

13239745  
4/10/2020 11:54:00 AM \$40.00  
Book - 10925 Pg - 468-507  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 40 P.

**When recorded, mail to:**

Otten, Johnson, Robinson,  
Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attn: Kyle Blackmer, Esq.

**File No.:** 120167

**In reference to Tax ID Number(s):** 26-26-126-012,  
26-26-126-013, 26-26-126-014 & 26-26-126-015

*This space reserved for Recorder's use only.*

---

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Deed of Trust**") is made this 10th day of April, 2020 by HERRIMAN SCHOOL DEVELOPMENT, LLC, a Utah limited liability company, whose address is 290 North Flint Street, Suite A, Kaysville, Utah 84037, herein called "**Trustor**," and ADVANTAGE ARTS ACADEMY, a Utah non-profit corporation, whose address is 6171 W. 11800 S., Herriman, Utah 84096, herein called "**Charter School**" to STEWART TITLE COMPANY, whose address is 1544 N. Woodland Park Dr., Suite 300, Layton, Utah 84041, herein called "**Trustee**," for the use and benefit of ZIONS BANCORPORATION, N.A., doing business as VECTRA BANK COLORADO, whose address is 2000 South Colorado Blvd., Suite 2-1200, Denver, Colorado 80222, herein called "**Beneficiary**."

WITNESSETH: THAT FOR THE PURPOSE OF SECURING (1) Payment in the sum of \$8,646,277.00 with interest thereon, according to the terms of the Promissory Note of even date herewith made by Trustor, payable to Beneficiary or order, which, if not sooner paid, is due and payable in full on or before April 10, 2025, and all modifications, extensions, renewals, and/or replacements thereof (the "**Note**"); (2) Payment of such additional sums with interest thereon (a) as may be hereafter borrowed from Beneficiary by the then record owner of the property hereinbelow described and evidenced by a promissory note or notes reciting it is or they are so secured, and all modifications, extensions, renewals and/or replacements thereof, and, (b) as may be incurred, paid out, or advanced by Beneficiary or may otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust and all modifications, extensions, renewals and/or replacements thereof; (3) Performance of each agreement or obligation contained herein or incorporated herein by reference or contained in any papers executed by Trustor relating to the loan of money by Beneficiary to Trustor as evidenced by the Note and any future notes secured hereby (the "**Loan**"),

including, without limitation, performance of each provision or agreement of Trustor contained in the Loan Agreement as it may be amended, modified, extended, renewed, restated, or supplemented from time to time (the “**Loan Agreement**”) among Trustor (as borrower), Beneficiary (as lender), and one or more guarantors of the Loan of even date herewith and any other agreement between Trustor and Beneficiary relating to the Loan (all of such documents and agreements as they may be amended, modified, extended, renewed, restated, or supplemented from time to time, are herein called the “**Loan Documents**”); (4) Payment by Trustor of each and every monetary provision to be performed by Trustor under any declaration of covenants, conditions, and restrictions pertaining to the property hereinbelow described and upon written request of Beneficiary, the enforcement by Trustor of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within thirty (30) days after such written request is made, valid legal steps to enforce such payment; (5) Payment of all fees and charges owing to Beneficiary in connection with the Loan, whether or not herein set forth, except where the document or agreement relating to such fees and charges expressly provides that payment of the same is an unsecured obligation of Trustor or is otherwise not intended to be secured by this Deed of Trust; and (6) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligations secured hereby.

**TRUSTOR AND CHARTER SCHOOL IRREVOCABLY GRANT, BARGAIN, SELL, CONVEY, WARRANT, TRANSFER AND ASSIGN TO TRUSTEE, ITS SUCCESSORS AND ASSIGNS, IN TRUST FOREVER, WITH POWER OF SALE**, and right of entry and possession to the extent provided herein or by law, for the use and benefit of Beneficiary, as beneficiary, all of that certain real property located in the County of Salt Lake, State of Utah, described as:

**SEE ATTACHED EXHIBIT “A” INCORPORATED HEREIN BY THIS REFERENCE**

(the “**Real Property**”).

**TOGETHER WITH** all interests which Trustor or Charter School now has or may hereafter acquire in or to the Real Property and in and to: (a) all tenements hereditaments, licenses, easements, gores of Real Property, streets, ways, alleys, passages, sewer rights, and rights of way appurtenant thereto; (b) all buildings, structures, improvements, fixtures, appliances, machinery, equipment, goods, and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to the Real Property and now or hereafter installed or placed thereon, and used in connection with any existing or future operation thereof (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the Real Property that is conveyed hereby (all of the herein above described property called the “**Improvements**”); (c) all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Real Property; (d) all shrubs, trees, crops, and plants; (e) all adjacent land included in enclosures or occupied by buildings located partly on the Real Property; (f) subject to the terms of the Loan Agreement all claims, demands and causes of action of every kind (including proceeds of settlements of any such claim, demand,

or cause of action of any kind and which are subject to Section 9 below) which Trustor or Charter School now has or may hereafter acquire arising out of acquisition or ownership of the Real Property, including insurance proceeds of any kind whatsoever (whether or not from insurance specifically required by the Loan Documents), and any award of damages or compensation for injury to or in connection with any condemnation for public use of the Real Property or any part thereof (whether or not eminent domain proceedings have been instituted), subject however to the right, power and authority given to and conferred upon Beneficiary by Section 9 below, incorporated herein by reference, it being agreed, however, that Trustee shall have no duty to prosecute any such claim, demand or cause of action; (g) all plans and specifications prepared for construction of any Improvements, and all contracts and agreements of Trustor or Charter School relating to such plans and specifications or to the construction of the Improvements, provided that nothing herein shall be deemed to be an assumption by Beneficiary of any obligation of Trustor or Charter School with respect to such plans and specifications or such construction or under any agreement relating thereto, nor shall Beneficiary otherwise incur any liability with respect thereto unless and until Beneficiary, in its sole and absolute discretion, shall hereafter expressly agree in writing; (h) all sales agreements, deposits, escrow agreements, and other documents and agreements entered into by Trustor or Charter School with respect to the sale of all or any part of the Real Property or any interest therein; (i) all accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter of credit rights, supporting obligations, permits, governmental approvals and entitlements, licenses, management contracts, and other contracts and agreements in which Trustor or Charter School now has or may hereafter have an interest arising out of, or relating to, the acquisition, development, ownership, management or use of the Real Property (but without Beneficiary assuming or incurring any obligation or liability of Trustor or Charter School arising thereunder or relating thereto), and all general intangibles arising out of or relating to the acquisition, development, ownership, management or use of the Real Property, including all software and names by which the Improvements or other property associated therewith may at any time be known or operated and all rights to carry on business under such names or any variant thereof and all trademarks and goodwill in any way relating to the Improvements or such other property; (j) all rights and remedies at any time arising under or pursuant to Section 365 of Title 11 of the United States Code (the "**Bankruptcy Code**"), or under or pursuant to any other provision of the Bankruptcy Code, including, without limitation, all of Trustor's rights to remain in possession of any property or improvements that are subject to the Ground Lease (as defined below) (the "**Bankruptcy Rights**"); and (k) all additions, substitutions and proceeds (cash and noncash) of the foregoing.

**ALSO TOGETHER WITH**, all of the estate, right, title, and interest of Trustor, both at law and in equity, therein and thereto, to secure the performance by Trustor of the covenants, conditions and agreements to be performed by Trustor thereunder, and any option to purchase any greater interest than Trustor now owns; and any and all other further or additional title, estate, interest or right which may at any time be acquired by Trustor in or to the Real Property, Trustor hereby agreeing that if Trustor shall, at any time prior to payment in full of all Secured Indebtedness, acquire any other or greater estate than Trustor now owns in the Real Property, then, and in that event, the lien of this Deed of Trust shall automatically, and without the need for further action by any party hereto, attach, extend to, cover and be a lien upon such greater estate, and Trustor will promptly execute, acknowledge and deliver such instruments as Beneficiary may reasonably require to accomplish such result;

**ALSO TOGETHER WITH** all profits, royalties, tolls, earnings, income and other benefits therefrom and installments of money payable pursuant to any agreement for sale of the Real Property or any part thereof or interest therein and any release, termination or “buy-out” consideration now or hereafter payable to Trustor or Charter School with respect to any lease, rental, tenancy, occupancy or other agreement;

**ALSO TOGETHER WITH** all right, title, and interest of Trustor and Charter School in and to any and all leases and rental, tenancy and occupancy agreements now or hereafter on or affecting the Real Property or the Improvements and all books and records pertaining thereto (the “**Leases**”), including, without limitation, (i) that certain Lease Agreement dated as of November 4, 2019, by and between Trustor, as “landlord,” and Charter School, as “tenant,” and (ii) that certain Ground Lease Agreement dated as of November 4, 2019, by and between Trustor as “tenant,” and Charter School as “landlord” (the “**Ground Lease**”), together with all rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits payable thereunder (collectively, “**Rents and Profits**”), subject however to the right, power and authority given to and conferred upon Beneficiary and Trustor herein. The immediately foregoing provision shall, to the extent permitted by applicable law, constitute an absolute, present and executed assignment of the Rents and Profits, subject, however, to the conditional license given to Trustor to collect, hold and use such Rents and Profits to the extent provided herein.

Notwithstanding the foregoing, the listing of specific rights or property will not be interpreted as a limit of general terms.

For the purpose of this Deed of Trust, including all provisions incorporated by reference herein, all of the foregoing described Real Property, property rights, interests and other real property shall be referred to collectively as “**Property**.”

Notwithstanding the foregoing, the Property does not include (i) any rent due and payable by Trustor to Charter School under the Ground Lease; (ii) any personal property of Charter School which Charter School now or hereafter owns or in which Charter School nor or hereafter acquires an interest or right including, without limitation, all *furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits*, and all other personal property of any kind or character whatsoever (as each of the foregoing italicized terms, as applicable, are defined in the Uniform Commercial Code (as defined herein)), other than fixtures.

#### **TRUSTOR COVENANTS AND AGREES WITH BENEFICIARY AS FOLLOWS:**

1. **PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS.** Trustor shall perform, observe and comply with all provisions hereof, of the Note, and of every other Loan Document and will promptly pay to Beneficiary the principal with interest thereon and all other sums required to be paid by Trustor under the Note and pursuant to the provisions of this Deed of Trust and of every other Loan Document when payment shall become due, provided that nothing herein shall be construed to cause this Deed of Trust to secure any covenant or other obligation of Trustor under any Loan Document which is expressly stated to be an unsecured obligation of Trustor or to be an obligation of Trustor which is not secured by this Deed of Trust.

2. **GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES.**

Trustor represents and warrants to Beneficiary that Trustor is the sole owner and holder of the leasehold and the entire right, title and interest of the lessee under the Ground Lease; the Ground Lease is in full force and effect in accordance with its terms; there have been no modifications or amendments to the Ground Lease; to Trustor's knowledge, there are no defaults under the Ground Lease by any party thereto, and no events or circumstances existing which, after notice or the passage of time, or both, would constitute a default or an event of default under the Ground Lease; and the leasehold and Trustor's interest under the Ground Lease are free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Encumbrances (defined below). Subject to Charter School's interest therein, Trustor represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Trustor is the lawful owner of good and marketable fee simple title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, and assign the Property, and is the owner of the Improvements hereby secured, and has good right to grant, bargain, sell, convey, transfer, and assign the same as security under this Deed of Trust; (b) Trustor will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure; and (c) all representations and warranties of Trustor set forth in the Loan Documents are true and correct.

3. **NO OTHER LIENS.** Neither Trustor nor Charter School will, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the liens disclosed on Exhibit B, attached hereto (the "**Permitted Encumbrances**"), regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Beneficiary, Trustor will cause the same to be promptly discharged and released. Trustor will own or lease (as tenant) all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Beneficiary. If Beneficiary consents to the voluntary grant by Trustor or Charter School of any deed of trust, lien, security interest, or other encumbrance (hereinafter called a "**Subordinate Lien**") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Deed of Trust and all Leases; (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Beneficiary; (3) Rents and Profits, if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of all indebtedness secured by this Deed of Trust (the "**Secured Indebtedness**") and expenses incurred in the ownership, operation and maintenance of the Property in such order as Beneficiary may

determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Beneficiary with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Trustor's or Charter School's rights hereunder without the prior written consent of Beneficiary.

4. **SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, AND FINANCING STATEMENTS.** Trustor (as *debtor*) hereby grants to Beneficiary (as *creditor* and *secured party*) a *security interest* in all of the Property which is tangible or intangible personal property, including without limitation, *fixtures, goods, accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter-of-credit rights, supporting obligations, and general intangibles* described hereinabove and all additions, substitutions, *cash proceeds*, and *noncash proceeds* of the foregoing (as each of the foregoing italicized terms, as applicable, are defined in the Uniform Commercial Code (as defined herein)).

Trustor shall execute any and all such documents as Beneficiary may request, including without limitation, financing statements pursuant to the Uniform Commercial Code of the State of Utah, Utah Code Ann. § 70A-1a-101, *et seq.* (as amended on one or more occasions, the “**Uniform Commercial Code**”), to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Beneficiary on demand any reasonable expenses reasonably incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed in the real estate records of the county in which the Property is located and such other offices as Beneficiary deems advisable under the Uniform Commercial Code. Trustor hereby authorizes Beneficiary to file all financing statements, refilings, continuations and amendments thereof as Beneficiary deems necessary or advisable to create, preserve and protect said lien and security interest, including those that (a) indicate the Property: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of Article 9 of the Uniform Commercial Code, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment. Trustor shall cooperate with Beneficiary in obtaining control of deposit accounts, letter of credit rights and any other collateral for which control is necessary for perfection under the Uniform Commercial Code. This Deed of Trust constitutes a security agreement for any and all items of Property which are personal property and fixtures and which, under applicable law, may be subject to a security interest pursuant to the applicable Uniform Commercial Code and which are not herein effectively made part of the Property. Trustor hereby grants Beneficiary a security interest in said property, and in all additions, substitutions and proceeds (cash and noncash) thereof, for the purpose of securing all indebtedness and obligations of Trustor now or hereafter secured by this Deed of Trust. The remedies available to Beneficiary for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Deed of Trust and (ii) as permitted under applicable law, including the Uniform Commercial Code. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Beneficiary may elect.

This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term "Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

Trustor, Charter School and Beneficiary agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in the above section shall be construed in any way as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded, to the extent permitted by applicable law, as part of the real estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment or other items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessor in any present or future Leases or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to clauses (1), (2), and (3) of this Section 4 that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records.

Trustor represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof as follows: Trustor's full, correct and exact legal name is set forth in the introductory paragraph of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in, organized or formed under the laws of the state specified in the introductory paragraph to this Deed of Trust. If Trustor is an unregistered entity (including, without limitation, a general partnership) it is organized or formed under the laws of the state specified in the introductory paragraph of this Deed of Trust. In the event of any change in name or identity of Trustor, Trustor shall notify Beneficiary in writing of such change at least 30 days prior to the effective date of such change and hereby authorizes Beneficiary to file such Uniform Commercial Code forms as are necessary to maintain the priority of Beneficiary's lien upon the Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Deed of Trust, and shall pay all expenses in connection with the filing and recording of such forms.

Trustor hereby assigns, sells, conveys, and sets over unto Beneficiary all of Trustor's right, title, and interest in and to any and all Leases, together with all security therefor and all monies payable thereunder, and all books and records pertaining thereto, subject, however, to the conditional license hereinabove given to Trustor to collect the Rents and Profits arising under any

such Leases. This is a present, effective, and absolute assignment, and Beneficiary shall have the right, at its option, to enter and take possession of the premises affected by any Lease and to perform all acts necessary for the operation and maintenance of such premises in the same manner and to the same extent that Trustor might reasonably so act. In furtherance of the foregoing, and not by way of limitation, Beneficiary is empowered, but shall have no obligation, to collect the Rents and Profits accruing under any Lease, to enforce payment thereof and the performance of any and all terms and provisions thereof, to exercise all the rights and privileges of Trustor thereunder.

5. **REPAIR AND MAINTENANCE OF PROPERTY.** Trustor covenants and agrees with Beneficiary to cause the Property to be managed in a first class manner satisfactory to Beneficiary; to keep the Property in good condition and repair, including, without limitation, maintaining all structures on the Property free of any liquid water and/or water vapor intrusion into the structures in amounts that could support the growth of fungus and/or mold inside the structures and free of any sites of growing fungus and/or mold inside the structures; not substantially to alter, remove or demolish any buildings or other Improvements except when incident to the replacement of fixtures, machinery or appliances with items of like kind and of at least equivalent value; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other Improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; to pay when due all claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's or materialman's lien to be filed or remain against the Property, subject to Trustor's right to contest claims as provided in the Loan Agreement; to comply with all laws affecting the Property or the operation or leasing thereof or requiring any alterations or improvements to be made thereon, including, without limitation, the Americans with Disabilities Act of 1990; to fully remedy in a manner acceptable to Beneficiary any notice of violation or any other notice issued by any governmental entity having jurisdiction over the Property within thirty (30) days of the date of such notice; not to commit or permit waste thereon; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same or better condition (reasonable wear and tear excepted) as at the date of this Deed of Trust; to perform and keep each of the covenants and agreements required to be kept and performed by Trustor pursuant to the terms of the Lease and any and all other instruments creating Trustor's interest in or defining Trustor's rights in respect to the Property. Without the prior written consent of Beneficiary, Trustor shall not (i) initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances, (ii) use or permit the use of the Property in a manner which may result in the use of the Property becoming a non-conforming use under applicable zoning ordinances, or (iii) subject the Property to restrictive covenants.

6. **INSURANCE.** At all times, Trustor is to provide, and maintain in full force and effect, and pay the cost of insurance in accordance with the terms and conditions of the Loan Agreement.



**7. DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY.** The amount received by Beneficiary pursuant to this Deed of Trust under any insurance policy, or in connection with any condemnation for public use of the Property, or for injury or damage to the Property, or in connection with the transaction financed by the Loan secured hereby shall be applied as provided in the Loan Agreement.

Trustor and Charter School hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under any applicable laws, which provide for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

**8. PERFORMANCE OF GROUND LEASE OBLIGATIONS.** Trustor will at all times comply in every respect with its obligations under the Ground Lease, will take any actions reasonably requested by Beneficiary to keep the Ground Lease in full force and effect, and will not take any action which would constitute a default under the Ground Lease. Trustor will take all actions reasonably necessary, or that Beneficiary reasonably deems advisable, to enforce the obligations of the Charter School, as lessor, under the Ground Lease. Trustor will promptly notify Beneficiary if Trustor receives any notice or other indication that an event of default exists under the Ground Lease, or if Charter School notifies Trustor that it has failed in any respect to comply with its obligations under the Ground Lease, or purporting to terminate or cancel the Ground Lease. Trustor will also promptly furnish to Beneficiary copies of any notices given to Trustor under the Ground Lease exercising any rights thereunder, alleging any default or breach thereof, or relating to any other material obligation of Trustor under the Ground Lease. Trustor agrees that Beneficiary, in its sole discretion, may advance any sum or take any action which Beneficiary reasonably believes is necessary or advisable to maintain the Ground Lease in full force and effect, and all such sums advanced by Beneficiary, together with all costs and expenses incurred by Beneficiary in connection with action taken by Beneficiary pursuant to this Section 8, shall be due and payable by Trustor to Beneficiary upon demand, shall bear interest until paid at the Default Rate (as defined in the Note), and shall be secured by all collateral securing repayment of the Loan. So long as any obligations under the Loan Agreement remain unpaid, Trustor will not, without Beneficiary's prior written consent, assign its rights under any Ground Lease to any Person other than Beneficiary. Trustor will not modify or consent to any modification or amendment of the Ground Lease, or cancel, terminate or surrender the Ground Lease, without Beneficiary's prior written consent. Any surrender by Trustor of the leasehold estate created by the Ground Lease or termination cancellation, modification, change, supplement, alteration or amendment by Trustor of the Ground Lease without the prior consent of Beneficiary shall be void and of no force and effect unless the same is ordered by a court of competent jurisdiction.

**9. TAXES, LIENS, AND OTHER SUMS DUE.** Trustor covenants and agrees with Beneficiary to pay, satisfy and discharge: (a) at least ten (10) days before delinquency, all general and special city and county taxes, and all assessments on water stock, affecting the Property, (b) when due, all special assessments for public improvements on or benefiting the Property, (c) on demand of Beneficiary but in no event later than the date such amounts and/or performance become due (i) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them), with

interest, on such Property, or any part thereof which are, or appear to Beneficiary to be prior to or superior to this Deed of Trust, (ii) all costs, fees and expenses under this Deed of Trust whether or not described herein, (iii) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary not to exceed the maximum amount allowed by law therefor at the time when such request is made, (iv) Beneficiary's and Trustee's reasonable fees, charges and expenses for any other statement, information or services furnished by Beneficiary or Trustee in connection with the obligations secured hereby (said services may include, but shall not be limited to, the processing by Beneficiary or Trustee, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, recordation of maps, plats or records of survey, grants of easements, and full and partial reconveyances, and the obtaining by Beneficiary of any policies of insurance pursuant to any of the provisions contained in this Deed of Trust), (v) if such Property includes a leasehold estate, all payments and obligations (whether monetary or otherwise) required of Trustor or its successor in interest under the terms of the instrument or instruments creating such leasehold, (vi) all payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof, and (vii) any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect, but without obligation to do so, to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying attorneys' fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the Default Rate (as defined in the Note) and shall be secured by this Deed of Trust. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the Property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment. Trustor will obtain the written consent of Beneficiary prior to permitting any issuance of any improvement bond for unpaid special assessments. Trustor agrees to notify Beneficiary and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of Property, the amount or basis of assessment of the Property, or the availability of any exemption to which Trustor is or may be entitled. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of deeds of trust or debts secured by deeds of trust, or the manner of collecting taxes so as to materially and adversely affect the rights of Beneficiary, the entire balance of the Secured Indebtedness and all interest accrued thereon shall, without notice, become due and payable forthwith at the option of Beneficiary.

Notwithstanding the foregoing, Trustor shall have the right to contest diligently and in good faith the validity or amount of any tax, assessment or charge affecting the Property or any part thereof, and, so long as the validity or amount thereof is being contested diligently and in good faith, Trustor may, to the extent permitted by law, defer payment of such tax, assessment or charge, provided Trustor protects the Property against any lien arising out of any such tax, assessment or charge or out of any such contest by either (a) depositing with Beneficiary, in a non-interest bearing account, as additional security for the Loan, an amount equal to 120% of the amount of the tax, assessment or charge being contested, or (b) a surety bond in form and substance satisfactory to Beneficiary and issued by a corporate surety satisfactory to Beneficiary.

Trustor will pay when due and payable, all appraisal fees, recording fees, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, fees of inspecting architect(s) and engineer(s), fees of environmental engineers and consultants, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Beneficiary in connection with the issuance of its commitment for the Loan, the preparation and execution of Loan Documents, the funding of the Loan, and the administration and enforcement of this Deed of Trust, the Note and the other Loan Documents. During the term of the Loan, Trustor will, upon demand by Beneficiary, reimburse Beneficiary for all such expenses, together with accrued interest at the Default Rate, which have been incurred or which shall be incurred by Beneficiary, and Trustor will defend, indemnify and hold harmless Beneficiary and Trustee from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Beneficiary or Trustee by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property, or with this Deed of Trust or any of the Secured Indebtedness.

10. **CLAIMS, DEMANDS AND ACTIONS.** Trustor covenants and agrees with Beneficiary: (a) to give Beneficiary immediate notice of any claim, demand, action or proceeding purporting to affect the Property (including, without limitation, loan funds, whether or not disbursed) or purporting to affect the security hereof (whether or not it affects the security hereof) or the condition and integrity of the Improvements constructed thereon or purporting to affect the rights or powers of Beneficiary or Trustee or which are *commercial tort claims* (as defined in the Uniform Commercial Code), (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every obligation to be performed by them under any declaration of covenants, conditions, and restrictions pertaining to the Property. Both Trustee and/or Beneficiary are hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, whether or not brought by or against Trustor to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding. Trustee and/or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein as either may deem advisable, and may settle, compromise or pay the same or any other claims and, for any of said purposes, may expend and advance such sums of money as either may deem necessary. Trustor covenants that, in addition to the present assignment of actions, claims, damages and awards set forth herein, Trustor will execute and deliver to Beneficiary such assignments of actions, claims, damages, and awards as Beneficiary may, from time to time, request, including but not limited to, assignments to Beneficiary in such form as Beneficiary may require of all such claims, demands and actions which are *commercial tort claims* (as defined in the Uniform Commercial Code). Trustor hereby authorizes Beneficiary to file all financing statements, refilings, continuations and amendments thereof as Beneficiary deems necessary or advisable under the Uniform Commercial Code in connection with such assignments. Whether or not Trustor so appears or defends, Trustor shall pay on demand all costs and expenses of Beneficiary and Trustee, including without limitation, costs of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear

by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Beneficiary or Trustee in the Property is directly questioned by such action including, but not limited to, any action for the condemnation or partition of the Property and any suit brought by Beneficiary to foreclose this Deed of Trust. Beneficiary may apply, use or release such monies so received by it in the same manner as in Section 7 provided for the proceeds of insurance.

11. **ACCUMULATION ACCOUNT.** Trustor covenants and agrees with Beneficiary, upon demand by Beneficiary, to pay to Beneficiary in addition to and concurrently with any other payments required in any note secured by this Deed of Trust, monthly advance installments, as estimated by Beneficiary from time to time for the purpose of establishing an account (the "**Accumulation Account**") for payment of any or all taxes, assessments, special assessments, fire, casualty, liability, and other insurance premiums, encumbrances and leasehold payments, security deposits, or other obligations required to be paid with respect to the Property (hereafter in this section referred to as "**Impositions**"). Trustor shall deliver promptly to Beneficiary all bills and notices of such Impositions. If the amounts paid to Beneficiary under the provisions of this section are not sufficient to pay such Impositions as they become due, Trustor shall pay to Beneficiary promptly upon demand the amount of the deficiency. All monies paid to Beneficiary under this section shall not be held in trust and may be intermingled with other monies of Beneficiary and such amounts held by Beneficiary shall earn only such interest as prescribed by law, if any. Beneficiary shall pay such Impositions before delinquency. In the event of a default in the payment of any note secured by this Deed of Trust, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Deed of Trust, then any balance remaining from monies paid Beneficiary under the provisions of this section may, at the option of Beneficiary, be applied to the payment of principal, interest or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Beneficiary to protect its security under this Deed of Trust and shall, after notice to Trustor, accrue interest at the Default Rate defined in the Note. Beneficiary will make such reports of the Accumulation Account as are required by law.

12. **SALES, TRANSFERS, FURTHER ENCUMBRANCES AND OTHER EVENTS.** Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if (a) Trustor or Charter School or any successor in interest to Trustor or Charter School conveys, transfers or assigns the Property or any part thereof, or interest therein, or agrees to do so, whether by deed, contract of sale, lease with option to buy, or otherwise and whether such conveyance, transfer or assignment is to an unrelated third party or a related entity, including without limitation an entity that shares a common ownership with Trustor or an entity that is a subsidiary of Trustor; or (b) Trustor or Charter School further encumbers or alienates the Property or any part thereof, or interest therein; or (c) in the event that the Property is not rental property, Trustor or Charter School or any successor in interest to Trustor or Charter School leases the Property or any part thereof without the prior written consent of Beneficiary; or (d) in the event that the Property is rental property, Trustor or Charter School or any successor in interest to Trustor or Charter School enters into any lease, rental agreements, tenancy agreement, or occupancy agreement in violation of any of the terms or conditions under this Deed of Trust or any other Loan Document; or (e) Trustor or Charter School suffers its title or any interest therein to be divested, whether voluntarily or involuntarily; or (f) without the written consent of Beneficiary, Trustor or any successor in interest to Trustor changes or permits to be changed the

character or use of the Property from the character or use contemplated by Trustor and Beneficiary upon execution of this Deed of Trust, as specified in Trustor's application to Beneficiary and other documents executed by Trustor in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (g) suit be commenced to condemn the Property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Beneficiary reasonably believes that its security under this Deed of Trust may be impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property; or (h) in the event that Trustor is a general partnership or limited liability company, any of the partners' or members' interests in Trustor or any portion thereof are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such partners' or members' respective family revocable trusts; or (i) in the event that Trustor is a corporation, more than twenty percent (20%) of the capital stock thereof is sold, transferred or assigned, whether voluntarily or involuntarily, other than to the shareholders' respective family revocable trusts; or (j) Trustor or any successor in interest to Trustor has made any oral or written material misrepresentations or failed to disclose any material fact, in order to induce Beneficiary to enter into the transaction evidenced by the Note or any agreements which this Deed of Trust secures; or (k) Trustor or any successor in interest to Trustor has disbursed funds collected from Rents and Profits to itself or its equity owners for personal use without first reserving sufficient funds to be used for the protection or preservation of the Property, for maintaining the Property in good condition, and for making such capital improvements and replacements to the Property as are reasonably foreseeable to be required within a period of twelve (12) months following the date of such distribution of funds. If any of the events described in this Section 11 occur and if Beneficiary consents to the same, then such consent must be in writing and signed by Beneficiary to be effective. Such written consent shall not be deemed or construed as a waiver of any of Beneficiary's rights or as a cure of any default by Trustor pertaining to any subsequent occurrences of any event described in this Section 11 and the written consent of Beneficiary shall be required on all subsequent occurrences. Furthermore, if any event described in this Section 11 occurs and if Beneficiary does not give its written consent to same but fails to exercise its right to declare all sums secured hereby due and payable, such failure shall not be deemed or construed as a waiver of any of Beneficiary's rights or as a cure of any default of Trustor pertaining to the occurrence of such event or any subsequent occurrences of any event described in this Section 11. The right of Beneficiary to declare all sums secured hereby immediately due and payable if any of the events described in this Section 11 occur shall not be construed or deemed to be exclusive of any other rights of Beneficiary set forth in this Deed of Trust or the Loan Documents, or any rights at law or in equity now or hereafter existing, to declare all sums secured hereby immediately due and payable, but all such rights shall be cumulative.

**13. WAIVERS AND CONSENTS PERTAINING TO NOTE.** Trustor and Charter School waive presentment, demand, protest and notice of nonpayment of the Note, and consent to delays, changes in time of payment, and the amount of installments due under the Note, and, to the extent provided in the Note, to the reduction or increase of the interest rate thereof.

**14. WAIVER OF STATUTE OF LIMITATIONS.** Time is of the essence in all Trustor's obligations hereunder, and to the fullest extent permitted by law, Trustor and Charter School waive the right to assert any present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Deed of Trust, the Note or any other Loan Document or any rights or remedies hereunder.

15. **ESTOPPEL CERTIFICATES.** Trustor, within 10 days after written request from Beneficiary, shall furnish a written statement, duly acknowledged to Beneficiary and any third party designated by Beneficiary, setting forth the unpaid principal and interest and any other sums and charges due under the Note, this Deed of Trust and the other Loan Documents and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums or charges and stating that the Note, Deed of Trust and other Loan Documents have not been modified or stating that the Note, Deed of Trust or other Loan Documents have been modified and specifying such modifications, and that the Note, Deed of Trust and other Loan Documents, as unmodified or modified, as applicable, remain in full force and effect. If Trustor fails to execute and deliver such estoppel certificate within such 10-day period, Trustor shall be in default hereunder and, without limiting any other rights or remedies of Beneficiary hereunder on account of such default, Trustor shall conclusively be deemed to have constituted and appointed Beneficiary as Trustor's special attorney-in-fact to execute and deliver any such estoppel certificate to any third party and shall be deemed to have certified that the Note, Deed of Trust and other Loan Documents remain in full force and effect, either unmodified or modified in the manner specified by Beneficiary, whichever Beneficiary reasonably may represent. Trustor and Beneficiary expressly agree that any such certificate may be relied on by any prospective purchaser of the Loan or any portion thereof or interest therein without independent investigation or examination.

16. **RIGHT TO COLLECT AND RECEIVE RENTS AND PROFITS.** The assignment of Rents and Profits set forth hereinabove shall be fully operative without any further action on the part of either party. Notwithstanding that Trustor has made a present, absolute and executed assignment of the Rents and Profits to Beneficiary, Beneficiary hereby grants a revocable license (the "**License**") to Trustor to collect, hold, apply and retain the Rents and Profits of the Property as they become due and payable, so long as Trustor is not in default under the Note, this Deed of Trust or any of the other Loan Documents. The License given to Trustor hereunder to collect, apply and retain such Rents and Profits shall be automatically revoked and terminated, without notice or demand of any kind, upon and after default by Trustor under the Note, the Deed of Trust or any of the other Loan Documents. Notwithstanding the foregoing, in the event that Beneficiary is required by any provision of law to give Trustor notice or to make a demand to terminate the License or to enforce the assignment granted by Trustor to Beneficiary hereunder, such notice, if not otherwise given by Beneficiary in such other manner as may be permitted or required by applicable law, shall be deemed to have been given by Beneficiary and actually received by Trustor when Beneficiary sends to Trustor, in the manner set forth herein, a written notice of default or demand for payment of the amount in default whether or not such notice or demand specifically refers to or contains a termination of the License. Trustor shall immediately turn over to Beneficiary upon receipt or collection any Rents and Profits collected or received by Trustor after the termination of said License or after default by Trustor under the Note, this Deed of Trust or any of the other Loan Documents. Any such Rents and Profits not turned over by Trustor to Beneficiary as required hereby shall be held by Trustor in trust for Beneficiary. After Trustor's default under the Note, this Deed of Trust or any of the other Loan Documents, Beneficiary, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured may, in the sole discretion of Beneficiary and without regard to the adequacy of its security: (i) use and possess, without rental or charge, the personal property of Trustor located on the Property and used in the operation or occupancy thereof; (ii) apply the Rents and Profits, and any sums recovered by

Beneficiary on account thereof, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Secured Indebtedness and in such order as Beneficiary may determine (except for such application, Beneficiary shall not be liable to any person for the collection or non-collection of any Rents and Profits, nor for failure to assert or enforce any of the foregoing rights); (iii) take possession of the Property, manage and operate the Property and Trustor's business thereon, and take possession of and use all books of accounts and financial records of Trustor and its property managers or representatives relating to the Property; (iv) execute new leases of any part of the Property, including leases that extend beyond the term of this Deed of Trust, and cancel or alter any existing leases; (v) sign the name of Trustor and bind Trustor on all papers and documents relating to the operation, leasing and maintenance of the Property; (vi) demand payment from Trustor of all Rents and Profits collected by Trustor from the date of the default, which Rents and Profits shall, from and after the occurrence of such default, be deemed held by Trustor in trust for Beneficiary; (vii) demand, receive, and sue for payment of Rents and Profits directly from Trustor's tenants, including serving notice upon any or all tenants for the payment directly to Beneficiary of all rents and other monetary obligations owing under such tenants' leases; (viii) bring an action against Trustor for turnover of Rents and Profits collected by Trustor after Trustor's default under the Note, this Deed of Trust or any of the other Loan Documents; (ix) to bring an action against Trustor to obtain the appointment of a receiver to collect and pay over to Beneficiary the Rents and Profits from the Property; and/or (x) take any and all other actions with respect to the Property and the Rents and Profits as may be permitted under or authorized by applicable law or any of the Loan Documents. Beneficiary may, in its sole and absolute discretion, seek the appointment of a receiver solely to collect the Rents and Profits from the Property, or may seek the appointment of a receiver to operate the Property and collect the Rents and Profits. Trustor hereby stipulates to the Court appointing a receiver its consent to such appointment, if at the time of Beneficiary's request Trustor is in default hereunder, or under the Note, the Deed of Trust or any of the other Loan Documents. The entering upon and taking possession of the Property, the collection of any Rents and Profits, the doing of other acts herein authorized and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Nothing herein contained shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the actual taking of possession of the Property by Beneficiary or as constituting an action, rendering any of Trustor's obligations to Beneficiary unenforceable, or otherwise limiting any rights available to Beneficiary.

17. **LEASES AFFECTING THE PROPERTY.** Trustor warrants, represents and covenants as to each Lease now or hereafter covering all or any part of the Property, that (i) each Lease is a written legal instrument in full force and effect, valid and enforceable in accordance with its terms and has not been modified, amended or altered, whether in writing or orally; (ii) each Lease has been entered into for fair market value as the result of arm's length transactions; (iii) Beneficiary has had an opportunity to review each of the Leases; (iv) no default exists on the part of any tenant under any Lease or Trustor thereunder and to the best of Trustor's knowledge, no event has occurred and is continuing which would result in default but for the requirement that notice be given in accordance with the terms of the Lease; (v) no rent has been collected more than one (1) month in advance; (vi) no Lease, or any interest therein, nor Rents and Profits arising therefrom, has been previously assigned or pledged and remains the subject thereof; (vii) no tenant has any defense, setoff or counterclaim against Trustor under any Lease; (viii) all rent due under each Lease has been collected and no concession has been granted to any tenant under a Lease in

the form of a waiver, release, reduction, discount or other alteration of rent due or to become due thereunder; (ix) no Lease grants to the tenant thereunder, or anyone else, an option to purchase, or a right of first refusal to purchase, any part of the Property; (x) Trustor is the sole owner of the entire landlord's interest in all Leases and it has not and will not perform or fail to perform any acts or execute any other instruments which might prevent Beneficiary from fully exercising its rights under the terms, covenants and conditions of this Deed of Trust; and (xi) Trustor has full right, power and authority to assign the Leases and the Rents and Profits to Beneficiary and Trustor has not done any act which might prevent Beneficiary from exercising its rights under this Deed of Trust.

The assignment of leases set forth hereinabove shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any Lease), and Trustor shall comply with and observe its obligations as landlord under all Leases affecting the Property or any part thereof.

Without the prior written consent of Beneficiary, Trustor shall not (i) amend, modify, cancel, terminate (except following a default by the tenant thereunder which has not been cured within the period, if any, expressly provided for such cure in the Lease) any Advantage Arts Academy Lease, (ii) waive, excuse, or in any manner release or discharge any tenant or guarantors from their obligations with respect to any Lease, (iii) extend the term of any Lease on the Property entered prior to the date hereof, or (iv) enter into any new Lease on the Property after the date hereof. Trustor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Beneficiary. Beneficiary shall have the right to require at any time and from time to time that Trustor promptly furnish to Beneficiary original or certified copies of all Leases now existing or hereafter created.

Trustor will immediately notify Beneficiary when any release, termination or "buy-out" consideration is due and payable to Trustor by any tenants or guarantors with respect to any Lease. Notwithstanding anything to the contrary set forth in this Deed of Trust or any of the Loan Documents, Beneficiary may, in its sole and absolute discretion, require that any such release, termination or "buy-out" consideration be paid immediately to Beneficiary as proceeds of its collateral. In its absolute and sole discretion and without regard to the adequacy of Beneficiary's security, Beneficiary may apply such payments to reduce the unpaid principal balance of the Loan or deposit such payments in a non-interest bearing account established with Beneficiary which account shall be held as additional security for the Loan.

With respect to the assignment of leases hereinabove set forth, Trustor shall, from time to time upon request of Beneficiary, execute one or more separate specific lease assignment or assignments in such form as may be approved by Beneficiary, assigning to Beneficiary all right, title and interest of Trustor in and to any and all Leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable thereunder, subject to the conditional License hereinabove given to Trustor to collect the Rents and Profits under any such Lease. Trustor shall also execute and deliver to Beneficiary any notification, financing statement or other document reasonably required by Beneficiary to perfect the foregoing assignment as to any such Leases. Beneficiary shall have the right, at any time and from time to time, to notify any



tenant of the rights of Beneficiary as provided in the assignment by Trustor to Beneficiary of all Leases relating to the Property and to the Rents and Profits.

In the event of the occurrence of any default by Trustor under any Loan Document and the institution by Beneficiary of any foreclosure, receivership or other proceeding for the enforcement of Beneficiary's rights or remedies under this Deed of Trust, Beneficiary may elect at any time prior to consummation of a foreclosure sale of the Property, and the purchaser at such foreclosure sale (including Beneficiary) may elect at any time within thirty (30) days following the consummation of such foreclosure sale, to declare any or all Leases to be prior and superior to the lien of this Deed of Trust and to recognize the rights of the tenant(s) thereunder, in which event such Lease(s) shall survive such foreclosure sale and shall be and remain in full force and effect, and the tenant(s) thereunder shall be obligated to attorn to Beneficiary or such purchaser and to execute and deliver such instruments of attornment as Beneficiary or such purchaser shall require. Any such election shall be in the sole discretion of Beneficiary or such purchaser, and shall be evidenced by written notice from Beneficiary to Trustor and/or to the applicable tenant(s) delivered either prior to or within thirty (30) days following such foreclosure sale, by a statement of such election contained in the notice of the foreclosure sale, and/or by announcement at such foreclosure sale.

**18. FAILURE OF TRUSTOR TO COMPLY WITH DEED OF TRUST.** Upon the occurrence of an Event of Default or Default (as each are defined in the Loan Agreement), or any other event of default as specified herein, Trustor shall be in default under this Deed of Trust, and Beneficiary (but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, and without contesting the validity or amount of the same) shall have the right, at its option, to declare all sums secured hereby immediately due and payable, and may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Property for such purposes, and in exercising any such power, pay necessary expenses, employ counsel and pay attorneys' fees. Furthermore, at any time after a default by Trustor, Beneficiary shall have the following rights and remedies, all of such rights and remedies, together with the rights and remedies set forth in the previous sentence, shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies: (a) Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property; (b) Beneficiary may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code; (c) Beneficiary may choose, in its sole and absolute discretion, to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9-604 of the Uniform Commercial Code, and Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property; and/or (d) Beneficiary may exercise any other right or remedy which is set forth in this Deed of Trust or any other Loan Document or which is otherwise available at law or in equity. Upon default by Trustor, Beneficiary may, by delivery to Trustee of written notice of declaration of default and demand for sale, cause to be filed of record a written notice of default and election to sell the Property. If required by Trustee, Beneficiary shall also deposit with Trustee the Deed of Trust and Note or other Loan Documents or other agreements and such documents as required by Trustee evidencing expenditures or advances secured hereby. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a

default by Trustor under any section or provision contained in this Deed of Trust, is authorized to accept as true and conclusive the facts and statements therein and to act thereon hereunder without any independent investigation or further inquiry by Trustee. Trustor hereby agrees to be bound thereby. After the lapse of such time as there may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property either as a whole or in separate parcels, and in such order as it or Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash in lawful money of the United States. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. The postponement shall be, and notice of the postponement shall be given, as then required by law. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenants or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale. Trustee shall apply the proceeds of the sale as follows: *FIRST*: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed; *SECOND*: To payment of the obligations secured by the trust deed; and *THIRD*: To the balance, if any, to the person or person's legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29. Upon any sale made under or by virtue of this section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Deed of Trust. Trustee first shall apply the proceeds of sale to payments of all sums expended under the terms hereof not then repaid, with accrued interest at the rate then payable under the Note or other obligations secured hereby, then to payment of all other sums secured hereby in such order as Beneficiary may direct, and if thereafter there be any proceeds remaining, distribute them to the person or persons legally entitled thereto. Trustor and all persons dealing with the Property through or under Trustor and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining an interest in the Property which is junior and subordinate to this Deed of Trust, by taking and accepting their respective conveyances, encumbrances, security interests, deeds of trust, or liens do hereby acknowledge, covenant and

agree with Beneficiary that (i) in the event of any default in the repayment of the Secured Indebtedness, or in the event of any default under the terms of this Deed of Trust, or under any other deed of trust or security agreement securing the same indebtedness as is secured by this Deed of Trust, whether directly or by virtue of a cross-collateralization agreement or under any other Loan Document, Beneficiary may proceed to seek foreclosure or any other relief available at law or in equity in any order which Beneficiary may determine, in Beneficiary's sole discretion, and Beneficiary may proceed against any property or collateral securing said indebtedness in any order which Beneficiary elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lienor or encumbrance under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation", (ii) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (iii) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines.

Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* §§ 78-37-1 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

**19. NO WAIVER OR MODIFICATION UNLESS IN WRITING.** No modification or waiver by Beneficiary of any right under this Deed of Trust shall be effective unless in writing. Waiver by Beneficiary of any right granted to Beneficiary under this Deed of Trust or under any provision of this Deed of Trust as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder but failed to make or perform, or by adding any payment so made by Beneficiary to the Secured Indebtedness, or by exercising Beneficiary's rights to receive and collect the Rents and Profits therefrom, Beneficiary does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.

20. **REMEDIES.** Except as otherwise set forth in this Deed of Trust, no remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Trustee or to Beneficiary or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue separate remedies. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the Secured Indebtedness, and Beneficiary is hereby authorized and empowered, at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any Secured Indebtedness and of Trustor to Beneficiary, any and all sums of money which Beneficiary may have in its possession or under its control, including, without limiting the generality of the foregoing, the indebtedness evidenced by an investment certificate or any escrow or trust funds. In order to assure the definiteness and certainty of the rights and obligations herein provided, Trustor waives any and all rights of offset of claims and no offset shall relieve Trustor from paying installments on the obligations secured hereby as they become due.

21. **GENERAL PROVISIONS.** (a) As and when used this Deed of Trust, the term “*Trustor*” shall mean and include Trustor above-named, any other co-maker of the Note and their respective successors and permitted assigns and the term “*Beneficiary*” shall mean and include Beneficiary hereinabove named and its successors and assigns; (b) wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and vice-versa; (c) captions and section headings used herein are for convenience only, are not a part of this Deed of Trust, and shall not be used in construing it; (d) Beneficiary shall have the right at any time and from time to time to provide any information it has in its possession relating to Trustor, or any guarantor of the Loan, or any other person or entity now or hereafter liable with respect to the Loan, or the Property to any party interested in acquiring all or any part of the Loan or any interest therein; (e) in exercising any right or remedy or taking any action provided herein, Beneficiary may act through its employees, agents, counsel, or independent contractors, as authorized by Beneficiary; (f) as and when used herein, the word “including” shall be deemed to mean “including without limitation”; and (g) if more than one person is named as Trustor, each obligation of Trustor hereunder shall be the joint and several obligation of each such person. Without limiting the foregoing, in the event that Trustor is a partnership, each general partner thereof shall be deemed to have agreed, by its execution of this Deed of Trust, that such partner is jointly and severally liable with Trustor for the performance of each and every obligation of Trustor under this Deed of Trust and the other Loan Documents and that Beneficiary shall not be required to exhaust the assets of Trustor in enforcing any monetary obligation of Trustor to Beneficiary prior to proceeding against the assets of such general partner. The foregoing agreement shall constitute a separate obligation of each general partner.

22. **FURTHER ASSURANCES.** At any time and from time to time, upon Beneficiary’s request, Trustor shall make, execute and deliver, or cause to be made, executed and delivered, to Beneficiary and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by Beneficiary, any and all such further deeds of trust, instruments of further assurance, certificates, agreements and other documents as Beneficiary may consider necessary or

desirable in order to effectuate, complete or perfect, or to continue and preserve the obligations of Trustor under the Note, this Deed of Trust or any other Loan Document and the lien of this Deed of Trust or any other lien upon or security interest in all of the Property or any other property securing the indebtedness evidenced by the Note, whether now owned or hereafter acquired by Trustor and unto all and every person or persons deriving any estate, right, title or interest under this Deed of Trust or the power of sale herein contained. Upon any failure by Trustor to do so, Trustor hereby authorizes Beneficiary to make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of Trustor, and Trustor hereby irrevocably appoints Beneficiary the agent and attorney-in-fact of Trustor to do so.

23. **GOVERNING LAW.** This Agreement is to be governed according to the laws of Utah, without giving effect to principles of conflict of laws.

24. **STATE STATUTES.** This Deed of Trust is further subject to the Utah Uniform Assignment of Rents Act and other Utah law (collectively, “**Utah Law**”). If there is a conflict between Utah Law and this Deed of Trust, the Utah Law will control as to rights, procedures, duties, and all other matters, and to the extent allowed by Utah Law, the rights of the parties pursuant to this Deed of Trust will be in addition to the rights of the parties under Utah Law.

25. **SEVERABILITY.** In the event that any provision or clause of this Deed of Trust is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Deed of Trust or any of the other Loan Documents which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of this Deed of Trust is declared to be severable.

26. **NOTICES.**

(a) **Generally.** Except for any notice required by applicable law to be given in another manner, all notices provided pursuant to this Deed of Trust shall be in writing and shall be deemed to have been duly given if sent by United States certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the address set forth herein or such other address as the recipient party may have designated by notice given in the manner specified above. Each such notice shall be deemed received upon the earlier of (i) when given or received in the manner prescribed by applicable law, (ii) when received in person by the recipient party or (iii) two calendar days following the mailing of such notice, certified mail, postage prepaid, return receipt requested to the address set forth herein.

(b) **By Trustee.** Trustee is not obligated to notify any of the other parties of pending sale under any other deed of trust of this trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee are a party unless brought by Trustee.

(c) **To Trustor and Charter School.** Copies of any notice of Default, Event of Default, or notice of sale under this Deed of Trust mailed to Trustor and Charter School will be sent in accordance with this section.

27. **LOST INSTRUMENTS.** In the event that following execution, the Note, Deed of Trust, or any other Loan Document should be lost, destroyed or mutilated, Trustor agrees to execute another original of such Note, Deed of Trust or Loan Document.

28. **POWER OF TRUSTEE TO RECONVEY OR CONSENT.** Without affecting the liability of any person, including Trustor, for the payment of the Secured Indebtedness, including such indebtedness as may be due at the time of or after full reconveyance, or the lien of this Deed of Trust upon any remainder of the Property for the full amount of the Secured Indebtedness, or the rights or powers of Beneficiary or Trustee with respect to the remainder of the Property (other than any person or property specifically released by Beneficiary), Beneficiary or Trustee (if so requested by Beneficiary, from time to time, without liability therefor, and without notice to Trustor, upon written request of Beneficiary and presentation of this Deed of Trust and the Note or other agreement secured hereby, together with payment for any reasonable fees of Trustee therefor), may do any one or more of the following: (1) release any indebtedness; (2) extend the time or otherwise alter the terms of payment of such indebtedness; (3) accept additional security; (4) substitute or release any property securing such indebtedness; (5) reconvey all or any part of such property; (6) consent to the making of any map or plat thereof; (7) join in granting any easement thereon; or (8) join in any extension agreement or any agreement subordinating or otherwise affecting the lien or charge hereof. Any reconveyance by Trustee shall be made without warranty. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyances may be described as "the person or persons legally entitled thereto". A full reconveyance of this Deed of Trust shall operate as a re-assignment of the Leases and the Rents and Profits assigned herein to Beneficiary.

29. **SUBSTITUTION OF TRUSTEE.** Beneficiary may, from time to time, by an instrument in writing, substitute a successor or successors to any trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor trustee or trustees, who shall, without conveyances from the trustee predecessor, succeed in all its title, estate, rights, powers and duties. Such instrument shall contain the name and address of the new trustee. The procedure herein provided for substitution of trustees shall not be exclusive of other provisions for substitution provided by law.

30. **RECONVEYANCE.** Upon payment of all sums secured by this Deed of Trust, including, but not limited to any prepayment premiums or fees due and payable under the Note, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing the Secured Indebtedness to Trustee. Trustee shall release the Property without warranty for the benefit of the person or persons legally entitled thereto. Such person or persons shall pay all reasonable costs of Trustee authorized by any law for so reconveying the Property.

31. **ENVIRONMENTAL DEFINITIONS.**

"Beneficiary's Environmental Liability" means any losses, liabilities, obligations, penalties, claims, litigation demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature

whatsoever (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Beneficiary in connection with or arising from: (a) any Hazardous Material, on, in, under or affecting all or any portion of the Property, the groundwater, or any surrounding areas; (b) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to herein; (c) any violation or claim of violation relating to or affecting the Property by Indemnitor or any third party of any Environmental Laws; (d) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material; (e) any claim by Indemnitor against Beneficiary under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted; or (f) any actions taken by Beneficiary (i) to enter and inspect the property and (ii) to appoint a receiver upon ex parte application without notice to Trustor, as a matter of right and without regard to the value of the collateral or the adequacy of any security for the indebtedness.

**“Environmental Laws”** means all federal, state and local laws (including all statutes, regulations, ordinances, codes, rules and other governmental restrictions, requirements and powers) now or hereafter in effect relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Materials (as any or all such laws may be amended from time to time), including but not limited to the following: (a) the Solid Waste Disposal Act, 42 U.S.C. § 9601 et seq.; (b) the Comprehensive Environmental Response, Compensation and Liability Act of 1976, 42 U.S.C. § 9601 et seq.; (c) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. § 1820 et seq.; (d) the Hazardous Materials Transportation Act, 49 U.S.C. § 1810 et seq.; (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (f) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 9601 et seq.; (g) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (h) the Clean Air Act, 42 U.S.C. § 7412 et seq.; (i) the regulations of the Environmental Protection Agency; (j) the regulations of the Nuclear Regulatory Agency; and (k) any related or similar statutes, ordinances or resolutions of the State of Utah or any other governmental entity.

**“Hazardous Material”** means: (a) any substances defined as “hazardous substances,” “pollutants,” “contaminants,” “hazardous materials,” “hazardous wastes,” or “hazardous or toxic substances” or related materials as now or hereafter defined in any Environmental Law, (b) those substances listed or otherwise identified as substances of the type referred to in the preceding subsection (a) in the regulations adopted and issued pursuant to any Environmental Law, as the same may be amended, modified or supplemented; (c) any friable asbestos, airborne asbestos in excess of that generally found in the atmosphere, respectively, where the Property is located, or any substance or material containing asbestos, excluding any such materials located on the Property prior to the date hereof so long as such materials are contained, maintained, abated, or removed in compliance with all applicable Environmental Laws; and (d) any substance the presence of which on the Property is prohibited by any applicable Environmental Law; provided that Hazardous Material shall not include any such substances used in or resulting from the ordinary operation of a general primary education facility or for the cleaning of the Property; provided that such substances are stored, handled and disposed of in compliance with all applicable Environmental Laws and other applicable laws and regulations.

**“Remedial Work”** means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Environmental Laws (as hereinafter defined), (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Environmental Laws, or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Environmental Laws or the presence of any Hazardous Material on, under or near the Property (collectively **“Claim”**).

**32. ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND COVENANTS.** Trustor (also referred to herein as **“Indemnitor”**) represents, covenants and warrants that as of the date hereof to the best knowledge of a responsible officer/member of Trustor who is in a position to have such knowledge, and at all times hereafter during the term hereof:

(a) **Compliance.** The Property (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, from and after the date of this Deed of Trust will be in compliance with all Environmental Laws. All Hazardous Materials generated or handled on the Property from and after the date of this Deed of Trust will be stored and disposed of in a lawful manner. The Indemnitor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Property, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(b) **Absence of Hazardous Materials.** No generation, manufacture, storage, use, handling, treatment, transportation or disposal of Hazardous Material has occurred as a result of the presence or disposal of Hazardous Materials or is occurring on or from the Property. No Hazardous Material shall be introduced to or handled on the Property without thirty (30) days’ prior written notice to and approval by Beneficiary. No environmental or public health or safety hazards currently exist as a result of the presence or disposal of Hazardous Materials with respect to the Property or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) have ever been or are present on or under the Property.

(c) **Absence of Water Intrusion.** All structures on the Property currently are, and Trustor shall continue to maintain all structures on the Property: (i) free of any liquid water and/or water vapor intrusion into the structures in amounts that could support the growth of fungus and/or mold inside the structures and (ii) free of any sites of growing fungus and/or mold inside the structures.

(d) **Proceedings and Actions.** There have been no past, and there are no pending or threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Property, or the disposal or presence of Hazardous Materials, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notice of noncompliance or other



proceedings of any kind relating to Hazardous Materials or Environmental Laws that could impair the value of the Property, or the priority of Beneficiary's mortgage lien. The Indemnitor shall immediately notify Beneficiary and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Property or compliance with Environmental Laws. Indemnitor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Beneficiary. Indemnitor shall keep the Property free of any lien imposed pursuant to any Environmental Laws.

(e) **Environmental Audit.** Indemnitor shall provide such information and certifications, which Beneficiary may reasonably request from time to time to ensure Indemnitor's compliance with Trustor's obligations under all provisions of this Deed of Trust. To investigate Indemnitor's compliance with Environmental Laws and with this Deed of Trust, Beneficiary shall have the right, but no obligation, at any time and from time to time to enter upon the Property, take samples, review books and records of Indemnitor, interview the employees and officers of Indemnitor, and conduct similar activities. Indemnitor shall cooperate in the conduct of such an audit.

No inspection or failure to inspect the Property by Beneficiary shall impose any liability upon Beneficiary for the discovery, failure to discover, evaluation, or remediation of any Hazardous Material that may exist on or affecting the Property. Beneficiary shall not be liable or responsible for any loss, damage, injury or liability to the Property or to any persons or property thereon arising from any entry or inspection by Beneficiary pursuant to this Section 32, except only for any loss, damage, injury or liability which is caused solely by the gross negligence of Beneficiary (which for purposes of this Deed of Trust shall mean an action taken by Beneficiary with reckless disregard of the consequences thereof), provided that in no event shall Beneficiary be liable under any circumstances for any consequential damages suffered by Trustor or any other person or entity.

Beneficiary is entitled to rely upon Indemnitor's representations and warranties contained herein despite any independent investigations by Beneficiary or its consultants. Indemnitor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Property and shall have no right to rely upon any environmental investigations or findings made by Beneficiary or its consultants.

33. **REMEDIAL WORK.** As soon as possible, but no later than sixty (60) days after receipt by Indemnitor of any Claim, Indemnitor shall perform or cause others qualified to do so to commence and/or perform any and all necessary Remedial Work in response to any Claim. Subject to the terms of any leases and applicable laws, in response to Indemnitor's knowledge of the presence of any Hazardous Material on or under the Property or real property immediately adjacent to the Property, Indemnitor shall immediately perform or cause tenants to immediately perform all Remedial Work. All Remedial Work shall be performed by contractors approved by Beneficiary and in accordance with all applicable Environmental Laws and any other applicable laws, rules, regulations, or orders. All costs and expenses of any Remedial Work shall be paid by Indemnitor, it being understood that Beneficiary shall incur no cost, expense or liability in connection with any Remedial Work. Beneficiary shall have the right, but no obligation, to join and participate in, as a party if it so elects at Beneficiary's cost, any legal proceedings or actions initiated in connection

with any Hazardous Material Claims, provided, however, Indemnitor shall reimburse Beneficiary for its attorneys' fees and costs incurred if such participation is deemed reasonably necessary by Beneficiary to protect its security interest in the Property.

#### 34. ENVIRONMENTAL INDEMNIFICATION.

(a) **Indemnify And Defend.** Indemnitor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to Beneficiary and at Indemnitor's sole cost) and hold Beneficiary free and harmless from and against Beneficiary's Environmental Liability. The indemnification provided for in this section shall specifically apply to and include any Beneficiary's Environmental Liability in connection with the exercise of Beneficiary's rights (a) to enter and inspect the Property, without limitation, the cost of repair of any physical injury to the Property caused by such entry and inspection, (b) to obtain the appointment of a receiver upon ex parte application without notice to Trustor, as a matter of right and without regard to the value of the collateral or the adequacy of any security for the indebtedness; (c) to determine the value of the Property and to establish the degree to which the Property may be environmentally impaired, and (d) to commence an action.

It is expressly understood and agreed that to the extent that Beneficiary is strictly liable under any Environmental Laws, the Indemnitor's obligation to Beneficiary under this indemnity shall likewise be without regard to fault on the part of the Indemnitor with respect to the violation or condition which results in liability to Beneficiary.

All costs and expenses, including, but not limited to, attorneys' fees, incurred by Beneficiary in connection with any action commenced under this Deed of Trust to determine the degree to which the Property is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the Secured Indebtedness and shall be due and payable to Beneficiary upon its demand.

(b) **Survival.** Any termination of the lien of this Deed of Trust shall not terminate or otherwise affect Indemnitor's obligations hereunder and Indemnitor's obligations hereunder shall survive (i) any foreclosure, deed in lieu of foreclosure, cancellation or release this Deed of Trust, (ii) any sale or other transfer of the Property by either Indemnitor or Beneficiary, and (iii) repayment of the Loan. The rights of Beneficiary under the environmental provisions in this Deed of Trust shall be in addition to any other rights and remedies of Beneficiary against Indemnitor under any other document or instrument now or hereafter executed by Indemnitor, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any of such rights. The obligations of Indemnitor hereunder shall be personal to each Indemnitor and their respective representatives, administrators, executors, successors and assigns, and shall not run, and shall not be deemed to run, with the Property.

Notwithstanding anything to the contrary in this Deed of Trust, any indemnification amount owing to Beneficiary pursuant to this Section 34 shall not be secured by the Property.

35. **NO IMPAIRMENT OF SECURITY.** The lien, security interest and other security rights of Beneficiary hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Beneficiary including, but not limited to, any renewal, extension or modification which Beneficiary may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Beneficiary shall not release or impair the lien, security interest or other security rights of Beneficiary hereunder or affect the liability of Trustor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Beneficiary's consent to any junior lien).

36. **ACTS NOT CONSTITUTING WAIVER BY BENEFICIARY.** Beneficiary may waive any default without waiving any other prior or subsequent default. Beneficiary may remedy any default without waiving the default remedied. Neither failure by Beneficiary to exercise, nor delay by Beneficiary in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Trustor therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

37. **TRUSTOR'S SUCCESSOR.** If the ownership of the Property or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and to the Secured Indebtedness in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Secured Indebtedness given by Beneficiary shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Trustor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the Secured Indebtedness.

The Trustor agrees that it shall be bound by any modification of this Deed of Trust or any of the other Loan Documents made by Beneficiary and any subsequent owner of the Property, with or without notice to such Trustor, and no such modifications shall impair the obligations of such Trustor under this Deed of Trust or any other Loan Document. Nothing in this section or elsewhere in this Deed of Trust shall be construed to imply Beneficiary's consent to any transfer of the Property.

38. **NO PARTNERSHIP.** The relationship between Beneficiary and Trustor is solely that of lender and borrower. Beneficiary has no fiduciary or other special relationship with Trustor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Trustor and Beneficiary or in any way make Beneficiary a co principal with Trustor with reference to the Property. All agreed contractual duties between or among Beneficiary, Trustor and Trustee are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

39. **DISPUTE RESOLUTION. THIS SECTION CONTAINS A JURY WAIVER, ARBITRATION CLAUSE, AND A CLASS ACTION WAIVER. READ IT CAREFULLY.**

This dispute resolution provision shall supersede and replace any prior "Jury Waiver," "Judicial Reference," "Class Action Waiver," "Arbitration," "Dispute Resolution," or similar alternative dispute agreement or provision between or among the parties.

(a) **JURY TRIAL WAIVER; CLASS ACTION WAIVER. AS PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THEIR RESPECTIVE RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH ANY DISPUTE (AS "DISPUTE" IS HEREINAFTER DEFINED), AND DISPUTES SHALL BE RESOLVED BY A JUDGE SITTING WITHOUT A JURY. IF A COURT DETERMINES THAT THIS PROVISION IS NOT ENFORCEABLE FOR ANY REASON AND AT ANY TIME PRIOR TO TRIAL OF THE DISPUTE, BUT NOT LATER THAN THIRTY (30) DAYS AFTER ENTRY OF THE ORDER DETERMINING THIS PROVISION IS UNENFORCEABLE, ANY PARTY SHALL BE ENTITLED TO MOVE THE COURT FOR AN ORDER COMPELLING ARBITRATION AND STAYING OR DISMISSING SUCH LITIGATION PENDING ARBITRATION ("ARBITRATION ORDER"). IF PERMITTED BY APPLICABLE LAW, EACH PARTY ALSO WAIVES THE RIGHT TO LITIGATE IN COURT OR AN ARBITRATION PROCEEDING ANY DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.**

(b) **Arbitration.** If a claim, dispute, or controversy arises between us with respect to this Agreement, related agreements, **or any other agreement or business relationship between any of us whether or not related to the subject matter of this Agreement** (all of the foregoing, a "Dispute"), and only if a jury trial waiver is not permitted by applicable law or ruling by a court, any of us may

require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. By agreeing to arbitrate a Dispute, **each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, JAMS or Forum (formerly known as National Arbitration Forum) ("**Administrator**") as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters (i) relating to a deposit account, application for or denial of credit, enforcement of any of the obligations we have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, (ii) based on or arising from an alleged tort, or (iii) involving either of our employees, agents, affiliates, or assigns of a party. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, we each will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where lender or Beneficiary is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000.00, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000.00, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall

review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. This arbitration provision shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

(c) Reliance. Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this Section.

40. **FINAL AGREEMENT.** The Note, this Deed of Trust, the Loan Agreement and the other Loan Documents collectively represent the final agreements between Beneficiary, Trustor and Charter School, as applicable, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten agreements between Beneficiary and Trustor or Charter School. In the event of any material conflict between any provision of this Deed of Trust and the Loan Agreement, the provisions of the Loan Agreement shall control.

41. **UNLAWFUL USE, MARIJUANA, CONTROLLED SUBSTANCES AND PROHIBITED ACTIVITIES.**

(a) Trustor shall not use, occupy, or permit the use or occupancy of any Property or Collateral by Trustor or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for commercial, medical, or personal purposes), or any law relating to the medicinal use or distribution of marijuana (collectively, "**Prohibited Activities**"). Any lease, license, sublease or other agreement for use, occupancy or possession of any Property or Collateral (collectively a "**lease**") with any third person ("**lessee**") shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. Trustor shall upon demand provide Beneficiary with a written statement setting forth its compliance with this section and stating whether any Prohibited Activities are or may be occurring in, on or around the Property or Collateral. If Trustor becomes aware that any lessee is likely engaged in any Prohibited Activities, Trustor shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities. Trustor shall keep Beneficiary fully advised of its actions and plans to comply with this section and to prevent Prohibited Activities.

(b) This Section 41 is a material consideration and inducement upon which Beneficiary relies in extending credit and other financial accommodations to Trustor. Failure by Trustor to comply with this section shall constitute a material non-curable Event of Default. Notwithstanding anything in this agreement, the Note or Related Documents regarding rights to cure Events of Default, Beneficiary is entitled upon breach of this section to immediately exercise any and all remedies under this agreement, the Note the Related Documents, and by law.

(c) In addition and not by way of limitation, Trustor shall indemnify, defend and hold Beneficiary harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities at or on the Property or Collateral, Prohibited Activities by Trustor or any lessee of the Property or Collateral, or Trustor's breach, violation, or failure to enforce or comply with any of the covenants set forth in this section. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any Property or Collateral (with or without compensation to Beneficiary, and whether or not Property or Collateral is taken free of or subject to Beneficiary's lien or security interest).

42. **GUARANTOR OBLIGATIONS.** Notwithstanding any other provision of this Deed of Trust (including anything incorporated herein by reference) or of the other Loan Documents, in no event will the obligations secured by this Deed of Trust include the obligations of the guarantors of the Loan.

43. **CONSTRUCTION LOAN.**

(a) **Deed of Trust as Construction Mortgage.** This Deed of Trust constitutes a "Construction Mortgage" within the meaning of Utah Code § 70A-9a-334(8) or any successor statute. The proceeds of the Loan secured by this Deed of Trust are to be used by Trustor in part for the purpose of funding the construction and development of the Real Property and Improvements, and are to be disbursed in accordance with the Loan Agreement and other Loan Documents.

(b) **Loan Amount Via One or More Disbursements.** The Note evidences a debt created by one or more disbursements made by Beneficiary to Trustor to finance the cost of the construction of certain improvements upon the Real Property in accordance with the Loan Agreement, up to such amount, to the same extent and with the same effect and priority as if such total amount had been fully disbursed on or before the date of recording of this Deed of Trust.

44. **CHARTER SCHOOL PROVISIONS.**

(a) Charter School represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof:

(i) Charter School is a non-profit corporation duly formed and validly in existence and in good standing under the laws of the State and authorized to do business and to own real property in the State;

(ii) Charter School is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business makes such qualification necessary and where the failure to so qualify permanently precludes Charter School from enforcing contracts;

(iii) Charter School has the full power and authority to enter this Deed of Trust and to execute and carry out the provisions herein;

(iv) The execution, delivery and performance of this Deed of Trust have been duly authorized by all necessary action of Charter School, and no other action of Charter School is required for the execution delivery and performance of this Deed of Trust;

(v) This Deed of Trust when executed and delivered constitutes valid and binding obligations of Charter School, enforceable with its respective terms; and

(vi) Charter School has not granted any mortgages, deeds of trust, deeds to secure debt or other security interests encumbering Charter School's interest in the Property, and no third party has an option or preferential right to purchase Charter School's interest in the Property.

(b) Charter School hereby agrees that neither the Ground Lease or the School Lease may be modified, terminated, amended, altered or cancelled other than in accordance with the terms and provisions of the Ground Lease or School Lease, as applicable, nor will Charter School accept a surrender of the Property other than in accordance with the terms and provisions of the Ground Lease, without the prior written consent of Beneficiary, and that any such action taken without Beneficiary's consent shall not be binding on Beneficiary; provided, however, that upon the occurrence of a default under the Ground Lease, which default is of the type which permits Charter School to terminate or cancel the Ground Lease, before terminating or canceling the Ground Lease, Charter School shall give Beneficiary a minimum of thirty (30) days after its receipt of the notice from Charter School or Trustor concerning such default to remedy the default or claimed default; provided, however, that if such default or claimed default cannot be remedied with reasonable diligence by Beneficiary within thirty (30) days, Beneficiary will have such additional time as is reasonably necessary to remedy the default with reasonable diligence and continuity. Furthermore, if a default can be reasonably remedied only if Beneficiary first obtains possession of the Property, Beneficiary shall have additional time as is reasonably necessary under the circumstances to obtain possession of the Property and to remedy the default with reasonable diligence and continuity thereafter.

(c) Subject to Trustor's interest therein, Charter School represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof:



(i) Charter School is the lawful owner of good and marketable title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, and assign the Property, and is the owner of the Improvements hereby secured, and has good right to grant, bargain, sell, convey, transfer, and assign the same as security under this Deed of Trust; (ii) Charter School will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure; and (iii) all representations and warranties of Charter School set forth in this Deed of Trust are true and correct.

(d) The general credit of Charter School is not obligated or available for the payment of this Deed of Trust. Beneficiary will not look to Charter School or any principal, member, director, officer or employee of Charter School with respect to the indebtedness evidenced by this Deed of Trust or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Deed of Trust, Beneficiary will look solely to the Property and/or Trustor for the payment of the indebtedness secured by this Deed of Trust and for the performance of the provisions hereof. Beneficiary will not seek a deficiency or other money judgment against Charter School or any principal, member, director, officer, or employee of Charter School and will not institute any separate action against Charter School by reason of any default that may occur in the performance of any of the terms and conditions of this Deed of Trust or the Loan Documents. This agreement on the part of Beneficiary shall not be construed in any way so as to effect or impair the lien of this Deed of Trust or Beneficiary's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of Beneficiary in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor.

(e) Charter School is not obligated and shall not be liable to any extent for the representations and covenants of Trustor made in or contained in this Deed of Trust.

(f) Charter School represents and warrants as of the date hereof that the Ground Lease is in full force and effect in accordance with its terms; to Trustor's knowledge, there are no defaults under the Ground Lease by any party thereto, and no events or circumstances existing which, after notice or the passage of time, or both, would constitute a default or an event of default under the Ground Lease; and the leasehold and Trustor's interest under the Ground Lease are free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Encumbrances.

(g) Charter School hereby assigns, sells, conveys, and sets over unto Beneficiary all of Charter School's right, title, and interest in and to any and all Leases, together with all security therefor and all monies payable thereunder, and all books and records pertaining thereto, subject, however, to the conditional license hereinabove given to Charter School to collect the Rents and Profits arising under any such Leases. This is a present, effective, and absolute assignment, and Beneficiary shall have the right, at its option, to enter and take possession of the premises affected by any Lease and to perform all acts necessary for the operation and maintenance of such premises in the same manner

and to the same extent that Charter School might reasonably so act. In furtherance of the foregoing, and not by way of limitation, Beneficiary is empowered, but shall have no obligation, to collect the Rents and Profits accruing under any Lease, to enforce payment thereof and the performance of any and all terms and provisions thereof, to exercise all the rights and privileges of Charter School thereunder.

45. **BENEFICIARYRUPTCY PROVISIONS.**

(a) The lien of this Deed of Trust shall attach to, and Trustor hereby assigns, conveys and grants to Beneficiary a security interest in, all of Trustor's rights and remedies at any time arising under or pursuant to Section 365 of the Bankruptcy Code, including, without limitation, all of Trustor's rights under Section 365(h) of the Bankruptcy Code to remain in possession of the property that is subject to the Ground Lease.

(b) Trustor shall not without Beneficiary's prior written consent elect to treat the Ground Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any section election made without Beneficiary's consent shall be void.

(c) Trustor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect to Charter School under the Bankruptcy Code or any other laws, statutes or regulations pursuant to which the Ground Lease might be disaffirmed. This Deed of Trust constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until the Indebtedness shall have been satisfied and discharged in full. Any amounts received by Beneficiary as damages arising out of the rejection of the Ground Lease shall be applied first to all costs and expenses of Beneficiary incurred in connection with the exercise of any of its rights and remedies under this section, with the balance to be applied to repayment of the Indebtedness in such manner as Beneficiary may determine.

(d) Trustor shall, promptly upon obtaining knowledge thereof, notify Beneficiary in writing of any filing by or against Charter School of a proceeding under the Bankruptcy Code or any similar statute, law or regulation. Trustor shall promptly deliver to Beneficiary copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such proceedings. If any action or proceeding shall be commenced, or any motion or notice shall be filed, in respect of Charter School in connection with any case under the Bankruptcy Code or any other similar law, statute or regulation, Beneficiary shall have the option, exercisable upon notice from Beneficiary to Trustor, to participate with Trustor in conducting and controlling any such litigation, and Beneficiary shall have the right to be represented therein by counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Trustor in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith. Trustor shall, upon demand, pay to Beneficiary all costs and expenses (including reasonable attorneys' fees) paid or incurred by Beneficiary in connection with

the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Trustor as aforesaid shall become part of the Indebtedness and shall be secured by all collateral therefor. Trustor shall not commence any action, suit or proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case under the Bankruptcy Code or similar statute, law or regulation without the prior written consent of Beneficiary.

(e) If there shall be filed by or against Trustor a petition under the Bankruptcy Code and Trustor as lessee under the Ground Lease shall determine to reject the Ground Lease pursuant to Section 365 of the Bankruptcy Code, Trustor shall give Beneficiary not less than twenty (20) days' prior written notice of the date on which Trustor shall apply for authority to reject the Ground Lease. Beneficiary shall have the right, but not the obligation, to serve upon Trustor within such twenty (20) day period a notice stating that (i) Beneficiary demands that Trustor assume and assign the Ground Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code, and (ii) Beneficiary covenants to cure or provide adequate assurance that it will promptly cure all defaults and provide adequate assurance of future performance under the Ground Lease. If Beneficiary shall serve upon Trustor the notice described in the preceding sentence, Trustor shall not seek to reject the Ground Lease and shall comply with the demand provided in clause (i) of the preceding sentence. Trustor hereby assigns and transfers to Beneficiary the right to apply to the Bankruptcy Court for an order extending the period during which the Ground Lease may be rejected or assumed.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Deed of Trust effective as of the day first above written.

TRUSTOR:

HERRIMAN SCHOOL DEVELOPMENT, LLC, a Utah limited liability company

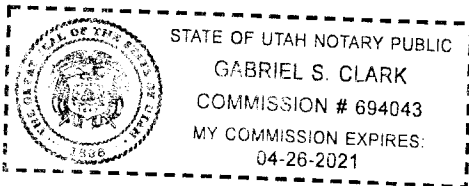
By: [Signature]  
Sheldon Killpack, its Manager

By: [Signature]  
Jed Stevenson, its Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF Davis )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of February, 2020, by Sheldon Killpack, as Manager of Herriman School Development, LLC, a Utah limited liability company.

WITNESS my hand and official seal.



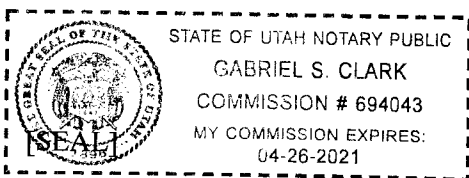
[Signature]  
Notary Public

My commission expires 4/26/21

STATE OF UTAH )  
 ) ss.  
COUNTY OF Davis )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of February, 2020, by Jed Stevenson, as Manager of Herriman School Development, LLC, a Utah limited liability company.

WITNESS my hand and official seal.



[Signature]  
Notary Public

My commission expires: 4/26/21

[Signatures continue on the following page]

**CHARTER SCHOOL:**

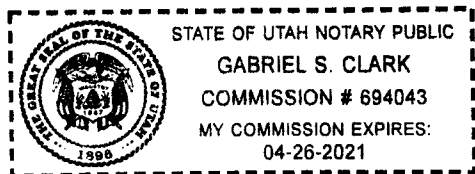
**ADVANTAGE ARTS ACADEMY**, a Utah  
non-profit corporation

By: [Signature]  
Name: Jodi Hart Wilson  
Title: Board President

STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake )

On this 2<sup>nd</sup> day of March, 2020, before me, Gabriel S. Clark, a  
Notary Public in and for said State, personally appeared Jodi Hart Wilson, known or  
identified to me to be the Board President of Advantage Arts Academy, a Utah non-profit  
corporation, the corporation that executed the within instrument or the person who executed the  
instrument on behalf of said corporation, and acknowledged to me that such corporation executed  
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the  
day and year in this certificate first above written.



[Signature]  
Notary Public for Utah  
Residing at Hooper, UT  
My commission expires 4/26/21

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL 1:

Lot 1, ADVANTAGE ARTS SUBDIVISION, according to the official plat thereof on file and of record in the Salt Lake County Recorder's office, recorded March 27, 2020 as Entry No. 13228786 in Book 2020P at Page 70.

PARCEL 2:

Lot 2, ADVANTAGE ARTS SUBDIVISION, according to the official plat thereof on file and of record in the Salt Lake County Recorder's office, recorded March 27, 2020 as Entry No. 13228786 in Book 2020P at Page 70.

PARCEL 3:

The non-exclusive easement, appurtenant to PARCELS 1 and 2 herein, for vehicular, pedestrian and other access, and for parking, as created by and defined in that certain Cross Access and Parking Easement recorded March 19, 2020 as Entry No. 13220164 in Book 10911 at Page 7269 in the office of the Salt Lake County Recorder.

## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. Taxes for the year 2020 and subsequent years, are accruing as a lien not yet due and payable under Parcel Nos. 26-26-126-013 and 26-26-126-015 (Parcel 1) and 26-26-126-012 and 26-26-126-014 (Parcel 2).
2. The herein described Land is located within the boundaries of Herriman City, South Salt Lake Valley Mosquito Abatement District, Jordan Valley Water Conservancy District, South Valley Sewer District, Central Utah Water Conservancy District, Unified Fire Services, Herriman City Safety Enforcement Area, and is subject to any and all charges and assessments levied thereunder.
3. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
4. Claim, right, title or interest to water or water rights whether or not shown by the public records.
5. Temporary Construction Easement in favor of Jordan Valley Water Conservancy District for a water pipeline(s), a municipal water meter station, and associated water system equipment and facilities and incidental purposes, by instrument dated February 7, 2017 and recorded February 14, 2017, as Entry No. 12476208 in Book 10529, at Page 5456. (affects Parcel 1)
6. Oil and Gas Lease by and between E. P. Bastian, K. M. Bastian, W. J. Bastian and Azalia Bastian, wife of W. J. Bastian and Rose F. Bastian, wife of K. M. Bastian, recorded May 6, 1931 as Entry No. 674833 in Book 95 at Page 130.
7. Mineral Deed in favor of Ronald G. Wilcox, recorded July 9, 1963 as Entry No. 1931404 in Book 2072 at Page 75 and Mineral Deed in favor of The Superior Oil Company, a California corporation, recorded July 9, 1963 as Entry No. 1931405 in Book 2072 at Page 77.  
  
Assignment of Bill of Sale in favor of XTO Energy Inc., a Delaware corporation, recorded October 2, 2018 as Entry No. 12860388 in Book 10718 at Page 2977.
8. Commercial Sewer Connection Agreement between Herriman School Development, LLC and South Valley Sewer District, a political subdivision of the State of Utah recorded January 9, 2020 as Entry No. 13166355 in Book 10882 at Page 9831.

9. Subject to the following matters disclosed on that certain survey prepared by Silverpeak Engineering, having been certified under the date of January 10, 2020, last revised April 8, 2020, as Job No. AW-051, by Jason T. Felt, a Professional Land Surveyor holding License No. 9239283:

Fire hydrants, C-900 PVC Fire Line Loop, and any other related facilities

Water lines and laterals

10. Improvement and Cost-Sharing Agreement by and among Herriman School Development, L.L.C., a Utah limited liability company, Advantage Arts Academy, a Utah corporation and Olympia Ranch, LLC, a Utah limited liability company recorded February 27, 2020 as Entry No. 13204420 in Book 10902 at Page 4611.
11. Cross Access and Parking Easement by and between Advantage Arts Academy, a Utah nonprofit corporation, and Herriman School Development, LLC, a Utah limited liability company, recorded March 19, 2020 as Entry No. 13220164 in Book 10911 at Page 7269.
12. Easements, notes and restrictions as shown on the recorded plat for Advantage Arts Subdivision, recorded March 27, 2020 as Entry No. 13228786 in Book 2020P at Page 70.
13. The terms and provisions of an unrecorded Ground Lease Agreement dated as of August 12, 2019, by and between Advantage Arts Academy, a Utah nonprofit corporation, as Landlord, and Herriman School Development, LLC, a Utah limited liability company, as Tenant, as disclosed by a copy thereof provided to the Company.
14. The terms and provisions of an unrecorded Lease Agreement dated as of August 12, 2019, by and between Herriman School Development, LLC, a Utah limited liability company, as Landlord, and Advantage Arts Academy, a Utah nonprofit corporation, as Tenant, as disclosed by a copy thereof provided to the Company.