

**GROUND LEASE AGREEMENT**

**By and Between**

**THE DISTRICT OF COLUMBIA**

**as LANDLORD**

**and**

**OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, L.L.C.**

**as TENANT**

September 4, 2008

600 Alabama Avenue, S.E.  
Washington, D.C.

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#### Exhibits:

- Exhibit A – Leased Premises
- Exhibit B – Depiction of Western Portion of Leased Premises
- Exhibit C - Concept Drawings
- Exhibit D – Redevelopment Project Schedule
- Exhibit E – Title Commitment
- Exhibit F – Example of Sublet Rent Payment Calculation
- Exhibit G – Outline of Community Participation and Public Benefits

## GROUND LEASE AGREEMENT

THIS GROUND LEASE (this "Lease" or "Agreement") is entered into as of this 4th day of September 2008 (the "Lease Commencement Date") by and between the District of Columbia, a municipal corporation by and through its Office of Property Management ("Landlord" or "District"), and Old Congress Heights School Redevelopment Company, L.L.C., a District of Columbia limited liability company, having its principal address at 3215 Martin Luther King, Jr. Avenue, S.E., Washington, D.C. 20032 ("Tenant").

### RECITALS:

R-1. District owns the real property located at 600 Alabama Avenue, S.E., in Washington, D.C., more specifically known for tax and assessment purposes as Parcel 235, Lot 6 ("Property") and as more fully depicted on Exhibit A attached hereto and made a part hereof. District has selected Tenant pursuant to the Solicitation of Offers ("Solicitation") issued by its Office of Property Management for the development of the Property, pursuant to Proposed Resolution 16-542 approved by the Council of the District of Columbia on March 7, 2006 in accordance with D.C. Official Code §10-801(c) (2006 Supp.).

R-2. District desires to lease the Property to Tenant and Tenant wishes to lease the Property from District pursuant to the terms and conditions contained herein.

R-3. The Property has a unique and special importance to the District. Accordingly, this Agreement makes particular provisions regarding the design, renovation and construction of the Redevelopment Project (defined below) which, initially, shall include, but not be limited to a school facility to be constructed in accordance with the standards set forth herein together with playground and parking spaces to be operated as a public charter school and an adult education and training center, to serve District residents and the public at large, and any other Permitted Use. The foregoing initial uses may change, but only pursuant to the provisions set forth below. The Redevelopment Project also includes the right to construct, pursuant to the requirements for Landlord approval set forth herein, one or more buildings on the undeveloped Western Portion of the Property (defined below) for office, retail, educational and any other Permitted Use (defined below), all as more particularly set forth in this Lease.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged by the Parties (defined below), District and Tenant do hereby agree as follows:

### ARTICLE I

### DEFINITIONS

The following terms, when used in this Lease, or in any Exhibit hereto, with initial capital letters, shall have the meanings ascribed to such terms below or at the applicable place of reference, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular. Defined terms used but not defined in this Lease shall have the meanings given to them in the First Source Agreement and the LSDBE Memorandum of Understanding.

**"Additional Cure Period"** as defined in Section 12.7.1.

**"Additional Insured"** as defined in Section 6.1.10.

**"Additional Rent"** as defined in Section 3.5.

**"Alterations"** as defined in Section 8.3.1.

**"Anti-Money Laundering Acts"** as defined in Section 20.1.12.

**"Anti-Terrorism Order"** as defined in Section 20.1.12.

**"Applicable Laws"** means all federal and District laws, codes, statutes, ordinances, by-laws, regulations, rules, licenses, permits, variances, governmental orders, and governmental approvals applicable to any subject facts, things, circumstances or events, including without limitation, the District of Columbia School Reform Act of 1995, as amended (D.C. Official Code § 38-1800.01 et seq. (Supp. 2005)) and all regulations promulgated thereunder.

**"Approved Mortgagee"** as defined in Section 12.1.1.

**"Architect"** means Bowie Gridley Architects or such substitute or substitutes therefor from time to time as may be named by Tenant for the Redevelopment Project, licensed to practice architecture in the District of Columbia and approved by Landlord, but shall not mean any landscape architect, or interior designers retained by the Tenant or the Architect.

**"Assign"** as defined in Section 9.1.1.

**"Base Building Alterations"** means any replacement, alteration, change or expansion made to the Base Building Conditions after the Final Completion of the Redevelopment Project Improvements.

**"Base Building Conditions"** means the exterior elements of the Building (as defined below) located on the Property, load bearing elements, foundations, roof, mechanical and utility core areas thereof, and utilities located on the Property serving the Building (including storm water, sewer, water and electric pipes or lines), all as upgraded or constructed as a part of the Redevelopment Project Improvements.

**"Base Rent"** as defined in Section 3.1.1.

**"Binding Agreement"** or **"Binding Agreements"** as defined in Section 2.2.1.

"BOMA Measurement Standard" means the Building Owners and Managers Association Standard Method for Measuring Floor Area in Office Buildings (BOMA/ANSI Z65.1-1996) for rentable floor area (i.e. Tenant's gross square footage of the entire building floor, minus the elevator core, flues, pipe shafts, vertical ducts, balconies, stairwell areas, and other similar columns and projections).

"Broker" as defined in Section 20.1.8.

"Building" means the existing building on the Property known as Old Congress Heights Elementary School comprising an approximately 42,528 square foot facility.

"Building Service Equipment" means all apparatus, machinery, devices, fixtures, appurtenances, equipment, and personal property necessary for the proper maintenance, protection, conservation, and operation of the Redevelopment Project Improvements located on the Leased Premises from time to time, other than **Decorations, Furnishings, Equipment, and Inventory**, and, in particular, shall include, without limiting the generality of the foregoing, the following, if any, on the Leased Premises: awnings, shades, screens, and blinds; asphalt; vinyl composition and other floor, wall and ceiling coverings; partitions, doors, and hardware; elevators, escalators, and hoists; heating, plumbing, and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts, and tanks; oil burners, furnaces, heaters, incinerators, and boilers; air cooling and air conditioning equipment; washroom, toilet, and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring, and equipment; tools, building supplies, lobby decorations, and window washing hoists and equipment; garage equipment; gardening and landscaping equipment; and all additions to and replacements of any of the foregoing. Without limiting the foregoing, Building Service Equipment shall encompass, as applicable, those of the foregoing items located on the Leased Premises on the Lease Commencement Date and the replacements thereof installed on the Leased Premises. Building Service Equipment shall specifically exclude, however, any Decorations, Fixtures, Furnishings, Equipment and Inventory used or owned by Tenant or Tenant's Related Party, in connection with the operation of the respective spaces and not in connection with the operation of the Redevelopment Project Improvements as a whole.

"Business Day" means Monday through Friday, other than (i) holidays recognized by the District or the federal government and (ii) days on which the District or federal government closes for business as a result of severe inclement weather or a declared emergency which is given legal effect in the District of Columbia. If any item must be accomplished or delivered under this Agreement on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on a day other than a Business Day shall be deemed to have been extended to the next Business Day.

"Certificate of Occupancy" means a certificate of occupancy or similar document or Permits (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Redevelopment Project Improvements, or any phase, component or portion thereof, to be located on the Leased Premises.

**"Charter School"** means a public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 ( D.C. Official Code § 38-1800.01 et seq. (Supp. 2005) to be operated at the Leased Premises upon Final Completion of the Redevelopment Project Improvements.

**"Chief Property Management Officer"** means the Director of the District of Columbia Office of Property Management, the executive agency within the Government of the District of Columbia authorized, pursuant to D.C. Official Code § 10-1001, et seq., to manage leased space and other real property assets controlled by Landlord.

**"Commencement of Construction"** means the time at which the Tenant has (i) executed the Construction Contract with the General Contractor for the renovation and construction of the Redevelopment Project Improvements, (ii) given such General Contractor notice to proceed for the Redevelopment Project Improvements, and (iii) obtained all Permits required to commence such renovation and construction.

**"Comparable Buildings"** shall mean properties and buildings in the District of Columbia reasonably comparable to the Leased Premises in size, age, use, design, general metropolitan location, type of construction and construction quality comparable to the completed Redevelopment Project Improvements.

**"Completion of Charter School"** means the Substantial Completion of the construction and renovation of the Charter School and the issuance of a Certificate of Occupancy by the Governmental Authority.

**"Construction Deadlines"** means the dates for performing renovation and construction of the Redevelopment Project Improvements, including Construction Commencement, Milestone Events, Substantial Completion, and Final Completion, set forth in the Redevelopment Project Schedule.

**"Construction Contract"** means each contract with a General Contractor for the renovation and construction of all or any part of the Redevelopment Project Improvements.

**"Construction Drawings"** mean the drawings setting forth in detail the requirements for renovation and construction for the Redevelopment Project Improvements, which shall be based upon the approved Design Development Drawings. The Construction Drawings shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Redevelopment Project Improvements.

**"Construction Financing"** means financing obtained by Tenant from Institutional Lender(s) and used solely for the purpose of designing, renovating, constructing, and otherwise completing the Redevelopment Project (including environmental remediation, if any).

**"Consumer Price Index"** means the "Consumer Price Index for Urban Wage Earners and Clerical Workers for the Washington-Baltimore area – all items, which index is published by the United States Bureau of Labor Statistics. If the aforesaid Consumer Price Index is not in existence at any time required for the calculation of an amount in this Lease, the Parties shall use such equivalent price index as is published by any successor governmental agency in lieu of the

aforesaid Consumer Price Index, or by such non-governmental agency as may then be publishing such equivalent price index.

**"Contaminant Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

**"Decorations, Fixtures, Furnishings, Equipment and Inventory"** shall mean all trade fixtures, furnishings, equipment, inventory, chattels and other personal property of Tenant, Tenant's Related Parties, and Tenant's subtenants and assignees permitted under this Lease, and all additions, replacements and substitutions thereto or therefor, located on the Leased Premises from time to time used for or in connection with the occupancy of the particular premises of Tenant and such tenants and parties and the operation of their businesses therein.

**"Depository"** as defined in Section 7.1.

**"Design Development Drawings"** means the drawings that illustrate and describe the refinement of the design of the Redevelopment Project Improvements, establishing the scope, relationships, forms, size and appearance of the such improvements by means of plans, sections and elevations, typical constructions details, and equipment layouts, which shall be based upon the approved Schematic Drawings, as applicable. The Design Development Drawings shall identify major construction materials and building systems and establish in general their quality levels.

**"Disapproval Notice"** as defined in Section 5.4.2.

**"DOES"** means the District of Columbia Office of Employment Services.

**"DOL"** means the Department of Labor.

**"Election Notice"** as defined in Section 19.1.

**"Environmental Claims"** as defined in Section 5.9.1.

**"Environmental Laws"** means any federal or District law, statute, code, ordinance, rule, regulation, requirement, permit, license, approval, policy or guidance, resolution, or judicial or administrative decision, order, judgment, injunction, award, decree, writ, or similar item (including, without limitation, consent decrees) relating to environmental matters, the protection of the environment or the protection of human health and safety from environmental concerns, including without limitation all those relating to or regulating the presence, use, generation, handling, storage, treatment, transportation, decontamination, processing, clean-up, removal, encapsulation, enclosure, abatement, disposal, reporting, licensing, permitting, monitoring, investigation, remediation, or release (including, without limitation, to ambient air, surface water, ground water, land surface or subsurface strata) of any Hazardous Material, pollutant, contaminant, or other substance or waste, including without limitation:

(a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, and their District and local counterparts and related regulations; and

(b) any other legal requirement, legal rule, or order given legal force and effect in the District regulating, relating to, imposing standards of conduct for, or imposing or allocating any liability concerning any Hazardous Material, pollutant, or contamination or any remedial action.

**“Environmental Liabilities and Costs”** any and all losses (including, without limitation, those related to remedial action, personal injuries, property damage, natural resource damages on or off the Leased Premises, and costs reasonably necessary to ensure full value or use of the Leased Premises) and claims or causes of action of any nature whatsoever incurred by or asserted against Landlord and/or any Landlord Related Party (including costs and attorneys’ fees) in connection with, arising out of, in response to, or in any manner relating to (i) the violation at any time, past, present, or future, of any Environmental Law by the Tenant or any Tenant Related Party, at the Leased Premises or relating in any manner to the Leased Premises or its use or condition, or (ii) any past, present, or future Contaminant Release or threatened Contaminant Release of any Hazardous Material on, under, about, or from the Leased Premises by Tenant or any Tenant Related Party, or (iii) any past, present, or future condition of pollution, contamination, or presence of Hazardous Material on, under, about, or from the Leased Premises by Tenant or any Tenant Related Party, regardless of how or when such violation, release or threatened release, or condition occurred, was caused, or discovered.

**“Event of Default”** shall mean a default by Tenant under this Lease as enumerated and described in Section 11.1.

**“Excusable Delay”** shall mean: (i) the inability of Tenant to obtain permission or approval, despite commercially reasonable efforts, from the Government of the District of Columbia to do anything required to be done under this Lease including, without limitation, approval of Design Development and Construction Drawings, and obtaining a Permit for the Redevelopment Project so long as Tenant has made taken all commercially reasonable steps to obtain the requested approval or Permit; or (ii) a Force Majeure Event.

**“Extension Option”** as defined in Section 19.1.

**“Extension Period”** as defined in Section 19.1.

**“Extension Term”** or **“Extension Terms”** shall mean two (2) fifteen (15) year renewals, as applicable.

**“Facility Allowance”** means the amount of money the Charter School may receive from the District of Columbia pursuant to D.C. Official Code §38-2908, as amended, and may also be identified as non-residential facilities allotment.

**“Fair Market Rental Value”** as defined in Section 19.2.

**"Feasibility Expiration Date"** as defined in Section 2.12.4.

**"Feasibility Studies"** means Tenant's performance of the following activities at its sole cost and expense: soil, engineering (including without limitation structural and roof inspections), environmental sampling, testing, and investigations (including without limitation, those that may relate to the removal of asbestos and lead as required by Applicable Laws, regulations, and codes), and other pre-design investigations, tests and studies in, on, under or about the Property.

**"Feasibility Studies Period"** means the ninety (90) calendar day period from the Lease Commencement Date to Feasibility Expiration Date for Tenant to conduct Feasibility Studies on the Property pursuant to the terms and conditions set forth in Section 2.12.

**"Final Completion"** means following Substantial Completion (i) the completion of all Punch List Items, (ii) the close-out of all construction contracts for the Redevelopment Project Improvements, (iii) the payment of all costs of constructing the Redevelopment Project Improvements, and receipt by Tenant of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors and all other Persons furnishing supplies or labor in connection with the Redevelopment Project Improvements, (iv) the receipt by Tenant of the Certificate of Occupancy, and (v) the receipt by District of a certification by Tenant of the items in clauses (i) through (iv) of this definition.

**"First Source Agreement"** means that certain First Source Agreement to be negotiated by and between Tenant and the District of Columbia Department of Employment Services.

**"Force Majeure Event"** means any of the following that directly cause any of Tenant's obligations under the Agreement not to be performed in a timely manner: An act of God, fire, earthquake, flood, explosion, war, invasion, acts of terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws or orders of government or of civil, military or naval authorities, or any other federal or local governmental acts or omissions (other than those in response to a rightful action of Landlord, as lessor under this Lease, that is consistent with this Agreement), or any other cause, whether similar or dissimilar to the foregoing that is not within the reasonable control of Tenant or Tenant's Related Parties (or their respective affiliates, as applicable) or caused by the fault or negligence of Tenant or Tenant's Related Parties, or their respective affiliates; but specifically excluding shortage or unavailability of funds or financial condition, failure of Tenant to comply with any law, rule or regulation of any Governmental Authority, and excluding any actions or omissions of a Governmental Authority arising out of or in connection with Tenant's applications for, or obtaining of Permits from a Governmental Authority incident or necessary to effect the Redevelopment Project.

**"Foundation Level"** means the amount of funding per weighted student needed to provide adequate regular education services to students as defined in D.C. Official Code Section 38-2901, as amended.

**"General Contractor"** means Hamel Builders, Inc. or each general contractor approved by the District.



**“Governmental Authority”** means any and all federal or District of Columbia governmental or quasi-governmental board, agency, authority, department or body having jurisdiction over any or all of the Leased Premises.

**“Governmental Requirement”** means building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees, of any federal or District governmental or quasi-governmental authority or agency pertaining (i) to any or all of the Leased Premises, (ii) to the use and operation of the Leased Premises, or (iii) to the subject matter described in the paragraph in which the term is used if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (i) or (ii).

**“Hazardous Materials” or “Hazardous Material”** means any substance or material:

(i) the presence or suspected presence of which requires or may require investigation, response, clean-up, remediation, or monitoring, or may result in liability, under any Environmental Law or other Governmental Requirement; or

(ii) that is or contains a hazardous substance, waste, extremely hazardous substance, hazardous material, hazardous waste, hazardous constituent, solid waste, special waste, toxic substance, pollutant, contaminant, petroleum or petroleum derived substance or waste, and related materials as such materials are defined, listed, identified under or described in any Environmental Law; or

(iii) which is flammable, explosive, radioactive, reactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous, or is or becomes regulated under any Environmental Law; or

(iv) which is or contains asbestos (whether friable or non-friable), any polychlorinated biphenyls or compounds or equipment containing polychlorinated biphenyls, or medical waste; or

(v) without limitation, which is or contains or once contained gasoline, diesel fuel, oil, diesel and gasoline range organics (TPH-DRO / GRO), or any other petroleum products or petroleum hydrocarbons, or additives to petroleum products, or any breakdown products or compounds of any of the foregoing; or

(vi) without limitation, radon gas.

**“Impositions”** as defined in Section 4.1.1.

**“Improper Influence”** as defined in Section 20.2.9.

**“Improvements”** shall mean all buildings, structures, interiors, landscaping, paving, lighting, pipes, conduits, fixtures, roads, walkways, fencing, utility lines and other improvements on the Leased Premises from time to time, and any and all Alterations thereto or thereof from time to time, the aforesaid elements existing on the Leased Premises on the Lease Commencement Date

and/or the replacements thereof. However, Decorations, Fixtures, Furnishings, Equipment and Inventory owned by Tenant shall not be deemed Improvements.

**"Indemnified Parties"** as defined in Section 5.9.1.

**"Institutional Lender"** means a lender or equity investor in real estate that is not a Prohibited Person but is: (i) a commercial bank, investment bank, investment company, savings and loan association, trust company or national banking association, acting for its own account, (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation), (iii) an insurance company, acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i)-(xi) hereof, (iv) a public employees' pension or retirement system, (v) a pension, retirement, or profit sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent, (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate mortgage investment conduit or securitization trust or similar investment entity, (vii) any federal, state, or District agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds, (viii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than \$1,000,000,000.00 in assets; (ix) any entity of any kind actively engaged in commercial real estate financing (including without limitation, affordable housing financing) and having total assets (on the date when its interest in the Project, or any portion thereof, is obtained) of at least \$30,000,000.00, (x) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing entities described in clauses (i)-(ix) when acting as trustee or manager for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Investors) or (xi) such other lender or equity investor which at the time of making the investment is of a type which may customarily be utilized as an investor or lender on projects like the portion of the Project upon which such financing is placed.

**"Interest Rate"** means the annual rate equal to (i) the Prime Rate plus (ii) two percent (2%) adjusted on a daily basis, based on such Prime Rate in effect at the time in question, and shall be calculated on the basis of a 365-day year.

**"Job Training Center"** means an adult job training and adult education center to be operated at the Leased Premises upon Final Completion of the Redevelopment Project Improvements.

**"Landlord Delay"** as defined in Section 2.9.

**"Landlord's Related Parties"** or **"Landlord Related Party"** as defined in Section 2.1.1.

**"Landlord's Address"** as defined in Section XVI.

**"Lease Commencement Date"** means that date stated in the first paragraph on Page 1 of the Lease.

**"Lease Expiration Date"** means the last day of the month in which the thirty-fifth (35<sup>th</sup>) anniversary of the Rent Commencement Date for the Building occurs or such earlier date as the Lease is terminated in accordance with its terms.

**"Leasehold Mortgage"** as defined in Section 12.1.2.

**"Leasehold Mortgagee"** as defined in Section 12.1.2.

**"Leased Premises"** as defined in Section 2.1.

**"Lease Term"** as defined in Section 2.3.

**"Lease Year"** shall mean a period of twelve (12) consecutive months commencing on the Rent Commencement Date, and each success twelve (12) month period thereafter until the Lease Term ends.

**"Liability Insurance"** as defined in Section 6.1.4.

**"LSDBE"** means a business that is currently certified as a local, small or disadvantaged business enterprise pursuant to D.C. Code §§ 2-217.01 et seq.

**"LSDBE MOU"** means the LSDBE Memorandum of Understanding between the Government of the District of Columbia Office of Local Business Development and Old Congress Heights Redevelopment Company, LLC, which is to be executed on or before the expiration of the Feasibility Study Period (defined below), as same may be amended from time to time.

**"Milestone Events"** as defined in Section 5.7.

**"Milestone Notices"** as defined in Section 5.7.

**"Modifications"** as defined in Section 5.4.1.

**"Mortgage"** as defined in Section 12.2.1.

**"Notice to Terminate"** as defined in Section 11.2.1.

**"OPM"** means the District of Columbia Office of Property Management.

**"Party"** means either Landlord or Tenant, as applicable.

**"Parties"** means Landlord and Tenant together.

**"Permits"** means all demolition, site, building, construction, and other permits, approvals, licenses and/or rights required to be obtained from the District of Columbia government or other Governmental Authorities having jurisdiction over the Property (including, without limitation, any utility company) necessary to commence and complete construction of, and operate and maintain, the Redevelopment Project Improvements.

**"Permitted Financing"** means Construction Financing for up to one hundred percent (100%) of the total costs for the Redevelopment Project Improvements.

**"Permitted Uses"** means the design, renovation, and construction of the Redevelopment Project Improvements, and the use of the Leased Premises for: (i) the operation of a Charter School, Job Training Center, educational and family service uses and offices together with related parking and playgrounds in accordance with Applicable Laws, including zoning and historic preservation regulations set forth by Governmental Authority in the Building; (ii) office, retail and educational uses on the Western Portion of the Leased Premises (defined below); and (iii) such other uses as are agreed by Landlord and Tenant as set forth below.

**"Person"** means any individual or entity.

**"Prime Rate"** means the lowest prime rate of interest as published or announced in the Money Rates Section of The Wall Street Journal, from time to time or, if such index ceases to be published, any comparable successor thereto from time to time.

**"Prohibited Person"** means solely with respect to any Person in any tier of membership, partnership, or ownership of Tenant that is no more than two (2) tiers removed from the primary Person in question or at issue: (a) any such Person that has been convicted of a felony or pleaded *nolo contendere* or any pleading similar thereto; or (b) any such Person who or which, at any time, has been in default of any contractual obligation to Landlord, beyond any applicable notice and/or cure periods afforded to such Person by Landlord or afforded to such Person pursuant to applicable laws; or (c) any Person on the District's list of debarred, suspended or ineligible persons.

**"Property"** means the real property as described in the attached and incorporated Exhibit A to the Lease, any appurtenance to the real property or improvements thereon now or hereafter located at 600 Alabama Avenue, S.E., Washington D.C. according to the District of Columbia Tax and Assessment Records as Parcel 235, Lot. 6.

**"Property Insurance Policy"** is defined in Section 6.1.1.

**"Punch List Items"** means items of base building work and adjustment of base building equipment and fixtures and finish work required to be installed or constructed by Tenant without causing substantial interference with its use of its premises and the absence of which would not result in the Leased Premises being ineligible for a Certificate of Occupancy, and such other items that are otherwise of the scope and nature as the term "Punch List" is commonly understood in the Washington, D.C. construction industry,

**"Redevelopment Project"** means the Property and Improvements to be constructed on the Property by or on behalf of Tenant, and the development, design, construction, erection, and operation thereof in accordance with the Redevelopment Project Schedule, Concept Drawings, Construction Drawings, First Source Agreement, and this Lease.

**"Redevelopment Project Improvements"** means the improvements and Building Service Equipment which Tenant shall construct, erect, renovate, or install on the Leased Premises (including without limitation, the renovation of the existing Old Congress Heights School

building as described in the Concept Drawings and the development at a later date of the Western Portion (defined below) of the Leased Premises; provided, however, that in no event shall any Decorations, Fixtures, Furnishings, Equipment and Inventory used or owned by Tenant or Tenant's Related Party be deemed included in the term "Redevelopment Project Improvements" as used in this Agreement.

"Redevelopment Project Schedule" means the comprehensive design, review, construction and completion schedule (including Construction Deadlines) for the Redevelopment Project Improvements at the Building as set forth in Exhibit D attached hereto and incorporated by reference, and which may be amended at a later date for Redevelopment Project Improvements on the Western Portion of the Leased Premises.

"Rent" shall mean the Base Rent, all Additional Rent and any other charges due from Tenant hereunder, each individually in a general sense or all of the foregoing collectively, as the context shall require.

"Rent Commencement Date" shall be September 1, 2010, subject to Excusable Delay. This date only applies to the Building. The "Rent Commencement Date" for the Western Portion of the Leased Premises shall be the earlier of December 31, 2011 or the date on which a Certificate of Occupancy is obtained for any improvements constructed on the Western Portion of the Leased Premises, subject to Excusable Delay..

"Required Insurance" as defined in Section 6.1.

"Restricted Person" as defined in Section 20.1.12.

"Right of Entry" means that certain Right of Entry Agreement between the District and Tenant dated as of February 26, 2008.

"ROE Date" means February 26, 2008, the date that certain Right of Entry granted by the District of Columbia to Tenant for the use of the Property became effective.

"Schematic Design" means the conceptual design of the Redevelopment Project Improvements illustrating the scale and relationship of the Redevelopment Project components. The documents shall include a conceptual site plan and preliminary building plans, sections and elevations.

"Solicitation" as defined in Recital R-1.

"Sublet" as defined in Section 9.1.1.

"Substantial Completion" means the completion of all Redevelopment Project Improvements in accordance with and to the extent required by the certification given by Tenant's Architect or such architect as Landlord may approve, such approval not to be unreasonably withheld, delayed, or conditioned, on an AIA Form G-704, with the Construction Drawings, and with all Applicable Laws to the point where only the following remain: (i) items of work necessary to complete the Redevelopment Project Improvements that will not materially interfere with the use and occupancy of the Redevelopment Project Improvements for their intended purposes; and (ii) Punch List Items; (iii) any retention for completion of Punch List Items from funds otherwise

due to contractors and subcontractors; and (iv) lien releases for any work by contractors and subcontractors which remains unperformed.

“Taxable Area” as defined in Section 4.1.1.

“Tenant’s Address” as defined in Article XVI.

“Tenant’s Base Building Alterations Certification” as defined in Section 8.3.1.

“Tenant’s Related Parties” or “Tenant Related Party” means Tenant’s subtenants, affiliates, agents, officers, employees, members, contractors, subcontractors, representatives and officers.

“Term” as defined in Section 2.3.

“Terrorist Acts” as defined in Section 20.1.12.

“Western Portion” means that portion of the Leased Premises that consists of undeveloped land adjacent to the Building and which is depicted on Exhibit B hereto.

## ARTICLE II

### LEASED PREMISES

#### Section 2.1 Demise.

The foregoing Recitals and definitions are incorporated in this Lease by reference and expressly made a part hereof. Subject to the terms, provisions and conditions hereinafter set forth, and in consideration of the covenants of payment and performance stipulated herein, Landlord hereby leases, demises and lets unto Tenant, and Tenant hereby leases from Landlord, for the Lease Term and for the Permitted Uses the Property (“Leased Premises”). The rentable area of the Leased Premises is estimated to be 42,528 square feet.

TO HAVE AND TO HOLD said Leased Premises, together with any rights, easements, privileges, both subterranean and vertical, and the appurtenances and improvements thereunto attaching or in anywise belonging unto Tenant for and during the Lease Term hereinafter set forth herein.

2.1.1 Neither Landlord (nor any of Landlord’s affiliates, agents, officers, employees, attorneys, accountants, brokers, contractors, subcontractors, licensees, invitees or representatives) (each a “Landlord Related Party” and collectively, “Landlord’s Related Parties”) make any representations as to any matter or thing affecting or relating to the Leased Premises, or this Lease, including, without limitation, relating to physical condition, layout, leases, footage, rents, income, expenses, operation, zoning or floor area ratio, all of which are expressly disclaimed, except as herein specifically set forth, and neither Party may rely upon any statement or representation previously made that is not embodied in this Lease.

2.1.2 EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS LEASE, TENANT ACCEPTS THE LEASED PREMISES IN "AS IS" CONDITION AND "WITH ALL FAULTS," THAT IS, THE CONDITION OR STATE IN WHICH THEY EXIST UPON THE LEASE COMMENCEMENT DATE, WITHOUT REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, ORAL OR WRITTEN, BY LANDLORD, OR ANY OF LANDLORD'S RELATED PARTIES, INCLUDING, WITHOUT LIMITATION, THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. TENANT HEREBY ASSUMES AND AGREES TO ACCEPT ALL RISK OF AND RESPONSIBILITY FOR ANY AND ALL DEFECTS, INFIRMITIES AND UNSAFE CONDITIONS IN OR ON THE LEASED PREMISES AND FOR ANY AND ALL OTHER CONDITIONS ADVERSELY AFFECTING THE VALUE OR USE OF THE LEASED PREMISES, WHETHER SUCH DEFECTS, INFIRMITIES, OR OTHER CONDITIONS ARE PATENT OR LATENT AND WOULD OR WOULD NOT BE DISCLOSED BY REASONABLE INSPECTION.

**Section 2.2 Exceptions, Limitations and Reservations With Respect to Demise.**

2.2.1 Tenant acknowledges that the demise under this Lease is subject to the following:

- (a) Any and all of the terms and provisions of the First Source Agreement, and LSDBE MOU (each of the foregoing being a "Binding Agreement" and collectively, the "Binding Agreements");
- (b) Except as expressly provided otherwise in Section 4.4 below, real estate taxes, if any, accruing from and after the Lease Commencement Date, whether or not a lien on the Leased Premises, not yet due and payable;
- (c) Landlord's reserved rights as more particularly set forth in this Lease;
- (d) Rights or easements, if any, acquired prior to the Lease Commencement Date by any public service corporation or private utility to maintain wires, pipes, cables, conduits, and distribution boxes;
- (e) Easements, encumbrances, and restrictions, if any, of record on or prior to the Lease Commencement Date and affecting the title to the Leased Premises;
- (f) Any state of facts, an accurate survey, and an inspection of the Leased Premises would disclose;
- (g) Building restrictions and regulations set forth in Applicable Laws, and the amendments and the additions thereto, in the District of Columbia;
- (h) All Applicable Laws, including but not limited to any zoning laws, ordinances, resolutions and regulations of the District of Columbia and all ordinances, laws, regulations and orders of all boards, bureaus, commissions and bodies of any

District of Columbia or federal sovereigns now or hereafter having or acquiring jurisdiction of the Leased Premises and the use and improvement thereof;

(i) All surface and subterranean physical conditions of the Property as they exist as of the Lease Commencement Date; and

(j) Except as expressly provided otherwise in Section 4.4 below, all outstanding Impositions as of the Lease Commencement Date.

2.2.2 Notwithstanding the foregoing, fee title to the Leased Premises shall continue to vest in Landlord or its successors at all times during the Lease Term and any Extension Terms. Nothing contained in this Lease shall be construed to convey any legal or equitable title in the Leased Premises to Tenant other than the leasehold estate described in this Section 2.2, which conveyance is subject to the terms and conditions of this Lease. Title to all Improvements used or erected by or for Tenant on the Leased Premises shall be in and remain in Tenant for and during the entire Term and any Extension Term, but upon the termination of the Term or any Extension Term (except termination resulting from a condemnation or from a purchase by Tenant of the Landlord's fee simple interest), shall vest in Landlord to the extent that the Improvements are then upon the Leased Premises.

### **Section 2.3    Term.**

All of the provisions of the Lease shall be in full force and effect from and after the Lease Commencement Date, unless specifically stated otherwise in the Lease. The term of this Lease ("Term" or "Lease Term") shall commence on the Rent Commencement Date and continue in full force and effect until the Lease Expiration Date, unless terminated sooner pursuant to the terms of the Lease, and subject to the extension provisions in Article XIX.

### **Section 2.4    Use.**

2.4.1 Tenant shall construct the Redevelopment Project Improvements on the Leased Premises as described in the Concept Drawings attached and incorporated herein as **Exhibit C**, substantially in accordance with the Construction Drawings and the Redevelopment Project Schedule attached and incorporated herein as **Exhibit D**, and in compliance with Applicable Laws.

2.4.2 Tenant shall use the Leased Premises for Permitted Uses only. Any changes to the Permitted Uses shall be subject to Landlord's prior written approval which shall be within Landlord's sole and absolute discretion.

2.4.3 Tenant shall not use, allow or suffer the Leased Premises or any part thereof to be used or occupied for any unlawful purpose or in violation of any Certificate of Occupancy or any law or certificate of compliance covering or affecting the use of the Leased Premises, or any part thereof, and, subject to the provisions of Article V, shall not allow or suffer any act to be done or any condition to exist on the Leased Premises or any part thereof or any article to be brought thereon, which may be dangerous to person or property unless safeguarded as required by law, or which may in law constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto or shall make it



impossible to obtain fire or other insurance thereon required to be furnished by Tenant hereunder.

#### **Section 2.5 District.**

2.5.1 For the purposes of this Lease, all references to "Landlord" or "District" shall mean the Landlord solely in its capacity as a contracting party to this Lease and the documents expressly contemplated to be signed in this Lease, acting through OPM, and not any other governmental or quasi-governmental agency of the District of Columbia, such that the acts or omissions of any governmental or quasi-governmental agency of the District of Columbia, other than the District of Columbia solely in its capacity as a contracting party to the Lease and the documents expressly contemplated to be signed in this Lease (acting through OPM), shall not constitute the acts or omissions of "Landlord" or "District" for the purposes of this Lease.

2.5.2 To the extent permitted by law and without diminishing the benefits afforded to Tenant hereunder, District shall have the right, pursuant to Article X, to assign this Lease, or delegate any of its rights hereunder, to any agency or instrumentality of the District or to any other Person provided, the District provides at least thirty (30) calendar days' prior written notice to Tenant of such assignment or delegation.

2.5.3 All rights of the District in this Lease shall be exercised by the Chief Property Management Officer.

#### **Section 2.6 Relationship of Parties.**

2.6.1 Tenant agrees to perform or cause to be performed the duties and obligations imposed upon or assumed by Tenant in this Lease.

2.6.2 Tenant is an independent party and not an agent, partner or joint venture of or with the Landlord. Nothing contained in this Agreement shall be deemed or construed by any Person as creating a relationship of principal and agent or of partnership or joint venture between Tenant and Landlord. Tenant is not authorized to act in any manner on behalf of Landlord.

#### **Section 2.7 Authorized Representatives.**

2.7.1 For the purposes of administering this Lease, Tenant hereby appoints Joshua Kern as its sole and exclusive representative whose authority shall be binding upon Tenant, and, upon written notice to Landlord, Tenant may delegate such authority to another person in writing in which case that person's authority shall be binding upon Tenant. Tenant shall appoint a single officer or other position to act as its day-to-day single point of communication, which person shall initially be Joshua Kern.

2.7.2 For the purposes of administering this Lease, OPM shall be the sole and exclusive agency whose authority shall be binding upon Landlord. OPM shall appoint a single officer or other position to act as its day-to-day single point of communication. However, it is specifically understood and agreed that any review, analysis, examination, investigation or approval or consent by Landlord pursuant to the terms of this Agreement or otherwise, in connection with the Leased Premises, is solely for the benefit of Landlord and shall not be relied upon or construed

by Tenant or any other Person as acceptance by Landlord of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with Applicable Laws. In furtherance of the foregoing, the grant of consent or approval by Landlord under this Lease shall be intended solely to satisfy Landlord's rights under this Lease and for no other purposes and shall not be binding upon any particular Governmental Authority having jurisdiction over the Leased Premises. Landlord will make reasonable efforts to assist Tenant in obtaining any permit, approval or consent required from any Governmental Authority in order for Tenant to proceed with Redevelopment Project Improvements. However, it is specifically understood and agreed that any such Landlord assistance is solely to satisfy Landlord's rights under the Lease and does not guarantee in any way that Tenant will receive the permits sought, nor shall such assistance be binding upon any particular Governmental Authority having jurisdiction over any matter related to the Leased Premises.

2.7.3 Each Party to this Lease may change its identified authorized representative from time to time upon delivery of written notice thereof to the other Party.

## **Section 2.8    Anti-Deficiency Provision.**

2.8.1 Landlord and Tenant acknowledge and agree that the obligations of Landlord to fulfill financial obligations of any kind pursuant to any and all provisions of this Lease, or any subsequent Lease, amendment, or addendum, entered into pursuant to this Lease or referenced herein to which Landlord is a party, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) D.C. Official Code § 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned. Landlord agrees to exercise all lawful and available authority to satisfy any financial obligations of Landlord that may arise under this Lease, including, without limitation, attempting to obtain the necessary appropriations and/or the reprogramming of available funds if such reprogramming is legal and necessary to satisfy Landlord's financial obligations, if any; however, since funds are appropriated annually by Congress on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, Landlord's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress. Landlord makes no representation or assurance that Congress will grant the authorizations and appropriations necessary for Landlord to perform its financial obligations under this Lease. Nothing in this Lease shall be construed as an attempt to create an obligation of Landlord in advance or in anticipation of an appropriation.

## **Section 2.9    Landlord Delay.**

2.9.1 "Landlord Delay" shall mean the occurrence of the following: (i) (a) with respect to any matter that requires the consent or approval of Landlord under this Lease, if Landlord unreasonably withholds, conditions, or delays its consent or approval of such matter (if Landlord's consent or approval is not to be unreasonably withheld, conditioned, or delayed according to this Lease) or fails to specify in reasonable detail the reason for Landlord's disapproval or rejection of such matter (unless Landlord's consent or approval may be given or withheld in Landlord's sole discretion), or (b) if Landlord fails to take any other action required

of Landlord under this Lease by the date such action is required; and (ii) Tenant shall notify Landlord in writing of the potential Landlord Delay and that Landlord has five (5) Business Days after the date of such notice to cure the potential Landlord Delay; and (iii) Landlord does not cure such potential Landlord Delay within such five (5) Business Days; but excluding the failure of Landlord's approval of certain documents which results in those documents to be deemed approved pursuant to the terms and conditions set forth in Article V of the Lease. If no date is specified in this Lease for an action required of Landlord, and the failure to take such action will materially and adversely affect Tenant's ability to comply with the approved Redevelopment Project Schedule, including Construction Deadlines, Tenant may by written notice to Landlord specify a date (in no event less than fifteen (15) calendar days from the date of such notice) by which such action must be taken, and such notice shall state clearly that a Landlord Delay or a deemed approval, as applicable, shall result if Landlord fails to take such action by such date, and in such event, any failure of Landlord to take such action by such specified date shall constitute a Landlord Delay; provided, however, this sentence shall in no event serve to shorten any specific period of time that the Landlord has under this Lease in order to render a consent, approval or disapproval of a particular matter under this Lease.

2.9.2 If there shall occur a Landlord Delay, and such Landlord Delay shall delay or prevent Tenant from performing any obligation under this Lease, then the required date for the Tenant's performance of such obligation shall be extended on a day-for-day basis. Any such extension shall not foreclose Tenant from any other remedy it may be entitled to pursue under this Lease in the event of Landlord Delay.

#### **Section 2.10 Landlord Liability.**

Any review, analysis, examination, investigation or approval or consent by Landlord pursuant to the terms of this Agreement or otherwise, in connection with the Leased Premises, is solely for the benefit of Landlord and shall not be relied upon or construed by Tenant or any other Person as acceptance by Landlord of any responsibility or liability therefor as to completeness or sufficiency thereof for any particular purpose or compliance with Applicable Laws. In furtherance of the foregoing, the grant of consent or approval by Landlord under this Lease shall be intended solely to satisfy Landlord's rights under this Lease and for no other purposes and shall not be binding upon any particular Governmental Authority having jurisdiction over the Leased Premises.

#### **Section 2.11 Title.**

Subject to Section 2.12 and delivery by Tenant of a copy of the commitment to insure title to the Property (the "Title Commitment"), Landlord is, and Tenant acknowledges Landlord to be, the fee simple owner of the Property. Subject to Section 2.12 Tenant will provide Landlord with the Title Commitment prior to the Feasibility Expiration Date (unless Tenant terminates this Lease pursuant to Section 2.12.4), which shall be attached and incorporated for all purposes as Exhibit E. Upon Landlord's delivery of its owner's affidavit as required by the Title Commitment within thirty (30) days from the date that Tenant provides the Title Commitment, Landlord shall be deemed to have conveyed good and valid leasehold title to the Property to Tenant, free and clear of any and all liens, defects, encumbrances, leases, easements, covenants, restrictions or other matters whatsoever, whether recorded or unrecorded, except for: (i) the lien

of real estate taxes, general assessments, special assessments, water rents and sewer charges, in each case not yet due and payable (but subject to adjustment upon execution as is customary); and (ii) the Standard Exceptions (as hereinafter defined). The term "Standard Exceptions", as used in this Agreement, shall mean the general exceptions from coverage listed in Schedule B of the form ALTA Lessee's Policy as set forth in the Title Commitment, exclusive of exceptions for mechanic's or materialmen's liens.

#### Section 2.12 Additional Feasibility Studies.

2.12.1 Tenant and Tenant's Related Parties, if any, have had a preliminary opportunity to inspect the condition and nature of the Leased Premises, including any sub-surface conditions, and the present uses and non-uses thereof, and the zoning and building laws, capability and regulations affecting the Leased Premises. Subject to the terms and provisions of this Section 2.12, and notwithstanding that the Parties have previously executed and delivered to one another the Right of Entry, enabling Tenant to perform certain Feasibility Studies on the Property using experts of its own choosing and to access the Property for the purposes of performing certain Feasibility Studies as described therein, Tenant shall have the right to continue to perform, or cause to be performed, such Feasibility Studies to determine whether Tenant can use the Property and its improvements existing in, upon, about, or under the Property for Tenant's intended use for a period not to exceed ninety (90) calendar days from the Lease Commencement Date ("Feasibility Studies Period"). At the end of the Feasibility Study Period, Tenant shall deliver to Landlord any Feasibility Studies that it has prepared or that it directed be prepared on its behalf.

2.12.2 Further, Tenant shall provide a progress report on its Feasibility Studies to the Chief Property Management Officer or his designee once every thirty (30) days from the Lease Commencement Date throughout the Feasibility Studies Period. Such progress report shall specify in detail the Feasibility Studies performed by Tenant, including due diligence work performed by Tenant in anticipation of a complete renovation of the Leased Premises and environmental study/testing/remediation performed by Tenant, and each Person performing such Feasibility Studies. Tenant shall promptly provide written notification to Landlord of the results of the Feasibility Studies and any other investigation of the Property and shall provide Landlord with copies of all sampling results and any written summaries, reports, or evaluations of such results. Notwithstanding the provisions of the immediately preceding sentence of this Section, Tenant is not obligated to deliver any documents created solely by Tenant's attorneys that may reasonably constitute attorney-client privileged communications or attorney work-product. Tenant makes no representations or warranties, express or implied, as to the truth, accuracy or completeness of any materials provided by third parties that are supplied to Landlord by Tenant or its Agents. Tenant expressly disclaims any responsibility or liability for the accuracy, veracity, or suitability of any reports or results so delivered to Landlord. Landlord expressly assumes all risk associated with Landlord's receipt, use, and further dissemination of such results, summaries, reports, or evaluations provided or caused to be provided by Tenant. Landlord hereby releases and discharges the providers of any such results, summaries, reports, or evaluations from any and all liability, losses, claims, or other damages that Landlord may incur by the receipt, use, and further dissemination of such results, summaries, reports, or evaluations by or through Landlord, it being agreed by the Parties hereto that each such provider of such results, summaries, reports, or evaluations is intended to be, and each of them hereby is, an

express third party beneficiary of this Section entitled to enforce its provisions as if it were a party hereto. Landlord makes no representations or warranties as to the presence or absence of Hazardous Materials (defined hereinafter).

2.12.3 Tenant shall pay for all such Feasibility Studies of the Property, for labor performed on the Property in connection therewith and for all materials furnished to the Property in connection with any Feasibility Studies done on the Property by or for Tenant. Tenant agrees, and will require Tenant's Related Parties, to comply with all Applicable Laws pertaining to such Feasibility Studies performed in, at, or under the Property by or for Tenant, including, but not limited to, all Environmental Laws and to comply with the insurance requirements of this Lease, where applicable.

2.12.4 If any of the Feasibility Studies referenced in Section 2.12 reflect results adverse to Tenant's intended design, development, economics, or use of the Property as determined by Tenant in Tenant's sole and absolute discretion, if Tenant is unable to obtain sufficient financing to undertake the Redevelopment Project, including without limitations, obtaining one or more Institutional Lender's approval of this Lease in connection with Tenant's granting a Leasehold Mortgage upon its leasehold estate in this Lease to such Institutional Lender, or if Tenant, in its sole and absolute discretion determines there are any restrictions or limitations with respect to Landlord's fee simple ownership of the Property or with respect to obtaining Title Commitment, Tenant shall have the right to terminate this Agreement by giving written notice to Landlord on or before 5 p.m. local Washington, D.C. time on the date that is ninety (90) calendar days after the Lease Commencement Date (the "Feasibility Expiration Date"). Further, on the eightieth (80<sup>th</sup>) day of the Feasibility Studies Period and every thirty (30) days thereafter, Tenant shall provide Landlord a written report in reasonable detail of Tenant's due diligence effort to obtain financing for the Redevelopment Project and the current status of any pending financing. If Tenant shall have been unable to obtain sufficient financing to undertake the Redevelopment Project within such Feasibility Studies Period and provided Tenant has submitted timely the written report of its effort to obtain financing as required herein, Landlord shall extend such Feasibility Studies Period for up to three (3) additional periods of thirty (30) days each. If Tenant shall fail to comply with the conditions set forth herein during the first thirty (30) day extension period, Landlord may terminate the Agreement with written notice to Tenant and without granting extension of the second thirty (30) day period. If Tenant shall fail to comply with the conditions set forth herein during the second thirty (30) day extension period, Landlord may terminate the Agreement with written notice to Tenant and without granting extension of the third thirty (30) day period. If Tenant shall fail to obtain sufficient financing for the Redevelopment Project to the satisfaction of Landlord at the end of the third thirty (30) day period, this Agreement shall terminate without further notice. If the Agreement is terminated pursuant to this Section 2.12.4 except as expressly provided otherwise in this Agreement, the Parties shall be automatically released and discharged from any liability or obligation hereunder. If Tenant does not give written notice of termination of this Agreement prior to the Feasibility Expiration Date, Tenant shall be deemed to have waived its termination right under this Section 2.12.4, this contingency shall be deemed satisfied and removed, this Agreement shall automatically remain in full force and effect, and Tenant shall have no further right to terminate this Agreement pursuant to this Section 2.12.4.

2.12.5 If the Agreement is terminated pursuant to Section 2.12.4, except to the extent caused or precluded by the actions or inactions of Landlord or any Landlord Related Party, Tenant shall, at Tenant's sole cost and expense, restore, or cause to be restored, the Property to substantially the same condition it was in prior to engaging in the Feasibility Studies, including the repair or replacement of any and all material physical damage to the Property, including using its commercially reasonable efforts to properly contain all Hazardous Materials disturbed or released by or during Tenant's Feasibilities Studies. Tenant shall not be obligated to so restore the Property or to repair or replace any physical damage to the Property to the extent that: (i) such restoration, repair, or replacement would involve the re-incorporation of any Hazardous Materials in, on, or about the Property; or (ii) Tenant has obtained Landlord's prior written consent not to do so. Tenant shall not be obligated to remove, remediate, or otherwise abate any environmental contamination which pre-existed the ROE Date except for: (i) the disposal, at Tenant's sole cost and expense, by or upon behalf of Tenant in accordance with Applicable Laws of any samples or other materials removed by or on behalf of Tenant; and (ii) the containment by or behalf of Tenant, at Tenant's sole cost and expense, of any Hazardous Materials disturbed or released by or as a result of Tenant's use of the Property from the ROE Date, including without limitation its Feasibility Studies (the "Containment Obligations"). Further, Tenant's obligations stated herein shall survive termination of the Agreement. Notwithstanding the foregoing, the terms and conditions contained herein shall not constitute a waiver of any rights or obligations agreed to by the Parties in any future agreement relating to the Property.

### **ARTICLE III**

#### **BASE RENT AND OTHER PAYMENTS**

##### **Section 3.1 Base Rent Payment.**

3.1.1 Base Rent for the Building. Beginning on the Rent Commencement Date for the Building and continuing throughout the Lease Term, Tenant covenants and agrees to pay to Landlord without demand, abatement, deduction or offset, in lawful money of the United States, the base rent ("Base Rent") in the amount set forth herein. The Base Rent for the Building shall be Two Dollars (\$2.00) per rentable square feet for a period of twenty-five (25) years from the Rent Commencement Date for the Building.

Base Rent Escalation For the Building. Beginning on September 1, 2035 the Base Rent for the Building then in effect shall escalate to ninety percent (90%) of the then fair market rental value of the Building and then escalate at the rate of two percent (2%) per year throughout the remainder of the Lease Term. On or before September 1, 2034, Tenant shall notify Landlord in writing that the Base Rent for the Building will escalate on September 1, 2035. The Parties shall during the next sixty (60) days attempt to reach agreement on the fair market rental value of the Building as of September 1, 2035. If the Parties are unable to agree on the fair market rental value of the Building (as of September 1, 2035) prior to November 1, 2034, then on or before January 15, 2035, Landlord shall provide Tenant with an appraisal made pursuant to the requirements of Paragraph 19.2 below and the Parties shall thereafter follow the procedure for setting fair market rental value set forth in Paragraph 19.2.

Failure to Give Notice With Respect to the Building. If Tenant fails to give Landlord the above notice of the impending Base Rent escalation on or before September 1, 2034, and the Parties are unable to agree on the fair market rental value of the Building by November 1, 2034, then Landlord shall on or before January 15, 2035, provide Tenant with an appraisal made pursuant to the requirements of Paragraph 19.2 below and said appraisal shall be conclusive as the fair market rental value subject only to a determination in accordance with D.C. Official Code § 10-1014 (2006) (Supp.) that such rental value is unreasonable. If Landlord's determination of the fair market rental value of the Building is determined to be unreasonable, as provided herein, the fair market rental value shall thereafter also be resolved in accordance with D.C. Official Code § 10-1014.

Base Rent for the Western Portion. Beginning on the Rent Commencement Date for the Western Portion of the Leased Premises, Tenant covenants and agrees to pay Landlord without demand, abatement, deduction or setoff, in lawful money of the United States, the Base Rent for the Western Portion, which shall be Two Dollars and Forty Cents (\$2.40) per rentable square feet for a period of twenty-five (25) years from the Rent Commencement Date for the Western Portion. If Tenant has not constructed any improvements on the Western Portion of the Leased Premises as of the Rent Commencement Date, the Base Rent shall be calculated on the assumption that Tenant has constructed an improvement on the Western Portion containing Ten Thousand (10,000) rentable square feet. At such time as Tenant constructs an improvement on the Western Portion of the Property, the Base Rent shall be calculated based on the rentable square footage of such improvement, which shall not contain less than ten thousand (10,000) square feet of rentable space.

Rent Escalation for the Western Portion. Beginning on December 31, 2036 the Base Rent for the Western Portion then in effect shall escalate to ninety percent (90%) of the then fair market value of the Western Portion and then escalate at the rate of two percent (2%) per year throughout the remainder of the Lease Term. On or before December 31, 2035, Tenant shall notify Landlord in writing that the Base Rent for the Western Portion will escalate on December 31, 2036. The Parties shall during the next sixty (60) days attempt to reach agreement on the fair market rental value of the Western Portion as of December 31, 2036. If the Parties are unable to agree on the fair market rental value of the Western Portion (as of December 31, 2036) prior to March 1, 2036, then on or before May 15, 2036, Landlord shall provide Tenant with an appraisal made pursuant to the requirements of Paragraph 19.2 below and the Parties shall thereafter follow the procedure for setting fair market rental value set forth in Paragraph 19.2.

Failure to Give Notice With Respect to the Western Portion. If Tenant fails to give Landlord the above notice of the impending Base Rent escalation on or before December 31, 2035, and the Parties are unable to agree on the fair market rental value of the Western Portion by March 1, 2036, then Landlord shall on or before May 15, 2036, provide Tenant with an appraisal made pursuant to the requirements of Paragraph 19.2 below and said appraisal shall be conclusive as the fair market rental value subject only to a determination in accordance with D.C. Official Code § 10-1014 (2006) Supp.) that such market rental value is unreasonable. If Landlord's determination of the fair market rental value of the Building is determined to be unreasonable, as provided herein, the fair market rental value shall thereafter also be resolved in accordance with D.C. Official Code § 10-1014.

3.1.2 If the Rent Commencement Date is not the first day of a month, then the Base Rent from the Rent Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the Base Rent payable during the first Lease Year, and Tenant shall pay such prorated installment of the Base Rent after the Rent Commencement Date, in advance.

3.1.3 Notwithstanding any other provisions of the Lease, if Final Completion shall not have occurred on or before September 1, 2010 for the Building ("Completion Date") then the current Base Rent for the Building shall increase by an amount equal to one hundred percent (100%) of the then current Base Rent until Final Completion. If Commencement of Construction has not been commenced on the Western Portion by December 31, 2012, then the current Base Rent for the Western Portion shall increase by an amount equal to one hundred percent (100%) of the then current Base Rent until Commencement of Construction. Notwithstanding the foregoing, if Tenant fails to achieve Final Completion by the Completion Date for the Building or Commencement of Construction for the Western Portion by December 31, 2012, due to an event or events of Excusable Delay, then the Final Completion or the Commencement of Construction for the Western Portion shall be extended on a day-for-day basis based on such Excusable Delay event(s).

**Section 3.2** Intentionally Omitted.

**Section 3.3** Rent Absolutely Net/Payment of Rent.

3.3.1 Except as expressly provided otherwise in this Agreement, this Lease shall be deemed and construed to be a "net lease" and Tenant shall pay all payments of Rent to Landlord, absolutely net throughout the Lease Term, free of any charges, assessments, impositions, costs or deductions of any kind and without demand, offset, abatement, notice, deduction, counter-claims or set-off, except as expressly set forth in the Lease, as applicable. All costs, fees, interest, charges, expenses, and obligations of every kind and nature whatsoever relating to the Leased Premises, which may accrue during the Lease Term shall be paid or discharged timely by Tenant.

3.3.2 Tenant's covenant to pay Rent is an independent covenant. Except as expressly provided otherwise in this Lease, no happening, event, occurrence, or situation whatsoever during the Lease Term, whether foreseen or unforeseen, and however extraordinary shall permit Tenant to quit or surrender the Leased Premises or this Lease or shall relieve Tenant from its liability to pay all Rent payable under this Lease, or relieve Tenant from any of its other obligations under this Lease. Tenant hereby waives any rights now or hereafter conferred upon it by statute, proclamation, decree, order or otherwise, to quit or surrender the Leased Premises or this Lease, or any part thereof, or to any abatement, diminution, reduction or suspension of Rent on account of any such event, happening, occurrence or situation.

3.3.3 Tenant shall pay all Rent payable by Tenant to Landlord pursuant to the terms hereof, at D.C. Lock Box 206, Washington, DC 20055-0206, in such United States coin or currency as shall, at the time of payment, be legal tender for the payment of public and private



debts. If Tenant fails to pay any installment of Rent within ten (10) calendar days after the same shall be due and payable, Tenant shall pay Landlord a late fee equal to two percent (2%) of such delinquent payment of the then current Rent. In addition to any late fee that may be payable, Tenant will pay to Landlord interest on any payment of Rent that is not paid timely at the Interest Rate plus five percent (5%) per annum from the date such amount is due until the date such amount is paid. Tenant acknowledges and agrees that the actual loss that Landlord will suffer as a result of the nonpayment of Rent is difficult to estimate, and that the amount of such default interest and such late fees is a fair and reasonable estimate of the actual loss to Landlord as a result of the nonpayment of Rent, and that such fixed amounts are reasonably related to the likely loss that Landlord will suffer as a result of such nonpayment. If any sums other than Rent due by Tenant to Landlord hereunder are not paid within thirty (30) calendar days after Tenant receives notice from Landlord that the same are due, such sums shall bear interest from and after such thirty (30) day period until paid at the Interest Rate.

**Section 3.4** To the extent that one or more Landlord Delays occur after the Lease Commencement Date and are a proximate cause of an actual delay in achieving Final Completion, then the District shall provide a per diem credit against Base Rent for each day of such actual delay, which credit shall be applied at such time as Final Completion is actually achieved.

**Section 3.5 Additional Rent.**

3.5.1 In addition to the amounts otherwise set forth in this Article III, Tenant shall pay as additional rent (the "Additional Rent"), all Impositions, and any and all other costs, expenses, and charges which Tenant in any of the provisions of this Lease assumes or agrees to pay, including without limitation, Landlord's costs, including reasonable attorney's fees and costs, of enforcing its rights under this Lease after a default by Tenant under this Lease (or after an Event of Default by Tenant under this Lease), and any professional fees incurred by Landlord to carry out inspections and reviews of plans and documents for purposes of giving Landlord's consent, approval or certification, expressly provided for under this Lease or requested by Tenant; except that Tenant shall not pay Landlord for any professional fees for obtaining its consent, approval or certification with respect to the Redevelopment Project Improvements that are done pursuant to the Redevelopment Project Schedule. Except as otherwise set forth in this Lease, Additional Rent shall be deemed "Rent" for the purposes of this Lease, and any and all of the provisions of this Lease governing Rent shall also apply to Additional Rent.

## **ARTICLE IV**

### **IMPOSITIONS**

**Section 4.1 Definition of Impositions.**

4.1.1 The term "Impositions" shall mean all ad valorem and other taxes, assessments, business improvement district fees, water and sewer rents and charges, use and occupancy taxes, license and permit fees, vault space rent and other governmental charges, obligations under Binding Agreements, general and special, ordinary and extraordinary, foreseen

and unforeseen, of any kind and nature whatsoever, which shall or may during the Lease Term be assessed, levied, charged, confirmed or imposed by public authority upon or accrue or become due or payable out of or on account of or become a lien on the Leased Premises, or the sidewalks, streets or vaults adjacent to the Leased Premises, and all improvements thereon (collectively, the "Taxable Area").

#### **Section 4.2    Additional Rent During the Term.**

4.2.1    Subject to the provisions of Section 4.4, Tenant will pay or cause to be paid, as and when the same shall become due (and before any fines, penalties, interest or cost may be added thereto), as Additional Rent all Impositions imposed on Landlord as a result of Tenant's use and occupancy of the Leased Premises, except that:

4.2.2    All Impositions for the fiscal year or tax year in which the term of this Lease commences, as well as during the year in which the Term expires, shall be apportioned so that the Tenant shall pay its proportionate share of the Impositions which are payable in the year in which the Term commences and in the year in which the Term expires, and Landlord shall pay its proportionate part; any sum payable by Tenant, as provided in this Article IV, which would not otherwise be due until after the date of the termination or expiration of this Lease (but attributable to the period of time preceding such Lease termination or expiration), shall be paid by Tenant to Landlord upon such termination or expiration.

4.2.3    Where any Impositions are permitted by law to be paid in installments, Tenant may pay such Imposition in installments as and when such installments become due; provided, however, that the amount of all installments of any such Impositions which are to become due and payable after the expiration of the Term shall not be apportioned (except as provided in Section 4.2.2 hereof).

4.2.4    The provisions of this Article IV shall not be construed as imposing any liability upon Tenant for the payment of any taxes, assessments or other charges imposed by city or federal laws or ordinances or any other laws or ordinances, upon the net income of Landlord, or upon the transfer or passing of any interest owned by Landlord in the Leased Premises, generally known as income, inheritance, estate, succession or transfer taxes, nor shall Tenant be obligated to pay any withholding, profit or revenue tax or charge levied upon the rents payable to Landlord under the terms of this Lease, or any corporate franchise tax or corporate license fee which may be levied upon or against any successor corporate Landlord. The payment of all such taxes, assessments and other charges referred to in this Section 4.2.4 shall be the sole liability of Landlord. Notwithstanding the foregoing, if, at any time during the Term of this Lease, the methods or scope of taxation prevailing on the Lease Commencement Date shall be altered or enlarged so as to cause the whole or any part of the taxes, assessments, levies, charges, or any other Impositions now or hereafter levied, assessed or imposed on real estate and the improvements thereof to be levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the rents received therefrom, or, if, by reason of any such alteration or enlargement of the methods or scope of taxation, any tax, corporation franchise tax, assessment, levy (including but not limited to any municipal, state, or federal levy), charge or any other Impositions or any part thereof, shall be measured by or based solely upon the Taxable Area, or the value thereof, and shall be imposed upon Landlord, then all such taxes, assessments, levies,

charges or Impositions, or the part thereof, so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, to the extent that such Impositions would be payable if the Taxable Area were the only property of Landlord subject to such Impositions.

**Section 4.3     Payment of Impositions Directly Imposed.**

Tenant shall pay all such Impositions to be paid by it directly to the appropriate authority. Tenant covenants to furnish to Landlord before any penalty, fine, interest or cost would become payable thereon for non-payment thereof official receipts of the appropriate taxing authority or other reasonable evidence of the payment of any Imposition payable by Tenant pursuant to this Lease. If Landlord receives any bills for such charges, Landlord shall promptly furnish the same to Tenant.

**Section 4.4     Exemption from Certain Tax Impositions.**

Landlord, in its capacity as owner of the Property only, shall use reasonable efforts, at no cost to Landlord, to cooperate with Tenant in Tenant's applications for any and all property tax, transfer tax, or recordation tax exemption to the extent such cooperation would be required by Governmental Requirements of any property owner similarly situated. In the event Tenant fails to file any such tax exemption forms or applications within the time period permitted by the Applicable Laws of the District, Tenant's obligations to pay any and all taxes, as stated herein in Section 4.4, shall be consistent with the terms and conditions contained in this Lease.

**Section 4.5             Contest.**

If any Impositions are to be paid by Tenant, Tenant shall be permitted to contest in good faith and diligently any Impositions to the extent permitted by Applicable Laws; provided that Tenant shall pay all such Impositions prior to the imposition of any penalties, fees or other liabilities in connection therewith if required to do so by law in order to contest same or shall have furnished a good and sufficient bond or surety reasonably satisfactory to Landlord or, at Tenant's option, deposited with Landlord the amount of the item so contested (or, where permitted by law, paid the same under protest), together with such additional sums as may reasonably be required to cover interest or penalties accrued or to accrue on any such item or items. Except with respect to impositions directly imposed to Tenant, Landlord shall lend all reasonable assistance to Tenant in any such contest proceeding; however, if significant third-party out-of-pocket costs or expenses are incurred by Landlord, Tenant shall reimburse such expenses upon demand and presentation of a reasonably detailed invoice therefor. Landlord shall not be required to join in any proceedings referred to in this Section 4.4 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the fee owner's name. In such event, Landlord shall join in such proceedings.

**Section 4.6             Utilities.**

Tenant shall be responsible for all charges for gas, heat, light, power, telephone, water, sewer, trash removal, and drainage charges and other charges by public utilities of every kind for services furnished to any improvements located on the Leased Premises during the Lease Term. The Landlord shall reasonably cooperate with the Tenant to cause such utilities and services, if

any, to be transferred to the Tenant. Tenant shall, (1), pay for the cost of having the relevant utility services separately metered or submetered (if necessary), (2) establish separate accounts with each utility, and (3) be responsible for making timely payment for utility services directly to each utility.

## ARTICLE V

### CONSTRUCTION OF REDEVELOPMENT PROJECT

#### Section 5.1 Obligation to Construct Improvements.

5.1.1 Tenant hereby agrees to develop, renovate, construct, use, maintain, and operate the Redevelopment Project Improvements on the Property in accordance with Applicable Laws, and the terms and conditions set forth herein, and in a diligent manner in accordance with industry standards for Comparable Buildings. The cost of developing the Property and construction of all Redevelopment Project Improvements thereon shall be borne solely by Tenant. Further, in prosecuting the Redevelopment Project, Tenant shall cooperate and comply with all applicable requirements that are set forth by the District of Columbia Office of Planning, but only to the extent that such requirements are expressly set forth in Applicable Laws. Unless otherwise required by Applicable Laws, Tenant shall submit all plans, designs and drawings concerning the Redevelopment Project Improvements to the Office of Property Management for review and approval, in addition to other Governmental Authorities to the extent required by Applicable Laws.

The Parties recognize and agree that, at present, the Redevelopment Project Improvements do not include the development of the Western Portion of the Leased Premises. The Parties agree that Tenant may, during the Term of the Lease (or any Extension Term thereof) develop and implement plans to construct Redevelopment Project Improvements on the Western Portion. Such Improvements may include, but not be limited to, the office, retail and/or educational uses.

At such time as Tenant decides to develop the Western Portion, it shall submit Concept Drawings to Landlord. Landlord shall have thirty (30) calendar days to review such submitted plans and notify Tenant in writing if Landlord approves or disapproves the aforesaid Concept Drawings. If Landlord disapproves the Concept Drawing, Landlord's notice must set forth in detail the basis for Landlord's disapproval. Landlord's approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall revise the plans in accordance with Landlord's comments in the notice and resubmit the plans for Landlord's review within ten (10) calendar days from the receipt of Landlord's notice. Landlord then shall have ten (10) calendar days from the receipt of Tenant's revised plans to review and approve it, and such approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord disapproves of a revised plan, Landlord shall list the reasons for such disapproval with reasonable specificity. Notwithstanding the foregoing, if Landlord fails within fifteen (15) days after Tenant provides written notice of such failure to approve or disapprove Tenant's Concept Drawings within thirty (30) calendar day period or approve or disapprove Tenant's revised plans within the aforementioned ten (10) calendar day period, such plans shall be deemed disapproved by Landlord.

After Landlord approves Tenant's Concept Drawings, Tenant shall prepare and Landlord shall review Tenant's Schematic, Design, Development and Construction Drawings pursuant to Section 5.2.2.

Landlord and Tenant shall also agree on a reasonable Redevelopment Project Schedule for the construction of Improvements on the Western Portion.

5.1.2 Landlord's review and approval of any documents proposed by Tenant, including without limitation, the Redevelopment Project Schedule, the plans and specifications set forth in Section 5.2, and the Modifications, is not and shall not be construed as a representation or other assurance that it complies with any building codes, regulations or standards, including, without limitation, building, engineering and structural design, or any other Applicable Laws. Landlord shall incur no liability in connection with its review of any such documents proposed by Tenant and is reviewing such documents solely for the purpose of protecting its own interests.

## **Section 5.2 Plans and Specifications.**

5.2.1 Tenant shall comply with the Redevelopment Project Schedule, attached and incorporated as Exhibit D, to complete the plans and specification set forth in Section 5.2 and the Milestone Events set forth in Section 5.7 by the dates set forth in the Redevelopment Project Schedule, unless such dates are extended as a result of mutual agreement by the Parties or a Force Majeure Event.

5.2.2 Tenant shall use commercially reasonable efforts in all instances and cooperate with Landlord, to achieve completion of the plans and specifications set forth below within the time periods indicated, to design the Redevelopment Project Improvements consistent with the provisions of this Section 5.2 and the concept drawings (including the site plan) ("Concept Drawings") attached and incorporated as Exhibit C.

### **(a) Schematic Design**

Except as may otherwise be agreed upon with Landlord pursuant to Section 5.2.5, Tenant shall complete and deliver copies to Landlord of the following Schematic Drawings and plans of the Redevelopment Improvements (subject to modifications as may be mutually agreed upon) at the indicated scale (or other scale satisfactory to Landlord) by the date set forth in the Redevelopment Project Schedule:

- (i) site plans (1"=30') showing location and type of all buildings and structures, location of loading and parking, and location and type of site amenities and community space, treatment of open space areas, conceptual landscaping design, and location of adjacent buildings, structures, driveways, access roads, street and curb lines, and pedestrian structures;
- (ii) schematic building plans (1/20"=1');
- (iii) typical floor plans (1/20"=1');

(iv) elevations and cross sections of proposed Redevelopment Improvements (1/20"=1');

(v) A chart showing floor area, floor area ratio, building coverage of the Property, building height, number of parking spaces, area dedicated to pedestrian uses and loading docks, if any,

(vi) A specific plan for trash/demolition debris disposal; and

(vii) A specific plan for Hazardous Material disposal.

Landlord shall have thirty (30) calendar days to review such submitted plans and notify Tenant in writing if Landlord disputes the conformance of the submitted plans to the Concept Drawings in all significant respects, which notice must set forth in detail the basis for Landlord's disapproval. Tenant shall revise the plans in accordance with Landlord's comments in the notice and resubmit the plans for Landlord's review within ten (10) calendar days from the receipt of Landlord's notice. Landlord then shall have five (5) calendar days from the receipt of Tenant's revised plans to review and approve it, such approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord disapproves of a revised plan, Landlord shall list the reasons for disapproval with reasonable specificity. Notwithstanding the foregoing, if Landlord fails, within fifteen (15) calendar days after Tenant provides written notice of such failure, to approve or notify Tenant of the nonconformance of the submitted plans to the Concept Drawings within the thirty (30) calendar day period or approve or disapprove Tenant's revised plans within the aforementioned five (5) calendar day period, such plans shall be deemed approved by Landlord.

(b) Design Development

Tenant shall complete and deliver copies to Landlord of Design Development Drawings of the Redevelopment Project Improvements (subject to modifications as may be mutually agreed upon) at the indicated scale (or other scale satisfactory to Landlord) by the date set forth in the Redevelopment Project Schedule:

(i) site plans (1"=30') showing lot lines and dimensions, location and type of all buildings and structures (including building footprint), location of loading and parking, location and type of site amenities and community space, treatment of open space areas, utilities, landscaping, schematic indication of surface drainage, and adjacent buildings, structures, driveways, access roads, street and curb lines, and pedestrian structures;

(ii) A summary chart showing floor area, building coverage of the Property, building height, floor area ratio, and number of parking spaces, area dedicated to pedestrian uses and loading docks, if any;

(iii) Lower level, first floor and typical floor plan (1/8" equals 1') showing Building entrances, service/loading, lobbies, public areas, elevators, stairs, other circulation, common spaces, toilets, ducts, etc., and structural system;

(iv) Front, back and side elevations (1/8" equals 1') showing roof lines, proposed building materials, floor to floor dimensions, building heights, and elevations of surrounding buildings;

(v) Typical sections of buildings (1/8" equals 1') showing floor to ceiling dimensions, footings, structural system and floor thickness, and relation to existing grades;

(vi) description and samples of final building materials; and

(vii) all appropriate details, including the location and type of mechanical/electrical and plumbing systems.

The Design Development Drawings shall be in a level of detail generally consistent with ninety percent (90%) complete design development drawings at the time of delivery to Landlord. Landlord shall have thirty (30) calendar days to review such submitted plans and notify Tenant in writing if Landlord disputes the conformance of the submitted plans to the Schematic Drawings, in all significant respects, which notice must set forth in detail the basis for Landlord's dispute. Tenant shall revise the plans in accordance with Landlord's comments in the notice and resubmit the plans for Landlord's review within ten (10) calendar days from the receipt of Landlord's notice. Landlord then shall have five (5) calendar days from the receipt of Tenant's revised plans to review and approve it, such approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord disapproves of a revised plan, Landlord shall list the reasons for disapproval with reasonable specificity. Notwithstanding the foregoing, if Landlord fails, within fifteen calendar days after Tenant provides written notice of such failure, to approve or notify Tenant of the nonconformance of the submitted plans to the Schematic Drawings within the thirty (30) calendar day period or approve or disapprove Tenant's revised plans within the aforementioned five (5) calendar day period, such plans shall be deemed disapproved by Landlord.

#### (c) Construction Drawings

Tenant shall complete the Construction Drawings and deliver same to Landlord by the date set forth in the Redevelopment Project Schedule. The Construction Drawings shall be not less than ninety percent (90%) complete at the time of delivery to Landlord. Landlord shall have fifteen (15) calendar days to review such submitted plans and notify Tenant in writing if Landlord disputes the conformance of the submitted plans to the Design Development Drawings, which notice must set forth in detail the basis for Landlord's dispute. Tenant shall revise the plans in accordance with Landlord's comments in the notice and resubmit the plans for Landlord's review within ten (10) calendar days from the receipt of Landlord's notice. Landlord then shall have five (5) calendar days from the receipt of Tenant's revised plans to review and approve it, such approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord disapproves of a revised plan, Landlord shall list the reasons for disapproval with reasonable specificity. Notwithstanding the foregoing, if Landlord fails to approve or notify Tenant of the nonconformance of the submitted plans to the Design Development Drawings

within the fifteen calendar (15) day period or approve or disapprove Tenant's revised plans within the aforementioned five (5) calendar day period, such plans shall be deemed approved by Landlord.

5.2.3 Construction of the Redevelopment Project Improvements shall be in accordance with all Applicable Laws. Upon the request of Landlord, Tenant shall submit to Landlord copies of documents evidencing each and every Permit obtained by Tenant. Landlord shall provide all reasonable assistance and support to Tenant in working with the appropriate Governmental Authority to obtain all Permits necessary to construct and complete the Redevelopment Project Improvements. However, it is specifically understood and agreed that any such Landlord assistance is solely to satisfy Landlord's rights under the Lease and does not guarantee in any way that Tenant will receive the Permits sought, nor shall such assistance be binding upon any particular Governmental Authority have jurisdiction over any matter related to the Leased Premises.

5.2.4 Tenant, at its sole cost and expense, shall be responsible for all preparation of the Leased Premises for development and construction substantially in accordance with the approved Construction Drawings, including costs associated with excavation, construction of the Redevelopment Project Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Redevelopment Project Improvements. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all Applicable Laws.

5.2.5 Notwithstanding the foregoing provisions of this Section 5.2, the Parties agree to work cooperatively as possible in developing Tenant's site plan design such that Tenant can submit its site plan to the District for its site plan permit as soon as possible.

### **Section 5.3    Construction Restrictions and Obligations.**

5.3.1 Tenant agrees that it shall use its commercially reasonable efforts to achieve Commencement of Construction on or before the date set forth in the Redevelopment Project Schedule attached and incorporated as **Exhibit D** and diligently perform the development and construction of the Redevelopment Project Improvements in accordance with the Construction Drawings and Redevelopment Project Schedule.

5.3.2 Tenant shall not permit the construction of any Redevelopment Project Improvements on, over or within the boundary lines of any easement for public utilities, unless such construction is approved by the appropriate Governmental Authority or other Person having approval rights thereover.

5.3.3 Tenant shall use its commercially reasonable efforts to achieve Final Completion on or before September 1, 2010 for the Building and December 31, 2011 for any Permitted Use on the Western Portion of the Leased Premises.



5.3.4 As a requirement for achieving Substantial Completion, the Architect, in the certificate of Substantial Completion, also shall determine, among other things, that all of the requirements of this Article V relating to the obligations of Tenant to develop and construct the Redevelopment Project Improvements have been fully satisfied.

5.3.5 Tenant shall promptly notify Landlord upon Final Completion of the Redevelopment Project Improvements in accordance with the Redevelopment Project Schedule and provide all documents as required by Final Completion.

#### Section 5.4 Modifications to Approved Construction Drawings.

5.4.1 Tenant shall not make, or cause to be made, any material changes (each, a "Modification" and collectively, "Modifications") to the final version of the approved Design Development Drawings without Landlord's prior written approval. Tenant shall submit the proposed Modifications to Landlord for approval, which approval shall not be unreasonably withheld, delayed or conditioned, in accordance with this Section. Landlord shall have fifteen (15) business days to review such submitted Modification plans and notify Tenant in writing if Landlord disapproves the Modification plans, which notice must set forth in detail the basis for Landlord's disapproval. Tenant shall revise the plans in accordance with Landlord's comments in the notice and resubmit the Modification plans for Landlord's review within ten (10) calendar days from the receipt of Landlord's notice. Landlord then shall have five (5) calendar days from the receipt of Tenant's revised plans to review and approve it, such approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord disapproves of a revised plan, Landlord shall list the reasons for disapproval with reasonable specificity. Notwithstanding the foregoing, if Landlord fails to approve or notify Tenant of disapproval of the submitted Modification plans with reasons for such disapproval within the fifteen calendar (15) day period or approve or disapprove Tenant's revised plans within the five (5) calendar day period, such plans shall be deemed approved by Landlord. Any approved Modification shall become part of the Construction Drawings.

5.4.2 Any notice from Landlord of its disapproval of the Modifications ("Disapproval Notice") shall state in reasonable detail the basis for such disapproval. If Landlord issues a Disapproval Notice, Tenant may revise the Modification to address the objections of Landlord and may resubmit the revised Modification for approval.

#### Section 5.5 Labor/Employment Covenants.

If Tenant receives federal or District of Columbia financial assistance, and if the Redevelopment Project is a union project with respect to the Property, during the construction of the Redevelopment Project Improvements, Tenant shall:

(a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the Department of Labor ("DOL"), advising the said labor union or worker's representative of Tenant's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

(c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of DOL and HUD, and will permit access to its books, records and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and

(d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

Tenant will take such action with respect to any contract, subcontract or purchase order as District, DOES or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Tenant's non-compliance with the nondiscrimination clause of this Section or with any applicable rule, regulation, or order, the District, DOES and/or DOL may take such enforcement against Tenant, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Laws.

#### **Section 5.6 Monitoring and Inspecting the Construction of the Redevelopment Project Improvements.**

5.6.1 In addition to and notwithstanding any monitoring and inspecting requirements of Tenant's Leasehold Mortgagee or any other construction lender and any applicable District of Columbia building and health code requirements, Landlord shall have the following rights:

(a) Inspection of site. During the construction of the Redevelopment Project Improvements, Landlord reserves for itself and its representatives the right to enter the Property from time to time during Tenant's normal business hours and at no cost or expense to Landlord, upon two (2) Business Day's advance notice to Tenant, for the purpose of performing routine inspections in connection with the development and construction of the Redevelopment Project Improvements. Tenant understands that Landlord or its representatives will enter the Property from time to time for the sole purpose of undertaking the inspection of the Redevelopment Project Improvements to determine conformance to the Construction Drawings, the covenants stated herein and the Redevelopment Project Schedule, as applicable. Tenant shall have the right to accompany those persons during the inspections. Landlord and its representatives shall comply at all times while on site with all reasonable safety requirements of Tenant's General Contractor, provided Landlord shall be given prior notice of such safety requirements. Tenant waives any claim that it may have against Landlord and Landlord Related Parties, arising out of Landlord's entry upon the Property unless resulting from the negligence or willful misconduct of Landlord or Landlord Related Parties. Any inspection of the Redevelopment Project

Improvements or access of the Property by Landlord hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Redevelopment Project Improvements or Property with any building codes, regulations, or standards, including, without limitation, building engineering and structural design, or other Applicable Laws.

(b) Progress Reports. From and after the Commencement of Construction and until Final Completion, Tenant, upon request by Landlord, shall make written reports to Landlord as to the progress of the construction of the Redevelopment Project Improvements, in such form and detail as may reasonably be requested by Landlord, and shall include a reasonable number of construction photographs taken since the last report submitted by Tenant. Such progress reports shall be delivered to Landlord by the Tenant within ten (10) calendar days after request by Landlord, but not more frequently than on a monthly basis.

(c) Audit Rights. Upon reasonable prior notice at any time prior to Final Completion, and if Landlord has a reasonable basis for believing that Tenant is not in compliance with its obligations under Article V, Landlord shall have the right (at the cost of Landlord unless Tenant is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Tenant) to request and inspect all documents in the possession or control of Tenant that are reasonably related to the provision of Article V that Landlord believes Tenant has violated for the purpose of ensuring compliance with this Article V and to have an independent audit of the documents provided by Tenant. Tenant shall cooperate with Landlord in providing Landlord reasonable access to the aforementioned documents during normal business hours at Tenant's offices for these purposes. Tenant shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Tenant and Landlord may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act of 1985, as amended, D.C. Official Code §§2-301.01 et seq. (2001), and shall execute a separate engagement letter with District. In the event that the audit reveals any default under the terms of this Article V, whether or not such default is cured, Tenant shall be responsible for payment of all costs and expenses incurred by the common accountant in connection with the audit, or, at Landlord's election, Tenant shall make a payment to Landlord in the amount of the costs and expenses incurred by Landlord and paid to the common accountant under its contract with District, as Additional Rent.

#### **Section 5.7** Milestone Notices.

Tenant shall notify Landlord in writing (the "Milestone Notices") of the following stages (collectively, the "Milestone Events") based on the Redevelopment Project Schedule, and Landlord shall have the right to have an inspector review the construction (subject to Landlord's compliance with the inspection-related requirements described in Section 5.6.1(a) above) within five (5) calendar days after written notification from Tenant of:

- (a) Commencement of environmental testing and abatement;
- (b) Completion of environmental testing and abatement;

(c) Commencement of Construction and renovation of existing building for the Charter School and the Job Training Center;

(d) Substantial Completion of renovation of the Redevelopment Project Improvements; and

(e) Final Completion.

#### **Section 5.8 Nondiscrimination Covenants.**

5.8.1 Tenant shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Laws, regulation, or court order, in the sale, lease, or rental or in the use or occupancy of the Property or any Redevelopment Project Improvements thereon.

5.8.2 Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Laws, regulation, or court order.

5.8.3 Tenant will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Tenant agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES and/or District setting forth the provisions of this non-discrimination clause.

5.8.4 Tenant will, in all solicitations or advertisements for potential employees placed by or on behalf of Tenant, include the federal U.S. Equal Employment Opportunity Commission's logotype, statement, or slogan as a means of educating the public that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Laws, regulation or court order.

#### **Section 5.9 Environmental Claims and Indemnification.**

5.9.1 Tenant hereby covenants that, at its sole cost and expense (as between District and Tenant provided that the foregoing shall not prohibit Tenant from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Laws, and Landlord and Landlord Related Parties shall have no responsibility or liability with respect thereto except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Related Party after the Lease Commencement Date. Subject to the

limitations contained in Section 21.22 below; and except to the extent that any Environmental Liabilities and Costs and Environmental Claims (defined below) are released, settled, or otherwise discharged by reason of any insurance coverage maintained by Tenant, and except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Related Party or by the condition of the Property which pre-existed the ROE Date which was not caused by the negligence or willful misconduct of Tenant or any Tenant Related Party, Tenant shall indemnify, defend, and hold Landlord and Landlord Related Parties (collectively, the "Indemnified Parties") harmless from and against any and all Environmental Liabilities and Costs and unreleased, undischarged, unsettled losses, costs, claims, damages, liabilities and causes of action of any nature whatsoever, including, without limitation, the reasonable costs and fees (including attorneys' fees and engineering consultant fees), incurred by or asserted against any of the Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Tenant's or any Tenant Related Party's violation of any Environmental Laws at the Leased Premises; (ii) any Contaminant Release or threatened Contaminant Release or a Hazardous Material at the Leased Premises by Tenant or any Tenant Related Party from and after the ROE Date, or (iii) any condition of pollution, contamination or Hazardous Material related nuisance on, under or from the Property from and after the ROE Date and caused or created by or through acts or omissions of Tenant or any Tenant Related Party ("Environmental Claims").

5.9.2 Except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Related Party on or after the ROE Date, Tenant, for itself, Tenant's Related Parties, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Liabilities and Costs.

**Section 5.10 Landlord Cooperation.** With the reasonable cooperation and assistance of Landlord, Tenant shall make all commercially reasonable and diligent efforts to obtain all Permits required to construct the Redevelopment Project Improvements. Upon Tenant's request, Landlord shall attend (and, as reasonably appropriate, assist in Tenant's presentation) at scheduled hearings and proceedings. Absent such request, Landlord shall still be entitled to attend and observe such hearings and proceedings. The foregoing provisions notwithstanding, Landlord's agreement to assist Tenant in the matters contemplated in this Section 5.10 shall not be deemed to constitute a guaranty by Landlord as to the results of any hearing, permit submission or related proceedings.

**Section 5.11 Reserved.**

**Section 5.12 Discharge of Liens.**

5.12.1 At all times during the Term, Tenant shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge (levied on account of any Imposition or any mechanic's, laborer's or materialman's lien or any mortgage, conditional sale, title retention agreement, security interest or chattel mortgage, or otherwise) caused by Tenant which might be or become a lien, encumbrance or charge upon the Leased Premises or any part thereof or the income therefrom, having any priority or preference over or ranking on a parity with the estate, rights and interest of Landlord in the Leased Premises or any part thereof or the income therefrom, and Tenant shall not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Leased Premises or any part thereof or the income therefrom might be impaired; provided that any such imposition, lien, encumbrance or charge shall be discharged in accordance with the terms of this Lease. Notwithstanding the foregoing provisions of this Section 5.12.1, Tenant shall have such rights with respect to its leasehold estate as are provided in Section 12.2.1 below.

5.12.2 At all times during the Term, if any mechanic's, laborer's or materialman's lien shall at any time be filed against the Leased Premises or any part thereof, Tenant, within thirty (30) calendar days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the enforcement of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances. Tenant agrees to reimburse and to pay to the Landlord within five (5) Business Days after written demand therefor, which demand shall be accompanied by reasonably detailed invoices evidencing the amounts so paid by Landlord and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection therewith, together with interest thereon at the Interest Rate plus five percent (5%) per annum, from the respective dates of Landlord's notice to Tenant of the making of the payment or the incurring of the cost and expense, including attorneys' fees, until paid.

5.12.3 Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, Alteration to, or repair of the Leased Premises or any part thereof or for the demolition or the replacement of the Leased Premises or any part thereof. Tenant shall have no right, authority or power to bind Landlord, or any interest of Landlord in the Leased Premises, for any claim for labor or material or for any other charge or expense incurred in the erection and construction of the Building or any change, Alteration or addition thereto, nor to render such Leased Premises liable to any lien or right of lien for any labor or material. Tenant shall in no way be considered as the agent of Landlord in the construction, erection or operation of the Building.

#### **Section 5.13 Zoning and Subdivision**

Landlord agrees that, after the Lease Commencement Date, it will not undertake or consent to any change in the zoning or other land use restrictions applicable to the Leased Premises during the Term and any extension thereof exercised by Tenant without Tenant's prior consent, such consent not to be unreasonably withheld, conditioned or delayed. Landlord agrees that Tenant may apply for, and that Landlord will provide all reasonable assistance at no out-of-pocket cost to Landlord (such out-of-pocket costs not to include Landlord's internal costs) for any zoning changes that are necessary in order to carry out the Redevelopment Project Improvements. However, any such Landlord assistance does not guarantee in any way that Tenant will receive the zoning approval sought, nor shall such assistance be binding upon any particular Governmental Authority having jurisdiction over any matter related to the Leased Premises. Landlord agrees that Tenant may apply, without the need for further Landlord consent, for rezoning of the Leased Premises, including both the Building and Western Portion, so that there are no zoning impediments to the Permitted Uses. Landlord further agrees that, in addition to the zoning changes mentioned in this Section 5.14, Tenant may, with Landlord's consent, which shall not be unreasonably withheld, conditioned or delayed, apply for other zoning changes to the Building and the Western Portion. The Parties agree that if a zoning change is required in order to carry out the Redevelopment Project Improvements, that any resulting delay in the Redevelopment Project Schedule shall be deemed "Excusable Delay."

The Parties agree that Tenant may at any time after the Lease Commencement Date apply to have the Property subdivided so that the Building and Western Portion are on separate parcels of land with separate legal descriptions and tax lot numbers. If Tenant does, in fact, have the Property subdivided, then the Parties shall, within ninety (90) calendar days of such subdivision prepare and execute a second ground lease pursuant to which Landlord leases the Western Portion to Tenant on substantially the same terms and condition as are set forth herein. In addition, and within the same ninety (90) calendar day period, the Parties shall prepare and execute an amendment to this Ground Lease that is designed to address the fact that the Western Portion is no longer a part of the Property as currently defined.

#### **Section 5.14. Signage.**

At all times prior to Final Completion, Landlord shall have the right to place, at Landlord's sole cost and expense, at the Leased Premises in a mutually agreed-upon location at the Leased Premises one (1) sign identifying the Redevelopment Project as a development undertaken in cooperation with Landlord and further identifying Landlord, acting through OPM, by name in a manner reasonably satisfactory to Landlord. Prior to Final Completion, Tenant shall also identify the Redevelopment Project as a development undertaken in cooperation with Landlord on all other signs placed by Tenant on the Leased Premises. Landlord's sign shall be designed and sited by Landlord in accordance with all Applicable Laws and the terms of this Agreement. Notwithstanding the foregoing, the Parties shall each comply with all Applicable Laws regarding the installation of all signage at the Leased Premises.

## ARTICLE VI

### INSURANCE

**Section 6.1 Insurance Coverage.** Tenant or its subtenants shall, at its sole cost and expense, keep and maintain during the Term, insurance (the "Required Insurance") as follows:

6.1.1. Property insurance for the Redevelopment Project Improvements with "special form" property insurance coverage as available in the insurance market at the date of this Lease (and against such additional risks of loss as may be customarily covered by such policies after the date of this Lease), or any equivalent to a "special form" property insurance policy that has been reasonably approved by Landlord (collectively, the "Property Insurance Policy"). The Property Insurance Policy shall cover at least the following perils: building collapse, fire, flood, impact of vehicles and aircraft, lightning, malicious mischief, terrorism, vandalism, water damage, and windstorm. The Property Insurance Policy shall also cover such other insurable perils as, under good insurance practices, other commercial property tenants from time to time insure against for Comparable Buildings. The Property Insurance Policy shall cover: (i) additional expense of demolition and increased cost of construction, including, without limitation, increased costs that arise from any changes in Applicable Laws with respect to such restoration in a minimum amount of \$10,000,000 for the Leased Premises; (ii) at least 100% of the replacement cost value of the Redevelopment Project Improvements (subject to Tenant's deductible); (iii) all tenant building and betterments that any subtenant requires the Tenant to insure (the "Insured Leasehold Property") and (iv) loss of rent insurance on an actual loss sustained basis covering twelve months. Any Property Insurance Policy shall contain an agreed amount endorsement or a coinsurance waiver and replacement cost value endorsement without reduction for depreciation and shall in no event be less than the replacement cost of the Building.

6.1.2. If any part of the Redevelopment Project Improvements is located in an area designated as "flood prone" or a "special flood hazard area" under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, at least the maximum coverage for the Redevelopment Project Improvements available under the federal flood insurance plan. Regardless of the flood zone, the minimum amount of coverage required by this subsection for loss caused by floods shall be that which is required by an Approved Mortgagee. Any insurance required pursuant to the terms of this subsection being hereinafter sometimes referred to as "Flood Insurance."

6.1.3. At all times during which structural construction, repairs or Alterations are being made with respect to the Redevelopment Project Improvements, builder's risk insurance for not less than the full completed project insurable value of the Redevelopment Project Improvements, covering the same risks and otherwise complying with the same requirements as the Property Insurance Policy, to such limits and with such coverage extensions as Landlord may reasonably require (the "Builder's Risk Insurance") Builder's Risk Insurance shall be written on a "completed value" form (100% nonreporting) or its equivalent and shall include an endorsement granting permission to occupy. Builder's Risk Insurance shall cover: (a) the same perils that the Property Insurance Policy must cover; (b) loss of materials, equipment, machinery, and supplies whether on-site, in transit, or stored offsite, or of any temporary structures, hoists, sidewalks, retaining walls, and underground property; (c) soft costs, plans, specifications,



blueprints and models; and (d) demolition and increased cost of construction, including increased costs arising from changes in Applicable Laws at the time of restoration of the Redevelopment Project Improvements and coverage for operation of building laws or other Applicable Laws, all subject to a sublimit and deductible satisfactory to Landlord on an actual loss sustained basis.

6.1.4. The following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall be in the so called "occurrence" form and shall provide coverage of at least \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate for all damages. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability and products and completed operations.

6.1.5. In the event any part of the Redevelopment Project Improvements contains a boiler or other pressure vessel or pressure pipes, Tenant or its subtenants shall obtain and maintain, or cause to be obtained and maintained, at Tenant's sole cost and expense, boiler, air conditioning, and pressure vessel (including, but not limited to, pressure pipes, steam pipes, and condensation return pipes) insurance providing coverage in a commercially reasonable amount throughout the Lease Term.

6.1.6. Such other types and amounts of insurance for the Redevelopment Project Improvements and its operations as Landlord shall from time to time reasonably require, consistent with insurance commonly maintained for Comparable Buildings (including increases in dollar amounts).

6.1.7. If a deductible is carried on any form of property insurance coverage, such deductible shall be no more than \$25,000 per occurrence.

6.1.8. Tenant, its contractors, subcontractors or subtenants shall, at its sole cost and expense, maintain a Pollution Legal Liability Insurance Policy with limits of Three Million Dollars (\$3,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. The policy shall provide dedicated and site specific limits. The policy shall include coverage for bodily injury, personal injury, disease, death, loss of, damage to, or loss of use of property, and clean up, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials or other irritants, contaminants or pollutants into or upon the Property, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental, whether existing or new pollution conditions, as well as transportation and disposal at non-owned location. Such policy shall contain no exclusions not approved in writing by Landlord in its sole discretion.

6.1.9 Intentionally omitted.

6.1.10 All insurance required under Sections 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.8 and 6.1.9 shall designate Landlord as an "additional insured" ("Additional Insured") (but not an "additional named insured") by an endorsement reasonably satisfactory to Landlord.

6.1.11 Tenant and its General Contractor shall obtain such completion bonds and payment and performance bonds in amounts and in form and substance and from sureties as are acceptable to: (i) Tenant's Approved Mortgagee; or (ii) Landlord in its reasonable discretion at least thirty (30) days prior to the Commencement of Construction for the Redevelopment Project Improvements.

6.1.12 Tenant shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies for public liability, fire and other coverage at any time in force with respect to the Leased Premises and the Redevelopment Project Improvements.

6.1.13 All insurance required by this Lease shall be from insurer(s) authorized to do business in the District of Columbia and reasonably satisfactory to Landlord with: (a) a claims paying ability of not less than "A-" (or the equivalent) by S&P and one other rating agency satisfactory to Landlord; or (b) "A-VII" or better financial strength rating by AM Best (or the equivalent). Tenant shall pay or cause to be paid the insurance premiums for all required insurance when due and payable. Tenant shall deliver to Landlord, immediately upon issuance, certificates of insurance (or copies of the insurance policies if requested by Landlord) for all insurance required by this Lease. At least ten (10) calendar days before any policy expires (time being of the essence), each such Tenant Related Party required by this Lease shall deliver evidence of renewal to the Landlord. Further, all Required Insurance shall be primary protection for any and all losses, and Landlord shall not be called upon to contribute to any loss. All Required Insurance shall be written on the "occurrence" basis unless Landlord, in its sole and exclusive discretion, provides its written approval of a "claims made" policy.

6.1.14 In each insurance policy (or an endorsement thereto), the carrier shall agree not to cancel, terminate, or nonrenew such policy without giving Landlord at least thirty (30) calendar days prior written notice. The Property Insurance Policy shall provide that as to Landlord's interest, such policy shall remain valid and shall insure Landlord regardless of any: (a) named insured's act, failure to act, negligence, or violation of warranties, declarations, or conditions; (b) occupancy or use of the Redevelopment Project Improvements for purposes more hazardous than those permitted; or (c) Landlord's exercise of any of their respective rights or remedies hereunder, but only if such coverage is commercially available in the District of Columbia with respect to coverage for ground lessees of Comparable Buildings from an insurance carrier licensed to do business in the District of Columbia and does not result in a significant increase in the costs for the relevant insurance policy.

6.1.15 Worker's Compensation Insurance and Contractor Requirements. While any construction is being done on or about the Leased Premises, Tenant shall cause its General Contractor, or, as applicable, their respective subcontractors, to obtain and maintain, worker's compensation insurance covering all persons employed by contractors or subcontractors of any tier in connection with any such construction, including without limitation all agents and employees of contractors and subcontractors with respect to whom death or bodily injury claims could be asserted against either Landlord or Tenant. In addition, Tenant shall cause its General Contractor to otherwise fulfill all applicable requirements of the law of the District of Columbia with respect to worker's compensation insurance related to such General Contractor's work at the Leased Premises. Such worker's compensation insurance policy shall comply with the

requirements of the District of Columbia and, if applicable, to the U.S. Longshoremen Harbor Workers' Act, Jones Act or Admiralty laws and the Federal Employers' Liability Act. The policy shall have not less the following limits:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

6.1.16 Sublease Requirements. Tenant shall include in each sublease entered into by Tenant a requirement that, while any construction is being done on the Leased Premises by such subtenant, the subtenant shall: (i) cause its general contractors, or, as applicable, their respective subcontractors, to obtain and maintain, worker's compensation insurance covering all persons employed by contractors or subcontractors of any tier in connection with any such construction, including without limitation all agents and employees of contractors and subcontractors with respect to whom death or bodily injury claims could be asserted against either Landlord or its agents or contractors; and (ii) cause its general contractors to otherwise comply with Applicable Laws with respect to worker's compensation insurance. Tenant shall enforce the requirements of this Section 6.1.16 against any subtenant.

## **Section 6.2 Rental Value Insurance.**

6.2.1 From and after Final Completion, Tenant or its subtenants shall maintain rental value insurance against loss or damage by fire, vandalism, riot, malicious mischief and all hazards included in the present uniform standard extended coverage "all risk policy" or under the provisions of such successor extended coverage endorsements as may be available (and against loss due to war, terrorism or nuclear action if such insurance shall be available and customarily required by institutional first mortgagees on Comparable Buildings within Washington, D.C.) in an amount sufficient to pay the Rent under this Lease for a period of one (1) year. Landlord shall be the beneficiary of such rental value insurance. The net proceeds of rent insurance when received by Landlord, less the cost of collecting same including reasonable attorneys' fees, to the extent available, shall be applied against the Rent then due and thereafter becoming due.

## **Section 6.3 Additional General Insurance Requirements.**

All insurance to be obtained by Tenant pursuant to this Lease shall: (i) contain an agreement by the insurer that loss shall be payable notwithstanding any negligence of Tenant (but still subject to such policy's standard definitions, exceptions, and exclusions) and waiving any right of subrogation by the insurer to any claims of Tenant against Landlord, (iii) contain an "inflation rider" so that the limits of such policy adjust accordingly and (iv) shall be written as primary policy coverage and not contributing with or in excess of any coverage carried by Landlord, if any. Tenant agrees that the limits specified in this Article VI will be increased from time to time as may be reasonably requested by Landlord in writing provided such increased limits are then being written on Comparable Buildings. The insurance requirements provided

herein are minimum requirements and shall not limit Tenant's liability to Landlord arising under this Lease or under the Applicable Laws, even if the proceeds of such insurance are not adequate to fulfill such obligations. Landlord agrees that if Tenant demonstrates to Landlord's reasonable satisfaction that certain insurance coverage or limits required by this Article VI are not commercially available in the District of Columbia to lessees similar to Tenant or are not being customarily written on Comparable Buildings, Landlord will waive the requirement for such insurance or reduce such limits provided that Tenant provides coverage as nearly as possible to the coverage that is waived or limits that are reduced which is commercially available and is being customarily written on Comparable Buildings.

**Section 6.4      Landlord Right to Obtain Insurance.**

If at any time Tenant fails to deliver to Landlord timely written evidence that Tenant has maintained and has paid for all required insurance, and such failure shall continue for a period of three (3) Business Days after written notice from Landlord of such failure and such coverage is commercially available in the District of Columbia with respect to coverage for ground lessees from an insurance carrier licensed to do business in the District of Columbia at commercially reasonable rates, then without limiting Landlord's rights or remedies hereunder, Landlord may (but shall have absolutely no obligation to) obtain such insurance for such periods as Landlord shall elect not exceeding twelve (12) months and pay the premium therefor, and Tenant shall, on demand, reimburse Landlord, for such premium payment and all commercially reasonable unrelated third-party expenses incurred in connection therewith, plus interest on such amounts at the Interest Rate plus five percent (5%) per annum from the date such cost or expense was incurred through the date of payment to Landlord.

**Section 6.5      No Invalidation of Insurance.**

Tenant shall at no time whatsoever do or permit to be done any act or thing in, to, or about the Leased Premises or otherwise which would or could have the effect of causing invalidating, in whole or in part or reducing the scope or amount of coverage provided by any of the insurance maintained pursuant to this Article VI. Tenant shall not permit any buildings, other structures, or improvements at any time to be put, kept, or maintained on the Leased Premises in such condition that the same cannot be insured in the amount of the full replacement cost thereof.

**Section 6.6      Blanket Policies.**

Any insurance required to be maintained herein by Tenant or subtenants may be effected under blanket insurance policies relating to the Leased Premises and other properties, so long as Tenant provides evidence to Landlord that (i) the amount of insurance covering the Leased Premises and the Redevelopment Project Improvements, and Tenant's use thereof, shall not be affected by losses at any or all additional locations and (ii) with respect to commercial general liability insurance, if there is a shared aggregate limit, then the minimum amount of liability insurance shall be increased to \$10,000,000.00.

**Section 6.7      Indemnity.**

6.7.1 Subject to the limitations contained in Section 21.22 below and except to the extent that any such claims are released, settled, or otherwise discharged by reason of any insurance coverage maintained by Tenant and except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Related Party after the ROE Date, Tenant agrees to indemnify and save harmless the Indemnified Parties against and from those portions of any and all claims by or on behalf of any Person (other than Tenant and Tenant's Related Parties) that are not so released, settled, or otherwise discharged as aforesaid, and to be liable and responsible for such unreleased, unsettled, or undischarged portions of any and all claims, including without limitations costs, liabilities, expenses, losses and damages, of any kind or nature which the Indemnified Parties may incur, including but not limited to loss of life, bodily injury, or damage or destruction to property, costs and reasonable legal fees, arising from: (i) the use, occupancy, construction, development, design, operation or management of the Leased Premises or the Redevelopment Project Improvements by Tenant or any Tenant Related Party; (ii) any work or thing whatsoever done or which is required to be done by Tenant or any Tenant Related Party and is not done in, on or about the Leased Premises during the Lease Term (including without limitation the construction of the Redevelopment Project Improvements); (iii) all Environmental Claims; (iv) during the Lease Term, any condition of the Leased Premises or of any vaults, passageways or spaces demised unto Tenant therein; (v) any Event of Default by Tenant under, or failure to comply with, this Lease; (vi) any act of Tenant or any of Tenant's Related Parties at or related to the Leased Premises; and (vi) any accident, injury or damage whatsoever, except caused by the negligence or willful misconduct of Landlord or Landlord's Related Parties after the Lease Commencement Date, to any Person occurring during the Term in or about the Leased Premises or upon or under the streets, sidewalks and land adjacent thereto, and from and against all expenses and liabilities incurred on account of any such claim or action or proceeding brought thereon.

6.7.2 Except as expressly provided otherwise in Section 21.22 below, Tenant's obligation to indemnify Landlord under this Section 6.7 shall not be limited to the scope and amount of coverage provided by any insurance maintained by Tenant, including, without limitation, the insurance required to be maintained by Tenant pursuant to Article VI. Tenant's obligation to indemnify Landlord under this Section 6.7 shall be independent of any insurance coverage maintained by Tenant or maintained by or otherwise available to Landlord; and under no circumstances shall Landlord be required to elect to proceed either by seeking benefits under any such insurance coverage or by seeking recourse under the protection of this indemnification, but Landlord shall in all events have the right to enforce this indemnification without first seeking the benefit of any such insurance coverage.

6.7.3 Should any claim be made against Landlord or Landlord's Related Parties or an action or proceeding be brought against any of them as set forth in this Section 6.7, Landlord agrees to give Tenant reasonably prompt written notice thereof so as to enable Tenant to resist or defend such claim, action or proceeding.

6.7.4 The foregoing indemnification shall not be limited to reimbursement of actual losses but shall include advances made by Landlord in response to claims made against Landlord and/or Landlord Related Parties, and shall include Tenant's duty to defend any of such claims.

6.7.5 Notwithstanding any provision to the contrary contained in this Lease, Landlord agrees and acknowledges that Tenant's obligations to indemnify and hold harmless Landlord and Landlord's Related Parties under this Lease shall in no event extend to or include any loss to the extent arising out of any fraudulent, negligent, or intentionally willful act on the part of Landlord or any Landlord Related Party, as applicable.

6.7.6 The terms and provisions of this Section 6.7 shall survive the termination of this Lease, in respect of matters arising from acts, omissions or neglect occurring prior thereto for the for the period afforded to Landlord under the applicable statute of limitations.

## ARTICLE VII

### RESTORATION

#### Section 7.1 Proceeds of Casualty.

7.1.1 From and after the Lease Commencement Date, the proceeds of any fire or casualty insurance shall be applied as follows at the time the proceeds are issued by Tenant's insurance company:

(a) Proceeds Less than or Equal to One Million Dollars

If less than or equal to One Million Dollars (\$1,000,000.00), such proceeds shall be paid to Tenant as a trust fund, deposited in a separate bank account maintained by Tenant and used, applied and paid for the repair and restoration of the damage to the Renovation Project Improvements on the Leased Premises; or

(b) Proceeds More than One Million Dollars

If such proceeds are in excess of One Million Dollars (\$1,000,000.00), they shall be paid to and deposited with a bank or trust company in the District of Columbia selected by Landlord and having assets in excess of \$30,000,000.00 as insurance trustee (hereinafter referred to as the "Depository") which shall hold, apply, and make available the proceeds of such insurance to the cost of repair of the damage and replacement or rebuilding of the Renovation Project Improvements on the Leased Premises as more particularly hereafter provided in Section 7.2.

#### Section 7.2 Tenant's Obligation to Restore.

7.2.1 If the Renovation Project Improvements now or hereafter erected upon the Leased Premises during the Term shall be destroyed or damaged in whole or in part by fire or other casualty, or as a result directly or indirectly of war, terrorism, bio-terrorism, or by act of God, or occurring by reason of any causes whatsoever, Tenant covenants that Tenant shall give prompt notice thereof to Landlord and Tenant's insurance company. Subject to Section 7.1, if such damage or destruction occurs prior to Final Completion of the Renovation Project Improvements affected by such damage or destruction, Tenant, at its own cost and expense, shall be obligated to repair or restore such Renovation Project Improvements in conformity with the Construction Drawings, subject to changes necessary to comply with then-current building code requirements, as approved by Landlord in its reasonable discretion. If such damage or destruction occurs after

Final Completion of the Renovation Project Improvements affected by such damage or destruction, Tenant, at its own cost and expense, shall repair, replace, restore or reconstruct the Renovation Project Improvements to substantially the same conditions as existed prior to any such casualty and with at least as good workmanship and quality as the improvements being repaired or replaced (but Tenant may make Alterations or Modifications with respect to restored improvements, so long as same are reasonably consistent with the Construction Drawings, as amended and approved by Landlord, or are otherwise approved by Landlord pursuant to the terms of the Lease, and are in compliance with Applicable Laws), subject to changes necessary to comply with then current building code requirements, as approved by Landlord in its reasonable discretion.

7.2.2 Such restoration shall be commenced within two hundred and seventy (270) calendar days from the date of the event of casualty. Tenant shall use commercially reasonable effort to pursue its insurance claims with its insurance company, comply with Section 7.1 for the deposit of the insurance proceeds, and complete the restoration work within a reasonable time, free and clear of all liens and encumbrances. If the insurance proceeds shall exceed the cost of such repairs or rebuilding, the balance remaining after payment of the cost of such repairs or rebuilding shall be paid over and belong to Tenant used solely for the repair and maintenance of the Redevelopment Project Improvements, provided that Tenant has effected the repair or rebuilding timely in accordance with this Article, otherwise such amount shall be paid to Landlord.

7.2.3 If Tenant fails to commence and diligently pursue the repairs, restoration and rebuilding required under Section 7.2.1 within the two hundred and seventy (270) calendar day period as required by Section 7.2.2, Landlord shall have the option, in Landlord's sole and absolute discretion, to terminate this Lease by written notice to Tenant subject, however, to the rights of any holder of a Leasehold Mortgage as set forth in Article XII hereof.

7.2.4 In the event of a termination of this Lease by Landlord as a result of Tenant's failure to commence restoration as set forth in Section 7.2.3 above, this Lease shall terminate upon the date specified by Landlord in its written notice of termination as though the date of such termination by Landlord were the last date of the Term, and all insurance proceeds shall be payable as follows:

(a) To Landlord, an amount sufficient to pay all costs to secure the Property, to clear the Leased Premises of partially damaged or destroyed improvements and debris; and for cleaning and restoration of the surface of the affected portion of the Leased Premises;

(b) To the holder of any Leasehold Mortgage, an amount sufficient to pay all amounts owed by Tenant to such holder;

(c) To Landlord to compensate Landlord for all sums due in connection with an Event of Default arising prior to termination, including without limitation the cost of cure of any Event of Default and unpaid Rent through the Lease termination date; and

(d) The remainder to Tenant.

7.2.5 Unless the damage is caused by Tenant's negligence or willful misconduct, Rent shall abate in proportion to the part of the Leased Premises that are unfit for use by the Tenant for up to one hundred percent (100%) of the entire Leased Premises, from the date of damage until the repairs are substantially complete, but not to exceed one hundred and eighty (180) calendar days.

## ARTICLE VIII

### OPERATIONS AND MAINTENANCE MATTERS

#### Section 8.1 Compliance with Applicable Laws.

8.1.1 At Tenant's sole cost and expense, Tenant shall comply with all Applicable Laws affecting the Leased Premises. Tenant shall be solely responsible for the health and safety of Tenant and Tenant's Related Parties, and for compliance with all Governmental Requirements and requirements relating to same, and under no circumstances shall Landlord be liable for the health and safety of Tenant or Tenant's Related Parties (except in the case of any liability the District of Columbia would have as a Governmental Authority separate from this Agreement) except to the extent of any gross negligence or willful misconduct of Landlord or any Landlord's Related Party.

8.1.2 At Tenant's sole cost and expense, Tenant shall likewise observe and comply with, or it shall cause to be observed and complied with, all the requirements of all policies of liability, fire or other insurance at any time in force with respect to the Leased Premises.

#### Section 8.2 Maintenance of Premises.

8.2.1 Throughout the Term, at Tenant's sole cost and expense, Tenant shall maintain the Leased Premises and the Redevelopment Project Improvements, both inside and outside in a clean and good condition similar to Comparable Buildings, reasonable wear and tear excepted. Tenant shall keep sidewalks, curbs, entrances, passageways, and to the extent required by Applicable Laws, all areas adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions.

8.2.2 Tenant shall maintain or cause to be maintained the foundations and appurtenances to the Leased Premises, together with any and all Alterations therein or thereto, in reasonably good order and condition, suffering no waste or injury except to the extent of any wear and tear and insured casualty, and shall, except as expressly provided herein, at Tenant's sole cost and expense, promptly make all necessary repairs and replacements, structural or otherwise, subject to the terms of this Lease.

8.2.3 All repairs and replacements made by Tenant shall be reasonably comparable to the original work performed by Tenant. The necessity for and adequacy of repairs to the Redevelopment Project Improvements shall be measured by the standards appropriate for Comparable Buildings, provided that Tenant shall in any event make all repairs reasonably necessary to avoid any structural damage.

#### Section 8.3 Alterations.



8.3.1 After Final Completion, Tenant may not make alterations, improvements, additions and other changes (each, an "Alteration," and collectively, "Alterations") except as provided in this Section 8.3.1. If the Alterations are Base Building Alterations, Tenant shall obtain Landlord's prior written consent for such alterations, which consent may be granted or denied at Landlord's sole and absolute discretion. Within thirty (30) calendar days after the completion of any Base Building Alterations, Tenant shall indicate to Landlord in writing the Base Building Alterations actually completed pursuant to Landlord's consent, the commercially reasonable cost of such alterations (with reasonably detailed documentation), and state all Base Building Alterations approved but not made ("Tenant's Base Building Alterations Certification"). If the Alterations are to the interior of the Redevelopment Project Improvements and not Base Building Alterations or cosmetic in nature, Tenant shall obtain Landlord's prior written approval, such approval shall not be unreasonably withheld, delayed, or conditioned; provided, however, if Landlord fails to approve or disapprove such Alterations after thirty (30) calendar days from Tenant's request together with reasonably detailed plans satisfactory to Landlord, such Alterations shall be deemed approved. Tenant shall have the right, at any time and from time to time, as often and frequently as Tenant wishes, to make Alterations to the interior and nonBase Building Conditions of the Redevelopment Project Improvements that are cosmetic in nature, including without limitations, painting and carpeting, as Tenant in Tenant's sole and absolute discretion shall deem necessary or desirable, without the necessity of securing Landlord's permission or consent.

8.3.2 Subject to Section 8.3.1, any Alterations to the Redevelopment Project Improvements that require Landlord's prior written consent shall be under the supervision of the Architect or another licensed architect or engineer selected by Tenant and approved in writing by Landlord (such approval not to be unreasonably withheld, delayed, or conditioned), and shall not be made except in accordance with detailed plans and specifications prepared and approved in writing by such architect or engineer and approved in writing by Landlord. Subject to Section 8.3.1, when Tenant requests Landlord's approval under Section 8.3.1 which necessitates the involvement of an engineer or architect in Tenant's reasonable good faith judgment, Tenant shall provide Landlord with a certification from a licensed engineer or architect and from Tenant that the proposed Alterations conform to all Applicable Laws. Landlord shall have a period of thirty (30) calendar days from receipt of the plans and specifications for each such Alteration within which to approve or reject same. Tenant will reimburse Landlord for its reasonable costs of retaining a third-party architect or engineer to review such plans. A rejection by Landlord of any portion of a proposed Alteration shall be in writing, which writing shall specify with particularity the basis for such rejection.

8.3.3 In the event of an emergency which threatens life, safety or property, Tenant may make all necessary repairs without Landlord's consent which are reasonably required to abate the emergency so long as Tenant attempts in good faith to notify Landlord in advance that such repairs are being made, and same are not inconsistent with the Construction Drawings.

8.3.4 Any Alterations shall be made in a good and workmanlike manner and in compliance with all Applicable Laws, and Governmental Requirements including permits and authorizations.

8.3.5 Prior to undertaking any Alterations other than as set forth in Section 8.3.3, adequate funds shall be committed for payment of the cost of any such Alterations, and reasonably satisfactory evidence of same shall be provided to Landlord; and such Alterations shall be completed, free of liens, encumbrances or other charges on the Leased Premises.

8.3.6 Tenant shall execute and deliver to the District the First Source Agreement with DOES in a form approved by District within ninety (90) calendar days from the Lease Commencement Date. Tenant agrees to be bound by and perform in accordance with such First Source Agreement.

#### Section 8.4 Hazardous Materials.

8.4.1 Tenant represents, warrants, and covenants to Landlord that, as of the Lease Commencement Date and throughout the Lease Term with respect to Tenant's use and occupancy of the Leased Premises:

(a) Tenant and Tenant's Related Parties will remain in compliance with all applicable Environmental Laws. After the completion of the Redevelopment Project Improvements, the Leased Premises will remain in compliance with all applicable Environmental Laws. Tenant will obtain all Permits and comply with all Applicable Laws, including Environmental Laws, relating to the use or operation of the Leased Premises. Tenant will conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions reasonably necessary to clean up and remove all Hazardous Materials on, from or affecting the Leased Premises in accordance with all applicable Environmental Laws.

(b) Tenant will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Materials, except in compliance with Environmental Laws, on, in, under, or from the Leased Premises. The foregoing prohibition shall not apply to the extent that such materials are of the type and quantity that are typically used in elementary, middle or high school or vocational training school. Tenant will promptly notify Landlord, in writing, if Tenant has actual knowledge or receives actual notice that any Hazardous Material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Leased Premises; and if any Hazardous Material is found on the Leased Premises, Tenant, at its own cost and expense, will immediately take such action as is reasonably necessary to detain the spread of and remove the Hazardous Material in accordance with the Environmental Laws; provided, however, if permitted to do so by Applicable Laws, Tenant may abate such Hazardous Materials "in place," provided such abatement shall not adversely affect the Permitted Use.

(c) Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Leased Premises or compliance with Environmental Laws. Tenant will promptly supply Landlord with copies of all notices, reports, correspondence, and submissions made by Tenant to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other Governmental Authority which requires submission of any information concerning environmental matters or hazardous wastes

or substances in, on, or about the Leased Premises pursuant to Environmental Laws. Tenant will promptly cure and have dismissed with prejudice any actions and proceeding brought pursuant to any Environmental Laws to the satisfaction of Landlord. Tenant will keep the Leased Premises free of any lien imposed pursuant to any Environmental Law except to the extent such lien arises from the actions or inactions of Landlord or any Landlord Related Party or by the condition of the Property which pre-existed the ROE Date which was not caused by the negligence or willful misconduct of Tenant or any Tenant Related Party. Tenant will promptly notify Landlord of any liens threatened or attached against the Leased Premises pursuant to any Environmental Law. If such a lien for which Tenant is responsible as provided in this Section is filed against the Leased Premises, then, within the earlier of thirty (30) calendar days or five (5) calendar days less than the period to remove the liens set forth in any underlying mortgage or lease from the date that the lien is placed against the Leased Premises, and before any Governmental Authority commences proceedings to sell the Leased Premises pursuant to the lien, Tenant will either (1) pay the claim and remove the lien from the Leased Premises; or (2) furnish either (i) a bond or cash deposit reasonably satisfactory to Landlord and Landlord's title insurance company in an amount not less than the claim from which the lien arises; or (ii) other security satisfactory to Landlord and to any superior mortgagee or lessee in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

(d) Landlord and Landlord's Related Parties, at Landlord's sole cost and expense, may (but without the obligation or duty so to do), at any time and from time to time, on not less than ten (10) Business Days' notice to Tenant (except in the event of an emergency in which case no notice will be required), inspect the Leased Premises to determine whether Tenant is complying with the obligations set forth in this Section 8.4 and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as Landlord and Tenant may agree. Landlord and Landlord's Related Parties shall comply at all times while on site with all reasonable safety requirements of Tenant, provided Tenant shall provide Landlord prior notice of such safety requirements. If Tenant is not in compliance, Landlord will have the right (but not the obligation), in addition to Landlord's other remedies available at law and in equity, to enter upon the Leased Premises immediately and at Tenant's sole cost and expense to take such action as Landlord in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Tenant's failure to comply. Landlord will use reasonable efforts to minimize interference with Tenant's business but will not be liable for any interference caused by Landlord's entry and remediation efforts as permitted by this section except to the extent caused by the negligence of Landlord or that of Landlord's Related Party. Upon completion of any sampling or testing Landlord will (at Tenant's expense if Landlord's actions are a result of Tenant's default under this Section 8.4) restore the affected area of the Leased Premises from any damage caused by Landlord's sampling and testing.

(e) If Tenant fails to comply with any of the foregoing covenants, Landlord, in addition to any other remedies it may have, may cause the removal (or other cleanup acceptable to Landlord) of any Hazardous Material from the Leased Premises. The costs of Hazardous Material removal and any other Environmental Liabilities and Costs will be Additional Rent under this Lease, whether or not a court has ordered the remedial action, and such costs together with interest at the Interest Rate of five percent (5%) per annum thereon from the date Landlord incurs any such expenses until all sums due under this subsection are paid will

become due and payable on demand by Landlord. Tenant will give Landlord and Landlord's Related Parties access to the Leased Premises to remove or otherwise clean up any Hazardous Material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any Hazardous Material, and this Lease will not be construed as creating any such obligation.

(f) Tenant shall not cause or permit any flammable liquids or dangerous or explosive materials to be used, generated, stored or disposed of, on or about the Leased Premises, except as provided in this Section 8.4 or in accordance with Environmental Laws. This restriction shall not apply: (1) to prevent the entry and parking of motor vehicles carrying flammable liquids solely for the purpose of their own propulsion, or (2) to prohibit use, storage and/or disposal of any liquid or material typically used in the construction, operation or maintenance of facilities of the type comprising the Redevelopment Project Improvements or in educational settings that are comparable to Tenant's Permitted Uses including, but not limited to, science labs, provided that such use and storage is in accordance with all Applicable Laws.

(g) Except to the extent that any such Environmental Liabilities and Costs arise from the negligence or willful misconduct of Landlord or any Landlord Related Party after the ROE Date, Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord and at Tenant's sole cost, it being agreed that any counsel provided or accepted by Tenant's insurer is deemed acceptable), and hold Landlord and Landlord's Related Parties free and harmless from and against all Environmental Liabilities and Costs, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord or any of them in connection with or arising from or out of:

(1) any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Section 8.4; or

(2) any violation by Tenant of any Environmental Law.

(h) This Section 8.4 will be in addition to any and all obligations and liabilities Tenant may have to Landlord at common law, and will survive termination of this Lease to the extent that Tenant violates Section 8.41(g) prior to the expiration of the Lease.

## ARTICLE IX

### TRANSFER AND SUBLEASE BY TENANT

#### Section 9.1 General.

9.1.1 (a) Tenant shall not assign or transfer (collectively, "Assign" or "Assignment") this Lease or all or any of Tenant's rights hereunder or interest herein. Notwithstanding the foregoing, to the extent permitted by Applicable Laws, Tenant may, upon Landlord's prior written consent which shall not be unreasonably withheld, conditioned or delayed, Assign the Lease or all or any of Tenant's rights or interest in the Lease to (i) an

Approved Mortgagee pursuant to Sections 12.1 and 12.2; or (ii) a District of Columbia Public School; or (iii) a public charter school with a charter in effect and established pursuant to D.C. Official Code §§ 31-2853.11 through 31-2853.25.

(b) Tenant may sublet, ("Sublet" or "Subletting") part or all of the Leased Premises for a Permitted Use with Landlord's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Landlord agrees, without need for further consent, that Tenant may sublet part of the Leased Premises to NIA Community Public Charter School and part of the Leased Premises to Congress Heights Training Center. Tenant shall not sublet the Leased Premises or any part thereof for a use that is not a Permitted Use. Tenant may deduct the following reasonable out-of-pocket costs and expenses from the Sublet rent:

(i) the Rent due under the lease (Base Rent and Additional Rent) paid annually and allocable to the sublet portion of the Leased Premises;

(ii) the reasonable cost of leasehold improvements made to the Sublet portion of the Leased Premises at the Tenant's cost prior to such Subletting, amortized over the term of the loan obtained by Tenant to finance the leasehold improvements and reasonable leasehold improvements made for the specific benefit of the sublessee, which shall also be deductible and amortized over the term of the sublease;

(iii) annual operating expenses and real property taxes (to the extent applicable);

(iv) an annual capital reserve of Fifty Cents (\$.50) per square foot;

(v) the cost of any real estate commissions, advertising, and legal expenses incurred by the Tenant in connection with such Subletting, amortized by Tenant over the term of the sublease; and

(vi) any other out-of-pocket economic concessions granted or paid to any such subtenant by the Tenant.

Tenant shall, after the above deductions, remit twenty percent (20%) of the remaining Sublet rent to Landlord annually on the anniversary of the Rent Commencement Date.

In the event there is an operating loss in any Lease Year, Tenant shall not remit any Sublet rent to Landlord and shall carry the operating loss forward and deduct it from Sublet Rent in a Lease Year when there is no operating loss before remitting any Sublet rent to Landlord. Tenant may accumulate and carry forward annual operating losses from year to year for purposes of deducting all of such losses against Sublet rent in a Lease Year in which there is no operating loss. An example of how Sublet rent payments are to be calculated is attached hereto as Exhibit F

(c) In no event shall any assignment of this Lease or Subletting of any portion of the Premises operate to release or discharge the original named Tenant hereunder of the

obligations of the Tenant under this Lease for the entire Lease Term (including the payment of Rent) unless Landlord has consented thereto in writing in advance.

(d) **Audit Rights.** Upon at least five (5) Business Days' written notice, and if Landlord has a reasonable basis for believing that Tenant is not in compliance with its obligations under Article 9.1.1, Landlord shall have the right (at the cost of Landlord unless Tenant is found to be in violation of any obligation imposed under Article 9.1.1, in which event such expense shall be borne by Tenant) to request and inspect all documents in the possession or control of Tenant that are reasonably related to the provision of Article 9.1.1 that Landlord believes Tenant has violated for the purpose of ensuring compliance with Article 9.1.1 and to have an independent audit of the documents provided by Tenant. Tenant shall cooperate with Landlord in providing Landlord reasonable access to the aforementioned documents during normal business hours at Tenant's offices for these purposes. Tenant shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Tenant and Landlord may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act of 1985, as amended, D.C. Official Code §§2-301.01 et seq. (2001), and shall execute a separate engagement letter with District. In the event that the audit reveals any default under the terms of this Article 9.1.1, whether or not such default is cured, Tenant shall be responsible for payment of all costs and expenses incurred by the common accountant in connection with the audit, or, at Landlord's election, Tenant shall make a payment to Landlord in the amount of the costs and expenses incurred by Landlord and paid to the common accountant under its contract with District, as Additional Rent.

9.1.2 No Assignment, Subletting, or right of occupancy hereunder may be effectuated by operation of law. It shall be reasonable for Landlord to withhold consent by way of example, if Tenant is in default under the terms of this Lease at the time of such Assignment or Sublet request. Landlord's consent to any Assignment or Subletting, the listing or posting of any name other than Tenant's, or Landlord's collection or acceptance of rent from any assignee or subtenant shall not be construed either as waiving or releasing Tenant from any of its liabilities or obligations under this Lease as a principal and not as a guarantor or surety, or as relieving Tenant or any assignee or subtenant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment or Subletting. For any period during which Tenant has committed an uncured Tenant Default hereunder, Tenant hereby authorizes each such assignee or subtenant to pay said rent directly to Landlord upon receipt of notice from Landlord specifying same. Landlord's collection of such rent shall not be construed as an acceptance of such assignee or subtenant as a tenant. Tenant shall reimburse Landlord for any reasonable out-of-pocket third-party expenses (including reasonable attorney's fees and expenses) incurred by Landlord in connection with Tenant's request for Landlord to give its consent to any Assignment or Subletting and Landlord shall be entitled to condition its consent to receipt of such reimbursement. Any sublease agreement shall be in a form and with terms approved by Landlord, such approval not to be unreasonably withheld, delayed, or conditioned. Tenant shall deliver to Landlord a fully-executed copy of each agreement evidencing a sublease or assignment within ten (10) calendar days after execution thereof.

9.1.3 All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any subtenant, assignee, licensee, concessionaire or other occupant or transferee, and Tenant shall cause such person to comply with such restrictions and obligations. Any assignee shall be deemed to have assumed obligations as if such assignee had originally executed this Lease and at Landlord's request shall execute promptly a document confirming such assumption. Each sublease is subject to the condition that if the Lease Term is terminated or Landlord succeeds to Tenant's interest in the Leased Premises by voluntary surrender or otherwise, at Landlord's option the subtenant shall be bound to Landlord for the balance of the term of such sublease and shall attorn to and recognize Landlord as its landlord under the then executory terms of such sublease.

9.1.4 Further, an approved sublease for all or part of the Leased Premises to another public charter school shall contain the following provisions:

(a) the subtenant is, and shall at all times be, a public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 (D.C. Official Code § 38-1800.01 et Seq. (Supp. 2005));

(b) the subtenant shall operate the leased premises in the sublease as a public charter school and in accordance with all applicable laws, including without limitation, the District of Columbia School Reform Act of 1995 ( D.C. Official Code § 38-1800.01 et Seq. (Supp. 2005)) and all regulations promulgated thereunder; and

(c) if at any time sublessee's charter to operate as a public charter school in the District of Columbia shall be revoked or adversely modified, such revocation or modification shall constitute a default under the sublease, and the sublease shall, at Tenant's option, immediately terminate without further notice.

9.1.5 Within twenty (20) business days of a written request by Tenant, Landlord agrees to provide a non-disturbance agreement to any of Tenant's subtenants, executed by Landlord and in such form as may be reasonably determined by Landlord, stating that, in the event this Lease is terminated for any reason, so long as subtenant is not in default of its obligations under its sublease with Tenant, then such sublease and the rights of the subtenant thereunder shall remain undisturbed and shall continue in full force and effect so long as subtenant continues to perform all of its obligations under the sublease, and that such sublease shall survive any and all terminations of this Lease or other action taken to enforce the Lease, provided that:

(a) Landlord has been given the right to review and approve the sublease, which approval shall not be unreasonably withheld, conditioned or delayed;

(b) Subtenant is obligated under the sublease to pay fair market rent based upon an arm's length transaction with Tenant. In determining whether subtenant is paying fair market rent under its sublease, consideration shall be given to whether subtenant has prepaid part of its rent by paying for some or all of the cost of improvements to the Leased Premises and the value of such improvements. A sublease between Tenant and a subtenant where subtenant or one of its members, shareholders, officers or directors is a member of Tenant shall be an arm's length transaction so long as the sublease otherwise complies with this provision;

(c) If subtenant is a public charter school, that the D.C. Public Charter School Board or other chartering authority has not (i) commenced proceedings to revoke its charter pursuant to D.C. Official Code § 38-1802.13; (ii) refused to renew its charter pursuant to D.C. Official Code § 38-1802.12; or (iii) placed the charter school on probationary status pursuant to D.C. Official Code § 38-1802.12(d)(5)(B), and has a charter in effect and established pursuant to D.C. Official Code §§ 38-1802.01 through §§ 38-1802.15;

(d) If subtenant is not a public charter school, that Landlord has been provided by subtenant with financial information, business records and such other documentation relating to the subtenant as may be reasonably required by Landlord, and that Landlord, in its reasonable judgment, has determined that subtenant has the financial capacity, controls and resources necessary to satisfy its obligations under the sublease and that its business operations at the Leased Premises will be a Permitted Use hereunder.

## **ARTICLE X**

### **TRANSFERS BY LANDLORD**

#### **Section 10.1 Assignment and Sale.**

Landlord may freely assign, transfer, sublet, hypothecate, pledge or mortgage the Leased Premises and Landlord's interest under the Lease without Tenant's prior consent, provided Tenant's interest in the Lease is not impaired.

#### **Section 10.2 Landlord's Mortgagee.**

10.2.1 Except as provided in this Article X, nothing contained herein shall restrict or otherwise impair the right of Landlord to transfer, convey, sell, mortgage or otherwise deal with the fee to the Leased Premises or affect the right of Landlord to assign this Lease and the rental and other sums payable hereunder as further collateral security for any such fee mortgage or otherwise, and Tenant agrees to honor any such assignment from and after receipt of an executed copy thereof.

10.2.2 Tenant further agrees that while any such mortgage or other encumbrance is in force, and if Tenant shall have been given written notice thereof and the name and address of the mortgagee and/or trustee, Tenant shall give said mortgagee or trustee a duplicate copy of any and all notices of default in writing which Tenant may give or serve upon Landlord pursuant to the terms of this Lease, and any such notice shall not be effective until said duplicate copy is given to such mortgagee or trustee. A different address may be designated by such mortgagee or trustee by written notice delivered to Tenant from time to time.

10.2.3 Any such mortgagee and/or trustee may, at its option, at any time before any rights of the Tenant shall have accrued as a result of any default of Landlord hereunder, make any payment or do any other act or thing required of the Landlord by the terms of this Lease; and all payments so made and all things so done or performed by any such mortgagee and/or trustee



shall be as effective to prevent accrual of any rights of Tenant hereunder as the same would have been if done and performed by the Landlord instead of by any such mortgagee or trustee.

10.2.4 No such mortgagee or trustee of the rights and interests of the Landlord hereunder shall be or become liable to Tenant as an assignee of this Lease until such time as said mortgagee or trustee shall by foreclosure or other appropriate proceedings in the nature thereof, or as the result of any other action or remedy provided for by such mortgagee or deed of trust, or by proper conveyance from Landlord, acquire the rights and interests of the Landlord under the terms of this Lease, and such liability of said mortgagee or trustee shall terminate upon such mortgagee's or trustee's assigning such rights and interests to another party.

## ARTICLE XI

### TENANT DEFAULT

**Section 11.1** Events of Default. Each of the following shall be an "Event of Default" by Tenant under this Lease:

11.1.1 Failure by Tenant to pay any installment of Rent or to pay or cause to be paid Impositions (to the extent Tenant is obligated to pay same or cause same to be paid), insurance premiums or other liquidated sums of money herein stipulated in this Lease to be paid by Tenant if such failure shall continue for a period of thirty (30) calendar days after written notice thereof has been delivered by Landlord to Tenant (with a copy of said notice also to be delivered to any holder of a Leasehold Mortgage or trustee as provided in Article XII hereof). Notwithstanding the foregoing, Landlord hereby agrees to extend the thirty (30) day cure period to a period not to exceed sixty (60) calendar days if Tenant's failure to pay is due to the non-receipt of by NIA of its Facility Allowance or Foundation Level payments for reasons outside of NIA's reasonable control.

11.1.2 Except otherwise stated in this Section 11.1, failure by Tenant to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease (other than the payment of Rent, Impositions, insurance premiums or other liquidated sums of money or the other provisions of this Section 11.1) stipulated in this Lease to be observed and performed by Tenant if such failure shall continue for a period of thirty (30) calendar days after notice thereof has been delivered by Landlord to Tenant (with a copy of said notice also to be delivered to any holder of a Leasehold Mortgage or trustee as provided in Article XII hereof); provided, however, that if any such failure (other than a failure involving payment of liquidated sums of money) cannot reasonably be cured within such thirty (30) day period, then Landlord shall not have the right to terminate this Lease pursuant to this Section 11.1.2 for so long as Tenant proceeds in good faith and with due diligence to remedy and correct such failure, provided that Tenant has commenced to cure such failure after the effective date of such notice (and in any event has so commenced within such thirty (30) day period) and has completed such cure within sixty (60) calendar days after the expiration of such thirty (30) day period; provided further that such Tenant cure period shall be extended on a day for day basis due to an event of Force Majeure.

11.1.3 Bankruptcy. If there shall be filed by or against Tenant in any court, pursuant to any statute of the United States, the District of Columbia, or of any State, a bona fide petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's property, or Tenant shall make an assignment for the benefit of creditors, or if any governmental department, bureau, corporation or authority shall by reason of the inability of Tenant to meet its obligations in due course take over the assets or property of Tenant.

Notwithstanding the foregoing, provided however, that if any such petition shall be filed against Tenant or any such action shall be taken involuntarily against Tenant, and if in good faith Tenant, as applicable, shall promptly thereafter commence and diligently prosecute any and all proceedings and actions necessary to secure the dismissal of any such petition or the restoration of Tenant to the possession of its assets, and such petition shall be dismissed or Tenant be restored to the possession of its assets, within ninety (90) calendar days after the filing of the aforesaid involuntary petition or the taking of the aforesaid action, same shall not be an Event of Default, provided Tenant shall within the aforesaid ninety (90) calendar days pay all the Rent required to be paid by Tenant under the terms of this Lease which have accrued during the aforesaid period.

11.1.4 Failure of Tenant, to timely comply with the covenants, terms and conditions set forth in Article V.

11.1.5 Failure of Tenant or any party by, through or under Tenant (including any subtenant) to use the Leased Premises for Permitted Uses.

11.1.6 Deliberately omitted

11.1.7 Any event or condition occurs which results in, or permits the forfeiture by Tenant of its material rights, benefits or privileges under any Leasehold Mortgage which continues unremedied for any applicable cure period; or the occurrence of any event, circumstance, or condition which, after any applicable cure or notice period or lapse of time, or both, would constitute a default under any Leasehold Mortgage, which continues unremedied for any applicable cure period, whether or not a party thereto exercises any of its rights and remedies with respect to such default.

11.1.8 If, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders or regulations, it shall become a violation of law to do business with Tenant during the term of this Lease, same shall be an Event of Default under this Lease, and Landlord shall be entitled to exercise all rights and remedies required by the Terrorist Acts or Anti-Terrorism Order, including without limitation, the termination of this Lease.

11.1.9 Any material representation or warranty of Tenant made in this Lease, shall fail to be correct in any material respect on the date made or deemed remade.

## **Section 11.2 Landlord Remedies for Tenant Default.**

11.2.1 Upon an Event of Default by Tenant under this Lease, Landlord shall have the right to terminate this Lease or pursue any other remedies provided in Section 11.2.3. However,

upon the occurrence of an Event of Default, Landlord agrees not to terminate this Lease until Landlord has given Tenant and all Approved Mortgagees written notice of its intention to terminate this Lease (the "Notice to Terminate"), and the Event of Default as specified in such Notice to Terminate is not cured prior to the termination date specified therein and an applicable Additional Cure Period to cure the Event of Default by an Approved Mortgagee specified in Section 11.7.1 has elapsed without the Event of Default being cured and no Approved Mortgagee shall have exercised its rights under Article XII. Upon the concurrence of all of the foregoing events, then unless such Event of Default shall have been cured, the Term of this Lease shall expire and terminate with the same force and effect as though the date so specified were the date herein originally fixed as the expiration date of the Term. Tenant shall reimburse Landlord for all fees and costs (including reasonable attorneys' fees) expended in connection with Landlord's exercise of its remedies and dispossession of Tenant as provided hereunder.

#### 11.2.2 Lease Termination.

(a) If Landlord terminates this Lease as expressly permitted under Section 11.2.1 above, the Term shall be deemed to have ended as fully and completely as if the said time were the date herein originally fixed for the expiration of the Term, and Tenant shall thereupon quit and peacefully surrender the Leased Premises to Landlord, ALL NOTICES TO QUIT BEING EXPRESSLY WAIVED, together with all Redevelopment Project Improvements and Alterations, buildings, improvements, appurtenances and fixtures now or hereafter erected and maintained thereon, without any payment therefor by Landlord.

(b) Upon the aforesaid termination date or at any time thereafter Landlord may reenter the Leased Premises and remove all persons and property there from (other than subtenants with respect to which Landlord has agreed in writing not to disturb their possession and that are not in default under their respective subleases), either by summary proceedings or by any suitable action or proceeding at law, or otherwise if permitted by law, without being liable to indictment, prosecution or damages therefor, and may have, hold and enjoy the Leased Premises together with any additions, Alterations, buildings, replacements, appurtenances, fixtures and improvements now or hereafter erected and maintained thereon as Landlord's sole and exclusive estate and interest.

(c) If the Lease is terminated pursuant to Section 11.2.1, notwithstanding any other provisions to the contrary in the Lease, Tenant shall pay all Rent due and payable to Landlord up to and until the Lease termination date specified in Landlord's Notice to Terminate (unless Tenant fails to vacate the Leased Premises on the termination date specified, then Tenant shall pay Rent to Landlord up to and until the date of vacation as though the Lease had not been terminated, as well as any and all damages Landlord may suffer and can establish that result from Tenant's failure to vacate on the termination date) or as specified in an order of a court of competent jurisdiction.

#### 11.2.3 Additional Remedies.

If an Event of Default shall occur, Landlord shall have the right to exercise all of its rights and remedies under this Lease, at law or in equity, including specific performance. In addition to and not in limitation of the other remedies in this Lease, Landlord shall be entitled to

the restraint by injunction of any violation or attempted or threatened violation of any of the non-monetary terms, covenants, conditions, provisions or agreements of this Lease. No failure by Landlord hereto to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy upon a default hereunder, no acceptance by Landlord of partial performance, and no custom or practice of the Parties hereto at variance with the provisions hereof shall constitute a waiver of any such default or of any of the terms of this Lease or a waiver of Landlord's right to demand exact compliance with the provisions contained in this Lease. None of the terms of this Lease to be kept, observed, or performed by Landlord and no breach thereof shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each of the terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any default hereunder by Landlord shall be implied from any omission by the Tenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

11.2.4 The acceptance by Landlord of Rent or any other charges due to Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the Rent or other charges then due shall be deemed to be other than on account of the earliest installment of the Rent or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as the Rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The acceptance by Landlord of any of the Rent or any other sum of money or any other consideration paid by Tenant after the termination of the Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not in this Lease reinstate, continue or extend the Term, or take away, diminish or in any manner impair the efficacy of any such notice of termination unless so agreed to in writing and signed by Landlord.

11.2.5 Neither acceptance of the keys nor any other act or thing done by Landlord or any of Landlord's Related Parties during the Term shall be deemed to be an acceptance of a surrender of the Leased Premises, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

#### 11.2.6 Landlord's Right to Perform Tenant's Covenants.

(a) As to any payment or act on Tenant's part required under the Lease, provided the failure to make the payment or to perform the act constitutes an Event of Default, then Landlord, as hereinafter provided, without waiving, or releasing Tenant from, any obligation of Tenant contained in this Lease, may, but shall be under no obligation to make such payment or perform such other act; and may enter upon the Leased Premises for any such purpose, and take all such action thereon, as may be necessary therefore..

(b) All sums paid by Landlord pursuant to Section 11.2.6(a) and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection with the performance of any such act or in connection with enforcing Landlord's rights to collect such amounts from Tenant, together with interest thereon at the rate equal to the then Interest Rate plus five percent (5%) per annum from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, including reasonable attorneys' fees, shall be paid by Tenant to Landlord on demand as Additional Rent. Landlord shall provide Tenant with at least ten (10) days' advance written notice before it is entitled to be paid the then Interest Rate plus five percent (5%) per annum with respect to any cost or expense, including reasonable attorneys' fees, incurred by Landlord in connection with the performance of any act or in connection with enforcing Landlord's rights to collect such amounts from Tenant. The foregoing notice requirement does not apply if Landlord, in its reasonable judgment, needs to take emergency action to enforce its rights hereunder, nor does the failure of Landlord to provide the aforesaid notice to Tenant operate as a bar or waiver of Landlord's right to recover any costs (excluding the imposition of a charge calculated based on the Interest Rate plus five percent (5%) per annum) it reasonably incurs in order to enforce its rights under the Lease.

(c) Unless specifically provided otherwise in the Lease, under no circumstances shall either the exercise by Landlord of the rights granted in this Section 11.2.6 to enter upon the Leased Premises for any purpose specified herein and take all such action thereon as may be necessary therefor, or the exercise of any other right or remedy granted to Landlord under any other provision of this Lease to cure, prevent or take any other action with respect to any default by Tenant, constitute an eviction of Tenant, result in a termination of this Lease, result in any liability to Landlord or in any manner whatsoever relieve Tenant from any liability to pay Rent or other sums payable by Tenant as in this Lease or relieve Tenant from the keeping, observance and performance of any other covenant, condition and agreement on the part of Tenant to be kept, observed and performed under this Lease, unless Landlord shall in writing expressly and specifically state otherwise.

11.2.7 All the rights and remedies of Landlord herein mentioned or referred to, or arising hereunder, shall be deemed to be distinct, separate and cumulative, whether or not so provided herein, and no one or more of such rights or remedies, whether exercised or not, nor any mention of, or reference to, any one or more of them herein, shall be deemed to be in exclusion of, or a waiver of, any of the others, or of any rights or remedies which Landlord might have, whether by present or future law or pursuant to this Lease, and Landlord shall have to the fullest extent permitted by law, the right to enforce any rights or remedies separately, and to take any lawful action or proceedings to exercise or enforce any rights or remedies whether at law or in equity or otherwise, without thereby waiving, or being thereby barred or stopped from exercising and enforcing any other rights or remedies by appropriate action or proceedings.

11.2.8 Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage

to, or destruction of, the Leased Premises or any part thereof, occurring during any period when Tenant shall have failed or neglected to provide insurance as aforesaid. Upon the expiration of this Lease, the unearned premiums upon any such transferable insurance policies issued pursuant to the terms of this Lease shall be apportioned only if Tenant shall not then be in default in keeping, observing or performing any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Lease on Tenant's part to be kept, observed or performed.

11.2.9 The fee title of Landlord and the leasehold estate of the Tenant and Tenant's interest in the Improvements on the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the leasehold estate created hereby, or any interest in either thereof or in Tenant's interest in the Improvements on the Leased Premises, may be held directly or indirectly by or for the account of any Person who shall own the fee estate in the Leased Premises or any portion thereof, and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the fee estate and all persons having any interest in the Lease or the leasehold estate and in Tenant's interest in the Improvements on the Leased Premises, including the holder of any Leasehold Mortgage upon the leasehold estate, shall join in the execution of a written instrument effecting such merger of estate.

**Section 11.3 Provision for Attorneys' Fees.** In the event Landlord is represented in any legal action or proceeding to enforce the terms of the Lease by the Office of the Attorney General for the District of Columbia ("OAG"), reasonable attorney's fees shall be calculated based on an equivalent amount that a private firm of comparable size of OAG in the Washington D.C. area would have charged for such representation based on the number of hours OAG staff participate in any such litigation.

## **ARTICLE XII**

### **RIGHTS OF APPROVED MORTGAGEES**

#### **Section 12.1 Approved Mortgagee.**

12.1.1 The term "Approved Mortgagee" shall mean only the holder of a Leasehold Mortgage pursuant to Permitted Financing who has notified Landlord pursuant to Section 12.3 hereof, and which holder shall be an Institutional Lender. Notwithstanding anything to the contrary in this Lease, Tenant may mortgage its leasehold estate under this Lease under a Leasehold Mortgage with an Approved Mortgagee at any time and from time to time, upon notice to and written approval from Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, prior to becoming an "Approved Mortgagee" for the purposes and benefits of this Lease, such mortgagee shall have agreed in writing with Landlord (in recordable form) that:

(a) prior to initiating any foreclosure proceedings under any Leasehold Mortgage, the Approved Mortgagee shall first offer to Landlord in writing, the option (with no obligation upon Landlord to exercise same) for Landlord to fully satisfy Tenant's obligations under the Leasehold Mortgage, at par, to be exercised within sixty (60) calendar days of delivery of written

notice to Landlord of Approved Mortgagee's intent to initiate foreclosure proceedings, which notice shall include the amount of Tenant's outstanding obligations to such Approved Mortgagee;

(b) assuming Landlord has not exercised the option described in Section 12.1.1(a), prior to acquiring the leasehold estate of Tenant in connection with foreclosure proceedings, or any conveyance in lieu of foreclosure, and prior to any further conveyance of the leasehold estate subsequent to any such foreclosure or conveyance in lieu of foreclosure, Approved Mortgagee (or any successor or acquirer of the leasehold estate) shall offer the leasehold estate for sale to Landlord in writing on the same terms and conditions being offered by or to any third party, whereupon Landlord will have a thirty (30) day period to determine whether to exercise its option to purchase the leasehold estate on such terms and conditions (but shall be under no obligation to do so), failing which Approved Mortgagee (or other successor or acquirer of the leasehold estate at foreclosure) may, subject to Section 12.2.3, so convey the leasehold estate to such third party on such particular terms and conditions;

(c) that upon any default under the Leasehold Mortgage, which remains uncured after the expiration of any applicable notice and cure period, such Approved Mortgagee will apply or cause to be applied any rents or other monies received from any subtenant at the Leased Premises or assignee or licensee of Tenant in excess of the monthly amount due and payable by Tenant (excluding the portion remitted to Landlord pursuant to Section 9.1.1) under such Leasehold Mortgage to the Rent due under this Lease; and

(d) it acknowledges the terms of this Lease.

12.1.2 The term "Leasehold Mortgage" as used in this Lease shall mean a mortgage deed of trust or other security instrument from an Approved Mortgagee by which Tenant's leasehold interest in the Leased Premises is mortgaged, conveyed, assigned or otherwise transferred to an Approved Mortgagee, to secure a debt or other obligation which (i) in the case of construction financing, is security only for indebtedness of Tenant incurred by Tenant with respect only to the development, construction and operation of the Leased Premises and (ii) secures a loan for the operation, repair and maintenance of the Leased Premises providing by its terms to be paid in full no later than the expiration of the full original Term of this Lease. Tenant's leasehold interest in the Leased Premises shall not be used as collateral for any other mortgage deed or trust or security instrument to secure a debt or obligation of Tenant for any other property other than to secure a debt or obligation of Tenant for the Leased Premises. The holder of a Leasehold Mortgage shall be a "Leasehold Mortgagee."

12.1.3 Landlord agrees to cooperate with a prospective Leasehold Mortgagee and provide reasonable review and approval of the documents submitted by such prospective Leasehold Mortgagee, including without limitation, loan documents and intercreditor agreement, if any. Notwithstanding the foregoing, Landlord's approval of any such documents shall be at Landlord's sole and absolute discretion. If any Leasehold Mortgage requires as a condition of financing that Landlord and Tenant shall enter into a modification of this Lease, Landlord shall work in good faith with Tenant and the aforesaid Leasehold Mortgagee to make such changes as are requested provided that the requested modification doesn't materially and adversely change Landlord's rights and obligations under this Lease.

## **Section 12.2 Leasehold Mortgage Authorized.**

12.2.1 Subject to the foregoing and the other provisions of this Article XII, Tenant may mortgage, pledge, hypothecate or encumber (collectively "Mortgage") this Lease and enter into a Leasehold Mortgage upon a sale and assignment of the leasehold estate permitted by this Lease or may mortgage or otherwise encumber Tenant's leasehold estate for the benefit of an Approved Mortgagee, under one or more Leasehold Mortgages and assign this Lease as security for such Leasehold Mortgage or Leasehold Mortgages.

12.2.2 Any such Leasehold Mortgage shall be expressly subordinate to Landlord's interest in this Lease and the Leased Premises, and that anyone claiming by or through Tenant shall be so subordinate and shall have no recourse against Landlord. Because Tenant will hold no interest in the fee, Tenant shall not have the right to encumber the fee interest of Landlord in the Leased Premises or the reversion of Landlord or rentals due Landlord, and as such Approved Mortgagee shall not acquire any greater interest in the Leased Premises than Tenant has under this Lease.

12.2.3 The transfer or Assignment of the leasehold estate of Tenant under this Lease pursuant to any foreclosure (judicial or otherwise) by any Approved Mortgagee or any deed or assignment in lieu of foreclosure or the disposition of the leasehold estate by the holder of such Leasehold Mortgage shall only be for Permitted Uses only.

## **Section 12.3 Notice to Landlord.**

12.3.1 If Tenant shall, on one or more occasions, mortgage Tenant's leasehold estate to an Approved Mortgagee, and if the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage, and the name and address of the Approved Mortgagee, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Article XII shall apply with respect to each such Leasehold Mortgage.

12.3.2 Landlord shall promptly, upon receipt of a communication purporting to constitute the notice provided for by Section 12.3.1 above, acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided for by Section 12.3.1 above or, in the alternative, notify the Tenant and the Approved Mortgagee of the rejection of such communication as not conforming with the provisions of Section 12.3.1 above, and specify the specific basis of such rejection.

12.3.3 After Landlord has received the notice provided for by Section 12.3.1, the Tenant, upon being requested to do so by Landlord, shall, with reasonable promptness, provide Landlord with copies of the note or other obligation secured by such Approved Mortgagee and of any other documents pertinent to the Leasehold Mortgage as specified by the Landlord not previously provided. If requested to do so by Landlord, the Tenant shall, thereafter, also provide the Landlord, from time to time, with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by an appropriate certification as to their authenticity as true and correct copies of official records, and all nonrecorded documents shall be accompanied by a certification by Tenant that such



documents are true and correct copies of the originals. From time to time, upon being requested to do so by Landlord, Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

12.3.4 In the event of any assignment of a Leasehold Mortgagee by an Approved Mortgagee, or in the event of a change of address of an Approved Mortgagee, or of an assignee of such Leasehold Mortgagee, notice of the new name and address shall be provided to Landlord pursuant to this Lease.

#### **Section 12.4 Consent of Approved Mortgagee.**

So long as Approved Mortgagee is in compliance with this Lease, no cancellation or surrender of this Lease shall be effective as to any Approved Mortgagee unless consented to in writing by such Approved Mortgagee. The foregoing shall not prevent the termination of the Lease in accordance with its terms.

#### **Section 12.5 Approved Mortgagee's Opportunity to Cure.**

Landlord, upon providing Tenant any notice under this Lease of: (a) default under this Lease, or (b) a termination of this Lease, or (c) a matter on which Landlord may predicate or claim a default, shall, at the same time, provide a copy of such notice to every Approved Mortgagee. From and after such notice has been given to an Approved Mortgagee, such Approved Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, an Additional Cure Period specified in Section 12.7.1, to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice at the instigation of such Approved Mortgagee as if the same had been done by Tenant. Tenant does hereby authorize entry upon the Leased Premises by the Approved Mortgagee for such purpose.

#### **Section 12.6 Termination Notice to Approved Mortgagee.**

12.6.1 Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, Landlord shall not effectuate the termination of the Lease unless, following such Event of Default, Landlord has delivered a copy of any Notice to Terminate to any Approved Mortgagee.

12.6.2 Any notice to be given by Landlord to an Approved Mortgagee pursuant to any provision of this Article XII shall be deemed properly addressed if sent to the Approved Mortgagee who served the notice referred to in Section 12.3.1 unless notice of a change of Leasehold Mortgage has been given to Landlord pursuant to Section 12.3.4.

#### **Section 12.7 Procedure on Default.**

12.7.1 If Landlord shall elect to terminate this Lease by reason of an Event of Default, the termination date for the Lease in the Notice to Terminate with respect to an Approved Mortgagee shall be extended for ten (10) calendar days with respect to any default that is capable

of being cured with the payment of money, and for thirty (30) calendar days for all other defaults (each as "Additional Cure Period"), provided that such Approved Mortgagee shall, during such ten (10) day or, as applicable, thirty (30) day period:

(a) pay or cause to be paid, the Rent, insurance premiums and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Premises junior in priority to the lien of the Leasehold Mortgage held by such Approved Mortgagee and (B) past nonmonetary obligations then in default and not reasonably susceptible of being cured by the payment of money by such Approved Mortgagee.

(b) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence within sixty (60) calendar days of the expiration of any Additional Cure Period assuming that Landlord has not previously exercised its right to satisfy the obligations under the Leasehold Mortgage or purchase the leasehold estate prior to such foreclosure proceedings, as set forth in Section 12.1.1(a).

(c) comply or in good faith, with reasonable diligence and continuity, commence to comply and thereafter continue to comply with all nonmonetary requirements of this Lease then in default, and reasonably susceptible of being complied with by such Approved Mortgagee.

12.7.2 If at the end of such ten (10) or, as applicable, thirty (30) day period set forth in Section 12.7(a) the Approved Mortgagee is not complying with Section 12.7(a), this Lease shall terminate. The Additional Cure Period provided to Tenant pursuant to Article XII shall run concurrently with the cure periods set forth in Section 12.7.

12.7.3 If the Approved Mortgagee is in compliance with Section 12.7(a), and Approved Mortgagee is enjoined or stayed by a court of competent jurisdiction from foreclosing under the Leasehold Mortgage, this Lease shall not then terminate and the time for completion of such Approved Mortgagee of its proceedings shall continue so long as such Approved Mortgagee is enjoined or stayed by a court of competent jurisdiction, and shall not terminate thereafter for so long as such Approved Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 12.7, however, shall be construed to extend this Lease beyond the original Term thereof, or to require an Approved Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If all defaults or Events of Default shall be cured any such extended period set forth in this Section 12.7 and the Approved Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

12.7.4 If an Approved Mortgagee is complying with Section 12.7(a), upon the acquisition of the leasehold estate herein by such Approved Mortgagee or its designee, or any other purchaser at a foreclosure sale, or otherwise and upon the discharge of any lien, charge or

encumbrance against the Tenant's interest in this Lease or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Approved Mortgagee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided however, that as a condition precedent to such continuation of this Lease, (a) such Approved Mortgagee or its designee, or any other purchaser at a foreclosure sale shall cure the Event of Default immediately upon the acquisition of the leasehold estate and use the Property for Permitted Uses only; and (b) to the extent that upon any acquisition of the leasehold estate at a foreclosure sale, or conveyance in lieu thereof, Approved Mortgagee receives any excess between the purchase price of the leasehold estate and the outstanding balance of the Leasehold Mortgage, Approved Mortgagee shall hold such excess proceeds in an interest bearing account maintained with Approved Mortgagee or another commercial financial institution acceptable to Landlord as a security deposit hereunder for the benefit of Landlord. Such funds shall be held and distributed as follows: (i) to the extent Landlord shall suffer any costs or damages during the balance of the Term, then upon application by Landlord, Approved Mortgagee shall disburse such funds to Landlord to defray such costs or damages or (ii) upon written instruction by Landlord to Approved Mortgagee, the balance of such security deposit shall be disbursed to Tenant.

12.7.5 For the purposes of this Article XII, any Approved Mortgagee, as such, shall not be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Approved Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. However, in the event of any sale of this Lease, and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or any assignment or transfer of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, any assignee or transferee under this Article XII, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the Tenant of the leasehold estate.

#### **Section 12.8      No Merger.**

So long as any Leasehold Mortgage is in existence, unless all Approved Mortgagees shall otherwise expressly consent in writing, the fee title to the Leased Premises and the leasehold estate of Tenant therein created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant, or by a third party, by purchase or otherwise.

### **ARTICLE XIII**

#### **CONDEMNATION**

#### **Section 13.1   Separate Awards.**

13.1.1 If any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, Landlord shall promptly give Tenant written notice thereof. In the event of any condemnation of any interest in the Leased Premises, then the court in such condemnation proceedings shall, if not prohibited by law, be requested to make separate awards to Landlord and Tenant, so that: (i) Landlord receives the award for its fee simple interest in and to the Leased Premises and Landlord's interest in this Lease, (including, without limitation, the reversionary interest in the Redevelopment Project Improvements), subject to the leasehold estate of Tenant therein; and (ii) Tenant receives the award for the leasehold estate and its ownership in fee simple of the improvements on the Leased Premises (subject to the reversionary interest of Landlord upon the expiration of the Lease Term). Landlord and Tenant hereby agree to request such action by the court. To the extent permitted by law, this Section 13.1.1 shall be construed as superseding any statutory provisions now in force or hereafter enacted concerning condemnation proceedings.

13.1.2 If such court is prohibited by law from making separate awards to Landlord and Tenant, or declines to do so, then the award in such condemnation proceedings shall be divided between Landlord and Tenant so that each receives the amount it would have received if separate awards had been made pursuant to Section 13.1.1.

## **Section 13.2 Total Condemnation.**

13.2.1 Tenant Option to Terminate. If all of the Leased Premises is condemned pursuant to a condemnation, or so much thereof that the remainder is unsuitable, in Tenant's reasonable opinion, for use by Tenant for Tenant's uses and purposes, or if any portion of the Leased Premises is condemned pursuant to a condemnation at a time when the remaining Lease Term is so limited as, in Tenant's reasonable opinion, to render restoration or repair of the remainder uneconomical or unfeasible, then upon Tenant's notice to Landlord given within one hundred eighty (180) calendar days after any such condemnation, this Lease shall terminate (i) with respect to that portion of the Leased Premises so taken, as of the date that title thereto is vested in the condemning authority, and the Rent attributable to that portion of the Leased Premises so taken shall cease and be abated for the entire unexpired portion of the Lease Term, and (ii) with respect to that portion of the Leased Premises not taken, on the date Tenant elects to terminate this Lease pursuant to this Section 13.2.1, and the Rent allocable to the portions of the Leased Premises are not condemned shall, from the date of such vesting to the termination, be the amount which would be payable pursuant to Section 13.3. Upon such termination, the Parties shall be released from any further liability or obligation under this Agreement, except as otherwise provided in this Agreement.

13.2.2 Any such termination of this Lease pursuant to this Section 13.2 shall not prejudice the rights of Landlord and Tenant with respect to the awards for such taking as provided in Section 13.1.1.

13.2.3 Waiver of Right. In the event that Tenant does not elect to terminate this Lease pursuant to Section 13.2.1 within one hundred eighty (180) calendar days after any such condemnation, then the remainder of the Leased Premises shall be deemed suitable for use by Tenant for Tenant's uses and purposes and Tenant shall be deemed to have waived any right to terminate this Lease pursuant to this Section 13.2 as a result of such taking.

**Section 13.3**      **Partial Condemnation.**

If only a part of the Leased Premises is condemned pursuant to a condemnation or if the remainder is, in Tenant's reasonable opinion, suitable for use by Tenant for Tenant's uses and purposes, this Lease shall remain in full force and effect as to that portion of the Leased Premises not taken, but the Rent shall be reduced during the unexpired portion of the Lease Term to such amount as may be fair and equitable under the circumstances, giving due consideration to the amount of Rent formerly payable hereunder, the portion of the Leased Premises taken, and the value and utility of the remainder of the Leased Premises.

**Section 13.4**      **Tenant's Restoration.**

If the Redevelopment Project Improvements is affected by condemnation, if this Lease is not terminated as a result thereof, Tenant shall repair or restore the remainder of the Redevelopment Project Improvements to a functional unit to the extent physically and economically practical and feasible under the circumstances with reasonable speed at the expense of Tenant, subject to Force Majeure Events and availability of sufficient funds.

**Section 13.5**      **Landlord Termination Option.**

In the event of any condemnation, (a) Tenant has not commenced restoration within one hundred eighty (180) calendar days after any such condemnation after the date of the judgment, decree or other vesting event regarding the condemnation (subject to extension for Force Majeure Events), Landlord shall have the option to terminate this Lease upon Landlord's written notice to Tenant given within sixty (60) calendar days after the expiration of the one hundred eighty (180) calendar day period after the date of the judgment, decree or other vesting event regarding such condemnation (as extended for Force Majeure Events).

**Section 13.6**      **Rights of Approved Mortgagee.**

Landlord and Tenant further agree and acknowledge that any right of Landlord in and to condemnation proceeds applicable to the leasehold estate (but not the fee simple estate in the Leased Premises or Landlord's interest under this Lease) shall be and remain subordinate and inferior to the interests in such proceeds held by any Approved Mortgagee. Under no circumstances whatsoever shall Landlord maintain that it has any right or claim of any kind or nature in and to any condemnation proceeds applicable to the leasehold estate (but not the fee simple estate in the Lease Property and Landlord's interest under this Lease) of equal priority or superior to the interest in such proceeds held by any Approved Mortgagee. If there is an Approved Mortgagee, such Approved Mortgagee shall, to the extent permitted by law, be made a party to any condemnation proceeding, if it so desires to be made a party.

**ARTICLE XIV**

**PEACEFUL ENJOYMENT/LANDLORD INSPECTIONS/REPORTING**

**Section 14.1**      **Peaceful Enjoyment.**

Subject to all of the terms and provisions of this Lease, Landlord covenants and warrants that during the entirety of the Lease Term, Tenant, on paying the Rent and other payments herein provided and performing and observing all of its covenants and agreements herein contained and provided, shall and may peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, the Leased Premises during the entire Lease Term. Landlord covenants to Tenant that Landlord owns good and marketable title to the Leased Premises.

#### **Section 14.2 Landlord Physical Inspection Right.**

14.2.1 Upon Final Completion and during the Lease Term, Landlord, in its capacity as Landlord hereunder, shall have the right (but not the duty nor obligation), upon reasonable advance written notice to Tenant (of at least twenty-four (24) hours, except in the event of emergency), to enter upon the Leased Premises during normal business hours for the purpose of inspecting the Leased Premises; provided, however, (i) Tenant shall have the right to have a representative of Tenant accompany Landlord during such entry and inspection, and (ii) Landlord shall use reasonable efforts not to interfere with the activities (including construction activities) of Tenant or the subtenants of the Leased Premises.

14.2.2 Any inspection by Landlord of the Leased Premises shall not be deemed or construed as a waiver of or approval of any Event of Default under this Lease existing at the time of the inspection; and provided further, however, that in no event shall any such inspection by Landlord be deemed or construed to be the assumption by Landlord of all or any of Tenant's obligations under this Lease, including, without limitation, the obligation to maintain the Leased Premises in a safe and secure manner and in a state of good repair.

14.2.3 During the last thirty (30) months of the Lease Term, Landlord shall have the right to enter the Leased Premises during normal business hours, upon reasonable prior written notice to Tenant, for purposes of showing the Leased Premises to prospective purchasers and tenants.

### **ARTICLE XV**

#### **SURRENDER OF LEASED PREMISES**

##### **Section 15.1 Surrender.**

Tenant covenants and agrees to and with Landlord that upon termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant will peaceably and quietly yield up and surrender possession to Landlord of the Leased Premises and the Redevelopment Project Improvements, including without limitation, all buildings and permanent improvements and other properties herein provided to be the property of Landlord on termination hereof without disturbance or molestation thereof, subject to Landlord's rights under Section 15.2 below.

##### **Section 15.2 Removal of Decorations, Furnishings, Equipment and Inventory.**

Tenant, at Tenant's sole cost and expense, shall promptly make all repairs, perform all maintenance and make all replacements in and to the Premises that are reasonably necessary or desirable to keep the Leased Premises and the Redevelopment Project Improvements in reasonably good condition and repair; in a reasonably clean, safe and tenantable condition; and otherwise in accordance with all Applicable Laws and the requirements of this Lease. Tenant shall maintain all Decorations, Fixtures, Furnishings, Equipment and Inventory, in reasonably clean, safe and sanitary condition, shall take good care thereof and make all reasonably necessary repairs and replacements thereto. Tenant shall not suffer no waste or injury to any part of the Leased Premises, and shall, at the expiration or earlier termination of the Lease Term, surrender the Leased Premises in an order and condition equal to or better than their order and condition on the Rent Commencement Date, except for ordinary wear and tear and insured casualty. All Alterations or affixed decorations in the nature of fixtures in or to the Leased Premises (including the Redevelopment Project Improvements) and to the Property made by either party shall immediately become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the end of the Lease Term hereof without disturbance, molestation or injury; provided, however, Tenant shall have the right, to remove all Decorations, Fixtures, Furnishings, Equipment and Inventory installed in the Leased Premises at the expense of Tenant at the termination or expiration of the Lease Term, if Tenant is not in default of the Lease at the time of such termination or expiration. If such property of Tenant is not removed by Tenant upon termination or expiration of the Lease, such property shall be deemed abandoned and Landlord may dispose of such property thereafter, provided that Tenant shall reimburse Landlord for the disposal of such property as Additional Rent. If Tenant shall make any Alterations to the Premises without Landlord's prior written consent which required Landlord's prior approval, Landlord may elect, at Landlord's sole option, to require Tenant to remove the same at the expiration or earlier termination of this Lease and place the Leased Premises in the same condition as before such Alterations were made.

## ARTICLE XVI

### NOTICE

Except the Rent payment provisions in Section 3.3.3, any notices or other communications required to be given under this Lease shall be in writing and delivered by certified mail (return receipt requested, first-class postage pre-paid), by hand, or by reputable private overnight commercial courier service. Notices served upon Landlord or Tenant in the manner aforesaid shall be deemed to have been received for all purposes under this Agreement at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next Business Day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, first-class postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Lease and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Lease. Either party may change its address for the giving of notices by notice given in accordance with this Section. If Landlord or the holder of any Leasehold Mortgage notifies Tenant that a copy of any notice to Landlord shall be sent to such holder at a specified address, then Tenant shall send (in the manner specified in this Section and at the same time such notice is sent to Landlord) a copy of

each such notice to such holder. Any such holder shall have thirty (30) calendar days (or such longer period of time necessary to cure such default if such default cannot reasonably be cured within such thirty (30) calendar days period provided such holder promptly commences any such cure and thereafter diligently pursues completion of such cure) after receipt of such notice to cure any Landlord default before Tenant may exercise any remedy. Any cure of Landlord's default by such holder shall be treated as performance by Landlord. All notices shall be addressed as follows:

If to Landlord: Office of Property Management  
441 Fourth Street, N.W., Suite 1100 South  
Washington, D.C. 20001  
Attention: Chief Property Management Officer  
Telecopy: 202-727-9877

with a copy to: Office of the Attorney General for the District of Columbia  
1100 15th Street, N.W., Suite 800  
Washington, D.C. 20005  
Attention: Deputy of Commercial Division  
Telecopy: 202-727-6014

If to Tenant: Old Congress Heights Redevelopment Company, LLC  
3215 Martin Luther King, Jr. Avenue, S.E.  
Washington, DC 20032  
Attention: Joshua Kern  
Telecopy: 202-727-6014

with a copy (which shall not constitute notice) to:

Stephen H. Marcus, Esq.  
1730 Rhode Island Avenue, N.W.  
Suite 713  
Washington, D.C. 20036  
Telecopy: 202-776-0394

## ARTICLE XVII

### LANDLORD DEFAULT

Except as otherwise provided in the Lease, it shall be a Landlord default ("Landlord Default") hereunder if Landlord fails to perform or observe any of its obligations under this Lease after a period of thirty (30) calendar days from the date Landlord receives written notice thereof from Tenant setting forth in reasonable detail the nature and extent of the failure and identifying the applicable Lease provision that such obligation was required to be performed hereunder; provided, however, that Landlord shall not have committed a Landlord Default if such failure is of a type and nature that cannot reasonably be cured within such thirty (30) day period, so long as Landlord promptly commences the curing of such failure within such thirty



(30) day period and thereafter diligently prosecutes to completion the curing of such failure. It is specifically understood and agreed that a Landlord Default occurs after the expiration of notice and applicable cure period.

Notwithstanding anything to the contrary contained in this Lease, Tenant specifically agrees that the exclusive remedy of Tenant for a Landlord Default shall be specific performance under this Lease.

None of Landlord's Related Parties shall have any personal liability under this Lease or on account of any undertaking herein contained, whether expressed or implied, nor shall Landlord or any of Landlord's Related Parties be liable to Tenant or any Tenant's Related Parties for any consequential damages, indirect losses, loss of value, temporary loss of business, lost profits, or lost opportunity damages at or arising from the Property suffered by Tenant. Tenant hereby releases Landlord and Landlord's Related Parties from all such personal liability, if any. Tenant hereby waives personal recourse against Landlord's officers, employees, agents or representatives or their respective assets.

#### **ARTICLE XVIII**

#### **INTENTIONALLY OMITTED**

#### **ARTICLE XIX**

#### **EXTENSIONS**

##### **Section 19.1 Extension Options.**

Tenant shall have the option (each, an "Extension Option") to extend the Term of this Lease for two consecutive periods of fifteen (15) additional Lease Years (each additional fifteen (15) Lease Year period is hereinafter referred to as an "Extension Period") so that Tenant may have the option to extend the Term therefor for a total of thirty (30) additional Lease Years, provided that Tenant provides written notice to Landlord of its election to exercise each such Extension Option ("Election Notice") anytime between thirty (30) and twenty-four (24) months prior to the expiration of the then existing Lease Term (as the same may have been extended); provided, however, Tenant may only exercise the second Extension Option if Tenant shall have exercised its first Extension Option. Each Extension Option may only be exercised by Old Congress Heights School Redevelopment Company LLC as Tenant and no other Person as Tenant, it being recognized that the Extension Options are non-transferable and personal to Old Congress Heights School Redevelopment Company LLC as Tenant.

##### **Section 19.2 Extension Period Base Rent**

For any Extension Period of the Lease, Base Rent shall be the fair market rental value for the Property, including the Redevelopment Project Improvements in their then condition, as used for school purposes (or such other additional purposes as the Property may then be used) upon Tenant's exercise of its Extension Option ("Fair Market Rental Value"), but in no event less than the then current total escalated and increased Base Rent. Fair Market Rental Value

notwithstanding, Base Rent for each Extension Period shall be escalated in accordance with the same method set forth in Section 3.1.1.

Fair Market Rental Value shall, in the first instance, be determined by Landlord within one hundred and twenty (120) calendar days of receipt of Tenant's Election Notice based on an appraisal acceptable to Landlord that is made by a licensed appraiser who is a Member of the Appraisal Institute (or similarly accredited by a professional appraisal organization of similar standing) with at least ten (10) years of experience appraising commercial real estate within the District of Columbia. Landlord shall provide Tenant with a copy of the appraisal promptly after acceptance and receipt thereof. If Tenant disputes the amount determined to represent Fair Market Rental Value, Tenant shall provide Landlord within sixty (60) calendar days of delivery of the appraisal evidence that the determination so made is unreasonable. Such evidence may be in the form of an appraisal prepared on Tenant's behalf by a licensed appraiser who is a Member of the Appraisal Institute (or similarly accredited by a professional organization of similar standing) with at least ten (10) years of experience appraising commercial real estate within the District of Columbia. Thereafter, Landlord and Tenant, in conjunction with their respective appraisers, shall attempt to resolve the dispute through negotiation for a period not less than thirty (30) but not more than sixty (60) calendar days. If after such period of negotiations Landlord and Tenant cannot agree on the Fair Market Rental Value, then Landlord and Tenant, in conjunction with their appraisers, shall jointly select a third appraiser with the same qualifications as those set forth above who, within sixty (60) days of his or her appointment shall independently determine the Fair Market Rental Value without reviewing the appraisals prepared on behalf of Landlord and Tenant. After completing his appraisal, the aforesaid third appraiser shall determine whether Landlord's appraisal or Tenant's appraisal is closest to the Fair Market Rental Value as independently determined by the third appraiser, and such appraisal selected shall be the final and binding determination of Fair Market Rental Value.

### **Section 19.3 Certain Rent Credits During Extension Period**

During the first twelve (12) months of either Extension Period, Tenant may apply a credit against any Rent otherwise due equal to the cost of any Base Building Alterations stated in any Tenant's Base Building Alterations Certification in accordance with Section 8.3 during the initial Lease Term (or during the first Extension Period, as applicable) as reduced by the then-depreciated value of such Base Building Alterations; provided, however, no credit shall be permitted in the second Extension Period except with respect Base Building Alterations made during the initial Extension Period, and then only to the extent properly set forth in any Base Building Alterations Certification. In calculating depreciation of Base Building Alterations, Tenant shall use straight-line depreciation over the useful life of such Base Building Alterations installed as would be calculated in accordance with Internal Revenue Service rules and regulations establishing the applicable recapture period for such items (or, in the absence of such rules and regulations, in accordance with Generally Accepted Accounting Principles consistently or such other commercially readily accepted accounting method used to calculate depreciation).

## ARTICLE XX

### REPRESENTATIONS AND WARRANTIES

#### Section 20.1 Tenant.

Tenant hereby represents and warrants to Landlord as follows:

20.1.1 (i) Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the District of Columbia, (ii) Tenant is duly qualified to conduct business in the District of Columbia, and (iii) Tenant has the power and authority to conduct the business in which it is currently engaged.

20.1.2 Tenant (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

20.1.3 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained is required in connection with the execution, delivery and performance of this Agreement by Tenant, except for: (i) Zoning and Permit Approvals, if any; and (ii) permits and approvals from Governmental Authorities required to construct the Improvements.

20.1.4 This Agreement has been duly executed and delivered by Tenant, and constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms.

20.1.5 The execution, delivery and performance by Tenant of this Agreement will not violate any Applicable Laws or result in a breach of any contractual obligation to which Tenant is a party.

20.1.6 Tenant's execution, delivery and performance of this Agreement and the transactions contemplated hereby shall not: (i) to the best of Tenant's knowledge, violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Tenant; or (ii) result in a breach or default under any provision of the organizational documents of Tenant.

20.1.7 No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the best knowledge of Tenant, threatened by or against Tenant which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Tenant and its ability to perform its obligations under this Agreement;

20.1.8 No agent, broker or other Person acting pursuant to express or implied authority of Tenant is or will be entitled to make any claim against Landlord for a commission or finder's fee. Other than Studley, Inc. (the "Broker"), Tenant has not dealt with any agent or broker in connection with the acquisition or ground leasing of the Property. Tenant agrees to pay the Broker in accordance with a separate agreement entered into with such Broker.

20.1.9 The Leased Premises shall be leased and used by Tenant and the other Tenant's Related Parties for the Permitted Uses in accordance with all Applicable Laws, and not for any other purpose. Specifically, Tenant covenants that Tenant shall comply with all Applicable Laws and requirements to maintain its charter to operate as a public charter school. Tenant further covenants and warrants that Tenant shall use its best effort to achieve the community participation and public benefits ("Outline of Community Participation and Public Benefits") as outlined in Exhibit G attached and incorporated herein by reference. Further, Tenant shall provide information and documents relating to the compliance of this section immediately upon Landlord's request.

20.1.10 Tenant shall use its reasonable efforts to cooperate and work with the District of Columbia Office of Planning on the design, site planning and historic preservation issues in its Redevelopment Project to the extent required to do so by Applicable Laws.

20.1.11 Except for Tenant's qualified and approved exemption by Governmental Authority, in no event shall Tenant, or any of Tenant's Related Parties assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to District, if any, under Applicable Laws on the basis of the Landlord's involvement in the transaction contemplated by this Agreement.

20.1.12 Tenant's financial statements submitted in connection with the Solicitation are complete and accurate as of the dates thereof. Neither Tenant nor any Person controlling Tenant or owning directly or indirectly any interest of ten percent (10%) or greater in Tenant has engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering laws or regulations or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. §§ 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. §§ 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control, (collectively, together with regulations promulgated with respect thereto, the "Anti-Money Laundering Acts"), (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Anti-Terrorism Order"), (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. § 1 *et seq.* or the International Emergency Economics Powers Act, 50 U.S.C. § 1701 *et seq.* (together with the Anti-Money Laundering Acts, the "Terrorist Acts") or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time. Neither Tenant nor any Person controlling Tenant or owning directly or indirectly any interest of ten percent (10%) or greater in Tenant (a) is conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) is a Person described in

section 1 of the Anti-Terrorism Order (a "Restricted Person"). Tenant shall not be in breach of this Section 20.1.12 as a result of the act or omission of any Person who is not otherwise an Affiliate of Tenant and whose only connection to Tenant is ownership of less than five percent (5%) in a company that itself has a direct or indirect interest in the Tenant and is traded on a U.S. national exchange unless such Person has the power to direct the management or operations of Tenant, in which case there shall be no threshold percentage applicable to such inquiry, or unless Tenant has actual knowledge that such Person is listed on one of the aforementioned lists or has or is in violation of the Terrorist Acts, or the Anti-Terrorism Order or their respective regulations.

## **Section 20.2 Landlord.**

Landlord hereby represents and warrants to Tenant as follows:

20.2.1 Landlord (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

20.2.2 No consent or authorization of, or filing with, any Person (including any governmental authority), which has not been obtained, is required in connection with the execution and delivery of this Agreement by Landlord.

20.2.3 This Agreement has been duly executed and delivered by District, and constitutes the legal, valid and binding obligation of Landlord, enforceable against it in accordance with its terms.

20.2.4 The execution, delivery and performance by Landlord of this Agreement will not violate any Applicable Laws or result in a breach of any contractual obligation to which Landlord is a party.

20.2.5 Landlord's execution, delivery and performance of this Agreement and the transactions contemplated hereby shall not: (i) to the best of Landlord's knowledge, violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Landlord; or (ii) result in a breach or violation of the Home Rule Charter for the District of Columbia.

20.2.6 No litigation, investigation or proceeding of or before any arbitrator or Governmental authority is pending or, to the best knowledge of Landlord, threatened by or against Landlord which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Landlord's ability to perform its obligations under this Agreement.

20.2.7 Except as otherwise set forth in this Agreement, no consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the performance of this Agreement by Landlord.

20.2.8 No agent, broker or other Person acting pursuant to express or implied authority of Landlord is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Tenant for a commission or finder's fee. Landlord has not dealt with any agent or broker in connection with the disposition or ground leasing of the Property.

20.2.9 The negotiation, execution, delivery and performance of the Agreement by Landlord are not and will not be induced by, resulting from or based on improper influence. "Improper Influence" means any influence that induces or tends to induce an employee or officer of Landlord to give consideration or to act regarding a lease with Landlord on any basis other than on the merits of the matter or in violation of any Applicable Laws or regulation regarding the disposition or acquisition of a leasehold interest.

## ARTICLE XXI

### MISCELLANEOUS

**Section 21.1 Governing Law.** This Lease shall be governed by the laws of the District of Columbia, and the covenants contained herein shall be deemed performable in the District of Columbia.

**Section 21.2 Recording of Lease.** Neither Landlord nor Tenant may record this Lease in the real property records of the District of Columbia unless such recording is required for Tenant to be exempted from the payment of real estate taxes and transfer and recordation taxes that would otherwise be due and payable by Tenant in connection with its execution and delivery of this Lease or otherwise desired by Tenant in connection with its rights and obligations under Section 4.4. Landlord and Tenant shall execute, acknowledge and record, at Tenant's expense, a Memorandum of Ground Lease, in form and substance reasonably acceptable to Landlord and Tenant, containing such terms as may be necessary to place third parties on notice of Tenant's rights under this Lease. Subject to Section 4.4, Tenant shall pay all transfer or recordation taxes, if any, due on recordation of the Memorandum of Ground Lease.

**Section 21.3 Time of Performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern time) on the performance or cure date. If the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States, or the laws of the District of Columbia, or on a day when courts, banks, the New York Stock Exchange or District or federal government offices are generally closed in the Washington metropolitan area because of executive order, inclement weather, acts of terrorism or widespread power or other utility outages that cause Landlord or Tenant, as the case may be, to be unable to perform hereunder, such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday or subject to the foregoing events.

**Section 21.4 Rule Against Perpetuities.** If any right granted in this Lease or any provision contained in this Lease is subject to the rule against perpetuities and the same shall not occur or shall not have vested on the date that is twenty-one (21) years after the death of the last to die of

all now living descendants of George W. Bush, William J. Clinton, George H. W. Bush, and James E. Carter, Jr., all of whom are current or former Presidents of the United States of America, then such right or provision shall terminate as of such date.

**Section 21.5 Captions, Numberings and Headings.** Captions, numberings and headings of Articles, Sections and Schedules in this Lease are for convenience of reference only and shall not be considered in the interpretation of this Lease.

**Section 21.6 Number; Gender.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

**Section 21.7 Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

**Section 21.8 Severability.** In the event that one or more of the provisions of this Lease shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Lease shall continue in full force and effect, unless this construction would operate as an undue hardship on Landlord or Tenant, or would constitute a substantial deviation from the general intent of the Parties as reflected in this Lease.

**Section 21.9 No Oral Modifications or Waivers.** No modification of this Lease shall be valid or effective unless the same is in writing and signed by Landlord and Tenant.

**Section 21.10 Schedules and Exhibits.** All Exhibits and Schedules referenced in this Lease are incorporated by this reference as if fully set forth in this Lease.

**Section 21.11 Including.** The word "including," and variations thereof, shall mean "including without limitation."

**Section 21.12 Integration.** This Lease and all Exhibits appended to this Lease and the documents and agreements referenced in this Lease contain the entire understanding between Landlord and Tenant with respect to the Lease, and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between them with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, between Landlord and Tenant with respect to the Lease other than as are expressly set forth in this Lease and the Schedules and Exhibits appended to this Lease and the documents and agreements referenced in this Lease.

**Section 21.13 No Construction Against Drafter.** This Lease has been negotiated and prepared by Landlord and Tenant and their respective attorneys and, should any provision of this Lease require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

**Section 21.8 Waiver of Jury Trial.** Landlord and Tenant each hereby waives any right to jury trial in connection with any suit, action, proceeding or claim relating to this Lease or to the transactions contemplated by this Lease.

**Section 21.14 Force Majeure.** Landlord and Tenant shall be excused from performing any other obligation under this Lease (i) to the extent that the performance is actually prevented or delayed, retarded or hindered by a Force Majeure Event, and (ii) the party seeking to claim a Force Majeure Event promptly notifies the other of the existence of such Force Majeure Event. Notwithstanding the foregoing, except as otherwise expressly set forth in this Lease, the occurrence of a Force Majeure Event shall not excuse Tenant from any obligation to pay any amount required under this Lease on the date such payment is otherwise required under this Lease).

**Section 21.16 Time of Essence.** Time is of the essence with respect to the performance by Landlord and Tenant of their obligations under this Lease.

**Section 21.17 Amendments.** This Lease may be amended or modified only by a written instrument executed by Tenant and by the Chief Property Management Officer on behalf of Landlord. The Chief Property Management Officer shall have the authority to approve on behalf of Landlord such amendments or modifications as the Chief Property Management Officer shall determine to be in the best interests of Landlord.

**Section 21.18 Generally Applicable Laws.** Tenant acknowledges that (i) nothing set forth in this Lease exempts the Redevelopment Project from Applicable Laws and regulations in effect from time to time in the District of Columbia, and (ii) execution of this Lease by Landlord is not binding upon, and does not affect the jurisdiction of or the exercise of police power by, Governmental Authority or independent agencies of the District of Columbia, including without limitation the Zoning Commission and Board of Zoning Adjustment.

**Section 21.19 False Claims Provisions.** Notwithstanding anything to the contrary in this Lease, and without limitation of any kind, all demands for payment or reimbursement of any kind under this Lease made by Tenant, if any, shall be subject to D.C. Official Code §§ 2-308.13 - 2-308.19 (2001) and the remedies available thereunder.

**Section 21.20 Waivers; Etc.** No waiver or waivers of any breach or default or any breaches or defaults by either party of any term, condition or liability of or performance by the other party of any duty or obligation hereunder, including without limitation, the acceptance by Landlord or payment by Tenant of any Rent at any time or in any manner other than as herein provided shall be deemed a waiver thereof, nor shall any such waiver or waivers be deemed or construed to be a waiver or waivers of subsequent breaches or defaults of any kind, character or description under any circumstances. If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

**Section 21.21 Jurisdiction and Right to Injunction.** Any action or proceeding involving any dispute under this Lease shall be determined in a court of competent jurisdiction within the District of Columbia, as provided in D.C. Official Code § 10-1014 (2006 Supp.). Whenever either party shall fail to comply with any covenant or provision of this Lease, the other party



shall be entitled to enforce its rights by injunctive relief, including an action for specific performance, any provision in this Lease to the contrary notwithstanding.

**Section 21.22 Non-Recourse and Exclusions from Liability.** Landlord or Landlord's Related Parties shall not be liable to Tenant or Tenant's Related Parties for any and all damage, injury, loss or claim based on or arising out of any cause whatsoever (except as otherwise expressly provided in this Lease) to the extent such damage, injury, loss or claim is covered by Tenant's insurance or shall be covered by Tenant's insurance to the extent required under this Lease. Under no circumstances shall Landlord or Landlord's Related Parties be liable for any exemplary, punitive, consequential or indirect damages (or for any interruption of or loss to business) in connection with or relating to this Lease. Further, at no time shall Landlord's liability exceed its interest in the Property. Notwithstanding anything set forth in this Lease or at law or in equity to the contrary: (i) none of Tenant's Related Parties, shall be personally liable or responsible for any duties, obligations or liabilities of Tenant under this Lease; and (ii) the indemnifications and defense obligations by Tenant under this Lease shall not cover, and Tenant and Tenant's Related Parties shall not be liable for any consequential damages, indirect losses, loss of value, temporary loss of business, lost profits, or lost opportunity damages at or arising from the Property suffered by Landlord (excluding Rent and Additional Rent due hereunder).

**Section 21.23 Rights Not for Benefit of Third Parties.** In no event and under no circumstances whatsoever shall the rights herein granted or to be granted in the future pursuant to this Lease, to or for the benefit of Landlord or Tenant be deemed to be for the benefit of the public. Except as expressly provided for herein with respect to Approved Mortgagees, no individual or entity that is not a signatory to this Lease (other than successors and permitted assigns of the signatories of this Lease) shall have any rights or privileges under or arising out of this Lease, nor shall any person or entity that is not a signatory to this Lease otherwise be deemed a third party beneficiary of this Lease.

**Section 21.24 Failure to Respond to Requests for Approval after Final Completion.** Except as expressly provided to the contrary in Section 21.24 of this Lease in the event any approval, consent, authorization, certificate, grant, conveyance, or permission is requested or demanded by Tenant pursuant to the express provisions of this Lease, and Landlord does not respond thereto within the specified period stated in the subject provision following the party's receipt of such demand or request, either by giving the item requested or by refusing to give the same and specifying specific reasons for such refusal, said failure to respond shall not be deemed to constitute the requested approval or consent, but shall be deemed a rejection of same.

**Section 21.25 Effect of "Review", "Objection", "Failure to Object", "Approval", "Non Approval", or "Consent".** In no event shall any review, objection, failure to object, approval, non approval, or consent by Landlord with respect to any act, plan, or proposal of Tenant made pursuant to any provision of this Lease or otherwise be deemed (i) to constitute an assumption by Landlord of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) to constitute a waiver of any claim or right Landlord might have against Tenant as a result of any loss, damage, or expense (including, without limitation, attorneys' fees and costs of litigation) incurred by Landlord by reason of or in connection with any act or omission of Tenant pursuant to or in accordance with any act, plan, or proposal reviewed by Landlord, (iii) to result

in Landlord's being deemed a joint tortfeasor with Tenant, or (iv) to be binding on any particular Governmental Authority having jurisdiction over the Leased Premises.

**Section 21.26 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Landlord, Tenant and their permitted successors and assigns.

**Section 21.27 No Public Subsidies.** Tenant acknowledges and agrees that no subsidy or incentive will be required by Tenant from Landlord in connection with the Redevelopment Project. Nothing set forth in this Section 21.27 shall be deemed to prohibit or restrict Tenant from (i) applying for tax exempt financing in accordance with the usual rules and procedures of Landlord or (ii) applying for or receiving any subsidy or incentive that is generally available to be applied for as a matter-of-right for the Property and other properties in the District of Columbia that are similarly situated.

**Section 21.28 Agents and Representatives.** No Person other than the parties to this Agreement, and the permitted assignees of such parties, shall have any liability or obligation under this Agreement. Without limiting the generality of the foregoing, (i) Tenant agree that no employee, official, consultant, contractor, agent or attorney engaged by Landlord in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to Tenant under this Agreement, and (ii) Landlord agrees that no consultant, contractor, agent or attorney engaged by Tenant in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to Landlord under this Agreement.

**Section 21.29 Further Assurances.** Each of the parties to this Agreement shall execute such further assurances as any other party may reasonably require to confirm and perfect the transaction described in this Agreement.

**Section 21.20 Rights and Remedies Cumulative.** The rights and remedies of Landlord under this Agreement, whether provided by law, in equity, or by this Agreement, shall be cumulative, and the exercise by Landlord of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

**Section 21.31 Release.** As additional consideration for Landlord's entry into this Lease, Tenant does hereby release and forever discharge Landlord and its respective agents, servants, employees, directors, officers, attorneys, parents, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations, and organizations, if any, acting on their behalf (collectively, the "Landlord Released Parties"), of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Tenant may now have or claim to have against the Landlord Released Parties as of the effective date of this Lease, whether presently known or unknown, of every nature and extent whatsoever on account of or in any way touching, relating to, concerning, arising out of or founded upon Landlord's treatment of Landlord's responses to Landlord's Solicitation of Offers, the Property, any documents executed in connection therewith (other than this Lease) or any hearings held, notices given, or decisions made in connection therewith, of any kind heretofore sustained, or that may arise as a consequence of the dealings between the Parties up to and including the effective date of this Lease except as expressly provided herein to the contrary. The agreement and covenant on the

part of Tenant under this Section 21.31 is contractual and not a mere recital, and the parties to this Lease acknowledge and agree that no liability whatsoever is admitted on the part of any party.

Section 21.32 Estoppels. From time to time, within twenty (20) Business Days after written request of the other Party, or of any holder or prospective holder of a Leasehold Mortgage (in connection with the encumbrance of the Leased Premises with a Leasehold Mortgage or an approved Transfer), or of any prospective permitted assignee of Tenant's interest in this Lease or any portion thereof, the other Party hereto shall, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the party delivering the estoppel certificate views them), that (i) this Lease is in full force and effect; (ii) this Lease has not been modified or amended (or if it has, a list of the amendments); (iii) the party requesting the estoppel certificate is not then in default; (iv) the Parties have fully performed all of their respective obligations thereunder; and (v) such other statements as reasonably may be required by any party or any other appropriate party, including but not limited, the amount of Rent due, if any. The delivery of any estoppel document or certificate by Landlord pursuant to this Section 21.32 shall be limited to the actual knowledge, without inquiry, of the person or party designated by the District from time to time to administer this Lease.

[Signature Pages to Follow]

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts as of the date and year first above written.

LANDLORD:


DISTRICT OF COLUMBIA  
By and through its  
Office of Property Management

By: \_\_\_\_\_  
Name:  
Title: Chief Property Management Officer

Approved as to legal sufficiency:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TENANT:  
Old Congress Heights School Redevelopment Company,  
LLC, a District of Columbia limited liability company

By:  \_\_\_\_\_  
Name: Joshua Kern  
Title: Managing Member

By: Capitol Services Management, Inc.

Title: Member

By: \_\_\_\_\_  
Name: Phinis Jones  
Title: President and CEO

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts as of the date and year first above written

LANDLORD:

DISTRICT OF COLUMBIA

By and through its


Office of Property Management

By: 

Name: Robin-Eve Jasper

Title: Chief Property Management Officer

Approved as to legal sufficiency:

  
Name: Paul Mathis  
Title: ASST Atty General  
Date: 9/8/08

TENANT:

Old Congress Heights School Redevelopment  
Company, LLC, a District of Columbia limited  
liability company

By:

Name: Joshua Kern

Title: Managing Member

By: Capitol Services Management, Inc.

Title: Member

By: 

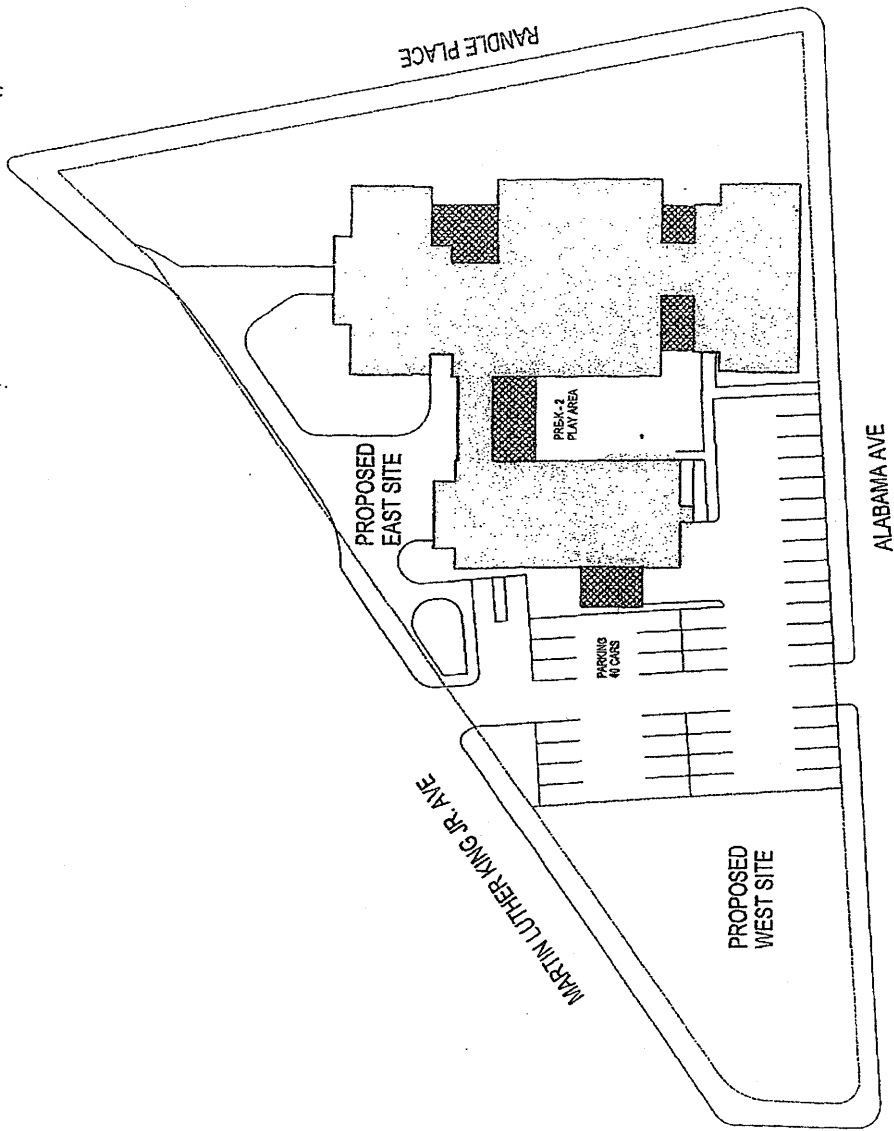
Name: Rhinis Jones

Title: President and CEO



Exhibit A

Legal Description of Leased Premises



# PROPOSED EAST AND WEST SITE PLAN



BOWIE GRIDLEY  
ARCHITECTS, P.L.L.C.

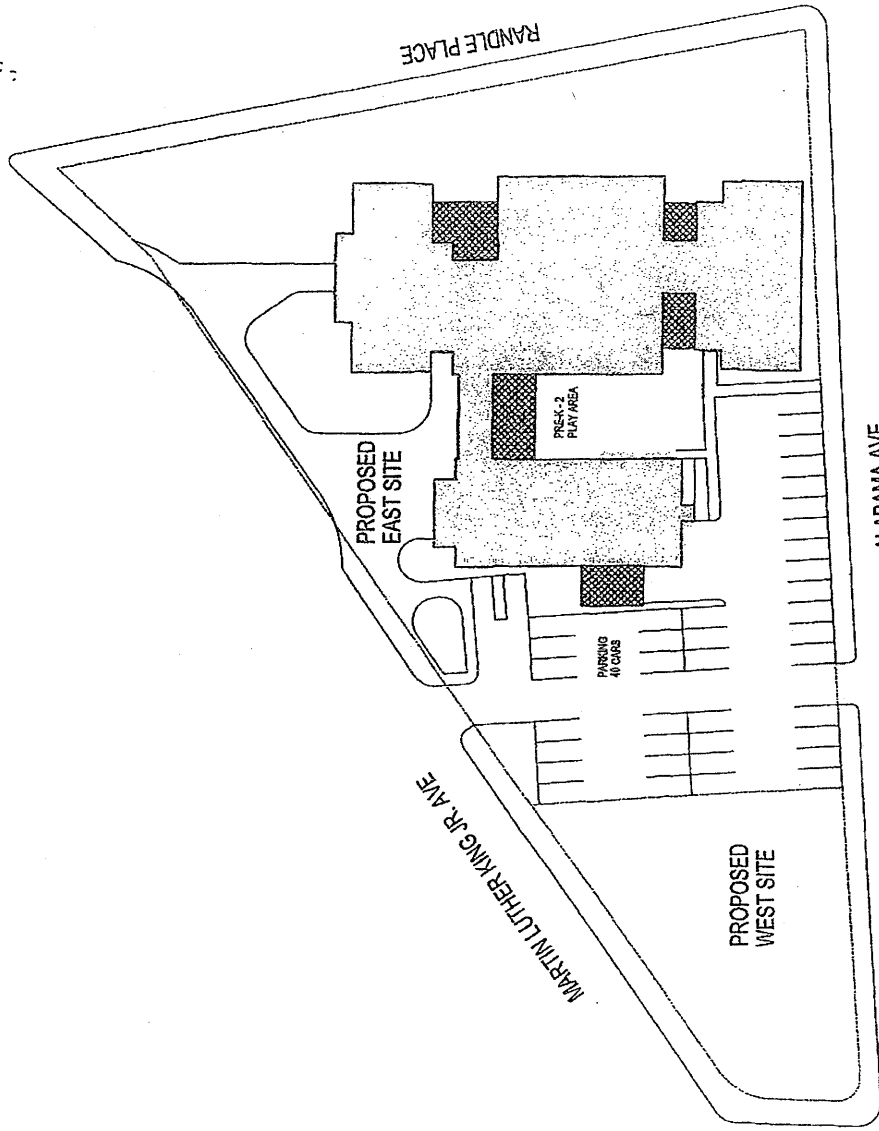
CONGRESS HEIGHTS SCHOOL  
600 ALABAMA AVE SE, WASHINGTON DC

JULY 2005



Exhibit B

Description of Western Portion of Leased Premises



# PROPOSED EAST AND WEST SITE PLAN



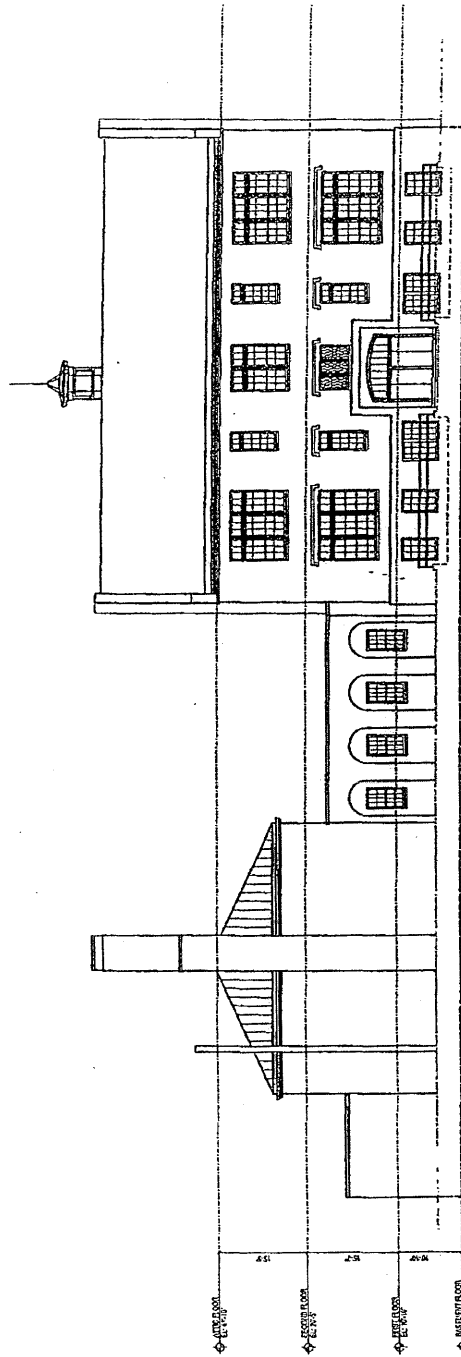
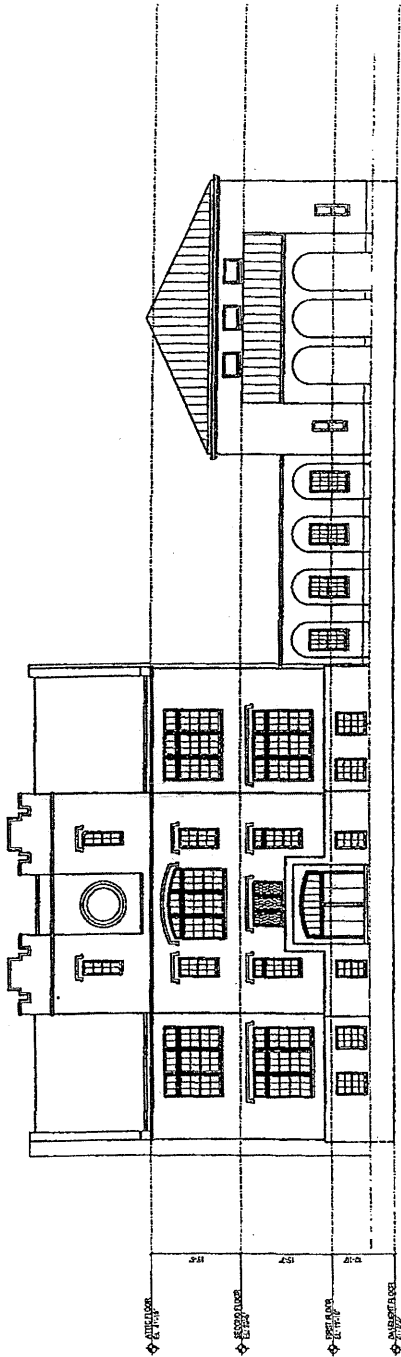
BOWIE GRIDLEY  
ARCHITECTS, P.L.L.C.

CONGRESS HEIGHTS SCHOOL  
600 ALABAMA AVE SE, WASHINGTON DC

JULY 2008

Exhibit C

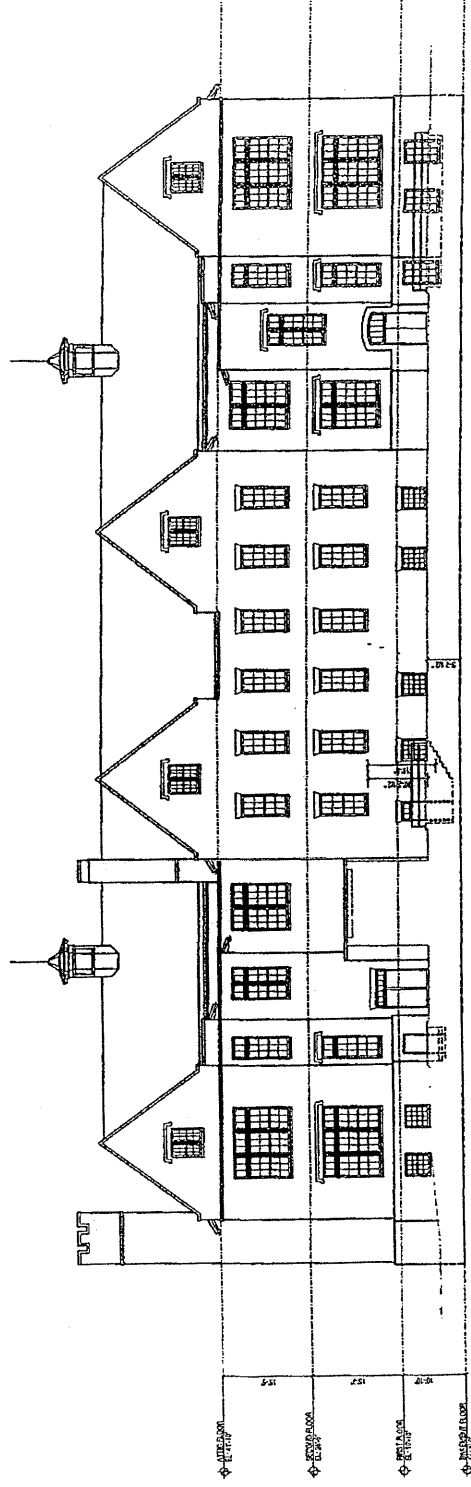
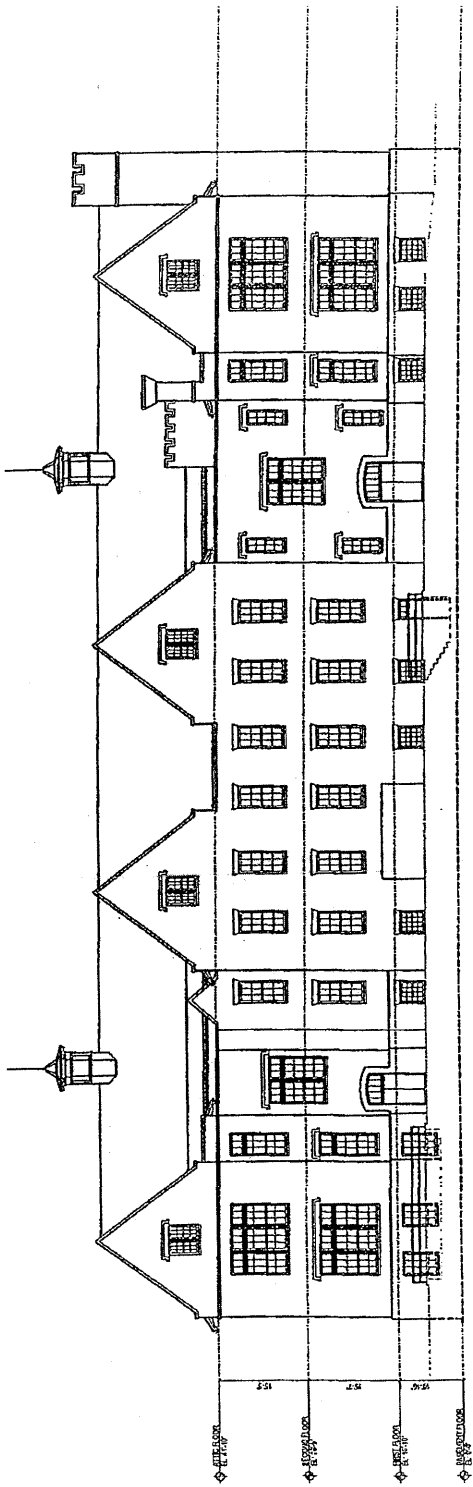
Concept Drawings



# CONGRESS HEIGHTS SCHOOL

600 ALABAMA AVE SE, WASHINGTON DC

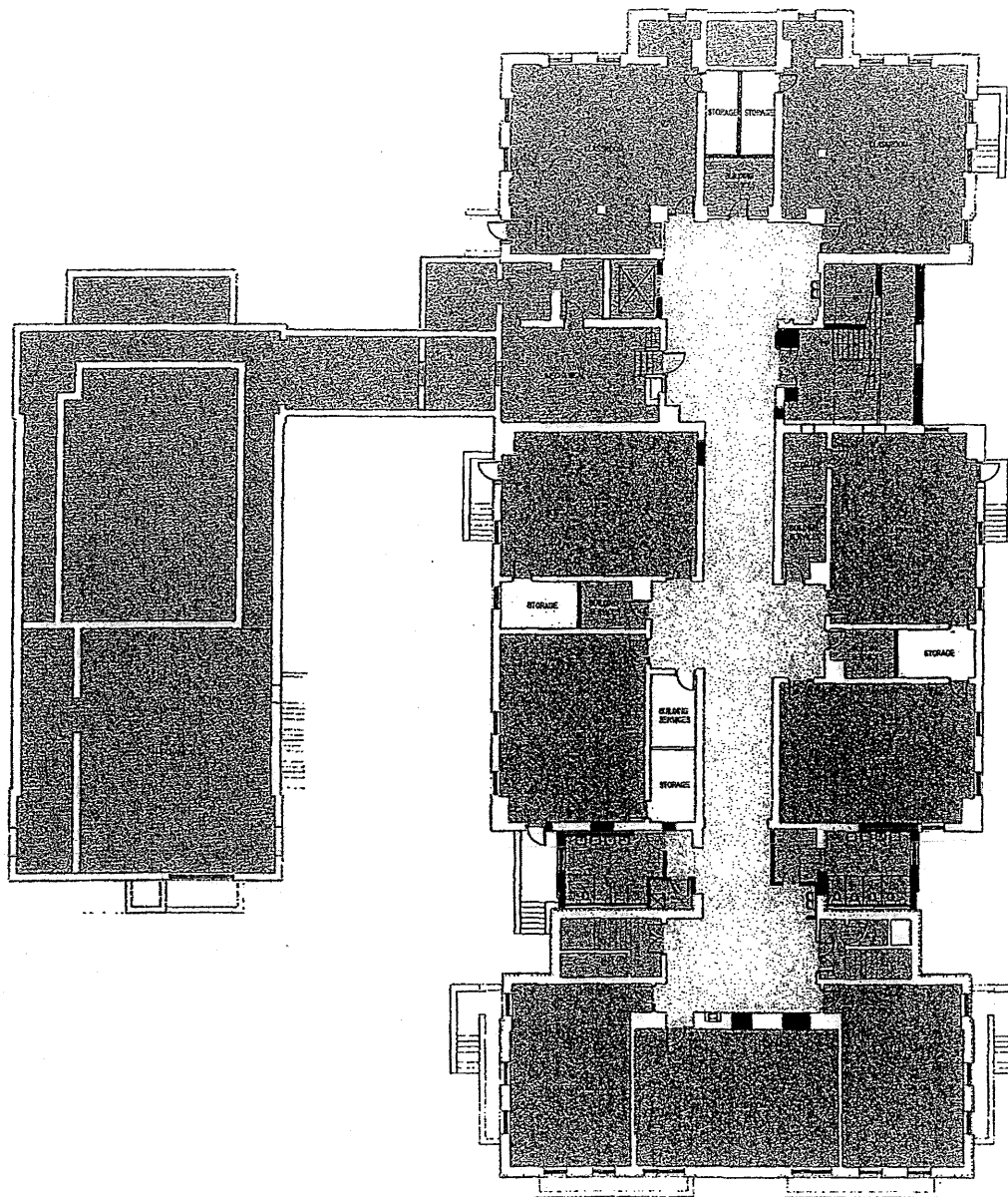
JULY 27



CONGRESS HEIGHTS SCHOOL

600 ALABAMA AVE SE, WASHINGTON DC

JULY

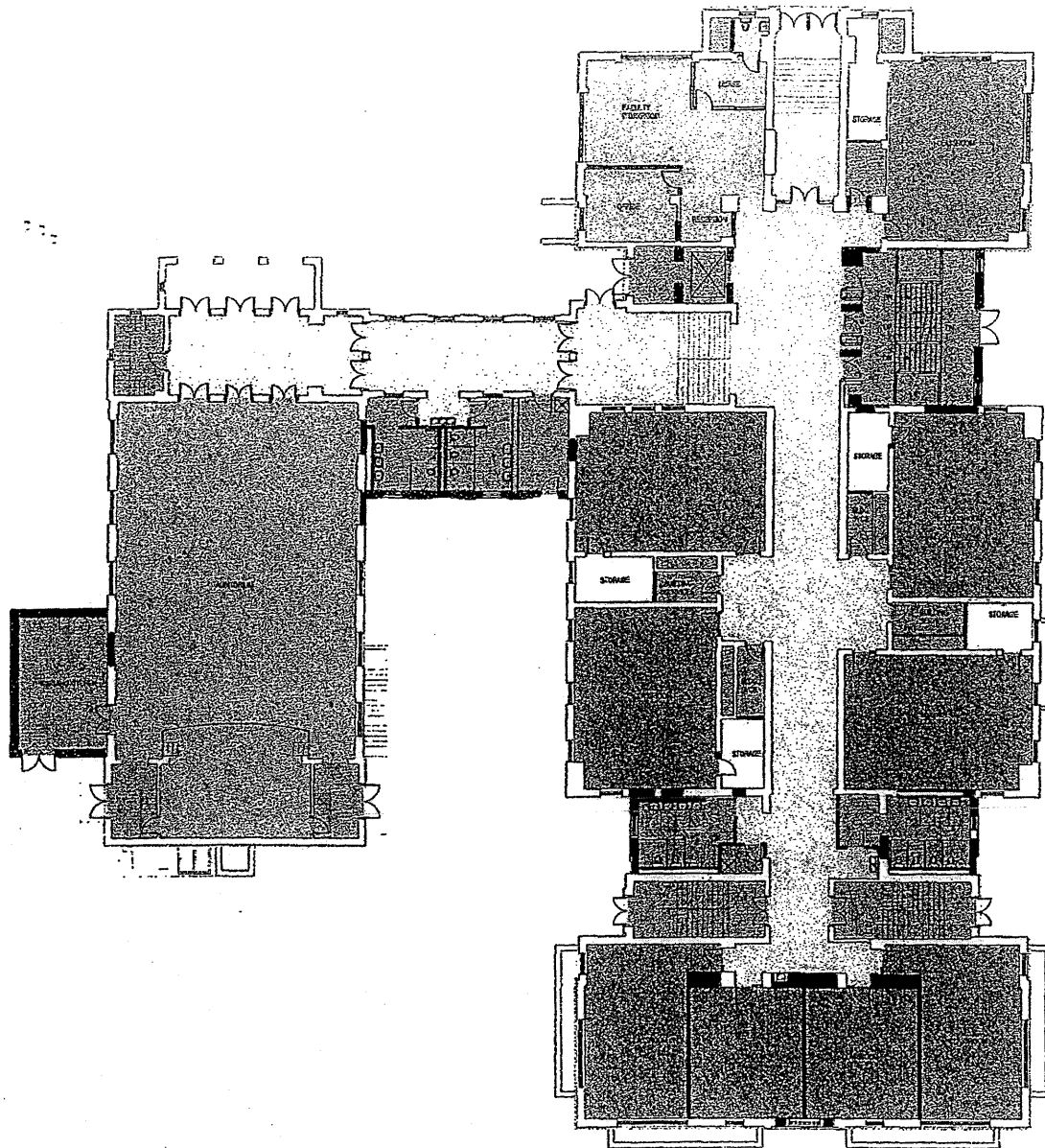


① GROUND FLOOR PLAN  
SCALE: 1/8" = 1'-0"

COLOR KEY	
	ACADEMIC SPACES
	ADMINISTRATIVE
	BUILDING SERVICES
	CDC TRAINING/CLASSROOM
	LIBRARY
	IT LAB
	OTHER
	CDC CONFERENCE ROOMS
	CDC OFFICES
	MULTI-PURPOSE
	STORAGE
	BREAK ROOM
	CORRIDORS



SCALE 1" = 40'



① 1ST FLOOR PLAN  
SCALE: 1/8" = 1'-0"

COLOR KEY

- ACADEMIC SPACES
- ADMINISTRATIVE
- BUILDING SERVICES
- CDC TRAINING/CLASSROOM
- LIBRARY
- IT LAB
- OTHER
- CDC CONFERENCE ROOMS
- CDC OFFICES
- MULTI-PURPOSE
- STORAGE
- BREAKROOM
- CORRIDORS



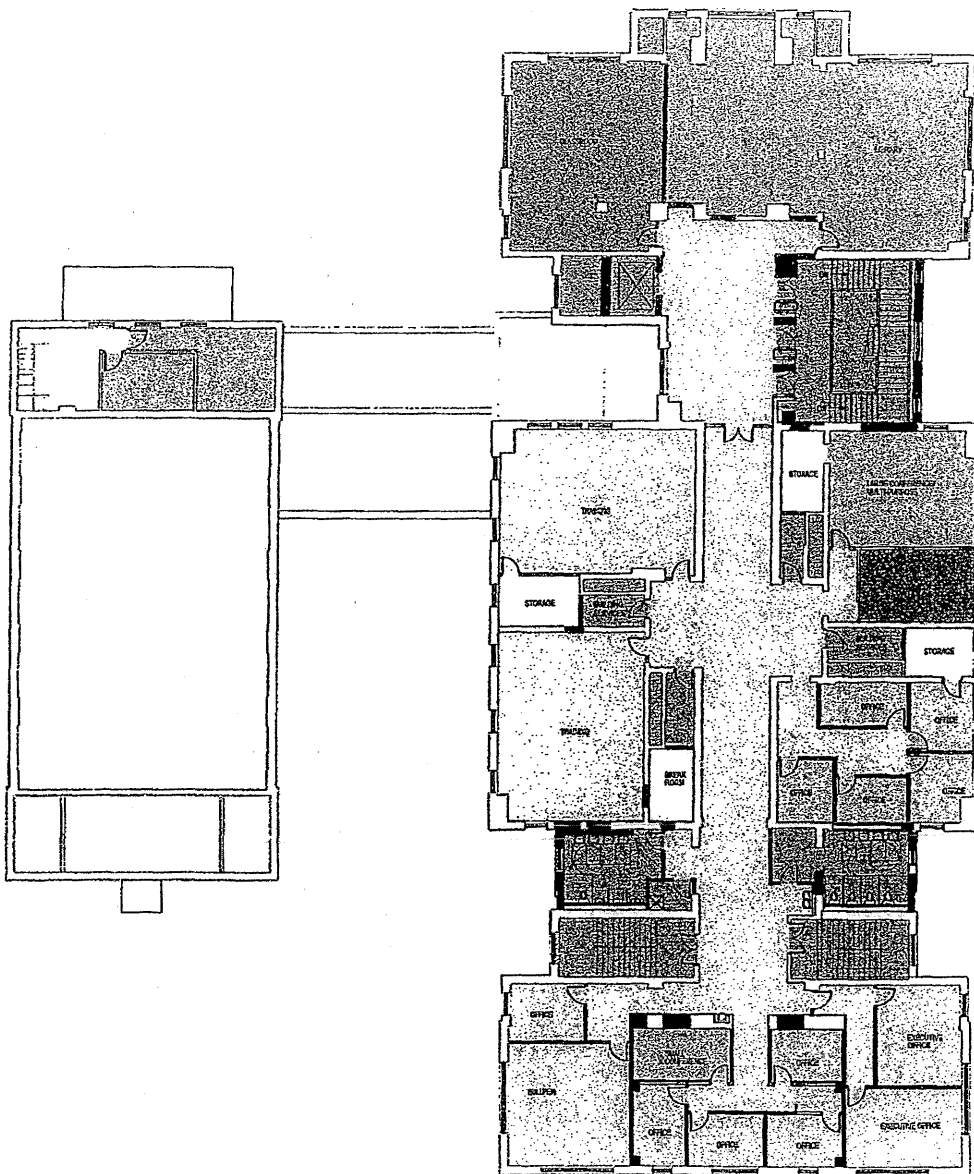
SCALE 1"=4'-0"



BOWIE, GRIDLEY  
ARCHITECTS, P.L.L.C.

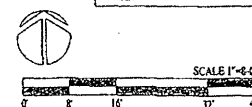
CONGRESS HEIGHTS SCHOOL  
600 ALABAMA AVE SE, WASHINGTON DC

JULY 2008



**2ND FLOOR PLAN**  
SCALE: 1/8" = 1'-0"

COLOR KEY	
	ACADEMIC SPACES
	ADMINISTRATIVE
	BUILDING SERVICES
	CDC TRAINING/CLASSROOM
	LIBRARY
	IT LAB
	OTHER
	CDC CONFERENCE ROOMS
	CDC OFFICES
	MULTI-PURPOSE
	STORAGE
	BREAK ROOM
	CORRIDORS

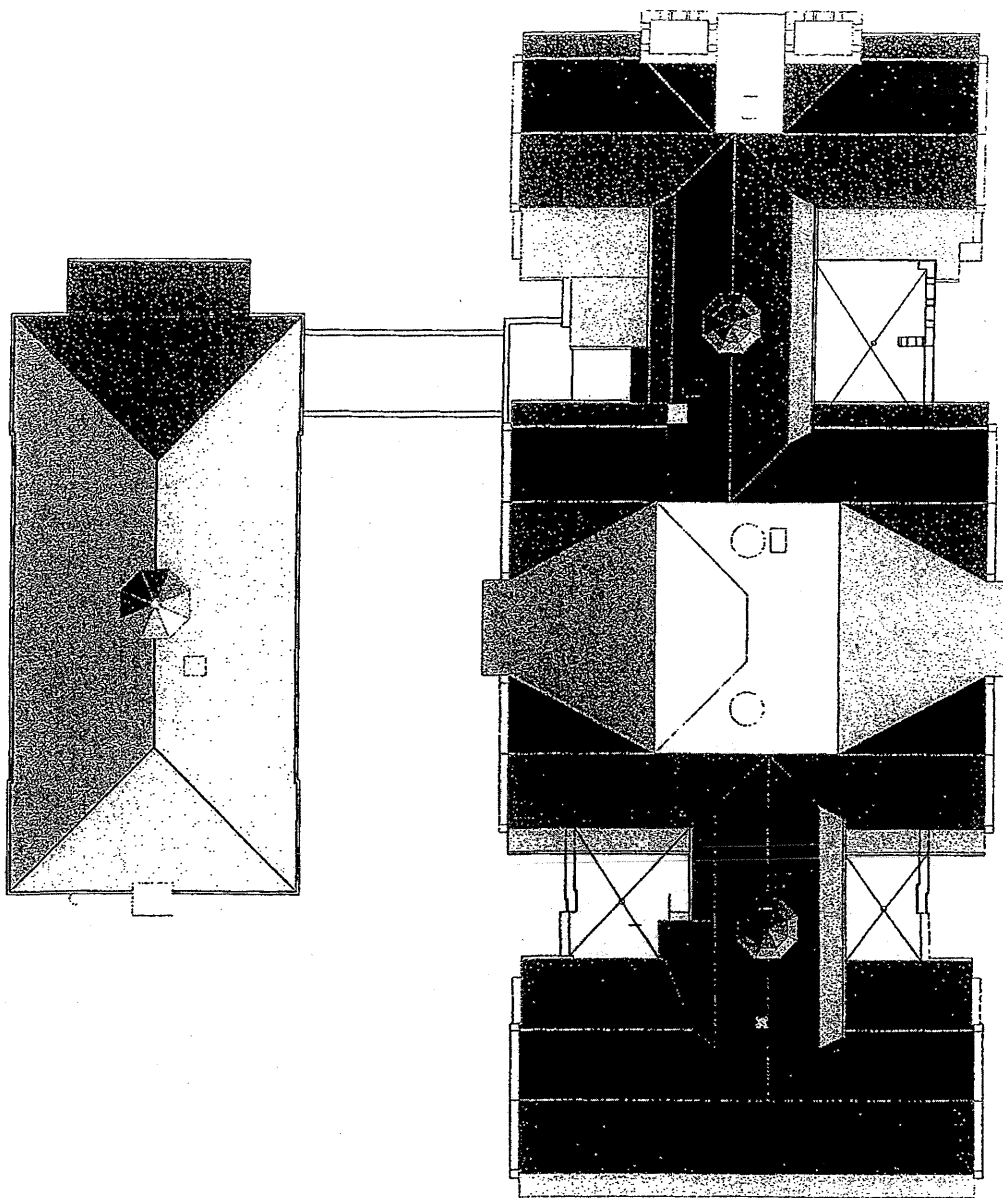


BOWIE GRIDLEY  
ARCHITECTS P.L.L.C.

CONGRESS HEIGHTS SCHOOL  
600 ALABAMA AVE SE, WASHINGTON DC

JULY 2002






**ROOF PLAN**  
 SCALE: 1/8" = 1'-0"

COLOR KEY	
	ACADEMIC SPACES
	ADMINISTRATIVE
	BUILDING SERVICES
	CDC TRAINING/ CLASSROOM
	LIBRARY
	IT LAB
	OTHER
	CDC CONFERENCE ROOMS
	CDC OFFICES
	MULTI-PURPOSE
	STORAGE
	BREAKROOM
	CORRIDORS



SCALE 1" = 40'  
 0 8 16 32 40

**DCA**

BOWIE • GRIDLEY  
 ARCHITECTS, P.L.L.C.  
 1215 15TH ST. NW  
 WASHINGTON, DC 20004

CONGRESS HEIGHTS SCHOOL  
 600 ALABAMA AVE SE, WASHINGTON DC

JULY 2008

Exhibit D

Redevelopment Project Schedule

Student

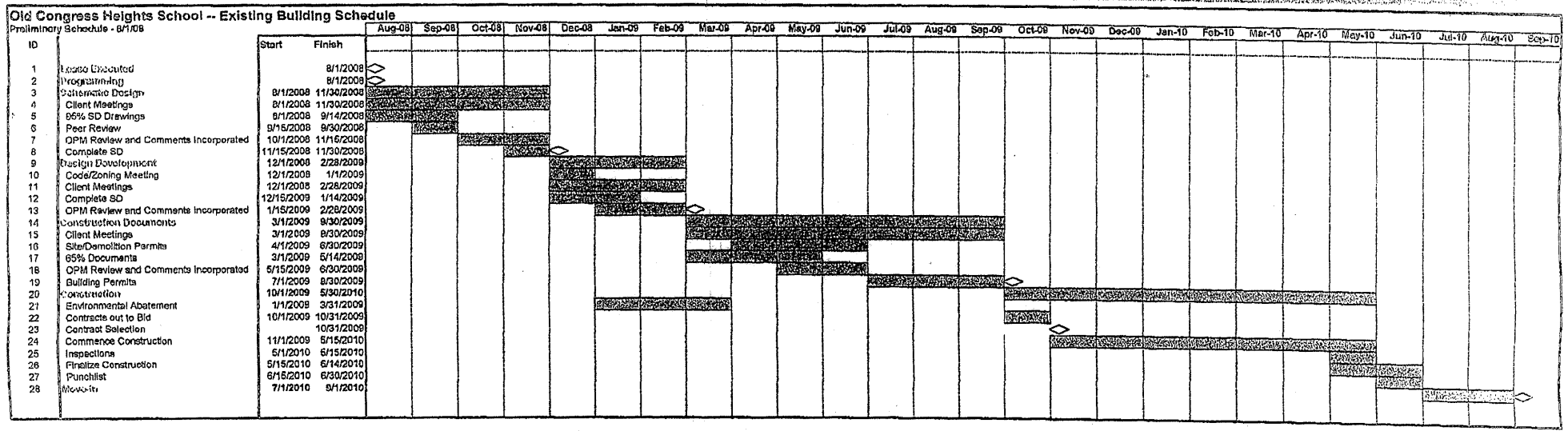


Exhibit E

**Title Commitment**  
**(To be provided prior to Feasibility Expiration Date)**

Exhibit F

Example of Sublet Rent Payment Calculation

OLD CONGRESS HEIGHTS  
EXHIBIT F

Exhibit -- Calculation of Profit Example

Building Size	21,000	Amortization of Leasehold Improvements	\$ 5,775,000
Total Building/Project Cost PSF	\$ 275.00	Interest Rate	7.50%
Total Building/Project Cost	\$ 5,775,000	Term	25
Building Operating Costs (incl RE Taxes)	\$ 10	Payment	(\$918,079)
Building Operating Costs & Cap Res Escalation	3.000%		
Capital Reserve	\$ 0.50		
Tenant X Size	21,000		
Tenant X NNN Rent	\$ 28.00		
Tenant Rent Escalation	2.75%		
Tenant Term	30		
Ground Rent	\$ 2.00		

New Building

Revenue	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Sublease Rent from Tenant X	\$ 546,000	\$ 581,015	\$ 578,443	\$ 592,285	\$ 608,583	\$ 625,319	\$ 642,516	\$ 660,185	\$ 678,340	\$ 696,994	\$ 716,181	\$ 735,856	\$ 756,082	\$ 776,884	\$ 798,268
Additional Rent from Tenant X	\$ 210,000	\$ 216,300	\$ 222,789	\$ 229,473	\$ 236,357	\$ 243,448	\$ 250,751	\$ 258,274	\$ 266,022	\$ 274,002	\$ 282,222	\$ 290,689	\$ 299,410	\$ 308,392	\$ 317,644
<b>Total Revenue</b>	<b>\$ 756,000</b>	<b>\$ 777,315</b>	<b>\$ 799,232</b>	<b>\$ 821,768</b>	<b>\$ 844,940</b>	<b>\$ 868,767</b>	<b>\$ 893,267</b>	<b>\$ 918,458</b>	<b>\$ 944,361</b>	<b>\$ 970,996</b>	<b>\$ 998,384</b>	<b>\$ 1,026,545</b>	<b>\$ 1,055,502</b>	<b>\$ 1,085,277</b>	<b>\$ 1,115,912</b>
<b>Expenses</b>															
Ground Rent	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000	\$ 42,000
Amortization of LHI	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079	\$ 518,079
Operating Expenses & Taxes	\$ 210,000	\$ 216,300	\$ 222,789	\$ 229,473	\$ 236,357	\$ 243,448	\$ 250,751	\$ 258,274	\$ 266,022	\$ 274,002	\$ 282,222	\$ 290,689	\$ 299,410	\$ 308,392	\$ 317,644
Capital Reserve	\$ 10,500	\$ 10,615	\$ 11,139	\$ 11,474	\$ 11,616	\$ 12,172	\$ 12,638	\$ 13,101	\$ 13,700	\$ 14,111	\$ 14,534	\$ 14,970	\$ 15,420	\$ 15,882	\$ 16,352
<b>Total Operating Expenses, Debt and Capital Expenses</b>	<b>\$ 780,579</b>	<b>\$ 787,194</b>	<b>\$ 794,008</b>	<b>\$ 801,025</b>	<b>\$ 808,254</b>	<b>\$ 815,689</b>	<b>\$ 823,368</b>	<b>\$ 831,268</b>	<b>\$ 839,402</b>	<b>\$ 847,782</b>	<b>\$ 856,413</b>	<b>\$ 865,303</b>	<b>\$ 874,459</b>	<b>\$ 883,891</b>	<b>\$ 893,606</b>
<b>Cash Flow</b>	<b>\$ (24,579)</b>	<b>\$ (9,879)</b>	<b>\$ 5,224</b>	<b>\$ 20,742</b>	<b>\$ 36,686</b>	<b>\$ 53,068</b>	<b>\$ 69,899</b>	<b>\$ 87,192</b>	<b>\$ 104,980</b>	<b>\$ 123,215</b>	<b>\$ 141,071</b>	<b>\$ 161,242</b>	<b>\$ 181,042</b>	<b>\$ 201,386</b>	<b>\$ 222,287</b>
<b>Accumulated Loss</b>	<b>\$ (24,579)</b>	<b>\$ (34,458)</b>													
NOI with Payback of Accumulated Loss			\$ (29,234)	\$ (3,492)	\$ 28,195	\$ 53,068	\$ 69,899	\$ 87,192	\$ 104,980	\$ 123,215	\$ 141,071	\$ 161,242	\$ 181,042	\$ 201,386	\$ 222,287
Distributable Income					\$ 28,195	\$ 53,068	\$ 69,899	\$ 87,192	\$ 104,980	\$ 123,215	\$ 141,071	\$ 161,242	\$ 181,042	\$ 201,386	\$ 222,287
Subtenant Profit Distribution					\$ 5,639	\$ 10,614	\$ 13,980	\$ 17,438	\$ 20,892	\$ 24,643	\$ 28,394	\$ 32,248	\$ 36,208	\$ 40,277	\$ 44,457

Note:

This hypothetical example demonstrates the methodology to calculate profit. The numbers used in this example are employed for illustrative purposes only.

Exhibit G

Outline of Community Participation and Public Benefits

*The Congress Heights neighborhood shares the same challenges as most of the communities in Ward 8 that struggle with providing adequate educational and employment opportunities.*

The Old Congress Heights School Redevelopment Company and the Development Team have undertaken an extensive review of the Old Congress Heights Site and have considered and tested many uses with the goal of determining the Site's "highest and best" use. This systematic approach to redevelopment is an important aspect of our commitment to adding value to the existing neighborhood and providing opportunity for the residents of Ward 8.

After thorough research and analysis with local experts, the Team has concluded that the most important need in Congress Heights is "Opportunity." The operations of a charter school (Nia Community Public Charter School – "Nia"), training center (Congress Heights Training and Development Center – "CHTDC") and new commercial building, as brought together and housed by the Team, will create such Opportunity where it is most needed—at the grassroots level. By providing education and employment options for the adult residents of Ward 8 and their children, the proposed uses will stimulate long-term economic growth in the community. Furthermore, this development will revitalize the critical intersection of Alabama Avenue and Martin Luther King Boulevard.

#### **Proposed Use Mix**

##### **Existing School Building**

The former and existing Old Congress Heights Elementary School building will be renovated in accordance with historic guidelines and will provide a new home to Nia's Pre-K through 8<sup>th</sup> grade students. Nia will preserve the fabric and aesthetics of the current school building while renovating the interiors and replacing most major building systems.

##### **New Construction**

On the western portion of the Site, the Tenant intends to construct a new commercial building with not less than 10,000 square feet. The uses of this building will be consistent with the permitted uses in the Lease. The facility will have a similar look and feel and be compatible with the current building, as well as be consistent with the design of the streetscape.

##### **Parking**

A parking lot to serve Nia and the adjacent building will divide the Site in two. This parking area will be available to local churches and not-for-profit institutions that benefit the community.

##### **Landscape**

As depicted in the Concept Plan, Nia will have approximately 1.5 acres of dedicated play areas and green spaces for the different age groups of the children. The Old Congress Heights Site will remain an aesthetically-pleasing environment.

#### **Public/Community Benefits**

The lack of community and public space in Congress Heights is addressed in the redevelopment design. The users will set aside space for shared-use by the community. The auditorium in the existing building will be restored and access may be granted for public gatherings and other uses when not in use by the charter school.



**GROUND LEASE AGREEMENT**

**By and Between**

**THE DISTRICT OF COLUMBIA**

**as LANDLORD**

**and**

**OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, L.L.C.**

**as TENANT**

**FIRST AMENDMENT**

**December 2, 2008**

600 Alabama Avenue, S.E.  
Washington, D.C.

## **FIRST AMENDMENT TO GROUND LEASE AGREEMENT**

THIS FIRST AMENDMENT TO GROUND LEASE (this "First Amendment") is entered into as of this 2<sup>nd</sup> day of December 2008 by and between the District of Columbia, a municipal corporation by and through its Office of Property Management ("Landlord" or "District"), and Old Congress Heights School Redevelopment Company, L.L.C., a District of Columbia limited liability company, having its principal address at 3215 Martin Luther King, Jr. Avenue, S.E., Washington, D.C. 20032 ("Tenant") (collectively, the "Parties").

### **RECITALS:**

WHEREAS, Landlord and Tenant entered into a ground lease ("Lease") as of the 4<sup>th</sup> day of September 2008 with respect to 600 Alabama Avenue, S.E., in Washington, D.C., more specifically known for tax and assessment purposes as Parcel 235, Lot 6 ("Property").

WHEREAS, Landlord and Tenant negotiated and entered into the Lease on the assumption there was no restrictive covenant limiting the use of the Property.

WHEREAS, Tenant has ascertained as a result its efforts to obtain title insurance for the Property that a restrictive covenant, dated January 2, 1866, was recorded on April 14, 1866 among the land records of the District of Columbia purporting to limit the use of the Property to "school purposes . . . for the free instruction of youth in said County, or a dwelling for one or more teachers, of free schools" ("Restrictive Covenant").

WHEREAS, the Restrictive Covenant may preclude Tenant from using or permitting the Property to be used for uses that were agreed to by the Parties and which are specifically permitted under the Lease.

WHEREAS, as a result of the discovery of the Restrictive Covenant, Tenant requires additional time beyond the time periods set forth in the Section 2.12 of the Lease to complete "Additional Feasibility Studies."

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The definitions used in the Lease, to the extent applicable herein, are incorporated into this Amendment by reference.
2. The Feasibility Studies Period set forth in Section 2.12.1 of the Lease is hereby extended to two hundred seventy (270) calendar days from the Lease Commencement Date.
3. The Feasibility Expiration Date set forth in Section 2.12.4 of the Lease is hereby extended to two hundred seventy (270) calendar days from the Lease Commencement Date.

4. The second sentence of Section 2.12.4 of the Lease which states that “on the eightieth (80th) day of the Feasibility Studies Period and every thirty (30) days thereafter, Tenant shall provide Landlord a written report in reasonable detail of Tenant’s due diligence effort to obtain financing for the Redevelopment Project and the current state of any pending financing” is hereby amended to state that “on the two hundred sixtieth (260th) day of the Feasibility Studies Period and every thirty (30) days thereafter, Tenant shall provide Landlord a written report in reasonable detail of Tenant’s due diligence effort to obtain financing for the Redevelopment Project and the current state of any pending financing.”

5. The Parties agree that Tenant shall not record a Memorandum of Ground Lease, as required by Section 21.2 of the Lease and Tenant shall not pay any transfer or recordation taxes that may be due as a result of the Lease, if any, until seven (7) business days after the Feasibility Studies Period, as extended herein, expires or Tenant terminates the Feasibility Study Period, whichever is earlier.

6. The second sentence of Section 9.1.1(b) of the Lease is hereby amended by replacing “NIA Community Public Charter School” with “School House Finance, LLC.”

7. Except as is expressly modified above, all of the terms and conditions of the Lease remain unchanged and in full force and effect.

[Signature Pages to Follow]

IN WITNESS WHEREOF, this First Amendment to Ground Lease Agreement is made and entered into in multiple original counterparts as of the date and year first above written.

LANDLORD:

DISTRICT OF COLUMBIA  
By and through its  
Office of Property Management

By: 

Name:

Robin-Eve Jasper

Title: Chief Property Management Officer

TENANT:

Old Congress Heights School Redevelopment  
Company, LLC, a District of Columbia limited  
liability company

By: 

Name: Joshua Kern

Title: Managing Member

Capitol Services/Management, Inc.

Title: Member

By: 

Name: Phin's Jones

Title: President and CEO

**SUBLEASE AGREEMENT**

**By and Between**

**OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, LLC**

**as SUBLANDLORD**

**and**

**SCHOOL HOUSE FINANCE, LLC**

**as TENANT**

**June 22, 2009**

**600 Alabama Avenue, S.E.  
Washington, D.C.**

## **SUBLEASE AGREEMENT**

This Sublease Agreement ("Sublease" or Agreement") is made this 22nd day of June, 2009, by and between Old Congress Heights School Redevelopment Company, LLC, a District of Columbia limited liability company (the "Sublandlord") and School House Finance, LLC, a Virginia limited liability company (the "Subtenant") (collectively, the "Parties").

### **RECITALS:**

Whereas, Sublandlord is the Tenant under a Ground Lease Agreement (the "Lease"), dated September 4, 2008 with the District of Columbia (the "Landlord") (a copy of which is attached hereto as **Exhibit "A"**) concerning real property located at 600 Alabama Avenue, S.E., in Washington, D.C., more specifically known for tax and assessment purposes as Parcel 235, Lot 6 (the "Leased Premises") (as defined in the Lease and incorporated herein);

WHEREAS, Sublandlord wants to sublease the Leased Premises as more particularly described in **Exhibit "B"** hereto ("Subleased Premises") to Subtenant and Subtenant wants to sublease the Subleased Premises on the terms and conditions set forth in this Sublease; and

WHEREAS, Subtenant plans to further sublease the Subleased Premises to Imagine Southeast Public Charter School a charter school authorized under District of Columbia School Reform Act of 1995 ( D.C. Official Code § 38-1800.01 et seq. (Supp. 2005)).

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

### **ARTICLE I**

#### **DEFINITIONS AND BASIC TERMS**

**"Additional Insured"** as defined in Section 6.1.10.

**"Additional Rent"** as defined in Section 3.5.1.

**"Alterations"** as defined in Section 8.3.1.

**"Applicable Laws"** means all federal and District laws, codes, statutes, ordinances, by-laws, regulations, rules, licenses, permits, variances, governmental orders, and governmental approvals applicable to any subject facts, things, circumstances or events, including without limitation, the District of Columbia School Reform Act of 1995, as amended (D.C. Official Code § 38-1800.01 et seq. (Supp. 2005)) and all regulations promulgated thereunder.

Day. Any time period that ends on a day other than a Business Day shall be deemed to have been extended to the next Business Day.

**"Cafetorium"** means designated space in the Subleased Premises that is subject to a Shared Space Agreement as defined in Section 2.4.3 below.

**"Certificate of Occupancy"** means a certificate of occupancy or similar document or Permits (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Redevelopment Project Improvements, or any phase, component or portion thereof, to be located on the Subleased Premises for use by Imagine Southeast as a Charter School.

**"Charter School"** means a public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 ( D.C. Official Code § 38-1800.01 et seq. (Supp. 2005) to be operated at the Subleased Premises upon Completion of the Redevelopment Project Improvements.

**"Commencement of Construction"** means the time at which the Sublandlord has (i) executed the Construction Contract with the General Contractor for the renovation and construction of the Redevelopment Project Improvements, (ii) given such General Contractor notice to proceed for the Redevelopment Project Improvements, and (iii) obtained all Permits required to commence such renovation and construction.

**"Comparable Buildings"** shall mean properties and buildings in the District of Columbia reasonably comparable to the Leased Premises in size, age, use, design, general metropolitan location, type of construction and construction quality comparable to the completed Redevelopment Project Improvements.

**"Completion"** means the issuance of a Certificate of Occupancy with respect to the Subleased Premises permitting the use of the Subleased Premises for the operation of a Charter School.

**"Construction Drawings"** mean the drawings setting forth in detail the requirements for renovation and construction for the Redevelopment Project Improvements, which shall be based upon the approved Design Development Drawings. The Construction Drawings shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Redevelopment Project Improvements.

**"Contaminant Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

**"Decorations, Fixtures, Furnishings, Equipment and Inventory"** shall mean all trade fixtures, furnishings, equipment, inventory, chattels and other personal property of Subtenant, SubTenant's Related Parties, and all additions, replacements and substitutions thereto or therefor, located on the Subleased Premises from time to time used for or in connection with the

about, or from the Subleased Premises or (iii) any condition of pollution, contamination, or presence of Hazardous Material on, under, about, or from the Subleased Premises regardless of how such violation, release or threatened release, or condition occurred, was caused, or discovered.

**"Event of Default"** shall mean a default by Subtenant under this Sublease as enumerated and described in Section 11.1.

**"Extension Option"** as defined in Section 19.1.

**"Extension Period"** as defined in Section 19.1.

**"Extension Term"** or **"Extension Terms"** shall mean four (4) five (5) year renewals, as applicable.

**"Fair Market Rental Value"** as defined in Section 19.2.

**"Force Majeure Event"** means any of the following that directly cause any of Subtenant's or Sublandlord's obligations under the Agreement not to be performed in a timely manner: An act of God, fire, earthquake, flood, explosion, war, invasion, acts of terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws or orders of government or of civil, military or naval authorities, or any other federal or local governmental acts or omissions (other than those in response to a rightful action of Sublandlord, as sublessor under this Sublease, that is consistent with this Agreement), or any other cause, whether similar or dissimilar to the foregoing that is not within the reasonable control of Subtenant or Subtenant's Related Parties or Sublandlord or Sublandlord's Related Parties (or their respective affiliates, as applicable) or caused by the fault or negligence of Subtenant or Subtenant's Related Parties or Sublandlord or Sublandlord's Related Parties, or their respective affiliates; but specifically excluding shortage or unavailability of funds or financial condition, failure of Subtenant or Sublandlord to comply with any law, rule or regulation of any Governmental Authority.

**"General Contractor"** means Hamel Builders, Inc. or such other general contractor as may be selected by Sublandlord.

**"Governmental Authority"** means any and all federal or District of Columbia governmental or quasi-governmental board, agency, authority, department or body having jurisdiction over any or all of the Subleased Premises.

**"Governmental Requirement"** means building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees, of any federal or District governmental or quasi-governmental authority or agency pertaining (i) to any or all of the Subleased Premises, (ii) to the use and operation of the Subleased Premises, or (iii) to the subject matter described in the paragraph in which the term is used if the context of the sentence



**"Landlord"** means the District of Columbia, a municipal corporation acting by and through its Office of Property Management.

**"Lease"** means the Ground Lease Agreement, dated September 4, 2008 between the District of Columbia, as Landlord, and Old Congress Heights School Redevelopment Company, LLC, as Tenant.

**"Leased Premises"** as defined in the Lease.

**"Liability Insurance"** as defined in Section 6.1.4.

**"Notice to Terminate"** as set forth in Section 11.2.2(c).

**"Operating Expenses"** as defined in Section 3.4.5.

**"OPM"** means the District of Columbia Office of Property Management.

**"Party"** means either Sublandlord or Subtenant, as applicable.

**"Parties"** means Sublandlord and Subtenant together.

**"Permits"** means all demolition, site, building, construction, and other permits, approvals, licenses and/or rights required to be obtained from the District of Columbia government or other Governmental Authorities having jurisdiction over the Property (including, without limitation, any utility company) necessary to commence and complete construction of, and operate and maintain, the Redevelopment Project Improvements.

**"Permitted Encumbrances"** shall mean, with respect to the Property, encumbrances listed in the Title Commitment, on the date that is ninety (90) days subsequent to Sublease commencement Date as approved by the Subtenant in its reasonable discretion, together with (a) liens for taxes, assessments and governmental charges with respect to the Property not yet due and payable; and (b) applicable zoning regulations and ordinances and other governmental laws, ordinances and regulations provided the same do not prohibit or impair in any material respects the use of the Property either as it is currently being used or otherwise as a privately operated charter school, as contemplated by this Sublease Agreement.

**"Permitted Use"** means the design, renovation, and construction of the Redevelopment Project Improvements, and the use of the Subleased Premises for the operation of a Charter School together with related parking and playgrounds in accordance with Applicable Laws, including zoning and historic preservation regulations set forth by Governmental Authority.

**"Person"** means any individual or entity.

**"Prime Rate"** means the lowest prime rate of interest as published or announced in the Money Rates Section of The Wall Street Journal, from time to time or, if such index ceases to be published, any comparable successor thereto from time to time.

**"Shared Space Agreement"** means an agreement between Subtenant and Congress Heights Community Training and Development Corporation to share the use of the Cafetorium, warming kitchen, restrooms and parking spaces in the Subleased Premises and as described in Exhibit A of the Shared Space Agreement which is attached hereto as **Exhibit "F."**

**"Sublandlord"** shall mean Old Congress Heights Public School Redevelopment Company, LLC.

**"Sublandlord's Related Parties"** or **"Sublandlord Related Party"** as defined in Section 2.1.1.

**"Sublease Commencement Date"** means that date stated in the first paragraph on Page 3 of the Sublease.

**"Sublease Expiration Date"** means (i) June 30, 2025 if Sublandlord achieves Completion on or before August 1, 2010 June 30, 2026 if Sublandlord achieves Completion after August 1, 2010 but before August 1, 2011 and June 30, 2027 if Sublandlord achieves Completion after August 1, 2011; (ii) the last day of any Extension Period; or (iii) such earlier date as the Sublease is terminated in accordance with its terms.

**"Subleased Premises"** as defined in Section 2.1.

**"Sublease Term"** as defined in Section 2.3.

**"Sublease Year"** shall mean a period of twelve (12) consecutive months commencing on the Rent Commencement Date, and each successive twelve (12) month period thereafter until the Sublease Term ends.

**"Subtenant's Related Parties"** or **"Subtenant Related Party"** means Subtenant's subtenants, affiliates, agents, officers, employees, members, contractors, subcontractors, representatives and officers.

**"Taxable Area"** as defined in Section 4.1.1.

**"Title Commitment"** shall mean a current title commitment, issued by a title company reasonably acceptable to Subtenant, and obtained by Sublandlord, for a Leasehold Owner's Policy form \_\_\_ with extended coverage, including endorsements, and deletion of arbitration and deletion of creditor's rights.

**"Western Portion"** means that portion of the Subleased Premises that consists of undeveloped land adjacent to the Building. A conceptual drawing showing the proposed development on the Western Portion is depicted in **Exhibit G** hereto. Sublandlord may adjust the boundary for the Western Portion in order to satisfy zoning and parking requirements that pertain to a planned development on the Western Portion, but any such adjustment shall not impair Subtenant's ability to have sufficient parking spaces on its portion of the Property to accommodate fifty (50) "teachers and employees" as set forth in and in order to satisfy D.C. zoning requirements. Further, any such boundary adjustment shall be accompanied by a written

the square footage of the Building (42,528 square feet) and the denominator of which shall be the square footage of the Building plus the square footage of the rentable area of the Western Portion but not including parking.

TO HAVE AND TO HOLD said Subleased Premises, together with any rights, easements, privileges, both subterranean and vertical, and the appurtenances and improvements thereunto attaching or in anywise belonging Subtenant for and during the Sublease Term hereinafter set forth herein.

2.1.1 Neither Sublandlord (nor any of Sublandlord's affiliates, agents, officers, employees, attorneys, accountants, brokers, contractors, subcontractors, licensees, invitees or representatives) (each a "Sublandlord Related Party" and collectively, "Sublandlord's Related Parties") make any representations as to any matter or thing affecting or relating to the Subleased Premises, or this Sublease, including, without limitation, relating to physical condition, layout, subleases, footage, rents, income, expenses, operation, zoning or floor area ratio, all of which are expressly disclaimed, except as herein specifically set forth, and neither Party may rely upon any statement or representation previously made that is not embodied in this Sublease.

## **Section 2.2 Exceptions, Limitations and Reservations With Respect to Demise.**

2.2.1 Subtenant acknowledges that the demise under this Sublease is subject to the following:

- (a) Real estate taxes, if any, accruing from and after the Sublease Commencement Date, whether or not a lien on the Subleased Premises, not yet due and payable. Subtenant shall be responsible for paying all such taxes;
- (b) Sublandlord's reserved rights as more particularly set forth in this Sublease;
- (c) Rights or easements, if any, acquired prior to the Sublease Commencement Date by any public service corporation or private utility to maintain wires, pipes, cables, conduits, and distribution boxes;
- (d) Easements, encumbrances, restrictive covenants and restrictions, if any, of record on or prior to the Sublease Commencement Date and affecting the title to the Subleased Premises;
- (e) Any state of facts, an accurate survey, and an inspection of the Subleased Premises would disclose. However, the Parties acknowledge that the square footage of the Subleased Premises set forth above is not subject to re-measurement or adjustment for purposes of affecting the Base Rent;
- (f) Building restrictions and regulations set forth in Applicable Laws, and the amendments and the additions thereto, in the District of Columbia;

which CDC shall have the right to use the Cafetorium, warming kitchen, restrooms and parking areas in the Subleased Premises and as described in Exhibit A to the Shared Space Agreement, which is attached hereto as **Exhibit "F."**

**Section 2.5 Old Congress Heights School Redevelopment Company.**

To the extent permitted by law and without diminishing the benefits afforded to Subtenant (including the term hereof) or increasing the costs of Subtenant hereunder, Sublandlord shall have the right, pursuant to Article X, to assign this Sublease, or delegate any of its rights hereunder to any other Person provided Sublandlord provides at least thirty (30) calendar days' prior written notice to Subtenant of such assignment or delegation, and provided that such Person has executed a non-disturbance agreement with Subtenant on terms that are commercially reasonable.

**Section 2.6 Relationship of Parties.**

2.6.1 Subtenant agrees to perform or cause to be performed the duties and obligations imposed upon or assumed by Subtenant in this Sublease.

2.6.2 Subtenant is an independent party and not an agent, partner or joint venture of or with the Sublandlord. Nothing contained in this Sublease shall be deemed or construed by any Person as creating a relationship of principal and agent or of partnership or joint venture between Subtenant and Sublandlord. Subtenant is not authorized to act in any manner on behalf of Sublandlord.

**Section 2.7 Authorized Representatives.**

2.7.1 For the purposes of administering this Sublease, Subtenant hereby appoints Barry Sharpe as its sole and exclusive representative whose authority shall be binding upon Subtenant, and, upon written notice to Sublandlord, Subtenant may delegate such authority to another person in writing in which case that person's authority shall be binding upon Subtenant. Subtenant shall appoint a single officer or other position to act as its day-to-day single point of communication, which person shall initially be Michael DePass.

2.7.2 For the purposes of administering this Sublease, Phinis Jones shall be the sole and exclusive agency whose authority shall be binding upon Sublandlord. Andy Botticello shall be Sublandlord's day-to-day single point of communication.

2.7.3 Each Party to this Sublease may change its identified authorized representative from time to time upon delivery of written notice thereof to the other Party.

**Section 2.8 Subordination to the Lease.**

2.8.1 This Sublease is subject and subordinate to the Lease, and to all leases, mortgages and other rights or encumbrances to which the Lease is subject or subordinate. Sublandlord represents that (a) a true and correct copy of the Lease is attached hereto as **Exhibit "A"**; (b) the Lease is in full force and effect; (c) Sublandlord is not in default in the payment of Rent or

Subtenant covenants and agrees to pay to Sublandlord, except as otherwise provided herein, without demand, abatement, deduction or offset, in lawful money of the United States, an annual base rent ("Base Rent") in the amount set forth herein payable in monthly installments in advance on the first (1<sup>st</sup>) day of each month throughout the Sublease Term. The Base Rent for the Subleased Premises shall be Twenty-Two Dollars and Eighty-Three Cents (\$22.83) per rentable square foot for the first Sublease Year (as set forth in the Rent Schedule attached hereto as Exhibit "E" and except as stated below).

Notwithstanding the foregoing, the Base Rent for the first Sublease Year (and only the first Sublease Year) shall be Fourteen Dollars and Eighty-Five Cents (\$14.85) per rentable square foot if Completion of the Subleased Premises does not occur by August 1, 2010 and Imagine Southeast's total student enrollment at 421 Alabama Avenue, S.E. and the Subleased Premises (as certified to the District of Columbia Public Charter School Board for the 2010-2011 academic years) is below 479 students as of the official school district count date for that academic year and Subtenant has not found a suitable subtenant for a portion of its subleased premises at either of these locations (not including Imagine Southeast).

3.1.2 Base Rent Escalation. The Base Rent for the second Sublease Year and each Sublease Year thereafter shall be as set forth in the Rent Schedule attached hereto as Exhibit E.

3.1.3 If the Rent Commencement Date is not the first day of a month, then the Base Rent from the Rent Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the Base Rent payable during the first Sublease Year, and Subtenant shall pay such prorated installment of the Base Rent after the Rent Commencement Date, in advance.

### **Section 3.2 Security Deposit, Good Faith Deposit and Grants.**

3.2.1 If Subtenant is more than ten (10) calendar days late in paying Rent more than once in an Sublease Year, Sublandlord has the right to require that Subtenant provide a security deposit ("Security Deposit") in an amount equal to up six (6) months' Rent (Rent to be determined based on the Rent payable during the Sublease Year in which the late rent payments were made).

The Security Deposit and the accumulated interest will be held by Sublandlord for the faithful performance by Subtenant of all of the terms, covenants and conditions of this Sublease, it being expressly understood and agreed that the Security Deposit is not an advance deposit for Base Rent, Additional Rent or a measure of Sublandlord's damages in case of Subtenant's default. The Security Deposit may be retained, used or applied by Sublandlord to remedy any default by Subtenant of its obligations hereunder. If any portion of the Security Deposit is so used or applied, Subtenant shall, within twenty (20) days after written demand therefor, deposit with Sublandlord an amount sufficient to restore the Security Deposit to the full amount required hereunder, and Subtenant's failure to do so shall be a default of this Sublease without the necessity of additional notice or the passage of additional grace periods. Subtenant may not elect to apply any portion of the Security Deposit or the Security Deposit toward payment of Base



such amount is paid. Subtenant acknowledges and agrees that the actual loss that Sublandlord will suffer as a result of the nonpayment of Rent is difficult to estimate, and that the amount of such default interest and such late fees is a fair and reasonable estimate of the actual loss to Sublandlord as a result of the nonpayment of Rent, and that such fixed amounts are reasonably related to the likely loss that Sublandlord will suffer as a result of such nonpayment. If any sums other than Rent due by Subtenant to Sublandlord hereunder are not paid within thirty (30) calendar days after Subtenant receives notice from Sublandlord that the same are due, such sums shall bear interest from and after such thirty (30) day period until paid at the Interest Rate plus five percent (5%) per annum.

#### **Section 3.4 Additional Rent.**

3.4.1 In addition to the amounts otherwise set forth in this Article III, Subtenant shall pay as additional rent ("Additional Rent"), all Capital Expenses (as defined below), all Impositions (defined below), all Operating Expenses (defined below), and any and all other costs, expenses, and charges which Subtenant in any of the provisions of this Sublease assumes or agrees to pay, including without limitation, Sublandlord's costs, including reasonable attorney's fees and costs, of enforcing its rights under this Sublease after a default by Subtenant under this Sublease (or after an Event of Default by Subtenant under this Sublease). Except as otherwise set forth in this Sublease, Additional Rent shall be deemed "Rent" for the purposes of this Sublease, and any and all of the provisions of this Sublease governing Rent shall also apply to Additional Rent.

3.4.2 Capital Expenses. Subtenant shall also pay as Additional Rent all expenses ("Capital Expenses") reasonably necessary to repair, maintain or replace the Redevelopment Project Improvements, the Building or the Subleased Premises. Subtenant shall not be required to pay Capital Expenses during the last twelve (12) months of the Sublease Term or, if applicable, any Extension Period, unless such Capital Expense is of an urgent nature such it reasonably needs to be addressed prior to the expiration of the Sublease Term or any Extension Period. Capital Expenses shall be determined based on the application of Generally Accepted Accounting Principles. On or before June 1<sup>st</sup> of every calendar year, Subtenant shall provide Sublandlord with a good faith estimate of Capital Expenses ("Subtenant's Capital Expenses Estimate") for the next three calendar years. Sublandlord shall have thirty (30) days to dispute Subtenant's Capital Expenses Estimate by giving written notice to Subtenant of its objection(s) and the basis thereof. Sublandlord and Subtenant shall then have thirty (30) days in which they shall use their best efforts to reach agreement on an agreed estimate for Capital Expenses for the next three calendar years. If Sublandlord and Subtenant are unable to reach agreement on an estimate of Capital Expenses for the next three years, then the dispute shall be referred by either of the Parties to a mutually agreed engineer with expertise in such matters within thirty (30) days after the expiration of the aforesaid thirty-day negotiation period with a request that their dispute be settled by the engineer selected within the next ninety (90) days. In event that the parties cannot agree with regard to the engineer's finding, then the parties shall submit to, arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry (Expedited Procedures), and any judgment of the arbitrator may be entered in a court having jurisdiction thereof. If Sublandlord doesn't dispute Subtenant's Capital Expenses Estimate or if an arbitration request is not made within the prescribed time period, then

#### 3.4.4 Deliberately omitted.

3.4.5 Operating Expenses Defined. Except as otherwise stated herein, "Operating Expenses" means all costs, fees and expenses incurred in each calendar year in connection with the operation, administration, management, maintenance, servicing, insuring and repair of the Subleased Premises, including, but not limited to the following: Base Building Conditions; Impositions (as defined below); employees' wages, salaries, welfare and pension benefits and other fringe benefits; payroll taxes; lighting; Utilities (as defined below), but excluding the cost of electricity provided to any subtenant who is billed directly by the applicable utility provider, the cost of the replacement of building standard electrical fixtures and bulbs; painting outside areas; trash removal (including charges incurred with recycling programs and legal requirements); extermination service; sewer and water charges; premiums for fire and casualty, liability, rent, workmen's compensation, sprinkler, water damage and other insurance; repairs and maintenance to the Property; equipment and supplies used in the operation and maintenance of the Property (including the cost of inspection and depreciation thereof unless the original cost thereof was included in Operating Expenses); uniforms and dry cleaning for employees that manage, operate, service or maintain the Property; snow and ice removal for the outside areas and sidewalks; the cost of service and maintenance contracts; landscaping, tree and shrubbery maintenance; condenser water charges; legal fees (other than legal fees relating to the enforcement of Sublandlord's rights under leases with subtenants in the Building); accounting fees; management fees (not in excess of the range of management fees charged in the Washington, D.C. metropolitan area for similar services), whether or not paid to any person having an interest in or under common ownership with Sublandlord; and all other expenses now or hereafter reasonably and customarily incurred in connection with the operation, maintenance and management of comparable buildings in Washington, D.C. in which a charter school is the primary tenant.

Operating Expenses shall not include painting or decorating other than outside areas; leasing commissions; interest, amortization, or other payments on loans to Sublandlord whether secured or unsecured; income, excess profits, or franchise taxes; ground lease rental (except to the extent such rental payments represent payment of Impositions); advertising for vacant space; leasing commissions; the cost of tenant improvements; or legal fees for leasing vacant space in the Building.

#### 3.5 Maintenance and Repairs.

3.5.1 From and after Rent Commencement Date, Subtenant shall perform all maintenance, repairs and replacements (as reasonably determined by Subtenant) relating to the Subleased Premises and all maintenance, repairs and replacements (as reasonably determined by Sublandlord) of all areas, the Building roof, footings, foundations, wall, skeleton, bearing columns, interior bearing walls, floor slabs, structural elements, underground utility and sewer pipes; driveways and parking lots; fire protection sprinkler system; all exterior painting (at reasonable intervals); the Building mechanical, plumbing, electrical, and HVAC systems serving the Building and/or the Subleased Premises, whether the same are located within or without of the Subleased Premises; and the walkways of and the sidewalks in front of the Buildings so that

## **ARTICLE IV**

### **IMPOSITIONS**

#### **Section 4.1    Definition of Impositions.**

4.1.1 The term "Impositions" shall mean all real estates and property taxes, transfer and recordation taxes, ad valorem and other taxes, assessments, business improvement district fees, water and sewer rents and charges, use and occupancy taxes, license and permit fees, vault space rent and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Sublease Term be assessed, levied, charged, confirmed or imposed by public authority upon or accrue or become due or payable out of or on account of or become a lien on the Property, or the sidewalks, streets or vaults adjacent to the Property, and all improvements thereon (collectively, the "Taxable Area").

#### **Section 4.2    Additional Rent During the Term.**

4.2.1 Subject to the provisions of Section 4.4, and commencing on the Sublease Commencement Date, Subtenant will pay or cause to be paid, as and when the same shall become due (and before any fines, penalties, interest or cost may be added thereto), all Impositions imposed on the Property, except that:

4.2.2 All Impositions for the fiscal year or tax year in which the term of this Sublease commences, as well as during the year in which the Term expires, shall be apportioned so that the Subtenant shall pay its proportionate share of the Impositions which are payable in the year in which the Sublease Term commences and in the year in which the Sublease Term expires, and Sublandlord shall pay its proportionate part; any sum payable by Subtenant, as provided in this Article IV, which would not otherwise be due until after the date of the termination or expiration of this Sublease (but attributable to the period of time preceding such Sublease termination or expiration), shall be paid by Subtenant to Sublandlord upon such termination or expiration.

4.2.3 Where any Impositions are permitted by law to be paid in installments, Subtenant may pay such Imposition in installments as and when such installments become due; provided, however, that the amount of all installments of any such Impositions which are to become due and payable after the expiration of the Sublease Term shall not be apportioned (except as provided in Section 4.2.2 hereof).

4.2.4 The provisions of this Article IV shall not be construed as imposing any liability upon Subtenant for the payment of any taxes, assessments or other charges imposed by city or federal laws or ordinances or any other laws or ordinances, upon the net income of Sublandlord, nor shall Subtenant be obligated to pay any withholding, profit or revenue tax or charge levied upon the rents payable to Sublandlord under the terms of this Sublease, or any corporate franchise tax or corporate license fee which may be levied upon or against any successor corporate Sublandlord. The payment of all such taxes, assessments and other charges referred to in this Section 4.2.4 shall be the sole liability of Sublandlord. Notwithstanding the



Subtenant shall be responsible for all charges for gas, heat, light, power, telephone, water, sewer, trash removal, and drainage charges and other charges by public utilities of every kind ("Utilities") for services furnished to any improvements located on the Subleased Premises from the Rent Commencement Date and continuing throughout the Sublease Term and that are provided and billed directly to Subtenant. The Sublandlord shall reasonably cooperate with the Subtenant to cause such utilities and services, if any, to be transferred to the Subtenant.

## **ARTICLE V**

### **CONSTRUCTION OF REDEVELOPMENT PROJECT**

#### **Section 5.1 Obligation to Construct Improvements.**

5.1.1 Sublandlord hereby agrees to develop, renovate, and construct the Redevelopment Project Improvements on the Subleased Premises as set forth in **Exhibit "C"** hereto. The cost of developing the Subleased Premises and construction of all Redevelopment Project Improvements thereon shall be borne by Sublandlord.

#### **Section 5.2 Redevelopment Project Improvements.**

5.2.1 Construction of the Redevelopment Project Improvements shall be in accordance with all Applicable Laws.

5.2.2 Except as otherwise stated herein, Sublandlord shall be responsible for preparation of the Subleased Premises for development and construction substantially in accordance with the Redevelopment Project Improvements set forth in **Exhibit "C"** hereto.

#### **Section 5.3 Construction Restrictions and Obligations.**

5.3.1 Sublandlord agrees that it shall use commercially reasonable efforts to achieve Commencement of Construction on or before the date set forth in the Redevelopment Project Schedule attached and incorporated as **Exhibit "D"** hereto and diligently perform the development and construction of the Redevelopment Project Improvements in accordance with the Construction Drawings and Redevelopment Project Schedule; provided, and on condition, that Subtenant complies with its obligations hereunder.

5.3.2 Sublandlord shall use commercially reasonable efforts to achieve Completion on or before August 1, 2010 for the Subleased Premises.

5.3.3 If Sublandlord has not achieved thirty percent (30%) completion of the Redevelopment Project Improvements of the Subleased Premises completed (as determined in accordance with the Draw Schedule (as defined below) by April 1, 2010, then Sublandlord or Subtenant shall have the right to postpone the Rent Commencement Date to August 1, 2011. Between March 22, 2010 and April 1, 2010, Sublandlord shall deliver to Subtenant the certification of the determination of the anticipated percentage of completion as of April 1, 2010. Upon written notice to the other Party within seven Business Days of receipt by Subtenant of

Subtenant has the right to hire a qualified third-party inspector at any time to verify the percentage completions set forth in this Section 5.3.3.

Subtenant will cooperate promptly in responding to any commercially reasonable information requests from Sublandlord relating to obtaining a Certificate of Occupancy, Temporary or otherwise.

“Draw Schedule” means a draw schedule on the AIA form of the General Contractor that includes all funds to be drawn from all sources for all work in connection with the Redevelopment Project Improvements.

Sections 5.4 If Subtenant requests and Sublandlord agrees to make any improvements that are in addition to those specified in the Redevelopment Project Improvements or any changes the Redevelopment Project Improvements, such improvements or changes shall be authorized and paid directly by Subtenant. If such improvements or changes result in any change in the Redevelopment Project Schedule, then any deadlines provided for in this Sublease relating to the timing of Sublandlord’s construction obligations shall be extended, day for day, to the extent of the delay caused by the requested improvements or changes to the Redevelopment Project Improvements.

Sections 5.5-5.8 Deliberately omitted.

#### Section 5.9 Environmental Claims.

##### 5.9.1a Subtenant Covenants and Responsibilities.

Subtenant hereby covenants that commencing on Rent Commencement Date, at its sole cost and expense (as between Sublandlord and Subtenant provided that the foregoing shall not prohibit Subtenant from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Subleased Premises and the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Laws to the extent that any Environmental Liabilities and Costs may be imposed, and Sublandlord and Sublandlord Related Parties shall have no responsibility or liability with respect thereto except to the extent such Environmental Liability is the direct result of a condition that existed prior to Rent Commencement Date or if caused by the negligence or willful misconduct of Sublandlord or any Sublandlord Related Party, after the Rent Commencement Date.

##### 5.9.1b Sublandlord Covenants and Responsibilities.

Sublandlord hereby covenants that, prior to Rent Commencement Date, at its sole cost and expense (as between Sublandlord and Subtenant provided that the foregoing shall not prohibit Sublandlord from the pursuit of any third party responsible for non-compliance with

Subtenant and Subtenant Related Parties (collectively, the "Subtenant Indemnified Parties") harmless from and against any and all Environmental Liabilities and Costs and unreleased, undischarged, unsettled losses, costs, claims, damages, liabilities and causes of action of any nature whatsoever, including, without limitation, the reasonable costs and fees (including attorneys' fees and engineering consultant fees), incurred by or asserted against any of the Subtenant Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Sublandlord's or any Sublandlord Related Party's violation of any Environmental Laws at the Subleased Premises; (ii) any Contaminant Release or threatened Contaminant Release or a Hazardous Material at the Subleased Premises by Sublandlord or any Sublandlord Related Party prior to the Rent Commencement Date, or (iii) any condition of pollution, contamination or Hazardous Material related nuisance on, under or from the Subleased Premises or violation of Environmental laws prior to the Rent Commencement Date ("Environmental Claims against Sublandlord").

5.9.3 Before undertaking an environmental remediation or other environmental-related work, Subtenant shall request Sublandlord's permission, in writing, at least twenty (20) days in advance of undertaking such environmental, which may be granted in Sublandlord's reasonable discretion.

5.10-11 Deliberately Omitted.

#### Section 5.12 Discharge of Liens.

5.12.1 From and after the Rent commencement Date, Subtenant shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge (levied on account of any Imposition or any mechanic's, laborer's or materialman's lien or any mortgage, conditional sale, title retention agreement, security interest or chattel mortgage, or otherwise) caused by Subtenant which might be or become a lien, encumbrance or charge upon the Property, the Building or the Subleased Premises or any part thereof or the income therefrom, having any priority or preference over or ranking on a parity with the estate, rights and interest of Sublandlord in the Subleased Premises or any part thereof or the income therefrom, and Subtenant shall not suffer any other matter or thing whereby the estate, rights and interest of Sublandlord in the Subleased Premises or any part thereof or the income therefrom might be impaired; provided that any such imposition, lien, encumbrance or charge shall be discharged in accordance with the terms of this Sublease.

5.12.2 From and after the Rent Commencement Date, if any mechanic's, laborer's or materialman's lien shall at any time, due to acts or omissions of Subtenant, be filed against the Property or any part thereof, Subtenant, within twenty (20) calendar days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Subtenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Sublandlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings and in any such event Sublandlord shall be entitled, if Sublandlord so elects, to compel the prosecution of an action for the enforcement of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances. Subtenant

equivalent to a "special form" property insurance policy that has been reasonably approved by Landlord (collectively, the "Property Insurance Policy"). The Property Insurance Policy shall cover at least the following perils: building collapse, fire, flood, impact of vehicles and aircraft, lightning, malicious mischief, terrorism, vandalism, water damage, and windstorm. The Property Insurance Policy shall also cover such other insurable perils as, under good insurance practices, other commercial property tenants from time to time insure against for Comparable Buildings. The Property Insurance Policy shall cover: (i) additional expense of demolition and increased cost of construction, including, without limitation, increased costs that arise from any changes in Applicable Laws with respect to such restoration in a minimum amount of \$10,000,000 for the Leased Premises; (ii) at least 100% of the replacement cost value of the Redevelopment Project Improvements (subject to Sublandlord's deductible); and (iii) loss of rent insurance on an actual loss sustained basis covering twelve months or such longer period as Sublandlord deems necessary. Any Property Insurance Policy shall contain an agreed amount endorsement or a coinsurance waiver and replacement cost value endorsement without reduction for depreciation and shall in no event be less than the replacement cost of the Building.

6.1.2. If any part of the Redevelopment Project Improvements is located in an area designated as "flood prone" or a "special flood hazard area" under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, Sublandlord shall obtain and maintain at least the maximum coverage for the Redevelopment Project Improvements available under the federal flood insurance plan. Regardless of the flood zone, the minimum amount of coverage required by this subsection for loss caused by floods shall be that which is required by an Approved Mortgagee. Any insurance required pursuant to the terms of this subsection being hereinafter sometimes referred to as "Flood Insurance."

6.1.3. Sublandlord shall obtain and maintain at all times during which structural construction, repairs are being made by Sublandlord with respect to the Redevelopment Project Improvements, builder's risk insurance for not less than the full completed project insurable value of the Redevelopment Project Improvements, covering the same risks and otherwise complying with the same requirements as the Property Insurance Policy, to such limits and with such coverage extensions as Sublandlord may reasonably require (the "Builder's Risk Insurance"). Builder's Risk Insurance shall be written on a "completed value" form (100% nonreporting) or its equivalent and shall include an endorsement granting permission to occupy. Builder's Risk Insurance shall cover: (a) the same perils that the Property Insurance Policy must cover; (b) loss of materials, equipment, machinery, and supplies whether on-site, in transit, or stored offsite, or of any temporary structures, hoists, sidewalks, retaining walls, and underground property; (c) soft costs, plans, specifications, blueprints and models; and (d) demolition and increased cost of construction, including increased costs arising from changes in Applicable Laws at the time of restoration of the Redevelopment Project Improvements and coverage for operation of building laws or other Applicable Laws, all subject to a sublimit and deductible satisfactory to Landlord on an actual loss sustained basis.

6.1.4. Sublandlord and Subtenant shall each obtain and maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall be in the so called "occurrence" form and



6.1.11 Subtenant and Sublandlord shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies for public liability, fire and other coverage at any time in force with respect to the Subleased Premises and the Redevelopment Project Improvements.

6.1.12 All insurance required by this Sublease shall be from insurer(s) authorized to do business in the District of Columbia and reasonably satisfactory to Sublandlord with: (a) a claims paying ability of not less than "A-" (or the equivalent) by S&P and one other rating agency satisfactory to Sublandlord; or (b) "A-VII" or better financial strength rating by A.M. Best (or the equivalent). Subtenant and Sublandlord shall pay or cause to be paid the insurance premiums for all insurance required to be obtained and maintained by Subtenant or Sublandlord, as the case may be, when due and payable. Each Party shall deliver to the other Party, immediately upon issuance, certificates of insurance (or copies of the insurance policies if requested by a Party) for all insurance required to be obtained and maintained by the Parties. At least ten (10) calendar days before any policy expires (time being of the essence), the relevant Party shall deliver evidence of renewal to the other Party. Further, all Required Insurance that must be obtained and maintained by a Party shall be primary protection for any and all losses, and the other Party shall not be called upon to contribute to any loss. All Required Insurance shall be written on the "occurrence" basis unless Sublandlord, in its sole and exclusive discretion, provides its written approval of a "claims made" policy.

6.1.13 In each insurance policy (or an endorsement thereto), the carrier shall agree not to cancel, terminate, or nonrenew such policy without giving the District of Columbia and the non-insuring Party at least thirty (30) calendar days prior written notice. The Property Insurance Policy shall provide that as to the District of Columbia and Sublandlord's interest or the Subtenant's interest, if any, such policy shall remain valid and shall insure the District of Columbia, Sublandlord and the non-insuring Party regardless of any: (a) named insured's act, failure to act, negligence, or violation of warranties, declarations, or conditions; (b) occupancy or use of the Redevelopment Project Improvements for purposes more hazardous than those permitted; or (c) the District of Columbia's, Sublandlord's or Subtenant's exercise of any of their respective rights or remedies hereunder, but only if such coverage is commercially available in the District of Columbia with respect to coverage for ground lessees of Comparable Buildings from an insurance carrier licensed to do business in the District of Columbia and does not result in a significant increase in the costs for the relevant insurance policy.

6.1.14 Sublease Requirements. While any construction is being done on the Subleased Premises by Subtenant, Subtenant shall: (i) cause its general contractors, or, as applicable, their respective subcontractors, to obtain and maintain, worker's compensation insurance covering all persons employed by contractors or subcontractors of any tier in connection with any such construction, including without limitation all agents and employees of contractors and subcontractors with respect to whom death or bodily injury claims could be asserted against the District of Columbia, Sublandlord or their agents or contractors; and (ii) cause its general contractors to otherwise comply with Applicable Laws with respect to worker's compensation insurance.

therefor, and Subtenant shall, on demand, reimburse Sublandlord, for such premium payment and all commercially reasonable unrelated third-party expenses incurred in connection therewith, plus interest on such amounts at the Interest Rate plus five percent (5%) per annum from the date such cost or expense was incurred through the date of payment to Sublandlord.

**Section 6.5      No Invalidation of Insurance.**

Subtenant shall at no time whatsoever do or permit to be done any act or thing in, to, or about the Subleased Premises or otherwise which would or could have the effect of causing invalidating, in whole or in part or reducing the scope or amount of coverage provided by any of the insurance maintained pursuant to this Article VI. Subtenant shall not permit any buildings, other structures, or improvements at any time to be put, kept, or maintained on the Subleased Premises in such condition that the same cannot be insured in the amount of the full replacement cost thereof.

**Section 6.6      Blanket Policies.**

Any insurance required to be maintained herein by Subtenant may be effected under blanket insurance policies relating to the Subleased Premises and other properties, so long as Subtenant provides evidence to Sublandlord that (i) the amount of insurance covering the Subleased Premises and the Redevelopment Project Improvements, and Subtenant's use thereof, shall not be affected by losses at any or all additional locations and (ii) with respect to commercial general liability insurance, if there is a shared aggregate limit, then the minimum amount of liability insurance shall be increased to \$10,000,000.00.

**Section 6.7      Indemnity.**

6.7.1      Subject to the limitations contained in Section 21.22 below and except to the extent that any such claims are released, settled, or otherwise discharged by reason of any insurance coverage maintained by Subtenant and except to the extent caused by the negligence or willful misconduct of Sublandlord or any Sublandlord Related Party, Subtenant agrees to indemnify and save harmless the Sublandlord and Sublandlord Related Party (collectively, "Indemnified Parties") against and from those portions of any and all claims by or on behalf of any Person (other than Subtenant and Subtenant's Related Parties) that are not so released, settled, or otherwise discharged as aforesaid, and to be liable and responsible for such unreleased, unsettled, or undischarged portions of any and all claims, including without limitations costs, liabilities, expenses, losses and damages, of any kind or nature which the Indemnified Parties may incur, including but not limited to loss of life, bodily injury, or damage or destruction to property, costs and reasonable legal fees, arising from: (i) the use, occupancy, or operation of the Property, the Subleased Premises or the Redevelopment Project Improvements by Subtenant or any Subtenant Related Party; (ii) any work or thing whatsoever done or which is required to be done by Subtenant or any Subtenant Related Party and is not done in, on or about the Subleased Premises during the Sublease Term; (iii) all Environmental Claims for which Subtenant is responsible for under this Sublease; (iv) from the Rent Commencement Date and continuing thereafter during the Sublease Term, any condition of the Subleased Premises or of any vaults, passageways or spaces demised unto Subtenant therein; (v)

7.1.1 From and after the Sublease Commencement Date, the proceeds of any fire or casualty insurance shall be applied as follows at the time the proceeds are issued by Sublandlord's or Subtenant's insurance company:

(a) Proceeds Less than or Equal to One Million Dollars

If less than or equal to One Million Dollars (\$1,000,000.00), such proceeds shall be paid to Sublandlord as a trust fund, deposited in a separate bank account maintained by Sublandlord and used, applied and paid for the repair and restoration of the damage to the Renovation Project Improvements on the Subleased Premises in accord with the Parties' mutual written agreement; or

(b) Proceeds More than One Million Dollars

If such proceeds are in excess of One Million Dollars (\$1,000,000.00), they shall be paid to and deposited with a bank or trust company in the District of Columbia selected by Landlord and having assets in excess of \$30,000,000.00 as insurance trustee (hereinafter referred to as the "Depository") which shall hold, apply, and make available the proceeds of such insurance to the cost of repair of the damage and replacement or rebuilding of the Renovation Project Improvements on the Subleased Premises as more particularly hereafter provided in Section 7.2.

**Section 7.2 Sublandlord's Obligation to Restore**

7.2.1 If the Renovation Project Improvements now or hereafter erected upon the Subleased Premises during the Sublease Term shall be destroyed or damaged in whole or in part by fire or other casualty, or as a result directly or indirectly of war, terrorism, bio-terrorism, or by act of God, or occurring by reason of any causes whatsoever, Subtenant covenants that it shall give prompt notice thereof to Sublandlord. Subject to Section 7.1, if such damage or destruction occurs prior to Completion of the Renovation Project Improvements affected by such damage or destruction, Sublandlord shall be obligated to repair or restore such Renovation Project Improvements in conformity with the Construction Drawings, subject to changes necessary to comply with then-current building code requirements, as approved by Sublandlord in its reasonable discretion. If such damage or destruction occurs after Completion of the Renovation Project Improvements affected by such damage or destruction, Sublandlord shall repair, replace, restore or reconstruct the Renovation Project Improvements to substantially the same conditions as existed prior to any such casualty and with at least as good workmanship and quality as the improvements being repaired or replaced, subject to changes necessary to comply with the current building code requirements, as approved by Sublandlord in its reasonable discretion.

7.2.2 Such restoration shall be commenced within two hundred seventy (270) calendar days from the date of the event of casualty. Sublandlord shall use commercially reasonable effort to pursue its insurance claims with its insurance company, comply with Section 7.1 for the deposit of the insurance proceeds, and complete the restoration work within a reasonable time, free and clear of all liens and encumbrances. If the insurance proceeds shall exceed the cost of such repairs or rebuilding, the balance remaining after payment of the cost of such repairs or rebuilding shall be paid over and belong to Sublandlord used solely for the repair and

Comparable Buildings, provided that Subtenant shall in any event make all repairs reasonably necessary to avoid any structural damage.

### **Section 8.3    Alterations.**

8.3.1 After Completion, Subtenant may not make alterations, improvements, additions and other changes (each, an "Alteration," and collectively, "Alterations") except as provided in this Section 8.3.1. If the Alterations are Base Building Alterations, Subtenant shall obtain Sublandlord's prior written consent for such alterations, which consent may be granted or denied at its sole and absolute discretion. Within thirty (30) calendar days after the completion of any Base Building Alterations, Subtenant shall indicate to Sublandlord in writing the Base Building Alterations actually completed pursuant to Sublandlord's consent, the commercially reasonable cost of such alterations (with reasonably detailed documentation), and state all Base Building Alterations approved but not made ("Subtenant's Base Building Alterations Certification"). If the Alterations are to the interior of the Redevelopment Project Improvements and not Base Building Alterations or cosmetic in nature, Subtenant shall obtain Sublandlord's prior written approval which may be granted or denied at Sublandlord's sole and absolute discretion. Subtenant shall have the right, at any time and from time to time, as often and frequently as Subtenant wishes, to make Alterations to the interior and non-Base Building Conditions of the Redevelopment Project Improvements that are cosmetic in nature, including without limitations, painting and carpeting with the written consent of Sublandlord, which shall not be unreasonably withheld, conditioned or delayed.

8.3.2 Subject to Section 8.3.1, any Alterations to the Redevelopment Project Improvements that require Sublandlord's prior written consent shall be under the supervision of a licensed architect or engineer selected by Subtenant and approved in writing by Sublandlord (such approval not to be unreasonably withheld, delayed, or conditioned), and shall not be made except in accordance with detailed plans and specifications prepared and approved in writing by such architect or engineer and approved in writing by Sublandlord. Subject to Section 8.3.1, when Subtenant requests Sublandlord's approval under Section 8.3.1 which necessitates the involvement of an engineer or architect in Subtenant's reasonable good faith judgment, Subtenant shall provide Sublandlord with a certification from a licensed engineer or architect and from Subtenant that the proposed Alterations conform to all Applicable Laws. Sublandlord shall have a period of sixty (60) calendar days from receipt of the plans and specifications for each such Alteration within which to approve or reject same. Subtenant will reimburse Sublandlord for its reasonable costs of retaining a third-party architect or engineer to review such plans. A rejection by Sublandlord of any portion of a proposed Alteration shall be in writing, which writing shall specify with particularity the basis for such rejection.

8.3.3 In the event of an emergency (including, without limitation, the existence of a condition requiring environmental remediation), which threatens life, safety or property, Subtenant may make all necessary repairs without Sublandlord's consent which are reasonably required to abate the emergency so long as Subtenant attempts in good faith to notify Sublandlord in advance that such repairs are being made, and same are not inconsistent with the Construction Drawings.



(c) Subtenant will immediately notify Sublandlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Subleased Premises or compliance with Environmental Laws. Subtenant will promptly supply Sublandlord with copies of all notices, reports, correspondence, and submissions made by Subtenant to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other Governmental Authority which requires submission of any information concerning environmental matters or hazardous wastes or substances in, on, or about the Subleased Premises pursuant to Environmental Laws. Subtenant will promptly cure and have dismissed with prejudice any actions and proceeding brought pursuant to any Environmental Laws to the satisfaction of Sublandlord. Subtenant will keep the Subleased Premises free of any lien imposed pursuant to any Environmental Law except to the extent such lien arises from the actions or inactions of Sublandlord or any Sublandlord Related Party or by the condition of the Property which pre-existed the Sublease Commencement Date which was not caused by the negligence or willful misconduct of Subtenant or any Subtenant Related Party. Subtenant will promptly notify Sublandlord of any liens threatened or attached against the Subleased Premises pursuant to any Environmental Law. If such a lien for which Subtenant is responsible as provided in this Section is filed against the Subleased Premises, then, within the earlier of thirty (30) calendar days or five (5) calendar days less than the period to remove the liens set forth in any underlying mortgage or lease from the date that the lien is placed against the Subleased Premises, and before any Governmental Authority commences proceedings to sell the Subleased Premises pursuant to the lien, Subtenant will either (1) pay the claim and remove the lien from the Subleased Premises; or (2) furnish either (i) a bond or cash deposit reasonably satisfactory to Sublandlord and Sublandlord's title insurance company in an amount not less than the claim from which the lien arises; or (ii) other security satisfactory to Sublandlord and to any superior mortgagee or lessee in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

(d) Sublandlord and Sublandlord's Related Parties, at Sublandlord's sole cost and expense, may (but without the obligation or duty so to do), at any time and from time to time, on not less than ten (10) Business Days' notice to Subtenant (except in the event of an emergency in which case no notice will be required), inspect the Subleased Premises to determine whether Subtenant is complying with the obligations set forth in this Section 8.4 and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as Sublandlord and Subtenant may agree. Sublandlord and Sublandlord's Related Parties shall comply at all times while on site with all reasonable safety requirements of Subtenant, provided Subtenant shall provide Sublandlord prior notice of such safety requirements. If Subtenant is not in compliance, Sublandlord will have the right (but not the obligation), in addition to Sublandlord's other remedies available at law and in equity, to enter upon the Subleased Premises immediately and at Subtenant's sole cost and expense to take such action as Sublandlord in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Subtenant's failure to comply. Sublandlord will use reasonable efforts to minimize interference with Subtenant's business but will not be liable for any interference caused by Sublandlord's entry and remediation efforts as permitted by this section except to the extent caused by the negligence of Sublandlord or that of Sublandlord's Related Party. Upon completion of any sampling or testing Sublandlord will (at Subtenant's expense if Sublandlord's actions are a result of Subtenant's default under this Section 8.4) restore

## ARTICLE IX

### TRANSFER AND SUBLEASE BY SUBTENANT

#### **Section 9.1    General.**

9.1.1 (a) Subtenant shall not assign or transfer (collectively, "Assign" or Assignment") this Sublease or all or any of Subtenant's rights hereunder or interest herein unless (i) the assignee will use the Subleased Premises for a Permitted Use; and (ii) Sublandlord provides its prior written consent which shall not be unreasonably withheld, conditioned or delayed. Any proposed Assignment must be in compliance with this Sublease and the proposed assignee must have the financial capacity to meet all of the financial and other obligations imposed on Subtenant under this Sublease.

(b) Subtenant shall not sublet ("Sublet" or "Subletting") part or all of the Subleased Premises unless (i) the space is to be used for a Permitted Use; and (ii) Sublandlord provides its written consent which shall not be unreasonably withheld, conditioned or delayed. Any proposed sublet must be in compliance with the Lease and the proposed sub-sublessee must have the financial capacity to meet all of the financial and other obligations imposed on Subtenant under this Sublease. Sublandlord agrees that Subtenant may sublease the Subleased Premises to Imagine Southeast or another D.C. public charter school on terms that are consistent with this Sublease. Subtenant shall provide Sublandlord with a copy of any sublease agreement between Subtenant and Imagine Southeast, and any amendment thereof, promptly upon execution of such sublease or amendment.

(c) In no event shall any assignment of this Sublease or Subletting of any portion of the Subleased Premises operate to release or discharge the original named Subtenant hereunder of the obligations of the Subtenant under this Sublease for the entire Sublease Term (including the payment of Rent).

9.1.2 No Assignment, Subletting, or right of occupancy hereunder may be effectuated by operation of law. Sublandlord's consent to any Assignment or Subletting, the listing or posting of any name other than Subtenant's, or Sublandlord's collection or acceptance of rent from any assignee or Subtenant shall not be construed either as waiving or releasing Subtenant from any of its liabilities or obligations under this Sublease as a principal and not as a guarantor or surety, or as relieving Subtenant or any assignee or Subtenant from the obligation of obtaining Sublandlord's prior written consent to any subsequent assignment or Subletting. For any period during which Subtenant has committed an uncured Subtenant Default hereunder, Subtenant hereby authorizes each such assignee or Subtenant to pay said rent directly to Sublandlord upon receipt of notice from Sublandlord specifying same. Sublandlord's collection of such rent shall not be construed as an acceptance of such assignee or Subtenant as a Subtenant. Subtenant shall reimburse Sublandlord for any reasonable out-of-pocket third-party expenses (including reasonable attorney's fees and expenses) incurred by Sublandlord in connection with Subtenant's request for Sublandlord to give its consent to any Assignment or Subletting and Sublandlord shall be entitled to condition its consent to receipt of such reimbursement. Any Sublease agreement shall be in a form and with terms approved by Sublandlord, such approval not to be unreasonably withheld, conditioned or delayed. Subtenant

D.C. Official Code § 38-1802.13; (ii) refused to renew its charter pursuant to D.C. Official Code § 38-1802.12; or (iii) placed the charter school on probationary status pursuant to D.C. Official Code § 38-1802.12(d)(5)(B), and has a charter in effect pursuant to D.C. Official Code through § 38-1802.01 through § 38-1802.15.

## **ARTICLE X**

### **TRANSFERS BY LANDLORD AND SUBLANDLORD**

#### **Section 10.1 Assignment and Sale.**

Landlord and Sublandlord may freely assign, transfer, sublet, hypothecate, pledge or mortgage the Subleased Premises and Landlord's and Sublandlord's interest under the Sublease without Subtenant's prior consent, provided Subtenant's interest in the Sublease is not impaired and Sublandlord obtains a non-disturbance agreement on behalf of Subtenant and on commercially reasonable terms from anyone obtaining a mortgage or other secured interest in the Subleased Premises.

#### **Section 10.2 Landlord's and Sublandlord's Mortgagee.**

10.2.1 Except as provided in this Article X, nothing contained herein shall restrict or otherwise impair the right of Landlord to transfer, convey, sell, mortgage or otherwise deal with the fee to the Subleased Premises or affect the right of Sublandlord to assign this Sublease and the rental and other sums payable hereunder as further collateral security for any such fee mortgage or otherwise, and Subtenant agrees to honor any such assignment from and after receipt of an executed copy thereof.

10.2.2 Subtenant further agrees that while any such mortgage or other encumbrance is in force, and if Subtenant shall have been given written notice thereof and the name and address of the mortgagee and/or trustee, Subtenant shall give said mortgagee or trustee a duplicate copy of any and all notices of default in writing which Subtenant may give or serve upon Sublandlord pursuant to the terms of this Sublease, and any such notice shall not be effective until said duplicate copy is given to such mortgagee or trustee. A different address may be designated by such mortgagee or trustee by written notice delivered to Subtenant from time to time.

10.2.3 Any such mortgagee and/or trustee may, at its option, at any time before any rights of the Subtenant shall have accrued as a result of any default of Sublandlord hereunder, make any payment or do any other act or thing required of the Sublandlord by the terms of this Sublease; and all payments so made and all things so done or performed by any such mortgagee and/or trustee shall be as effective to prevent accrual of any rights of Subtenant hereunder as the same would have been if done and performed by the Sublandlord instead of by any such mortgagee or trustee.

10.2.4 No such mortgagee or trustee of the rights and interests of the Sublandlord hereunder shall be or become liable to Subtenant as an assignee of this Sublease until such time as said mortgagee or trustee shall by foreclosure or other appropriate proceedings in the nature thereof, or as the result of any other action or remedy provided for by such mortgagee or deed of trust, or by proper conveyance from Sublandlord, acquire the rights and interests of the

or authority shall by reason of the inability of Subtenant to meet its obligations in due course take over the assets or property of Subtenant.

Notwithstanding the foregoing, provided however, that if any such petition shall be filed against Subtenant or any such action shall be taken involuntarily against Subtenant, and if in good faith Subtenant, as applicable, shall promptly thereafter commence and diligently prosecute any and all proceedings and actions necessary to secure the dismissal of any such petition or the restoration of Subtenant to the possession of its assets, and such petition shall be dismissed or Subtenant be restored to the possession of its assets, within ninety (90) calendar days after the filing of the aforesaid involuntary petition or the taking of the aforesaid action, same shall not be an Event of Default, provided Subtenant shall within the aforesaid ninety (90) calendar days pay all the Rent required to be paid by Subtenant under the terms of this Sublease which have accrued during the aforesaid period.

11.1.4 Intentionally omitted.

11.1.5 Failure of Subtenant or any party by, through or under Subtenant (including any Subtenant) to use the Subleased Premises for Permitted Uses.

11.1.6 If at any time Imagine Southeast's charter or the charter of any other public charter school that is in possession of the Subleased Premises to operate as a public charter school in the District of Columbia is revoked or adversely modified in which case the Sublease shall, at Sublandlord's option, immediately terminate without further notice.

11.1.7 Intentionally omitted.

11.1.8 If, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders or regulations, it shall become a violation of law to do business with Subtenant during the term of this Sublease, same shall be an Event of Default under this Sublease, and Sublandlord shall be entitled to exercise all rights and remedies required by the Terrorist Acts or Anti-Terrorism Order, including without limitation, the termination of this Sublease.

11.1.9 Any material representation or warranty of Subtenant made in this Sublease, shall fail to be correct in any material respect on the date made or deemed remade.

## **Section 11.2 Sublandlord Remedies for Subtenant Default.**

11.2.1 Upon an Event of Default by Subtenant under this Sublease, Sublandlord shall have the right to terminate this Sublease or pursue any other remedies provided for herein.

### **11.2.2 Sublease Termination.**

(a) If Sublandlord terminates this Sublease as expressly permitted under Section 11.2.1 above, the Sublease Term shall be deemed to have ended as fully and completely as if the said time were the date herein originally fixed for the expiration of the Term, and Subtenant shall thereupon quit and peacefully surrender the Subleased Premises to Sublandlord, ALL NOTICES TO QUIT BEING EXPRESSLY WAIVED, together with all



all disbursements, brokerage fees and attorneys' fees) incurred by Sublandlord in reentering and repossessing the Subleased Premises, in painting, altering, repairing or dividing the Subleased Premises, in protecting and preserving the Subleased Premises and in reletting the Subleased Premises; and (iii) any other amount necessary to compensate Sublandlord for any other detriment caused Sublandlord by Subtenant's failure to perform its obligations under this Sublease or would likely result therefrom, less (iv) the net proceeds received by Sublandlord from any reletting prior to the date the Sublease would have expired if it had not been terminated. Subtenant agrees to pay to Sublandlord the amount so owed for each month during the Sublease Term, at the beginning of each such month. Any suit brought by Sublandlord to enforce collection of such amount for any one month shall not prejudice Sublandlord's right to enforce to enforce the collection of any such amount for any subsequent month.

If Sublandlord terminates this Sublease pursuant to Section 11.2.1 above, Sublandlord shall have the right at any time, at its sole option, to require Subtenant to pay Sublandlord, on demand, as liquidated and agreed final damages: (i) the then present cash value of the Base Rent, Additional Rent and all other sums which would have been payable under this Sublease from the date of such demand to the date when this Sublease would have expired if it had not been terminated, minus (ii) any rent that Sublandlord actually receives from another subtenant who subleases the Subleased Premises, with such rent to be remitted to Subtenant after it is received by Sublandlord; provided, however, that if such damages are limited by law to a lesser amount, Sublandlord shall be entitled to prove as liquidated damages the maximum amount permitted by law. In making the foregoing computation for liquidated damages, the then present cash value of the Base Rent, Additional Rent and all other sums which would have been payable under this Sublease from the date of demand to the date this Sublease would have expired if it had not been terminated shall be deemed to be the sum which, if invested at four percent (4%) simple interest, would produce such Base Rent, Additional Rent and other sums over the period of time in question

Subtenant shall pay all of Sublandlord's reasonable attorneys' fees and expenses incurred by Sublandlord in connection with or as a result of any Event of Default whether or not a suit is instituted. Nothing herein shall be construed to affect or prejudice Sublandlord's right to prove, and claim in full, unpaid rent accrued prior to the termination of this Sublease.

11.2.4 The acceptance by Sublandlord of Rent or any other charges due to Sublandlord, with knowledge of any breach of this Sublease by Subtenant or of any default on the part of Subtenant in the observance or performance of any of the conditions or covenants of this Sublease, shall not be deemed to be a waiver of any provisions of this Sublease. No acceptance by Sublandlord of a lesser sum than the Rent or other charges then due shall be deemed to be other than on account of the earliest installment of the Base Rent or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as the Rent or charges due be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance of such installment or pursue any other remedy provided in this Sublease. The acceptance by Sublandlord of any of the Rent or any other sum of money or any other consideration paid by Subtenant after the termination of the Sublease, or after giving by Sublandlord of any notice hereunder to effect such termination, shall not in this Sublease reinstate, continue or extend the

and to take any lawful action or proceedings to exercise or enforce any rights or remedies whether at law or in equity or otherwise, without thereby waiving, or being thereby barred or stopped from exercising and enforcing any other rights or remedies by appropriate action or proceedings.

11.2.8 Sublandlord shall not be limited in the proof of any damages which Sublandlord may claim against Subtenant arising out of or by reason of Subtenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Subtenant and which would have been payable upon such insurance, but Sublandlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Sublease), damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Subleased Premises or any part thereof, occurring during any period when Subtenant shall have failed or neglected to provide insurance as aforesaid. Upon the expiration of this Sublease, the unearned premiums upon any such transferable insurance policies issued pursuant to the terms of this Sublease shall be apportioned only if Subtenant shall not then be in default in keeping, observing or performing any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Sublease on Subtenant's part to be kept, observed or performed.

11.2.9 The fee title of Landlord and the subleasehold estate of the Subtenant and Subtenant's interest in the Improvements on the Subleased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Sublease or the Subleasehold estate created hereby, or any interest in either thereof or in Subtenant's interest in the Improvements on the Subleased Premises, may be held directly or indirectly by or for the account of any Person who shall own the fee estate in the Subleased Premises or any portion thereof, and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the fee estate and all persons having any interest in the Sublease or the Subleasehold estate and in Subtenant's interest in the Improvements on the Subleased Premises, including the holder of any mortgage upon the Subleasehold estate, shall join in the execution of a written instrument effecting such merger of estate.

**Section 11.3 Provision for Attorneys' Fees.** In the event Sublandlord is represented in any legal action or proceeding to enforce the terms of the Sublease, Sublandlord shall be entitled to its reasonable attorney's fees and expenses.

## **ARTICLE XII**

### **INTENTIONALLY OMITTED**

#### **Section 13.4            Sublandlord's Restoration.**

If the Redevelopment Project Improvements are affected by condemnation, and if this Sublease is not terminated as a result thereof, Sublandlord shall repair or restore the remainder of the Redevelopment Project Improvements to a functional unit to the extent physically and economically practical and feasible under the circumstances with reasonable speed, at the expense of Subtenant, subject to Force Majeure Events and availability of sufficient funds.

#### **Section 13.5-13.6 Intentionally Omitted.**

### **ARTICLE XIV**

#### **PEACEFUL ENJOYMENT/SUBLANDLORD INSPECTIONS/REPORTING**

#### **Section 14.1            Peaceful Enjoyment.**

Subject to all of the terms and provisions of this Sublease and the Lease, Sublandlord covenants and warrants that during the entirety of the Sublease Term, Subtenant, on paying the Rent and other payments herein provided and performing and observing all of its covenants and agreements herein contained and provided, shall and may peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, the Subleased Premises during the entire Sublease Term.

#### **Section 14.2            Sublandlord Physical Inspection Right.**

14.2.1        Upon Completion and during the Sublease Term, Sublandlord, in its capacity as Sublandlord hereunder, shall have the right (but not the duty nor obligation), upon reasonable advance written notice to Subtenant (of at least twenty-four (24) hours, except in the event of emergency), to enter upon the Subleased Premises during normal business hours for the purpose of inspecting the Subleased Premises; provided, however, (i) Subtenant shall have the right to have a representative of Subtenant accompany Sublandlord during such entry and inspection, and (ii) Sublandlord, taking into account the use of the Subleased Premises as a Charter School and the need for protection of the students, shall use reasonable efforts not to interfere with the activities (including construction activities) of Subtenant.

14.2.2        Any inspection by Sublandlord of the Subleased Premises shall not be deemed or construed as a waiver of or approval of any Event of Default under this Sublease existing at the time of the inspection; and provided further, however, that in no event shall any such inspection by Sublandlord be deemed or construed to be the assumption by Sublandlord of all or any of Subtenant's obligations under this Sublease, including, without limitation, the obligation to maintain the Subleased Premises in a safe and secure manner and in a state of good repair.

14.2.3        During the last thirty (30) months of the Sublease Term, Sublandlord shall, taking into account the use of the Subleased Premises as a Charter School and the need for protection of the students, have the right to enter the Subleased Premises during normal business hours, upon reasonable prior written notice to and accompanied by a representative of Subtenant, for purposes of showing the Subleased Premises to prospective subtenants.

**Section 15.3 Holdover.** If Subtenant holds over at the expiration or earlier termination of this Sublease without Sublandlord's consent, then, in addition to all other rights and remedies of Sublandlord provided by the terms of this Sublease, Subtenant shall pay Sublandlord an amount equal to Two Hundred Percent (200%) for the first month of holdover, Two Hundred and Fifty Percent (250%) for the second month of holdover, and Three Hundred Percent (300%) for the third month of holdover and for every month thereafter of the Base Rent and Additional Rent then payable by Subtenant under this Sublease, calculated on a monthly basis for each month, or portion thereof, that Subtenant remains in possession of the Subleased Premises after expiration or other termination of this Sublease. Subtenant shall also indemnify and hold harmless Sublandlord against and from all claims and demands by Landlord for rent and damages claimed pursuant to the Lease and arising out of such holdover. Nothing contained in this Sublease shall be deemed to be consent by Subtenant to the holding over by Subtenant, nor a waiver of any other remedy which may be available to Sublandlord. Subtenant's obligations under this Subsection 15.3 shall survive the termination of this Sublease.

## ARTICLE XVI

### NOTICE

Except the Rent payment provisions in Section 3.3.3, any notices or other communications required to be given under this Sublease shall be in writing and delivered by certified mail (return receipt requested, first-class postage pre-paid), by hand, or by reputable private overnight commercial courier service. Notices served upon Sublandlord or Subtenant in the manner aforesaid shall be deemed to have been received for all purposes under this Sublease at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next Business Day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, first-class postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Sublease and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Sublease. Either party may change its address for the giving of notices by notice given in accordance with this Section. If Sublandlord or the holder of any leasehold mortgage notifies Subtenant that a copy of any notice to Sublandlord shall be sent to such holder at a specified address, then Subtenant shall send (in the manner specified in this Section and at the same time such notice is sent to Sublandlord) a copy of each such notice to such holder. Any such holder shall have thirty (30) calendar days (or such longer period of time necessary to cure such default if such default cannot reasonably be cured within such thirty (30) calendar days period provided such holder promptly commences any such cure and thereafter diligently pursues completion of such cure) after receipt of such notice to cure any Sublandlord default before Subtenant may exercise any remedy. Any cure of Sublandlord's default by such holder shall be treated as performance by Sublandlord. All notices shall be addressed as follows:



understood and agreed that a Sublandlord Default occurs after the expiration of notice and applicable cure period.

In the event of a Sublandlord Default, Subtenant shall have the right to exercise all of its rights and remedies under this Sublease, at law or in equity, including, without limitation, specific performance and damages, except as is otherwise stated in this Agreement but only if (i) Subtenant first seeks diligently to be reimburse by any insurance coverage it maintains for the damage it has sustained; and (ii) its insurers refuse to reimburse Subtenant for such damage. In addition to and not in limitation of the other remedies in this Sublease, Subtenant shall be entitled to the restraint by injunction of any violation or attempted or threatened violation of any of the non-monetary terms, covenants, conditions, provisions or agreements of this Sublease. No failure by Subtenant hereto to insist upon the strict performance of any of the terms of this Sublease or to exercise any right or remedy upon a default hereunder, no acceptance by Subtenant of partial performance, and no custom or practice of the Parties hereto at variance with the provisions hereof shall constitute a waiver of any such default or of any of the terms of this Sublease or a waiver of Subtenant's rights to demand exact compliance with the provisions contained in this Sublease. None of the terms of this Sublease to be kept, observed, or performed by Sublandlord and no breach thereof shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Sublease, but each of the terms of this Sublease shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any default hereunder by Subtenant shall be implied from any omission by the Subtenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

None of Sublandlord's Related Parties shall have any personal liability under this Sublease or on account of any undertaking herein contained, whether expressed or implied, nor shall Sublandlord or any of Sublandlord's Related Parties be liable to Subtenant or any Subtenant's Related Parties for any consequential damages, indirect losses, loss of value, temporary loss of business, lost profits, or lost opportunity damages at or arising from the Subleased Premises or the Property suffered by Subtenant. Subtenant hereby releases Sublandlord and Sublandlord's Related Parties from all such personal liability, if any. Subtenant hereby waives personal recourse against Sublandlord's officers, employees, agents or representatives or their respective assets.

## **ARTICLE XVIII**

### **INTENTIONALLY OMITTED**

## **ARTICLE XIX**

### **EXTENSIONS**

#### **Section 19.1 Extension Options.**

## **ARTICLE XX**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 20.1 Subtenant.**

Subtenant hereby represents and warrants to Sublandlord as follows:

20.1.1 (i) Subtenant or its sublessee is, and shall at all times be, a public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 (D.C. Official Code § 38-1800.01 et seq. (Supp. 2005); (ii) Subtenant or its sub-sublessee shall operate the Subleased Premises as a public charter school and in accordance with all applicable laws, including without limitation, the District of Columbia School Reform Act of 1995 ( D.C. Official Code § 38-1800.01 et Seq. (Supp. 2005)) and all regulations promulgated thereunder (iii) Subtenant is duly qualified to conduct business in the District of Columbia; and (iv) Subtenant has the power and authority to conduct the business in which it is currently engaged.

20.1.2 Subtenant (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

20.1.3 Intentionally omitted.

20.1.4 This Agreement has been duly executed and delivered by Subtenant, and constitutes the legal, valid and binding obligation of Subtenant, enforceable against Subtenant in accordance with its terms.

20.1.5 The execution, delivery and performance by Subtenant of this Agreement will not violate any Applicable Laws or result in a breach of any contractual obligation to which Subtenant is a party.

20.1.6 Subtenant's execution, delivery and performance of this Agreement and the transactions contemplated hereby shall not (i) to the best of Subtenant's knowledge, violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Subtenant; or (ii) result in a breach or default under any provision of the organizational documents of Subtenant.

20.1.7 No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the best knowledge of Subtenant, threatened by or against Subtenant which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Subtenant and its ability to perform its obligations under this Agreement;

20.1.8 Deliberately omitted.

20.1.12 This Sublease is contingent on it being approved by the District of Columbia Public Charter School Board.

**Section 20.2 Sublandlord.**

Sublandlord hereby represents and warrants to Subtenant as follows:

20.2.1 Sublandlord (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

20.2.2 No consent or authorization of, or filing with, any Person (including any governmental authority), which has not been obtained, is required in connection with the execution and delivery of this Agreement by Sublandlord.

20.2.3 This Agreement has been duly executed and delivered by Sublandlord, and constitutes the legal, valid and binding obligation of Sublandlord, enforceable against it in accordance with its terms.

20.2.4 The execution, delivery and performance by Sublandlord of this Agreement will not violate any Applicable Laws or result in a breach of any contractual obligation to which Sublandlord is a party.

20.2.5 Sublandlord's execution, delivery and performance of this Agreement and the transactions contemplated hereby shall not violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Sublandlord.

20.2.6 No litigation, investigation or proceeding of or before any arbitrator or Governmental authority is pending or, to the best knowledge of Sublandlord, threatened by or against Sublandlord which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Sublandlord's ability to perform its obligations under this Agreement.

20.2.7 Except as otherwise set forth in this Agreement, no consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the performance of this Agreement by Sublandlord.

20.2.8 Studley, Inc. is entitled to a brokerage fee in connection with the transactions contemplated by this Sublease and will be paid by Sublandlord pursuant to a separate agreement.

20.2.9 The negotiation, execution, delivery and performance of the Agreement by Sublandlord are not and will not be induced by, resulting from or based on improper influence. "Improper Influence" means any influence that induces or tends to induce an employee or officer of Sublandlord to give consideration or to act regarding a sublease with Sublandlord on any basis

**Section 21.4 Rule Against Perpetuities.** If any right granted in this Sublease or any provision contained in this Sublease is subject to the rule against perpetuities and the same shall not occur or shall not have vested on the date that is twenty-one (21) years after the death of the last to die of all now living descendants of George W. Bush, William J. Clinton, George H. W. Bush, and James E. Carter, Jr., all of whom are current or former Presidents of the United States of America, then such right or provision shall terminate as of such date.

**Section 21.5 Captions, Numberings and Headings.** Captions, numberings and headings of Articles, Sections and Schedules in this Sublease are for convenience of reference only and shall not be considered in the interpretation of this Sublease.

**Section 21.6 Number; Gender.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

**Section 21.7 Counterparts.** This Sublease may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

**Section 21.8 Severability.** In the event that one or more of the provisions of this Sublease shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Sublease shall continue in full force and effect, unless this construction would operate as an undue hardship on Sublandlord or Subtenant, or would constitute a substantial deviation from the general intent of the Parties as reflected in this Sublease.

**Section 21.9 No Oral Modifications or Waivers.** No modification of this Sublease shall be valid or effective unless the same is in writing and signed by Sublandlord and Subtenant.

**Section 21.10 Schedules and Exhibits.** All Exhibits and Schedules referenced in this Sublease are incorporated by this reference as if fully set forth in this Sublease.

**Section 21.11 Including.** The word "including," and variations thereof, shall mean "including without limitation."

**Section 21.12 Integration.** This Sublease and all Exhibits appended to this Sublease and the documents and agreements referenced in this Sublease contain the entire understanding between Sublandlord and Subtenant with respect to the Sublease, and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between them with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, between Sublandlord and Subtenant with respect to the Sublease other than as are expressly set forth in this Sublease and the Schedules and Exhibits appended to this Sublease and the documents and agreements referenced in this Sublease.

**Section 21.13 No Construction Against Drafter.** This Sublease has been negotiated and prepared by Sublandlord and Subtenant and their respective attorneys and, should any provision



**Section 21.21 Jurisdiction and Right to Injunction.** Any action or proceeding involving any dispute under this Sublease shall be determined in a court of competent jurisdiction within the District of Columbia, as provided in D.C. Official Code § 10-1014 (2006 Supp.). Whenever either party shall fail to comply with any covenant or provision of this Sublease, the other party shall be entitled to enforce its rights by injunctive relief, including an action for specific performance, any provision in this Sublease to the contrary notwithstanding.

**Section 21.22 Non-Recourse and Exclusions from Liability.** Under no circumstances shall Sublandlord or Sublandlord's Related Parties or Subtenant or Subtenant's Related Parties be liable for any exemplary, punitive, consequential or indirect damages (or for any interruption of or loss to business) in connection with or relating to this Sublease. Further, at no time shall Sublandlord's liability exceed its interest in the Subleased Premises. Notwithstanding anything set forth in this Sublease or at law or in equity to the contrary, none of Subtenant's Related Parties or Sublandlord's Related Parties shall be personally liable or responsible for any duties, obligations or liabilities of Subtenant or Sublandlord, respectively, under this Sublease.

**Section 21.23 Rights Not for Benefit of Third Parties.** In no event and under no circumstances whatsoever shall the rights herein granted or to be granted in the future pursuant to this Sublease, to or for the benefit of Sublandlord or Subtenant be deemed to be for the benefit of the public. Except as expressly provided for herein, no individual or entity that is not a signatory to this Sublease (other than successors and permitted assigns of the signatories of this Sublease) shall have any rights or privileges under or arising out of this Sublease, nor shall any person or entity that is not a signatory to this Sublease otherwise be deemed a third party beneficiary of this Sublease.

**Section 21.24 Failure to Respond to Requests for Approval after Completion.** Except as expressly provided to the contrary in this Sublease, in the event any approval, consent, authorization, certificate, grant, conveyance, or permission is requested or demanded by Subtenant pursuant to the express provisions of this Sublease, and Sublandlord does not respond thereto within the specified period stated in the subject provision following the party's receipt of such demand or request, either by giving the item requested or by refusing to give the same and specifying specific reasons for such refusal, said failure to respond shall not be deemed to constitute the requested approval or consent, but shall be deemed a rejection of same.

**Section 21.25 Effect of "Review", "Objection", "Failure to Object", "Approval", "Non Approval", or "Consent".** In no event shall any review, objection, failure to object, approval, non approval, or consent by Sublandlord with respect to any act, plan, or proposal of Subtenant made pursuant to any provision of this Sublease or otherwise be deemed (i) to constitute an assumption by Sublandlord of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) to constitute a waiver of any claim or right Sublandlord might have against Subtenant as a result of any loss, damage, or expense (including, without limitation, attorneys' fees and costs of litigation) incurred by Sublandlord by reason of or in connection with any act or omission of Subtenant pursuant to or in accordance with any act, plan, or proposal reviewed by Sublandlord, (iii) to result in Sublandlord's being deemed a joint tortfeasor

effect; (ii) this Sublease has not been modified or amended (or if it has, a list of the amendments); (iii) the party requesting the estoppel certificate is not then in default; (iv) the Parties have fully performed all of their respective obligations thereunder; and (v) such other statements as reasonably may be required by any party or any other appropriate party, including but not limited, the amount of Rent due, if any. The delivery of any estoppel document or certificate by Sublandlord pursuant to this Section 21.32 shall be limited to the actual knowledge, without inquiry, of the person or party designated by Sublandlord from time to time to administer this Sublease.

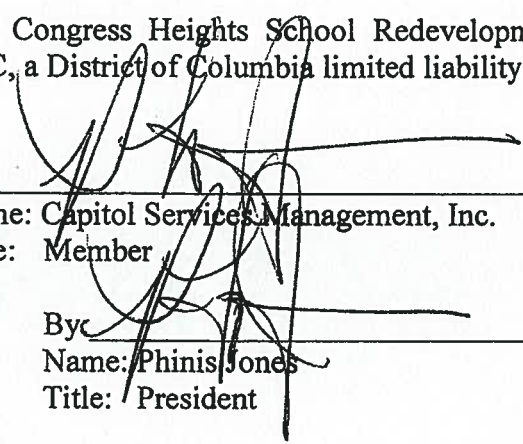
**Section 21.33. Title Matters and Termination Rights.** The Subtenant shall have the right, in its reasonable discretion, to terminate this Sublease following which it shall have no further obligations hereunder, in the event that the following conditions have not been satisfied on or before ninety (90) days following the Sublease Commencement Date: (i) the nondisturbance agreement in compliance with the terms contained in Section 9.1.5 has been delivered to Subtenant; and (ii) the Sublandlord has recorded in the appropriate public land records of the District of Columbia, a memorandum of the Lease which shall establish as a condition of title to the Property that the Lease has priority to all matters and encumbrances of record except Permitted Encumbrances as evidenced by the Title Commitment; provided that Sublandlord shall have thirty (30) additional days to remove or cure any encumbrances or defects that are not included in Permitted Encumbrances.

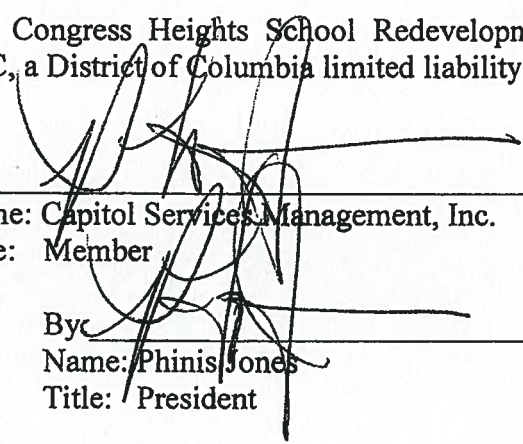
[Signature Pages to Follow]

IN WITNESS WHEREOF, this Sublease is made and entered into in multiple original counterparts as of the date and year first above written

SUBLANDLORD:

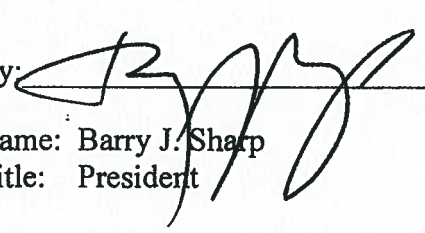
Old Congress Heights School Redevelopment Company,  
LLC, a District of Columbia limited liability company

By:   
Name: Capitol Services Management, Inc.  
Title: Member

By:   
Name: Phinis Jones  
Title: President

SUBTENANT:

School House Finance, LLC a Virginia limited  
liability company

By:   
Name: Barry J. Sharp  
Title: President

6/22/09



LT1-5-2010018802-1



LT2-0-0-24

## SECOND AMENDMENT TO GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO GROUND LEASE AGREEMENT (this "Amendment") is dated this 3<sup>rd</sup> day of March, 2010, is executed by and between DISTRICT OF COLUMBIA, a municipal corporation acting by and through its Department of Real Estate Services (formerly the Office of Property Management), as landlord (the "Landlord") and OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, LLC, a District of Columbia limited liability company, as tenant (the "Tenant").

### RECITALS

A. Tenant is currently a lessee of the real property located at 500 Alabama Avenue, S.E., in Washington, D.C., more specifically known for tax and assessment purposes as Parcel 235, Lot 6 (the "Leased Premises"), pursuant to the terms of a Ground Lease Agreement dated September 4, 2008, by and between the Landlord and the Tenant as amended by that certain First Amendment to Ground Lease Agreement dated December 2, 2008 (collectively, the "Lease"). The Lease was recorded with the District of Columbia Recorder of Deeds on or before the date of this Amendment.

B. Tenant has obtained financing from CitiBank NMTC Corporation, a Delaware corporation (the "Lender"), for the development of the Leased Premises as required by the terms of the Lease. As a condition of its financing, the Lender is requiring certain amendments to the Lease.

C. The Lease also references an incorrect street address for the property. Tenant and Landlord have agreed to correct such references and otherwise modify certain terms of the Lease.

D. Accordingly, the parties hereto have executed this Amendment in order to evidence their understandings with respect thereto.

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

1. Incorporation of Recitals. The parties hereto acknowledge and agree that the recitals hereinabove set forth are true and correct in all respects and that the same are incorporated herein and made a part hereof.

2. Representations. The parties hereto hereby represent and warrant to each other the following facts with respect to the Lease and the Premises:

(a) The Lease is in full force and effect and constitutes the entire rental agreement between Landlord and Tenant for the Leased Premises;

(b) The Lease has not been modified or amended prior to the date hereof;



(c) Tenant is in full and complete possession of the Leased Premises;

(d) To Tenant's knowledge, there are no existing defaults on the part of either Landlord or Tenant under the Lease; and

(e) Tenant does not currently have or hold any claim against Landlord, including without limitation, any claim that might be offset or credited against future accruing rents.

3. Recital R-1 of the Lease is hereby amended to change "600 Alabama Avenue, S.E." to "500 Alabama Avenue, S.E.".

4. Exhibit A attached to this Amendment shall be inserted into the Lease and the defined term "Property" in Article I of the Lease is hereby deleted in its entirety, and the following is substituted in its place:

**"Property"** means the real property as described in the attached and incorporated Exhibit A to the Lease, any appurtenance to the real property or improvements thereon now or hereafter located at 500 Alabama Avenue, S.E., Washington, D.C. according to the District of Columbia Tax and Assessment Records as Parcel 235, Lot 6."

5. The defined term "Rent Commencement Date" in Article I of the Lease is hereby deleted in its entirety, and the following is substituted in its place:

**"Rent Commencement Date"** shall be December 1, 2010, subject to Excusable Delay. This date only applies to the Building. The "Rent Commencement Date" for the Western Portion of the Leased Premises shall be the earlier of December 31, 2011 or the date on which a Certificate of Occupancy is obtained for any improvements constructed on the Western Portion of the Leased Premises, subject to Excusable Delay."

5.A. The Redevelopment Project Schedule shall be amended to provide that the Redevelopment Project shall be fifty percent (50%) completed on or before September 15, 2010 and Substantial Completion shall occur on or before December 15, 2010.

6. Section 9.1.1 is hereby amended by adding the following subsection (c):

"(e) Notwithstanding anything to the contrary contained herein, Landlord hereby approves (i) that certain Sublease dated June 22, 2009, by and between Tenant and Schoolhouse Finance, LLC ("Schoolhouse"), pursuant to which Schoolhouse intended to sub-sublease the Property to SEDC Charter School, Inc., d/b/a Imagine Southeast Public Charter School ("SEDC") and (ii) that certain

,Sublease Agreement dated July 6, 2009, by and between Schoolhouse and SEDC. Landlord further approves the execution and delivery by Schoolhouse of a Subordination, Nondisturbance and Attornment Agreement in favor of CitiBank NMTC Corporation substantially in the form attached to this Amendment as Exhibit B."

7. Section 11.1.1 is hereby deleted in its entirety and the following is substituted in its place:

"11.1.1 Failure by Tenant to pay any installment of Rent or to pay or cause to be paid Impositions (to the extent Tenant is obligated to pay same or cause same to be paid), insurance premiums or other liquidated sums of money herein stipulated in this Lease to be paid by Tenant if such failure shall continue for a period of thirty (30) calendar days after written notice thereof has been timely delivered by Landlord to Tenant (with a copy of said notice also to be delivered to any holder of a Leasehold Mortgage or trustee as provided in Article XII hereof). Notwithstanding the foregoing, Landlord hereby agrees to extend the thirty (30) calendar day cure period to a period not to exceed sixty (60) calendar days if Tenant's failure to pay is due to the non-receipt by SEDC of its Facility Allowance or Foundation Level payments for reasons outside of SEDC's reasonable control."

8. Section 11.1.3 is hereby deleted in its entirety and the following is substituted in its place:

"11.1.3 Bankruptcy. If there shall be filed by or against Tenant in any court, pursuant to any statute of the United States, the District of Columbia, or of any State, a bona fide petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's property, or Tenant shall make an assignment for the benefit of creditors, or if any governmental department, bureau, corporation or authority shall by reason of the inability of Tenant to meet its obligations in due course take over the assets or property of Tenant.

Notwithstanding the foregoing, if any such petition shall be filed against Tenant or any such action shall be taken involuntarily against Tenant, and if Tenant, in good faith, shall promptly thereafter commence and diligently prosecute any and all proceedings and actions necessary to secure the dismissal of any such petition or the restoration of Tenant to the possession of its assets, and such petition shall be dismissed or Tenant be restored to the possession of its assets within ninety (90) calendar days after the filing of the aforesaid involuntary petition or the taking of the aforesaid action, then the same shall not be an Event of Default, provided Tenant shall within the aforesaid ninety (90) calendar days pay all the Rent required to be paid by Tenant under the terms of this Lease which have accrued during the aforesaid period.

Notwithstanding the foregoing, if any voluntary or involuntary petition in bankruptcy shall be filed by or against Tenant, the termination of this Lease pursuant to this Section 11.1.3 shall be subject to the rights of any Approved Mortgagee under Section 12.7.3."

9. Section 11.1.5 is hereby deleted in its entirety and the following is substituted in its place:

"11.1.5 Failure of Tenant or any party by, through or under Tenant (including any subtenant) to use the Leased Premises for Permitted Uses. Notwithstanding the foregoing, a Leasehold Mortgagee or a subsidiary thereof who has foreclosed upon the Leasehold Mortgage pursuant to the terms of this Lease and is now in possession of the Property shall use the Property for a Permitted Use within two (2) years of the date of its possession of the Property."

10. Section 11.1.7 is hereby deleted in its entirety and the following is substituted in its place:

"11.1.7 Any event or condition which will or does result in the forfeiture by Tenant of its material rights, benefits or privileges under any Leasehold Mortgage as determined in the reasonable discretion of the Leasehold Mortgagee."

11. Section 11.1.8 is hereby deleted in its entirety and the following is substituted in its place:

"11.1.8 If, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders or regulations, it shall become a violation of law to do business with Tenant during the term of this Lease, the same shall be an Event of Default under this Lease, and Landlord shall be entitled to exercise all rights and remedies required by the Terrorist Acts or Anti-Terrorism Order, including without limitation, the termination of this Lease; provided however that if any Leasehold Mortgagee or other third party is in possession of the Premises pursuant to a foreclosure or deed in lieu of foreclosure, this Section 11.1.8 shall not constitute an Event of Default provided it is not a violation of law to do business with the Leasehold Mortgagee or other third party in possession of the Property under the Terrorist Acts or Anti-Terrorism Order and the Property is used for a Permitted Use, pursuant to Section 11.1.5."

12. Section 11.2.1 is hereby deleted in its entirety and the following is substituted in its place:

"11.2.1 Upon an Event of Default by Tenant under this Lease, Landlord shall have the right to terminate this Lease or pursue any other remedies provided in Section 11.2.3; subject to the rights of any Leasehold Mortgagee pursuant to Article XII. Upon the occurrence of an Event of Default, Landlord agrees not to terminate this Lease until Landlord has given Tenant and all Approved Mortgagees written notice of its intention to terminate this Lease (the "Notice to Terminate"), and the Event of Default as specified in such Notice to Terminate is not cured prior to the termination date specified therein and all additional periods of time specified in Sections 12.6 and 12.7 to cure the Event of Default by an Approved Mortgagee have elapsed without the Event of Default being cured and no Approved Mortgagee shall have exercised its rights under Article XII. Upon the concurrence of all of the foregoing events, then unless such Event of Default shall have been cured, the Term of this Lease shall expire and terminate with the same force and effect as though the date so specified were the date herein originally fixed as the expiration date of the Term. Tenant shall reimburse Landlord for all fees and costs (including reasonable attorneys' fees) expended in connection with Landlord's exercise of its remedies and dispossession of Tenant as provided in this Article XI."

13. Section 12.1.1 is hereby amended by adding the following sentence at the end of Section 12.1.1:

"Landlord hereby approves CitiBank NMTC Corporation, a Delaware corporation, and any special purpose subsidiary entity thereof, and any

community development entity lender or lenders making a debt and/or equity investment to finance the Leased Premises or the Redevelopment Project Improvements under the New Markets Tax Credit program administered by the United States Department of Treasury and affiliates thereof, as an Approved Mortgagee."

14. Section 12.6 is hereby deleted in its entirety and the following is substituted in its place:

"Section 12.6 Termination Notice to Approved Mortgagee.

12.6.1 Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, Landlord shall not effectuate the termination of the Lease unless, following the expiration of Tenant's cure period for such Event of Default, Landlord has delivered a copy of the Notice to Terminate to any Approved Mortgagee at least thirty (30) calendar days in advance of the proposed effective date of such termination. The provisions of Section 12.7.1 shall apply if, during such 30-day termination notice period, any Approved Mortgagee shall:

(a) Notify Landlord of such Approved Mortgagee's desire to cure the Tenant's defect; and

(b) Pay or cause to be paid all Rent, insurance premiums and other monetary obligations of Tenant then due in arrears as set forth in the Notice to Terminate to such Approved Mortgagee and/or which may become due during such 30 day period; and

(c) Comply or in good faith and with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and which are reasonably susceptible of being complied with by such Approved Mortgagee; provided, however, that such Approved Mortgagee shall not be required during such 30 day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Leased Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgage.

12.6.2 Any notice to be given by Landlord to an Approved Mortgagee pursuant to any provision of this Article XII shall be deemed properly addressed if sent to the Approved Mortgagee who served the notice referred to in Section 12.3.1 unless notice of a change of Leasehold Mortgage has been given to Landlord pursuant to Section 12.3.4."

15. Section 12.7 is hereby deleted in its entirety and the following is substituted in its place:

"Section 12.7 Procedure on Default.

12.7.1 If Landlord shall elect to terminate this Lease by reason of an Event of Default, the termination date for the Lease in the Notice to Terminate with respect to an Approved Mortgagee shall be extended for ten (10) calendar days with respect to any default that is capable of being cured with the payment of money, and for twelve (12) months for all other defaults, provided that such Approved Mortgagee shall, during such ten (10) day or, twelve (12) month period, as applicable:

(a) pay or cause to be paid, the Rent, insurance premiums and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Premises junior in priority to the lien of the Leasehold Mortgage held by such Approved Mortgagee and (B) past nonmonetary obligations then in default and not reasonably susceptible of being cured by the payment of money by such Approved Mortgagee.

(b) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence provided that Landlord has not previously exercised its right to satisfy the obligations under the Leasehold Mortgage or purchase the leasehold estate prior to such foreclosure proceedings, as set forth in Section 12.1.1(a). Notwithstanding the foregoing, an Approved Mortgagee shall not be required to comply with the terms of this paragraph (b) if the Event(s) of Default are solely monetary and the Approved Mortgagee has cured such monetary default.

(c) comply or in good faith, with reasonable diligence and continuity, commence to comply and thereafter continue to comply with all nonmonetary requirements of this Lease then in default, and reasonably susceptible of being complied with by such Approved Mortgagee.

12.7.2 If at the end of such ten (10) day or twelve (12) month period, as applicable set forth in Section 12.7.1 the Approved Mortgagee is not in compliance with Section 12.7.1, the Landlord may terminate this Lease.

12.7.3 If the Approved Mortgagee is in compliance with Section 12.7.1, and Approved Mortgagee is enjoined or stayed by a court of competent jurisdiction from foreclosing under the Leasehold Mortgage, this Lease shall not then terminate and the time for completion of such Approved Mortgagee of its proceedings shall continue so long as such Approved Mortgagee is enjoined or stayed by a court of competent jurisdiction, and shall not terminate thereafter provided that within the twelve (12) month period commencing on the day the stay is lifted, Approved Mortgagee either reinstates the Tenant under the

Leasehold Mortgage, executes a workout agreement with the Tenant, or proceeds to take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. . Nothing in this Section 12.7, however, shall be construed to extend this Lease beyond the Term thereof, or to require an Approved Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If all defaults or Events of Default shall be cured during any such extended period set forth in this Section 12.7 and the Approved Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

12.7.4 If an Approved Mortgagee is in compliance with Section 12.7.1, upon the acquisition of the leasehold estate herein by such Approved Mortgagee or its designee, or any other purchaser at a foreclosure sale, or otherwise and upon the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Approved Mortgagee, if so required by applicable law, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided however, that as a condition precedent to such continuation of this Lease, (a) such Approved Mortgagee or its designee, or any other purchaser or assignee at a foreclosure sale or deed in lieu of foreclosure shall cure any existing Event of Default in accordance with the provisions of Section 12.7.1 upon the acquisition of the leasehold estate and use the Property only for Permitted Uses; and (b) to the extent that upon any acquisition of the leasehold estate at a foreclosure sale, or conveyance in lieu thereof, there are excess proceeds between the purchase price of the leasehold estate and the outstanding balance of the Leasehold Mortgage and outstanding obligations that must be satisfied and have priority under Applicable Law, to the extent permitted by Applicable Law, the excess proceeds in an amount up to six months of the then current Rent for the applicable Lease Year shall be deposited with the Landlord for five (5) years from the date of the deposit . In the event that Applicable Law requires that the security deposit be deposited with a court of competent jurisdiction and such security deposit is so deposited by the Approved Mortgagee or Person conducting the foreclosure sale, or conveyance in lieu thereof, then Landlord shall apply to the court for disbursement. Such funds shall be held and distributed as follows: (i) to the extent Landlord shall suffer any costs or damages during the balance of the Term, then upon application by Landlord, such funds shall be disbursed to Landlord to defray such costs or damages related to any act or omission of the then current Tenant, tenant in possession at the time of the foreclosure sale, or conveyance in lieu thereof, or the Approved Mortgagee or (ii) beginning on the first annual anniversary of the date of the deposit through the fifth annual anniversary of the date of the deposit, if no such costs or damages have been incurred, the tenant in possession at the time of foreclosure, or conveyance in lieu thereof shall be entitled to a release of the deposit in an amount equal to twenty (20%) of the then remaining total deposit. The tenant in possession at the time of foreclosure, or conveyance in lieu thereof shall request such amounts within thirty (30) calendar days of the annual

anniversary of the date of the deposit. At the expiration of the fifth year following the date of the deposit, the total amount of the outstanding deposit held by Landlord shall be released to the tenant in possession at the time of the foreclosure sale, or conveyance in lieu thereof.

12.7.5 For the purposes of this Article XII, any Approved Mortgagee, as such, shall not be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Approved Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. However, in the event of any sale of this Lease, and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or any assignment or transfer of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, any assignee or transferee under this Article XII, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the Tenant of the leasehold estate.

12.7.6 Any Leasehold Mortgage or other entity in possession of Tenant's interest under the Leasehold Mortgage pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, without the consent of Landlord, sell, transfer or assign its Leasehold Mortgage to an Institutional Lender on such terms and conditions as determined in its sole and absolute discretion."

16. Continuing Agreements; Novation. Except as expressly modified hereby, the parties hereto ratify and confirm each and every provision of the Lease as if the same were set forth herein. In the event that any of the terms and conditions in the Lease conflict in any way with the terms and provisions hereof, the terms and provisions hereof shall prevail. The parties hereto covenant and agree that the execution of this Amendment is not intended to and shall not cause or result in a novation with regard to the Lease.

17. Entire Agreement. NO STATEMENTS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, WHICH MAY HAVE BEEN MADE TO TENANT OR TO ANY EMPLOYEE OR AGENT OF TENANT, EITHER BY LANDLORD OR BY ANY EMPLOYEE, AGENT OR BROKER ACTING ON LANDLORD'S BEHALF, WITH RESPECT TO THE MODIFICATION OF THE LEASE, SHALL BE OF ANY FORCE OR EFFECT, EXCEPT TO THE EXTENT STATED IN THIS AMENDMENT, AND ALL PRIOR AGREEMENTS AND REPRESENTATIONS WITH RESPECT TO THE MODIFICATION OF THE LEASE ARE MERGED HEREIN.

18. Captions. The captions herein set forth are for convenience only and shall not be deemed to define, limit or describe the scope or intent of this Amendment.



19. Governing Law. The provisions of this Amendment shall be construed, interpreted and enforced in accordance with the laws of the District of Columbia as the same may be in effect from time to time.

20. Counterparts. This Amendment may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original. It shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on more than one counterpart.

*(SIGNATURES COMMENCE ON THE FOLLOWING PAGE)*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment under seal as of the date first above written.

WITNESS OR ATTEST:

LANDLORD:

DISTRICT OF COLUMBIA

By and through its

Department of Real Estate Services

Steven Sadel

By: [Signature]  
Name:  
Title: Chief Property Management Officer

WITNESS OR ATTEST:

TENANT:

OLD CONGRESS HEIGHTS SCHOOL  
REDEVELOPMENT COMPANY, LLC

[Signature]

By: [Signature]  
Name: ANDY BOTTENW  
Title: AUTHORIZED MEMBER

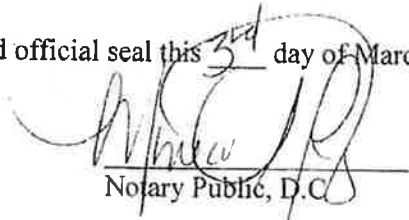
*Approved For Legal Sufficiency:*

By: Steven Sadel  
Name: STEVEN SADEL  
Title: ASSISTANT ATTORNEY GENERAL

Prince Georges County, SS:  
Maryland

I, Monica T Ray, a Notary Public in and for Prince Georges County, Maryland, do hereby certify that Robin-Eve Jasper, personally known to me as the person(s) who executed the foregoing instrument bearing date the 3<sup>rd</sup> day of March, 2010, personally appeared before me and acknowledged said instrument to be her act and deed in her official capacity, and that she executed said instrument for the purposes therein contained.

Witness my hand and official seal this 3<sup>rd</sup> day of March, 2010

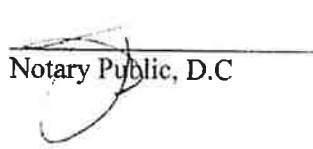
  
Notary Public, D.C.

Monica T. Ray  
NOTARY PUBLIC  
Prince Georges County, Maryland  
My Commission expires 10/13/2013

District of Columbia, SS:

I, R. Eisen, a Notary Public in and for the District of Columbia, do hereby certify that Andy Botticello, personally known to me as the person(s) who executed the foregoing instrument bearing date the 3<sup>rd</sup> day of March, 2010, personally appeared before me and acknowledged said instrument to be his act and deed in his official capacity, and that he executed said instrument for the purposes therein contained.

Witness my hand and official seal this 3<sup>rd</sup> day of March, 2010

  
Notary Public, D.C.

RICHARD D. EISEN  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires July 14, 2013

## EXHIBIT A

Address: 500 Alabama Avenue, S.E., Washington, DC 20032

Being all of the conveyance from John H. Wheeler et al. to the Board of Commissioners of Primary Schools of Washington County, District of Columbia, of the two acres, one rood, and twenty five perches of land described in the deed dated December 6, 1867 and recorded August 18, 1868 in Liber 568 at folio 7 among the Office of the Recorder of Deeds of the District of Columbia and delineated as Parcel 235/6 in the District of Columbia property book 3, page 92 among the records of the Office of The Surveyor of The District of Columbia;

Excepting and reserving "a public county road fifty feet wide" per aforesaid deed and now known as Randle Place, S.E. (50 feet wide public street) and;

Saving and excepting the cross hatched area described as "new highway proposed to be established under Public Act No. 435 approved March 4th 1913" and shown on Map 755 and in Street Extension Book 5, page 12 both among the records of the Office of the Surveyor of The District of Columbia and;

Now more particularly described as follows:

Beginning for the same at the point of intersection of the southerly line of the public street named Martin Luther King, Jr. Avenue, S.E., and the westerly line of the fifty feet wide public street named Randle Place, S.E., thence leaving said southerly street line and running with said westerly line of Randle Place, S.E.

1. S 10°44'00"E – 343.50 feet to the point of intersection of the of said westerly street line and the northerly line of Alabama Avenue, S.E., thence leaving the aforesaid westerly street line and running with the said northerly line of Alabama Avenue, S.E.
2. S 86°19'20" W – 449.84 feet to a point of intersection of said northerly street line and the extension of the easterly line of the 5th Street, S.E., thence leaving said northerly street line and running with the extension of said easterly line of 5th Street, S.E.
3. N 00°02'42" E – 77.99 feet to the point of intersection of the said extension of the easterly street line and the southerly street line of the aforesaid Martin Luther King, Jr. Avenue, S.E., thence leaving said extension and running with the southerly lines of Martin Luther King, Jr. Avenue, S.E., for the next two courses and distances.
4. N 55°18'00" E – 415.79 feet to a point, thence
5. N 39°48'00" E – 67.23 feet to the place of beginning,

containing 2.0188 acres or 87,940 square feet of land more or less as now surveyed by Maddox Engineers & Surveyors, Inc., in February of 2010, Job No. 09096.

Note: Now known for assessment and taxation purposes as tax parcel 235/6.

Sq/Lot



**Exhibit B**  
**(Form of Schoolhouse SNDA)**

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of March \_\_, 2010 (the "Effective Date"), between CITIBANK NMTC CORPORATION, a Delaware corporation, whose address is c/o Citi Community Capital, 390 Greenwich Street, 2nd Floor, New York, New York 10013 (the "Lender"), and SCHOOLHOUSE FINANCE, LLC, a Virginia limited liability company, whose address is 1005 N. Glebe Road, Suite 610, Arlington, Virginia 22201 ("Tenant"), with reference to the following facts:

A. Old Congress Heights Redevelopment Company, LLC, a District of Columbia limited liability company, whose address is 3215 Martin Luther King, Jr. Avenue, S.E., Washington, DC 20032 ("Landlord"), is the leasehold owner of the real property located at 500 Alabama Avenue, S.E., Washington, D.C. (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in Schedule A, pursuant to that certain Ground Lease Agreement dated September 4, 2008 by and between the District of Columbia, a municipal corporation acting by and through its Office of Property Management, as lessor, and Borrower, as lessee, as amended by that certain First Amendment to Ground Lease Agreement dated February \_\_, 2010.

B. The Lender has made or has agreed to make a loan to Landlord (the "Loan").

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Deed of Trust, Assignment, Security Agreement and Fixture Filing, for the benefit of the Lender (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the land records of the District of Columbia (the "Land Records").

D. Pursuant to a Sublease Agreement, dated as of June 22, 2009 (the "Lease"), Landlord demised to Tenant Landlord's Premises ("Tenant's Premises"). Tenant's Premises are commonly known as 500 Alabama Avenue, S.E., Washington, D.C.

E. Tenant and Lender desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

**NOW, THEREFORE**, for good and sufficient consideration, Tenant and Lender agree:

1. Definitions.

The following terms shall have the following meanings for purposes of this Agreement.

1.1 Construction-Related Obligation. A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable

law, including bankruptcy law) as holder of the Loan and the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 Former Landlord. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 Offset Right. An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.5 Rent. The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.6 Successor Landlord. A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.7 Termination Right. A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

## 2. Subordination.

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

## 3. Nondisturbance, Recognition and Attornment.

3.1 No Exercise of Mortgage Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "Event of Default"), Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. Protection of Successor Landlord.

Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Lender. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

4.4 Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Lender's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 Construction-Related Obligations. Any Construction-Related Obligation of Landlord under the Lease.

4.7 Default Under Mortgage. In the event that Lender notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage and notwithstanding any contrary instructions of or demands from Landlord.

5. Exculpation of Successor Landlord.

Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time,



including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. Lender's Right to Cure.

6.1 Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time (the "Extended Cure Period") as Lender may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. Confirmation of Facts.

Tenant represents to Lender and to any Successor Landlord, in each case as of the Effective Date:

7.1 Effectiveness of Lease. Attached hereto as "Exhibit A" is a true, correct and complete copy of the Lease, together with all amendments thereto. The Lease is in full force and effect, has not been modified in any way except as set forth in Exhibit A, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. All conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied. No unfulfilled conditions exist to Tenant's obligations under the Lease. There are no existing defenses, offsets, claims or credits which the undersigned has against the enforcement of the Lease

7.2 Rent. Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

7.3 No Landlord Default. To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

7.4 No Tenant Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

7.5 No Termination. Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

7.6 Commencement Date. The "Commencement Date" of the Lease was June 22, 2009.

7.7 Expiration. The expiration date of the term of the Lease is no earlier than June 30, 2025, and the undersigned has no rights to renew or extend the term of the Lease except as expressly set forth in the Lease.

7.8 No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than that certain Sublease Agreement (the "Sublease") dated July 6, 2009 by and between Tenant and SEDC Charter School, Inc., a District of Columbia non-profit corporation, d/b/a Imagine Southeast Public Charter School (the "School"), which Sublease was entered into in compliance with the Lease.

7.9 Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

7.10 Deposit. The undersigned has paid to Landlord a good faith deposit in the amount of \$50,000.

7.11 Permits, Licenses and Consents. The undersigned has all governmental permits, licenses and consents required for the activities and operations being conducted or to be conducted by it in or around the building.

7.12 Bankruptcy or Insolvency. As of the date hereof, there are no actions, whether voluntary or otherwise, pending against the undersigned under the bankruptcy or insolvency laws of the United States or any state thereof.

7.13 Payment of Rent. Notwithstanding anything contained in the Lease or the Sublease to the contrary, Tenant acknowledges and agrees that the School shall pay "Sublease Rent" and "Additional Rent" (as such terms are defined in the Sublease and, collectively, the "Sublease Rent") as and when due under the Sublease in the following manner: (a) the School shall pay directly into a lockbox or other restricted account (the "Lockbox Account") maintained with or on behalf of Lender a portion of the Sublease Rent equal to "Rent" as defined in the Lease, which Rent is otherwise due and payable by Tenant under the Lease, and (b) the balance, if any, of the Sublease Rent then due shall be remitted directly by the School to the Tenant in accordance with the Sublease. If any such payment is not made by wire transfer or other electronic means, the item of payment shall be deposited to the Lockbox Account in precisely the form received, except for the endorsement of Landlord and/or Tenant where necessary to permit the collection of any such item of payment, which endorsement Landlord hereby agrees to make and agrees to cause Tenant to make, as necessary. In the event Landlord fails to do so, Landlord hereby authorizes Lender to make the endorsement in the name of Landlord.

8. Miscellaneous.

8.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five business days after being sent by certified mail (return receipt requested).

8.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

8.3 Entire Agreement. This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

8.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Lender confirms that Lender has consented to Landlord's entering into the Lease.

8.5 Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

8.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the District of Columbia, excluding its principles of conflict of laws.

8.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

8.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.9 Lender's Representation. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

**[Signatures Begin on Following Page]**

**Signature Page 1 to  
Subordination, Nondisturbance and Attornment Agreement**

IN WITNESS WHEREOF, this Agreement has been duly executed and sealed by Lender and Tenant as of the Effective Date.

**LENDER**

CITIBANK NMTC CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_  
Guillermo Franco  
Vice President

[BANK SEAL]

*DISTRICT OF COLUMBIA, TO WIT:*

*This instrument was acknowledged before me on March \_\_\_\_\_, 2010, by Guillermo Franco, as Vice President of Citibank NMTC Corporation, the Lender herein.*

In witness hereof, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**[Signatures Continue on Following Page]**

**Signature Page 2 to  
Subordination, Nondisturbance and Attornment Agreement**

**TENANT**

SCHOOLHOUSE FINANCE, LLC,  
a Virginia limited liability company

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

[CORPORATE SEAL]

*DISTRICT OF COLUMBIA, TO WIT:*

*This instrument was acknowledged before me on March \_\_\_\_\_, 2010, by \_\_\_\_\_, as  
\_\_\_\_\_ of Schoolhouse Finance, LLC, the Tenant herein.*

In witness hereof, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**[Landlord's Consent on Following Page]**

**LANDLORD'S CONSENT AND ACKNOWLEDGEMENT**

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Lender under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon receipt of a notice as set forth in Section 4.7 above from Lender and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage.

In addition to the foregoing, Landlord expressly acknowledges that Tenant's obligation to pay Rent under the Lease shall be satisfied if and to the extent that the School pays the amount or amounts then due under the Lease directly to Lender as described in Section 7.13 of the foregoing Agreement.

**LANDLORD**

Old Congress Heights Redevelopment Company, LLC, a  
District of Columbia limited liability company

By: \_\_\_\_\_  
Andrew Boticello  
Member

Dated: \_\_\_\_\_, 20\_\_

[CORPORATE SEAL]

*DISTRICT OF COLUMBIA, TO WIT:*

*This instrument was acknowledged before me on March \_\_\_\_, 2010, by Andrew Boticello, as Member of Old Congress Heights Redevelopment Company, LLC, the Landlord herein.*

In witness hereof, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**SCHEDULE A**

Description of Landlord's Premises

Doc# 2010018802 Fees: \$180.50  
03/04/2010 4:20PM Pages 24  
Filed & Recorded in Official Records of  
WASH DC RECORDER OF DEEDS LARRY TODD

RECORDING  
SURCHARGE

\$  
\$

174.00  
6.50

### THIRD AMENDMENT TO GROUND LEASE AGREEMENT

THIS THIRD AMENDMENT TO GROUND LEASE AGREEMENT ("Amendment") is entered into on this 30<sup>th</sup> day of December, 2010, by and between DISTRICT OF COLUMBIA, a municipal corporation acting by and through its Department of Real Estate Services (formerly the Office of Property Management) ("Landlord") and OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, LLC ("Tenant").

The Second Amendment to Ground Lease Agreement recorded March 4, 2010, as Instrument 2010018802, with respect to the property described in the attached Exhibit A, is amended in the following respects:


1. The words "December 1, 2010" in section 5 are modified to read "May 1, 2011".
2. The words "December 15, 2010" in section 5.A. are modified to read "March 15, 2011".

ALL OTHER TERMS AND CONDITIONS CONTINUE IN EFFECT UNAMENDED.

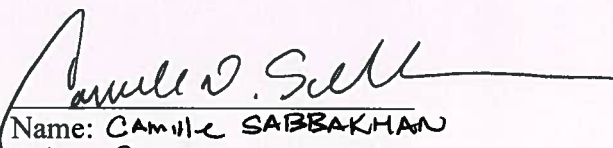
LANDLORD

Approved as to Legal Sufficiency:

DISTRICT OF COLUMBIA  
By and through its Department  
of Real Estate Services

  
Name: Brian J. Hanlon

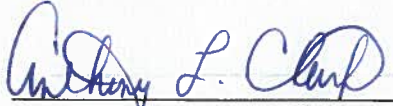
Title: Interim Director

  
Name: CAMILLE SABBAKHAN  
Title: GENERAL COUNSEL  
Date: 12/30/10

\_\_\_\_\_)S

\_\_\_\_\_)S

I, Anthony L. Clark, a Notary Public in and for the District of Columbia, do hereby certify that Brian J. Hanlon, who is personally well known to me as (or proved by the oath of credible witness to be) the person named as Interim Director of the District of Columbia Department of Real Estate Services, in the foregoing document, bearing the date on the \_\_\_\_ day of ~~December~~, January ~~2011~~ 2010, and hereto annexed, personally appeared before me in said jurisdiction and acknowledged the same to be the act and deed of said District for the purposes therein contained.

  
Notary Public

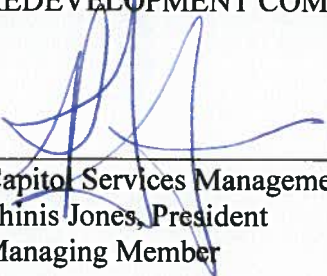
ANTHONY CLARK  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires May 31, 2015





TENANT

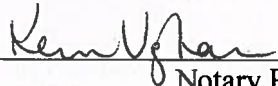
OLD CONGRESS HEIGHTS SCHOOL  
REDEVELOPMENT COMPANY, LLC

  
\_\_\_\_\_  
Capitol Services Management, Inc.  
Phinis Jones, President  
Managing Member

\_\_\_\_\_)S

\_\_\_\_\_)S

I, Kevin Vaughan, a Notary Public in and for the District of Columbia, do hereby certify that Phinis Jones, who is personally well known to me as (or proved by the oath of credible witness to be) the person named as Managing Member of the District of Columbia Department of Real Estate Services, in the foregoing document, bearing the date on the \_\_\_ day of ~~December~~, January 2011, and hereto annexed, personally appeared before me in said jurisdiction and acknowledged the same to be the act and deed of said District for the purposes therein contained.

  
\_\_\_\_\_  
Notary Public

Embossed Hereon is My  
District of Columbia Notary Public Seal  
My Commission Expires March 14, 2015  
KEVIN L. VAUGHAN



**FOURTH AMENDMENT TO GROUND LEASE AGREEMENT**

**THIS FOURTH AMENDMENT TO GROUND LEASE AGREEMENT** (this “**Fourth Amendment**”) is made and entered into as of this 13th day of April, 2016 (the “**Fourth Amendment Effective Date**”) by and between the DISTRICT OF COLUMBIA, a municipal corporation, by and through its Department of General Services (“**Landlord**” or the “**District**”), and OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, LLC, a District of Columbia limited liability company (“**Tenant**”). Tenant and the District are each referred to hereinafter as a “**Party**” and collectively referred to as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, pursuant to that certain Ground Lease Agreement by and between Tenant and the District, dated as of September 4, 2008, as amended by (a) that certain First Amendment to Ground Lease Agreement by and between Tenant and the District, dated as of December 2, 2008, (b) that certain Second Amendment to Ground Lease Agreement by and between Tenant and the District, dated as of March 3, 2010, and (c) that certain Third Amendment to Ground Lease Agreement by and between Tenant and the District, dated as of December 30, 2010 (collectively, the “**Original Lease**”, and together with this Fourth Amendment, the “**Lease**”), Tenant leases from the District, and the District leases to Tenant, those certain premises located at 3100 Martin Luther King, Jr. Avenue, S.E. in Washington, D.C. 20032, as is more particularly set forth in the Original Lease;

**WHEREAS**, pursuant to the Department of General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21, 58 DCR 6226), D.C. Official Code § 10-551.01 (2011 Supp.), as well as all regulations and orders promulgated and related thereto and in furtherance thereof, the District of Columbia Department of General Services was established and, among other things, performs certain functions and has certain delegated authority with respect to management, maintenance, and operations of certain facilities, which include administering matters related to the District’s leasehold interests in the Leased Premises;

**WHEREAS**, the Parties acknowledge and agree that the address of the Leased Premises is 3100 Martin Luther King, Jr. Avenue, S.E. in Washington, D.C. (also known as 500 Alabama Avenue, S.E. and formerly known as 600 Alabama Avenue, S.E.); and

**WHEREAS**, the Parties desire to otherwise modify the terms of the Original Lease, as set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals and Exhibits.** The above recitals and any exhibits hereto are incorporated in, and made a part of, this Fourth Amendment.

2. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Original Lease. All references in the Original Lease to "this Lease" or "the Lease" shall mean the Original Lease, as amended by this Fourth Amendment.

3. Amendment of Original Lease Recital. The reference in Recital R-1 of the Original Lease to "600 Alabama Avenue, S.E., in Washington, D.C." is hereby deleted and replaced with the following: "3100 Martin Luther King, Jr. Avenue, S.E. (also known as 500 Alabama Avenue, S.E.)".

4. Rent Deferment. Landlord and Tenant acknowledge and agree that Tenant owes Landlord Five Hundred Two Thousand Sixteen Dollars (\$502,016.00) for unpaid Base Rent for the period from the Rent Commencement Date through January 31, 2016 (the "**Unpaid Base Rent**"). The Unpaid Base Rent does not include accrued late fees. The Unpaid Base Rent plus the Base Rent attributable to the Western Portion from October 1, 2015 through the Arrears Deadline (hereinafter defined) shall be referred to herein as the "**Arrears**". Landlord hereby agrees to defer payment of the Arrears until the earlier of (a) November 1, 2018, and (b) the date on which a Certificate of Occupancy is issued for any improvements constructed on the Western Portion of the Leased Premises (the "**Arrears Deadline**"). Tenant shall provide Landlord with a copy of the Certificate of Occupancy no later than 10 days after Tenant receives it. No later than the Arrears Deadline, Tenant shall pay to Landlord the full amount of the Arrears. If Tenant fails to pay the Arrears by the Arrears Deadline as set forth herein, the entire Arrears amount shall become immediately due, and all accrued late fees shall be included in addition to the Arrears. Notwithstanding the foregoing, the Base Rent attributable to the Property, less and except the Base Rent attributable to the Western Portion, shall continue to be paid by Tenant as the same becomes due and payable under the Lease. From and after the Arrears Deadline, all Rent for the Property shall be paid by Tenant as the same becomes due and payable under the Lease. Notwithstanding the foregoing, if this Lease is terminated prior to the Arrears Deadline, then prior to such termination, the Arrears shall be deemed an accrued Rent obligation under the Lease and immediately due and payable by Tenant.

5. Rent Commencement Date. Effective as of the date of the Original Lease, the parties agree that the Rent Commencement Date for the Building is May 1, 2011 and that "Lease Year" and the "Term" are calculated based on this date. Effective as of the date of the Original Lease, the Rent Commencement Date for the Western Portion is January 1, 2012.

6. Insurance. Section 6.1.4 of the Original Lease is hereby deleted in its entirety and replaced with the following:

"6.1.4 Tenant's insurance shall cover the entirety of the Leased Premises, the Building and all improvements thereon and naming Tenant as the named insured and District as an additional insured, protecting Tenant and the additional insured or loss payee (as the case may be) against liability for:

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- (a) The following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the “**Liability Insurance**”): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall be in the so called "occurrence" form and shall provide coverage of at least Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the annual aggregate for all damages. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability and products and completed operations.
- (b) Child Molestation/Sexual Misconduct liability insurance in the aggregate amount of not less than \$3,000,000.00.
- (c) Appropriate employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per accident; One Million Dollars (\$1,000,000.00) per employee; One Million Dollars (\$1,000,000.00) policy limit.

Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Lease, the amount of such coverage shall be subject to Landlord's annual review. In the event Landlord, in its reasonable judgment, deems the coverage required under this Section 6.1.4 insufficient based on standard practice in connection with comparable properties and with comparable tenants in the District of Columbia after any such annual review, Tenant shall increase the amount or type of coverage required hereby by Landlord, provided such increase shall be commercially reasonable.”

7. Sublease and Assignment. Section 9.1.1(b) of the Original Lease is hereby deleted in its entirety and replaced with the following:

“(b) “Sublease and Assignment.

I. Tenant shall not assign, transfer or mortgage any or all of Tenant's rights or interests under this Lease or sublease any or all of the Leased Premises (“**Transfer**”) without District's prior written consent which consent District may withhold in its sole and absolute discretion; provided, however, Tenant may, upon District's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, Transfer the Lease to (i) a District of Columbia Public School; (ii) a public charter school with a charter in effect and established pursuant to D.C. Official Code §§ 38-1800.01 through 38-1802.15 or an entity controlled by such public charter school; (iii) any other entity that will use the Leased Premises for secondary or post-secondary educational purposes; (iv) a subsidiary, affiliate, parent or other entity to Tenant which controls,

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is controlled by, or is under common control with, Tenant; (v) a successor entity to Tenant resulting from merger, consolidation, non-bankruptcy reorganization, or government action; or (vi) a purchaser of all or any significant portion of Tenant's ownership interests or assets. Notwithstanding the foregoing, the District hereby approves the following: (A) a sublease or other occupancy agreement at any time to each of the following (1) the Job Training Center (the "Training Center"), and (2) Democracy Preparatory Public Charter School; and (B) a sublease or other occupancy agreement with any other District of Columbia public charter school so long as each such sublease or occupancy agreement meets certain criteria to be set forth in the Lease. The Parties acknowledge that Landlord approved that certain Amended and Restated Sublease Agreement dated December 11, 2015, by and between Tenant and Democracy Prep Congress Heights Public Charter School ("**Democracy Prep**"), pursuant to which Democracy Prep now occupies the Leased Premises, subject to this Lease.

II. Sublet Rent. Notwithstanding the foregoing, the following conditions shall apply to any proposed Transfer:

(i) Each and every covenant, condition, or obligation imposed upon Tenant by this Lease and each and every right, remedy, or benefit afforded Landlord by this Lease shall not be impaired or diminished as a result of such Transfer; and

(ii) Tenant may deduct the following reasonable out-of-pocket costs and expenses from the sublet rent: (a) the Rent due under the lease (after application of any Rent Abatement or Additional Rent Abatement) paid annually to the Landlord and allocable to the sublet portion of the Leased Premises; (b) the reasonable out of pocket costs of any Capital Alterations made to the sublet portion of the Leased Premises at the Tenant's cost prior to such subletting, or at any time thereafter, amortized over the term of the sublease; (c) annual operating expenses and real property taxes (to the extent applicable); (d) the reasonable and out-of-pocket costs incurred by Tenant for any real estate commissions, advertising, financing fees, legal expenses or other costs incurred by the Tenant in connection with such subletting, amortized by Tenant over the term of the sublease and as reasonably demonstrated to Landlord with copies of paid invoices supporting said expenses and costs; (e) debt service payments to the extent (e.g., interest, loan fees, etc.) not otherwise encompassed by other deductions identified in this Section 9.1.1(b)(II); (f) reasonable and out-of-pocket costs incurred by Tenant for overhead & administration as reasonably demonstrated to Landlord with copies of paid invoices supporting said expenses and costs; and (g) any other out-of-pocket economic concessions granted or paid to any such subtenant by the Tenant, amortized by Tenant over the term of the sublease; and Tenant

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shall, after the above deductions, remit forty percent (40%) of the remaining sublet rent to District annually on the anniversary of the Rent Commencement Date; provided, however, that this Section 9.1.1(b)(II)(ii) shall not apply (and no sublet rent shall be payable to Landlord) in connection with a sublease by (1) Tenant to any Affiliate of Tenant, (2) Tenant to a Qualified Active Low Income Community Business, (3) a Qualified Active Low Income Community Business to Tenant, or (4) Tenant to the Job Training Center, or any Charter School (including, but not limited to, DPPCS). Tenant shall continue to remain liable under this Lease for the performance of all terms, including, but not limited to, the payment of Rent due under this Lease, except to the extent otherwise agreed to in writing by the Parties.”

8. Continuous Operation. Tenant shall open and operate the entire Leased Premises for the Permitted Uses continuously and uninterruptedly during the Term during all Business Days, except for Excused Periods (as defined herein). The “**Excused Periods**” are periods during which the failure of Tenant to conduct the operations of its business in the Leased Premises: (i) resulted from alterations or renovations being diligently performed in and to the Leased Premises in accordance with the terms of the Lease; or (ii) was caused by Force Majeure; or (iii) was consistent with the hours of operation and periods of closure pursuant to Tenant's published school calendar, attached as **Exhibit A** to this Fourth Amendment and made a part hereof.

9. CBE and First Source Requirements.

- a. Tenant shall enter into a Certified Business Enterprise agreement with the District of Columbia governing the obligations of Tenant under the Small, Local and Disadvantaged Business Enterprise Development and Assistant Act of 2005 (D.C. Law 16-33; D.C., Official Code Section 2-218.01, *et seq.*), as amended or modified from time to time, within 30 days of the Fourth Amendment Effective Date. At a minimum, Tenant shall ensure that Certified Business Enterprises account for at least 35% of the contract dollar volume of the project, and 20% of both equity and development participation. This requirement is for new buildings only.
- b. Tenant shall enter into a First Source Agreement with the District of Columbia Department of Employment Services governing the obligations of Tenant under the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code Section 2-219.03, *et seq.*), as amended or modified from time to time, within 30 days of the Fourth Amendment Effective Date. This requirement is for new buildings only.

10. Green Building Requirements. Tenant shall comply with all requirements of Title 6, Chapter 14A of the D.C. Official Code, as may be amended from time to time, entitled *Green Building Requirements*. This requirement is for new buildings only.

## EXECUTION COPY

11. Counterparts. This Fourth Amendment may be executed in several counterparts each of which shall constitute an original, but both of which together shall constitute one and the same instrument. Execution and delivery of this Fourth Amendment by facsimile signature (including but not limited to an e-mailed PDF document) shall be sufficient for all purposes, and shall be binding on the Parties hereto.

12. Binding; Choice of Law. This Fourth Amendment shall be (a) binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and permitted assigns, and (b) governed by, and construed in accordance with, the laws of the District of Columbia, without regard to conflicts of law provisions.

13. Miscellaneous. The Parties, intending to be bound, acknowledge and agree that: (a) this Fourth Amendment contains and embodies the entire agreement of the Parties with respect to the matters set forth herein, and supersedes and revokes any and all negotiations, arrangements, letters of intent, representations, inducements or other agreements, oral or in writing with respect to such matters; (b) no representations, inducements or agreements, oral or in writing, between the Parties with respect to such matters, unless contained in this Fourth Amendment, shall be of any force or effect; and (c) in the event of any conflict between any terms of this Fourth Amendment and of the Original Lease, the terms of this Fourth Amendment shall control.

14. Notices. Notwithstanding any provision contained in the Original Lease to the contrary, unless a proper notice is given to one Party by the other of a new notice address, any notice, consent, approval or other communication to either Party from the other Party pertaining to the Lease shall be addressed as follows:

If to the District:

Government of the District of Columbia  
Department of General Services  
2000 14<sup>th</sup> Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20009  
Attention: Director

with a copy to:

Government of the District of Columbia  
Department of General Services  
2000 14<sup>th</sup> Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20009  
Attention: General Counsel

and, in the event of an alleged default by the District, with a copy to:

Government of the District of Columbia

## EXECUTION COPY

Office of the Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 1010 South  
Washington, D.C. 20001  
Attention: Deputy Attorney General, Commercial Division

If to Tenant:

Old Congress Heights Redevelopment Company, LLC  
3215 Martin Luther King, Jr. Avenue, S.E.  
Washington, DC 20032  
Attention: Phinis Jones  
Telecopy: 202-727-6014  
E-Mail: phinis@thecsmi.com

with a copy to:

Darvin R. Davitian, Esq.  
Perkins Coie LLP  
700 13th Street, N.W.; Suite 700  
Washington, D.C. 20005  
Telecopy: 202-654-9954  
E-Mail: ddavitian@perkinscoie.com

15. Absence of Interest. Tenant represents and warrants that no officer, agent, employee, elected official or representative of the District of Columbia, including the Council of the District of Columbia, has received any payment or other consideration for the making of the Lease, and that no such person has any interest, direct or indirect, in the Lease, or the proceeds thereof or related thereto.

16. Broker. Tenant acknowledges and agrees that it has not been represented by any agent or broker with respect to this Fourth Amendment and that Tenant shall pay any commission or fee due to Tenant's broker, if any, pursuant to a separate written agreement. In addition to any other indemnity provided under the Lease, Tenant shall indemnify the District and defend, save and hold the District and all of its officers, agents and servants harmless from and against any and all claims, liabilities, or demands for payment made by Tenant's broker or agent, or any broker or agent claiming through Tenant, with respect to the Lease.

17. Authority. By executing this Fourth Amendment, Tenant represents to the District that: (i) it is authorized to enter into, execute and deliver this Fourth Amendment and perform its obligations hereunder; (ii) this Fourth Amendment is effective and enforceable against Tenant in accordance with its terms; (iii) the person signing on behalf of Tenant is duly authorized to execute this Fourth Amendment and thereby bind Tenant; (iv) no other signatures or approvals are necessary in order to make all of the representations of Tenant contained in this Section true and correct in all material respects; (v) Tenant is in good standing in the District of Columbia and shall remain so for the term of the Lease; and (vi) Tenant is in compliance with all District of Columbia



laws and regulations applicable to Tenant, including but not limited to laws and regulations pertaining to the District of Columbia Office of Tax and Revenue and the District of Columbia Department of Employment Services, and shall remain so for the term of the Lease.

18. Severability. Each provision of this Fourth Amendment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Fourth Amendment or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision, and the remainder of this Fourth Amendment and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby.

19. No Partnership; No Third Party Beneficiaries. Nothing contained in the Lease shall be deemed or construed to create a partnership or joint venture of or between Tenant and the District, or to create any other relationship between the Parties hereto other than that of landlord and tenant. Nothing contained in the Lease shall be deemed or construed to create any third party beneficiaries. The only entities that the Parties intend to be benefitted by the Lease are Tenant and the District.

20. Not a Contract for Goods or Services. The Lease is not intended to be, nor shall it be deemed or construed to be a contract for goods or services. Nothing contained in the Lease, and no future action or inaction by the District under the Lease, shall be deemed or construed to mean that the District has contracted with Tenant to perform any activity at the Leased Premises or the Property that is not ancillary to the conveyance of an interest in real property. Tenant expressly acknowledges that the District is prohibited by law from entering into contracts for goods and services without following the procedures set forth in the Procurement Practices Reform Act of 2010, D.C. Official Code § 2-351.01, *et seq.*, as may be amended from time to time, or any other applicable procurement authority.

21. Anti-Deficiency Limitations.

a. Whether expressly or impliedly qualified or limited in any Section of the Lease, the obligations of the District to fulfill any financial obligation pursuant to the Lease or any subsequent agreement entered into pursuant to the Lease, or referenced herein, to which the District is a party (each, an “**Other Agreement**”) are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2006 Supp.) ((i) and (ii) collectively, as may be amended from time to time, the “**Anti-Deficiency Acts**”); and (iii) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2006 Supp.), as may be amended from time to time, to the extent applicable to the Lease or any Other Agreement (collectively, “**Any**

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**Agreement**”). To the extent required by the Anti-Deficiency Acts, nothing in Any Agreement shall create an obligation of the District in anticipation of an appropriation by the United States Congress (“**Congress**”) for such purpose, and the District’s legal liability for the payment of any financial obligation or any component thereof under Any Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references to the “District of Columbia” in this Section shall refer to the District of Columbia as a sovereign entity, and not as a landlord). Tenant confirms that it has read and familiarized itself with the Anti-Deficiency Acts and has full knowledge of such laws and the impact on the District’s financial obligations hereunder.

b. If no appropriation is made by the District of Columbia or Congress to pay any financial obligation under Any Agreement for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District shall not be liable to make any payment under Any Agreement upon the expiration of any then-existing appropriation.

c. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District (or of the District of Columbia) shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the District under Any Agreement.

d. Any Agreement shall not constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No officer, employee, or agent of the District is authorized to obligate or expend any amount under Any Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

***[Signature Pages to Follow]***

**EXECUTION COPY**

IN WITNESS WHEREOF, Tenant and the District have executed this Fourth Amendment as of the Fourth Amendment Effective Date.

**TENANT:**

OLD CONGRESS HEIGHTS SCHOOL  
REDEVELOPMENT COMPANY LLC, a District  
of Columbia limited liability company

By: 

Name: Andy Botticello

Title: Managing Member

***[District's Signature Page to Follow]***

**EXECUTION COPY**

**DISTRICT:**

DISTRICT OF COLUMBIA, a municipal corporation, by and through its Department of General Services

By:   
Christopher Weaver, Director

The Form of this Fourth Amendment Approved as to Legal Sufficiency for the District of Columbia by:

Office of the General Counsel for the Department of General Services

By:   
Assistant General Counsel

**EXHIBIT A**

**Hours of Operation and Periods of Closure Pursuant to Published School Calendar**



# DEMOCRACY PREP PUBLIC SCHOOLS

Work Hard. Go to College. Change the World!

2015-2016 | DC ACADEMIC CALENDAR

JULY   2015						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AUGUST   2015						
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30	31					

SEPTEMBER   2015						
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27	28	29	30			

OCTOBER   2015						
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NOVEMBER   2015						
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27	28	29	30			

DECEMBER   2015						
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JANUARY   2016						
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31						

FEBRUARY   2016						
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MARCH   2016						
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APRIL   2016						
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MAY   2016						
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JUNE   2016						
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25	26	27	28	29	30	

## CALENDAR DETAILS

### 2015

Jun 30-Jul 2: School Leader/Ops PD  
Jul 17: Summer Academy Ends  
July 27: Summer PD Begins for ALL STAFF  
Aug 4-5: DP YOU & Pep Rally  
Aug 6: All New Staff HR Session (2-5pm)  
Aug 11: New Teacher Network Culture PD (1-5pm)  
Aug 12: New Teacher Network Rigor PD (1-5pm)  
Aug 17-21: First Day of Classes-Prep Academy (Mandatory)  
Aug 24: First Full Day  
Aug 31-Sep 11: Fall MAP Testing Window  
R1 STEP Testing  
Sep 7: Labor Day NO SCHOOL  
Sep 16: State of the School Address  
Oct 7: T1 Progress Report Conferences  
Oct 12: Columbus Day NO SCHOOL  
Oct 20-21: ANET 1  
Oct 23: Civic Coordinator Meeting (3:30-5pm)  
Nov 3-Nov 13: R2 STEP  
Nov 3: Election Day! GOTV!  
Nov 11: Veteran's Day NO SCHOOL  
Nov 24: End of T1. Grade Books LOCKED  
Nov 25 - 27: Thanksgiving Break NO SCHOOL  
Nov 30: Staff PD Day (NO SCHOOL for scholars)  
Dec 1: T2 Begins  
Dec 1-2: ANET 2  
Dec 9: T1 P/T Conferences  
Dec 21-Jan 1: Holiday Break NO SCHOOL

### 2016

Jan 4: Staff PD Day (NO SCHOOL for scholars)  
Jan 5: Scholars Return  
Jan 11-22: R3 STEP  
Jan 8: Civic Coordinator Meeting (3:30-5pm)  
Jan 18: MLK Day NO SCHOOL  
Jan 27: Progress Reports sent home  
Feb 2: Charter School Advocacy Day  
Feb 8-12: FUNbruary Week  
Feb 15: Presidents' Day NO SCHOOL  
Feb 23-24: ANET 3  
March 7-March 18: R4 STEP  
Mar 15: End of T2. Grade Books LOCKED  
Mar 16: T3 Begins  
Mar 23: T2 P/T Conference  
Mar 25: Civic Coordinator Meeting (2-5pm)  
Mar 28-Apr 1: Spring Break NO SCHOOL  
May 2-6: Teacher Appreciation Week  
May 3-4: ANET 4  
May 6: Staff PD Day (NO SCHOOL for scholars)  
May 13: DP Day of Service Day (ALL)  
May 16 - May 27: MAP Testing Window  
R5 STEP Testing  
May 30: Memorial Day NO SCHOOL  
Jun 10: T3 Grade Books LOCKED  
Jun 17: Last Day of School for Scholars & Staff (1pm Dismissal for Scholars)

## LEGEND

	Testing Window
	Data & PD Days (No Scholars)
	Mandatory Prep Academy
	First Day of Trimester
	Parent / Teacher Conferences
	Holidays/School Closed
	Required Civic Engagement
	Day - Families Welcome
	Development

## Regular Daily Schedule

Day	Grade	Time
M, T, Th, F	Gr. K-6	7:45AM - 4:00PM
Wed	Gr. K-6	7:45AM - 2:00PM
M, T, Th, F	Gr. K-6	Tutoring 4:15-5:15

**FIFTH AMENDMENT TO GROUND LEASE AGREEMENT**

**THIS FIFTH AMENDMENT TO GROUND LEASE AGREEMENT** (this “**Fifth Amendment**”) is made and entered into as of this 20<sup>th</sup> day of February, 2018 (the “**Fifth Amendment Effective Date**”) by and between the DISTRICT OF COLUMBIA, a municipal corporation, by and through its Department of General Services (“**Landlord**” or the “**District**”), and OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, LLC, a District of Columbia limited liability company (“**Tenant**”). Tenant and the District are each referred to hereinafter as a “**Party**” and collectively referred to as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, pursuant to that certain Ground Lease Agreement by and between Tenant and the District, dated as of September 4, 2008, as amended by (a) that certain First Amendment to Ground Lease Agreement by and between Tenant and the District, dated as of December 2, 2008, (b) that certain Second Amendment to Ground Lease Agreement by and between Tenant and the District, dated as of March 3, 2010, (c) that certain Third Amendment to Ground Lease Agreement by and between Tenant and the District, dated as of December 30, 2010, (d) that certain Fourth Amendment to Ground Lease Agreement dated April 13, 2016 (the “**Fourth Amendment**”), and (e) that certain letter agreement dated April 13, 2017 (the “**Letter Amendment**”; the foregoing, collectively, the “**Original Lease**”, and together with this Fifth Amendment, the “**Lease**”), Tenant leases from the District, and the District leases to Tenant, those certain premises located at 3100 Martin Luther King, Jr. Avenue, S.E. in Washington, D.C. 20032, as is more particularly set forth in the Original Lease; and

**WHEREAS**, the Parties desire to otherwise modify the terms of the Original Lease, as set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals and Exhibits.** The above recitals and any exhibits and schedules hereto are incorporated in, and made a part of, this Fifth Amendment.
2. **Defined Terms.** Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Original Lease. All references in the Original Lease to “this Lease” or “the Lease” shall mean the Original Lease, as amended by this Fifth Amendment.
3. **Arrears.** Landlord and Tenant acknowledge and agree that (a) the Unpaid Base Rent (as defined in the Fourth Amendment) and any accrued late fees have been paid in full by Tenant as follows: (i) Landlord has forgiven and discharged Three Hundred Twenty-Six Thousand Three Hundred Ten Dollars and Forty Cents (\$326,310.40) of the Unpaid Base Rent and any accrued late fees, and (ii) Tenant paid to Landlord the remaining Unpaid Base Rent in the amount of One Hundred Seventy-Five Thousand Seven Hundred

Five Dollars and Sixty Cents (\$175,705.60); and (b) the portion of the Arrears (as defined in the Fourth Amendment) constituting the Base Rent attributable to the Western Portion from October 1, 2015 through the Arrears Deadline (as defined in the Fourth Amendment; such portion of the Arrears, the “**Western Portion Arrears**”) remains due and payable, and shall be subject to the Rent Abatement (defined below) under the Lease.

4. Tenant’s Work on Western Portion; Rent Abatement. The following Sections are added to the Original Lease as new Section 3.6 and Section 3.7. The Parties hereby acknowledge and agree that, as of the Fifth Amendment Effective Date, (a) the definition for the term “Alterations” set forth below in Section 3.6 shall apply to any Alterations performed after the Fifth Amendment Effective Date and shall replace the definition therefor in the Original Lease for such purpose, (b) Sections 8.3.1 through 8.3.5 of the Original Lease shall not apply to any Alterations performed after the Fifth Amendment Effective Date (but Section 8.3.6 of the Original Lease shall remain in effect), and (c) Section 3.6 below shall apply to any Alterations performed after the Fifth Amendment Effective Date.

“**Section 3.6** Tenant’s Work on Western Portion; Alterations.”

(a) Tenant and Landlord acknowledge that Tenant is developing additional school building improvements on the Western Portion which shall be used solely for educational uses (the “**Tenant’s Work**”). Notwithstanding that the Tenant’s Work has commenced prior to the Fifth Amendment Effective Date, within ten (10) Business Days of the Fifth Amendment Effective Date, Tenant shall deliver to Landlord for Tenant’s Work construction-stage plans and specifications, which must include: one (1) complete set of Architectural and Engineering Drawings on Bond Paper, one (1) electronic version in Adobe Reader (.pdf), and an electronic AutoCAD Drawings (.dwg) of the final layout for the entire portion of the Leased Premises being modified (“**Plans and Specifications**”). The Plans and Specifications must be complete, accurate, legible, and definitive of all aspects of the intended construction. Together with the Plans and Specifications for the Tenant’s Work, Tenant shall deliver to Landlord the budget for the Construction Costs (as defined below) for the Tenant’s Work and a schedule.

(b) Within sixty (60) days after Completion (as defined below) of Tenant’s Work and any subsequent Alterations (as defined below), the following items must be submitted to Landlord by or on behalf of Tenant:

(i) A notice from Tenant, or its general contractor, certifying in writing to Landlord that one hundred percent (100%) of Tenant’s Work or subsequent Alterations, as specified in the final Plans and Specifications (approved by Landlord with respect to Alterations), has been Completed;

(ii) An affidavit of Tenant’s chief fiscal officer stating the total Construction Costs;

(iii) Final and unconditional releases of liens executed by the general contractor and all suppliers, materialmen, contractors and subcontractors



with contracts for any portion of Tenant's Work with a total value of \$250,000 or more, or sufficient bonds to cover the same;

(iv) An affidavit stating that all contractors, subcontractors, suppliers and materialmen have been paid in full for the labor, services, goods and materials provided or supplied to the Leased Premises as of the date of the affidavit;

(v) A reproducible copy of any "as built" drawings of such work;

(vi) A permanent or temporary certificate of occupancy for the Leased Premises as well as copies of any other permits, approvals or other documents issued by any Governmental Authority in connection with such work; and

(vii) A final accounting of the Construction Costs (including paid invoices, back-up and other supporting documentation) for the Tenant's Work or the Alterations, as applicable, and with respect to the Tenant's Work, a written request for Landlord's approval of the amount of the Rent Abatement (as defined in Section 3.7 below) (such written request, the "**Declaration of Rent Abatement**").

**"Completion"** or **"Completed"** means, with respect to the Tenant's Work or any subsequent Alterations, the satisfaction of each of the following: (i) the completion of the specified work by or on behalf of Tenant at the Leased Premises in substantial conformance with the final Plans and Specifications therefor (approved by Landlord with respect to Alterations) and in accordance with all applicable Laws; (ii) the close-out of all construction contracts for such work; (iii) the payment of all costs of such work, and receipt by Tenant of fully executed, notarized and valid releases of liens from the general contractor and all subcontractors furnishing supplies or labor in connection with such work which cost exceeded Five Thousand Dollars (\$5,000.00), and (iv) the receipt by Landlord from Tenant of a permanent or temporary certificate of occupancy for the Leased Premises following completion of such work.

**"Construction Costs"** means the actual construction costs incurred by Tenant, and approved by Landlord, in performing Tenant's Work or any subsequent Capital Alterations, including both hard and soft costs, but excluding (i) the costs of purchasing and installing Tenant's Property (as hereinafter defined); and (ii) the cost to repair any damage to the Leased Premises caused by Tenant or Tenant's Related Parties. **"Tenant's Property"** means all movable goods, inventory, furniture, equipment, trade fixtures (including, without limitation, exterior signs, white boards, and curtains) belonging to Tenant that are not permanently affixed to the Leased Premises.

“**Alterations**” means any alterations, additions, renovations, improvements or installations in or to the Leased Premises.

(c) After Completion of Tenant’s Work, Tenant shall not make or cause to be made any Alterations without Landlord’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided however that Tenant may make or cause to be made any Alteration without Landlord’s consent if (i) the total cost of such Alteration is less than One Hundred Thousand Dollars (\$100,000.00), or (ii) such Alteration is to the interior of a building and is cosmetic in nature, including without limitation, painting and floor coverings. In the event of an emergency which imminently threatens life, safety or property, Tenant shall have the right to make all necessary repairs and/or Alterations without Landlord’s consent which are reasonably required to abate the emergency, provided that Tenant shall immediately notify Landlord of such emergency and repairs or Alterations. Prior to the commencement of any Alterations subsequent to the Completion of the Tenant’s Work, Tenant shall submit to Landlord for its consent, which consent shall not be unreasonably withheld, conditioned or delayed, the Plans and Specifications for the Alterations, a proposed scope of work setting forth in detail the work to be performed (“**Scope**”), together with an estimated schedule (“**Schedule**”) and estimated budget (“**Budget**”). Any modification to a Budget approved by both Parties in excess of ten percent (10%) of the Budget and any modification to a Scope or Schedule approved by both Parties shall require Landlord’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Construction relating to Alterations shall not begin until Landlord’s approval of the Plans and Specifications, Budget, Scope and Schedule therefor (collectively, the “**Alteration Documents**”).

(d) With respect to any Alterations subsequent to the completion of the Tenant’s Work which require Landlord’s approval, Landlord shall have thirty (30) Business Days from its receipt of the Alteration Documents (or revisions to the Alteration Documents requiring Landlord’s approval hereunder) to review and advise Tenant of its approval or of any changes Landlord requires to be made. Within ten (10) Business Days after receipt of Landlord’s notice of changes (if any), Tenant shall cause all such changes to be made, and Tenant shall resubmit the revised Alteration Documents for Landlord’s review and written approval. The revisions and resubmission shall continue until Landlord shall have approved, or shall be deemed to have approved, the Alteration Documents. In the event that Landlord has not responded to Tenant within such thirty (30) Business Day period, then Tenant shall have the right to deliver a notice to Landlord containing the following language in bold font and capital letters: **THIS NOTICE IS DELIVERED PURSUANT TO SECTION 3.6 OF YOUR LEASE FOR PREMISES AT 3100 MARTIN LUTHER KING, JR. AVENUE SE, WASHINGTON, DC. IF YOU FAIL TO APPROVE OR SEND COMMENTS TO THOSE CERTAIN PLANS AND SPECIFICATIONS AND OTHER ALTERATION DOCUMENTS DELIVERED TO YOU ON \_\_\_\_\_ FOR WORK TO BE DONE AT SUCH LOCATION WITHIN TEN (10) BUSINESS DAYS OF LANDLORD’S RECEIPT OF THIS NOTICE, LANDLORD SHALL BE DEEMED TO HAVE APPROVED SUCH PLANS AND SPECIFICATIONS AND OTHER ALTERATION DOCUMENTS.** If Landlord fails to respond within such ten (10) Business Day period after receipt of such notice from Tenant, then Landlord shall be deemed to have approved such Alteration

Documents for the applicable Alterations. Landlord's approval of the final Plans and Specifications shall be evidenced by Landlord and Tenant initialing two (2) complete sets of the final Plans and Specifications, whereupon one fully executed set shall be delivered to Landlord.

(e) No approval by Landlord of any Plans and Specifications shall (i) imply Landlord's approval of the structural or engineering designs as to quality or fitness of any material or device used; (ii) imply that the Plans and Specifications are in compliance with Laws (it being agreed that such compliance is solely Tenant's responsibility); (iii) relieve Tenant of the responsibility to construct structurally sound improvements which are free of defects; (iv) impose any liability on any Landlord's Related Party; or (v) serve as a waiver or forfeiture of any right of Landlord.

(f) All work performed by Tenant in, on and to the Leased Premises, including without limitation Tenant's Work and Alterations, shall be performed: (i) promptly and once commenced diligently pursued to timely Completion pursuant to the Schedule; (ii) in a good and workmanlike manner, with new materials; (iii) by duly qualified, insured and licensed and bonded (if required by Laws) Persons; and (iv) in accordance with (A) the Plans and Specifications therefor (as approved by Landlord with respect to Alterations), and (B) all Laws. Tenant's failure to comply with the requirements of this Section shall constitute a Default hereunder.

### **Section 3.7 Rent Abatement.**

(a) Commencing as of the later of (i) the Fifth Amendment Effective Date, and (ii) March 1, 2018 (the "**Rent Abatement Commencement Date**"), Tenant shall be entitled to a credit against Base Rent in an amount equal to the lesser of (A) the total amount of the Construction Costs for the Tenant's Work, and (B) One Million Dollars (\$1,000,000.00) (the "**Rent Abatement**"), provided that Tenant is not then in Default under this Lease, and, provided further, that the Rent Abatement amount must be amortized in equal monthly installments over the period commencing on the Rent Abatement Commencement Date and ending on the date that is seven and one-half (7.5) years after such date (the "**Rent Abatement Period**"). Tenant shall be entitled to apply the total amount of the Rent Abatement on a monthly basis, based on the Rent Abatement amount amortized over the Rent Abatement Period, on a dollar-for-dollar basis, against the total amount of each monthly installment of Base Rent, as the same becomes due and payable, until the entire Rent Abatement has been so applied (it being acknowledged and agreed by the Parties that the Rent Abatement shall be first applied to the Western Portion Arrears). Notwithstanding any provision in this Lease to the contrary, in no event shall all or any portion of the Rent Abatement be due or payable by Landlord to Tenant in the event this Lease expires or is terminated pursuant to its terms prior to the full amount of the Rent Abatement being applied against Base Rent. For the avoidance of doubt, (x) Base Rent and any other Rent due or payable under this Lease shall be paid in accordance with the terms of this Lease prior to, during and following the Rent Abatement Period, subject to the application of the Rent Abatement against Base Rent pursuant to the terms of this Section 3.7; (y) Landlord and Tenant acknowledge and agree that attached hereto as Schedule 3.7 is a schedule of Base Rent due and payable under this Lease, which schedule

does not reflect the discharge of Unpaid Base Rent pursuant to Section 3 of the Fifth Amendment to this Lease or the Rent Abatement; and (z) Landlord and Tenant acknowledge and agree that the commencement of Tenant's application of the Rent Abatement prior to Landlord's approval of the Construction Costs for Tenant's Work pursuant to the terms hereof or of the determination of the Rent Abatement amount shall not constitute a waiver of any of the terms or requirements of Section 3.6 or Section 3.7.

(b) The Parties agree that the application of the Rent Abatement is subject to the condition that, throughout the Term, Tenant shall perform its obligations under this Lease, including, without limitation, Tenant's obligations set forth in Section 3.6 above with respect to Tenant's Work. Although Tenant shall be entitled to continue to apply the Rent Abatement during any notice and cure period for a Tenant default hereunder, if Tenant fails to timely and faithfully cure such default prior to same becoming a Default, then, in addition to, and not in lieu of, Landlord's remedies for a Default (i) Tenant shall not be entitled to apply the Rent Abatement against Base Rent while a Default exists; (ii) Landlord shall have the right to recapture the full amount of any Rent Abatement ("**Abatement Recapture**") applied from the date of the occurrence of the Default (the "**Default Date**") through the date the Default is cured (the "**Cure Date**", and such period from the Default Date through the Cure Date, the "**Recapture Period**"); and (iii) Tenant shall, without any demand or Notice from Landlord, be obligated to pay the Abatement Recapture to Landlord on the date that is the first Business Day of the month following the Cure Date ("**Recapture Payment**"). For purposes of illustration, if a Default occurs on January 1, 2019 (i.e., the Default Date), and Tenant cures such Default on March 1, 2019 (i.e., the Cure Date), then (A) Tenant shall not be entitled to apply the Rent Abatement during the Recapture Period (i.e., January 1, 2019 through March 1, 2019), (B) Landlord shall be entitled to an Abatement Recapture for the Recapture Period, and (C) Tenant shall be obligated to pay the Recapture Payment equal to the amount of the Rent Abatement applied for January and February of 2019 on the first Business Day of April 2019. For the avoidance of doubt, Tenant's cure of a Default shall not entitle Tenant to a return of the Recapture Payment. In the event that Tenant shall fail to timely and faithfully pay any Recapture Payment as and when due hereunder, then, notwithstanding anything to the contrary in this Lease, such failure to pay shall constitute a Default, and Landlord shall have all of the remedies available to it hereunder, at law or in equity."

5. Counterparts. This Fifth Amendment may be executed in several counterparts each of which shall constitute an original, but both of which together shall constitute one and the same instrument. Execution and delivery of this Fifth Amendment by facsimile signature (including but not limited to an e-mailed PDF document) shall be sufficient for all purposes, and shall be binding on the Parties hereto.

6. Binding; Choice of Law. This Fifth Amendment shall be (a) binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and permitted assigns, and (b) governed by, and construed in accordance with, the laws of the District of Columbia, without regard to conflicts of law provisions.

7. Miscellaneous. The Parties, intending to be bound, acknowledge and agree that: (a) the Lease contains and embodies the entire agreement of the Parties with respect to the matters set forth herein, and supersedes and revokes any and all negotiations, arrangements, letters of intent, representations, inducements or other agreements, oral or in writing with respect to such matters; (b) no representations, inducements or agreements, oral or in writing, between the Parties with respect to such matters, unless contained in the Lease, shall be of any force or effect; and (c) in the event of any conflict between any terms of this Fifth Amendment and of the Original Lease, the terms of this Fifth Amendment shall control.

8. Absence of Interest. Tenant represents and warrants that no officer, agent, employee, elected official or representative of the District of Columbia, including the Council of the District of Columbia, has received any payment or other consideration for the making of the Lease, and that no such person has any interest, direct or indirect, in the Lease, or the proceeds thereof or related thereto.

9. Broker. Tenant acknowledges and agrees that it has not been represented by any agent or broker with respect to this Fifth Amendment and that Tenant shall pay any commission or fee due to Tenant's broker, if any, pursuant to a separate written agreement. In addition to any other indemnity provided under the Lease, Tenant shall indemnify the District and defend, save and hold the District and all of its officers, agents and servants harmless from and against any and all claims, liabilities, or demands for payment made by Tenant's broker or agent, or any broker or agent claiming through Tenant, with respect to the Lease.

10. Authority. By executing this Fifth Amendment, Tenant represents to the District that: (i) it is authorized to enter into, execute and deliver this Fifth Amendment and perform its obligations hereunder; (ii) this Fifth Amendment is effective and enforceable against Tenant in accordance with its terms; (iii) the person signing on behalf of Tenant is duly authorized to execute this Fifth Amendment and thereby bind Tenant; (iv) no other signatures or approvals are necessary in order to make all of the representations of Tenant contained in this Section true and correct in all material respects; (v) Tenant is in good standing in the District of Columbia and shall remain so for the term of the Lease; and (vi) Tenant is in compliance with all District of Columbia laws and regulations applicable to Tenant, including but not limited to laws and regulations pertaining to the District of Columbia Office of Tax and Revenue and the District of Columbia Department of Employment Services, and shall remain so for the term of the Lease.

11. Severability. Each provision of this Fifth Amendment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Fifth Amendment or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision, and the remainder of this Fifth Amendment and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby.

12. No Partnership; No Third Party Beneficiaries. Nothing contained in the Lease shall be deemed or construed to create a partnership or joint venture of or between Tenant and the District, or to create any other relationship between the Parties hereto other than that of landlord and tenant. Nothing contained in the Lease shall be deemed or construed to create any third party beneficiaries. The only entities that the Parties intend to be benefitted by the Lease are Tenant and the District.

13. Not a Contract for Goods or Services. The Lease is not intended to be, nor shall it be deemed or construed to be a contract for goods or services. Nothing contained in the Lease, and no future action or inaction by the District under the Lease, shall be deemed or construed to mean that the District has contracted with Tenant to perform any activity at the Leased Premises or the Property that is not ancillary to the conveyance of an interest in real property. Tenant expressly acknowledges that the District is prohibited by law from entering into contracts for goods and services without following the procedures set forth in the Procurement Practices Reform Act of 2010, D.C. Official Code § 2-351.01, *et seq.*, as may be amended from time to time, or any other applicable procurement authority.

14. Anti-Deficiency Limitations.

a. Whether expressly or impliedly qualified or limited in any Section of the Lease, the obligations of the District to fulfill any financial obligation pursuant to the Lease or any subsequent agreement entered into pursuant to the Lease, or referenced herein, to which the District is a party (each, an “**Other Agreement**”) are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2006 Supp.) ((i) and (ii) collectively, as may be amended from time to time, the “**Anti-Deficiency Acts**”); and (iii) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2006 Supp.), as may be amended from time to time, to the extent applicable to the Lease or any Other Agreement (collectively, “**Any Agreement**”). To the extent required by the Anti-Deficiency Acts, nothing in Any Agreement shall create an obligation of the District in anticipation of an appropriation by the United States Congress (“**Congress**”) for such purpose, and the District’s legal liability for the payment of any financial obligation or any component thereof under Any Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references to the “District of Columbia” in this Section shall refer to the District of Columbia as a sovereign entity, and not as a landlord). Tenant confirms that it has read and familiarized itself with the Anti-Deficiency Acts and has full knowledge of such laws and the impact on the District’s financial obligations hereunder.

b. If no appropriation is made by the District of Columbia or Congress to pay

## EXECUTION VERSION

any financial obligation under Any Agreement for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District shall not be liable to make any payment under Any Agreement upon the expiration of any then-existing appropriation.

c. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District (or of the District of Columbia) shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the District under Any Agreement.

d. Any Agreement shall not constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No officer, employee, or agent of the District is authorized to obligate or expend any amount under Any Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

*[Signature Pages to Follow]*

**EXECUTION VERSION**

IN WITNESS WHEREOF, Tenant and the District have executed this Fifth Amendment as of the Fifth Amendment Effective Date.

**TENANT:**

OLD CONGRESS HEIGHTS SCHOOL  
REDEVELOPMENT COMPANY LLC, a District  
of Columbia limited liability company

By: 

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

Andy Botticello

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

Managing Member, Old Congress Heights  
School Redevelopment Company LLC

***[District's Signature Page to Follow]***



**EXECUTION VERSION**

**DISTRICT:**

DISTRICT OF COLUMBIA, a municipal corporation, by and through its Department of General Services

By:

  
Greer Johnson Gillis, PE, Director

The Form of this Fifth Amendment Approved as to Legal Sufficiency for the District of Columbia by:

Office of the General Counsel for the Department of General Services

By:

  
Assistant General Counsel

***[Leasehold Mortgagee Consents to Follow]***

**EXECUTION VERSION**

This Fifth Amendment is hereby consented to by the following Leasehold Mortgagees:

**UNITED BANK**

By: \_\_\_\_\_  
Name: Joe Chellene  
Title: VP

**HARBOR COMMUNITY FUND IX LLC,**  
a Maryland limited liability company

By: Harbor Bankshares Corporation, a Maryland corporation,  
its managing member

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

**EXECUTION VERSION**

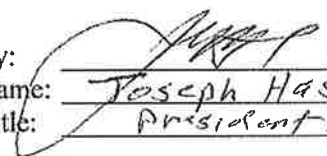
This Fifth Amendment is hereby consented to by the following Leasehold Mortgagees:

**UNITED BANK**

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

**HARBOR COMMUNITY FUND IX LLC,**  
a Maryland limited liability company

By: Harbor Bankshares Corporation, a Maryland corporation,  
its managing member

By:   
Name: Joseph HASKINS, Jr.  
Title: President & CEO

**Schedule 3.7****Schedule of Base Rent****OCHS Rent Schedule Phase 1 and  
Phase 2 (Western Portion)**

	<u>Phase 1</u>	<u>Phase 2</u>	<u>Phase 2 Pre Construction</u>
<b>Sq Ft</b>	42,528	20,309	10,000
<b>Rate</b>	<b>\$ 2.00</b>	<b>\$ 2.40</b>	<b>\$ 2.40</b>
Original Annual Rent	\$ 85,056.00	\$ 48,741.60	\$ 24,000.00
<b>Monthly</b>	<b>7,088.00</b>	<b>4,061.80</b>	<b>2,000.00</b>

	<b>Phase 1</b>	PSF Rate	Annual Net Rental	Monthly Net Rental
	Lease Year 1	\$2.00	\$85,056.00	\$7,088.00
	Lease Year 10	\$2.00	\$85,056.00	\$7,088.00

Constant until September 1, 2035 (Shall then escalate at the rate of ninety percent (90%) of the then fair market rent value of the building and then escalate at the rate of two percent (2%) per year throughout the remainder of the Lease term).

<b>Phase 2</b>	PSF Rate	Annual Net Rental	Monthly Net Rental
Lease Year 1	\$2.40	\$48,741.60	\$4,061.80
Lease Year 10	\$2.40	\$48,741.60	\$4,061.80

Constant until December 31, 2036 (Shall then escalate at the rate of ninety percent (90%) of the then fair market rent value of the building and then escalate at the rate of two percent (2%) per year throughout the remainder of the Lease term).

**AMENDED AND RESTATED SUBLEASE AGREEMENT**

**By and Between**

**OLD CONGRESS HEIGHTS SCHOOL REDEVELOPMENT COMPANY, LLC**

**as SUBLANDLORD**

**and**

**DEMOCRACY PREP CONGRESS HEIGHTS PUBLIC CHARTER SCHOOL**

**as TENANT**

**December 11, 2015**

**3100 Martin Luther King Jr. Avenue, S.E.  
Washington, D.C.**

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Exhibits:

- Exhibit A – Ground Lease
- Exhibit B – Subleased Premises
- Exhibit C – Permitted Liens
- Exhibit D – Reserved
- Exhibit E – Rent Schedule
- Exhibit F – Shared Space Agreement
- Exhibit G – Conceptual Drawing of Proposed Improvements on Western Portion
- Exhibit H – Form of Lender Agreement
- Exhibit I – Required Repairs

## **AMENDED AND RESTATED SUBLEASE AGREEMENT**

This Amended and Restated Sublease Agreement (as the same may be further amended or modified from time to time, the “Sublease”) is made this 11th day of December, 2015, by and between Old Congress Heights School Redevelopment Company, LLC, a District of Columbia limited liability company (the “Sublandlord”) and Democracy Prep Congress Heights Public Charter School, a District of Columbia non-profit corporation (the “Subtenant”) (collectively, the “Parties”).

### **RECITALS:**

WHEREAS, Sublandlord is the Tenant (as defined in the Lease (as defined below)) under that certain Ground Lease Agreement, dated September 4, 2008 with the District of Columbia (the “Landlord”), as amended by that certain First Amendment to Ground Lease Agreement, dated December 2, 2008, as further amended by that certain Second Amendment to Ground Lease Agreement, dated March 3, 2010, and as further amended by that certain Third Amendment to Ground Lease Agreement dated on or about December of 2010, (and as the same may be further amended or modified from time to time, the “Lease”) (a copy of which is attached hereto as **Exhibit A**) concerning real property located at 3100 Martin Luther King Jr. Avenue, S.E., in Washington, D.C., more specifically known for tax and assessment purposes as Parcel 235, Lot 6 (the “Leased Premises”) (as defined in the Lease and incorporated herein);

WHEREAS, Sublandlord previously subleased the Subleased Premises (as defined below) to Subtenant’s predecessor-in-interest, SCHOOLHOUSE FINANCE, LLC, a Virginia limited liability (“Schoolhouse”) pursuant to that certain Sublease Agreement, dated as of June 22, 2009, by and between Sublandlord as sublandlord and Schoolhouse as subtenant (the “Prior Sublease”);

WHEREAS, Schoolhouse previously further subleased the Subleased Premises to Subtenant pursuant to that certain Sublease Agreement, dated as of July 3, 2014, by and between Schoolhouse as sublandlord and Subtenant as subtenant (the “Prior Sub-Sublease”);

WHEREAS, Schoolhouse and Subtenant have terminated the Prior Sub-Sublease, and Schoolhouse has assigned all of its right, title and interest as Subtenant in, to and under the Prior Sublease to Subtenant;

WHEREAS, in connection with Subtenant’s assumption of Schoolhouse’s right, title and interest in, to and under the Prior Sublease, Sublandlord and Subtenant desire to amend and restate the Prior Sublease to, among other things, provide that Subtenant shall sublease the Subleased Premises directly from Sublandlord pursuant to the terms hereof and assume all of Schoolhouse’s right, title and interest in, to and under the Prior Sublease, but solely to the extent set forth herein and in the Tri-Party Agreement (as defined below);

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

## ARTICLE I

### DEFINITIONS AND BASIC TERMS

**“Additional Insured”** as defined in Section 6.1.10.

**“Additional Rent”** as defined in Section 3.5.1.

**“Alterations”** as defined in Section 8.3.1.

**“Amended Sublease Commencement Date”** shall mean the date of this Sublease as set forth in the preamble above.

**“Amended Sublease Term”** as defined in Section 2.3.

**“Applicable Laws”** means all federal and District laws, codes, statutes, ordinances, by-laws, regulations, rules, licenses, permits, variances, governmental orders, and governmental approvals applicable to any subject facts, things, circumstances or events, including without limitation, the District of Columbia School Reform Act of 1995, as amended (D.C. Official Code § 38-1800.01 et seq. (Supp. 2005)) and all regulations promulgated thereunder.

**“Assign”** as defined in Section 9.1.1.

**“Base Building Alterations”** means any replacement, alteration, change or expansion made to the Base Building Conditions after the Amended Sublease Commencement Date.

**“Base Building Conditions”** means the exterior elements of the Building (as defined below) located on the Property, load bearing elements, foundations, roof, mechanical and utility core areas thereof, and utilities located on the Property serving the Building (including storm water, sewer, water and electric pipes or lines).

**“Base Rent”** as defined in Section 3.1.1 and as set forth in Exhibit E hereto.

**“Building”** means the existing building on the Property currently known as Democracy Prep Congress Heights Public Charter School comprising an approximately 42,528 square foot facility.

**“Building Service Equipment”** means all apparatus, machinery, devices, fixtures, appurtenances, equipment, and personal property necessary for the proper maintenance, protection, conservation, and operation of the Improvements located on the Subleased Premises from time to time, other than Decorations, Furnishings, Equipment, and Inventory, and, in particular, shall include, without limiting the generality of the foregoing, the following, if any, on the Subleased Premises: awnings, shades, screens, and blinds; asphalt; vinyl composition and other floor, wall and ceiling coverings; partitions, doors, and hardware; elevators, escalators, and hoists; heating, plumbing, and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts, and tanks; oil burners, furnaces, heaters, incinerators, and boilers; air cooling and air conditioning equipment; washroom, toilet, and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring, and equipment; tools, building supplies, lobby

decorations, and window washing hoists and equipment; garage equipment; gardening and landscaping equipment; and all additions to and replacements of any of the foregoing. Without limiting the foregoing, Building Service Equipment shall encompass, as applicable, those of the foregoing items located on the Subleased Premises on the Amended Sublease Commencement Date and the replacements thereof installed on the Subleased Premises. Building Service Equipment shall specifically exclude, however, any Decorations, Fixtures, Furnishings, Equipment and Inventory used or owned by Subtenant or Subtenant's Related Party.

**"Business Day"** means Monday through Friday, other than (i) holidays recognized by the District or the federal government and (ii) days on which the District or federal government closes for business as a result of severe inclement weather or a declared emergency which is given legal effect in the District of Columbia. If any item must be accomplished or delivered under this Sublease on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on a day other than a Business Day shall be deemed to have been extended to the next Business Day.

**"Certificate of Occupancy"** means the certificate of occupancy currently in effect for the Building.

**"Charter School"** means Democracy Prep Congress Heights Public Charter School or any other public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 (D.C. Official Code § 38-1800.01 et seq. (Supp. 2005).

**"Comparable Buildings"** shall mean properties and buildings in the District of Columbia reasonably comparable to the Subleased Premises in size, age, use, design, general metropolitan location, type of construction and construction quality comparable to the completed Building.

**"Contaminant Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

**"Decorations, Fixtures, Furnishings, Equipment and Inventory"** shall mean all trade fixtures, furnishings, equipment, inventory, chattels and other personal property of Subtenant, Subtenant's Related Parties, and all additions, replacements and substitutions thereto or therefor, located on the Subleased Premises from time to time used for or in connection with the occupancy of the particular premises of Subtenant and such tenants and parties and the operation of their businesses therein.

**"District of Columbia"** means the District of Columbia, a municipal corporation acting by and through its Department of General Services.

**"Environmental Claims"** as defined in Section 5.9.1.

**"Environmental Claims against Sublandlord"** as defined in Section 5.4.2.

**“Environmental Claims against Subtenant”** as defined in Section 5.4.2.

**“Environmental Laws”** means any federal or District law, statute, code, ordinance, rule, regulation, requirement, permit, license, approval, policy or guidance, resolution, or judicial or administrative decision, order, judgment, injunction, award, decree, writ, or similar item (including, without limitation, consent decrees) relating to environmental matters, the protection of the environment or the protection of human health and safety from environmental concerns, including without limitation all those relating to or regulating the presence, use, generation, handling, storage, treatment, transportation, decontamination, processing, clean-up, removal, encapsulation, enclosure, abatement, disposal, reporting, licensing, permitting, monitoring, investigation, remediation, or release (including, without limitation, to ambient air, surface water, ground water, land surface or subsurface strata) of any Hazardous Material, pollutant, contaminant, or other substance or waste, including without limitation:

(a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the ‘toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, and their District and local counterparts and related regulations; and

(b) any other legal requirement, legal rule, or order given legal force and effect in the District regulating, relating to, imposing standards of conduct for, or imposing or allocating any liability concerning any Hazardous Material, pollutant, or contamination or any remedial action,

**“Environmental Liabilities and Costs”** means any and all losses (including, without limitation, those related to remedial action, personal injuries, property damage, natural resource damages on or off the Subleased Premises, and costs reasonably necessary to ensure full value or use of the Subleased Premises) and claims or causes of action of any nature whatsoever incurred by or asserted (including costs and attorneys’ fees) in connection with, arising out of, in response to, or in any manner relating to (i) the violation of any Environmental Law, at the Subleased Premises or relating in any manner to the Subleased Premises or its use or condition or (ii) any Contaminant Release or threatened Contaminant Release of any Hazardous Material in, under, about, or from the Subleased Premises or (iii) any condition of pollution, contamination, or presence of Hazardous Material on, under, about, or from the Subleased Premises regardless of how such violation, release or threatened release, or condition occurred, was caused, or discovered.

**“Event of Default”** shall mean a default by Subtenant under this Sublease as enumerated and described in Section 11.1.

**“Extension Option”** as defined in Section 19.1.

**“Extension Period”** as defined in Section 19.1.

**“Fair Market Rental Value”** as defined in Section 19.2.

**“Force Majeure Event”** means any of the following that directly cause any of Subtenant’s or Sublandlord’s obligations under the Sublease not to be performed in a timely manner: An act of God, fire, ‘earthquake, flood, explosion, war, invasion, acts of terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws or orders of government or of civil, military or naval authorities, or any other federal or local governmental acts or omissions (other than those in response to a rightful action of Sublandlord, as sublessor under this Sublease, that is consistent with this Sublease), or any other cause, whether similar or dissimilar to the foregoing that is not within the reasonable control of Subtenant or Subtenant’s Related Parties or Sublandlord or Sublandlord’s Related Parties (or their respective affiliates, as applicable) or caused by the fault or negligence of Subtenant or Subtenant’s Related Parties or Sublandlord or Sublandlord’s Related Parties, or their respective affiliates; but specifically excluding shortage or unavailability of funds or financial condition, failure of Subtenant or Sublandlord to comply with any law, rule or regulation of any Governmental Authority.

**“Governmental Authority”** means any and all federal or District of Columbia governmental or quasi-governmental board, agency, authority, department or body having jurisdiction over any or all of the Subleased Premises.

**“Governmental Requirement”** means building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees, of any federal or District governmental or quasi-governmental authority or agency pertaining (i) to any or all of the Subleased Premises, (ii) to the use and operation of the Subleased Premises, or (iii) to the subject matter described in the paragraph in which the term is used if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (i) or (ii).

**“Hazardous Materials or “Hazardous Material”** means any substance or material:

(i) the presence or suspected presence of which requires or may require investigation, response, clean-up, remediation, or monitoring, or may result in liability, under any Environmental Law or other Governmental Requirement; or

(ii) that is or contains a hazardous substance, waste, extremely hazardous substance, hazardous material, hazardous waste, hazardous constituent, solid waste, special waste, toxic substance, pollutant, contaminant, petroleum or petroleum derived substance or waste, and related materials as such materials are defined, listed, identified under or described in any Environmental Law; or

(iii) which is flammable, explosive, radioactive, reactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous, or is or becomes regulated under any Environmental Law; or

(iv) which is or contains asbestos (whether friable or non-friable), any polychlorinated biphenyls or compounds or equipment containing polychlorinated biphenyls, or medical waste; or

(v) without limitation, which is or contains or once contained gasoline, diesel fuel, oil, diesel and gasoline range organics (TPII-DRO / GRO), or any other petroleum products or petroleum hydrocarbons, or additives to petroleum products, or any breakdown products or compounds of any of the foregoing; or

(vi) without limitation, radon gas.

**"Impositions"** as defined in Section 4.1.

**"Improvements"** shall mean all buildings (including, without limitation, the Building), structures, interiors, landscaping, paving, lighting, pipes, conduits, fixtures, roads, walkways, fencing, utility lines and other improvements on the Subleased Premises from time to time, and any and all Alterations thereto or thereof from time to time, the aforesaid elements existing on the Subleased Premises on the Amended Sublease Commencement Date and/or the replacements thereof. However, Decorations, Fixtures, Furnishings, Equipment and Inventory owned by Subtenant shall not be deemed Improvements.

**"Indemnified Parties"** as defined in Section 6.7.1.

**"Interest Rate"** means the annual rate equal to (i) the Prime Rate plus (ii) two percent (2%) adjusted on a daily basis, based on such Prime Rate in effect at the time in question, and shall be calculated on the basis of a 365-day year.

**"JLL"** as defined in Section 20.1.8.

**"Landlord"** as defined in the recitals.

**"Lease"** as defined in the recitals.

**"Leased Premises"** as defined in the recitals.

**"Lender"** shall mean United Bank or such other lender as Sublandlord may from time to time grant a leasehold mortgage in its interest in the Lease subject to the terms of the Lease.

**"Liability Insurance"** as defined in Section 6.1.4.

**"Notice to Terminate"** as set forth in Section 11.2.2(c).

**"Operating Expenses"** as defined in Section 3.4.5.

**"Party"** or **"Parties"** as defined in the preamble.



**“Permits”** means all demolition, site, building, construction, and other permits, approvals, licenses and/or rights required to be obtained from the District of Columbia government or other Governmental Authorities having jurisdiction over the Property (including, without limitation, any utility company) necessary to operate and maintain the Improvements.

**“Permitted Encumbrances”** shall mean, with respect to the Property, encumbrances listed in the Title Commitment, together with (a) liens for taxes, assessments and governmental charges with respect to the Property not yet due and payable; (b) applicable zoning regulations and ordinances and other governmental laws, ordinances and regulations provided the same do not prohibit or impair in any material respects the use of the Property for its Permitted Use, and (c) to the extent not included in the foregoing, those permitted liens set forth on **Exhibit C** attached hereto.

**“Permitted Use”** means the use of the Subleased Premises for the operation of a Charter School together with related parking and playgrounds in accordance with Applicable Laws, including zoning and historic preservation regulations set forth by Governmental Authority.

**“Person”** means any individual or entity.

**“Prime Rate”** means the lowest prime rate of interest as published or announced in the Money Rates Section of The Wall Street Journal, from time to time or, if such index ceases to be published, any comparable successor thereto from time to time.

**“Prior Sublease”** as defined in the recitals.

**“Prior Sublease Commencement Date”** shall mean the Sublease Commencement Date as defined in the Prior Sublease.

**“Prior Sub-Sublease”** as defined in the recitals.

**“Property”** means the real property as described in the attached and incorporated **Exhibit A** to the Lease, any appurtenance to the real property or improvements thereon now or hereafter located at 3100 Martin Luther King Jr. Avenue, S.E., Washington D.C. according to the District of Columbia Tax and Assessment Records as Parcel 235, Lot 6. The Property includes the Building and the Improvements.

**“Property Insurance Policy”** as defined in Section 6.1.1.

**“Rent”** shall mean the Base Rent (as set forth in the attached Rent Schedule), all Additional Rent (except as otherwise stated herein with respect to Impositions), and any other charges due from Subtenant hereunder, each individually in a general sense or all of the foregoing collectively, as the context shall require.

**“Rent Schedule”** means the Base Rent as set forth in **Exhibit E** attached hereto.

**“Required Insurance”** as defined in Section 6.1.

**“Schoolhouse”** as defined in the recitals.

**“Schoolhouse Related Parties”** as defined in Section 5.4.1.

**“Shared Space Agreement”** means that certain Shared Space Agreement, dated as of June 13, 2009 which is attached hereto as **Exhibit F**.

**“Sublandlord”** as defined in the preamble.

**“Sublandlord Environmental Indemnity Period”** as defined in Section 5.4.2.

**“Sublandlord Indemnified Parties”** as defined in Section 5.4.2.

**“Sublandlord’s Maintenance Obligations”** as defined in Section 8.2.2.

**“Sublandlord’s Related Parties”** or **“Sublandlord Related Party”** as defined in Section 2.1.1.

**“Sublandlord Released Parties”** as defined in Section 21.31.

**“Sublease Expiration Date”** means (i) June 30, 2026 or, if an Extension Option is exercised by Subtenant pursuant to the terms hereof, the last day of the applicable Extension Period; or (ii) such earlier date as the Sublease is terminated in accordance with its terms.

**“Subleased Premises”** as defined in Section 2.1.

**“Sublease Year”** shall mean a period of twelve (12) consecutive months commencing on the Amended Sublease Commencement Date, and each successive twelve (12) month period thereafter until the Amended Sublease Term ends.

**“Subtenant Environmental Indemnity Period”** as defined in Section 5.4.1.

**“Subtenant Indemnified Parties”** as defined in Section 5.4.2.

**“Subtenant’s Maintenance Obligations”** as defined in Section 8.2.1.

**“Subtenant’s Related Parties”** or **“Subtenant Related Party”** means Subtenant’s subtenants, affiliates, agents, officers, employees, members, contractors, subcontractors, representatives and officers.

**“Subtenant Released Parties”** as defined in Section 21.31.

**“Subtenant’s Surviving Obligations”** as defined in Section 2.9.

**“Taxable Area”** as defined in Section 4.1.1.

**“Title Commitment”** shall mean that certain Title Insurance Commitment issued by First American Title Insurance Company as File No. 201502013 effective October 27, 2015.

**“Tri-Party Agreement”** shall mean that certain Tri-Party Agreement, dated on or about the date hereof, by and among Subtenant, Sublandlord and Schoolhouse, as the same may be amended or modified from time to time.

**“Western Portion”** means that portion of the Subleased Premises that consists of undeveloped land adjacent to the Building. A conceptual drawing showing the proposed development on the Western Portion is depicted in **Exhibit G** hereto. Sublandlord may adjust the boundary for the Western Portion in order to satisfy zoning and parking requirements that pertain to a planned development on the Western Portion, but any such adjustment shall not impair Subtenant’s ability to have sufficient parking spaces on its portion of the Property to accommodate fifty (50) “teachers and employees” as set forth in and in order to satisfy D.C. Zoning requirements. Further, any such boundary adjustment shall be accompanied by a written notice from Sublandlord stating that, as of the effective date of the boundary adjustment, Subtenant shall have no further obligation or liability with respect to the Western Portion, except to the extent that such obligation or liability arose or is attributable to Subtenant’s action or failure to take action prior to the effective date of the boundary adjustment notification.

## ARTICLE II

### SUBLEASED PREMISES

#### Section 2.1 Demise.

The foregoing Recitals and definitions are incorporated in this Sublease by reference and expressly made a part hereof. Subject to the terms and conditions hereinafter set forth, and in consideration of the covenants of payment and performance stipulated herein, Sublandlord hereby subleases, demises and lets unto Subtenant, and Subtenant hereby Subleases from Sublandlord, for the Amended Sublease Term and for the Permitted Uses the Subleased Premises. The **“Subleased Premises”** shall consist of the Leased Premises as set forth in the Lease including, without limitation, the Building, parking, and play areas all of which are more particularly described in **Exhibit B** hereto. The rentable area of the Subleased Premises (which consists of the Building, but not including parking and play areas) is estimated to be forty-two thousand five hundred twenty-eight (42,528) square feet. The Parties agree that if Sublandlord intends to enter into a sublease other than this Sublease with respect to the Western Portion (**“Western Portion Sublease”**), Sublandlord shall provide Subtenant with written notice at least forty-five (45) days prior to the commencement date of the Western Portion Sublease stating that forty-five (45) days after Subtenant’s receipt of the aforesaid notice (the **“Western Portion Termination Date”**) the Subleased Premises shall no longer include the Western Portion. The aforesaid notice shall not affect any of Subtenant’s financial or other obligations under this Sublease including, without limitation, its obligations to pay the amounts set forth herein for Rent and Additional Rent. Nor shall Sublandlord be required to make any payment or provide any benefit, financial or otherwise, to Subtenant as a result of the exercise by Sublandlord of its right to terminate Subtenant’s sublease rights with respect to the Western Portion. Subtenant’s rights under this Sublease with respect to the Western Portion shall forever terminate as of the date of the aforesaid notice. If Sublandlord provides the aforesaid notice, it shall also be entitled to subdivide or otherwise separate the Property such that the Western Portion is separated from and no longer a part of the rest of the Property. Any proposed subtenant for the Western Portion

shall be subject to (i) the limitations applicable under the Lease as in effect on the date of this Sublease; and (ii) the requirement that it will not use the Western Portion as a liquor establishment, pawn shop, tobacconist, substance abuse or any court ordered rehabilitation or counseling center, halfway house, adult arcade, adult bookstore, adult cabaret, adult mini motion picture theater, adult sauna, adult theater, sexual encounter, sexual paraphernalia store, massage parlor; or any establishment where the predominant use is one or more of the foregoing uses, nor display any sign advertising the operation of any of the above uses, nor be a business whose owner has had its business license revoked within the last five years. The Parties agree that if Sublandlord does sublease the Western Portion and it is commercially reasonable to allocate common expenses between Subtenant and the subtenant of the Western Portion, that the formula used to determine common expenses for Subtenant shall be a fraction the numerator of which is the square footage of the Building (42,528 square feet) and the denominator of which shall be the square footage of the Building plus the square footage of the rentable area of the Western Portion but not including parking.

TO HAVE AND TO HOLD said Subleased Premises, together with any rights, easements, privileges, both subterranean and vertical, and the appurtenances and improvements thereunto attaching or in anywise belonging Subtenant for and during the Amended Sublease Term hereinafter set forth herein.

2.1.1 Neither Sublandlord (nor any of Sublandlord's affiliates, agents, officers, employees, attorneys, accountants, brokers, contractors, subcontractors, licensees, invitees or representatives) (each a "Sublandlord Related Party" and collectively, "Sublandlord's Related Parties") make any representations as to any matter or thing affecting or relating to the Subleased Premises, or this Sublease, including, without limitation, relating to physical condition, layout, subleases, footage, rents, income, expenses, operation, zoning or floor area ratio, all of which are expressly disclaimed, except as herein specifically set forth, and neither Party may rely upon any statement or representation previously made that is not embodied in this Sublease.

## **Section 2.2**    Exceptions, Limitations and Reservations With Respect to Demise.

2.2.1 Subtenant acknowledges that the demise under this Sublease is subject to the following:

- (a) Real estate taxes, if any, accruing from and after the Amended Sublease Commencement Date, whether or not a lien on the Subleased Premises, not yet due and payable. Subtenant shall be responsible for paying all such taxes;
- (b) Sublandlord's reserved rights as more particularly set forth in this Sublease;
- (c) Rights or easements, if any, acquired prior to the Prior Sublease Commencement Date by any public service corporation or private utility to maintain wires, pipes, cables, conduits, and distribution boxes;
- (d) Easements, encumbrances, restrictive covenants and restrictions, if any of record on or prior to the Prior Sublease Commencement Date and affecting the title to the Subleased Premises;

(e) Any state of facts an accurate survey and an inspection of the Subleased Premises would disclose. However, the Parties acknowledge that the square footage of the Subleased Premises set forth above is not subject to re-measurement or adjustment for purposes of affecting the Base Rent;

(f) Building restrictions and regulations set forth in Applicable Laws, and the amendments and the additions thereto, in the District of Columbia;

(g) All Applicable Laws, including but not limited to any zoning laws, ordinances, resolutions and regulations of the District of Columbia and all ordinances, laws, regulations and orders of all boards, bureaus, commissions and bodies of any District of Columbia or federal sovereigns now or hereafter having or acquiring jurisdiction of the Subleased Premises and the use and improvement thereof;

(h) All outstanding Impositions as of the Prior Sublease Commencement Date;

(i) Sublandlord's right to terminate all of subtenant's rights and interest in the Western Portion as set forth above; and

(j) The terms and conditions of the Shared Space Agreement.

2.2.2 Fee title to the Subleased Premises shall continue to vest in Landlord or its successors at all times during the Amended Sublease Term (including, if applicable, any Extension Period). Nothing contained in this Sublease shall be construed to convey any legal or equitable title in the Subleased Premises to Subtenant other than the Subleasehold estate described in this Section 2.2, which conveyance is subject to the terms and conditions of the Lease and this Sublease. Title to all Improvements used or erected by or for Subtenant on the Subleased Premises shall be in and remain in Sublandlord for and during the entire Amended Sublease Term (including, if applicable, any Extension Period), and upon the termination of the Amended Sublease Term (including, if applicable, any Extension Period) shall be and remain in Sublandlord to the extent that the Improvements are then upon the Subleased Premises.

### **Section 2.3** Term.

All of the provisions of the Sublease shall be in full force and effect from and after the Amended Sublease Commencement Date, unless specifically stated otherwise in the Sublease. The term of this Sublease ("Amended Sublease Term") shall commence on the Amended Sublease Commencement Date and continue in full force and effect until the Sublease Expiration Date, unless terminated sooner pursuant to the terms of the Sublease, and subject to the extension provisions in Article XIX.

### **Section 2.4** Use.

2.4.1 Subtenant shall use the Subleased Premises for the Permitted Use only. Any changes to the Permitted Use shall be subject to Sublandlord's prior written approval which shall be within Sublandlord's sole and absolute discretion.

2.4.2 Subtenant shall not use, allow or suffer the Subleased Premises or any part thereof to be used or occupied for any unlawful purpose or in violation of any Certificate of Occupancy or any law or certificate of compliance covering or affecting the use of the Subleased Premises, or any part thereof, shall not allow or suffer any act to be done or any condition to exist on the Subleased Premises or any part thereof or any article to be brought thereon, which may be dangerous to person or property unless safeguarded as required by law, or which may in law constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto or shall make it impossible to obtain fire or other insurance thereon required to be furnished by Subtenant hereunder.

**Section 2.5** Old Congress Heights School Redevelopment Company.

To the extent permitted by law and without diminishing the benefits afforded to Subtenant (including the term hereof) or increasing the costs of Subtenant hereunder, Sublandlord shall have the right, pursuant to Article X, to assign this Sublease, or delegate any of its rights hereunder to any other Person provided Sublandlord provides at least thirty (30) calendar days' prior written notice to Subtenant of such assignment or delegation, and provided that such Person has executed a non-disturbance agreement with Subtenant on terms that are commercially reasonable.

**Section 2.6** Relationship of Parties.

2.6.1 Subtenant agrees to perform or cause to be performed the duties and obligations imposed upon or assumed by Subtenant in this Sublease.

2.6.2 Subtenant is an independent party and not an agent, partner or joint venture of or with the Sublandlord. Nothing contained in this Sublease shall be deemed or construed by any Person as creating a relationship of principal and agent or of partnership or joint venture between Subtenant and Sublandlord. Subtenant is not authorized to act in any manner on behalf of Sublandlord.

**Section 2.7** Authorized Representatives.

2.7.1 For the purposes of administering this Sublease, Subtenant hereby appoints Sean Reidy as its sole and exclusive representative whose authority shall be binding upon Subtenant, and, upon written notice to Sublandlord, Subtenant may delegate such authority to another person in writing in which case that person's authority shall be binding upon Subtenant. Subtenant shall appoint a single officer or other position to act as its day-to-day single point of communication, which person shall initially be Sean Reidy; provided, however, upon written notice to Sublandlord, Subtenant may from time to time further delegate the duties and obligations of such designated representative with respect to day-to-day matters to one or more additional representatives of Subtenant.

2.7.2 For the purposes of administering this Sublease, Phinis Jones shall be the sole and exclusive agency whose authority shall be binding upon Sublandlord. Andy Botticello shall be Sublandlord's day-to-day single point of communication.

2.7.3 Each Party to this Sublease may change its identified authorized representative from time to time upon delivery of written notice thereof to the other Party.

**Section 2.8** Subordination to the Lease.

2.8.1 This Sublease is subject and subordinate to the Lease; and to all leases, mortgages and other rights or encumbrances to which the Lease is subject or subordinate. Sublandlord represents that (a) a true and correct copy of the Lease is attached hereto as **Exhibit A**; (b) the Lease is in full force and effect; (c) Sublandlord is not in default in the payment of Rent or Additional Rent under the Lease; and (d) Sublandlord has not received any notice of default under the Lease.

2.8.2 Whenever Subtenant desires to do any act or thing which requires the consent or approval of Landlord (a) Subtenant shall not do such act or thing without first having obtained the consent or approval of both Landlord and Sublandlord (and Sublandlord's right to withhold consent or approval shall be independent of Landlord's right); (b) Subtenant shall not request Landlord's consent or approval directly; and (c) in no event shall Sublandlord be required to give its consent or approval prior to Landlord doing so.

2.8.3 Subtenant agrees that if Landlord alleges that any action or failure to take action by Subtenant is a breach of the Lease, Subtenant, in good faith, will either contest or work expeditiously with Sublandlord to cure the alleged breach.

2.8.4 If Subtenant shall fail to perform any of its obligations hereunder and such failure shall continue beyond any cure period provided for herein or if Landlord shall give any notice of failure or default under the Lease arising out of any failure by Subtenant to perform any of its obligations hereunder, then Sublandlord shall have the right (but not the obligation) to perform or endeavor to perform such obligation at Subtenant's expense, and Subtenant shall, within ten days of Sublandlord's demand, reimburse Sublandlord for all costs and expenses incurred by Sublandlord in so doing.

2.8.5 Except as may be provided in a nondisturbance agreement between Landlord or Lender, as applicable, and Subtenant delivered pursuant to Section 9.1.5 hereof, in the event of the termination of the Lease prior to the Sublease Expiration Date for any reason whatsoever, this Sublease shall simultaneously terminate. Upon termination of this Sublease, Sublandlord shall return to Subtenant that portion of the Rent that has been paid in advance by Subtenant hereunder, if any, prorated as of the date of such termination; provided, however, that Subtenant is not then in default hereunder beyond applicable notice and cure periods, and provided that no sums are otherwise due to Sublandlord under this Sublease.

**Section 2.9** Subtenant's Surviving Obligations. Sublandlord and Subtenant hereby acknowledge and agree that, notwithstanding anything to the contrary contained herein, as between Sublandlord and Subtenant, Subtenant shall have no responsibility with respect to any covenants or obligations, including without limitation, any indemnities, under the Prior Sublease or the Prior Sub-Sublease arising during or relating to the period prior to the Amended Sublease Commencement Date, except for those obligations which were expressly made or assumed by Subtenant as subtenant under the Prior Sub-Sublease thereunder ("Subtenant's Surviving

Obligations”). Sublandlord agrees, subject to and in accordance with the Tri-Party Agreement, to look solely to Schoolhouse for satisfaction of any covenants or obligations with respect to the Prior Sublease arising during or relating to the period prior to the Amended Sublease Commencement Date.

**Section 2.10** Deliberately Omitted.

**Section 2.11** Deliberately Omitted.

### ARTICLE III

#### BASE RENT AND OTHER PAYMENTS

**Section 3.1** Base Rent Payment.

3.1.1 Base Rent for the Subleased Premises. Beginning on the Amended Sublease Commencement Date for the Subleased Premises and continuing throughout the Amended Sublease Term, Subtenant covenants and agrees to pay to Sublandlord, except as otherwise provided herein, without demand, abatement, deduction or offset, in lawful money of the United States, an annual base rent (“Base Rent”) in the amounts for the applicable Sublease Year as set forth on the Rent Schedule attached hereto as **Exhibit E** in monthly installments in advance on the first (1<sup>st</sup>) day of each month throughout the Amended Sublease Term.

3.1.2 Prorated Base Rent. If the Amended Sublease Commencement Date is not the first day of a month, then the Base Rent from the Amended Sublease Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the Base Rent payable during the first Sublease Year, and Subtenant shall pay such prorated installment of the Base Rent after the Amended Sublease Commencement Date, in advance.

**Section 3.2** Security Deposit, Good Faith Deposit and Grants.

3.2.1 If Subtenant is more than ten (10) calendar days late in paying Rent more than once in an Sublease Year, Sublandlord has the right to require that Subtenant provide a security deposit (“Security Deposit”) in an amount equal to up six (6) months’ Rent (Rent to be determined based on the Rent payable during the Sublease Year in which the late rent payments were made).

The Security Deposit and the accumulated interest will be held by Sublandlord for the faithful performance by Subtenant of all of the terms, covenants and conditions of this Sublease, it being expressly understood and agreed that the Security Deposit is not an advance deposit for Base Rent, Additional Rent or a measure of Sublandlord’s damages in case of Subtenant’s default. The Security Deposit may be retained, used or applied by Sublandlord to remedy any default by Subtenant of its obligations hereunder. If any portion of the Security Deposit is so used or applied, Subtenant shall, within twenty (20) days after written demand therefor, deposit with Sublandlord an amount sufficient to restore the Security Deposit to the full amount required hereunder, and Subtenant’s failure to do so shall be a default of this Sublease without the necessity of additional notice or the passage of additional grace periods. Subtenant may not elect



to apply any portion of the Security Deposit or the Security Deposit toward payment of Base Rent or any other amounts payable by Subtenant under this Sublease, although Sublandlord may elect to do so in the event Subtenant is in default hereunder or is insolvent.

Provided Subtenant shall not then be in default of its obligations under this Sublease, Sublandlord shall return the balance of the Security Deposit to Subtenant within forty-five (45) days after the Sublease Expiration Date (or any extension thereof) has occurred and Subtenant has surrendered possession of the Subleased Premises to Sublandlord as required hereunder.

3.2.2 Concurrently with the execution of this Sublease, Subtenant, Sublandlord, and United Bank will enter into that certain Subordination, Nondisturbance, and Attornment Agreement in the form of **Exhibit H**, attached hereto (the “Lender Agreement”), pursuant to which Subtenant will deposit into escrow a certain amount as additional security for the performance of Subtenant’s obligations under this Sublease (the “Escrowed Amount”). If, after the date of this Sublease, United Bank ceases to be a Lender, Subtenant will deposit the Escrowed Amount into a new escrow account agreed to by Subtenant and Sublandlord pursuant to (i) a separate escrow agreement between Subtenant, Sublandlord, and Sublandlord’s then-current Lender, or (ii) a separate escrow agreement between Subtenant, Sublandlord and a mutually acceptable third party escrow agent, if Sublandlord’s then-current Lender does not require the escrow agreement. Any escrow agreement to be entered into in the future will (A) contain release triggers of the Escrowed Amount substantially the same as those in the Lender Agreement, and (B) otherwise be on commercially reasonable terms, and reasonably acceptable to each party thereunder. For the avoidance of doubt, Subtenant acknowledges and agrees that it is the intention of Subtenant and Sublandlord that the Escrowed Amount be held for the entire Amended Sublease Term, subject to the disbursement provisions in the Lender Agreement (or any approved replacement thereof). The Escrowed Amount will not be released to Subtenant merely because Sublandlord refinances its loan with a different Lender.

### **Section 3.3    Rent Absolutely Net/Payment of Rent.**

3.3.1 Except as expressly provided otherwise in this Sublease, this Sublease shall be deemed and construed to be a “net Sublease” and Subtenant shall pay all payments of Rent to Sublandlord, absolutely net throughout the Amended Sublease Term, free of any charges, assessments, impositions, costs or deductions of any kind and without demand, offset, abatement, notice, deduction, counter-claims or set-off, except as expressly set forth in the Sublease, as applicable. All costs, fees, interest, charges, expenses, and obligations of every kind and nature whatsoever relating to the Subleased Premises, which may accrue during the Amended Sublease Term shall be paid or discharged timely by Subtenant.

3.3.2 Subtenant’s covenant to pay Rent is an independent covenant. Except as expressly provided otherwise in this Sublease, no happening, event, occurrence, or situation whatsoever during the Amended Sublease Term, whether foreseen or unforeseen, and however extraordinary shall permit Subtenant to quit or surrender the Subleased Premises or this Sublease or shall relieve Subtenant from its liability to pay all Rent payable under this Sublease, or relieve Subtenant from any of its other obligations under this Sublease. Except as expressly provided otherwise in this Sublease, Subtenant hereby waives any rights now or hereafter conferred upon it by statute, proclamation, decree, order or otherwise, to quit or surrender the Subleased

Premises or this Sublease, or any part thereof, or to any abatement, diminution, reduction or suspension of Rent on account of any such event, happening, occurrence or situation.

3.3.3 Subtenant shall pay all Rent payable by Subtenant to Sublandlord pursuant to the terms hereof, to: Old Congress Heights School Redevelopment Company, 3215 Martin Luther King, Jr. Avenue, S.E., Washington, DC 20032, in such United States coin or currency as shall, at the time of payment, be legal tender for the payment of public and private debts. If Subtenant fails to pay any installment of Rent within ten (10) calendar days after the same shall be due and payable, Subtenant shall pay Sublandlord a late fee equal to two percent (2%) of such delinquent payment of the then current Rent. In addition to any late fee that may be payable, Subtenant will pay to Sublandlord interest on any payment of Rent that is not paid timely at the Interest Rate plus five percent (5%) per annum from the date such amount is due until the date such amount is paid. Subtenant acknowledges and agrees that the actual loss that Sublandlord will suffer as a result of the nonpayment of Rent is difficult to estimate, and that the amount of such default interest and such late fees is a fair and reasonable estimate of the actual loss to Sublandlord as a result of the nonpayment of Rent, and that such fixed amounts are reasonably related to the likely loss that Sublandlord will suffer as a result of such nonpayment. If any sums other than Rent due by Subtenant to Sublandlord hereunder are not paid within thirty (30) calendar days after Subtenant receives notice from Sublandlord that the same are due, such sums shall bear interest from and after such thirty (30) day period until paid at the Interest Rate plus five percent (5%) per annum.

#### **Section 3.4    Additional Rent.**

3.4.1 In addition to the amounts otherwise set forth in this Article III, Subtenant shall pay as additional rent ("Additional Rent"), all Capital Expenses (as defined below), all Impositions (defined below), all Operating Expenses (defined below), and any and all other costs, expenses, and charges which Subtenant in any of the provisions of this Sublease assumes or agrees to pay, including without limitation, Sublandlord's costs, including reasonable attorney's fees and costs, of enforcing its rights under this Sublease after a default by Subtenant under this Sublease (or after an Event of Default by Subtenant under this Sublease). Except as otherwise set forth in this Sublease, Additional Rent shall be deemed "Rent" for the purposes of this Sublease, and any and all of the provisions of this Sublease governing Rent shall also apply to Additional Rent.

3.4.2 Capital Expenses. Subtenant shall also pay as Additional Rent all expenses incurred by Sublandlord ("Capital Expenses") reasonably necessary to repair, maintain or replace the Improvements, the Building or the Subleased Premises. Subtenant shall not be required to pay Capital Expenses during the last twelve (12) months of the Amended Sublease Term, unless such Capital Expense is of an urgent nature such that it reasonably needs to be addressed prior to the expiration of the Amended Sublease Term. Capital Expenses shall be determined based on the application of Generally Accepted Accounting Principles. On or before June 1<sup>st</sup> of every calendar year, Subtenant shall provide Sublandlord with a good faith estimate of Capital Expenses ("Subtenant's Capital Expenses Estimate") for the next three calendar years. Sublandlord shall have thirty (30) days to dispute Subtenant's Capital Expenses Estimate by giving written notice to Subtenant of its objection(s) and the basis thereof. Sublandlord and Subtenant shall then have thirty (30) days in which they shall use their best efforts to reach

agreement on an agreed estimate for Capital Expenses for the next three calendar years. If Sublandlord and Subtenant are unable to reach agreement on an estimate of Capital Expenses for the next three years, then the dispute shall be referred by either of the Parties to a mutually agreed engineer with expertise in such matters within thirty (30) days after the expiration of the aforesaid thirty-day negotiation period with a request that their dispute be settled by the engineer selected within the next ninety (90) days. In the event that the parties cannot agree with regard to the engineer's finding, then the parties shall submit to arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry (Expedited Procedures), and any judgment of the arbitrator may be entered in a court having jurisdiction thereof. If Sublandlord doesn't dispute Subtenant's Capital Expenses Estimate or if an arbitration request is not made within the prescribed time period, then Subtenant's Capital Expenses Estimate shall apply. If Subtenant does not provide Sublandlord with Subtenant's Capital Expenses Estimate by August 1<sup>st</sup> of a calendar year, Sublandlord shall provide Subtenant with its estimate of Capital Expenses for that calendar year and such estimate shall apply until such time as Subtenant provides its estimate for that year.

If Subtenant fails to commence performance of work identified as a Capital Expense pursuant to this Section 3.4.2, after Sublandlord's giving Subtenant thirty (30) days' written notice of such default, Sublandlord has the right to perform such work and to require that Subtenant forthwith reimburse Sublandlord for any reasonable costs incurred by Sublandlord in performing such work. Subtenant shall within ten (10) days of receipt of Sublandlord's written notice, provide Sublandlord with reasonable documentary confirmation that it has performed any Capital Expense required pursuant to this Section 3.4.2.

**3.4.3 Operating Expenses.** Subtenant shall also pay as Additional Rent all Operating Expenses (defined below) incurred by Sublandlord for each calendar year during the Amended Sublease Term. On or before June 1<sup>st</sup> of each calendar year, Subtenant shall provide Sublandlord with a good faith estimate of Operating Expenses ("Subtenant's Operating Expenses Estimate") for the next calendar year during the Sublease Term. Sublandlord shall have thirty (30) days to dispute Subtenant's Operating Expenses Estimate by giving written notice to Subtenant. Sublandlord and Subtenant shall then have thirty (30) days in which they shall use their best efforts to reach agreement on an agreed estimate for Operating Expenses for the next calendar year. If Sublandlord and Subtenant are unable to reach agreement on an estimate of Operating Expenses for the next calendar year, then the dispute shall be referred by either of the Parties to a mutually acceptable facilities manager with expertise in such matters within thirty (30) days after of the expiration of the aforesaid thirty-day negotiation period with a request that their dispute be settled by the facilities manager selected within the next ninety (90) days. In the event the Parties cannot agree with the facilities manager's findings, the Parties shall submit to arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry (Expedited Procedures), and any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If Sublandlord doesn't dispute Subtenant's Operating Expense Estimate or an arbitration request is not made within the prescribed time period, then Subtenant's Operating Expenses Estimate shall apply for that year.

If Subtenant does not provide Sublandlord with Subtenant's Operating Expenses Estimate by August 1<sup>st</sup> of a calendar year, Sublandlord shall provide Subtenant with its estimate of

Operating Expenses for that calendar year and such estimate shall apply until such time as Subtenant provides its estimate for that year.

If Subtenant fails to commence performance of work identified as an Operating Expense pursuant to this Section 3.4.3 after Sublandlord's giving Subtenant thirty (30) days' written notice of such default, Sublandlord has the right to perform such work and to require that Subtenant forthwith reimburse Sublandlord for any reasonable costs incurred by Sublandlord in performing such work. Subtenant shall within ten (10) days of receipt of Sublandlord's written notice, provide Sublandlord with reasonable documentary confirmation that it has performed any Operating Expense required pursuant to this Section 3.4.3.

#### 3.4.4 Deliberately omitted.

3.4.5 Operating Expenses Defined. Except as otherwise stated herein, "Operating Expenses" means all costs, fees and expenses incurred by Sublandlord in each calendar year in connection with the operation, administration, management, maintenance, servicing, insuring and repair of the Subleased Premises, including, but not limited to the following: Base Building Conditions; Impositions (as defined below); employees' wages, salaries, welfare and pension benefits and other fringe benefits; payroll taxes; lighting; Utilities (as defined below), but excluding the cost of electricity provided to any subtenant who is billed directly by the applicable utility provider, the cost of the replacement of building standard electrical fixtures and bulbs; painting outside areas; trash removal (including charges incurred with recycling programs and legal requirements); extermination service; sewer and water charges; premiums for Required Insurance and any other insurance required to be carried pursuant to the terms hereof; equipment and supplies used in the operation and maintenance of the Property (including the cost of inspection and depreciation thereof unless the original cost thereof was included in Operating Expenses); uniforms and dry cleaning for employees that manage, operate, service or maintain the Property; snow and ice removal for the outside areas and sidewalks; the cost of service and maintenance contracts; landscaping, tree and shrubbery maintenance; condenser water charges; legal fees (other than legal fees relating to the enforcement of Sublandlord's rights under leases with subtenants in the Building); accounting fees; management fees (not in excess of the range of management fees charged in the Washington, D.C. metropolitan area for similar services), whether or not paid to any person having an interest in or under common ownership with Sublandlord; and all other expenses now or hereafter reasonably and customarily incurred in connection with the operation, maintenance and management of Comparable Buildings in which a Charter School is the primary tenant.

Operating Expenses shall not include painting or decorating other than outside areas; leasing commissions; interest, amortization, or other payments on loans to Sublandlord whether secured or unsecured; income, excess profits, or franchise taxes; ground lease rental (except to the extent such rental payments represent payment of Impositions); advertising for vacant space; the cost of tenant improvements; or legal fees for leasing vacant space in the Building.

3.4.6 Notwithstanding anything to the contrary herein, for the avoidance of doubt, in no event shall Additional Rent or any component thereof be deemed to include Sublandlord's obligations set forth in Section 8.2.4 hereof, including any cost or expense with respect thereto.

### **Section 3.5    Maintenance and Repairs.**

3.5.1 From and after the Amended Sublease Commencement Date, subject to Section 8.2.4 hereof, Subtenant shall perform all maintenance, repairs and replacements (as reasonably determined by Subtenant) relating to the Subleased Premises and all maintenance, repairs and replacements (as reasonably determined by Sublandlord) of all areas, the Building roof, footings, foundations, wall, skeleton, bearing columns, interior bearing walls, floor slabs, structural elements, underground utility and sewer pipes; driveways and parking lots; fire protection sprinkler system; all exterior painting (at reasonable intervals); the Building mechanical, plumbing, electrical, and HVAC systems serving the Building and/or the Subleased Premises, whether the same are located within or without of the Subleased Premises; and the walkways of and the sidewalks in front of the Buildings so that they are reasonably free from snow and ice. The cost and expenses of Subtenant's maintenance, repairs and replacements as set forth above shall be included in Operating Expenses or Capital Expenses, as appropriate.

3.5.2 Except as provided above, Subtenant agrees to keep and maintain the Subleased Premises, including the Improvements, the playground, and all of its fixtures, equipment installed by Subtenant and any Alterations in good working order and condition beginning with the Amended Sublease Commencement Date and continuing throughout the Amended Sublease Term, and to make and perform all maintenance, repairs and replacements thereto as and when necessary (whether or not Sublandlord shall have given Subtenant notice of the need therefor), as part of the consideration for leasing the Subleased Premises. Sublandlord shall have no obligation to make any repairs except as expressly provided herein. From and after the Amended Sublease Commencement Date, Sublandlord gives to Subtenant exclusive control of the Subleased Premises (subject to the terms hereof, including, without limitation, the Shared Space Agreement) and shall be under no obligation to inspect said Subleased Premises. Subtenant shall at once report in writing to Sublandlord any maintenance, repair or replacement problems known to Subtenant which Sublandlord is required to repair pursuant to Section 8.2.4 hereof, and failure to so report such defects shall make Subtenant responsible to Sublandlord for any liability incurred by Sublandlord by reason of such defect.

3.5.3 Subtenant shall, subject to Section 8.2.4, reimburse Sublandlord, upon demand, for the cost of any and all repairs or replacements which are the responsibility of Sublandlord, if any, and which are necessitated or occasioned by the acts, omissions or negligence of Subtenant or Subtenant's Related Parties, or by the use or occupancy or manner of use or occupancy of the Subleased Premises by Tenant or any such person. Sublandlord shall have no responsibility to make repairs to the Subleased Premises, that are otherwise Sublandlord's responsibility pursuant to this Sublease (if any), if the need for such repairs is due to the intentional or negligent act or omission of Subtenant or Subtenant's Related Parties, and, unless attributable to Sublandlord's negligence or willful misconduct, Sublandlord shall have no liability for any damages or injuries arising from the failure to make any such repairs nor shall Sublandlord be liable for damages or injuries arising from defective workmanship or materials used in making any such repairs, Sublandlord shall not be liable for, and there shall be no abatement of rent with respect to, any injury to or interference with Subtenant's business arising from any repairs, maintenance, alteration or improvement in or to any portion of the Property or in or to the fixtures, appurtenances or equipment therein. Subtenant shall also reimburse Sublandlord, upon demand, for the reasonable cost of any and all repairs or replacements which are the responsibility of

Subtenant but which Subtenant fails to make within thirty (30) days after written notice from Sublandlord, plus an administrative fee of ten (10) percent (but with a minimum administrative fee amount of \$250 and a maximum of \$2,000) over and above the cost incurred by Sublandlord to make such repair or replacement.

3.5.4 Notwithstanding the foregoing, this Section 3.5 shall be subject in all respects to the terms and conditions of Section 8.2.4 hereof.

## **ARTICLE IV**

### **IMPOSITIONS**

#### **Section 4.1** Definition of Impositions.

4.1.1 The term “Impositions” shall mean all real estate and property taxes, transfer and recordation taxes, ad valorem and other taxes, assessments, business improvement district fees, water and sewer rents and charges, use and occupancy taxes, license and permit fees, vault space rent and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Amended Sublease Term be assessed, levied, charged, confirmed or imposed by public authority upon or accrue or become due or payable out of or on account of or become a lien on the Property, or the sidewalks, streets or vaults adjacent to the Property, and all improvements thereon (collectively, the “Taxable Area”).

#### **Section 4.2** Additional Rent During the Term.

4.2.1 Commencing on the Amended Sublease Commencement Date, Subtenant will pay or cause to be paid, as and when the same shall become due (and before any fines, penalties, interest or cost may be added thereto), all Impositions imposed on the Property, except that;

4.2.2 All Impositions for the fiscal year or tax year in which the term of this Sublease expires shall be apportioned so that the Subtenant shall pay its proportionate share of the Impositions which are payable in the year in which the Amended Sublease Term expires, and Sublandlord shall pay its proportionate part; any sum payable by Subtenant, as provided in this Article IV, which would not otherwise be due until after the date of the termination or expiration of this Sublease (but attributable to the period of time preceding such Sublease termination or expiration), shall be paid by Subtenant to Sublandlord upon such termination or expiration.

4.2.3 Where any Impositions are permitted by law to be paid in installments, Subtenant may pay such Imposition in installments as and when such installments become due; provided, however, that the amount of all installments of any such Impositions which are to become due and payable after the expiration of the Amended Sublease Term shall not be apportioned (except as provided in Section 4.2.2 hereof).

4.2.4 The provisions of this Article IV shall not be construed as imposing any liability upon Subtenant for the payment of any taxes, assessments or other charges imposed by city or federal laws or ordinances or any other laws or ordinances, upon the net income of Sublandlord, nor shall Subtenant be obligated to pay any withholding, profit or revenue tax or charge levied

upon the rents payable to Sublandlord under the terms of this Sublease, or any corporate franchise tax or corporate license fee which may be levied upon or against any successor corporate Sublandlord. The payment of all such taxes, assessments and other charges referred to in this Section 4.2.4 shall be the sole liability of Sublandlord. Notwithstanding the foregoing, if, at any time during the Amended Sublease Term, the methods or scope of taxation prevailing on the Amended Sublease Commencement Date shall be altered or enlarged so as to cause the whole or any part of the taxes, assessments, levies, charges, or any other Impositions now or hereafter levied, assessed or imposed on real estate and the improvements thereof to be levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the rents received therefrom, or, if, by reason of any such alteration or enlargement of the methods or scope of taxation, any tax, corporation franchise tax, assessment, levy (including but not limited to any municipal, state, or federal levy), charge or any other Impositions or any part thereof shall be measured by or based solely upon the Taxable Area, or the value thereof, and shall be imposed upon Sublandlord, then all such taxes, assessments, levies, charges or Impositions, or the part thereof so measured or based, shall be deemed to be included within the term "Impositions."

4.2.5 If Subtenant is entitled to an exemption for any Imposition, it shall be solely responsible for making whatever application is necessary to obtain such exemption. If Subtenant receives any such exemption, it shall within ten (10) Business Days of acknowledgement of receipt of such exemption provide Sublandlord with all documentation reasonably necessary to substantiate the exemption. Sublandlord shall within thirty (30) days of receipt of Subtenant's notice thereafter adjust Subtenant's Operating Expenses Estimate in order to reasonably take account of the aforesaid exemption and provide Subtenant with written notice of such adjustment. Sublandlord shall provide any assistance or information reasonably requested by Subtenant in connection with Subtenant's application or other endeavors to obtain an exemption from an Imposition. Subtenant, for its part, shall provide any assistance or information reasonably requested by Sublandlord in connection with Sublandlord's application or other endeavors to obtain an exemption from an Imposition.

4.2.6 As stated above, Subtenant shall pay all Impositions imposed on or after the Amended Sublease Commencement Date. Commencing on the Amended Sublease Commencement Date, Impositions shall be Additional Rent hereunder and shall be paid by Subtenant as required herein.

**Section 4.3**    Payment of Impositions Directly Imposed.

Subtenant shall pay all such Impositions to be paid by it directly to the appropriate authority. Subtenant covenants to furnish to Sublandlord before any penalty, fine, interest or cost would become payable thereon for non-payment thereof official receipts of the appropriate taxing authority or other reasonable evidence of the payment of any Imposition payable by Subtenant pursuant to this Sublease. If Sublandlord receives any bills for such charges, Sublandlord shall promptly furnish the same to Subtenant.

**Section 4.4**    Deliberately omitted.

**Section 4.5**    Deliberately omitted.

**Section 4.6**    Utilities.

Subtenant shall be responsible for all charges for gas, heat, light, power, telephone, water, sewer, trash removal, and drainage charges and other charges by public utilities of every kind (“Utilities”) for services furnished to any improvements located on the Subleased Premises from the Amended Sublease Commencement Date and continuing throughout the Amended Sublease Term and that are provided and billed directly to Subtenant. The Sublandlord shall reasonably cooperate with the Subtenant to cause such utilities and services, if any, to be transferred to the Subtenant.

**ARTICLE V**

**ENVIRONMENTAL CLAIMS; LIENS; SIGNAGE**

**Section 5.1**    Deliberately Omitted.

**Section 5.2**    Deliberately omitted.

**Section 5.3**    Deliberately omitted.

**Section 5.4**    Environmental Claims.

5.4.1a Subtenant Covenants and Responsibilities.

Subtenant hereby covenants that, subject to Section 2.9 above, commencing on the day Subtenant occupied the Subleased Premises, and at its sole cost and expense and through the Amended Sublease Term (the “Subtenant Environmental Indemnity Period”) (as between Sublandlord and Subtenant provided that the foregoing shall not prohibit Subtenant from the pursuit of any third party responsible for non-compliance with Environmental Laws), it has and will comply with and remain, and has and will cause Subtenant’s subtenants, affiliates, agents, officers, employees, members, contractors, subcontractors, representatives, students and invitees (the “Subtenant Related Parties”) to comply with and remain, in compliance with all Environmental Laws relating to the use, occupancy, or operation of the Subleased Premises and to the extent permitted by this Sublease the use, occupancy, or operation of the Property by Subtenant and the Subtenant Related Parties, and it will conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal and other actions reasonably necessary to cleanup and remove all Hazardous Materials on, from or affecting the Subleased Premises in accordance with all applicable Environmental Laws to the extent caused, released, or exacerbated by the use, occupancy, or operation of the Subleased Premises or the Property by Subtenant or the Subtenant Related Parties. Subject to Section 2.9 above and Section 5.4.1b below, during the Subtenant Environmental Indemnity Period, Subtenant shall be subject to and shall comply with each and every provision of the Sublease related to Environmental Claims and Hazardous Materials and Sublandlord and Sublandlord’s affiliates, agents, officers, employees, members, contractors, subcontractors, representatives, students and invitees (the “Sublandlord Related Parties”) shall have no responsibility or liability with respect thereto except to the extent such Environmental Liability (i) is the direct result of an act or occurrence upon the Property during the Sublandlord Environmental Period (as defined below) for which Subtenant is not



liable under this Sublease and pursuant to the Prior Sub-Sublease or (ii) is caused by the negligence or willful misconduct of Sublandlord or any Sublandlord Related Party.

#### 5.4.1b Sublandlord Covenants and Responsibilities.

Sublandlord hereby represents and warrants that, for the period prior to Subtenant's occupancy of the Leased Premises (the "Sublandlord Environmental Period"), to the best of Sublandlord's actual knowledge, the Subleased Premises has been in compliance with all Environmental Laws relating to the use or operation of the Subleased Premises and the use and occupancy of the Property by Sublandlord and the Sublandlord Related Parties and it has conducted and completed all investigations, studies, sampling, and testing procedures and all remedial, removal and other actions reasonably necessary to cleanup and remove all Hazardous Materials on, from or affecting the Subleased Premises in accordance with all applicable Environmental Laws to the extent caused by the use or operation of the Subleased Premises or the Property by Sublandlord or the Sublandlord Related Parties. Subject to Sections 5.4.1a and 5.4.2a, Subtenant and the Subtenant Related Parties shall have no responsibility or liability with respect thereto for any matters arising during or directly resulting from actions taken during the Sublandlord Environmental Period, except to the extent Subtenant expressly assumed liability therefor pursuant to the Prior Sub-Sublease and except where caused by the negligence or willful misconduct of Subtenant or any Subtenant Related Party.

#### 5.4.2 Indemnification of Environmental Liabilities and Costs

##### 5.4.2a Indemnification by Subtenant.

Subtenant shall indemnify, defend, and hold Sublandlord and its affiliates, agents, officers, employees, members, contractors, subcontractors and representatives (collectively, the "Sublandlord Indemnified Parties") harmless from and against any and all Environmental Liabilities and Costs and unreleased, undischarged, unsettled losses, costs, claims, damages, liabilities and causes of action of any nature whatsoever, including, without limitation, the reasonable costs and fees (including attorneys' fees and engineering consultant fees), incurred by or asserted against any of the Sublandlord Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Subtenant's or a Subtenant Related Party's violation of any Environmental Laws at the Subleased Premises; (ii) any Contaminant release or threatened Contaminant release or release of a Hazardous Material at the Subleased Premises by Subtenant or a Subtenant Related Party from and after Subtenant's occupancy of the Leased Premises, or (iii) any condition of pollution, contamination or Hazardous Material related nuisance on, under or from the Subleased Premises from and after Subtenant's occupancy of the Leased Premises and caused or created by or through acts or omissions of Subtenant or a Subtenant Related Party ("Environmental Claims against Subtenant"); provided, however, that, in no event shall Environmental Claims against Subtenant include (and Subtenant shall not be required to indemnify Sublandlord or any Sublandlord Indemnified Parties for) any Environmental Liabilities and Costs or other claims that (i) are released, settled or otherwise discharged by reason of any insurance coverage maintained by Subtenant, (ii) are caused by the negligence or willful misconduct of Sublandlord or any Sublandlord Related Party, or (iii) arise directly from the condition of the Property or the Subleased Premises prior to the Amended Sublease Commencement Date, except as may have been caused by the negligence or willful

misconduct of Subtenant or a Subtenant Related Party. Subtenant's indemnity obligation pursuant to this section shall be subject to Section 2.9 and shall survive expiration or termination of this Sublease.

#### 5.4.2b Indemnification by Sublandlord.

Sublandlord shall indemnify, defend, and hold Subtenant and its affiliates, agents, officers, employees, members, contractors, subcontractors and representatives (collectively, the "Subtenant Indemnified Parties") harmless from and against any and all Environmental Liabilities and Costs and unreleased, undischarged, unsettled losses, costs, claims, damages, liabilities and causes of action of any nature whatsoever, including, without limitation, the reasonable costs and fees (including attorneys' fees and engineering consultant fees), incurred by or asserted against any of the Subtenant Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Sublandlord and a Sublandlord Related Party's violation of any Environmental Laws at the Subleased Premises; (ii) any Contaminant release or threatened Contaminant release or release of a Hazardous Material at the Subleased Premises by Sublandlord or any Sublandlord Related Party prior to the Amended Sublease Commencement Date, or (iii) any condition of pollution, contamination or Hazardous Material related nuisance on, under or from the Subleased Premises or violation of Environmental Laws occurring during the Sublandlord Environmental Period ("Environmental Claims against Sublandlord"); provided, however, that, in no event shall Environmental Claims against Sublandlord include (and Sublandlord shall not be required to indemnify Subtenant or any Subtenant Indemnified Parties for) any Environmental Liabilities and Costs or other claims that (i) are released, settled or otherwise discharged by reason of any insurance coverage maintained by Sublandlord or (ii) are caused by the negligence or willful misconduct of Subtenant or any Subtenant Indemnified Party. Sublandlord's indemnity obligation pursuant to this section shall survive during the term of this Sublease.

5.4.3 Before undertaking an environmental remediation or other environmental-related work, Subtenant shall request Sublandlord's permission, in writing, at least twenty (20) days in advance of undertaking such environmental, which may be granted in Sublandlord's reasonable discretion.

**Section 5.5** Deliberately Omitted.

**Section 5.6** Deliberately Omitted

**Section 5.7** Discharge of Liens.

5.7.1 From and after the Amended Sublease Commencement Date, Subtenant shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge (levied on account of any Imposition or any mechanic's, laborer's or materialman's lien or any mortgage, conditional sale, title retention agreement, security interest or chattel mortgage, or otherwise) caused by Subtenant which might be or become a lien, encumbrance or charge upon the Property, the Building or the Subleased Premises or any part thereof or the income therefrom, having any priority or preference over or ranking on a parity with the estate, rights and interest of Sublandlord in the Subleased Premises or any part thereof or the income therefrom, and

Subtenant shall not suffer any other matter or thing whereby the estate, rights and interest of Sublandlord in the Subleased Premises or any part thereof or the income therefrom might be impaired; provided that any such imposition, lien, encumbrance or charge shall be discharged in accordance with the terms of this Sublease.

5.7.2 From and after the Amended Sublease Commencement Date, if any mechanic's, laborer's or materialman's lien shall at any time, due to acts or omissions of Subtenant, be filed against the Property or any part thereof, Subtenant, within twenty (20) calendar days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Subtenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Sublandlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings and in any such event Sublandlord shall be entitled, if Sublandlord so elects, to compel the prosecution of an action for the enforcement of such lien by the lien or and to pay the amount of the judgment in favor of the lien or with interest, costs and allowances. Subtenant agrees to reimburse and to pay to the Sublandlord within five (5) Business Days after written demand therefor, which demand shall be accompanied by reasonably detailed invoices evidencing the amounts so paid by Sublandlord and all costs and expenses, including reasonable attorneys' fees, incurred by Sublandlord in connection therewith, together with interest thereon at the Interest Rate plus five percent (5%) per annum, from the respective dates of Sublandlord's notice to Subtenant of the making of the payment or the incurring of the cost and expense, including attorneys' fees, until paid.

5.7.3 Nothing in this Sublease contained shall be deemed or construed in any way as constituting the consent or request of Sublandlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, Alteration to, or repair of the Subleased Premises or any part thereof or for the demolition or the replacement of the Subleased Premises or any part thereof. Subtenant shall have no right, authority or power to bind Sublandlord, or any interest of Sublandlord in the Subleased Premises, for any claim for labor or material or for any other charge or expense incurred in the erection and construction of the Subleased Premises or any change, Alteration or addition thereto, nor to render such Subleased Premises liable to any lien or right of lien for any labor or material. Subtenant shall in no way be considered as the agent of Sublandlord in the construction, erection or operation of the Subleased Premises.

**Section 5.8**    Deliberately Omitted.

**Section 5.9**    Signage.

The Parties shall each comply with all Applicable Laws regarding the installation of all signage at the Subleased Premises.

## ARTICLE VI

### INSURANCE

**Section 6.1 Insurance Coverage.** Sublandlord and/or Subtenant, as stated below, shall, obtain and maintain during the Amended Sublease Term insurance (the “Required Insurance”) set forth below. All Required Insurance obtained by Sublandlord shall be paid for by Sublandlord after it provides Subtenant promptly upon receipt by Sublandlord of any bill it receives for the payment of any insurance premium due from Sublandlord pursuant to its obligations hereunder and Subtenant provides Sublandlord with sufficient funds to timely pay the aforesaid bill. Subtenant shall pay directly all insurance required to be obtained by Subtenant. Sublandlord and/or Subtenant shall keep and maintain the following Required Insurance as follows as of the Amended Sublease Commencement Date:

6.1.1 Sublandlord shall obtain and maintain Property insurance for the Improvements with “special form” property insurance coverage as available in the insurance market at the date of this Sublease (and against such additional risks of loss as may be customarily covered by such policies after the date of this Sublease), or any equivalent to a “special form” property insurance policy that has been reasonably approved by Landlord (collectively, the “Property Insurance Policy”). The Property Insurance Policy shall cover at least the following perils: building collapse, fire, flood, impact of vehicles and aircraft, lightning, malicious mischief, terrorism, vandalism, water damage, and windstorm. The Property Insurance Policy shall also cover such other insurable perils as, under good insurance practices, other commercial property tenants from time to time insure against for Comparable Buildings. The Property Insurance Policy shall cover: (i) additional expense of demolition and increased cost of construction, including, without limitation, increased costs that arise from any changes in Applicable Laws with respect to such restoration in a minimum amount of \$10,000,000 for the Leased Premises; (ii) at Least 100% of the replacement cost value of the Improvements (subject to Sublandlord’s deductible); and (iii) loss of rent insurance on an actual loss sustained basis covering twelve months or such longer period as Sublandlord deems necessary. Any Property Insurance Policy shall contain an agreed amount endorsement or a coinsurance waiver and replacement cost value endorsement without reduction for depreciation and shall in no event be less than the replacement cost of the Building.

6.1.2 If any part of the Improvements is located in an area designated as “flood prone” or a “special flood hazard area” under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, Sublandlord shall obtain and maintain at least the maximum coverage for the Improvements available under the federal flood insurance plan. Regardless of the flood zone, the minimum amount of coverage required by this subsection for loss caused by floods shall be that which is required by an any mortgagee approved hereunder. Any insurance required pursuant to the terms of this subsection being hereinafter sometimes referred to as “Flood Insurance.”

6.1.3 Deliberately omitted.

6.1.4 Sublandlord and Subtenant shall each obtain and maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the

“Liability Insurance”): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall be in the so called “occurrence” form and shall provide coverage of at least \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate for all damages. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability and products and completed operations.

6.1.5 In the event any part of the Improvements contains a boiler or other pressure vessel or pressure pipes, Sublandlord shall obtain and maintain, or cause to be obtained and maintained, boiler, air conditioning, and pressure vessel (including, but not limited to, pressure pipes, steam pipes, and condensation return pipes) insurance providing coverage in a commercially reasonable amount throughout the Amended Sublease Term.

6.1.6 Sublandlord shall obtain such other types and amounts of insurance for the Improvements and its operations as Landlord or Sublandlord shall from time to time reasonably require, consistent with insurance commonly maintained for Comparable Buildings (including increases in dollar amounts) including, without limitation, insurance required for by the District of Columbia Public Charter School Board.

6.1.7 If a deductible is carried on any form of property insurance coverage, such deductible shall be no more than \$25,000 per occurrence.

6.1.8 Sublandlord, its contractors or subcontractors shall obtain and maintain a Pollution Legal Liability Insurance Policy with limits of Three Million Dollars (\$3,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. The policy shall provide dedicated and site specific limits. The policy shall include coverage for bodily injury, personal injury, disease, death, loss of damage to, or loss of use of property, and clean up, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials or other irritants, contaminants or pollutants into or upon the Property, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental, whether existing or new pollution conditions, as well as transportation and disposal at non-owned location.

6.1.9 Subtenant shall obtain and maintain, at all times during the Amended Sublease Term and at Subtenant’s sole cost and expense, “Special Form” policies of insurance covering its fixtures, furniture, equipment and inventory installed and located on the Subleased Premises in an amount of not less than the full replacement cost of said items. Such insurance shall cover any peril included under insurance industry practice in the state in which the Subleased Premises is located within the classification “fire and extended coverage”, together with insurance against vandalism, malicious mischief, and sprinkler leakage or other sprinkler damage; and boiler and pressure vessel insurance; any proceeds of such insurance shall be used only to replace the items so insured.

6.1.10 All insurance obtained and maintained by Subtenant under this Sublease shall designate the District of Columbia and Sublandlord as “additional insureds” (“Additional Insureds”) (but not an “additional named insured”) by an endorsement reasonably satisfactory to

Landlord and Sublandlord, except worker's compensation insurance. All insurance obtained and maintained by Sublandlord under this Sublease shall designate Subtenant as an "additional insured" by an endorsement reasonably satisfactory to Subtenant.

6.1.11 Subtenant and Sublandlord shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies for public liability, fire and other coverage at any time in force with respect to the Subleased Premises and the Improvements.

6.1.12 All insurance required by this Sublease shall be from insurer(s) authorized to do business in the District of Columbia and reasonably satisfactory to Sublandlord with: (a) a claims paying ability of not less than "A-" (or the equivalent) by S&P and one other rating agency satisfactory to Sublandlord; or (b) "A-VII" or better financial strength rating by A.M. Best (or the equivalent). Subtenant and Sublandlord shall pay or cause to be paid the insurance premiums for all insurance required to be obtained and maintained by Subtenant or Sublandlord, as the case may be, when due and payable. Each Party shall deliver to the other Party, immediately upon issuance, certificates of insurance (or copies of the insurance policies if requested by a Party) for all insurance required to be obtained and maintained by the Parties. At least ten (10) calendar days before any policy expires (time being of the essence), the relevant Party shall deliver evidence of renewal to the other Party. Further, all Required Insurance that must be obtained and maintained by a Party shall be primary protection for any and all losses, and the other Party shall not be called upon to contribute to any loss. All Required Insurance shall be written on the "occurrence" basis unless Sublandlord, in its sole and exclusive discretion, provides its written approval of a "claims made" policy.

6.1.13 In each insurance policy (or an endorsement thereto), the carrier shall agree not to cancel, terminate, or nonrenew such policy without giving the District of Columbia and the non-insuring Party at least thirty (30) calendar days prior written notice. The Property insurance Policy shall provide that as to the District of Columbia and Sublandlord's interest or the Subtenant's interest, if any, such policy shall remain valid and shall insure the District of Columbia, Sublandlord and the non-insuring Party regardless of any: (a) named insured's act, failure to act, negligence, or violation of warranties, declarations, or conditions; (b) occupancy or use of the Improvements for purposes more hazardous than those permitted; or (c) the District of Columbia's, Sublandlord's or Subtenant's exercise of any of their respective rights or remedies hereunder, but only if such coverage is commercially available in the District of Columbia with respect to coverage for ground lessees of Comparable Buildings from an insurance carrier licensed to do business in the District of Columbia and does not result in a significant increase in the costs for the relevant insurance policy.

6.1.14 Sublease Requirements. While any construction is being done on the Subleased Premises by Subtenant, Subtenant shall: (i) cause its general contractors, or, as applicable, their respective subcontractors, to obtain and maintain, worker's compensation insurance covering all persons employed by contractors or subcontractors of any tier in connection with any such construction, including without limitation all agents and employees of contractors and subcontractors with respect to whom death or bodily injury claims could be asserted against the District of Columbia, Sublandlord or their agents or contractors; and (ii) cause its general

contractors to otherwise comply with Applicable Laws with respect to worker's compensation insurance.

**Section 6.2**    Intentionally Omitted.

**Section 6.3**    Additional General Insurance Requirements.

All insurance to be obtained by a Party pursuant to this Sublease shall: (i) contain an agreement by the insurer that loss shall be payable notwithstanding any negligence of such Party (but still subject to such policy's standard definitions, exceptions, and exclusions) and waiving any right of subrogation by the insurer to any claims of such Party against the District of Columbia or the other Party, (ii) contain an "inflation rider" so that the limits of such policy adjust accordingly and (iii) shall be written as primary policy coverage and not contributing with or in excess of any coverage carried by the District of Columbia or the other Party, if any. The Parties agree that the limits specified in this Article VI will be increased from time to time as may be reasonably requested by the District of Columbia or Sublandlord in writing provided such increased limits are then being written on Comparable Buildings. The insurance requirements provided herein are minimum requirements and shall not limit Subtenant's liability to Sublandlord arising under this Sublease or under the Applicable Laws, even if the proceeds of such insurance are not adequate to fulfill such obligations. Sublandlord agrees that if Subtenant demonstrates to Sublandlord's reasonable satisfaction that certain insurance coverage or limits required by this Article VI are not commercially available in the District of Columbia to lessees similar to Subtenant or are not being customarily written on Comparable Buildings, Sublandlord will waive the requirement for such insurance or reduce such limits provided that Subtenant provides coverage as nearly as possible to the coverage that is waived or limits that are reduced which is commercially available and is being customarily written on Comparable Buildings and the District of Columbia agrees to the aforesaid waiver.

**Section 6.4**    Sublandlord Right to Obtain Insurance.

If at any time Subtenant fails to deliver to Sublandlord timely written evidence that Subtenant has maintained and has paid for all Required Insurance, and such failure shall continue for a period of three (3) Business Days after written notice from Sublandlord of such failure and such coverage is commercially available in the District of Columbia with respect to coverage for ground lessees from an insurance carrier licensed to do business in the District of Columbia at commercially reasonable rates, then without limiting Sublandlord's rights or remedies hereunder, Sublandlord may (but shall have absolutely no obligation to) obtain such insurance for such periods as Sublandlord shall elect not exceeding twelve (12) months and pay the premium therefor, and Subtenant shall, on demand, reimburse Sublandlord, for such premium payment and all commercially reasonable unrelated third-party expenses incurred in connection therewith, plus interest on such amounts at the Interest Rate plus five percent (5%) per annum from the date such cost or expense was incurred through the date of payment to Sublandlord.

**Section 6.5**    No Invalidation of Insurance.

Subtenant shall at no time whatsoever do or permit to be done any act or thing in, to, or about the Subleased Premises or otherwise which would or could have the effect of causing

invalidating, in whole or in part or reducing the scope or amount of coverage provided by any of the insurance maintained pursuant to this Article VI. Subtenant shall not permit any buildings, other structures, or improvements at any time to be put, kept, or maintained on the Subleased Premises in such condition that the same cannot be insured in the amount of the full replacement cost thereof.

#### **Section 6.6**    Blanket Policies.

Any insurance required to be maintained herein by Subtenant may be effected under blanket insurance policies relating to the Subleased Premises and other properties, so long as Subtenant provides evidence to Sublandlord that (i) the amount of insurance covering the Subleased Premises and the Improvements, and Subtenant's use thereof, shall not be affected by losses at any or all additional locations and (ii) with respect to commercial general liability insurance, if there is a shared aggregate limit, then the minimum amount of liability insurance shall be increased to \$10,000,000.00.

#### **Section 6.7**    Indemnity.

6.7.1 Subject to (i) Section 2.9, (ii) Sublandlord's obligations under Section 5.4.2b and (iii) the limitations contained in Section 21.22 below and except to the extent that any such claims are released, settled, or otherwise discharged by reason of any insurance coverage maintained by Subtenant or Sublandlord and except to the extent caused by the negligence or willful misconduct of Sublandlord or any Sublandlord Related Party, Subtenant agrees to indemnify and save harmless Sublandlord and Sublandlord Related Party (collectively, "Indemnified Parties") against and from those portions of any and all claims by or on behalf of any Person (other than Subtenant and Subtenant's Related Parties) that are not so released, settled, or otherwise discharged as aforesaid, and to be liable and responsible for such unreleased, unsettled, or undischarged portions of any and all claims, including without limitations costs, liabilities, expenses, losses and damages, of any kind or nature which the Indemnified Parties may incur, including but not limited to loss of life, bodily injury, or damage or destruction to property, costs and reasonable legal fees arising from: (i) the use, occupancy, or operation of the Property, the Subleased Premises or the Improvements by Subtenant or any Subtenant Related Party; (ii) any work or thing whatsoever done or which is required to be done by Subtenant or any Subtenant Related Party and is not done in, on or about the Subleased Premises during the Sublease Term; (iii) all Environmental Claims for which Subtenant is responsible for under this Sublease; (iv) any condition of the Subleased Premises or of any vaults, passageways or spaces demised unto Subtenant therein; (v) any Event of Default by Subtenant under, or failure to comply with, this Sublease; (vi) any act of Subtenant or any of Subtenant's Related Parties at or related to the Subleased Premises; and (vi) any accident, Injury or damage whatsoever, except caused by the negligence or willful misconduct of Sublandlord or Sublandlord's Related Parties after the Amended Sublease Commencement Date, to any Person occurring during the Amended Sublease Term in or about the Property, Subleased Premises or upon or under the streets, sidewalks and land adjacent thereto, and from and against all expenses and liabilities incurred on account of any such claim or action or proceeding brought thereon.

6.7.2 Except as expressly provided otherwise in Section 21.22 below, Subtenant's obligation to indemnify Sublandlord under this Section 6.7 shall not be limited to the scope and



amount of coverage provided by any insurance maintained by Subtenant, including, without limitation, the insurance required to be maintained by Subtenant pursuant to Article VI, Subtenant's obligation to indemnify Sublandlord under this Section 6.7, except as otherwise provided in Section 21.22, shall be independent of any insurance coverage maintained by Subtenant or maintained by or otherwise available to Sublandlord; and under no circumstances shall Sublandlord be required to elect to proceed either by seeking benefits under any such insurance coverage or by seeking recourse under the protection of this indemnification, but Sublandlord shall in all events have the right to enforce this indemnification without first seeking the benefit of any such insurance coverage.

6.7.3 Should any claim be made against Sublandlord or Sublandlord's Related Parties or an action or proceeding be brought against any of them as set forth in this Section 6.7, Sublandlord agrees to give Subtenant reasonably prompt written notice thereof so as to enable Subtenant to resist or defend such claim, action or proceeding.

6.7.4 The foregoing indemnification shall not be limited to reimbursement of actual losses but shall include advances made by Sublandlord in response to claims made against Sublandlord and/or Sublandlord Related Parties, and shall include Subtenant's duty to defend any of such claims.

6.7.5 Notwithstanding any provision to the contrary contained in this Sublease, Sublandlord agrees and acknowledges that Subtenant's obligations to indemnify and hold harmless Sublandlord and Sublandlord's Related Parties under this Sublease shall in no event extend to or include any loss to the extent arising out of any fraudulent, negligent, or intentionally willful act on the part of Sublandlord or any Sublandlord Related Party, as applicable.

6.7.6 The terms and provisions of this Section 6.7 shall survive the termination of this Sublease, in respect of matters arising from acts, omissions or neglect occurring prior thereto for the period afforded to Sublandlord under the applicable statute of limitations.

## **ARTICLE VII**

### **RESTORATION**

#### **Section 7.1    Proceeds of Casualty.**

7.1.1 From and after the Amended Sublease Commencement Date, the proceeds of any fire or casualty insurance shall be applied as follows at the time the proceeds are issued by Sublandlord's or Subtenant's insurance company:

(a)    Proceeds Less than or Equal to One Million Dollars

If less than or equal to One Million Dollars (\$1,000,000.00), such proceeds shall be paid to Sublandlord as a trust and, deposited in a separate bank account maintained by Sublandlord and used, applied and paid for the repair and restoration of the damage to the Improvements on the Subleased Premises in accord with the Parties' mutual written agreement; or

(b) Proceeds More than One Million Dollars

If such proceeds are in excess of One Million Dollars (\$1,000,000.00), they shall be paid to and deposited with a bank or trust company in the District of Columbia selected by Landlord and having assets in excess of \$30,000,000.00 as insurance trustee (hereinafter referred to as the “Depository”) which shall hold, apply, and make available the proceeds of such insurance to the cost of repair of the damage and replacement or rebuilding of the Improvements on the Subleased Premises as more particularly hereafter provided in Section 7.2.

**Section 7.2** Sublandlord’s Obligation to Restore.

7.2.1 If the Improvements now or hereafter erected upon the Subleased Premises during the Amended Sublease Term shall be destroyed or damaged in whole or in part by fire or other casualty, or as a result directly or indirectly of war, terrorism, bio-terrorism, or by act of God, or occurring by reason of any causes whatsoever, Subtenant covenants that it shall give prompt notice thereof to Sublandlord. Sublandlord shall repair, replace, restore or reconstruct the Improvements to substantially the same conditions as existed prior to any such casualty and with at least as good workmanship and quality as the Improvements being repaired or replaced, subject to changes necessary to comply with the current building code requirements, as approved by Sublandlord in its reasonable discretion.

7.2.2 Such restoration shall be commenced within two hundred seventy (270) calendar days from the date of the event of casualty. Sublandlord shall use commercially reasonable effort to pursue its insurance claims with its insurance company, comply with Section 7.1 for the deposit of the insurance proceeds, and complete the restoration work within a reasonable time, free and clear of all liens and encumbrances. If the insurance proceeds shall exceed the cost of such repairs or rebuilding, the balance remaining after payment of the cost of such repairs or rebuilding shall be paid over and belong to Sublandlord used solely for the repair and maintenance of the Improvements, provided that Sublandlord has effected the repair or rebuilding timely in accordance with this Article.

7.2.3 Deliberately omitted.

7.2.4 Deliberately omitted.

7.2.5 Unless the damage is caused by Subtenant’s negligence or willful misconduct, Rent shall abate in proportion to the part of the Subleased Premises that are unfit for use by the Subtenant for up to one hundred percent (100%) of the entire Subleased Premises, from the date of damage until the repairs are substantially complete.

## **ARTICLE VIII**

### **OPERATIONS AND MAINTENANCE MATTERS**

**Section 8.1** Compliance with Applicable Laws.

8.1.1 At Subtenant’s sole cost and expense, Subtenant shall comply with all Applicable Laws affecting the Subleased Premises. Subtenant shall be solely responsible for the health and

safety of Subtenant and Subtenant's Related Parties, and for compliance with all Governmental Requirements and requirements relating to same, and under no circumstances shall Sublandlord be liable for the health and safety of Subtenant or Subtenant's Related Parties (except to the extent of any negligence or willful misconduct of Sublandlord or any Sublandlord's Related Party).

8.1.2 At Subtenant's sole cost and expense, Subtenant shall likewise observe and comply with, or it shall cause to be observed and complied with, all the requirements of all policies of liability, fire or other insurance at any time in force with respect to the Subleased Premises.

## **Section 8.2    Maintenance of Premises.**

8.2.1 Beginning on the Amended Sublease Commencement Date and continuing thereafter throughout the Amended Sublease Term, at Subtenant's sole cost and expense, Subtenant shall maintain the Subleased Premises, the Improvements, the playground, and any Alteration, both inside and outside in a clean and good condition similar to Comparable Buildings, reasonable wear and tear excepted.

8.2.2 From and after the Amended Sublease Commencement Date, Subtenant shall maintain or cause to be maintained the foundations and appurtenances to the Building, the Property (except as stated in Section 8.2.1), in reasonably good order and condition, suffering no waste or injury except to the extent of any wear and tear and insured casualty, and shall, except as expressly provided herein, promptly make all necessary repairs and replacements, structural or otherwise, subject to the terms of this Sublease. All costs and expenses incurred by Subtenant pursuant to this section are Operating or Capital Expenses and are to be paid by Subtenant.

8.2.3 All repairs and replacements made by Subtenant shall be reasonably comparable to the original work performed by Sublandlord. The necessity for and adequacy of repairs to the Improvements shall be measured by the standards appropriate for Comparable Buildings, provided that Subtenant shall in any event make all repairs reasonably necessary to avoid any structural damage.

8.2.4 Notwithstanding anything to the contrary in this Sublease, including, without limitation, Sections 3.5 or 8.2, Sublandlord agrees to perform or cause to be performed to Subtenant's reasonable satisfaction, at Sublandlord's sole cost and expense, those repairs identified on Exhibit I hereof within a commercially reasonable time period after the date hereof. Sublandlord agrees to use commercially reasonable efforts to ensure that Subtenant may utilize the benefits of any and all warranties that may be available from time to time to Sublandlord as a result of Sublandlord's construction of the Improvements and/or in connection with Sublandlord's completion of the repairs identified on Exhibit I pursuant to this Section 8.2.4 (Subtenant acknowledging, however, that Sublandlord makes no representations or warranties as to the existence or availability of any such warranties).

## **Section 8.3    Alterations.**

8.3.1 Subtenant may not make alterations, improvements, additions and other changes (each, an "Alteration," and collectively, "Alterations") except as provided in this Section 8.3.1.

If the Alterations are Base Building Alterations, Subtenant shall obtain Sublandlord's prior written consent for such alterations, which consent may be granted or denied at its sole and absolute discretion. Within thirty (30) calendar days after the completion of any Base Building Alterations, Subtenant shall indicate to Sublandlord in writing the Base Building Alterations actually completed pursuant to Sublandlord's consent, the commercially reasonable cost of such alterations (with reasonably detailed documentation), and state all Base Building Alterations approved but not made ("Subtenant's Base Building Alterations Certification"). Subtenant shall have the right, at any time and from time to time, as often and frequently as Subtenant wishes, to make any Alterations which are not Base Building Alterations, including without limitation, painting and carpeting, with the written consent of Sublandlord, which shall not be unreasonably withheld, conditioned or delayed.

8.3.2 Subject to Section 8.3.1, any Alterations to the Improvements that require Sublandlord's prior written consent shall be under the supervision of a licensed architect or engineer selected by Subtenant and approved in writing by Sublandlord (such approval not to be unreasonably withheld, delayed, or conditioned), and shall not be made except in accordance with detailed plans and specifications prepared and approved in writing by such architect or engineer and approved in writing by Sublandlord. Subject to Section 8.3.1, when Subtenant requests Sublandlord's approval under Section 8.3.1 which necessitates the involvement of an engineer or architect in Subtenant's reasonable good faith judgment, Subtenant shall provide Sublandlord with a certification from a licensed engineer or architect and from Subtenant that the proposed Alterations conform to all Applicable Laws. Sublandlord shall have a period of sixty (60) calendar days from receipt of the plans and specifications for each such Alteration within which to approve or reject same. Subtenant will reimburse Sublandlord for its reasonable costs of retaining a third-party architect or engineer to review such plans. A rejection by Sublandlord of any portion of a proposed Alteration shall be in writing, which writing shall specify with particularity the basis for such rejection.

8.3.3 In the event of an emergency (including, without limitation, the existence of a condition requiring environmental remediation), which threatens life, safety or property, Subtenant may make all necessary repairs without Sublandlord's consent which are reasonably required to abate the emergency so long as Subtenant attempts in good faith to notify Sublandlord in advance that such repairs are being made, and same are not inconsistent with the current Improvements.

8.3.4 Any Alterations shall be made in a good and workmanlike manner and in compliance with all Applicable Laws and Governmental Requirements including permits and authorizations.

8.3.5 Prior to undertaking any Alterations other than as set forth in Section 8.3.3, adequate funds shall be committed for payment of the cost of any such Alterations, and reasonably satisfactory evidence of same shall be provided to Sublandlord; and such Alterations shall be completed, free of liens, encumbrances or other charges on the Subleased Premises.

## **Section 8.4    Hazardous Materials.**

8.4.1 Prior to the Amended Sublease Commencement Date, Sublandlord remained in compliance with all applicable Environmental Laws, obtained all Permits and complied with all Applicable Laws, including Environmental Laws, relating to Sublandlord's (but not others') use or operation of the Subleased Premises, and Sublandlord conducted and completed all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions reasonably necessary to clean up and remove all Hazardous Materials on, from or affecting the Subleased Premises in accordance with all applicable Environmental Laws. Sublandlord shall provide information regarding the foregoing to Subtenant promptly upon request. Subject to Sections 5.4.1 and 5.4.2 hereof, Subtenant represents, warrants, and covenants to Sublandlord that, from and after the Amended Sublease Commencement Date and continuing thereafter throughout the Amended Sublease Term with respect to Subtenant's use and occupancy of the Subleased Premises:

(a) Subtenant and Subtenant's Related Parties will remain in compliance with all applicable Environmental Laws. The Subleased Premises will remain in compliance with all applicable Environmental Laws. Subtenant will obtain all Permits and comply with all Applicable Laws, including Environmental Laws, relating to the use or operation of the Subleased Premises. Subtenant will conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions reasonably necessary to clean up and remove all Hazardous Materials on, from or affecting the Subleased Premises in accordance with all applicable Environmental Laws.

(b) Subtenant will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Materials, except in compliance with Environmental Laws, on, in, under, or from the Subleased Premises. The foregoing prohibition shall not apply to the extent that such materials are of the type and quantity that are typically used in elementary, middle or high school or vocational training school. Subtenant will promptly notify Sublandlord, in writing, if Subtenant has actual knowledge or receives actual notice that any Hazardous Material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Subleased Premises; and if any Hazardous Material is found on the Subleased Premises, Subtenant, at its own cost and expense, will immediately take such action as is reasonably necessary to detain the spread of and remove the Hazardous Material in accordance with the Environmental Laws; provided, however, if permitted to do so by Applicable Laws, Subtenant may abate such Hazardous Materials "in place," provided such abatement shall not adversely affect the Permitted Use.

(c) Subtenant will immediately notify Sublandlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Subleased Premises or compliance with Environmental Laws. Subtenant will promptly supply Sublandlord with copies of all notices, reports, correspondence, and submissions made by Subtenant to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other Governmental Authority which requires submission of any information concerning environmental matters or hazardous wastes or substances in, on, or about the Subleased Premises pursuant to Environmental Laws. Subtenant will promptly cure and have dismissed with prejudice any

actions and proceeding brought pursuant to any Environmental Laws to the satisfaction of Sublandlord. Subject to Section 2.9, Subtenant will keep the Subleased Premises free of any lien imposed pursuant to any Environmental Law except to the extent such lien arises from the actions or inactions of Sublandlord or any Sublandlord Related Party or by the condition of the Property which existed prior to Subtenant's occupancy of the Subleased Premises and which was not caused by the negligence or willful misconduct of Subtenant or any Subtenant Related Party. Subtenant will promptly notify Sublandlord of any liens threatened or attached against the Subleased Premises pursuant to any Environmental Law. If such a lien for which Subtenant is responsible as provided in this Section is filed against the Subleased Premises, then, within the earlier of thirty (30) calendar days or five (5) calendar days less than the period to remove the Liens set forth in any underlying mortgage or lease from the date that the lien is placed against the Subleased Premises, and before any Governmental Authority commences proceedings to sell the Subleased Premises pursuant to the lien, Subtenant will either (1) pay the claim and remove the lien from the Subleased Premises; or (2) furnish either (i) a bond or cash deposit reasonably satisfactory to Sublandlord and Sublandlord's title insurance company in an amount not less than the claim from which the lien arises; or (ii) other security satisfactory to Sublandlord and to any superior mortgagee or lessee in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

(d) Sublandlord and Sublandlord's Related Parties, at Sublandlord's sole cost and expense, may (but without the obligation or duty so to do), at any time and from time to time, on not less than ten (10) Business Days' notice to Subtenant (except in the event of an emergency in which case no notice will be required), inspect the Subleased Premises to determine whether Subtenant is complying with the obligations set forth in this Section 8.4 and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as Sublandlord and Subtenant may agree. Sublandlord and Sublandlord's Related Parties shall comply at all times while on site with all reasonable safety requirements of Subtenant, provided Subtenant shall provide Sublandlord prior notice of such safety requirements. If Subtenant is not in compliance, Sublandlord will have the right (but not the obligation), in addition to Sublandlord's other remedies available at law and in equity, to enter upon the Subleased Premises immediately and at Subtenant's sole cost and expense to take such action as Sublandlord in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Subtenant's failure to comply. Sublandlord will use reasonable efforts to minimize interference with Subtenant's business but will not be liable for any interference caused by Sublandlord's entry and remediation efforts as permitted by this section except to the extent caused by the negligence of Sublandlord or that of Sublandlord's Related Party. Upon completion of any sampling or testing Sublandlord will (at Subtenant's expense if Sublandlord's actions are a result of Subtenant's default under this Section 8.4) restore the affected area of the Subleased Premises from any damage caused by Sublandlord's sampling and testing.

(e) If Subtenant fails to comply with any of the foregoing covenants, Sublandlord, in addition to any other remedies it may have, may cause the removal (or other cleanup acceptable to Sublandlord) of any Hazardous Material from the Subleased Premises. The costs of Hazardous Material removal and any other Environmental Liabilities and Costs will be Additional Rent under this Sublease, whether or not a court has ordered the remedial action, and such costs together with interest at the Interest Rate of five percent (5%) per annum thereon from

the date Sublandlord incurs any such expenses until all sums due under this subsection are paid will become due and payable on demand by Sublandlord. Subtenant will give Sublandlord and Sublandlord's Related Parties access to the Subleased Premises to remove or otherwise clean up any Hazardous Material. Sublandlord, however, has no affirmative obligation to remove or otherwise clean up any Hazardous Material, and this Sublease will not be construed as creating any such obligation.

(f) Subtenant shall not cause or permit any flammable liquids or dangerous or explosive materials to be used, generated, stored or disposed of, on or about the Subleased Premises, except as provided in this Section 8.4 or in accordance with Environmental Laws. This restriction shall not apply: (1) to prevent the entry and parking of motor vehicles carrying flammable liquids solely for the purpose of their own propulsion, or (2) to prohibit use, storage and/or disposal of any liquid or material typically used in the construction, operation or maintenance of facilities of the type comprising the Improvements or in educational settings that are comparable to Subtenant's Permitted Uses including, but not limited to, science labs, provided that such use and storage is in accordance with all Applicable Laws.

(g) [intentionally omitted];

(h) Except to the extent that any such Environmental Liabilities and Costs arise from the negligence or misconduct of Sublandlord or any Sublandlord Related Party after the Amended Sublease Commencement Date, subject to Section 2.9, Subtenant agrees to indemnify, defend (with counsel reasonably acceptable to Sublandlord and at Subtenant's sole cost, it being agreed that any counsel provided or accepted by Subtenant's insurer is deemed acceptable), and hold Sublandlord and Sublandlord's Related Parties free and harmless from and against all Environmental Liabilities and Costs, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including reasonable attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Sublandlord in connection with or arising from or out of any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Section 8.4.

(i) This Section 8.4 will be in addition to any and all obligations and liabilities Subtenant may have to Sublandlord at common law, and will survive termination of this Sublease.

## ARTICLE IX

### TRANSFER AND SUBLEASE BY SUBTENANT

#### Section 9.1 General.

9.1.1 (a) Subtenant shall not assign or transfer (collectively, "Assign" or "Assignment") this Sublease or all or any of Subtenant's rights hereunder or interest herein unless (i) the assignee will use the Subleased Premises for a Permitted Use; and (ii) Sublandlord provides its

prior written consent which shall not be unreasonably withheld, conditioned or delayed. Any proposed Assignment must be in compliance with this Sublease and the proposed assignee must have the financial capacity to meet all of the financial and other obligations imposed on Subtenant under this Sublease.

(b) Subtenant shall not sublet ("Sublet" or "Subletting") part or all of the Subleased Premises unless (i) the space is to be used for a Permitted Use; and (ii) Sublandlord provides its written consent which shall not be unreasonably withheld, conditioned or delayed. Any proposed sublet must be in compliance with the Lease and the proposed sub-sublessee must have the financial capacity to meet all of the financial and other obligations imposed on Subtenant under this Sublease. Sublandlord agrees that Subtenant may sublease the Subleased Premises to another Charter School on terms that are consistent with this Sublease. Subtenant shall provide Sublandlord with a copy of any sublease agreement between Subtenant and such other Charter School, and any amendment thereof, promptly upon execution of such sublease or amendment.

(c) In no event shall any assignment of this Sublease or Subletting of any portion of the Subleased Premises operate to release or discharge the original named Subtenant hereunder of the obligations of the Subtenant under this Sublease for the entire Amended Sublease Term (including the payment of Rent).

9.1.2 No Assignment, Subletting, or right of occupancy hereunder may be effectuated by operation of law. Sublandlord's consent to any Assignment or Subletting, the listing or posting of any name other than Subtenant's, or Sublandlord's collection or acceptance of rent from any assignee or subtenant shall not be construed either as waiving or releasing Subtenant from any of its liabilities or obligations under this Sublease as a principal and not as a guarantor or surety, or as relieving Subtenant or any assignee of Subtenant from the obligation of obtaining Sublandlord's prior written consent to any subsequent assignment or subletting. For any period during which Subtenant has committed an uncured Subtenant Default hereunder, Subtenant hereby authorizes each such assignee or subtenant to pay said rent directly to Sublandlord upon receipt of notice from Sublandlord specifying same. Sublandlord's collection of such rent shall not be construed as an acceptance of such assignee or subtenant as a subtenant. Subtenant shall reimburse Sublandlord for any reasonable out-of-pocket third-party expenses (including reasonable attorney's fees and expenses) incurred by Sublandlord in connection with Subtenant's request for Sublandlord to give its consent to any Assignment or Subletting and Sublandlord shall be entitled to condition its consent to receipt of such reimbursement. Any Sublease agreement shall be in a form and with terms approved by Sublandlord, such approval not to be unreasonably withheld, conditioned or delayed. Subtenant shall deliver to Sublandlord a fully-executed copy of each agreement evidencing a Sublease or Assignment within ten (10) calendar days after execution thereof.

9.1.3 All restrictions and obligations imposed pursuant to this Sublease on Subtenant shall be deemed to extend to any sub-subtenant, assignee, licensee, concessionaire or other occupant or transferee, and Subtenant shall cause such person to comply with such restrictions and obligations. Any assignee shall be deemed to have assumed obligations as if such assignee had originally executed this Sublease and at Sublandlord's request shall execute promptly a document confirming such assumption. Each sub-sublease is subject to the condition that if the Amended Sublease Term is terminated or Sublandlord succeeds to Subtenant's interest in the



Subleased Premises by voluntary surrender or otherwise, at Sublandlord's option the sub-tenant shall be bound to Sublandlord for the balance of the term of such Sublease and shall attorn to and recognize Sublandlord as its Sublandlord under the then executory terms of such sub-sublease.

9.1.4 Further, an approved sublease for all or part of the Subleased Premises to another public charter school shall contain the following provisions:

(a) the subtenant is, and shall at all times be, a public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 (D.C. Official Code § 38-1800.01 et Seq. (Supp. 2005));

(b) the subtenant shall operate the sub-subleased premises in the sub-sublease as a public charter school and in accordance with all applicable laws, including without limitation, the District of Columbia School Reform Act of 1995 ( D.C. Official Code 38-1800.01 et seq. (Supp. 2005)) and all regulations promulgated thereunder; and

(c) if at any time subtenant's charter to operate as a public charter school in the District of Columbia shall be revoked or adversely modified, such revocation or modification shall constitute a default under the sublease, and the sublease shall, at Sublandlord's option, immediately terminate without further notice.

9.1.5 Sublandlord agrees that a condition to Subtenant's or Subtenant's Related Parties' obligations under this Sublease is that Landlord shall provide Subtenant, within ninety (90) days of the Amended Sublease Commencement Date, a non-disturbance agreement on commercially reasonable terms and consistent with District of Columbia practice, executed by Landlord and in such form as may be reasonably determined by Landlord stating that, in the event the Lease is terminated for any reason, so long as Subtenant is not in default of its obligations under this Sublease, then this Sublease and the rights of Subtenant hereunder shall remain undisturbed and shall continue in full force and effect so long as Subtenant continues to perform all of its obligations under the Sublease, and that such Sublease shall survive any and all terminations of the Lease or other action taken to enforce the Lease, provided that:

(a) Landlord is permitted to review and approve this Sublease: and

(b) the D.C. Public Charter School Board or other chartering authority has not (i) commenced proceedings to revoke Subtenant's or Subtenant Related Parties' charter pursuant to D.C. Official Code § 38-1802.13; (ii) refused to renew its charter pursuant to D.C. Official Code § 38-1802.12; or (iii) placed the charter school on probationary status pursuant to D.C. Official Code § 38-1802.12(d)(5)(B), and has a charter in effect pursuant to D.C. Official Code through § 38-1802.01 through § 38-1802.15.

## ARTICLE X

### TRANSFERS BY LANDLORD AND SUBLANDLORD

#### **Section 10.1** Assignment and Sale.

Subject to terms, conditions, and restrictions contained in the Lease, Landlord and Sublandlord may freely assign, transfer, sublet, hypothecate, pledge or mortgage the Subleased Premises and Landlord's and Sublandlord's interest under the Sublease without Subtenant's prior consent, provided Subtenant's interest in the Sublease is not impaired and Sublandlord obtains a non-disturbance agreement on behalf of Subtenant and on commercially reasonable terms from anyone obtaining a mortgage or other secured interest in the Subleased Premises.

#### **Section 10.2** Landlord's and Sublandlord's Mortgagee.

10.2.1 Except as provided in this Article X, nothing contained herein shall restrict or otherwise impair the right of Landlord to transfer, convey, sell, mortgage or otherwise deal with the fee to the Subleased Premises or affect the right of Sublandlord to assign this Sublease and the rental and other sums payable hereunder as further collateral security for any such fee mortgage or otherwise, and Subtenant agrees to honor any such assignment from and after receipt of an executed copy thereof.

10.2.2 Subtenant further agrees that while any such mortgage or other encumbrance is in force, and if Subtenant shall have been given written notice thereof and the name and address of the mortgagee and/or trustee, Subtenant shall give said mortgagee or trustee a duplicate copy of any and all notices of default in writing which Subtenant may give or serve upon Sublandlord pursuant to the terms of this Sublease, and any such notice shall not be effective until said duplicate copy is given to such mortgagee or trustee. A different address may be designated by such mortgagee or trustee by written notice delivered to Subtenant from time to time.

10.2.3 Any such mortgagee and/or trustee may, at its option, at any time before any rights of the Subtenant shall have accrued as a result of any default of Sublandlord hereunder, make any payment or do any other act or thing required of the Sublandlord by the terms of this Sublease; and all payments so made and all things so done or performed by any such mortgagee and/or trustee shall be as effective to prevent accrual of any rights of Subtenant hereunder as the same would have been if done and performed by the Sublandlord instead of by any such mortgagee or trustee.

10.2.4 No such mortgagee or trustee of the rights and interests of the Sublandlord hereunder shall be or become liable to Subtenant as an assignee of this Sublease until such time as said mortgagee or trustee shall by foreclosure or other appropriate proceedings in the nature thereof, or as the result of any other action or remedy provided for by such mortgagee or deed of trust, or by proper conveyance from Sublandlord, acquire the rights and interests of the Sublandlord under the terms of this Sublease, and such liability of said mortgagee or trustee shall terminate upon such mortgagee's or trustee's assigning such rights and interests to another party.

10.2.5 Subtenant shall as promptly as practical upon receipt of written notice, but in no event later than thirty (30) days from receipt of such written notice, provide Sublandlord with

any financial and any other information reasonably required by Sublandlord to obtain financing for the Improvements or the Subleased Premises. Subtenant shall reasonably cooperate with Sublandlord (with any out-of-pocket cost or expense to Subtenant being reimbursed by Sublandlord upon request) in its efforts to obtain financing for the Improvements and the Subleased Premises.

## ARTICLE XI

### SUBTENANT DEFAULT

**Section 11.1 Events of Default.** Each of the following shall be an “Event of Default” by Subtenant under this Sublease:

11.1.1 Failure by Subtenant to pay any installment of Rent or to pay or cause to be paid Impositions (to the extent Subtenant is obligated to pay same or cause same to be paid), Additional Rent, Operating Expenses, insurance premiums, to comply with its obligations set forth in Section 3.4, to restore the Security Deposit, or to pay any other liquidated sum of money herein stipulated in this Sublease to be paid by Subtenant if such failure shall continue for a period of thirty (30) calendar days after written notice thereof has been delivered by Sublandlord to Subtenant.

11.1.2 Except as otherwise stated in this Section 11.1, failure by Subtenant to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Sublease (other than the payment of Rent, Impositions, insurance premiums or other liquidated sums of money or the other provisions of this Section 11.1) stipulated in this Sublease to be observed and performed by Subtenant if such failure shall continue for a period of thirty (30) calendar days after notice thereof has been delivered by Sublandlord to Subtenant; provided, however, that if any such failure (other than a failure involving payment of liquidated sums of money) cannot reasonably be cured within such thirty (30) day period, then Sublandlord shall not have the right to terminate this Sublease pursuant to this Section 11.1.2 for so long as Subtenant proceeds in good faith and with due diligence to remedy and correct such failure, provided that Subtenant has commenced to cure such failure after the effective date of such notice (and in any event has so commenced within such thirty (30) day period) and has completed such cure within sixty (60) calendar days after the expiration of such thirty (30) day period; provided, further that such Subtenant cure period shall be extended on a day for day basis due to an event of Force Majeure.

11.1.3 Bankruptcy. If there shall be filed by or against Subtenant in any court, pursuant to any statute of the United States, the District of Columbia, or of any State, a bona fide petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Subtenant’s property, or Subtenant shall make an assignment for the benefit of creditors, or if any governmental department, bureau, corporation or authority shall by reason of the inability of Subtenant to meet its obligations in due course take over the assets or property of Subtenant.

Notwithstanding the foregoing, provided however, that if any such petition shall be filed against Subtenant or any such action shall be taken involuntarily against Subtenant, and if in good faith Subtenant, as applicable, shall promptly thereafter commence and diligently prosecute

any and all proceedings and actions necessary to secure the dismissal of any such petition or the restoration of Subtenant to the possession of its assets, and such petition shall be dismissed or Subtenant be restored to the possession of its assets, within ninety (90) calendar days after the filing of the aforesaid involuntary petition or the taking of the aforesaid action, same shall not be an Event of Default, provided Subtenant shall within the aforesaid ninety (90) calendar days pay all the Rent required to be paid by Subtenant under the terms of this Sublease which has accrued during the aforesaid period.

11.1.4 Deliberately omitted.

11.1.5 Failure of Subtenant or any party by, through or under Subtenant (including any Subtenant) to use the Subleased Premises for Permitted Uses.

11.1.6 If at any time Subtenant's or the charter of any other public charter school that is in possession of the Subleased Premises to operate as a public charter school in the District of Columbia is revoked or adversely modified in which case the Sublease shall, at Sublandlord's option, immediately terminate without further notice.

11.1.7 Deliberately omitted.

11.1.8 If, under the Terrorist Acts or Anti-Terrorism Order, as may be supplemented by additional legislation, orders or regulations, it shall become a violation of law to do business with Subtenant during the term of this Sublease, same shall be an Event of Default under this Sublease, and Sublandlord shall be entitled to exercise all rights and remedies required by the Terrorist Acts or Anti-Terrorism Order, including without limitation, the termination of this Sublease.

11.1.9 Any material representation or warranty of Subtenant made in this Sublease, shall fail to be correct in any material respect on the date made or deemed remade.

## **Section 11.2 Sublandlord Remedies for Subtenant Default.**

11.2.1 Upon an Event of Default by Subtenant under this Sublease, Sublandlord shall have the right to terminate this Sublease or pursue any other remedies provided for herein.

11.2.2 Sublease Termination.

(a) If Sublandlord terminates this Sublease as expressly permitted under Section 11.2.1 above, the Amended Sublease Term shall be deemed to have ended as fully and completely as if the said time were the date herein originally fixed for the expiration of the Amended Sublease Term, and Subtenant shall thereupon quit and peacefully surrender the Subleased Premises to Sublandlord, ALL NOTICES TO QUIT BEING EXPRESSLY WAIVED, together with all Improvements and Alterations, buildings, improvements, appurtenances and fixtures now or hereafter erected and maintained thereon, without any payment therefor by Sublandlord; provided, however, that Subtenant shall have the right to remove all Decorations, Fixtures, Furnishings, Equipment and Inventory subject to Section 15.2 hereof.

(b) Upon the aforesaid termination date or at any time thereafter Sublandlord may reenter the Subleased Premises and remove all persons and property there from either by summary proceedings or by any suitable action or proceeding at law, or otherwise if permitted by law, without being liable to indictment, prosecution or damages therefor, and may have, hold and enjoy the Subleased Premises together with, subject to clause (a) above, any additions, Alterations, buildings, replacements, appurtenances, fixtures and improvements now or hereafter erected and maintained thereon as Sublandlord's sole and exclusive estate and interest.

(c) If the Sublease is terminated pursuant to Section 11.2.1, notwithstanding any other provisions to the contrary in the Sublease, Subtenant shall pay all Rent due and payable to Sublandlord up to and until the Sublease termination date specified in Sublandlord's Notice to Terminate (unless Subtenant fails to vacate the Subleased Premises on the termination date specified, then Subtenant shall pay Rent to Sublandlord up to and until the date of vacation as though the Sublease had not been terminated, as well as any and all damages Sublandlord may suffer and can establish that result from Subtenant's failure to vacate on the termination date) or as specified in an order of a court of competent jurisdiction.

(d) Notwithstanding anything to the contrary herein, if the default by Subtenant is solely as described in Section 11.1.6 above, and provided that Subtenant continues to timely pay all Rent under this Sublease, Subtenant shall have the right to continue in possession of the Subleased Premises until not later than thirty (30) days following the end of the school year in which such default shall have occurred if the District of Columbia charter school board (or other applicable governing agency) authorizes Subtenant to continue operating the Charter School; and in the event of such default, all remedies available to Sublandlord, other than termination of possession, shall be immediately available to Sublandlord hereunder and Subtenant may additionally exercise its rights to terminate possession at any time following thirty (30) days after the end of the school year in which the default shall have occurred.

### 11.2.3 Additional Remedies.

If an Event of Default shall occur, Sublandlord shall have the right to exercise all of its rights and remedies under this Sublease, at law or in equity, including, without limitation, specific performance and damages. In addition to and not in limitation of the other remedies in this Sublease, Sublandlord shall be entitled to the restraint by injunction of any violation or attempted or threatened violation of any of the non-monetary terms, covenants, conditions, provisions or agreements of this Sublease. No failure by Sublandlord hereto to insist upon the strict performance of any of the terms of this Sublease or to exercise any right or remedy upon a default hereunder, no acceptance by Sublandlord of partial performance, and no custom or practice of the Parties hereto at variance with the provisions hereof shall constitute a waiver of any such Event of Default or of any of the terms of this Sublease or a waiver of Sublandlord's right to demand exact compliance with the provisions contained in this Sublease. None of the terms of this Sublease to be kept, observed, or performed by Sublandlord and no breach thereof shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Sublease, but each of the terms of this Sublease shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any default hereunder by Sublandlord shall be implied from any omission by the Subtenant to take any action on account of such default if such default persists

or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

If Sublandlord terminates this Sublease pursuant to Section 11.2.1 above, Subtenant shall remain liable for (i) any Rent and any other sums provided for in this Sublease until the date this Sublease would have expired had such termination not occurred; (ii) any all expenses (including all disbursements, brokerage fees and attorneys' fees) incurred by Sublandlord in reentering and repossessing the Subleased Premises, in painting, altering, repairing or dividing the Subleased Premises, in protecting and preserving the Subleased Premises and in reletting the Subleased Premises; and (iii) any other amount necessary to compensate Sublandlord for any other detriment caused Sublandlord by Subtenant's failure to perform its obligations under this Sublease or would likely result therefrom, less (iv) the net proceeds received by Sublandlord from any reletting prior to the date the Sublease would have expired if it had not been terminated. Subtenant agrees to pay to Sublandlord the amount so owed for each month during the Amended Sublease Term, at the beginning of each such month. Any suit brought by Sublandlord to enforce collection of such amount for any one month shall not prejudice Sublandlord's right to enforce the collection of any such amount for any subsequent month.

If Sublandlord terminates this Sublease pursuant to Section 11.2.1 above, Sublandlord shall have the right at any time, at its sole option, to require Subtenant to pay Sublandlord, on demand, as liquidated and agreed final damages: (i) the then present cash value of the Base Rent, Additional Rent and all other sums which would have been payable under this Sublease from the date of such demand to the date when this Sublease would have expired if it had not been terminated, minus (ii) any rent that Sublandlord actually receives from another subtenant who subleases the Subleased Premises, with such rent to be remitted to Subtenant after it is received by Sublandlord; provided, however, that if such damages are limited by law to a lesser amount, Sublandlord shall be entitled to prove as liquidated damages the maximum amount permitted by law. In making the foregoing computation for liquidated damages, the then present cash value of the Base Rent, Additional Rent and all other sums which would have been payable under this Sublease from the date of demand to the date this Sublease would have expired if it had not been terminated shall be deemed to be the sum which, if invested at four percent (4%) simple interest, would produce such Base Rent, Additional Rent and other sums over the period of time in question.

Subtenant shall pay all of Sublandlord's reasonable attorneys' fees and expenses incurred by Sublandlord in connection with or as a result of any Event of Default whether or not a suit is instituted. Nothing herein shall be construed to affect or prejudice Sublandlord's right to prove, and claim in full, unpaid rent accrued prior to the termination of this Sublease.

11.2.4 The acceptance by Sublandlord of Rent or any other charges due to Sublandlord, with knowledge of any breach of this Sublease by Subtenant or of any default on the part of Subtenant in the observance or performance of any of the conditions or covenants of this Sublease, shall not be deemed to be a waiver of any provisions of this Sublease. No acceptance by Sublandlord of a lesser sum than the Rent or other charges then due shall be deemed to be other than on account of the earliest installment of the Base Rent or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as

the Rent or charges due be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance of such installment or pursue any other remedy provided in this Sublease. The acceptance by Sublandlord of any of the Rent or any other sum of money or any other consideration paid by Subtenant after the termination of the Sublease, or after giving by Sublandlord of any notice hereunder to effect such termination, shall not in this Sublease reinstate, continue or extend the Amended Sublease Term, or take away, diminish or in any manner impair the efficacy of any such notice of termination unless so agreed to in writing and signed by Sublandlord.

11.2.5 Neither acceptance of the keys nor any other act or thing done by Sublandlord or any of Sublandlord's Related Parties during the Amended Sublease Term shall be deemed to be an acceptance of a surrender of the Subleased Premises, excepting only an agreement in writing signed by Sublandlord accepting or agreeing to accept such a surrender.

11.2.6 Sublandlord's Right to Perform Subtenant's Covenants.

(a) As to any payment or act on Subtenant's part required under the Sublease, provided the failure to make the payment or to perform the act constitutes an Event of Default, then Sublandlord, as hereinafter provided, without waiving, or releasing Subtenant from, any obligation of Subtenant contained in this Sublease, may, but shall be under no obligation to make such payment or perform such other act, and may enter upon the Subleased Premises for any such purpose, and take all such action thereon, as may be necessary therefore.

(b) All sums paid by Sublandlord pursuant to Section 11.2.6(a) and all costs and expenses, including reasonable attorneys' fees, incurred by Sublandlord in connection with the performance of any such act or in connection with enforcing Sublandlord's rights to collect such amounts from Subtenant, together with interest thereon at the rate equal to the then Interest Rate plus five percent (5%) per annum from the respective dates of Sublandlord's making of each such payment or incurring of each such cost and expense, including reasonable attorneys' fees, shall be paid by Subtenant to Sublandlord on demand as Additional Rent.

(c) Unless specifically provided otherwise in the Sublease, under no circumstances shall either the exercise by Sublandlord of the rights granted in this Section 11.2.6 to enter upon the Subleased Premises for any purpose specified herein and take all such action thereon as may be necessary therefor, or the exercise of any other right or remedy granted to Sublandlord under any other provision of this Sublease to cure, prevent or take any other action with respect to any default by Subtenant, constitute an eviction of Subtenant, result in a termination of this Sublease, result in any liability to Sublandlord or in any manner whatsoever relieve Subtenant from any liability to pay Rent or other sums payable by Subtenant as in this Sublease or relieve Subtenant from the keeping, observance and performance of any other covenant, condition and agreement on the part of Subtenant to be kept, observed and performed under this Sublease, unless Sublandlord shall in writing expressly and specifically state otherwise.

11.2.7 All the rights and remedies of Sublandlord herein mentioned or referred to, or arising hereunder, shall be deemed to be distinct, separate and cumulative, whether or not so provided herein, and no one or more of such rights or remedies, whether exercised or not, nor any mention of, or reference to, any one or more of them herein, shall be deemed to be in

exclusion of, or a waiver of, any of the others, or of any rights or remedies which Sublandlord might have, whether by present or future law or pursuant to this Sublease, and Sublandlord shall have to the fullest extent permitted by law, the right to enforce any rights or remedies separately, and to take any lawful action or proceedings to exercise or enforce any rights or remedies whether at law or in equity or otherwise, without thereby waiving, or being thereby barred or stopped from exercising and enforcing any other rights or remedies by appropriate action or proceedings.

11.2.8 Sublandlord shall not be limited in the proof of any damages which Sublandlord may claim against Subtenant arising out of or by reason of Subtenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Subtenant and which would have been payable upon such insurance, but Sublandlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Sublease), damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Subleased Premises or any part thereof, occurring during any period when Subtenant shall have failed or neglected to provide insurance as aforesaid. Upon the expiration of this Sublease, the unearned premiums upon any such transferable insurance policies issued pursuant to the terms of this Sublease shall be apportioned only if Subtenant shall not then be in default in keeping, observing or performing any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Sublease on Subtenant's part to be kept, observed or performed.

11.2.9 The fee title of Landlord and the subleasehold estate of the Subtenant and Subtenant's interest in the Improvements on the Subleased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Sublease or the Subleasehold estate created hereby, or any interest in either thereof or in Subtenant's interest in the Improvements on the Subleased Premises, may be held directly or indirectly by or for the account of any Person who shall own the fee estate in the Subleased Premises or any portion thereof, and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the fee estate and all persons having any interest in the Sublease or the Subleasehold estate and in Subtenant's interest in the Improvements on the Subleased Premises, including the holder of any mortgage upon the Subleasehold estate, shall join in the execution of a written instrument effecting such merger of estate.

**Section 11.3** Provision for Attorneys' Fees. In the event Sublandlord is represented in any legal action or proceeding to enforce the terms of the Sublease, Sublandlord shall be entitled to its reasonable attorney's fees and expenses.



## ARTICLE XII

### INTENTIONALLY OMITTED

## ARTICLE XIII

### CONDEMNATION

#### **Section 13.1** Separate Awards.

13.1.1 If any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, Sublandlord shall promptly give Subtenant written notice thereof.

#### **Section 13.2** Total Condemnation.

13.2.1 Subtenant Option to Terminate. If all of the Subleased Premises is condemned pursuant to a condemnation, or so much thereof that the remainder is unsuitable, in Subtenant's reasonable opinion, for use by Subtenant for Subtenant's uses and purposes, or if any portion of the Subleased Premises is condemned pursuant to a condemnation at a time when the remaining Sublease Term is so limited as, in Subtenant's reasonable opinion, to render restoration or repair of the remainder uneconomical or unfeasible, and if Sublandlord, with Landlord's concurrence, exercises Sublandlord's termination rights under Article 13.2.1 of the Lease, then upon Subtenant's notice to Sublandlord given within one hundred eighty (180) calendar days after any such condemnation, this Sublease shall terminate (i) with respect to that portion of the Subleased Premises so taken, as of the date that title thereto is vested in the condemning authority, and the Rent attributable to that portion of the Subleased Premises so taken shall cease and be abated for the entire unexpired portion of the Amended Sublease Term, and (ii) with respect to that portion of the Subleased Premises not taken, on the date Subtenant elects to terminate this Sublease pursuant to this Section 13.2.1, and the Rent allocable to the portions of the Subleased Premises are not condemned shall, from the date of such vesting to the termination, be the amount which would be payable pursuant to Section 13.3. Upon such termination, the Parties shall be released from any further liability or obligation under this Sublease, except as otherwise provided in this Sublease.

13.2.2 Waiver of Right. In the event that Subtenant does not elect to terminate this Sublease pursuant to Section 13.2.1 within one hundred eighty (180) calendar days after any such condemnation, then the remainder of the Subleased Premises shall be deemed suitable for use by Subtenant for Subtenant's uses and purposes and Subtenant shall be deemed to have waived any right to terminate this Sublease pursuant to this Section 13.2 as a result of such taking.

#### **Section 13.3** Partial Condemnation.

If only a part of the Subleased Premises is condemned pursuant to a condemnation or if the remainder is, in Subtenant's reasonable opinion, suitable for use by Subtenant for Subtenant's uses and purposes, this Sublease shall remain in full force and effect as to that portion of the Subleased Premises not taken, but the Rent shall be reduced during the unexpired

portion of the Amended Sublease Term to such amount as may be fair and equitable under the circumstances, giving due consideration to the amount of Rent formerly payable hereunder, the portion of the Subleased Premises taken, and the value and utility of the remainder of the Subleased Premises.

**Section 13.4** Sublandlord's Restoration.

If the Improvements are affected by condemnation, and if this Sublease is not terminated as a result thereof, Sublandlord shall repair or restore the remainder of the Improvements to a functional unit to the extent physically and economically practical and feasible under the circumstances with reasonable speed, at the expense of Subtenant, subject to Force Majeure Events and availability of sufficient funds.

**Section 13.5** Intentionally Omitted.

**Section 13.6** Intentionally Omitted.

**ARTICLE XIV**

**PEACEFUL ENJOYMENT/SUBLANDLORD INSPECTIONS/REPORTING**

**Section 14.1** Peaceful Enjoyment.

Subject to all of the terms and provisions of this Sublease and the Lease, Sublandlord covenants and warrants that during the entirety of the Amended Sublease Term, Subtenant, on paying the Rent and other payments herein provided and performing and observing all of its covenants and agreements herein contained and provided, shall and may peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, the Subleased Premises during the entire Amended Sublease Term.

**Section 14.2** Sublandlord Physical Inspection Right.

14.2.1 During the Amended Sublease Term, Sublandlord, in its capacity as Sublandlord hereunder, shall have the right (but not the duty nor obligation), upon reasonable advance written notice to Subtenant (of at least twenty-four (24) hours, except in the event of emergency), to enter upon the Subleased Premises during normal business hours for the purpose of inspecting the Subleased Premises; provided, however, (i) Subtenant shall have the right to have a representative of Subtenant accompany Sublandlord during such entry and inspection, and (ii) Sublandlord, taking into account the use of the Subleased Premises as a Charter School and the need for protection of the students, shall use reasonable efforts not to interfere with the activities (including construction activities) of Subtenant.

14.2.2 Any inspection by Sublandlord of the Subleased Premises shall not be deemed or construed as a waiver of or approval of any Event of Default under this Sublease existing at the time of the inspection; and provided, further, however, that in no event shall any such inspection by Sublandlord be deemed or construed to be the assumption by Sublandlord of all or any of Subtenant's obligations under this Sublease, including, without limitation, the obligation to maintain the Subleased Premises in a safe and secure manner and in a state of good repair.

14.2.3 During the last thirty (30) months of the Amended Sublease Term, Sublandlord shall, taking into account the use of the Subleased Premises as a Charter School and the need for protection of the students, have the right to enter the Subleased Premises during normal business hours, upon reasonable prior written notice to and accompanied by a representative of Subtenant, for purposes of showing the Subleased Premises to prospective subtenants.

## **ARTICLE XV**

### **SURRENDER OF SUBLEASED PREMISES**

#### **Section 15.1 Surrender.**

Subtenant covenants and agrees to and with Sublandlord that upon termination of this Sublease, whether by lapse of time or because of any of the conditions or provisions contained herein, Subtenant will peaceably and quietly yield up and surrender possession to Sublandlord of the Subleased Premises and the Improvements, including without limitation, the Building and all other permanent improvements and any other properties (if applicable) herein on termination hereof without disturbance or molestation thereof, subject to Sublandlord's rights under Section 15.2 below.

#### **Section 15.2 Removal of Decorations, Furnishings, Equipment and Inventory.**

Subject to Section 8.4.2, Subtenant, at Subtenant's sole cost and expense, shall promptly make all repairs, perform all maintenance and make all replacements in and to the Subleased Premises that are reasonably necessary or desirable to keep the Subleased Premises and the Improvements in reasonably good condition and repair; in a reasonably clean, safe and tenantable condition; and otherwise in accordance with all Applicable Laws and the requirements of this Sublease. Subject to Section 8.4.2, Subtenant shall maintain all Decorations, Fixtures, Furnishings, Equipment and Inventory, in reasonably clean, safe and sanitary condition, shall take good care thereof and make all reasonably necessary repairs and replacements thereto. Subtenant shall not suffer no waste or injury to any part of the Subleased Premises, and shall, at the expiration or earlier termination of the Amended Sublease Term, surrender the Subleased Premises in an order and condition equal to or better than their order and condition on the Amended Sublease Date, except for ordinary wear and tear. All Alterations or affixed decorations in the nature of fixtures in or to the Subleased Premises (including the Improvements) and to the Property made by either party shall immediately become the property of Sublandlord and shall remain upon and be surrendered with the Subleased Premises as a part thereof at the end of the Sublease Term hereof without disturbance, molestation or injury; provided, however, Subtenant shall have the right, to remove all Decorations, Fixtures, Furnishings, Equipment and Inventory (except for anything that is affixed to any wall, which shall not be removed by Subtenant, other than any "Smart Board" installed by Subtenant, which may be removed by Subtenant provided that such removal is in compliance with the terms hereof) installed in the Subleased Premises at the expense of Subtenant at the termination or expiration of the Amended Sublease Term, if Subtenant is not in default of the Sublease at the time of such termination or expiration and if Subtenant repairs any damage caused to the Subleased Premises by the removal. If such property of Subtenant is not removed by Subtenant upon termination or expiration of the Sublease, such property shall be deemed abandoned and

Sublandlord may dispose of such property thereafter, provided that Subtenant shall reimburse Sublandlord for the disposal of such property as Additional Rent. If Subtenant shall make any Alterations to the Subleased Premises without Sublandlord's prior written consent when such prior written was required hereunder, Sublandlord may elect, at Sublandlord's sole option, to require Subtenant to remove the same at the expiration or earlier termination of this Sublease and place the Subleased Premises in the same condition as before such Alterations were made. Sublandlord may elect, at its sole option, to require Subtenant to remove any and all electrical wiring installed by or on behalf of Subtenant in the Subleased Premises.

**Section 15.3 Holdover.** If Subtenant holds over at the expiration or earlier termination of the Amended Sublease Term without Sublandlord's consent, then, in addition to all other rights and remedies of Sublandlord provided by the terms of this Sublease, Subtenant shall pay Sublandlord an amount equal to (i) Two Hundred Percent (200%) for the first month of holdover; (ii) Two Hundred and Fifty Percent (250%) for the second month of holdover; and (iii) Three Hundred Percent (300%) for the third month of holdover and for every month thereafter of, in each case, the Base Rent and Additional Rent then payable for such period by Subtenant under this Sublease, calculated on a monthly basis for each month, or portion thereof, that Subtenant remains in possession of the Subleased Premises after expiration or other termination of the Amended Sublease Term. Subtenant shall also indemnify and hold harmless Sublandlord against and from all claims and demands by Landlord for rent and damages claimed pursuant to the Lease and arising out of such holdover. Nothing contained in this Sublease shall be deemed to be consent by Subtenant to the holding over by Subtenant, nor a waiver of any other remedy which may be available to Sublandlord. Subtenant's obligations under this Subsection 15.3 shall survive the termination of this Sublease.

## ARTICLE XVI

### NOTICE

Except the Rent payment provisions in Section 3.3.3, any notices or other communications required to be given under this Sublease shall be in writing and delivered (i) by certified mail (return receipt requested, first-class postage pre-paid), (ii) by hand, (iii) by reputable private overnight commercial courier service, or (iv) by electronic mail, followed by delivery of such notice or other communication by the method specified in clause (i), (ii) or (iii) above. Notices served upon Sublandlord or Subtenant in the manner aforesaid shall be deemed to have been received for all purposes under this Sublease at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next Business Day after the notice is deposited with the overnight delivery service; (iii) if given by certified mail, return receipt requested, first-class postage prepaid, three (3) business days after the date which is stamped by the United States Post Office on the envelope enclosing same; or (iv) if given by electronic mail, at the time such notice was sent. If notice is tendered under the terms of this Sublease and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Sublease. Either party may change its address for the giving of notices by notice given in accordance with this Section. If Sublandlord or the holder of any leasehold mortgage notifies Subtenant that a copy of any notice to Sublandlord shall be sent to such holder at a specified

address, then Subtenant shall send (in the manner specified in this Section and at the same time such notice is sent to Sublandlord) a copy of each such notice to such holder. Any such holder shall have thirty (30) calendar days (or such longer period of time necessary to cure such default if such default cannot reasonably be cured within such thirty (30) calendar days period provided such holder promptly commences any such cure and thereafter diligently pursues completion of such cure) after receipt of such notice to cure any Sublandlord default before Subtenant may exercise any remedy. Any cure of Sublandlord's default by such holder shall be treated as performance by Sublandlord. All notices shall be addressed as follows:

If to Sublandlord: Old Congress Heights Redevelopment Company, LLC  
3215 Martin Luther King, Jr. Avenue, S.E.  
Washington, DC 20032  
Attention: Phinis Jones  
Telecopy: 202-727-6014  
E-Mail: phinis@thecsmi.com

with a copy (which shall not constitute notice) to:

Darvin R. Davitian, Esq.  
Perkins Coie LLP  
700 13th Street, N.W.; Suite 700  
Washington, D.C. 20005  
Telecopy: 202-654-9954  
E-Mail: ddavitian@perkinscoie.com

If to Subtenant: Democracy Prep Congress Heights Public Charter School  
1767 Park Avenue; 3<sup>rd</sup> Floor  
New York, NY 10035  
Attn: Benjamin Feit, Chief of Staff and Kent Anker, General Counsel  
Telecopy: (646) 829-9635  
E-Mail: kent.anker@democracyprep.org,  
benjamin.feit@democracyprep.org

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Attn: Kimberly Lucas, Esq.  
Telecopy: (212)751-4864  
E-Mail: kimberly.lucas@lw.com

Where a notice being sent under this Sublease pertains to the default or non-performance of a party under this Sublease, a copy of such notice shall also be sent to Landlord at:

District of Columbia Department of General Services  
2000 14th Street NW, 8th Floor  
Washington, DC 20009  
Attn: Director

## ARTICLE XVII

### SUBLANDLORD DEFAULT

Except as otherwise provided in the Sublease, it shall be a Sublandlord default ("Sublandlord Default") hereunder if Sublandlord fails to perform or observe any of its obligations under this Sublease after a period of thirty (30) calendar days from the date Sublandlord receives written notice thereof from Subtenant setting forth in reasonable detail the nature and extent of the failure and identifying the applicable Sublease provision that such obligation was required to be performed hereunder; provided, however, that Sublandlord shall not have committed a Sublandlord Default if such failure is of a type and nature that cannot reasonably be cured within such thirty (30) day period, so long as Sublandlord promptly commences the curing of such failure within such thirty (30) day period and thereafter diligently prosecutes to completion the curing of such failure and provided that it is reasonably expected that such default is susceptible of being cured within six (6) months following such thirty (30) day period. It is specifically understood and agreed that a Sublandlord Default occurs after the expiration of notice and applicable cure period.

In the event of a Sublandlord Default, Subtenant shall have the right to exercise all of its rights and remedies under this Sublease, at law or in equity, including, without limitation, specific performance and damages, except as is otherwise stated in this Sublease but only if (i) Subtenant first seeks diligently to be reimbursed by any insurance coverage it maintains for the damage it has sustained, and (ii) its insurers refuse to reimburse Subtenant for such damage. In addition to and not in limitation of the other remedies in this Sublease, Subtenant shall be entitled to the restraint by injunction of any violation or attempted or threatened violation of any of the non-monetary terms, covenants, conditions, provisions or agreements of this Sublease. No failure by Subtenant hereto to insist upon the strict performance of any of the terms of this Sublease or to exercise any right or remedy upon a default hereunder, no acceptance by Subtenant of partial performance, and no custom or practice of the Parties hereto at variance with the provisions hereof shall constitute a waiver of any such default or of any of the terms of this Sublease or a waiver of Subtenant's rights to demand exact compliance with the provisions contained in this Sublease. None of the terms of this Sublease to be kept, observed, or performed by Sublandlord and no breach thereof shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Sublease, but each of the terms of this Sublease shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any default hereunder by Subtenant shall be implied from any omission by the Subtenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

None of Sublandlord's Related Parties shall have any personal liability under this Sublease or on account of any undertaking herein contained, whether expressed or implied, nor shall Sublandlord or any of Sublandlord's Related Parties be liable to Subtenant or any Subtenant's Related Parties for any consequential damages, indirect losses, loss of value, temporary loss of business, lost profits, or lost opportunity damages at or arising from the

Subleased Premises or the Property suffered by Subtenant. Subtenant hereby releases Sublandlord and Sublandlord's Related Parties from all such personal liability, if any. Subtenant hereby waives personal recourse against Sublandlord's officers, employees, agents or representatives or their respective assets.

## ARTICLE XVIII

### INTENTIONALLY OMITTED

## ARTICLE XIX

### EXTENSIONS

#### **Section 19.1** Extension Options.

Subtenant shall have the option (each, an "Extension Option") to extend the term of this Sublease for four (4) consecutive periods of five (5) additional Sublease Years (each additional five (5) Sublease Year period is hereinafter referred to as an "Extension Period") so that Subtenant may have the option to extend the Amended Sublease Term therefor for a total of twenty (20) additional Sublease Years, provided that Subtenant provides written notice to Sublandlord of its election to exercise each such Extension Option ("Election Notice") no earlier than thirty (30) months and no later than eighteen (18) months prior to the expiration of the then existing Amended Sublease Term (as the same may have been extended); provided, however, Subtenant may only exercise the second, third and fourth Extension Options if Subtenant shall have exercised any and all preceding Extension Options. Subtenant's fourth and final Extension Period shall be shortened, if necessary, so that it does not extend past the Lease Expiration Date as defined in the Lease.

#### **Section 19.2** Extension Period Base Rent.

For any Extension Period of the Sublease, Base Rent shall be the fair market rental value for the Subleased Premises, including the Improvements in their then condition, as used for school purposes (or such other additional purposes as the Subleased Premises may then be used) upon Subtenant's exercise of its Extension Option ("Fair Market Rental Value"), but in no event less than the then current total escalated and increased Base Rent. Fair Market Rental Value notwithstanding, beginning on the first day of the second Sublease Year in an Extension Period the Base Rent for the Extension Period shall be escalated by increasing the Base Rent payable in the first Sublease Year by three percent (3%) and in each subsequent Sublease Year thereafter.

Within thirty (30) days of receipt of Subtenant's Election Notice, Sublandlord shall provide Subtenant with its determination of the Fair Market Rental Value. The Parties shall have a period of thirty (30) days to determine if they can agree on a Fair Market Rental Value. If the Parties are unable to agree on Fair Market Rental Value within such period each party shall within the next thirty (30) days provide the other with the opinion of a real estate broker licensed in the District of Columbia for at least ten (10) years with experience in the leasing of public charter schools in the District of Columbia on the Fair Market Rental Value. The Parties shall then have a period of thirty (30) days to determine if they can agree on a Fair Market Rental

Value. If the Parties are unable to reach an agreement on the Fair Market Rental Value within such period, then the two brokers used by the Parties shall within fifteen (15) days select a third broker licensed in the District of Columbia for at least ten (10) years with experience in the leasing of public charter schools in the District of Columbia. The third broker shall then have a period of thirty (30) days independently to determine the Fair Market Rental Value and then, based on that determination, select the Fair Market Rental Value determined by either the Sublandlord's or the Subtenant's broker that is closest to the independent Fair Market Rental Value determination made by the third broker, which shall be the third broker's recommended Fair Market Rental Value to the Parties. Such recommendation shall not be binding and it shall be up to each of the parties to accept or reject such recommendation. If the Parties do not reach agreement on the Fair Market Rental Value within thirty (30) days of receipt of the third broker's recommendation, there shall be no extension of the Sublease Agreement and this Sublease will terminate at the end of the current Amended Sublease Term.

**Section 19.3** Deliberately omitted.

## **ARTICLE XX**

### **REPRESENTATIONS AND WARRANTIES**

**Section 20.1** Subtenant.

Subtenant hereby represents and warrants to Sublandlord as follows:

20.1.1 (i) Subtenant or its sublessee is, and shall at all times be, a public charter school with a charter in effect pursuant to the District of Columbia School Reform Act of 1995 (D.C. Official Code § 38-1800.01 et seq. (Supp. 2005)); (ii) Subtenant or its sub-sublessee shall operate the Subleased Premises as a public charter school and in accordance with all applicable laws, including without limitation, the District of Columbia School Reform Act of 1995 (D.C. Official Code § 38-1800.01 et Seq. (Supp. 2005)) and all regulations promulgated thereunder (iii) Subtenant is duly qualified to conduct business in the District of Columbia; and (iv) Subtenant has the power and authority to conduct the business in which it is currently engaged.

20.1.2 Subtenant (i) has the power and authority to execute, deliver and perform its obligations under this Sublease, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Sublease.

20.1.3 Deliberately omitted.

20.1.4 This Sublease has been duly executed and delivered by Subtenant, and constitutes the legal, valid and binding obligation of Subtenant, enforceable against Subtenant in accordance with its terms.

20.1.5 The execution, delivery and performance by Subtenant of this Sublease will not violate any Applicable Laws or result in a breach of any contractual obligation to which Subtenant is a party.



20.1.6 Subtenant's execution, delivery and performance of this Sublease and the transactions contemplated hereby shall not (i) to the best of Subtenant's knowledge, violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Subtenant; or (ii) result in a breach or default under any provision of the organizational documents of Subtenant.

20.1.7 No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the best knowledge of Subtenant, threatened by or against Subtenant which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Subtenant and its ability to perform its obligations under this Sublease;

20.1.8 Subtenant represents and warrants to Sublandlord that Subtenant has not dealt with any real estate broker in connection with this Sublease and agrees to indemnify and keep harmless Sublandlord from any and all claims arising out of any breach of this representation and warranty. The provisions of this Section shall survive the expiration or earlier termination of this Sublease.

20.1.9 The Subleased Premises shall be Subleased and used by Subtenant and Subtenant's Related Parties as a public charter school in accordance with all Applicable Laws, and not for any other purpose. Subtenant shall provide information and documents relating to the compliance of this section immediately upon Sublandlord's request.

20.1.10 Except for Subtenant's qualified and approved exemption by Governmental Authority, in no event shall Subtenant, or any of Subtenant's Related Parties assert for its own benefit, or attempt to assert, an exemption (including from sales taxes) or immunity available to the District, if any, under Applicable Laws on the basis of Landlord's involvement in the transaction contemplated by this Sublease.

20.1.11 Neither Subtenant nor any Person controlling Subtenant or owning directly or indirectly any interest of ten percent (10%) or greater in Subtenant has engaged in any dealings or transactions (i) in contravention of the applicable anti-money laundering laws or regulations or orders, including without limitation, money laundering prohibitions, if any, set forth in the Bank Secrecy Act (12 U.S.C. §§ 1818(s), 1829(b) and 1951-1959 and 31 U.S.C. §§ 5311-5330), the USA Patriot Act of 2001, Pub. L. No. 107-56, and the sanction regulations promulgated pursuant thereto by U.S. Treasury Department Office of Foreign Assets Control, (collectively, together with regulations promulgated with respect thereto, the "Anti-Money Laundering Acts"), (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Anti-Terrorism Order"), (iii) in contravention of the provisions set forth in 31 C.F.R. Part 103, the Trading with the Enemy Act, 50 U.S.C. Appx. § 1 *et seq.* or the International Emergency Economics Powers Act, 50 U.S.C. § 1701 *et seq.* (together with the Anti-Money Laundering Acts, the "Terrorist Acts") or (iv) is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time. Neither Subtenant nor any Person controlling Subtenant or owning directly or indirectly any

interest of ten percent (10%) or greater in Subtenant (a) is conducting any business or engaging in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A, or is named in the Annex to the Anti-Terrorism Order or any terrorist list published and maintained by the Federal Bureau of Investigation and/or the U.S. Department of Homeland Security, as may exist from time to time, or (b) is a Person described in section 1 of the Anti-Terrorism Order (a "Restricted Person"). Subtenant shall not be in breach of this Section 20.1.12 as a result of the act or omission of any Person who is not otherwise an Affiliate of Subtenant and whose only connection to Subtenant is ownership of less than five percent (5%) in a company that itself has a direct or indirect interest in the Subtenant and is traded on a U.S. national exchange unless such Person has the power to direct the management or operations of Subtenant, in which case there shall be no threshold percentage applicable to such inquiry, or unless Subtenant has actual knowledge that such Person is listed on one of the aforementioned lists or has or is in violation of the Terrorist Acts, or the Anti-Terrorism Order or their respective regulations.

**Section 20.2** Sublandlord.

Sublandlord hereby represents and warrants to Subtenant as follows:

20.2.1 Sublandlord (i) has the power and authority to execute, deliver and perform its obligations under this Sublease, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Sublease.

20.2.2 No consent or authorization of, or filing with, any Person (including any governmental authority), which has not been obtained, is required in connection with the execution and delivery of this Sublease by Sublandlord.

20.2.3 This Sublease has been duly executed and delivered by Sublandlord, and constitutes the legal, valid and binding obligation of Sublandlord, enforceable against it in accordance with its terms.

20.2.4 The execution, delivery and performance by Sublandlord of this Sublease will not violate any Applicable Laws or result in a breach of any contractual obligation to which Sublandlord is a party.

20.2.5 Sublandlord's execution, delivery and performance of this Sublease and the transactions contemplated hereby shall not violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority with proper jurisdiction that is binding on Sublandlord.

20.2.6 No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the best knowledge of Sublandlord, threatened by or against Sublandlord which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Sublandlord's ability to perform its obligations under this Sublease.

20.2.7 Except as otherwise set forth in this Sublease, no consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the performance of this Sublease by Sublandlord.

20.2.8 The negotiation, execution, delivery and performance of the Sublease by Sublandlord are not and will not be induced by, resulting from or based on Improper Influence. As used herein, “Improper Influence” means any influence that induces or tends to induce an employee or officer of Sublandlord to give consideration or to act regarding a sublease with Sublandlord on any basis other than on the merits of the matter or in violation of any Applicable Laws or regulation regarding the disposition or acquisition of a subleasehold interest.

20.2.9 As of the Amended Sublease Commencement Date the Property will be in compliance with all Environmental Laws. To the extent this representation is not correct (notwithstanding anything to the contrary herein and regardless of whether Sublandlord knew of such noncompliance), Sublandlord will be responsible for all liabilities and costs relating to such violation.

20.2.10 No consent is required for the effectiveness of this Sublease from Landlord pursuant to the Lease.

20.2.11 Sublandlord has not placed any liens or encumbrances upon the Subleased Premises and is not aware of any liens or encumbrances upon the Subleased Premises except the Permitted Encumbrances and such additional liens or encumbrances of record as of the Prior Sublease Commencement Date attached hereto as Exhibit C.

## ARTICLE XXI

### MISCELLANEOUS

**Section 21.1** Governing Law. This Sublease shall be governed by the laws of the District of Columbia, and the covenants contained herein shall be deemed performable in the District of Columbia.

**Section 21.2** Recording of Sublease. Subtenant may record a memorandum of this Sublease in the real property records of the District of Columbia. If any transfer or recordation tax is imposed by the District of Columbia as a result of such recordation, Subtenant shall pay the tax.

**Section 21.3** Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. If the final date of any period which is set out in any provision of this Sublease falls on a Saturday, Sunday or legal holiday under the laws of the United States, or the laws of the District of Columbia, or on a day when courts, banks, the New York Stock Exchange or District or federal government offices are generally closed in the Washington metropolitan area because of executive order, inclement weather, acts of terrorism or widespread power or other utility outages that cause Sublandlord or Subtenant, as the case may be, to be unable to perform hereunder, such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday or subject to the foregoing events.

**Section 21.4** Rule Against Perpetuities. If any right granted in this Sublease or any provision contained in this Sublease is subject to the rule against perpetuities and the same shall not occur or shall not have vested on the date that is twenty-one (21) years after the death of the last to die of all now living descendants of George W. Bush, William J. Clinton, George H. W. Bush, and James E. Carter, Jr., all of whom are current or former Presidents of the United States of America, then such right or provision shall terminate as of such date.

**Section 21.5** Captions, Numberings and Headings. Captions, numberings and headings of Articles, Sections and Schedules in this Sublease are for convenience of reference only and shall not be considered in the interpretation of this Sublease.

**Section 21.6** Number; Gender. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

**Section 21.7** Counterparts. This Sublease may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Executed counterparts of this Sublease delivered electronically via facsimile transmission or electronic mail shall be deemed originals for all purposes under this Sublease and shall not be subject to challenge on the basis of not being originally signed counterparts.

**Section 21.8** Severability. In the event that one or more of the provisions of this Sublease or any portion thereof, or the application thereof to any person(s) or circumstances shall, to any extent, be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, each such provision shall be deemed severable and the remaining provisions of this Sublease shall continue in full force and effect, unless this construction would operate as an undue hardship on Sublandlord or Subtenant, or would constitute a substantial deviation from the general intent of the Parties as reflected in this Sublease.

**Section 21.9** No Oral Modifications or Waivers. No modification of this Sublease shall be valid or effective unless the same is in writing and signed by Sublandlord and Subtenant.

**Section 21.10** Schedules and Exhibits. All Exhibits and Schedules referenced in this Sublease are incorporated by this reference as if fully set forth in this Sublease.

**Section 21.11** Including. The word “including,” and variations thereof, shall mean “including without limitation.”

**Section 21.12** Integration. This Sublease and all Exhibits appended to this Sublease and the documents and agreements referenced in this Sublease contain the entire understanding between Sublandlord and Subtenant with respect to the Sublease, and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between them with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, between Sublandlord and Subtenant with respect to the Sublease other than as are expressly set forth in this Sublease and the Schedules and Exhibits appended to this Sublease and the documents and agreements referenced in this Sublease.

**Section 21.13 No Construction Against Drafter.** This Sublease has been negotiated and prepared by Sublandlord and Subtenant and their respective attorneys and, should any provision of this Sublease require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

**Section 21.13A Waiver of Jury Trial.** Sublandlord and Subtenant each hereby waives any right to jury trial in connection with any suit, action, proceeding or claim relating to this Sublease or to the transactions contemplated by this Sublease.

**Section 21.14 Force Majeure.** Sublandlord and Subtenant shall be excused from performing any other obligation under this Sublease (i) to the extent that the performance is actually prevented or delayed, retarded or hindered by a Force Majeure Event, and (ii) the party seeking to claim a Force Majeure Event promptly notifies the other of the existence of such Force Majeure Event. Notwithstanding the foregoing, except as otherwise expressly set forth in this Sublease, the occurrence of a Force Majeure Event shall not excuse Subtenant from any obligation to pay any amount required under this Sublease on the date such payment is otherwise required under this Sublease).

**Section 21.15 Deliberately Omitted.**

**Section 21.16 Time of Essence.** Time is of the essence with respect to the performance by Sublandlord and Subtenant of their obligations under this Sublease.

**Section 21.17 Amendments.** This Sublease may be amended or modified only by a written instrument executed by Subtenant and Sublandlord.

**Section 21.18 Generally Applicable Laws.** Subtenant acknowledges that (i) nothing set forth in this Sublease exempts the Improvements from Applicable Laws and regulations in effect from time to time in the District of Columbia, and (ii) execution of this Sublease by Sublandlord is not binding upon, and does not affect the jurisdiction of or the exercise of police power by, Governmental Authority or independent agencies of the District of Columbia, including without limitation the Zoning Commission and Board of Zoning Adjustment.

**Section 21.19 Deliberately omitted.**

**Section 21.20 Waivers; Etc.** No waiver or waivers of any breach or default or any breaches or defaults by either party of any term, condition or liability of or performance by the other party of any duty or obligation hereunder, including without limitation, the acceptance by Sublandlord or payment by Subtenant of any Rent at any time or in any manner other than as herein provided shall be deemed a waiver thereof, nor shall any such waiver or waivers be deemed or construed to be a waiver or waivers of subsequent breaches or defaults of any kind, character or description under any circumstances. If any term or provision of this Sublease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Sublease shall be valid and shall be enforceable to the extent permitted by law.

**Section 21.21 Jurisdiction and Right to Injunction.** Any action or proceeding involving any dispute under this Sublease shall be determined in a court of competent jurisdiction within the District of Columbia, as provided in D.C. Official Code § 10-1014 (2006 Supp.). Whenever either party shall fail to comply with any covenant or provision of this Sublease, the other party shall be entitled to enforce its rights by injunctive relief, including an action for specific performance, any provision in this Sublease to the contrary notwithstanding.

**Section 21.22 Non-Recourse and Exclusions from Liability.** Under no circumstances shall Sublandlord or Sublandlord's Related Parties or Subtenant or Subtenant's Related Parties be liable for any exemplary, punitive, consequential or indirect damages (or for any interruption of or loss to business) in connection with or relating to this Sublease. Further, at no time shall Sublandlord's liability exceed its interest in the Subleased Premises. Notwithstanding anything set forth in this Sublease or at law or in equity to the contrary, none of Subtenant's Related Parties or Sublandlord's Related Parties shall be personally liable or responsible for any duties, obligations or liabilities of Subtenant or Sublandlord, respectively, under this Sublease.

**Section 21.23 Rights Not for Benefit of Third Parties.** In no event and under no circumstances whatsoever shall the rights herein granted or to be granted in the future pursuant to this Sublease, to or for the benefit of Sublandlord or Subtenant be deemed to be for the benefit of the public. Except as expressly provided for herein, no individual or entity that is not a signatory to this Sublease (other than successors and permitted assigns of the signatories of this Sublease) shall have any rights or privileges under or arising out of this Sublease, nor shall any person or entity that is not a signatory to this Sublease otherwise be deemed a third party beneficiary of this Sublease.

**Section 21.24 Failure to Respond to Requests for Approval after Completion.** Except as expressly provided to the contrary in this Sublease, in the event any approval, consent, authorization, certificate, grant, conveyance, or permission is requested or demanded by Subtenant pursuant to the express provisions of this Sublease, and Sublandlord does not respond thereto within the specified period stated in the subject provision following the party's receipt of such demand or request, either by giving the item requested or by refusing to give the same and specifying specific reasons for such refusal, said failure to respond shall not be deemed to constitute the requested approval or consent, but shall be deemed a rejection of same.

**Section 21.25 Effect of "Review", "Objection", "Failure to Object", "Approval", "Non Approval", or "Consent".** In no event shall any review, objection, failure to object, approval, non approval, or consent by Sublandlord with respect to any act, plan, or proposal of Subtenant made pursuant to any provision of this Sublease or otherwise be deemed (i) to constitute an assumption by Sublandlord of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) to constitute a waiver of any claim or right Sublandlord might have against Subtenant as a result of any loss, damage, or expense (including, without limitation, attorneys' fees and costs of litigation) incurred by Sublandlord by reason of or in connection with any act or omission of Subtenant pursuant to or in accordance with any act, plan, or proposal reviewed by Sublandlord, (iii) to result in Sublandlord's being deemed a joint tortfeasor with Subtenant, or (iv) to be binding on any particular Governmental Authority having jurisdiction over the Subleased Premises.

**Section 21.26 Binding Effect.** This Sublease shall be binding upon and inure to the benefit of Sublandlord, Subtenant and their permitted successors and assigns.

**Section 21.27 Deliberately omitted.**

**Section 21.28 Agents and Representatives.** No Person other than the Parties to this Sublease, and the permitted assignees of such parties, shall have any liability or obligation under this Sublease. Without limiting the generality of the foregoing, (i) Subtenant agrees that no employee, official, consultant, contractor, agent or attorney engaged by Sublandlord in connection with this Sublease or the transactions contemplated by this Sublease shall have any liability or obligation to Subtenant under this Sublease, and (ii) Sublandlord agrees that no consultant, contractor, agent or attorney engaged by Subtenant in connection with this Sublease or the transactions contemplated by this Sublease shall have any liability or obligation to Sublandlord under this Sublease.

**Section 21.29 Further Assurances.** Each of the parties to this Sublease shall execute such further assurances as any other party may reasonably require to confirm and perfect the transaction described in this Sublease.

**Section 21.30 Rights and Remedies Cumulative.** The rights and remedies of Sublandlord under this Sublease, whether provided by law, in equity, or by this Sublease, shall be cumulative, and the exercise by Sublandlord of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

**Section 21.31 Intentionally Omitted.**

**Section 21.32 Estoppels.** From time to time, within ten (10) Business Days after written request of the other Party, or of any holder or prospective holder of a leasehold mortgage (in connection with the encumbrance of the Subleased Premises or an approved Transfer), or of any prospective permitted assignee of Subtenant's interest in this Sublease or any portion thereof, the other Party hereto shall, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the party delivering the estoppel certificate views them), that (i) this Sublease is in full force and effect; (ii) this Sublease has not been modified or amended (or if it has, a list of the amendments); (iii) the party requesting the estoppel certificate is not then in default; (iv) the Parties have fully performed all of their respective obligations thereunder; and (v) such other statements as reasonably may be required by any party or any other appropriate party, including but not limited, the amount of Rent due, if any. The delivery of any estoppel document or certificate by Sublandlord pursuant to this Section 21.32 shall be limited to the actual knowledge, without inquiry, of the person or party designated by Sublandlord from time to time to administer this Sublease.

**Section 21.33 Title Matters and Termination Rights.** Subtenant shall have the right, in its reasonable discretion, to terminate this Sublease following which it shall have no further obligations hereunder, in the event that the following conditions have not been satisfied on or before ninety (90) days following the Amended Sublease Commencement Date: (i) the nondisturbance agreement in compliance with the terms contained in Section 9.1.5 has been

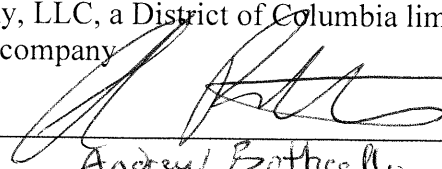
delivered to Subtenant; and (ii) the Sublandlord has recorded in the appropriate public land records of the District of Columbia, a memorandum of the Lease which shall establish as a condition of title to the Property that the Lease has priority to all matters and encumbrances of record except Permitted Encumbrances as evidenced by the Title Commitment; provided that Sublandlord shall have thirty (30) additional days to remove or cure any encumbrances or defects that are not included in Permitted Encumbrances.

[Signature Pages to Follow]



SUBLANDLORD:

Old Congress Heights School Redevelopment  
Company, LLC, a District of Columbia limited  
liability company

By:   
Name: Andrew Botteello  
Title: Managing Member

[Signatures continue on the next page.]

IN WITNESS WHEREOF, Sublandlord and Subtenant have agreed to the foregoing Sublease in its entirety as of the day and year first set forth above, and have executed the same on the day and year first set forth above.

**SUBLANDLORD:**

OLD CONGRESS HEIGHTS SCHOOL  
REDEVELOPMENT COMPANY, LLC, a  
District of Columbia limited liability company

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

**SUBTENANT:**

DEMOCRACY PREP CONGRESS HEIGHTS  
PUBLIC CHARTER SCHOOL, a District of  
Columbia non-profit corporation

By: Borden Wright  
Name: Borden Wright  
Title: Board Chair

**EXHIBIT A**

**GROUND LEASE**

[see attached]

**EXHIBIT B**

**SUBLEASED PREMISES**

The Land referred to herein below is situated in the County of District of Columbia, State of District of Columbia, and is described as follows:

Lot Numbered 0001 in Square Numbered W-5954 in a Subdivision made by District of Columbia, as per plat recorded in the Surveyors Office of the District of Columbia in Liber 205 at Folio 44.

Property Address: 3100 Martin Luther King Jr. Avenue S.E., Washington, D.C. 20032

## **EXHIBIT C**

### **PERMITTED LIENS**

1. Ground Lease Agreement by and between the District of Columbia, as Landlord, and Old Congress Heights School Redevelopment Company, L.L.C., as Tenant, dated September 4, 2008, as amended by that certain First Amendment, dated December 2, 2008, by that certain Second Amendment dated March 3, 2010 as further amended by that certain Third Amendment to Ground Lease Agreement dated on or about December of 2010, and as further amended by that certain Fourth Amendment to Ground Lease Agreement dated on or about the date hereof;
2. Declaration of Covenants and Easement, made as of August 31, 2010 by Old Congress Heights School Redevelopment Company, LLC, a District of Columbia limited liability company, and its successors and assigns for the benefit of the District of Columbia Water and Sewer Authority, a municipal corporation, its successors and assigns;
3. Leasehold Deed of Trust, Assignment, Security Agreement and Fixture Filing, dated on or about the date hereof, made by Old Congress Heights School Redevelopment Company, LLC, a District of Columbia limited liability company for the benefit of the United Bank to be recorded in the land records of the District of Columbia.

**EXHIBIT D**

**RESERVED**

**EXHIBIT E**  
**RENT SCHEDULE**

**Democracy Prep Rent Schedule**

11/19/2015

From	To		OCHS/SHF Rent	DP/SHF Rent	Split 50%	DP Rent	Sq Ft 42,528
Dec 1 2015	31-Jul-16	Esc.	\$ 32.00	\$ 38.40	\$ 3.20	\$ 35.20	\$ 124,743.48
Aug 1 2016	31-Jul-17	2.50%	\$ 32.80	\$ 39.36	\$ 3.28	\$ 36.08	\$ 127,862.07
Aug 1 2017	31-Jul-18		\$ 33.62	\$ 40.34	\$ 3.36	\$ 36.98	\$ 131,058.62
Aug 1 2018	31-Jul-19		\$ 34.46	\$ 41.35	\$ 3.44	\$ 37.90	\$ 134,335.09
Aug 1 2019	31-Jul-20		\$ 35.32	\$ 42.38	\$ 3.53	\$ 38.85	\$ 137,693.47
Aug 1 2020	31-Jul-21		\$ 36.21	\$ 43.44	\$ 3.62	\$ 39.82	\$ 141,135.80
Aug 1 2021	31-Jul-22		\$ 37.11	\$ 44.53	\$ 3.71	\$ 40.82	\$ 144,664.20
Aug 1 2022	31-Jul-23		\$ 38.04	\$ 45.64	\$ 3.80	\$ 41.84	\$ 148,280.80
Aug 1 2023	31-Jul-24		\$ 38.99	\$ 46.78	\$ 3.90	\$ 42.89	\$ 151,987.82
Aug 1 2024	31-Jul-25		\$ 39.96	\$ 47.95	\$ 3.99	\$ 43.96	\$ 155,787.52
Aug 1 2025	31-Jul-26		\$ 40.96	\$ 49.15	\$ 4.09	\$ 45.06	\$ 159,682.21

**EXHIBIT F**  
**SHARED SPACE AGREEMENT**

[see attached]



## **EXHIBIT F -- SHARED SPACE AGREEMENT**

### **JUNE 13, 2009**

The intent of this agreement is to outline the terms by which School House Finance and its Sub-Sublessee Imagine Schools Southeast (collectively "SHF") and their assigns will share the use of the Cafetorium (and associated restrooms and warming kitchen, collectively the "Space") and the parking as detailed on Exhibit 1 with the Congress Heights Training and Development Center ("CDC").

#### **Hours of Use and Priority:**

- a. SHF has the exclusive use of the Space and the parking from 7AM to 6PM Monday through Friday with the exception of Federal holidays.
- b. SHF will have the first right to use the Space at any other time ("Other Time"). The CDC will have the second right to use the space.

#### **Booking**

The CDC will manage the calendar for the Space's Other Time and post such calendar in a shared electronic format so that both SHF and the CDC shall have access to such information at all times.

Scheduling shall be done on a school year basis, August 1<sup>st</sup> through July 31<sup>st</sup>. SHF shall schedule its events for the following school year by July 31<sup>st</sup>. The calendar shall be open to the CDC commencing August 1<sup>st</sup>. Scheduling shall be done during the school year on a first-come, first-serve basis.

The CDC may request use of the Space during SHF's exclusive time. SHF will consider in good faith any such CDC requests.

#### **Cost of Space**

On an annual basis, SHF will establish an hourly cost for using the Shared Space (the "Cost of Use"). This cost will be based on the school's hourly operating budget for electricity, water, gas and repairs & maintenance, collectively "Operating Expenses" (calculated by totaling Operating Expenses and dividing this sum by the total square footage of the building and multiplied by the Cafetorium square footage) and will be fair and reasonable to the user. The CDC will pay the Cost of Use to SHF for any time that CDC uses the Space within thirty days of its use.

The CDC will be responsible for cleaning the space and ensuring that the space is left in the condition it was found after each use. In the event SHF is not

satisfied with the cleaning, it may perform such service itself and bill the CDC for two times the actual cost of such cleaning.

### **Security**

The CDC will be responsible for securing the Space during its use. The CDC will be the only entity other than SHF to have "keys"/access to the Space and will have a CDC representative on site during any event or use of the Space by or through the CDC.

### **Insurance/Damages**

The CDC will provide the following insurance:

Commercial General Liability Insurance: providing \$1 million per occurrence and \$2 million aggregate coverage

Automobile Liability: \$1 million combined single limit coverage

Excess/Umbrella Liability: \$3 million per occurrence and \$3 million aggregate coverage

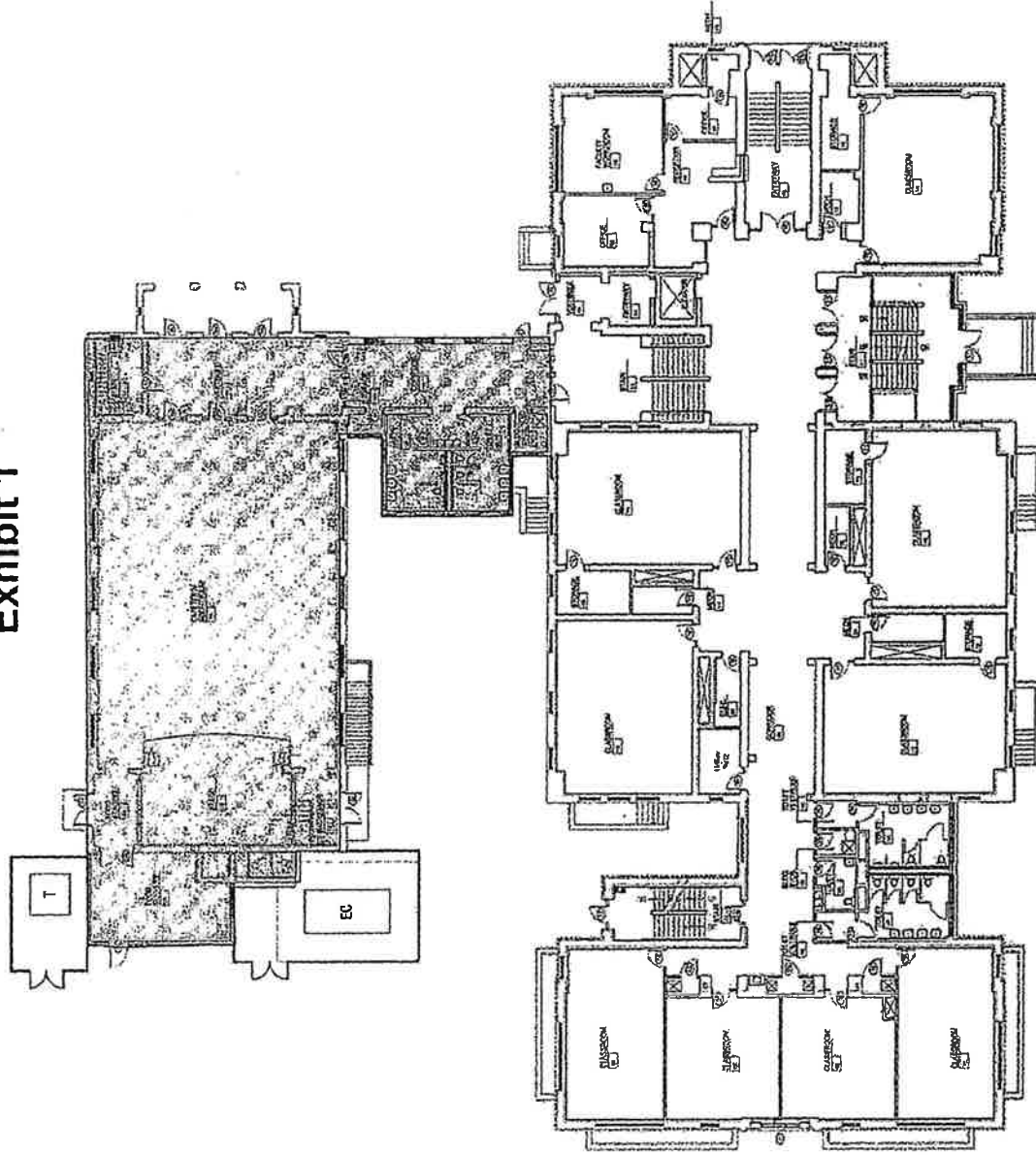
The CDC will name SHF as an additional insured on its insurance policy.

In the event of any damages resulting from the CDC's use of the Space, the CDC will be responsible for repairing or fixing the damage and will undertake this process with SHF's cooperation promptly after it has been identified.

### **Rules and Regulations**

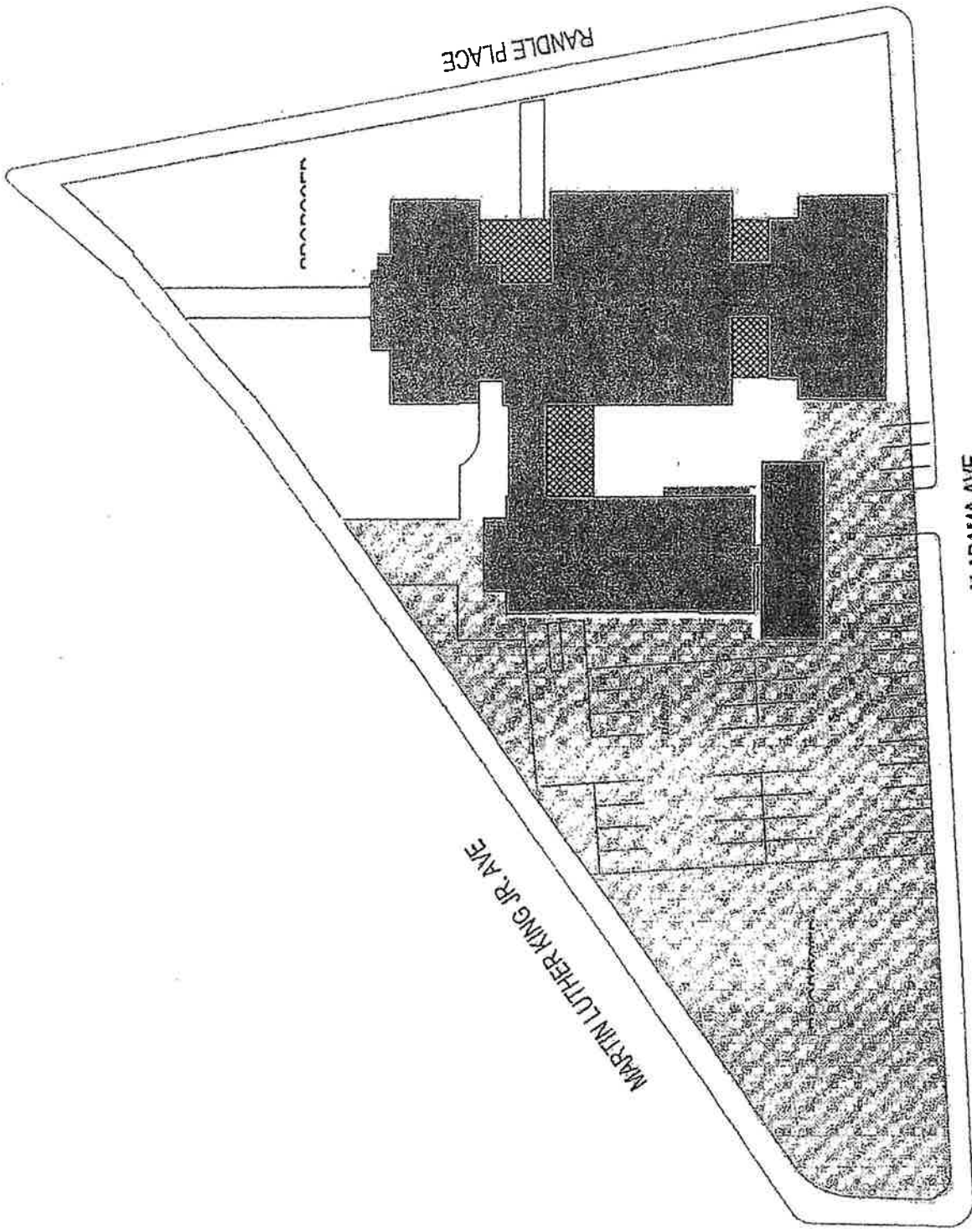
SHF and the CDC will work together in good faith to establish a detailed list of rules and regulations for the Space's use (the "Rules"). The Rules, among other matters, will insure that no provisions of the Sublease are violated by or during the use of the Space and will be reviewed and may be changed from time to time as the parties deem necessary. CDC will be responsible for ensuring that the Rules are adhered to.

Exhibit 1



Interior Shared Space

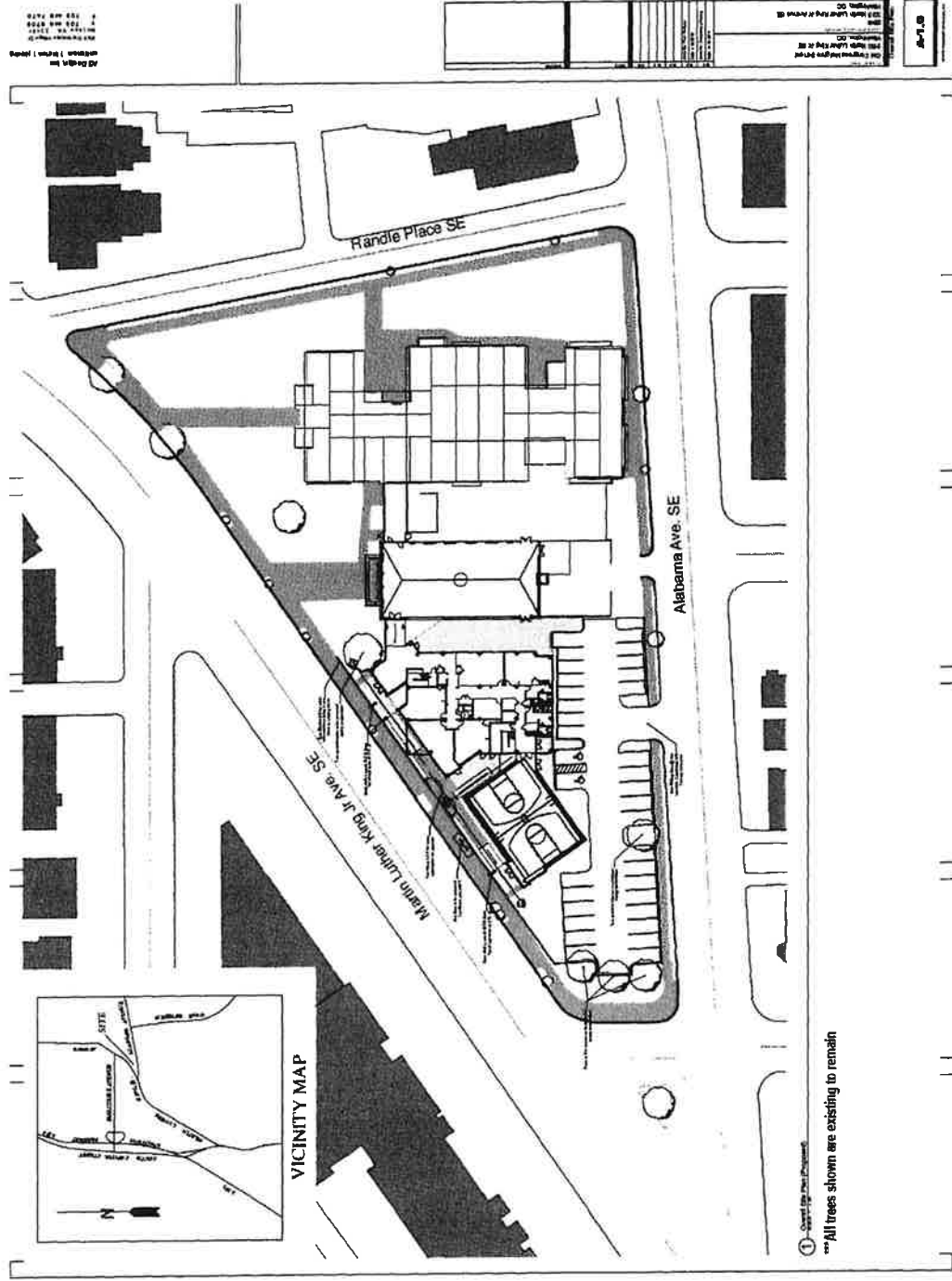




ALABAMA AVE  
**Exterior Shared Space**

# EXHIBIT G

## CONCEPTUAL DRAWING OF PROPOSED IMPROVEMENTS ON WESTERN PORTION



**EXHIBIT H**  
**FORM OF LENDER AGREEMENT**

[see attached]

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2015 (the "Effective Date"), between UNITED BANK, whose address is 1875 Eye Street, N.W., Washington, DC 20006 ("Lender"), and DEMOCRACY PREP CONGRESS HEIGHTS PUBLIC CHARTER SCHOOL, a District of Columbia non-profit corporation, whose address is 3100 Martin Luther King Jr. Avenue, S.E., Washington, DC 20032 ("Tenant"), with reference to the following facts:

A. Old Congress Heights School Redevelopment Company, LLC, a District of Columbia limited liability company, whose address is 3215 Martin Luther King, Jr. Avenue, S.E., Washington, DC 20032 ("Landlord"), is the leasehold owner of the real property located at 3100 Martin Luther King Jr. Avenue, S.E., Washington, D.C. (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described on Exhibit A, pursuant to that certain Ground Lease Agreement dated September 4, 2008, by and between the District of Columbia, a municipal corporation acting by and through its Office of Property Management, as lessor, and Landlord, as lessee, as amended by that certain First Amendment to Ground Lease Agreement dated December 2, 2008, as further amended by that certain Second Amendment to Ground Lease Agreement dated March 3, 2010, as further amended by that certain Third Amendment to Ground Lease Agreement dated "December \_\_, 2010", and as further amended by that certain Fourth Amendment to Ground Lease Agreement dated on or about the date hereof.

B. The Lender has made or has agreed to make a loan to Landlord (the "Loan").

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Leasehold Deed of Trust, Assignment, Security Agreement and Fixture Filing, for the benefit of the Lender (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the land records of the District of Columbia (the "Land Records").

D. Pursuant to an Amended and Restated Sublease Agreement, dated as of \_\_\_\_\_, 2015 (the "Lease"), Landlord demised to Tenant Landlord's Premises ("Tenant's Premises"). Tenant's Premises are commonly known as 3100 Martin Luther King Jr. Avenue, S.E., Washington, D.C.

E. Tenant and Lender desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Lender agree:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement.

1.1 Construction-Related Obligation. A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. A Construction-Related Obligation shall not include: (a) reconstruction or repair



following fire, casualty or condemnation; (b) day-to-day maintenance and repairs; or (c) Landlord's repair obligations pursuant to Section 8.2.4 of the Lease.

1.2 Foreclosure Event. A "**Foreclosure Event**" means: (a) foreclosure under the Mortgage; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and the Mortgage, as a result of which successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 Former Landlord. A "**Former Landlord**" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 Offset Right. An "**Offset Right**" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.5 Rent. The "**Rent**" means any fixed rent, base rent or additional rent under the Lease.

1.6 Successor Landlord. A "**Successor Landlord**" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.7 Termination Right. A "**Termination Right**" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. Subordination. The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. **Nondisturbance, Recognition and Attornment.**

3.1 No Exercise of Mortgage Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "**Event of Default**"), Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's

Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Lender. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

4.4 Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Lender's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 Construction-Related Obligations. Any Construction-Related Obligation of Landlord under the Lease.

4.7 Default Under Mortgage. In the event that Lender notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage and notwithstanding any contrary instructions of or demands from Landlord; provided that Lender shall provide such notice at least ten (10) Business Days prior to the date on which the next payment is due under the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "**Successor Landlord's Interest**"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. Lender's Right to Cure.

6.1 Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Tenant shall provide Lender with reasonable notice of the breach or default by Landlord giving rise to same (the "**Default Notice**") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time (the "**Extended Cure Period**") as Lender may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such

receiver a reasonable period of time in which to cure the default; provided that such Extended Cure Period shall in no event exceed one hundred twenty (120) days in the aggregate.

7. **Confirmation of Facts; Payment of Rent.** Tenant represents to Lender and to any Successor Landlord, in each case as of the Effective Date:

7.1 **Effectiveness of Lease.** Attached hereto as **Exhibit B** is a true, correct and complete copy of the Lease, together with all amendments thereto. The Lease is in full force and effect, has not been modified in any way except as set forth in **Exhibit B**, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. All conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied. No unfulfilled conditions exist to Tenant's obligations under the Lease. To the best of Tenant's knowledge, there are no existing defenses, offsets, claims or credits which the undersigned has against the enforcement of the Lease

7.2 **Rent.** Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

7.3 **No Landlord Default.** To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

7.4 **No Tenant Default.** To the best of Tenant's knowledge, Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

7.5 **No Termination.** Tenant has not commenced any action nor sent or received any notice to terminate the Lease. To the best of Tenant's knowledge; Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

7.6 **Commencement Date.** The "Commencement Date" of the Lease is the date of the Lease, as set forth in Recital D above.

7.7 **Expiration.** The expiration date of the term of the Lease is no earlier than June 30, 2026, and the undersigned has no rights to renew or extend the term of the Lease except as expressly set forth in the Lease.

7.8 **No Transfer.** Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein.

7.9 **Due Authorization.** Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

7.10 **Intentionally Omitted.**

7.11 **Intentionally Omitted.**

7.12 Bankruptcy or Insolvency. As of the date hereof, there are no actions, whether voluntary or otherwise, pending against the undersigned under the bankruptcy or insolvency laws of the United States or any state thereof.

7.13 Payment of Rent. Notwithstanding anything contained in the Lease to the contrary, Tenant acknowledges and agrees that Tenant shall pay "Base Rent" and "Additional Rent" (as such terms are defined in the Lease and, collectively, the "**Rent**") as and when due under the Lease in the following manner: within five (5) business days of receipt of each facilities allowance from the District of Columbia to be received in October and July of each year (collectively, the "**Facilities Allowance**"), Tenant shall deposit such Facilities Allowance directly into a restricted account (the "**Restricted Account**") maintained with or on behalf of Lender (each such deposit herein called an "**Escrow Deposit**"). Lender shall deposit the Escrowed Deposits in a federally insured, interest-bearing escrow account and shall not commingle any Escrow Deposit with any other third party deposits or its own funds. Notwithstanding the foregoing, in no event shall the Escrow Deposit to be funded by Tenant exceed the total annual Base Rent then payable by Tenant under the Lease. In the event that the sum of the amount of the Facilities Allowance received by Tenant plus any amounts then held in the Escrow Deposit exceeds the total annual Base Rent then payable by Tenant under the Lease (such excess, the "**Excess Amount**"), Tenant shall be entitled to retain from such Facilities Allowance and Tenant shall be permitted to expend such Excess Amount in its discretion. All interest earned on the Escrow Deposits shall accrue to the benefit of Tenant and shall be deposited into the Restricted Account. At Tenant's request, Lender shall promptly confirm in writing: (a) that Lender continues to hold the Escrow Deposits and (b) the bank account in which Lender is holding the Escrow Deposits. Each month, on the date on which Rent is due and payable by Tenant under the Lease and not before, Lender will withdraw funds from the Restricted Account necessary for Tenant's payment of Rent next due under the Lease; provided, however, in no event shall Lender withdraw funds from the Restricted Account to pay for any Additional Rent unless and until Tenant has provided its prior written consent to such withdrawal, which such consent shall not be unreasonably withheld or delayed with respect to (i) withdrawals to pay for agreed estimates of Capital Expenses and Operating Expenses pursuant to Section 3.4 of the Lease and (ii) withdrawals to pay for Impositions imposed on the Property (as defined in the Lease) pursuant to Article IV of the Lease. After each withdrawal by Lender, Tenant will be deemed to have made the Rent payment under the Lease for which the withdrawal was made from the Restricted Account regardless of whether Lender pays such amount to Landlord or otherwise applies such payment to a Landlord obligation to Lender. If any Escrow Deposit is not made by wire transfer or other electronic means, such Escrow Deposit shall be deposited with Lender in precisely the form received from the District of Columbia, except for the endorsement of Landlord and/or Tenant where necessary to permit the collection of any such item of payment, which endorsement Landlord hereby agrees to make and agrees to cause Tenant to make, as necessary. In the event Landlord fails to do so, Landlord hereby authorizes Lender to make the endorsement in the name of Landlord.

Lender shall not be liable with respect to the Restricted Account except for its gross negligence, willful misconduct or misappropriation or misapplication of any Escrow Deposits. In the event of any ambiguity in the provisions governing the Escrow Deposits or uncertainty on the part of Lender as to how to proceed, such that Lender, in its good faith reasonable judgment, deems it necessary for its protection so to do, Lender may refrain from taking any action other than to

retain custody of the Escrow Deposits until it shall have received written instructions signed by Landlord and Tenant, or may deposit the Escrow Deposits with a court of competent jurisdiction in the District of Columbia and notify Landlord and Tenant in writing of such deposit, and thereupon shall have no further duties or responsibilities in connection therewith.

Upon repayment in full of the Loan, Tenant and Landlord shall deliver to Lender written notice executed by both parties specifying how any Escrow Deposits then held in the Restricted Account should be released and Lender shall transfer any Escrow Deposits then held in the Restricted Account as instructed in such notice.

Any litigation or other court action regarding this Section 7.13 shall be conducted in the Courts of the District of Columbia or in a United States District Court sitting in the District of Columbia, and each party hereby submits to jurisdiction and consents to venue in such courts.

Except as expressly set forth herein with respect to mechanics of the payment of the Rent, Landlord and Tenant agree that nothing in this Section 7.13 modifies their respective rights and obligations under the Lease.

## **8. Miscellaneous.**

8.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given (a) by certified mail (return receipt requested), (b) by nationally recognized overnight courier service that regularly maintains records of items delivered or (c) by electronic mail, provided a copy of such notice is delivered promptly thereafter to the recipient pursuant to one of the methods set forth in clauses (a) and (b). Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five business days after being sent by certified mail (return receipt requested).

8.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

8.3 Entire Agreement. This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

8.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Lender confirms that Lender has consented to Landlord's entering into the Lease.

8.5 Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment

occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

8.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the District of Columbia, excluding its principles of conflict of laws.

8.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged. Notwithstanding the foregoing, no amendment to Section 7.13 hereof shall be effective unless Tenant has provided its written consent to such amendment.

8.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.9 Lender's Representation. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

8.10 Tenant's Personal Property. In no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business equipment, furniture, signs or other personal property at any time placed on or about the Premises.

*[Signatures Begin on Following Page.]*

**Signature Page 1 to  
Subordination, Nondisturbance and Attornment Agreement**

IN WITNESS WHEREOF, this Agreement has been duly executed and sealed by Lender and Tenant as of the Effective Date.

**LENDER:**

**UNITED BANK**

By: \_\_\_\_\_  
Thomas A. Nida  
Market President

[BANK SEAL]

DISTRICT OF COLUMBIA, TO WIT:

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Thomas A. Nida, as Market President of United Bank, the Lender herein.

In witness hereof, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

*[Signatures Continue on Following Page.]*



**Signature Page 2 to  
Subordination, Nondisturbance and Attornment Agreement**

**TENANT:**

**DEMOCRACY PREP CONGRESS HEIGHTS PUBLIC CHARTER SCHOOL,**  
a District of Columbia non-profit corporation

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

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, TO WIT:

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by \_\_\_\_\_, as \_\_\_\_\_ of DEMOCRACY PREP CONGRESS HEIGHTS PUBLIC CHARTER SCHOOL, the Tenant herein.

In witness hereof, I hereunto set my hand and official seal.

[SEAL] \_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[*Landlord's Consent on Following Page.*]

**LANDLORD'S CONSENT AND ACKNOWLEDGEMENT**

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Lender under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon receipt of a notice as set forth in Section 4.7 above from Lender and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage.

In addition to the foregoing, Landlord expressly acknowledges that Tenant's obligation to pay Rent under the Lease shall be satisfied if and to the extent that the School pays the amount or amounts then due under the Lease directly to Lender as described in Section 7.13 of the foregoing Agreement.

**LANDLORD:**

**Old Congress Heights Redevelopment Company, LLC,**  
a District of Columbia limited liability company

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

Andrew Boticello  
Managing Member

Dated: \_\_\_\_\_

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, TO WIT:

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Andrew Boticello, as Managing Member of Old Congress Heights Redevelopment Company, LLC, the Landlord herein.

In witness hereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**Description of Landlord's Premises**

[To be inserted.]

**EXHIBIT B**

**Copy of the Lease**

[See attached.]

## **EXHIBIT I**

### **REQUIRED REPAIRS**

- Sublandlord shall conduct a survey of the attic space, and exterior façade as required, for the purpose of determining the means in which birds are achieving access into the attic. Upon determination, Sublandlord shall “close up” any means of access and repair the area to the levels of the surrounding finishes. Sublandlord shall clean and “make safe” the current attic condition resulting from bird infestation.
- Sublandlord shall enlist a licensed engineer to conduct a survey of all mechanical units to document their existing condition and any deficiencies such as leaking, loud noise, end of useful life. Sublandlord shall promptly remedy any discovered deficiencies either by repair or replacement of cited units.
- Sublandlord shall enlist a licensed engineer to install movement monitors at appropriate locations on or about the window alcoves in room 115. Engineer shall review the monitors at appropriate intervals along with a review of the condition of the “bowed” wall. In the event that additional movement or the infiltration of moisture is evident, Sublandlord shall conduct exploratory investigations to determine the source, and shall then take such measures to rectify. Sublandlord shall repair or replace finishes to the level of surrounding finishes.
- Sublandlord shall enlist a qualified roof expert to perform a survey of existing conditions and documentation of any water penetrating areas. Sublandlord shall determine any infiltration sources and shall then take such measures to rectify. Sublandlord shall repair or replace affected finishes to the level of surrounding finishes.