

LEASE PURCHASE ARRANGEMENT

dated as of \_\_\_\_\_, 2020,

by and between

THE ASK ACADEMY EDUCATION FOUNDATION,

A New Mexico non-profit corporation, as Lessor,

and

THE ASK ACADEMY,

A New Mexico public charter school, as Lessee.

THIS LEASE PURCHASE ARRANGEMENT, dated as of \_\_\_\_\_, 2020 (“Agreement”), is made and executed by and between The ASK Academy Foundation, a NM non-profit corporation (“Lessor”), and The ASK Academy, a New Mexico public charter school (“Lessee”).

#### Recitals

A. Lessee is a New Mexico state-chartered charter school as defined in Section 22-8B-2(A) NMSA 1978, which is authorized to enter into a “lease purchase arrangement” or “financing agreement” as defined in Section 22-26A-3(A) NMSA 1978, part of the Public School Lease Purchase Act, Chapter 22, Article 26A NMSA 1978 (“Public School Lease Purchase Act”).

B. Lessee’s governing body has determined that it is necessary, desirable, and in Lessee’s best interest, subject to separate statutory approval by the Public Education Department and the Public School Facilities Authority, to acquire from Lessor through a lease purchase arrangement the Land and Improvements (collectively the “School Site”) located at 4550 Sundt Road NE, Rio Rancho, Sandoval County, New Mexico, and more specifically identified in Exhibit “A” hereto.

C. Lessor is a non-profit corporation duly organized and existing under the New Mexico Non-Profit Corporation Act, whose corporate purpose is to support The ASK Academy, including providing facilities for the School.

D. This Agreement, once fully executed by the parties, replaces and supersedes the Lease Agreement between Lessor and Lessee, dated February 12, 2015.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration exchanged, Lessor and Lessee agree as follows:

ARTICLE I  
DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless otherwise specified in this Agreement, the capitalized terms used herein shall have the meanings specified below.

“Agreement,” for all purposes herein and as to all appertaining exhibits and documents, shall have the same legal meaning and effect as either the term “lease purchase arrangement” or “financing agreement,” as these latter two terms are defined in Section 22-26A-3(A) NMSA 1978, whether capitalized herein or not.

“Lease Payments” means, collectively, any payments due from Lessee to Lessor under this Agreement and in accordance with Article V hereof, payable from funds specifically appropriated year to year by Lessee for such purpose from any legally available funds.

“Commencement Date” means the date of execution of this Agreement by the parties after separate statutory approval by the Public Education Department and the Public School Facilities Authority, after which date the payment obligations hereunder will continue for a period not exceeding thirty (30) years after the date of execution, as prescribed by Section 22-26A-5(C) NMSA 1978.

“Improvements” means any beneficial additions or changes to the leased property described in Exhibit “A” to this Agreement, whether permanent or not, made by or for the benefit of Lessee.

“Land” means the parcels of land, identified in Exhibit “A” to this Agreement.

“Lessee’s Representative” means the chair of Lessee’s governing body or any other person duly authorized by Lessee to act on its behalf under or with respect to this Agreement.

“Lessor’s Representative” means Lessor’s chief executive officer or any other person duly authorized by Lessor to act on its behalf under or with respect to this Agreement.

“Net Proceeds” means any insurance proceeds or condemnation award paid on the School Site, remaining after payment of all costs and expenses incurred in the collection of those amounts.

“Option to Purchase” means the right of Lessee to purchase the School Site in accordance with the terms of Article VI of this Agreement and the provisions of the Public School Lease Purchase Act.

“School Site” means the Land identified in Exhibit “A” and any Improvements made thereto.

“Term” means the time period during which this Agreement is in effect, as provided in Section 4.1 hereof.

“Statewide Adequacy Standards” mean the standards set forth in Title 6, Chapter 27, Part 30 NMAC (08/31/2005), and any subsequent versions thereof, subject to any variances granted to Lessee by the Public School Capital Outlay Council pursuant to Section 22-8B-4.2(F)(2) NMSA 1978.

Section 1.2 Exhibits. The following exhibits are attached to and by reference made a part of this Agreement:

Exhibit A - Legal Description

Exhibit B - Site Plans and Floor Plan/Improvements

Exhibit C - Lease Payment Schedule

Exhibit D - Planned Funding Sources and Budget to make Lease Payments

Exhibit E - Copies of the New Mexico Public Education Department’s and Public School Facilities Authority’s individual approvals of this Agreement.

## ARTICLE II REPRESENTATIONS, COVENANTS, AND WARRANTIES

Section 2.1. Representations, Covenants, and Warranties of Lessee. Lessee represents, covenants, and warrants as follows:

(a) Lessee is a duly authorized and existing public charter school under the provisions of the Charter Schools Act, Chapter 22, Article 8B NMSA 1978.

(b) Lessee has full power and authority to lease, operate, maintain, and acquire under an option to purchase the School Site, to execute and deliver this Agreement, and perform the related transactions in accordance with the provisions of the Public School Lease Purchase Act and other applicable New Mexico statutes, and to carry out its obligations under this Agreement, subject to the limitations and conditions stated herein and the availability of sufficient appropriations and revenues therefor.

(c) Lessee’s representatives executing this Agreement have been duly authorized to execute and deliver it in accordance with the terms and provisions of the resolution duly passed and adopted by Lessee’s governing body.

(d) Lessee’s governing body has complied fully with all the provisions in Section 22-26A-6 NMSA 1978 and those in the Open Meetings Act, Chapter 10, Article 15 NMSA

1978 applicable to its actions with regard to this Agreement and the acquisition of the School Site through a lease purchase arrangement.

(e) Lessee has immediate need for, and expects to make immediate use of, the School Site being leased with an option to purchase under this Agreement, which need, at the time of approval hereof, is not temporary or expected to diminish in the foreseeable future.

(f) To Lessee's knowledge, there are no pending or threatened legal actions, suits, proceedings, or inquiries disputing Lessee's authority to execute, deliver, perform on, or expend public funds pursuant to, this Agreement.

(g) Lessee shall not transfer, lease, assign, mortgage, or encumber all or any portion of its interest under this Agreement, or the School Site itself, except in accordance with the terms and conditions hereunder and as provided by law, including Section 22-26A-5(K) NMSA 1978 with respect to assignment of the lease purchase arrangement to any third party.

(h) Lessee shall use and occupy the School Site for the primary purpose of a state-chartered charter school and the activities directly related thereto, or for such other public school purposes as may be lawfully authorized or permitted by Lessor under New Mexico law.

(i) Lessee shall conform to and comply with all applicable municipal, state, and federal laws, ordinances, rules and regulations in its use of the School Site, and Lessee will not use or suffer to be used the School Site in any manner contrary to any applicable municipal, state, or federal laws, ordinances, rules or regulations, so as to create or cause to exist any nuisance or hazardous condition.

(j) Lessee shall use its best efforts to purchase the School Site from Lessor with funds obtained from lease payment grant assistance from the Public School Capital Outlay Council in accordance with Section 22-24-4(I) NMSA 1978, or from other lawfully available funding sources at the earliest possible time, but in no event shall this Agreement have a final payment date exceeding thirty (30) years after the date of its execution by the parties.

Section 2.2. Representations, Covenants, and Warranties of Lessor. Lessor represents, covenants, and warrants as follows:

(a) Lessor is a non-profit corporation duly organized, existing, and in good standing under the laws of the State of New Mexico and has full power and authority to enter into this Agreement and to carry out all its obligations hereunder; and Lessor has full power to own, hold, finance, and furnish the School Site in accordance herewith, and to lease and sell the same to Lessee.

(b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions, or provisions

of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound.

(c) Lessor warrants that it is in good standing pursuant to the terms of any mortgage or other financial obligation under which either the Land or School Site, or both, has been given as security for the payment of the underlying debt or financial obligation.

(d) To the best of Lessor's knowledge, Lessor has not received any notice that the School Site or its present use and condition violates any applicable deed restrictions or other covenants, restrictions or agreements, mortgages, or conditions of title or ownership, site plan approval, zoning or subdivision regulations, urban development plans, the laws statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, or requirements of any authorities governing or regulating the use and operation, or otherwise applicable to the School Site.

(e) To the best of Lessor's knowledge, there are no underground storage tanks at the School Site and, to the best of Lessor's knowledge, Lessor has not used the School Site to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials, or hazardous substances as defined in or pursuant to the Resource Conservation and Recovery Act (42 U.S.C.A. §§6901 *et seq.*) as amended, the comprehensive Environmental Response Compensation and Liability Act (42 U.S.C.A. §§9601 *et seq.*) as amended, or any other related Legal Requirement, and to the best of Lessor's knowledge, Lessor has not caused, and has no knowledge of, the leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of any hazardous substances on or off the School Site on adjacent properties.

### ARTICLE III AGREEMENT TO LEASE

Section 3.1. Lease. Lessor hereby leases the School Site to Lessee, and Lessee hereby leases the School Site from Lessor with an option to purchase, upon the terms and conditions set forth in this Agreement, provided that the terms and conditions herein are not in contravention of any applicable laws. This Agreement, once fully executed, shall supersede any prior written agreement between the parties for the lease of the School Site.

Section 3.2. Possession and Enjoyment. During the Term of this Agreement, Lessor shall provide Lessee with quiet use and enjoyment of the School Site and during such term Lessee shall peaceably and quietly have and hold and enjoy the School Site, without suit, trouble, or hindrance from Lessor, except as expressly set forth herein. Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so. Notwithstanding the foregoing, Lessor shall have the right to inspect the School Site as provided in Section 3.3 hereof.

Section 3.3. Lessor's Access to School Site. Lessee agrees that **following the Commencement Date of this Agreement, Lessor during the Term** shall have the right during Lessee's normal working hours on Lessee's normal working days, upon compliance with any security requirements imposed by Lessee and upon reasonable notice, to enter on and examine and inspect the School Site for the purpose of assuring that **it** is being properly maintained, preserved, and kept in good repair and condition. Lessee further agrees that Lessor shall have such rights of access to the School Site as may be reasonably necessary to cause the proper maintenance of the School Site in the event of failure by Lessee to perform its obligations hereunder, provided that at no time shall Lessor be compelled or required to make any improvements, alterations, or additions to the School Site.

#### ARTICLE IV TERM OF AGREEMENT

Section 4.1. Term. The Term shall commence upon the execution of this Agreement by the **parties after separate statutory approval by the Public Education Department and the Public School Facilities Authority, and continue for no more than thirty (30) years from the date of its execution by the parties** ("Term").

Section 4.2. Termination of Agreement. This Agreement **shall** terminate upon the occurrence of **one** of the following events:

- (a) the purchase of the School Site by Lessee pursuant to Article VI **hereof; or**
- (b) a default by Lessee and Lessor's **ensuing** election to terminate this Agreement pursuant to Article XI **hereof; or**
- (c) a default by Lessor and Lessee's **ensuing** election to terminate this Agreement pursuant to Article XI **hereof; or**
- (d) if sufficient money is not available to meet **the** current lease payments; **or**
- (e) Lessee's charter **is revoked or not renewed by the Public Education Commission and any adverse final decision by the Secretary of Public Education on such prior action by the chartering authority is not set aside or reversed by the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.**

**There is no legal obligation for Lessee to continue the lease under this Agreement from year to year or to purchase the real property identified in Exhibit "A" hereto, and Lessee's obligation to make Lease Payments and meet any other payment obligations under this Agreement are subject to the appropriation and sufficiency of available funds by Lessee from year to year. Lessee presently intends to continue this Agreement for the Term and to pay all Rent Payments or other payments required hereunder.**

Section 4.3. Effect of Termination of Agreement. Upon termination of this Agreement:

(a) All unaccrued obligations of Lessee hereunder shall terminate, but all obligations of Lessee that have accrued hereunder prior to such termination shall continue until they are discharged in full, **subject to Section 22-2-2(C) NMSA 1978 under which the Public Education Department’s School Budget and Finance Analysis Bureau has both the authority and responsibility to immediately take over the control and management of Lessee’s assets and finances, as well as the powers and duties of Lessee’s governing body designated as a board of finance under Section 22-8B-6(L)(4) NMSA 1978; and**

(b) If the termination occurs because of the occurrence of a non-appropriation or an Event of Default **as defined herein**, (i) Lessee’s right to possession of the School Site shall terminate; and (ii) Lessee shall, within sixty (60) days, vacate the School Site. If termination occurs because of non-renewal or revocation of Lessee’s charter, **Lease Payments** shall be paid through the last day of occupancy, **subject to (i) Section 22-2-2(C) NMSA 1978 as set forth hereinabove; and to (ii) Section 22 8B-12.1(C) NMSA 1978 which provides that when a charter school is closed, its assets shall be distributed first to satisfy outstanding payroll obligations for employees of the charter school, then to creditors of the charter school and then to the State of New Mexico’s treasury to the credit of the current school fund.**

(c) **Lien on Improvements by Lessee.** If State of New Mexico or Lessee’s charter school funds, above those required for lease payments hereunder, are used to construct or acquire Improvements, the cost of those improvements shall constitute a lien on the School Site in favor of Lessee and then, if this Agreement is terminated prior to the final payment and the release of the security interest or the transfer of title, at the option of the Lessee: (1) Lessee may foreclose the real estate lien; or (2) the current market value of the School Site at the time of termination, as determined by an independent appraisal certified by the New Mexico Taxation and Revenue Department, in excess of the outstanding principal due under this Agreement, shall be paid to Lessee, all in accordance with Section 22-26A-5(H) NMSA 1978. The priority of such statutory lien shall be determined according to New Mexico law, should a legal dispute arise as to the order of satisfaction.

Section 4.4 **Continuation.** The parties stipulate and agree that there is no legal obligation for Lessee to continue the lease under this Agreement from year to year or to purchase the School Site, in accordance with Section 22-26A-5(I) NMSA 1978.

## ARTICLE V AGREEMENT LEASE PAYMENTS

### Section 5.1. **Lease Payments.**

(a) **Obligation to Pay.** Lessee agrees to pay Lessor, its successors and assigns, for the right to use, improve, and acquire by purchase the School Site, and Lessor agrees to accept as full lease payments for the School Site individual sums equal to the monthly lease amounts set forth in Exhibit “C” to this Agreement, the first one being due and payable on the fifteenth (15th) day of the first month following the Commencement Date hereof and each succeeding

month thereafter during the Term of this Agreement. Any partial month will be calculated on a *pro rata* basis. Lessor and Lessee acknowledge and agree that the interest rate for the purchase price, as set forth in Exhibit "C," is subject to change from time to time based on changes in the interest rate on the corresponding or appertaining loan(s) made to Lessor, provided that (i) any change in the specified principal and interest component of any payment to be made hereunder shall constitute an amendment to this Agreement and shall be approved by the Public Education Department; and (ii) the net effective interest rate thereon shall not exceed the maximum permitted by the Public Securities Act.

(b) Upon a change in Lessor's interest rate due, whether increased or reduced, Lessor shall provide to Lessee a revised Exhibit "C," and Lessee shall make lease payments hereunder in accordance with that revised exhibit. Notwithstanding anything to the contrary herein, the parties agree that (i) the Lease Payments shall not be more than the separate amounts shown in Exhibit "C" hereto; and (ii) the rate of interest applicable to the Lease Payments set forth in Exhibit "C" hereto, shall not be interpreted to exceed that maximum allowed pursuant to the Public Securities Act; in which event, the rate of interest automatically shall be reduced to the maximum rate permitted by law.

(c) A portion of each Lease Payment is paid as, and represents payment of, interest as shown on Exhibit "C" hereto, which sets forth the principal and interest component of each payment made. Upon receipt of each Lease Payment, Lessor shall apply the amount of such payment to principal and interest as shown on Exhibit "C," thereby reducing the purchase price due at each subsequent Option Date.

(d) In any School fiscal year (July 1 to June 30) that this Agreement is in effect, Lessee shall include in the budget proposal to the Public Education Department for the ensuing fiscal year an amount equal to one hundred percent (100%) of the Lease Payments and other obligations payable by Lessee under this Agreement, not in contravention of New Mexico law. The Lease Payments and other obligations payable by Lessee under this Agreement shall constitute currently appropriated expenditures of Lessee and shall not constitute a debt or multiple fiscal year direct or indirect obligations whatsoever of Lessee or a mandatory charge or requirement against Lessee in any fiscal year (July 1 to June 30) beyond the fiscal year for which such payments have been approved.

Section 5.2. Funding of Improvements to School Site. Lessee and Lessor agree that Lessee shall not use any funds, other than lease payment grant assistance funds from the Public School Capital Outlay Council in accordance with Section 22-24-4(I) NMSA 1978 or other legally available funds, to acquire, construct, install, or purchase any Improvement to the School Site during the Term of this Agreement. Prior to any termination of this Agreement as provided hereunder, Lessor may require Lessee to remove at Lessee's own expense any Improvements to the School Site that were funded by Lessee from other funding sources.

## ARTICLE VI

## OPTION TO PURCHASE

Section 6.1. Option to Purchase. In consideration of the agreements, promises, and covenants made each to the other in this Agreement, and other good and valuable consideration received, which consideration Lessor acknowledges to be adequate herefor, Lessor grants to Lessee the option to purchase the School Site upon the terms and conditions set forth in this Agreement and as permitted under the Public School Lease Purchase Act.

Section 6.2 Accelerated Sale and Transfer. Lessee may exercise its option to purchase the School Site only on a **designated Option Date**. “Option Date” shall mean February 1, of 2025, and the corresponding date for each following year during the Term of this Agreement, provided that if the purchase of and transfer of title to the School Site is not completed on or prior to the last Option Date, Lessee’s option to purchase hereunder shall expire and thereafter be of no further force or effect.

Section 6.3 Notice of Sale and Transfer. Lessee’s option to proceed with the purchase of and transfer of title to the School Site on an Option Date shall be exercised by written notice to Lessor, sent by registered or certified mail to Lessor’s address as stated herein, or to any other address designated by Lessor in writing to Lessee. Such written notice shall be given not less than twelve (12) months prior to the Option Date on which Lessee will exercise its option to proceed with the purchase of and transfer of title to the School Site.

Section 6.4. Purchase Price on Exercise of Option. The Purchase Price for the School Site on exercise of the option to purchase hereunder shall be the amount necessary to pay the outstanding principal balance on the unpaid purchase price as of that Option Date, as set forth in the schedules attached at Exhibit “C” hereto, plus any accrued and unpaid interest to that date, with any penalties for interest forbearance, as well as any associated closing costs and options fees. The interest rate on the principal balance remaining on exercise of the option to purchase shall not exceed the maximum permitted by the Public Securities Act.

Section 6.5. Expenses, Mortgage. The Purchase Price to be paid by Lessee to Lessor shall be a net amount to Lessor, and all expenses in connection with the transfer of the School Site, including title insurance, recording fees, documentary stamps, and any other closing costs, shall be divided evenly by Lessor and Lessee. The Purchase Price shall be paid by Lessee in cash to Lessor concurrent with Lessor’s conveyance of the School Site to Lessee by special warranty deed as provided in Section 6.6 hereof.

Section 6.6. Transfer of Title. Except as provided in Section 6.7 hereof, at the closing of the transaction between the parties, Lessor shall convey the School Site to Lessee free and clear of any mortgage, indenture, or other encumbrance of record. The conveyance shall be by a standard form special warranty deed from Lessor to Lessee.

Section 6.7. First Mortgage. Lessee’s rights under this Agreement are and shall be subject and subordinate to any underlying mortgage (including a consolidated mortgage), indenture, or deed of trust constituting a first lien on the School Site, or any part thereof,

whether such mortgage, indenture, or deed of trust has heretofore been, or may hereafter be, placed upon the School Site to secure Lessor's indebtedness to any bank or other financial institution, trust company, or other financial lender, whether private or public, for the purchase of the School Site and Improvements, or to any renewal, modification, consolidation, replacement, or extension of any such mortgage, indenture, or deed of trust. This subordination clause applies only to a first mortgage securing any indebtedness that on any Option Date will not exceed the purchase price when the option to purchase hereunder is then exercised. This subordination clause shall be self-operative and no further instrument of subordination shall be required. Lessee shall, nevertheless, execute and deliver, from time to time, any instrument and certificate affirming and confirming such subordination that Lessor may reasonably request. Lessor will cause any such mortgage, indenture, or deed of trust to contain provisions requiring the holder of the indebtedness secured thereby to mail to Lessee by registered mail, addressed to Lessee at its office as set forth in this Agreement, a copy of each notice of breach of covenant, default, or foreclosure given by the holder or the trustee under such mortgage, indenture, or deed of trust to Lessor. Notwithstanding the provisions of Section 6.3 hereof, Lessee may, upon receiving notice of breach of covenant, default, or foreclosure under any such mortgage, indenture, or deed of trust as herein provided after the first Option Date, exercise the option to purchase at the following purchase price: the amount which would have been payable, as provided in Section 6.5 hereof, at the next succeeding Option Date, plus 1/365ths of the difference between that amount and the amount which would have been payable, as provided in Section 6.5 hereof, at the last preceding Option Date, multiplied by the number of days remaining between the settlement date and the next succeeding Option Date. Notwithstanding the provisions of Article VI hereof, Lessee may, upon receiving notice of breach of covenant, default, or foreclosure under any such mortgage, indenture, or deed of trust as herein provided before the first Option Date, exercise the option to purchase set forth herein by paying the then-outstanding principal amount of the debt secured by mortgage, indenture, or deed of trust plus any accrued and unpaid interest and any amounts necessary to pay all amounts due to the first call date secured by the mortgage, indenture, or deed of trust.

Section 6.8. Performance of Lease. The right to exercise the option to purchase as set forth herein is conditioned upon the faithful performance by Lessee of all its covenants, conditions, and agreements under this Agreement, and the payment by Lessee of all Base Rent and Additional Rent, and other special payments as provided for in this Agreement to the date of the completion of the purchase of the School Site by Lessee.

Section 6.9. Adjustments. Adjustments and proration of taxes, water rents, insurance premiums, and similar items shall be made as of the date of the closing of title, in accordance with the practice approved by the parties.

Section 6.10. Security Deposit. The parties stipulate that no security deposit was paid by Lessee as part of this Agreement and that none is required.

Section 6.11. Priority. The option to purchase set forth herein shall be a covenant running with the Land, and no conveyance, transfer, easement, or encumbrance thereof shall defeat or adversely affect the option to purchase hereunder.

Section 6.12. Assignment of Option; Binding Effect. With the prior approval of Lessor, which shall not be unreasonably withheld, the option to purchase hereunder is assignable, without cost to Lessee, and with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to (a) a New Mexico school district or charter school; or (b) the State of New Mexico or one of its institutions, instrumentalities, or other political subdivisions.

Section 6.13. Prepayment. The amounts due under this Agreement are subject to prepayment at the option of Lessee's governing body at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as determined by Lessee's governing body. Beginning with the first Option Date, the parties may proceed to closing on the purchase of the School Site at any time, without assessment of costs, expenses, or penalties, except that Lessee agrees to pay any penalties for interest forbearance on any of Lessor's loans secured by the School Site.

## ARTICLE VII MAINTENANCE AND INSURANCE

Section 7.1. Maintenance and Facility Costs. Lessee shall at all times during the Term maintain, preserve, and keep the School Site in good repair, working order and condition, and shall from time to time make all repairs, replacements, and improvements necessary to keep the School Site in such condition. This Agreement is intended to be and shall be construed consistent with it being an absolute net lease, with Lessee paying all expenses related to the School Site, including without limitation (i) the cost of insurance premiums for insurance deemed necessary or desirable in Lessor's reasonable discretion; (ii) the cost of taxes, utility charges, maintenance, upkeep, and repair costs including routine repair and replacement of roof, structural components, HVAC, and carpet and/or tile; and (iii) all other costs associated with the operation, repair, and maintenance of the School Site (collectively, "Operating Expenses"). Portions of Operating Expenses may be, at Lessor's option, paid by Lessee directly to the third parties who are owed specific amounts.

Section 7.2. Removal of Improvements. Except as provided for in Section 4.3(c) and Section 9.3 of this Agreement, Lessee agrees and covenants with Lessor that any and all alterations, additions, and improvements, except moveable furniture, equipment, portable or modular buildings and such other items of personal property that are removable from the wall, ceiling and floor surfaces without causing damage to such surfaces, shall become a permanent part of the School Site at the termination of this Agreement, if not removed by the Lessee. Lessee agrees that if such Improvements are removed at the termination hereof, it will repair or restore the area of such surface, if removal of Lessee's personal property creates an unsightly condition, by capping any electrical outlets and concealing any surface areas where personal property, such as counters or shelving, may have been stabilized by attachment to such surfaces.

Section 7.3. Lessee's Insurance Obligations.

(a) Liability Insurance. Beginning on the Commencement Date, Lessee shall procure and maintain or cause to be carried and maintained in full force and effect during the Term and any extension thereof at Lessee's sole cost and expense and as Additional Rent above the Base Rent hereunder, such public liability insurance covering bodily injury, disease, illness or death, and property damage liability as is available from and provided by the New Mexico **Public Schools Insurance Authority** or its successor, with limits of coverage not less than \$300,000 for each person for all past and future medical and medically-related expenses arising out of a single occurrence and \$400,000 in the aggregate for all claims other than medical or medically-related expenses arising out of a single occurrence, and \$100,000 for each accident for property damage liability for the benefit of both Lessee and Lessor as protection against all liability claims arising from activities on the School Site, causing Lessor to be named as an additional-named insured on such policy of insurance, and delivering a copy thereof to Lessor upon the commencement of the Term. Lessee shall adjust such minimum coverage limits annually or as necessary to conform to the minimum coverage limits required for local public bodies pursuant to Sections 41-4-19 and 41-4-20 NMSA 1978, and Sections 22-29-1 through 22-29-11 NMSA 1978.

(b) Property Insurance. Subject to the availability of such coverage from the **New Mexico Public Schools Insurance Authority**, Lessee shall also carry and maintain or cause to be carried and maintained in full force and effect during the Term and any renewal thereof, at Lessee's sole cost and expense, fire and extended coverage insurance upon the School Site, including all buildings, alterations, additions, and improvements in an amount equal to their replacement values. Lessor and any lending institution(s) of record shall be named as additional insureds and loss payees on the Property Insurance Policy and shall be provided with a copy of this policy annually on the anniversary date of the Policy. In the event that the School Site should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, Lessee shall have the option to either continue this Agreement and use the insurance proceeds to replace or repair the School Site and on Lessor's behalf, or terminate this Agreement and tender to the Lessor all such insurance proceeds attributable to the loss or damage to the School Site. If for any reason Lessee is prohibited by law or regulation from carrying such insurance, Lessor may obtain such insurance, and Lessee shall pay the premiums of such insurance as Operating Expenses.

Section 7.4. Workers' Compensation Insurance. If required by **New Mexico** law as of the Commencement Date, Lessee shall carry workers' compensation insurance covering all of its **individual** employees on, in, near, or about the School Site, and upon request shall furnish certificates to **Lessor** evidencing such coverage.

Section 7.5. Liens. **Neither** Lessee nor Lessor shall directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Improvements, other than the **individual** rights of Lessor and Lessee as herein provided. Except as otherwise expressly provided **herein**, Lessor and Lessee shall promptly, at **their** own expense, take such action as may be necessary to duly discharge or remove any such mortgage, other than existing mortgages or subsequent mortgages as agreed to by the parties in writing, pledge, lien, charge, encumbrance or claim if the same shall arise at any time, during

the respective party's control of the School Site and each party shall reimburse the other for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance, or claim which arose during the control of the School Site. Nothing herein shall limit the Lessor's right to refinance or restructure debt against the School Site; however, no refinance or restructure shall impair Lessee's rights under the terms of this Agreement. Lessee covenants and agrees to execute and deliver, upon demand, such further reasonable instrument or instruments subordinating this Agreement to the lien of any mortgage or mortgages as shall be desired by Lessor and any mortgagees or proposed mortgagees, provided such documents contain commercially reasonable non-disturbance agreements. Lessor, within **thirty (30)** days of refinancing or restructuring, **shall** provide notification to Lessee with certification from the financial institution that this Agreement does not violate any term or condition of the restructured or refinanced obligation and Lessor shall pay for any of Lessee's costs associated with said refinancing.

## ARTICLE VIII CONDEMNATION; USE OF NET PROCEEDS

Section 8.1. Condemnation. In the event that all or any portion of the School Site or Improvements are condemned by any governmental body or **entity** under the power of eminent domain or **are** sold under threat of condemnation to any public body or **entity** prior to **Lessee's** purchase of the School Site, Lessor shall be entitled to all compensation awarded, less an amount equal to **Lessee's** principal payments made to date in accordance with Article VI **hereof**, plus the value of any improvements placed on the School Site by Lessee pursuant to **Article IX** herein, which portions of the compensation awarded shall be paid to Lessee.

Section 8.2. Condemnation of Other Property Owned by Lessee. Lessee shall be entitled to the Net Proceeds of any condemnation award or portion thereof made for destruction of, damage to, or taking of its property not included in the School Site. Lessor agrees that Lessee shall have the option, upon written notice to Lessor, to enter an appearance and defend in any condemnation action as to both the School Site and the Improvements, and upon such election, Lessor shall not be obligated to provide a defense as to the Improvements, but may do so at Lessor's sole expense. In consideration for such option granted in this paragraph, Lessee agrees not to enter into any settlement agreement as to the condemnation award to be paid for the taking or partial taking of the Improvements without Lessor's prior written consent, which consent shall not be unreasonably withheld.

## ARTICLE IX LESSEE'S IMPROVEMENTS, EQUIPMENT, AND WARRANTIES

Section 9.1. Improvements to School Site. **Lessee**, at its own expense, may remodel, or make additions, modifications, or improvements to the School Site, provided that (i) such remodeling, modifications and additions shall not in any way damage the School Site as it existed prior thereto, and shall become part of the School Site, subject to the provisions of Section 4.3(d) **hereof**; (ii) the value of the School Site after such remodeling, modifications, and additions shall be at least as great as the value of the School Site prior thereto; and (iii) the

School Site, after such remodeling, modifications, and additions, shall continue to be used as **set forth herein** and shall otherwise be subject to the terms of this Agreement. **Capital improvements made by Lessee to the School Site shall not change the Lease Payments or the Purchase Price without a written amendment to this Agreement approved by the Public Education Department.**

Section 9.2. Installation of Lessee's Equipment. Lessee may at any time and from time to time in its sole discretion and at its own expense, install items of movable machinery, standard office partitions, railings, doors, gates, counters, cabinets, lighting fixtures, signs, and such other furnishings and equipment as may in Lessee's judgment be necessary for its purposes in or upon the School Site. All such items shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the School Site resulting from the installation, modification or removal of any such items upon termination of this Agreement for any reason other than purchase of the School Site by **Lessee**. Nothing in this Agreement shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the School Site.

Section 9.3. Warranties. Upon acceptance and purchase of the School Site by Lessee pursuant to Article VI hereof, Lessor **shall** assign to Lessee, all of its interest, if any in all warranties and guarantees or other contract rights against architects, builders, contractors, subcontractors, suppliers, materialmen or manufacturers for the School Site, express or implied, issued on or applicable to the School Site, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessee's sole remedy for the breach of such warranties and guarantees shall be against the provider of such work, service, equipment or materials made to or on the School Site and not against Lessor, nor shall such matter have any effect whatsoever on the rights of the Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder.

Section 9.4. Disclaimer of Warranties. Upon acceptance of the School Site by the Lessee, Lessor makes no warranty or representation except as stated in Section 9.3 **hereof**, either express or implied, as to the value, design, condition, merchantability, or fitness for any particular purpose or fitness for the use contemplated by Lessee of the School Site, or any other representation or warranty with respect to the School Site. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any portion of the Improvements provided for in this Agreement.

## ARTICLE X

## ASSIGNMENT, SUBLEASING, MORTGAGING, AND SELLING

Section 10.1. Assignment. Subject to the other provisions of this Agreement, neither party shall assign its interests herein without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any consent by a party to any assignment shall not operate as consent to any further assignment, and any further assignment shall be subject to the prior written consent of the other party in accordance with the provisions of Section 10.1 hereof. Unless otherwise agreed to by the parties, no assignment permitted hereunder shall relieve a party from liability for the performance of its obligations under this Agreement for the remainder of the then current term.

With the prior approval of Lessor, which shall not be unreasonably withheld, this Agreement is assignable by the parties, without cost to Lessee and with all of the rights and benefits of its predecessor in interest in being transferred to the assignee to: (a) a New Mexico school district or charter school; or (b) the State of New Mexico or one of its institutions, instrumentalities, or other political subdivisions. Nothing in Section 10.1 shall be construed to prohibit, limit, or restrict Lessee's ability to enter into a joint powers agreement for the shared use of the School Site, provided that each party to such agreement is a "public agency" as defined in the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7 NMSA 1978, and that both public agencies are authorized by their legislative or other governing bodies to jointly exercise any power common to the contracting parties as provided by law.

Section 10.2. Restriction on Mortgage or Sale of School Site by Lessee. Prior to closing on the purchase of the School Site, Lessee shall not mortgage, sell, assign, transfer, or convey the School Site or any portion thereof without the written consent of Lessor, which consent shall not be unreasonably withheld or delayed, and subject to the applicable provisions of the Public School Lease Purchase Act.

Section 10.3. Title. Upon Lessee's purchase of the School Site pursuant to Article VI of this Agreement, Lessor shall transfer its interest in the School Site to Lessee by a standard form special warranty deed, free and clear of any encumbrances of record except those specifically accepted by Lessee.

## ARTICLE XI EVENTS OF DEFAULT AND REMEDIES

Section 11.1. Events of Default Defined. Each of the following shall constitute an "Event of Default" under this Agreement, and the terms "Event of Default" and "Default" shall mean, whenever they are used herein, any one or more of the following events whether occurring voluntarily or involuntarily, by operation of law, or pursuant to any order of any New Mexico governmental agency or court of competent jurisdiction:

(a) Failure by Lessee to make any payments under this Agreement as and when due from any lawful source of funds, except where sufficient money is not available to meet the current lease payments; or

(b) Any representation made by Lessee or Lessor hereunder later found to be untrue in any material respect as of the date it was made; or

(c) Lessee or Lessee making, permitting, or suffering any unauthorized assignment, transfer, or other disposition of this Agreement or any interest hereunder, or any part of the School Site or any interest therein; or

(d) Failure by either Lessor or Lessee to observe and perform any covenant, condition, or agreement, other than as described in Section 11.1(a) hereof or its parts, to be observed or performed for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given by the nondefaulting party unless the nondefaulting party shall agree in writing to an extension of such time prior to its expiration; provided that if the failure stated in the notice cannot be corrected within the applicable period, the nondefaulting party shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the defaulting party within the applicable period and diligently pursued until the default is corrected; or

(e) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment, or attachment of such consequence as would impair Lessee's ability to carry on its operations at the School Site, or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the federal Bankruptcy Act, as amended, or under any similar acts which may hereafter be enacted; or

(f) The revocation or nonrenewal of Lessee's charter by the Public Education Commission and the failure by the district court to set aside or reverse any adverse final decision by the Secretary of Public Education on such prior action by the chartering authority, pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Section 11.2. Remedies of Lessor upon Event of Default. Upon the happening and continuance of any event of default specified in Article XI of this Agreement, Lessor or its assigns may, without any further demand or notice to Lessee, take one or any combination of the following remedial steps:

(a) Terminate this Agreement and give written notice to Lessee to vacate the School Site within sixty days (60) days from the date of such notice, subject to Section 22-2-2(C) NMSA 1978 and Section 22-8B-12.1(C) NMSA 1978.

(b) Lease all or any portion of the School Site as permitted by New Mexico law.

(c) Recovery from Lessee: (i) to the extent the recovery thereof is permitted by law, the fair lease value of the use of the School Site during any period beyond the thirtieth (30<sup>th</sup>) day following the occurrence of the Event of Default; and (ii) Lease Payments , which would

otherwise have been payable by Lessee hereunder during the remainder, after the Lessee vacates the School Site, of the Fiscal Year in which such Event of Default occurs.

(d) Take whatever action either at law or in equity as Lessor or its legal counsel shall deem most effectual to protect and enforce this Agreement and Lessor's rights hereunder.

Section 11.3. Remedies of Lessee upon Event of Default. Upon the happening and continuance of any event of default specified in Article XI of this Agreement, Lessee or its assigns may, without any further demand or notice to Lessor, take one or any combination of the following remedial steps:

(a) Terminate this Agreement and give written notice to Lessor that Lessee shall vacate the School Site within thirty (30) days from the date of such notice;

(b) Take whatever steps are necessary to remedy Lessor's default under any existing mortgage or other underlying debt or financial obligation of record, the payment of which is secured by either the Land or School Site, or both, and thereafter subtract any amounts so paid by Lessee from any payments due to Lessor under this Agreement, whether designated as Lease Payments and/or operating expenses or otherwise, until Lessee has been fully reimbursed;

(c) Take whatever action either at law or in equity as Lessee or its legal counsel shall deem most effectual to protect and enforce this Agreement and Lessee's rights hereunder.

Section 11.4. Force Majeure. The provisions of Sections 11.1 and 11.2 of this Agreement are subject to the following limitations: if by reason of *force majeure* Lessee or Lessor is unable in whole or in part to carry out its obligations under this Agreement, Lessor or Lessee shall not be deemed in default during the continuance of such inability or during any other delays which are a direct consequence of the *force majeure* inability. The term "*force majeure*" as used herein shall mean, without limitation: acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military authority other than Lessee or Lessor; insurrections; riots; earthquakes; fires; storms; drought; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessor or Lessee and not resulting from the negligence of the party claiming a force majeure event. Lessor and Lessee agree, however, to remedy with all reasonable dispatch the cause or causes preventing them from carrying out their respective obligation under this Agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall not be required if in the judgment of the party raising the defense of *force majeure*, acceding to the demands of the person or persons creating the strike, lockout or industrial disturbance, would be injurious to such party.

Section 11.4. Remedies Cumulative. The above-provided rights and remedies to which either party is entitled hereunder, at law or in equity, are cumulative and not exclusive of all other rights and remedies to which a party may be entitled herein, at law or in equity, in the

event of breach or threatened breach by a party in default of any of the terms, conditions, and provisions contained herein.

Section 11.5. No Additional Waiver Implied by One Waiver. The failure, neglect, or omission of a non-defaulting party to terminate this Agreement for any breach or default shall not be deemed a consent by the non-defaulting party of such breach or default and shall not stop, bar, or prevent the non-defaulting party from thereafter terminating this Agreement, either for such violation of for prior or subsequent violation of any covenant hereof. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.6. Dispute Resolution. The parties shall endeavor to resolve all disputes arising as to this Agreement by mediation before a mutually agreed mediator the cost of which shall be shared by the parties. In the event mediation is unsuccessful, arbitration in accordance with the terms of this Section shall be used to resolve any and all claims, disputes or disagreements arising under this Agreement, except for (i) matters requiring immediate exigent relief, including without limitation unlawful detainer; and (ii) all claims by either party which (a) seek anything other than enforcement of rights under this Agreement; or (b) are primarily founded upon matters of fraud, willful misconduct, or any other allegations of tortious action, and seek the award of punitive or exemplary damages, which disputes shall be resolved by suit filed in the Thirteenth Judicial District Court, Sandoval County, New Mexico, the decision of which court shall be subject to appeal pursuant to applicable law. The parties hereby agree to conduct themselves in strict, full, complete and timely accordance with the terms of this Section.

(a) Any dispute to be arbitrated pursuant to the provisions of this Section shall be determined by binding arbitration before a single arbitrator (the "Arbitrator") under the auspices of the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration shall be initiated by either party, within thirty days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to AAA. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The parties may agree on the selection of an Arbitrator.

(b) The arbitration shall be conducted in the greater Rio Rancho metropolitan area or Sandoval County and, unless otherwise agreed by the parties, must be completed within 180 days. Any party may be represented by counsel or other authorized representative. In rendering a decision, the Arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of New Mexico and the terms and provisions of this Agreement. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the Thirteenth Judicial District Court, Sandoval County, New Mexico in accordance with the New Mexico Uniform Arbitration Act. The Arbitrator may award injunctive relief. The Arbitrator may award costs, including without limitation, attorneys' fees, and expert and witness costs, to the prevailing party, if any as determined by the Arbitrator in

his or her discretion. A party shall be determined by the Arbitrator to be the prevailing party if its proposal for the resolution of the dispute in the discretion of the Arbitrator was closest to that adopted by the Arbitrator.

## ARTICLE XII TITLE

Section 12.1. Title to Improvements. During the Term, Lessor shall hold legal title to the School Site and any and all additions which comprise repairs, replacements, substitutions, or modifications, and Lessor shall retain an equitable lien on the title to the School Site and any and all repairs, replacements, substitutions, and modifications to it, unless otherwise agreed to by the parties in writing.

Section 12.2. Public Property. Upon approval of this Agreement by the Department and execution of this Agreement by the parties pursuant to the Public School Lease Purchase Act, the School Site shall be considered to be a public property pursuant to Section 22-26A-5.1(B) NMSA 1978.

## ARTICLE XIII HAZARDOUS MATERIALS LAWS

Section 13.1. Compliance with all Hazardous Materials Laws. As of the Commencement Date, Lessee, shall at all times keep and maintain the School Site in compliance with and shall not cause or permit the School Site or any activities conducted thereon to be in violation of any federal, state or local law, ordinance or regulation relating to commercial or industrial hygiene, environmental safety or the environmental conditions on, under or about the School Site, including, but not limited to, air, soil, subsurface and ground water conditions. Lessee shall not permit any subtenant or other occupant of the School Site, except in accordance with applicable Hazardous Materials Laws as hereinafter defined, to use, generate, manufacture, store, produce, release, discharge, dispose of or otherwise permit the presence of, on, under or about the premises or transport to or from the School Site any explosives (flammable or otherwise), radioactive materials, pollutants, contaminants, hazardous wastes, hazardous air pollutants, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous pollutants” or “toxic substances” under any applicable federal or state laws or regulations (collectively referred to hereinafter as “Hazardous Materials”). Hazardous materials shall include petroleum products. Upon request of Lessor, Lessee will prepare and provide such reports as will evidence compliance by Lessee with Hazardous Materials Laws, and which will evidence that the School Site and the uses thereon are in compliance with Hazardous Materials Laws. Either party shall immediately advise the other party in writing of its discovery of or receipt of notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws, ordinances, regulations, orders or publications relating to any Hazardous Materials affecting the School Site (“Hazardous Materials Laws”); (ii) any use, generation, manufacture, production, release,

discharge, storage or disposal of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the School Site; (iii) all claims made or threatened by any third party against a party or the School Site relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (iii) above are hereinafter referred to as “Hazardous Materials Claims”); and (iv) any occurrence or condition on any property adjoining or in the vicinity of the School Site that could cause the School Site to be subject to any restrictions on the ownership, Completion, transferability or use of the premises under any Hazardous Materials Law.

Section 13.2. Lessee’s Responsibility. Upon and after acceptance of the School Site by the Lessee, Lessee shall be solely responsible to pay or otherwise satisfy any claim, written notice or demand, penalty, fine, settlement, loss, damage, cost, expense or liability made against Lessor or Lessee directly or indirectly arising out of or attributable to the violation by Lessee of any Hazardous Materials Law, orders, written notice or demand of governmental authorities, or the use, generation, manufacture, storage, release, threatened release, discharge, disposal, production, abatement or presence of Hazardous Materials on, under or about the premises including, without limitation: the costs of any required or necessary investigation, repair, cleanup or detoxification of the School Site, and the preparation and implementation of any closure, abatement, containment, remedial or other required plan and shall to the extent allowable by law applicable to public schools, indemnify Lessor and hold Lessor harmless from any such claim, demand, penalty, fine, settlement, loss, damage, cost, expense or liability subject to the limitations and waivers contained in the New Mexico Tort Claims Act and any insurance coverage issued pursuant thereto.

Section 13.3. Remedial Action Required. Without Lessor’s prior written consent, which shall not be unreasonably withheld, Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the School Site, nor enter into any settlement agreement, consent decree, or other compromise in response to any Hazardous Materials claim, which remedial action, settlement, consent or compromise might, in Lessor’s reasonable judgment, impair the value of Lessor’s fee interest in the School Site; provided, however, that prior consent shall not be necessary in the event that: (i)(a) the presence of Hazardous Materials on, under, or about the School Site either poses an immediate threat or is of such a nature that an immediate remedial response is necessary; or (b) any delay in taking such remedial action would result in the imposition of periodic or daily fines; and (c) such action is required by government order; and (ii) it is not possible to obtain Lessor’s consent before taking such action; provided that in such event notice shall be given as soon as practicable of any action so taken. Lessor agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) Lessee establishes to the reasonable satisfaction of Lessor that there is no reasonable alternative to such remedial action that would result in less impairment to the value of Lessor’s interest in the School Site.

Section 13.4. Survival of Lessee’s Obligations and Liabilities. Lessee’s obligations and liabilities hereunder with respect to Hazardous Materials Claims arising from Lessee’s actions shall survive the expiration or other termination of this Agreement.

ARTICLE XIV  
LIMITATION OF LIABILITY

Section 14.1. Limitation of Liability. Neither party shall be liable for special, indirect, incidental, punitive or consequential damages arising from a breach of this Agreement.

ARTICLE XV  
MISCELLEANOUS

Section 15.1 Notices. All notices required under this Agreement shall be **sufficiently given** in writing, signed by the party or agent sending them, and (i) delivered personally, (ii) sent by registered or certified mail, (iii) sent by a recognized overnight express mail carrier, or (iv) sent by electronic mail, if a copy is sent by one of methods (i), (ii), or (iii) as soon as practicable thereafter, addressed to Lessor or Lessee, as the case may be, at the following addresses (or such other addresses as either party may give by notice conforming with this Section 15.1), and such notices shall be effective on the date of receipt thereof.

<u>Lessor:</u>	<u>Lessee:</u>
The ASK Academy Education Foundation	The ASK Academy
Attn: President	c/o Executive Director
4550 Sundt Road NE, Rio Rancho, NM 87124	4550 Sundt Road NE, Rio Rancho, NM 87124

Section 15.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective **successors and assigns**.

Section 15.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 15.4. Amendments, Changes, and Modifications. This Agreement may be amended or any of its terms modified only by a written amendment authorized and executed by both Lessee and Lessor. Amendments to this Agreement, except amendments that would improve the building or other real property without additional financial obligations to the Lessee, shall be approved by the **Public Education** Department pursuant to 22-26A-5(L) NMSA 1978.

Section 15.5. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, if necessary, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

Section 15.6. Execution in Counterparts. This Agreement may be **executed in several counterparts**, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15.7. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 15.8. Lessor and Lessee Representatives. Whenever under the provisions of this Agreement the approval of Lessor or Lessee is required, or Lessor or Lessee is required to take some action at the request of the other, such approval **or** such request **shall** be given for Lessor by a Lessor Representative and for Lessee by a Lessee Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 15.9. Integration. This Agreement contains all of the agreements of Lessee and Lessor respecting the subject matters hereof, and all prior negotiations are merged herein.

Section 15.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any **provision or section hereof**.

Section 15.11. Business Days. If the day upon which any action required by the Agreement **falls** on a Saturday, Sunday, or banking holiday, then such **action** shall be deemed timely if made or taken on the next succeeding business day.

Section 15.12. Administrative Approval. Pursuant to Section 22-26A-4 NMSA 1978, the parties to this Agreement acknowledge that they have obtained **the required statutory approval from both the Public Education Department and the Public School Facilities Authority**.

IN WITNESS WHEREOF, Lessor and Lessee, **each acting through their duly authorized agent or legal representative, have made and executed this Agreement as of the date first above**.



The foregoing LEASE PURCHASE ARRANGEMENT was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as chair of the governing body of The ASK Academy, A New Mexico public charter school.

(Seal)

\_\_\_\_\_  
Notary Public