

**LEASE AGREEMENT**

**By and Between**

**EAST MOUNTAIN HIGH SCHOOL FOUNDATION, INC.,**

**A New Mexico nonprofit corporation,**

**and**

**EAST MOUNTAIN,**

**A New Mexico public charter school**

**DATED AS OF March \_\_\_\_\_, 2026**

## LEASE AGREEMENT

This Lease Agreement (this "Lease") is entered into by and between the East Mountain High School Foundation, Inc., a New Mexico nonprofit corporation (the "Foundation"), as lessor, and East Mountain, a New Mexico public charter school, (the "School"), as lessee, effective as of March \_\_\_\_\_, 2026.

### *RECITALS*

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

A. The Foundation is the owner of certain real property commonly described as 725 La Madera Rd, Sandia Park, NM 87047, together with any existing site improvements, building structures, landscaping, irrigation equipment, and fixtures erected thereon or affixed thereto, or which belong to or are used in connection therewith and all minerals, mineral rights, water rights, tenements, hereditaments, rights, privileges, interests, leases, easements and appurtenances belonging or in any way pertaining thereto (the "Property") located in Bernalillo County, New Mexico and more particularly described as:

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.

B. A portion of the Property contains certain improvements currently used to house the School, serving grades 9 through 12 and subject to that Lease Purchase Agreement dated February 1, 2012 and maturing on January 15, 2027 (the "Lease Purchase Agreement").

C. The Foundation intends to construct additional improvements on the Property upon obtaining necessary funds for completion of the Improvements on the Property that will allow the expansion of the School to serve grades 6 through 12, including (i) an approximately 6,100 square foot prefabricated modular building and an approximately 28,700 square foot parking lot (the "Phase 1 Improvements"), and (ii) a new approximately 27,400 square foot middle school facility (the "Phase 2 Improvements", collectively referred to herein as the "Improvements"). The Improvements, leased pursuant to this Lease, are not a part of the Lease Purchase Agreement. The Improvements leased to the School pursuant to this Lease will meet educational occupancy and adequacy requirements according to New Mexico school building requirements

D. The School is public charter school authorized by the New Mexico Public Education Department and duly organized and validly existing pursuant to the New Mexico Charter Schools Act, §§ 22-8B-1 through 22-8B-15, NMSA 1978, (the "Act"), and the School is authorized by Section 22-8B-4D of the Act to contract with any third party for the use of a school building and grounds.

E. The Foundation is a nonprofit corporation organized, existing, and in good standing under the laws of the State of New Mexico (the "State"); is duly qualified to do business in the State;

and is authorized under its articles of incorporation, bylaws, action of its board of directors, and applicable law, to own and manage its properties, to conduct its affairs in the State, to lease the Property to the School, and to otherwise act in the manner contemplated herein. The Foundation was created to support the School, and for the purpose of providing the School with a facility pursuant to NMSA 1978 §22-8B-4.2.

F. The Landlord has entered into a Loan Agreement, dated March \_\_\_\_\_, 2026 (“Loan Agreement”), with the Equitable Facilities Fund, Inc. a nonprofit social impact fund (“EFF”), pursuant to which EFF has loaned to Foundation the principal amount of **\$21,400,000 (Twenty-One Million and Four Hundred Thousand Dollars** and 00/100). The Foundation entered a “Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement, Fixture Filing and Other Real Property Related Financing Statement Filing” with Centrix Title & Escrow Company, as Trustee and EFF, dated March \_\_\_\_\_, 2026, and filed of record as of the same date with the Bernalillo County Clerk’s Office as Document # \_\_\_\_\_ (“Deed of Trust”), to secure Landlord’s indebtedness under the Loan Agreement and related Promissory Note “the Note”), and any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases thereof. The Tenant is not a party to or a borrower/trustor under the Loan Agreement, Deed of Trust or the Note. Under the Deed of Trust, the Landlord (a) mortgaged to Trustee for the benefit of EFF, the Property, and (b) assigned all leases between Landlord and the Tenant, and any subsequent lease purchase arrangements, this Agreement included, to EFF.

G. The School desires to lease the Improvements from the Foundation, and the Foundation desires to lease the Improvements to the School, pursuant to the terms and conditions and contingencies and for the purposes set forth in this Lease, subject in all respects to the liens evidenced by the Loan Agreement and all other related loan documents executed by the Landlord. The School desires to have and the Foundation agrees to extend to the School a right to enter a Lease Agreement with Option to Purchase pursuant to the Public Schools Lease Purchase Act, NMSA 1978 §§22-26A-1, *et seq.*, and substantially in the form attached hereto as Exhibit D, pursuant to Section 32 herein, upon the execution of which both this Lease and the Lease Purchase Agreement shall immediately terminate.

### *AGREEMENT*

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

1. Demise. The Foundation hereby leases the Improvements to the School, and the School hereby leases the Improvements from the Foundation. The Foundation shall not interfere with the quiet use and enjoyment of the Improvements by the School during the Initial Term (and any Extended Terms) of this Lease so long the School is not in default under the terms of this Lease.

2. Need. The School hereby declares its current need for the Improvements that may hereafter be constructed by the Foundation and further determines and declares its expectation that

the Improvements will (so long as they are subject to the terms hereof) adequately serve the needs for which they are being leased throughout the stated term of this Lease. The School hereby agrees and determines that the Base Rent (defined below) during the Initial Term (and any Extended Terms) of this Lease represents not more than the fair market value of the use of the Improvements, if any, during such year. In making such declarations and determinations, the School has given consideration to the uses and purposes for which the Improvements will be employed by the School, the benefit to the School by reason of the Improvements, and the use and occupancy of the Improvements pursuant to the terms and provisions of this Lease.

3. Initial Term. The Initial Term of this Lease shall be for a period commencing on the date of this Lease and ending no later than **June 30, 2027** (“Initial Term”), unless sooner terminated pursuant to any provision of this Lease or in the event the School and Foundation enter into a Lease Agreement with Option to Purchase. This Lease is contingent upon sufficient appropriations being made by the State for performance of this Lease. If sufficient appropriations and authorization are not made by the State, this Lease may terminate prior to the end of the then current term.

4. Extended Terms. The School shall be entitled to extend the term of this Lease beyond the Initial Term for thirty (30) additional one-year terms (each an “Extended Term”), commencing on July 1<sup>st</sup> of a given year and ending on June 30<sup>th</sup> of the following year, provided that this Lease has not been previously terminated and that the School is not in default under the terms of this Lease at the time of each extension. The School shall give written notice of the intent to extend at least thirty (30) days prior to the expiration of the then-current term. The School is under no obligation to extend the term of this Lease at any time, and the School shall have no further right to extend the term of this Lease beyond the expiration of the extensions provided for above. Further, any Extended Term is contingent upon sufficient appropriations being made by the State to the School for performance of this Lease. If sufficient appropriations and authorization are not made by the State to the School, this Lease may terminate prior to the end of the then current term.

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

6. Rental Commencement Date; Base Rent. The School shall not be obligated to pay any Base Rent until the Rental Commencement Date. The Rental Commencement Dates shall be (i) the date of Substantial Completion on Phase 1 Improvements (expected to be August 31, 2026) and (ii) the date of Substantial Completion of the Phase 2 Improvements (expected to be August 31, 2027). From and after the Rental Commencement Dates during all Extended Terms of this Lease, the School shall pay Base Rent directly to the Foundation or to a person designated by the Foundation as the Foundation’s representative for rent collection purposes, on the fifteenth day of each month of an Extended Term from any and all legally available sources of revenue, including per pupil

operating revenues payable to the School. The Base Rent of this Lease shall be in the amounts set forth in Exhibit B attached hereto, which from time to time may be amended or supplemented.

7. Additional Rent. The School shall pay Additional Rent during any Extended Terms of this Lease as herein provided. Commencing with the Rental Commencement Date, the Additional Rent shall be estimated annually by the Board of Directors of the Foundation and shall be in an amount sufficient to pay the following costs during the next ensuing Fiscal Year: (i) the reasonable management fees and expenses of the Foundation related to the Improvements; (ii) the cost of insurance premiums; (iii) the cost of taxes, utility charges, maintenance, upkeep, and repair costs including routine repair and replacement of roof, HVAC, and carpet and/or tile incorporated into any Improvements; (iv) all costs of common area maintenance charges, operating charges, association dues and fees; and (v) all other costs included in the definition of, or expressly required to be paid by the School as Additional Rent hereunder. The Additional Rent may be adjusted during any Extended Term of this Lease in the discretion of the Board of Directors of the Foundation and with the consent of the School. In the event the Lease term is extended for the next ensuing Fiscal Year, the School's obligation under this Lease to pay Additional Rent during such Fiscal Year shall be limited to the amount so appropriated for Additional Rent and any amounts subsequently appropriated by supplemental appropriation for payment of Additional Rent during such Fiscal Year. Additional Rental obligations in excess of the amounts so appropriated shall in no event be due or owing from the School. As used herein, "Fiscal Year" means the School's fiscal year, which begins on July 1<sup>st</sup> of any year and ends on June 30<sup>th</sup> of the following year. The Additional Rent during the first Fiscal Year after the Rental Commencement Date shall be in the amounts set forth in Exhibit C attached hereto. The Foundation will provide a proposed new Exhibit C no later than April 1 of each year. For each year the School elects to extend the term of this Lease, if any, a new Exhibit C with the new Additional Rent amount shall be attached hereto and become a part hereof in lieu of the then current Exhibit C.

8. Nature of Payment. The School and the Foundation acknowledge and agree that the Base Rent and Additional Rent hereunder shall constitute currently appropriated expenditures of the School and may be paid from any legally available funds. No payments of Base Rent or Additional Rent shall be due under this Lease until the School occupies each phase of the Improvements which shall occur on the Rental Commencement Dates. The School's obligations under this Lease shall not constitute a mandatory charge or requirement for payment of any amounts in excess of amounts appropriated for any Fiscal Year beyond the Fiscal Year for which such appropriation has been made. No provision of this Lease shall be construed or interpreted as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the School within the meaning of any constitutional or statutory limitation or requirement. No provision of this Lease shall be construed or interpreted as creating a delegation either of governmental powers or as a donation by or a lending of the credit of the School within the meaning of any constitutional or statutory limitation or requirement. This Lease does not directly or indirectly obligate the School to make any payments beyond those appropriated for any Fiscal Year for which such payments have been appropriated.

9. Manner of Payment. The Base Rent and any Additional Rent shall be paid, commencing on the Rental Commencement Dates and continuing on the fifteenth day of every month of an Extended Term thereafter by lawful money of the United States of America in the

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

10. Budgeting. In any Fiscal Year that this Lease shall be in effect, such officer of the School responsible for the preparation of the annual budget shall include in the budget proposal for the ensuing Fiscal Year an amount equal to one-hundred percent (100%) of the Base Rent and estimated Additional Rent hereunder for such ensuing Fiscal Year, provided that the decision whether to extend the term of this Lease and whether appropriations are sufficient shall remain solely within the discretion of the School.

11. Representations, Covenants, and Warranties of the School. The School represents, covenants, and warrants as follows:

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

(b) The execution, delivery, and performance of this Lease has been duly authorized by the School and this Lease is enforceable against the School in accordance with its terms.

(c) Nothing in this Lease shall be construed as diminishing, unlawfully delegating, or otherwise restricting any legal authority of the School. Nothing in this Lease shall be construed to require the School to operate the Improvements other than as Lessee.

(d) The execution, delivery, and performance of this Lease are in the best interests of the School and serve a public purpose.

(e) None of the execution and delivery of this Lease, the fulfillment of or compliance with the terms and conditions of this Lease, or the consummation of the transactions contemplated by this Lease, conflicts with or results in a breach of the terms, conditions, or provisions of any material restriction or any agreement or instrument to which the School is now a party or by which the School is bound, or constitutes a default under any of the foregoing or, except as specifically provided in this Lease, results in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the School.

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

(g) The Improvements will be operated in accordance with all Requirements of Law. As used herein, "Requirements of Law" means any material federal, state, or local statute, ordinance, rule, or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any applicable common-law doctrine, any provision or condition of any permit required to be obtained or maintained, or any other binding determination of any governmental authority relating to the ownership or operation of property, including any of relating to environmental, health, or safety matters including without limitation, Environmental Laws. "Environmental Laws" means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, codes, plans, judgments, orders, decrees, permits, concessions, grants, restrictions, franchises, licenses, policies, binding and enforceable guidelines, agreements or other governmental restrictions (or judicial or administrative interpretations thereof) relating to air, water or land pollution, wetlands or the protection of the environment, public health and safety or to emissions, discharges or releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials or the clean-up or other remediation thereof.

(h) The Improvements are necessary and essential to the School's operations.

(i) The School will observe and perform all covenants, conditions and agreements on its part to be performed under that certain Master Covenant Agreement dated as of March \_\_\_\_, 2026 (the "Covenant Agreement") between the School and the Foundation.

12. Representations, Covenants, and Warranties of the Foundation. The Foundation represents, covenants, and warrants as follows:

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

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

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

(d) The Improvements will be constructed to educational occupancy standards, will meet all applicable state adequacy standards, and at the time of completion, the Improvements will meet or exceed the statewide condition index for public schools maintained by the New Mexico Public Schools Facilities Authority ("PSFA") or will meet or exceed the condition index within 18 months of the School's occupancy of the Improvements. The Improvements will be leased by the Foundation in accordance with all Requirements of Law.

(e) The execution and delivery of this Lease, or the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions, and provisions of any restriction or any agreement or instrument to which the Foundation is now a party or by which the Foundation is bound or constitutes a default under any of the foregoing.

(f) Except as specifically provided in this Lease, the Foundation will not assign the Lease, its rights to payments from the School or its duties and obligations hereunder or thereunder to any other person, firm, or corporation so as to impair or violate the representations, covenants, and warranties contained herein.

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

(h) To the knowledge of the Foundation: (i) all permits required by Requirements of Law in respect of the Improvements will be obtained and in full force and effect prior to the School's occupancy, and the Foundation is in substantial compliance with the material terms and conditions of such permits; (ii) there is no pending litigation, investigation, administrative or other proceeding of any kind before or by any governmental authority or other person or entity relating to, or alleging, any violation of any Requirements of Law in connection with the Improvements and there are no grounds on which any such litigation, investigation or proceedings might be commenced; (iii) the Improvements are not subject to any judgment, injunction, writ, order, or agreement respecting any Requirements of Law; (iv) there is no hazardous substance (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, any applicable state law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, any applicable state law or regulations promulgated under either), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or

any constituent of any of the foregoing located on, in, or under the Property or the Improvements in violation of any Requirements of Law; (v) there has been no disposal of any of the items referred to in clause (vi) on, from, into, or out of the Property or the Improvements in violation of any Requirements of Law; and (vii) there has been no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing, or dispersing of any of the items referred to in clause (v) into the indoor or outdoor environment from, into, or out of the Property or the Improvements including the movement of any such items through or in the air, soil, surface water, ground water from, into, or out of the Property or the Improvements or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into, or out of the Property or the Improvements in violation of any Requirements of Law.

(i) The Foundation will observe and perform all covenants, conditions and agreements on its part to be performed in the Loan Agreement dated February \_\_, 2026 (“Loan Agreement”), as well as in all other documents and agreements related to the Loan (as defined in the Loan Agreement) to which the Foundation is a party.

13. Title to the Improvements. During the pendency of this Lease, title to the Improvements shall not merge with or become a part of the Property. The School shall have no right, title, or ownership interest in the Improvements or any permanent additions and modifications thereto or replacements thereof, whether or not the School obtains title to the Property.

14. Liens and Encumbrances. The School shall not permit any mechanic's or other lien to remain against the Property or Improvements; provided that if the School shall first notify the Foundation and the Trustee of the intention of the School so to do, the School may in good faith contest any mechanic's or other lien filed or established against the Property or Improvements, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Foundation or Trustee shall notify the School that, in the opinion of independent counsel, whose reasonable fees shall be paid by the School, but only to the extent that amounts for Additional Rent which have been specifically appropriated by the School are available for the payment of such costs, by nonpayment of any such items the Foundation's title in the Property or the Improvements will be materially endangered, or the Property or the Improvements or any part thereof will be subject to loss or forfeiture, in which event the School shall promptly pay and cause to be satisfied and discharged all such unpaid items; provided, however, that such payment shall not constitute a waiver by the School of the right to continue to contest such items. The Foundation and the Trustee will cooperate fully with the School in any such contest, upon the request and at the expense of the School, to the extent that Additional Rents which have been specifically appropriated by the School are available for the payment of such expenses. The School shall not directly or indirectly create, incur, or assume any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property or the Improvements.

15. Compliance with Law. The School shall at all times operate the Improvements, or cause the Improvements to be used and operated, such that (a) the Property and the Improvements at all times shall be operated in substantial compliance with all Requirements of Law; (b) all permits

required by Requirements of Law in respect of the Improvements shall be obtained and maintained in full force and effect and the School shall substantially comply with the material terms and conditions of such permits; (c) there shall be no Hazardous Material located on, in or under the Property or the Improvements in violation of any Requirements of Law including without limitation Environmental Laws; (d) there shall be no disposal of any Hazardous Material on, from, into or out of the Property or on, from, into or out of the Improvements in violation of any Requirements of Law; and (e) there shall be no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing, or dispersing of any Hazardous Material into the indoor or outdoor environment from, into, or out of the Property or the Improvements including the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Property or the Improvements or the abandonment or discard of barrels, containers, or other open or closed receptacles containing any such items from, into or out of the Property or the Improvements in violation of any Requirements of Law, including without limitation Environmental Laws.

16. Maintenance. During the Initial Term of this Lease, and for any Extended Term, the Foundation agrees to maintain, preserve, and keep the Improvements or cause the Improvements to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair, working order, and condition, subject to normal wear and tear, and that the Foundation will from time to time make or cause to be made all necessary and proper repairs. The Foundation shall be required to provide maintenance as required by applicable law.

17. Modifications. During any Extended Term of this lease, with the Foundation's prior written consent, the School may remodel or make substitutions, additions, modifications, or improvements to the Improvements, at its own cost and expense, and the same (if permanently affixed) shall be part of the Improvements, subject to, and shall be included under the terms of this Lease; provided, however, that (i) such remodeling, substitutions, additions, modifications, and improvements shall not in any way damage the existing Improvements; and (ii) the Improvements, as remodeled, improved, or altered, upon completion of such remodeling, or such making of substitutions, additions, modifications, and improvements, shall be of a value not less than the value of the Improvements immediately prior to such remodeling or such making of substitutions, additions, modifications, and improvements.

18. Equipment. The School may, from time to time in its sole discretion and at its own expense, install equipment and personal property in or on the Improvements. All such equipment and personal property shall remain the sole property of the School in which the Foundation shall not have any interest; provided, however, that any such equipment and personal property which becomes permanently affixed to the Improvements shall become part of the Improvements, subject to this Lease and shall be included under the terms of this Lease.

19. Initial Term -Taxes and Assessments. During the Initial Term, if the Improvements or any portion thereof shall, for any reason, be deemed subject to taxation, assessments, or charges lawfully made by any governmental body, the Foundation shall pay the amount of all such taxes, assessments, and governmental charges then due. With respect to special assessments or other governmental charges that may be lawfully paid in installments over a period of years, the Foundation shall be obligated to provide only for such installments as are required to be paid during

the Initial Term. The Foundation shall not allow any liens for taxes, assessments, or governmental charges to exist with respect to the Improvements or any portion thereof.

20. Extended Term – Taxes and Assessments. For any Extended Term, if the Improvements or any portion thereof shall, for any reason, be deemed subject to taxation, assessments, or charges lawfully made by any governmental body, the School shall pay the amount of all such taxes, assessments, and governmental charges then due, but only to the extent that amounts for Additional Rent which have been specifically appropriated by the School are available for the payment of such costs. With respect to special assessments or other governmental charges that may be lawfully paid in installments over a period of years, the School shall be obligated to provide only for such installments as are required to be paid during Extended Terms of this Lease. The School shall not allow any liens for taxes, assessments, or governmental charges to exist with respect to the Improvements or any portion thereof (including any taxes levied thereon which, if not paid, will become a charge on the rentals and receipts from the Improvements or any portion thereof, or any interest therein, including the interest of the Foundation or the Trustee) or the rentals and revenues derived therefrom or hereunder. If the School shall first notify the Foundation and Trustee of the intention of the School to do so, the School may, at the expense and in the name of the School, in good faith contest any such tax, assessment, and other charges and, in the event of any such contest, may permit the tax, assessment, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Foundation or the Trustee shall notify the School that, in the opinion of independent counsel, whose reasonable fees shall be paid by the School, but only to the extent that amounts for Additional Rent which have been specifically appropriated by the School are available for the payment of such costs, by nonpayment of any such items the Improvements or any portion thereof will be subject to loss or forfeiture, or the Foundation or Trustee will be subject to liability, in which event such tax, assessment, or other charges shall, to the extent that amounts for Additional Rent which have been specifically appropriated by the School are available for the payment thereof, be paid promptly or secured by posting a bond as provided by law (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, or other charges).

21. Utilities. During the Initial Term of the Lease, and any Extended Term, the School shall pay, as the same respectively become due, all gas, water, steam, electricity, heat, power, utility, and other charges incurred in the maintenance and upkeep of the Improvements, and the School shall place all such utilities in its name.

22. Insurance. The Foundation shall, at its own expense, obtain and maintain or cause its contractor to obtain and maintain the following policies of insurance. The insurance policies required by this Section shall meet the following conditions: (i) any insurance policy may have a deductible clause in an amount not to exceed \$20,000; (ii) each insurance policy shall be so written or endorsed as to make losses, if any, payable to the Foundation, the Trustee and the School, as their respective interests may appear; (iii) each insurance policy shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of the Foundation, the Trustee or the School without first giving written notice thereof to the Foundation, the Trustee and the School at least thirty (30) days in advance of such cancellation or modification; (iv) each insurance policy, or each certificate evidencing such policy, shall be deposited with the Trustee and a true and complete copy with the School; (v) full payment of

insurance proceeds under any insurance policy up to the dollar limit required by this Section in connection with damage to the Property or the Improvements shall, under no circumstance, be contingent on the degree of damage sustained at other property owned or leased by the School; and (vi) to the extent the Foundation can control the terms of each insurance policy, each insurance policy shall explicitly waive any coinsurance penalty. The Foundation may, in its discretion, provide any of the insurance required by this Section under blanket insurance policies which insure not only the risks required to be insured hereunder but also other similar risks.

(a) At the time of construction of any Improvements on the Property, casualty and property damage insurance with respect to the Improvements in an amount equal to the full replacement value of the Improvements.

(b) Commercial general liability insurance against claims arising in, on, or about the Property, including in the Improvements, providing coverage limits not less than the coverage limits customarily carried by owners or operators of facilities of similar size and character within the State.

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

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

23. Insurance. The School shall, at its own expense, obtain and maintain the following policies of insurance during each term of the Lease. The insurance policies required by this Section shall meet the following conditions, to the extent allowed by state law or the School's required insurer, the New Mexico Public Schools Insurance Authority ("NMPSIA"): (i) any insurance policy may have a deductible clause in an amount not to exceed \$20,000; (ii) each insurance policy shall be so written or endorsed as to make losses, if any, payable to the School, the Trustee and the Foundation, as their respective interests may appear; (iii) each insurance policy shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of the School, the Trustee and the Foundation without first giving written notice thereof to the School, and the Foundation at least thirty (30) days in advance of such cancellation or modification; (iv) each insurance policy, or each certificate evidencing such policy, shall be deposited with the Trustee; (v) full payment of insurance proceeds under any insurance policy up to the dollar limit required by this Section in connection with damage to the Property or the Improvements shall, under no circumstance, be contingent on the degree of damage sustained at other property owned or leased by the School; and (vi) to the extent the School can control the terms of each insurance policy, each insurance policy shall explicitly waive any coinsurance penalty. The School may, in its discretion, provide any of the insurance required by this Section under blanket insurance policies which insure not only the risks required to be insured hereunder but also other similar risks. The School agrees to pay the premiums for any insurance required by the Foundation, as part of the Additional Rent.

(a) Casualty and property damage insurance with respect to the Property and the Improvements in an amount equal to the full replacement value of the Property and the Improvements.

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

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

(d) Rental value insurance covering all risks as to which insurance is required pursuant to Subsection (a) above, in an amount equal to not less than the amounts required to be paid as Base Rent and Additional Rent for a period of not less than twelve (12) months.

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

24. Damage, Destruction, or Condemnation; Use of Net Proceeds.

(a) *Damage, Destruction, or Condemnation.* If, during the term (and any extended terms) of this Lease, (i) Improvements, or any portion thereof, shall be destroyed (in whole or in part), or damaged by fire or other casualty; (ii) title to, or the temporary or permanent use of, the Improvements, or any portion thereof or the estate of the School, the Trustee or the Foundation in the Improvements or any portion thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; (iii) breach of warranty or any material defect with respect to the Improvements shall become apparent; or (iv) title to or the use of all or any portion of the Improvements shall be lost by reason of defect in the title thereto, then, the School shall be obligated, subject to the provisions of Subsection (c) hereof, to continue to pay the amounts specified in Subsection (b) hereof and, to the extent of amounts specifically appropriated by the School, to pay Base Rent and Additional Rent. As used herein, "Net Proceeds" means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys' fees) incurred in the collection of such gross proceeds.

(b) *Repair and Replacement.* To the extent permitted by applicable law, subject to the provisions of Subsection (c) hereof, the School (and, to the extent such Net Proceeds are within their control, the Foundation) shall cause such Net Proceeds to be deposited in a separate trust fund held by the Trustee. Except as set forth in Subsection (c) hereof, all

Net Proceeds of any insurance, performance bonds, or condemnation awards owed to either the School or the Foundation shall be applied to the prompt repair, restoration, modification, improvement, or replacement of the Improvements, as the case may be, by the School upon receipt of requisitions acceptable to the Trustee setting forth: (i) the requisition number; (ii) the name and address of the person, firm, or corporation to whom payment is due or has been made; (iii) the amount to be paid or reimbursed; and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Trustee shall cooperate with the School in the administration of such fund and shall not unreasonably withhold its approval of requisitions under this Section. Any repair, restoration, modification, improvement, or replacement paid for in whole or in part out of Net Proceeds shall be the property of the Foundation, subject to this Lease, and shall be included as part of the Improvements under this Lease.

(c) *Insufficiency of Net Proceeds for Improvements.* If there occurs an event described in Subsection (a) hereof, and if any Net Proceeds received as a consequence of such event shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the Improvements required under Subsection (b) hereof, the School shall elect one of the following options:

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

or

(ii) If, by June 30<sup>th</sup> of the Fiscal Year in which an event described in Subsection (a) hereof occurs (or June 30<sup>th</sup> of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve, or replace the Improvements become apparent), the School has not appropriated amounts sufficient to proceed under clause (i) of this Subsection, the School may terminate the Lease for lack of sufficient appropriations by giving the Foundation and Trustee sixty (60) days prior written notice and in such event the School's termination shall not constitute a default permitting the Foundation or Trustee to pursue the remedies provided in Section 26 ("Remedies on Default"); provided that, all Net Proceeds are paid to the Foundation.

(d) *Insufficiency of Net Proceeds for Improvements.* If there occurs an event described in Subsection (a) hereof, and if any Net Proceeds received as a consequence of such event shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement, or replacement of the Improvements required under Subsection (b) hereof, the School shall elect one of the following options:

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

(ii) If, by June 30<sup>th</sup> of the Fiscal Year in which an event described in Subsection (a) hereof occurs (or June 30<sup>th</sup> of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve, or replace the Improvements become apparent), the School has not appropriated amounts sufficient to proceed under clause (i) of this Subsection, the School may terminate the Lease for lack of sufficient appropriations by giving the Foundation and Trustee sixty (60) days prior written notice and in such event the School's termination shall not constitute a default permitting the Foundation or Trustee to pursue the remedies provided in Section 26 ("Remedies on Default" ); provided that, all Net Proceeds are paid to the Foundation.

(f) *Cooperation.* The parties to this Lease shall cooperate fully with the other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Subsection (a) hereof, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Improvements or any portion thereof, and in the prosecution of any action relating to defaults or breaches of warranty under any contract relating to the Improvements. In no event shall either party voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to defaults or breaches of warranty under any contract relating to the Improvements or any portion thereof without the written consent of the other party. Each party shall be responsible for their respective fees and expenses incurred under this section.

25. Events of Default. Any one of the following shall constitute an "Event of Default" under this Lease: (i) failure by the School to pay any specifically appropriated Base Rent during the Initial Term (and any Extended Terms) of this Lease on, before, or within fifteen (15) days of the applicable due date or to pay Additional Rent which become due during the Initial Term (and any

Extended Terms) of this Lease, up to the amount specifically appropriated for the payment of Additional Rent in accordance with the provisions hereof; (ii) failure by the School to observe and perform any covenant, condition, or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied shall be given to the School by the Foundation or Trustee, unless the party giving such notice shall agree in writing, prior to the expiration of the thirty-day period, to an extension of no more than sixty (60) days; provided, however, that if the failure stated in the notice cannot be corrected within the original thirty-day period, the party giving such notice shall not withhold their consent to an extension of up to sixty (60) days if corrective action shall be instituted by the School within such time period and diligently pursued until the default is corrected; or (iii) failure by the School to maintain its charter under the Act. The foregoing provisions of this Section are subject to the following limitations: (i) the School shall be obligated to pay the Base Rent and Additional Rent only during the Initial Term (and any Extended Terms) of this Lease, except as otherwise expressly provided in this Lease; and (ii) if, by reason of Force Majeure, the School shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the School contained herein and until the termination or end of the Initial Term (and any Extended Terms) of this Lease, the School shall not be deemed in default during the continuance of such inability. The School agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the School from carrying out its agreement; provided that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the School. As used herein, "Force Majeure" includes the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other causes not within the control of the School or the Foundation.

26. Remedies on Default. Subject to the provisions of Section 44 herein, whenever any Event of Default shall have happened and be continuing, the Trustee, acting for the Foundation, may, without any further demand or notice, take one or any combination of the following remedial steps:

- (a) Terminate the Initial Term (and any Extended Terms) of this Lease and give notice to the School to vacate the Improvements within one-hundred twenty days (120) days from the date of such notice.
- (b) Lease all or any portion of the Improvements.
- (c) Recover from the School: Base Rent and Additional Rent, to the extent amounts for such Additional Rent have been specifically appropriated in accordance with the provisions of hereof, which would otherwise have been payable by the School hereunder during the remainder, after the School vacates the Improvements, of the Fiscal Year in which such Event of Default occurs.
- (d) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Improvements under this Lease.

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

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

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

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

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

32. Conversion to Lease With Option to Purchase Agreement. At the discretion and option of the School, the parties agree that this Lease may be superseded by a Lease with Option to Purchase Agreement, provided approval of the Lease with Option to Purchase Agreement has been approved by the necessary regulatory authorities in the Public Schools Lease Purchase Act, NMSA 1978 §§22-26A-1 et seq. The Lease with Option to Purchase Agreement between the School and the Foundation shall be substantially in the form and upon the terms attached as Exhibit D hereto.

33. Waiver. No term of this Lease shall be deemed waived unless such waiver is in writing signed by the party making the waiver. No delay or omission by either party in exercising or enforcing any right or power hereof shall impair such right or power or be construed to be a waiver thereof. No custom or practice that may evolve between the parties shall be construed to lessen the right of a party to require the performance of the other party in strict accordance with the terms of this Lease. A waiver by one party of a failure of the other party to fully comply with any of the terms of this Lease shall not be construed to be a waiver of any subsequent failure to comply or any other failure to comply.

34. Assignment and Subleasing. This Lease may not be assigned by the School for any reason, whether by operation of law or pursuant to any contract. However, the Improvements may be leased, as a whole or in part, by the School, with the consent of the Foundation, which consent will not be unreasonably withheld; subject, however, to the provisions of Section 43 herein and further subject to each of the following conditions: (i) this Lease, and the obligations of the School hereunder, shall, at all times during the Initial Term (and any Extended Terms) of this Lease, remain direct obligations of the School; (ii) no additional lease shall change the use of the Improvements; and (iii) a copy of the lease agreement is provided to the Foundation.

35. Amendments, Changes, and Modifications. This Lease shall not be altered, changed, or amended other than by a written instrument executed by the parties.

36. Notices. All notices and communications required or permitted under this Lease (including change of address and facsimile or telephone number set forth below) shall be in writing and shall be deemed given to, and received by, the receiving party: (i) when hand-delivered to the street address of the receiving party set forth below; (ii) when sent by facsimile transmission to the facsimile number of the receiving party set forth below; (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address set forth below; or (iv) five (5) days after deposit in the U. S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

The Foundation: East Mountain High School  
Foundation, Inc.

With a copy to: Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
P.O. Box 2168  
Albuquerque, New Mexico 87103  
Or 500 Fourth Street N.W. Suite 1000  
Albuquerque, New Mexico 87102  
Attn: Margaret Lewis Meister  
Facsimile No.: (505) 848-9710

**The School:** East Mountain  
c/o Executive Director

With a copy to: Cuddy & McCarthy, LLP  
1701 Old Pecos Trail, Suite A  
Santa Fe, New Mexico 87502-4160  
Attn: Heather Travis Boone

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

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

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

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

41. Severability. In the event that any provision of this Lease, other than the requirement of the School to pay Base Rent and Additional Rent, the requirement of the Foundation to provide quiet enjoyment of the Improvements, and the requirement that the obligations of the School to pay Base Rent and Additional Rent under this Lease are conditioned upon the prior specific appropriation by the School of amounts for such purposes in accordance with the requirements of State law, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

42. Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

43. Days Cash On Hand. The School and Foundation shall manage their businesses to maintain not less than sixty (60) Days Cash on Hand in the current Fiscal Year and for each Fiscal Year thereafter. "*Days Cash on Hand*" means (A) the cash requirements of Tenant and the

Foundation during such Fiscal Year related to or payable from revenues attributable to Tenant and the Foundation (excluding from such calculation all depreciation and other non-cash items), and including within such calculation on behalf of Tenant and the Foundation (i) all Tenant Operating Expenses and the Foundation Operating Expenses for such Fiscal Year, and (ii) the maximum Base Rent and Additional Rent payable under the Lease, interest expense or any rent or other amounts due under any lease for that year, divided by (B) 365. For the avoidance of doubt, any proceeds of any Outstanding (as defined under the Loan Agreement) Debt, regardless of maturity, whose proceeds were drawn for the payment of Tenant Operating Expenses and the Foundation Operating Expenses or the funding of cash shall not be considered Cash on Hand for the purposes of Days Cash on Hand. Failure to maintain the sixty (60) Days Cash on Hand as required by this Section shall not constitute an Event of Default so long as the School timely engages an Independent Management Consultant within thirty (30) days. Within sixty (60) days of engaging an Independent Management Consultant, such Independent Management Consultant shall prepare a report with recommendations for meeting the required sixty (60) Days Cash on Hand. As soon as practicable, but no later than thirty (30) days after receipt of such report, the School shall, to the extent legally permissible, implement the Independent Management Consultant's recommendations. Notwithstanding any other provision of this Section, failure of the School to maintain not less than sixty (60) Days Cash on Hand for two consecutive Fiscal Years shall immediately constitute an Event of Default. If at any time the New Mexico Public Education Department prohibits the School from maintaining sixty (60) Days Cash on Hand in any Fiscal Year, the provisions of this section shall be reduced to forty-five (45) Days Cash on Hand.

(a) “*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 Tenant, and (iii) is not connected with the Tenant 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.

(b) “*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.

44. Tenant Lease Payment Coverage Ratio. “*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 Tenant, Base Rent payable under the Lease, and any actual rent or other amounts due under any facility lease, for such period. “*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.

(a) It shall constitute an Event of Default under this Lease 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 Tenant 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.

44. Requirements for Tax Exempt Bonds. The construction of the Improvements by the Foundation is being financed through issuance of debt. As a part of the debt transaction, Centrix Title & Escrow is being appointed as trustee (Centrix Title & Escrow along with any successor trustee shall be referred to herein as "Trustee"). Notwithstanding any other provisions of this Lease, the parties hereby agree as follows:

(a) The Foundation will collaterally assign all its rights to use the Improvements, and all payments made by the School pursuant to this Lease, to the Trustee, including all rights arising in any situation where the School defaults under this Lease.

(b) Neither the Foundation nor the School shall allow an assignment or sublease of the Improvements to any person (including the Foundation) without an opinion of nationally recognized bond counsel that such assignment or sublease will not adversely affect any tax-exemption of interest on the debt transaction.

45. Subordination. School hereby agrees that this Agreement now is, and shall at all times continue to be, subject, inferior and subordinate in each and every respect to the lien of the Deed of Trust defined herein, and to any and all renewals, amendments, modifications, extensions, substitutions, replacements, increases and/or consolidations of the Deed of Trust and/or the Note; and the lien of the Deed of Trust, and any and all renewals, amendments, modifications, extensions, substitutions, replacements, increases and/or consolidations of the Deed of Trust and/or the Note, shall be and remain, in each and every respect prior and superior to this Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the Agreement to the lien of the Deed of Trust and shall supersede and cancel insofar as same may affect the priority between the Deed of Trust and the Agreement, any prior agreements or

provisions relating to the subordination of the Agreement to the lien of the Deed of Trust, including, without limitation, those provisions, if any, contained in the Agreement which provide for the subordination thereof to the lien of any Deed of Trust, mortgage or other security agreement. Foundation will cause any such mortgage, indenture, or deed of trust to contain provisions requiring the holder of the indebtedness secured thereby to mail to Charter School by registered mail, addressed to Charter School at its office as set forth in this Agreement, a copy of each notice of breach of covenant, default, or foreclosure given by the holder or the trustee under such mortgage, indenture, or deed of trust to Foundation. Charter School may, upon receiving notice of breach of covenant, default, or foreclosure under any such mortgage, indenture, or deed of trust as herein provided exercise the option to purchase set forth herein by paying the then-outstanding principal amount of the debt secured by mortgage, indenture, or deed of trust plus any accrued and unpaid interest and any amounts necessary to pay all amounts due to the first call date secured by the mortgage, indenture or deed of trust.

*[Signatures on following page.]*

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

THE SCHOOL

East Mountain,  
a New Mexico public charter school

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Governing Council President

THE FOUNDATION

East Mountain High School Foundation, Inc.  
a New Mexico nonprofit corporation

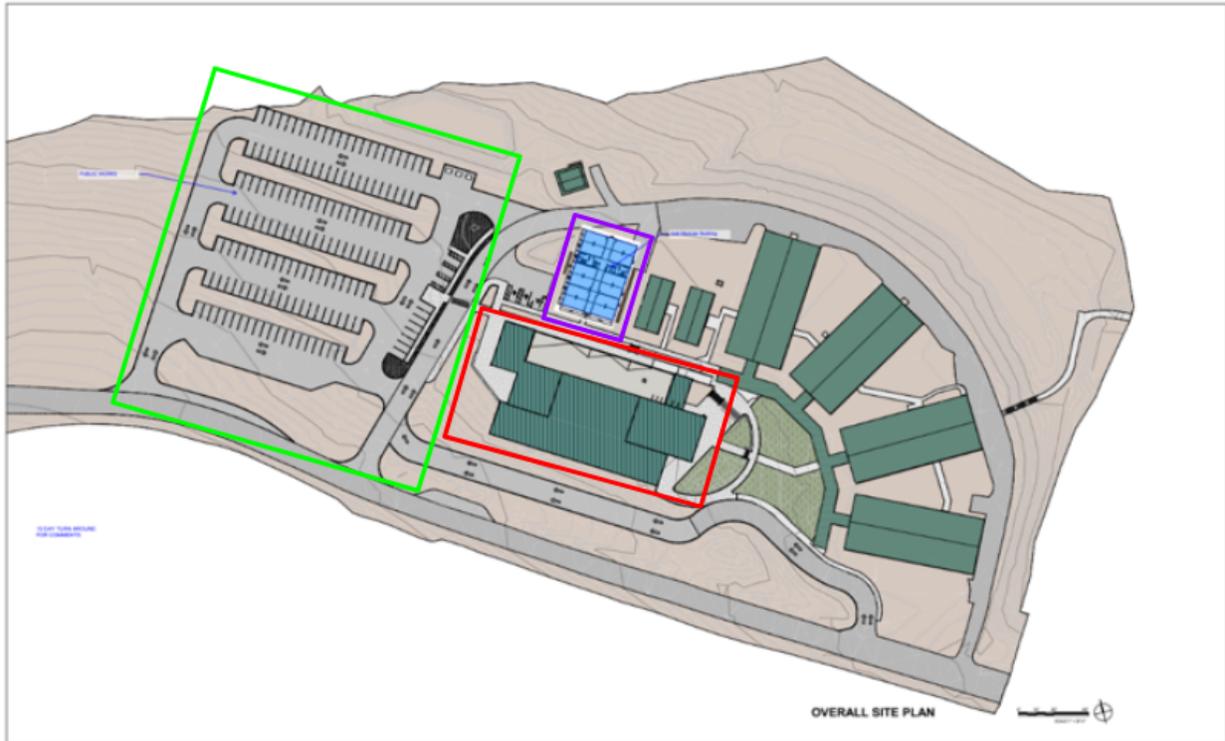
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

## EXHIBIT A

### SITE DRAWING

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**  
**RENT SCHEDULE**  
**(See Attached)**

**EXHIBIT C**

**ADDITIONAL RENT  
TO BE COMPLETED BY FOUNDATION  
PURSUANT TO THE TERMS OF THE LEASE AGREEMENT**

For the Initial Term of the Lease Agreement School shall pay \$ 0 in Additional Rents.

**EXHIBIT D**

**FORM OF  
Lease with Option to Purchase Agreement  
(SEE ATTACHED)**