds.** The Lessor/School represents, warrants and covenants that any funds received by the Lessor/School prior to the date hereof (including any grants made by state or local governments), with respect to solicitations for money which funds are restricted by: (i) applicable law, (ii) the donor of such funds, or (iii) the Lessor/School to the payment of or reimbursement for the costs of the facilities of the Lessor/School ("Restricted Funds"), have been or will be applied to costs other than Project costs. The Lessor/School represents, warrants and covenants that any Restricted Funds restricted to costs of the Project received by the Lessor/School subsequent to the date hereof will be applied to repay the Loan as rapidly as possible to the extent permitted by law. Notwithstanding the foregoing, funds received by the Lessor/School which are not Restricted Funds may be expended pursuant to the discretion of the Lessor/School.

**6.11. \$150,000,000 Limit.** The Lessor represents that at least ninety five percent (95%) of the proceeds of the Loan are allocable to capital expenditures incurred after August 5, 1997.

**6.12. Overburdening.** The Lessor/School represents, warrants and covenants that the Bonds are not and will not be a part of a transaction or series of transactions that: (i) enables the Lessor/School or any Related Party to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, or (ii) overburdens the market for tax-exempt obligations in any manner, including, without limitation, by selling bonds that would not otherwise be sold, or selling more bonds, or issuing bonds sooner, or allowing bonds to remain outstanding longer, than would otherwise be necessary.

**6.13. No Replacement.** The Lessor/School represents, warrants and covenants that no portion of the proceeds of the Loan will be used directly or indirectly to replace funds of the Lessor/School or any Related Party which were intended to be used for the purpose of the Loan and will be used directly or indirectly to acquire investment property reasonably expected to produce

a yield higher than the yield on the Loan. The Lessor/School represents, warrants and covenants that the term of the Loan is not longer than is reasonably necessary to accomplish the governmental purpose for which the proceeds of the Loan are being borrowed.

**6.14. Federal Guarantee.** The Lessor represents, warrants and covenants that it will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Lessor or any Related Party or take or omit to take any action that would cause the Bonds to be obligations that are “federally guaranteed” within the meaning of Section 149(b) of the Code. In furtherance of this representation, warranty and covenant, the Lessor will not allow the payment of principal or interest with respect to the Bonds to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof. Except as provided in the next sentence, the Lessor will not invest 5% or more of the proceeds in federally-insured deposits or accounts. The preceding sentence shall not apply to investments in the Debt Service Fund.

**6.15. Schedule K.** The Lessor/School acknowledges that the Internal Revenue Service requires the annual Return of Organizations Exempt From Income Tax on Form 990 to include Supplemental Information on Tax-Exempt Bonds (Schedule K) (“Schedule K”), and that both the Lender and the Lessor will be required to report information on the Loan and the Project on its respective Schedule K to the extent the Loan is refinanced with proceeds of the Bonds. It is expected that the Loan will be refinanced with the Bonds at the closing of the Loan. The Lessor/School covenants and agrees to provide all information requested by the Lender for the purpose of completing the Lender’s Schedule K, and the Lessor further acknowledges that it assumes full responsibility for completing and filing its own Schedule K and that neither the Issuer nor the Lender has any such responsibility. Further, the Lessor covenants and agrees to provide the Lender with a copy of its Schedule K on the timeline required by the Lender.

**6.16. Spend Down of Proceeds.** With respect to the Project, the Lessor represents, warrants and covenants that it reasonably expects to spend at least 85% of the proceeds of the Loan allocable to the Project within three years of the date hereof. The Lessor has incurred or reasonably expects to incur within 6 months a binding contractual obligation to spent at least 5% of the proceeds of the Loan allocable to the Project on the Project. Construction of the Project will proceed diligently.

## **VII. OTHER MATTERS**

**7.01. Due Authorization.** The undersigned is an authorized representative of the Lessor or the School acting for and on behalf of the Lessor or the School in executing this Certificate. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

**7.02. Public Hearing and Approval.** The Lessor represents that: (i) it caused to be published on January 30, 2026, in the *Albuquerque Journal* a newspaper of general circulation in Bernalillo County, New Mexico, a notice of public hearing regarding the Issuer’s issuance of the Bonds necessary to refinance or reimburse for the Loan, copies of which are attached hereto as Exhibit E, (ii) such hearing was held on February 6, 2026, on behalf of the State of New Mexico (the “State”), (iii) at this hearing all interested persons were invited and given a reasonable opportunity to comment upon the nature of the financing, and (iv) on February 18, 2026, the

Governor of the State approved the issuance of the Bonds for the purpose of financing a portion of the costs of the Project, a copy of which approval is attached hereto as Exhibit E.

**7.03. Cooperation and Provision of Information.** The Lessor/School acknowledges that the United States Department of the Treasury has issued regulations with respect to the method of computing whether any rebate amount is due to the federal government under Section 148(f) of the Code. The Lessor/School represents, warrants and covenants that it will undertake to comply with the rebate provisions contained in Section 148(f) of the Code and furnish the Lender or the Issuer with any requested information in a timely manner. In that regard, the Lessor/School will, on a timely basis, provide the Lender with all necessary information and payments of earnings on the proceeds of the Loan and such other amounts as the Lender or Issuer shall deem necessary to enable the Issuer to comply with the arbitrage and rebate requirements of the Code. The Lessor also hereby covenants, represents and warrants to restrict the yield on the proceeds of the Loan (to the extent required) as provided in Section 4.03 of this Certificate.

**7.04. Record Retention.** The Lessor/School covenants to maintain all records relating to the requirements of the Code and the representations, certifications and covenants set forth in this Certificate until the date three years after the last outstanding Bonds have been retired. If any of the Bonds are refunded by tax-exempt obligations (the “Refunding Obligations”), the Lessor/School covenants to maintain all records required to be retained by this 7.04 until the later of the date three years after the last outstanding Bonds or portion of the Loan has been retired or the date three years after the last Refunding Obligations have been retired. The records that must be retained include, but are not limited to:

- (a) Basic records and documents relating to the Loan (including the Loan Agreement);
  - (b) Documentation evidencing expenditure of proceeds of the Loan;
  - (c) Documentation evidencing use of the Project by public and private sources (e.g., copies of management contracts, research agreements, leases, etc.);
  - (d) Documentation evidencing all sources of payment or security for the Loan;
- and
- (e) Documentation pertaining to any investment of proceeds of the Loan (including the purchase and sale of securities, United States Treasury Securities – State and Local Government Series subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds of the Loan, guaranteed investment contracts, and rebate calculations).

## **VIII. POST-CLOSING REQUIREMENTS AND DELIVERABLES**

**8.01. Supplemental Lessor/School Certification.** As consideration for the Loan, at the time the Bonds are issued, each of the Lessor and the School agree that it will deliver a certificate to the Lender and the Issuer affirming all of the representations and covenants set forth herein in the form attached hereto as Exhibit C, which form may be updated by the Lender.

**8.02. Post Issuance Tax Compliance.** As consideration for the Loan, the Lessor/School agrees to furnish the lender with a completed “Annual Post-Issuance Compliance” questionnaire in the form attached hereto as Exhibit D, which may be updated from time to time by the Lender.

IN WITNESS WHEREOF, I have hereunto set my hand February [26], 2026.

**EAST MOUNTAIN HIGH SCHOOL  
FOUNDATION,**  
a New Mexico non-profit corporation,

By: \_\_\_\_\_  
Name:  
Its:

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

By: \_\_\_\_\_  
Name:  
Its:

**EXHIBIT A**

**PROJECT DESCRIPTION AND ECONOMIC LIFE OF ASSETS**

Acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of facilities located at 25 La Madera Road, Sandia Park, New Mexico

At least 30 years

**EXHIBIT B**

**SOURCES AND USES**

**EXHIBIT C**

**SUPPLEMENTAL TAX CERTIFICATE**

**[To Be Executed and Provided to the Lender and Bond Counsel on Issuance of the Bonds]**

The undersigned, each being an authorized representative of East Mountain High School Foundation, a New Mexico nonprofit corporation (the “Lessor”), and East Mountain, a New Mexico public charter school (the “School”), respectively, having responsibility for the matters set forth herein, DOES HEREBY CERTIFY with respect to the loan from Equitable Facilities Fund, Inc., a Delaware nonstock, nonprofit corporation (the “Lender”), in the aggregate principal amount of \$[PAR].00 (the “Loan”), dated February [26], 2026, as follows:

All statements, covenants, representations, and warranties of each of the School and the Lessor set forth in the Tax Certificate dated as of February [26], 2026 to which this Supplemental Tax Certificate is included as Exhibit C are accurate and complete as of the date hereof. No information has come to the attention of either of the undersigned that would change or modify any of such statements, covenants, representations or warranties, and the undersigned covenant and agree to continue to comply with the Tax Certificate and to notify the Lender in the event that facts or circumstances with respect to the Loan or the use of the facilities financed with proceeds of the Loan change after the date hereof.

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

By: \_\_\_\_\_  
Name:  
Its:

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

By: \_\_\_\_\_  
Name:  
Its:

**EXHIBIT D**

**ANNUAL POST-ISSUANCE COMPLIANCE QUESTIONNAIRE**

**[TO BE COMPLETED, EXECUTED, AND PROVIDED TO THE LENDER BY *MARCH 1***  
**OF EACH YEAR THE LOAN IS OUTSTANDING WITH RESPECT TO THE PRIOR**  
**CALENDAR YEAR]**

**ANNUAL POST-ISSUANCE COMPLIANCE QUESTIONNAIRE**  
**For Calendar Year Ending December 31, 20\_\_**

The undersigned representatives of East Mountain High School Foundation, a New Mexico nonprofit corporation (the “Lessor”), and East Mountain, a New Mexico public charter school (the “School” and, together with the Lessor, the “Lessor/School”), hereby represents that he/she is authorized by the respective entity to complete and execute this Annual Post-Issuance Compliance Questionnaire (the “Questionnaire”) on behalf of respective Lessor/School entity in connection with the loan (the “Loan”) by Equitable Facilities Fund, Inc. (the “Lender”) to the Lessor/School dated February [26], 2026.

The following information is being requested in order to aid in the review of compliance with the Internal Revenue Code of 1986 (the “Code”) with respect to the facilities that were financed with the proceeds of the Loan that is expected to be refinanced with bonds the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code by the Lender or its affiliate. This Certificate is being delivered for the purposes of documenting the Lessor/School’s compliance with the Tax Certificate (the “Tax Certificate”) executed in connection with the making of the Loan by the Lender. The Lessor/School understands that the information contained herein will be relied upon by the Lender and by the issuer of any bonds to refinance the Loan. For purposes of this Questionnaire, the term “Project” includes only those assets and/or facilities financed or refinanced with the proceeds of the Loan and the term “this calendar year” refers to the reporting period set forth in the heading above.

In executing this Questionnaire, the Lessor/School has reviewed its governing documents, contracts and other relevant information with particular attention to the organization, operation, use and management of the Project, including any compensation and operational arrangements.

**EAST MOUNTAIN HIGH SCHOOL  
FOUNDATION,**

a New Mexico nonprofit corporation

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

Name:

Its:

**EAST MOUNTAIN,**

a New Mexico public charter school

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

Name:

Its:

1. Please provide records regarding the expenditure of proceeds of the Loan and any interest earnings on investment of proceeds of the Loan, including, as applicable, trustee statements, bank account records, spend-down schedules, etc.
2. Have there been any amendments or other changes to the Lessor/School's governing documents in this calendar year?

Yes

No

If "yes" please provide copies of all amended documents.

3. Has the Lessor/School been audited by the Internal Revenue Service in this calendar year or been notified by the IRS that the IRS is proposing to (i) revoke its determination letter, or (ii) investigate the Lessor/School's continued qualification as an organization described in Section 501(c)(3) of the Code?

Yes

No

If yes, please provide details.

4. Has the Lessor/School been notified by the governmental authority that issued the charter to any public charter school operated by the Lessor/School that the charter is under review (other than a standard periodic review), being revoked, or otherwise in jeopardy of not being continued or renewed?

Yes

No

If yes, please provide details.

5. Did the Lessor/School engage in “unrelated trade or business” activities within the meaning of Section 513(a) of the Code this calendar year (regardless of whether such activities generated taxable income)?

Yes

No

If yes, please describe the scope of such activities and whether any occurred in Project facilities.

6. Did the Lessor/School enter into any transactions with its employees, officers or any members of its governing body (other than contracts for services as an employee, officer, or member of its governing body) or any person, firm or other entity owned or controlled by any of its employees, officers or members of its governing body (e.g., rental of property from an officer or entity owned by an officer, or a loan to an employee)?

Yes

No

If yes, please describe. Please also attach a copy of any such agreements.

7. Did the Lessor/School lease any portion of the Project during the calendar year, including but not limited to leases to an organization described in Section 501(c)(3), to a governmental entity, or to a private party?

Yes

No

If yes, please describe. Please also attach a copy of any such lease agreements and provide details on the specific Project facilities subject to the lease.

8. Did the Lessor/School sell any of the Project facilities or equipment during the calendar year?

Yes

No

If yes, please describe.

9. Did the Lessor/School enter into any Management Contract (as defined in the Tax Certificate) other than as permitted by such Tax Certificate during the calendar year or have such Management Contract in place that it did not disclose on a prior year's questionnaire?

Yes

No

If yes, please describe and provide a copy of such agreement(s).

TEFRA MATERIALS

[SEE TAB 13]

**EXHIBIT D**

**General Certificate**

*(See Attached)*

## GENERAL CERTIFICATE OF THE TENANT

I hereby certify that I am a duly appointed and acting officer of East Mountain, a public charter school (the “*Tenant*”), holding the office set forth below. The capitalized terms used herein, but not defined herein, shall have the meanings given to such terms, or incorporated by reference, in the Master Covenant Agreement (defined herein).

This certificate is given for the benefit of Orrick, Herrington & Sutcliffe LLP and Equitable Facilities Fund, Inc. (the “*Lender*”) under that certain Master Covenant Agreement dated as of February \_\_, 2026 (the “*Master Covenant Agreement*”), by and between East Mountain High School Foundation (“*Landlord*”) and the Tenant.

I hereby further certify on behalf of the Tenant that:

1. Attached hereto as **Exhibit A** is a true and correct copy of the Letter of Charter Renewal from the Albuquerque Public Schools Board of Education.
2. Attached hereto as **Exhibit B** is a true and correct copy of the Charter Contract by and between the Tenant and the Albuquerque Public Schools Board of Education, dated July 1, 2025, and letter of good standing from the Albuquerque Public Schools Board of Education.
3. Attached hereto as **Exhibit C** is a true and correct copy of the Resolution of the Governing Council of the Tenant.
4. The Tenant is a is a duly formed and validly existing public charter school operating under the laws of the State of New Mexico and, as of the date of this certificate, is in good standing with its authorizer, the Albuquerque Public Schools Board of Education. Additionally, the Tenant meets the federal definition of a “charter school” as defined in Section 4310(2) of the Elementary and Secondary Education Act of 1965, as amended through P.L. 115-224, enacted July 31, 2018.
5. To the knowledge of Tenant, no event not previously disclosed has occurred since the date of the Landlord’s application to the Lender to issue the Loan to Landlord that would result in a material adverse change in the financial condition of the Tenant or the Tenant’s ability to perform its obligations under the Tenant Documents, and the Lender will be provided with a complete description of the facts and circumstances of such event, to the extent required by the Tenant Documents to which it is a party, should such event occur. “Tenant Documents” mean the Tax Certificate, Master Covenant Agreement, and the Lease.
6. To the knowledge of Tenant, there is no default or event of default under any agreement to which the Tenant is a party which has a material adverse effect on the Tenant, and the Lender will be provided with a complete description of the facts and circumstances of any such default, to the extent required by the Lender and the Tenant Documents to which the Tenant is a party, should any occur.
7. No Event of Default has occurred under the Tenant Documents. Tenant is in full compliance with all warranties, covenants and agreements set forth in the Tenant Documents.

8. That the description and status of the Project and the facts represented with respect thereto, as set forth herein and in the Tax Certificate are true and correct in all material respects.

9. No litigation not previously disclosed is pending, or to the knowledge of Tenant is threatened in writing, in any court in any way affecting the existence of the Tenant or which will materially adversely impact the financial position of the Tenant or that will materially and adversely impact the Tenant's ability to conduct its business affairs, or seeking to restrain or to enjoin the issuance or delivery of the Tenant Documents to which Tenant is a party, or in any way contesting or materially and adversely affecting the validity or enforceability of the Tenant Documents to which the Tenant is a party, or contesting in any materially adverse way the powers of the Tenant or its authority with respect to the Tenant Documents to which it is a party.

10. The Tenant's President of its Governing Council, or their designees, are the Authorized Representatives of the Tenant.

11. I, Dr. Glenn Hushman, am the duly chosen, qualified and acting President of the Governing Council of the Tenant, and the signature appearing above my name below is my true and genuine signature.

Executed as of \_\_\_\_\_, 2026.

EAST MOUNTAIN,  
a New Mexico public charter school

By: \_\_\_\_\_  
Name: Dr. Glenn Hushman  
Title: President, Governing Council

- Exhibit A Letter of Charter Renewal from the Albuquerque Public Schools Board of Education
- Exhibit B Charter Contract and Letter of Good Standing
- Exhibit C Resolution of the Governing Council of the Tenant

## **EXHIBIT A**

Letter of Charter Renewal from the Albuquerque Public Schools Board of Education

**EXHIBIT B**

Charter Contract and Letter of Good Standing

**EXHIBIT C**

Resolution of the Governing Council of the Tenant