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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 9 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

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## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "**Assignment**"), dated as of this 10th day of April, 2020, is given by HERRIMAN SCHOOL DEVELOPMENT, LLC, a Utah limited liability company, whose address is 290 North Flint Street, Suite A, Kaysville, Utah 84037 ("**Assignor**"), in favor of ZIONS BANCORPORATION, N.A. dba Vectra Bank Colorado, whose address is 2000 South Colorado Blvd., Suite 2-1200, Denver, Colorado 80222 ("**Bank**").

## PRELIMINARY STATEMENTS

A. Assignor is party to that certain Loan Agreement of even date herewith (as amended, restated or supplemented from time to time, the "**Loan Agreement**") providing for a loan from Bank to Assignor in the amount of \$8,646,277.00 (the "**Loan**"). Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Loan Agreement.

B. The Loan is evidenced by a Promissory Note of even date herewith from Assignor payable to Bank in the face amount of the Loan (the "**Note**"). The Loan Agreement and Note are secured by, among other things, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith given by Assignor and Advantage Arts Academy, a Utah non-profit corporation (the "**Charter School**"), for the benefit of Bank (the "**Deed of Trust**") encumbering the Property (as defined below).

C. Assignor, as Landlord, has entered into and may hereafter enter into written and/or oral lease(s) affecting all or part of the improvements on the land described on Exhibit A hereto (the "**Land**") (the Land, together with all such improvements now or hereafter located thereon, is referred to herein as the "**Property**").

D. The assignment of Assignor's rights in such leases, as more fully provided in this Assignment, is a condition precedent to the making of the Loan by Bank.

### AGREEMENT

THEREFORE, to induce Bank to enter into the Loan Agreement and advance funds under the Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees with Bank as follows:

1. Assignment. Assignor hereby absolutely and unconditionally grants, bargains, sells, transfers, assigns and conveys to Bank, its successors and assigns, in accordance with the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "**Utah Act**"), and grants a security interest in and to, in accordance with the Utah Uniform Commercial Code, Utah Code Ann. § 70A-9a-101 et seq. (the "**Utah UCC**");

(a) all right, title and interest that Assignor has or might hereafter have in and to all leases, tenancies or other occupancy arrangements, whether oral or written, now or hereafter entered into in connection with or affecting the Property, or any part thereof (collectively, the "**Leases**"), including, but not limited to, that certain Lease Agreement dated November 4, 2019, made by the Charter School as lessee, and the Assignor as lessor (the "**School Lease**");

(b) all right, title and interest that Assignor has or might hereafter have in and to any and all of the rents, income, issues, profits, avails and any other benefits now due and that may hereafter become due under or by virtue of any Leases, or letting of or any agreement for the use or occupancy of any part of the Property that might have heretofore been made or might hereafter be made or agreed to between Assignor or any other owner of the Property and any tenant or occupant of any part of the Property, or that might be made or agreed to by Bank under the power herein granted (collectively, the foregoing are the "**Rents**");

(c) the right to the use and possession of the Property and all Rents from or in connection with the Property;

(d) the right to the use and possession of any or all of the furniture, furnishings, fittings, attachments, appliances, machinery, equipment, devices and appurtenances of every kind and description now or hereafter affixed to, attached to, located in or on the Property or available for the use of the tenants under the Leases or the operation of the Property and in or to which Assignor has any right, title or interest;

(e) all of Assignor's right, title and interest in and to all security deposits in connection with any Leases; on the condition that Bank shall have no obligation to any lessee with respect to any such security deposit unless and until Bank comes into actual possession and control of said deposit; and

(f) all of Assignor's rights, title, interest and estate in, to and under any security agreement contained in or a part of the School Lease and/or Leases including without limitation any security interest created by such security agreement.

2. Covenants of Assignor. In addition to any covenants in the Loan Agreement, Note or Deed of Trust, Assignor hereby covenants and agrees as follows:

- (a) faithfully to abide by, perform and discharge each and every obligation, covenant and agreement that is to be performed by the lessor under the Leases;
- (b) at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases to be performed by the lessees thereunder;
- (c) not to enter into, terminate, modify or amend any of the Leases or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of Bank;
- (d) simultaneously with receiving or giving of the same, to send to Bank copies of all notices, demands and other communications received or given by Assignor to or from the lessees under any of the Leases or any guarantor thereof;
- (e) to confirm in writing the transfer and assignment to Bank of any and all subsequent Leases upon all or any part of the Property, upon the terms and conditions herein contained, and to make, execute and deliver to Bank upon demand any and all instruments that might be necessary or desirable to evidence such assignment, but the terms and provisions of this Assignment shall apply to any such subsequent Leases upon the Property, whether or not such confirmation is given;
- (f) at Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the Leases hereby assigned, or the obligations, duties or liabilities of the lessor or lessee thereunder or any guarantor thereof, and to pay all reasonable costs and expenses of Bank, including, without limitation, legal fees and disbursements in a reasonable sum, in any such action or proceeding in which Bank might appear;
- (g) to not request, consent to, agree to or accept subordination of the Leases to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting all or any part of the Property, other than the Deed of Trust; and
- (h) not to make or execute any other assignment of leases, rents, issues, income or profits from the Property or any part thereof for so long as any Obligations remain outstanding and unpaid or unperformed.

3. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Bank that:

- (a) Assignor has not executed any prior assignment of leases with respect to the Property or any of the Leases which remains in effect as of the date hereof; Assignor is entitled to receive Rents from the Property and to enjoy all other rights mentioned herein; and Assignor has free right to transfer to Bank such rights, interests, powers and authorities as are herein granted or conferred;

(b) Assignor has not performed any act or executed any instrument that might prevent Bank from exercising or obtaining the benefit of any of the terms and conditions hereof;

(c) as of the date hereof, there are no Leases other than the School Lease;

(d) there is no default now existing under the School Lease;

(e) true and correct copies of the School Lease and all modifications and amendments thereto have been delivered to Bank prior to the date hereof;

(f) no lessee under the Leases has a defense, setoff or counterclaim against Assignor and as of the date hereof, there are no charges, liens, setoffs, off-sets, rebates, concessions, abatements, credits or deductions under the Leases or otherwise, against rents or other charges due or to become due thereunder, or claims by the lessees thereunder against the enforcement of any of the agreements, terms, covenants or conditions of the Leases or against Assignor in respect of the Leases; and

(g) no concession has been granted to any lessee in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due.

4. Default and Remedies. Assignor further agrees with Bank as follows:

(a) Upon or at any time after the occurrence of any Default, Bank shall at once become entitled to the possession, use and enjoyment of the Property and the Rents, from the date of such occurrence and continuing during the pendency of any proceedings for sale by the Trustee or foreclosure proceedings, and the period of redemption, if any. Bank shall be entitled to a receiver for the Property, and of the Rents, after any such Default, including, without limitation, the time covered by any proceedings for sale by the Trustee or foreclosure proceedings and the period of redemption, if any. Bank shall be entitled to a receiver as a matter of right, without regard to the solvency or insolvency of Assignor, or of the then current owner of the Property, and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon *ex parte* application, and without notice, notice being hereby expressly waived, and all Rents shall be applied by such receiver to the payment of the Obligations according to the orders and directions of the court, or in the absence of such orders or directions, in accordance with applicable law (including, without limitation, the Utah Act and the Utah UCC, as applicable, and, unless otherwise specified thereunder, in such order as Bank shall elect in its sole and absolute discretion.

(b) Upon or at any time after the occurrence of any Default, Bank may, at its option, without notice, and whether or not the Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (i) enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) make, cancel, enforce or modify Leases; (iii) obtain and evict tenants; (iv) fix or modify Rents; (v) do any acts that Bank deems reasonably proper to protect the security hereof; (vi) exercise any right or

remedy under the Utah UCC, the Utah Act, or other applicable law, and (vii) either with or without taking possession of the Property, in its own name sue for or otherwise take any and all actions Bank deems necessary or advisable to collect and receive the Rents, including, without limitation, all Rents that are past due and unpaid. In connection with the foregoing, Bank shall be entitled and empowered to employ attorneys and their staff, and management, rental or other agents in and about the Property and to effect the matters that Bank is empowered to do, and if Bank shall itself effect such matters, Bank shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the fees, charges, costs and expenses of Bank or such other persons described above shall be deemed Obligations and shall also be secured hereby. The entering upon and taking possession of the Property, the collection of the Rents and the application thereof as aforesaid shall not operate to cure or waive any Default or waive, modify or affect notice of Default under the Agreement, the Note or the Deed of Trust or invalidate any act done pursuant to said notice.

(c) Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Bank hereunder without investigating the reason for any action taken by Bank, or the validity or the amount of indebtedness owing to Bank, or the existence of any default under any of the Loan Agreement, the Note or the Deed of Trust, or under or by reason of this Assignment, or the application to be made by Bank of any amounts to be paid to Bank. The sole signature of Bank shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Bank for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Property. Checks for all or any part of the Rents collected under this Assignment shall be drawn to the exclusive order of Bank.

(d) Any monies received by Bank or receiver hereunder may be applied when received from time to time in payment of (i) any fees or expenses due Bank hereunder or under the Note or the Deed of Trust, (ii) reasonable costs of collections and all costs of renting, maintaining, altering, renovating, operating, repairing or managing the Property, (iii) any taxes, assessments or other liens affecting the Property regardless of the delinquency or priority, and (iv) the Obligations, such application to be in such order as Bank may determine. The acceptance of this Assignment by Bank or the exercise of any rights by it hereunder shall neither be, nor be construed to be, an affirmation by it of any tenancy or Lease nor an assumption of any liability under any such tenancy or Lease.

(e) Assignor hereby grants Bank a power of attorney and appoints Bank as Assignor's attorney-in-fact for the purpose of Bank carrying out the rights and remedies of Bank hereunder. The appointment of Bank as Assignor's attorney-in-fact hereunder is coupled with an interest and is irrevocable, and Assignor expressly grants to Bank, among other things, the authority to sign the name of Assignor and to bind Assignor on all papers and documents relating to the operation, leasing and maintenance of the Property.

5. Assignor's Right to Retain Rents. It is the parties' intention that this Assignment constitutes an absolute assignment. It is understood, however, that so long as there shall exist no Default, Assignor shall have the right to collect, but not in excess of one month prior to accrual under such Lease, all Rents, but only as trustee for the benefit of Bank; and Assignor shall apply

the amounts so collected first to the payment of interest and principal and all other sums due and payable under the Loan Agreement, the Note and the Deed of Trust and this Assignment, and thereafter, so long as no Default has occurred, the balance of such Rents shall be retained by Assignor for its own account. Nothing contained in this paragraph 5 or elsewhere in this Assignment, the Deed of Trust or the Note shall be construed to make Bank a "mortgagee-in-possession."

6. No Obligation of Bank/Indemnity by Assignor. Bank shall not be obligated to perform or discharge, and Bank does not hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases assigned hereunder or under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify Bank against and hold it harmless from any and all liability, loss, damage, cost or expense that Bank may or might incur under any of the Leases or under or by reason of this Assignment, and against and from any and all claims and demands whatsoever that might be asserted against Bank by reason of any alleged obligation or undertaking on Bank's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. If Bank incurs any such liability, loss, damage, cost or expense under any of the Leases or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including, without limitation, costs, expenses and reasonable legal fees and disbursements, together with a default rate of interest to be determined by Bank, shall be secured by this Assignment and the Deed of Trust, and Assignor shall reimburse Bank immediately upon demand.

7. Waiver/Further Cooperation. Assignor further agrees as follows:

(a) Assignor will execute upon the reasonable request of Bank any and all instruments requested by Bank to carry out the terms and conditions of this Assignment or the assignments intended hereby;

(b) Bank's omission or failure to give any notice of or under this Assignment to Assignor or any lessee, tenant or other occupant of the Property or any part thereof, or to collect any Rents, shall not constitute or be deemed a waiver of any of Bank's rights hereunder, under the Deed of Trust, the Loan Agreement or under the Note; and

(c) on request of Bank, Assignor will execute and deliver to Bank or otherwise, such instruments or documents (including, without limitation, estoppel certificates) confirming the status of all or part of the Leases, including, without limitation, the assignment thereof to Bank.

8. Release. The (a) full and complete performance and the indefeasible payment in full of all amounts due to Bank and (b) the recording of a full release of the Deed of Trust, shall, when completed, constitute a full release of this Assignment.

9. Utah Uniform Assignment of Rents Act. This Assignment is subject to the Utah Act. In the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of the Utah Act, the provisions of the Utah Act shall control. Bank shall have all rights and remedies available under the Utah Act, and to the extent allowed by law, those rights and remedies shall be cumulative with all rights and remedies provided for in this Assignment.

10. Miscellaneous.

(a) All notices, demands or documents that are required or permitted to be given or served hereunder shall be given or served as provided in the Loan Agreement.

(b) This Assignment shall be governed by and construed under the laws of the State of Utah.

(c) This Assignment and all of the terms, covenants and conditions hereof shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Bank and its successors and assigns.

(d) Notwithstanding any future amendment to or modification of the Note, the Loan Agreement or the Deed of Trust, this Assignment and the rights and benefits hereby assigned and granted shall continue in full force and effect in accordance with the terms of this Assignment.

(e) This Assignment may not be changed, amended, modified, abridged, cancelled or discharged other than by a written instrument signed by Bank and Assignor.

(f) Time is of the essence of this Assignment.

(g) Notwithstanding anything to the contrary in this Assignment, as long as (i) the Deed of Trust encumbers the Property and the loan amounts secured under it have not been paid, (ii) that certain Escrow Agreement is in effect whereby Zions Bancorporation, National Association, as Escrow Agent (in such capacity, the “**Escrow Agent**”) will make payments directly to an account at Zions Bancorporation N.A., dba Zions First National Bank under the terms of the Escrow Agreement and (iii) the Charter School, Assignor and Escrow Agent are honoring their respective obligations under the terms of the Escrow Agreement, then, due to such payments the Charter School will not be paying directly to the Assignor payments required under the School Lease and the Charter School shall be deemed to have complied with its obligations for payment to the Assignor under the School Lease.

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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.