

LEASE AGREEMENT

Dated as of _____, 2018,

by and between

**THE ASK ACADEMY EDUCATION FOUNDATION,
A New Mexico Nonprofit Corporation,**

and

**THE ASK ACADEMY CHARTER SCHOOL,
A New Mexico state-authorized public charter school.**

G. The Lessee desires to have and the Lessor agrees to extend to the Lessee an option, contingent on meeting the requirements of Section 4.4 ~~herein~~hereof, to enter into a lease purchase arrangement pursuant to the Public School Lease Purchase Act, NMSA 1978, §§22-26A-1, *et seq.* and NMSA 1978, §22-20-1, and substantially in the form attached hereto as Exhibit "C" ("Lease Purchase Arrangement").

H. The execution, delivery and performance of this Lease by the Lessee are in the best interest of the Lessee, serve a public purpose, and have been duly authorized by the governing board of the Lessee.

I. The Lessor desires to lease the Property to the Lessee and the Lessee desires to lease the Property from the Lessor, pursuant to the terms and conditions and contingencies and for the purposes set forth in this Lease.

AGREEMENT

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

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following terms shall have the meaning set forth below:

"Additional Rent" means as set forth in Section 5.3 hereof, all amounts due by the Lessee under the terms of this Lease, except Base Rent, as provided herein.

"Agreement" means this Lease Agreement, dated as of the Commencement Date, by and between the Lessor and the Lessee and any amendments or supplements hereto, including all exhibits hereto and thereto.

"Base Rent" means the amount set forth in Section 5.3.

"Capital Improvements" means the construction or reconstruction of improvements, betterments, and extensions which, under generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board, are properly chargeable as capital items.

"Certificate of Occupancy" means the governmental authorization to permit the Lessee to occupy the Property.

"Commencement Date" means the date as first stated in the preamble clause.

"E-Occupancy" means the requirements for educational occupancy of a facility as described pursuant to the International Building Code.

Exhibit B Improvements

Exhibit C Form of Lease Purchase Arrangement

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) It is a duly authorized and chartered charter school by the New Mexico Public Education Commission under the provisions of the Act.

(b) It is, and will use its best efforts to remain, a public charter school duly organized and validly existing under the Act.

(c) It is authorized: (i) to lease the Property from the Lessor pursuant to this Lease; and (ii) to execute and deliver this Lease and related documents and instruments.

(d) It will perform its obligations under this Lease including making appropriations for the payment of all scheduled obligations hereunder, subject to the limitations and conditions stated herein and the availability of sufficient appropriations and revenues therefor.

(e) Nothing in this Lease shall be construed as diminishing, unlawfully delegating, or otherwise restricting any legal authority of the Lessee.

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

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

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

(i) The Property will be operated in accordance with all Requirements of Law.

(j) The Property is necessary and essential to the Lessee's operations.

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

(a) It is a nonprofit corporation (i) duly organized, existing, and in good standing under the laws of New Mexico, (ii) is possessed of full power to purchase, own, hold, and lease (as owner and landlord) real and personal property, (iii) has all necessary power to lease the Property to the Lessee pursuant to this Lease, (iv) with the power, and authorized to execute, deliver, and perform its obligations under this Lease and (v) has duly authorized the execution, delivery, and performance of its obligations under this Lease.

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

ARTICLE III AGREEMENT TO LEASE

Section 3.1 Lease of Property. The Lessor hereby leases the Property to the Lessee, and the Lessee hereby leases the Property from the Lessor, upon the terms and conditions set forth in this Agreement, provided that any term or condition herein in contravention of any applicable laws shall be automatically stricken from this Lease. This Agreement, once fully executed, shall supersede any prior written agreement between the Parties for the lease of the Property.

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

Section 3.3 The Lessor's Access to Property. The Lessee further agrees that the Lessor, after the Commencement Date, shall have such rights of access to the Property upon compliance with any security requirements imposed by the Lessee as may be reasonably necessary to complete the Improvements and to cause the proper maintenance of the Property in the event of failure by the Lessee to perform its obligations hereunder, provided that at no time shall the Lessor be compelled or required to make any improvements, alterations, or additions to the Property for which it is not obligated to do so according to the terms of this Agreement.

Section 3.4 Use. The Property shall be used and occupied only for educational and related purposes, and for no other purpose. No portion of the Property shall be used primarily for pervasively sectarian purposes. The Lessee will comply with all applicable state and federal laws concerning discrimination on the basis of disability, physical or mental handicap, serious medical conditions, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services, or any other state or federally protected classification of persons.

reason, (a) to appropriate by June 30 of each Fiscal Year sufficient amounts authorized and directed to be used to pay all Base Rent due in the next ensuing Fiscal Year or; (b) a failure by the Lessee to appropriate sufficient amounts to fully pay all obligations when due under the 2015 Lease for the applicable Fiscal Year of the Lessee; or (c) upon the occurrence of any of the other events described in the definition of Event of Non-appropriation herein.

(c) Any decision not to renew this Lease shall be made solely by the governing authority of the Lessee and not by any other agency or official of the Lessee except as otherwise provided in the New Mexico Public School Code, including but without limitation, NMSA 1978, §22-8-39.

(d) If an Event of Non-appropriation occurs, the Lessee shall not be obligated to pay the Base Rent and Additional Rent or any other payments provided for herein other than the amounts specifically appropriated by the Lessee for the ~~fiscal-year~~ Fiscal Year during which such Event of Non-appropriation occurs; provided, however, and notwithstanding anything to the contrary herein, the Lessee shall continue to be liable for Base Rent and Additional Rent, to the extent payable from legally available moneys, allocable to any period during which the School shall continue to occupy or retain possession of the Property.

(e) The Lessee shall, in all events, vacate the Property and surrender it to the Lessor by June 30th following an Event of Non-appropriation.

Section 4.4 Lease Purchase Arrangement. The parties agree that this Lease shall be automatically superseded by a Lease Purchase Arrangement, provided that the Lessee has obtained the necessary approval of regulatory authorities as contemplated in the Public School Lease Purchase Act, NMSA 1978, §§22-26A-1 *et seq.* and NMSA 1978, §22-20-1. The Lease Purchase Arrangement between the Lessee and the Lessor shall be submitted to the NMPED incorporating the terms and conditions set forth in Exhibit C, and permitting administrative revision as required by NMPED as a condition for approval. Lessee agrees to submit the proposed Lease Purchase Arrangement to the NMPED by no later than ninety (90) days from the Commencement Date, but failure to do so shall not constitute an event of default hereunder.

ARTICLE V RENT AND EXPENSES

Section 5.1 Rental Commencement Date. The Lessee shall pay Base Rent for the Property commencing as of October 1, 2018 or the date Lessor has been issued a Certificate of Occupancy after completion of the Property by the governmental authority with jurisdiction, whichever date is later ("Rental Commencement Date").

Section 5.2 Base Rent. From and after the Rental Commencement Date as defined herein, and during the Term of this Lease, the Lessee shall pay Base Rent directly to the Lessor, on the twentieth (20th) day following the Rental Commencement Date of each month of the Term. The Base Rent for this Lease for the Initial Term and any Extended Term shall be in the monthly amounts of \$5,283.79. Any partial month will be calculated on a *pro rata* basis.

Section 5.3 Additional Rent. In addition to Base Rent, the Lessee shall pay Additional Rent during the Term, which shall be estimated annually by the Lessee and shall be in an amount sufficient to pay the following costs during the next ensuing ~~fiscal-year~~ Fiscal Year: (i) taxes and

such taxes, assessments, and governmental charges then due. With respect to special assessments or other governmental charges that may be lawfully paid in installments over a period of years, the Lessee shall be obligated to provide only for such installments as are required to be paid during the Term of this Lease. The Lessee shall not allow any liens for taxes, assessments, or governmental charges to exist with respect to the Property or any portion thereof (including any taxes levied thereon which, if not paid, will become a charge on the rentals and receipts from the Property or any portion thereof, or any interest therein, including the interest of the Lessor) or the rentals and revenues derived therefrom or hereunder. If the Lessee shall first notify in writing the Lessor of the intention of the Lessee to do so, the Lessee may, at the expense and in the name of the Lessee, in good faith contest any such tax, assessment, and other charges and, in the event of any such contest, may permit the tax, assessment, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee that, in the opinion of independent counsel, whose fees and costs shall be paid by the Lessee, by nonpayment of any such items, the Property or any portion thereof will be subject to loss or forfeiture, or the Lessor will be subject to liability, in which event such tax, assessment, or other charges shall be paid promptly or secured by posting a bond with the Lessor in form satisfactory to the Lessor (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, or other charges). The Lessor shall reasonably cooperate in any efforts by the Lessee to contest any taxes or assessments.

Section 5.7 Utilities. During the Term, the Lessee shall pay, as the same respectively become due, all gas, water, electricity, heat, sewer and waste disposal, and other utility charges incurred in the maintenance and upkeep of the Property, and the Lessee shall place all such utilities relating to the Property in its name or otherwise.

ARTICLE VI CONSTRUCTION OF FACILITY AND MAINTENANCE

Section 6.1 Construction of Improvements. As soon as reasonably practicable after execution of this Lease as determined by the Lessor, the Lessor shall commence construction of the Improvements described in Exhibit B. The Lessor shall construct the Improvements at the Lessor's sole cost and expense, using properly licensed, insured and bonded contractors, in accordance with plans and specifications approved by the Lessee, PSFA, and all other required governmental authorities. The Improvements shall be designed and constructed to meet all requirements for E-Occupancy and to meet all applicable Statewide Adequacy Standards. The Lessor shall use reasonable efforts to target completion of the Improvements and certify the Improvements and Property for the Lessee's occupancy by all required authorities by no later than August 1, 2018. However, in no event shall Lessee be responsible to commence rent payments until a certificate of occupancy is issued.

Section 6.2 Maintenance. During the period of the Lessor's construction of the Improvements hereunder, the Lessor shall maintain, preserve and keep the Property and Improvements at its expense. After the Certificate of E-Occupancy for the Property has issued and the Lessee takes possession, the Lessee shall maintain, preserve and keep the Property as described herein. The Lessee agrees to maintain, preserve, and keep the Property to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair,

or discard of barrels, containers, or other open or closed receptacles containing any such items from, into or out of the Property in violation of any Requirements of Law.

ARTICLE VII INSURANCE

Section 7.1 The Lessee's Insurance.

(a) Liability Insurance. Beginning upon the Commencement Date, the Lessee shall procure and maintain or cause to be carried and maintained in full force and effect during the term of this Lease and any extension thereof at the 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 Lessees Insurance Authority ("NMPSIA") 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 the Lessee and the Lessor as protection against all liability claims arising from activities on the Property, causing the Lessor and any financing entity(ies) of record or otherwise identified by the Lessor to be named as additional-named insureds on such policy of insurance, and delivering a copy thereof to the Lessor upon the commencement of the term of this Lease. The 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 NMSA 1978, §§41-4-19 and 41-4-20 and NMSA 1978, §§22-29-1 through 22-29-11, as amended.

(b) Property Insurance. Subject to the availability of such coverage from NMPSIA, the Lessee shall also carry and maintain or cause to be carried and maintained in full force and effect during the term of this Lease and any renewal thereof, at the Lessee's sole cost and expense, fire and extended coverage insurance upon the Property and Improvements, including all buildings, alterations, and additions in an amount equal to their replacement values. The Lessor and any financing entity(ies) of record or otherwise identified by the Lessor shall be named as additional insureds and loss payees on the Property Insurance Policy and shall be provided with a copy of the policy or declaration of coverage certificate at renewal. In the event that the Property should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, the provisions of Section 7.3, below, shall apply. If for any reason the Lessee is prohibited by law or regulation from carrying such insurance, the Lessor may obtain such insurance, and the Lessee shall pay the premiums of such insurance as Additional Rent.

(c) Worker's Compensation Insurance. If required by state law as of the Commencement Date, the Lessee shall carry worker's compensation insurance covering all of its respective employees on, in, near or about the Property and upon request, shall furnish certificates to the Lessor evidencing such coverage.

modify, improve, or replace the Property become apparent), the Lessee, has not appropriated amounts sufficient to proceed under clause (i) of this Subsection, the Lessee may make demand on the Lessor to make up the insufficiency in the Net Proceeds and if the Lessor refuses, the Lessee may terminate the Lease.

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

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1 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 State governmental agency or court of competent jurisdiction:

(a) Failure by the Lessee to pay any specifically appropriated Base Rent during the Term of this Agreement on, before, or within fifteen (15) days of the applicable due date or to pay Additional Rent on, before, or within fifteen (15) days of the applicable due date during the Term of this Agreement, up to the amount specifically appropriated for the payment of Base Rent and Additional Rent in accordance with the provisions hereof;

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

(c) Failure by the Lessee or the Lessor to observe and perform any covenant, condition, or agreement on its part to be observed or performed for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, unless the party giving such notice shall agree in writing, prior to the expiration of the thirty-day period, to an extension of no more than sixty (60) days. Provided, however, that if the failure stated in the notice cannot be corrected within the original thirty-day period, the party giving such notice shall not withhold their consent to an extension of up to sixty (60) days if corrective action shall be instituted by the defaulting party within such time period and diligently pursued until the default is corrected

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

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 8.5 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 8.6 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.

ARTICLE IX MISCELLANEOUS

Section 9.1 Further Assurances and Corrective Instruments. The Lessor and the Lessee agree that so long as this Lease is in full force and effect and no Event of Default shall have occurred, the Lessor and the Lessee shall have full power to carry out the acts and agreements provided herein and they will, so far as it may be authorized by law, from time to time, execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be, or for otherwise carrying out the intention of or facilitating the performance of this Agreement.

Section 9.2 Compliance with Requirements of Law. During the Term of this Lease, the Lessee and the Lessor shall observe and comply promptly with all current and future Requirements of Law applicable to the Property (including those set forth in NMSA 1978, §22-8B-4.2(D)(2)) or any portion thereof and all current and future requirements of all insurance companies writing policies covering the Property or any portion thereof.

Section 9.3 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and permitted assigns.

Section 9.4 No Individual Liability. All covenants, stipulations, promises, agreements, and obligations of the Lessee or the Lessor, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the Lessee or the Lessor, as the case may be, and not of any member, director, officer, employee, attorneys or other agent of the Lessee or the Lessor in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement, or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, attorneys or other

The Lessee: THE ASK ACADEMY CHARTER SCHOOL
4550 Sundt Road NE
Rio Rancho, New Mexico 87124
Attn: Daniel Barbour, Director of Finance
Email: dbarbour@theaskacademy.org
Phone: (505) 891-0757

With a copy to: Matthews Fox, P.C.
1925 Aspen Drive, Suite 301A
Santa Fe, NM 87505
Attn: Patricia Matthews
Email: pmatthews@matthewsfox.com
Phone: (505) 473-3020

Section 9.9 Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, *i.e.*, including Saturdays, Sundays, and holidays as observed by the State of New Mexico; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or such observed holiday, the day for such act shall be the first day following such Saturday, Sunday, or observed holiday that is not a Saturday, Sunday, or such observed holiday.

Section 9.10 Interpretation. The captions and paragraph headings of this Lease are not necessarily descriptive, or intended or represented to be descriptive, of all the terms thereunder, and shall not be deemed to limit, define, or enlarge the terms of this Lease. Whenever used herein, unless otherwise indicated by the context, the singular shall include the plural, the plural shall include the singular, the use of any gender shall include all genders, and the use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter. The parties were, or had ample opportunity to be represented by counsel, and as such this Lease shall not be interpreted for or against either party based on authorship.

Section 9.11 Incorporation. Each and all of the recitals set forth at the beginning of this instrument and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.

Section 9.12 Applicable Law. Each party shall perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect. This Lease shall be governed by the laws of the State of New Mexico (without giving effect to the State of New Mexico's choice of law provisions). All legal proceedings arising from unresolved disputes under this Lease shall be brought in Albuquerque before the Second Judicial District Court of the State of New Mexico.

Section 9.13 Severability. In the event that any provision of this Lease, other than the requirement of the Lessee to pay Base Rent and Additional Rent, the requirement of the Lessor to provide quiet enjoyment of the Property, and the requirement that the obligations of the Lessee to pay Base Rent and Additional Rent under this Lease are conditioned upon the prior specific appropriation by the Lessee of amounts for such purposes in accordance with the requirements of

IN WITNESS WHEREOF, Lessor and Lessee, each acting through their duly authorized agent or legal representative, have made and executed this Agreement effective as of the Commencement Date.

LESSEE:

THE ASK ACADEMY CHARTER SCHOOL, a New Mexico public charter school

By: _____
Name: _____
Title: _____

LESSOR:

THE ASK ACADEMY EDUCATION FOUNDATION, a New Mexico nonprofit corporation

By: _____
Name: _____
Title: _____

EXHIBIT B
IMPROVEMENTS
(See attached)

SUBORDINATION AGREEMENT

This Subordination Agreement, dated as of _____, 2018 (this "Agreement"), is made by Wells Fargo Bank, National Association, as trustee (the "Trustee"), The ASK Academy Education Foundation, as landlord (the "Foundation"), and The ASK Academy, as lessee (the "Charter School").

WHEREAS, \$6,360,000 Educational Facility Revenue Bonds (The ASK Academy Project) Series 2015A and \$340,000 Educational Facility Revenue Bonds (The ASK Academy Project) Series 2015B (the "Bonds") were issued pursuant to an Indenture of Trust dated as of February 1, 2015 (the "Indenture") between the Public Finance Authority (the "Issuer") and the Trustee to provide funds to finance the Project (described below) and setting forth the form and details of the Bonds and their issuance and pledging the lease payments derived from the Senior Lease (described below) to the payment of the Bonds. Capitalized terms used without definition herein shall have the meanings ascribed in the Indenture.

WHEREAS, the Issuer loaned the proceeds from the sale of the Bonds to the Foundation pursuant to the provisions of a Loan and Security Agreement dated as of February 1, 2015 between the Issuer and the Foundation (the "Loan Agreement") to finance the (i) acquisition, construction, and equipping of an approximately 38,950 square foot public charter school educational facility located at 4550 Sundt Road, Lot B, Rio Rancho, New Mexico (the "Facility") including approximately 30 classrooms, plus a commons area, and approximately 20 educational offices, for use as a charter high school and middle school, and (ii) the acquisition of approximately 5.5 acres of land located west of the Facility (collectively, the "Project"), owned by the Foundation, and leased to the Charter School.

WHEREAS, the Foundation and the Charter School entered into a Lease Agreement dated February 12, 2015 (together with any successor lease purchase arrangement entered into in accordance therewith, referred to as the "Senior Lease") pursuant to which the Charter School agreed to make lease payments in the amounts and at such times as stated in the Senior Lease.

WHEREAS, under the Loan Agreement, the Foundation agreed to make loan payments, which the Trustee will apply to the payment of the Bonds, from proceeds of the lease payments under the Senior Lease.

WHEREAS, the payment obligation of the Foundation under the Loan Agreement was secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated February 12, 2015, by the Foundation to the Trustee (the "Deed of Trust"), which includes an assignment of the Senior Lease and payments due thereunder.

WHEREAS, under a Pledge and Covenant Agreement dated as of February 1, 2015 by the Charter School for the benefit of the Trustee (the "Pledge Agreement"), to the extent allowable under New Mexico law, the Charter School agreed to grant a security interest in certain "Adjusted Pledged Revenues," the definition of which includes State Lease Reimbursement Program payments and as otherwise therein defined, in order to provide additional security to the Trustee for the timely payments of amounts due under the Senior Lease and, thus, under the Loan Agreement.

WHEREAS, the Foundation proposes to acquire, expand, and renovate a 5,000 square-foot building on 0.82 acres, located adjacent to the Project, and with an address of 4500 Sundt Road NE, Rio Rancho, New Mexico ("New Facility"), and lease it to the Charter School for additional classroom space.

WHEREAS, the Foundation proposes to enter into that certain Real Estate Contract dated [____], 2018 (the "Real Estate Contract") between the Foundation, as buyer, and Rachel Matthew Development, a New Mexico corporation, as seller (the "New Facility Seller"), in order to finance the acquisition of the New Facility.

WHEREAS, it is proposed that the Foundation lease the New Facility to the Charter School pursuant to a Lease Agreement dated as of [____], 2018, which may be succeeded to by a Lease Purchase Arrangement (collectively, the "Junior Lease"). The Junior Lease and any payments due thereunder, including payments made from the State Lease Reimbursement Program or other Adjusted Pledged Revenues, (i) shall be unsecured obligations of the Charter School, (ii) shall be subordinate to the Charter School's obligations under the Senior Lease and the Trustee's security interest in lease payments thereunder and to Adjusted Pledged Revenues under the Pledge Agreement, and (iii) shall not be subject to appropriation until all amounts payable under the Senior Lease have been fully appropriated for each Fiscal Year pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Trustee, the Foundation, and the Charter School hereby agree as follows:

1. The obligations of the Foundation under the Real Estate Contract shall at all times be and remain an unsecured obligation of the Foundation secured solely by the Foundation's interest in the New Facility. The liens of the Loan Agreement and the Deed of Trust, as they may be extended, modified, renewed, amended, and/or replaced, shall be superior to any right, title, interest, claim, or lien which the New Facility Seller may have in or upon the Gross Revenues of the Foundation. The priorities specified herein are applicable irrespective of the time or order of attachment or perfection of security interests or the time or order of filing of financing statements or the giving or failure to give notice of the acquisition or expected acquisition of any security interest by the Trustee or the Foundation.

2. The obligations of the Charter School under the Junior Lease shall at all times be and remain an unsecured annual appropriation obligation of the Charter School. The Charter School shall not pledge any Adjusted Pledged Revenues to payments on the Junior Lease. The liens of the Pledge Agreement, as it may be extended, modified, renewed, amended, and/or replaced, shall be superior to any right, title, interest, claim, or lien which the Foundation may have in or upon the Adjusted Pledged Revenues of the Charter School with respect to the Junior Lease.

3. The Charter School shall not make any payments under the Junior Lease, unless the Charter School has fully appropriated, and has the funds to actually pay, when due, all payments on the Senior Lease for the then current Fiscal Year. Any time from and after the date

on which the Foundation or the Charter School receives written notice from the Trustee of the occurrence of a default under the Loan Agreement or Deed of Trust or by the Charter School under the Pledge Agreement, and until such default is cured or waived, the Foundation will not receive, or take action to collect or enforce, any payment from the Charter School under the Junior Lease, and the Charter School will not make payment to the Foundation of payments due under the Junior Lease

4. Until payment in full of the Bonds, the Foundation will not, without the prior written consent of the Trustee, receive or take any action to collect or enforce payment under the Junior Lease or any part thereof from any trustee in bankruptcy, receiver, or other liquidator of any part of the Adjusted Pledged Revenues or the Charter School's property, or from any other person.

5. Contemporaneously with the execution and delivery of this Agreement, the Foundation shall deliver to the Trustee an account control agreement among the Trustee, the Foundation and Wells Fargo Bank, National Association, in its capacity as depository (the "Depository"), for the Foundation's bank account (the "Secured Foundation Account"). The Foundation agrees, upon receipt, to deposit all payments under the Junior Lease into the Secured Foundation Account, which shall remain in effect for the term of the Junior Lease and be terminated upon the expiration of the Junior Lease. Should the Foundation desire to move the Secured Foundation Account from the Depository, the Foundation shall provide the Trustee with thirty (30) days' prior written notice of its intention to move the Secured Foundation Account together with a new account control agreement acceptable to the Trustee providing the Trustee with a perfected security interest in the replacement bank account at the replacement depository bank under the same terms and conditions as the original account control agreement.

6. In the event of the bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of, the Charter School, or in the event the Charter School shall become the subject of any proceeding of any character under any federal or state bankruptcy or insolvency act or law, all moneys and other property allocated or allocable to the Junior Lease and which would be payable or deliverable to the Foundation in the absence of the provisions of this Agreement shall be paid and delivered directly to the Trustee for application by the Trustee to the payments due under the Loan Agreement, in such order as the Trustee shall elect, until full payment of the Bonds, with the excess, if any, to be paid to the Foundation, regardless of whether the Foundation or the Trustee or both file a claim on behalf of the Junior Lease in any such proceeding. The Trustee is hereby irrevocably appointed attorney-in-fact for the Foundation with full power to act in the place and stead of the Foundation in all matters relating to or affecting the Junior Lease, including the right to make, present, file, and vote such proofs of claim against the Charter School on account of all or any part of said Junior Lease, as the Trustee may deem advisable and to receive and collect any and all dividends or other payments ("Dividends") made thereon and to apply the same on account of the Bonds. The Foundation will execute and deliver to the Trustee such instruments as may be required by the Trustee to enforce the Junior Lease, to effectuate the aforesaid power of attorney and to effect collection of any and all Dividends which may be made at any time on account thereof.

7. As collateral securing payment of the Bonds, the Foundation hereby transfers and assigns to the Trustee the Junior Lease and all collateral security and guaranties therefor to which

the Foundation may be entitled. The Trustee may file one or more financing statements concerning any security interest hereby created without the signature of the Foundation, and the Foundation shall cause such financing statements to be prepared at its expense at the request of the Trustee.

8. (a) In the event that the Foundation receives any payment or property on the Junior Lease in violation of the terms of this Agreement, (i) such payments shall be held in trust by the Foundation and (ii) the Foundation will forthwith pay over or deliver the same to the Trustee to be held and applied by the Trustee pursuant to the Indenture. Failure to comply with this Agreement shall be an event of default under the Loan Agreement, unless such violation is cured within ten days of the date of such payment.

(b) Any payment by the Charter School to the Foundation in violation of this Agreement or any failure to comply with the provisions of this Agreement shall be deemed an event of default hereunder and under the Pledge Agreement, unless such violation is cured within ten days of the date of such payment or event.

9. The Foundation's undertakings herein shall not be affected or impaired by (a) any neglect or omission on the part of the Trustee to look to or to preserve any collateral at any time securing payment of the Bonds, or (b) any act on the part of the Trustee in releasing, canceling or surrendering all or part of such collateral, or in extending the time for payment with respect to all or any part of the Bonds or such collateral, or in enforcing or realizing upon such collateral.

10. The Foundation will not assign, pledge, or otherwise transfer, or permit or suffer to be assigned, pledged or otherwise transferred, or execute any power of attorney with respect to, the Junior Lease or any part thereof, unless such assignee, pledgee, or transferee agrees in writing to be bound by the terms and conditions of this Agreement, and the Foundation obtains the prior written consent of the Trustee, which the Trustee may withhold in its sole and absolute discretion.

11. If the Junior Lease shall be superseded by a Lease Purchase Arrangement as provided in Section 4.4 of the Junior Lease, then all references herein to the Junior Lease shall automatically be deemed references to the Lease Purchase Arrangement described in the Junior Lease.

12. This Agreement shall be irrevocable and shall continue effective until the Bonds shall have been paid in full and all agreements between the Foundation and the Trustee have been terminated.

13. This Agreement is binding not only upon the Foundation and the Charter School, but also upon the heirs, representatives, successors and assigns of each of them, and is enforceable not only by the Trustee but also by its successors and any assignee of or participant in the Indenture, the Loan Agreement, and/or the Pledge Agreement, but shall not inure to the benefit of or be enforceable by any other party or subordinate the Junior Lease to any claim other than the Senior Lease, the Loan Agreement, the Indenture, and the Bonds.

14. THIS AGREEMENT SHALL BE INTERPRETED, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED, IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW MEXICO.

15. THE FOUNDATION, THE CHARTER SCHOOL AND THE TRUSTEE HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY UNDER ANY ACTION OR PROCEEDING ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT, AND ALL DOCUMENTS INCIDENT THERETO.

16. This Agreement may be executed in any number of counterparts and by any combination of the parties hereto in separate counterparts, each of which counterparts shall be an original and all of which taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

TRUSTEE:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee**

By: _____
Its: _____

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of Wells Fargo Bank, National Association, a national banking association, on behalf of the national banking association.

[Notary Stamp]

Notary Public

[SIGNATURE PAGE TO SUBORDINATION AGREEMENT]

FIRST SUPPLEMENTAL PLEDGE AND COVENANT AGREEMENT

This **FIRST SUPPLEMENTAL PLEDGE AND COVENANT AGREEMENT**, is made and entered into as of [_____] 1, 2018 by and between **THE ASK ACADEMY**, a new Mexico public (charter) school (the “School”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as trustee (the “Trustee”) under that certain Indenture of Trust, dated as of February 1, 2015 (the “Indenture”) between the Trustee and Public Finance Authority, as issuer of the bonds referred to below (the “Issuer”).

WITNESSETH:

WHEREAS, the Issuer has issued its Educational Facility Revenue Bonds (The ASK Academy Project), Series 2015A, in the original aggregate principal amount of \$6,360,000 and its Taxable Charter School Lease Revenue Bonds (The ASK Academy Project), Series 2015B, in the original aggregate principal amount of \$340,000 (collectively, the “Bonds”), pursuant to the Indenture to finance the acquisition, construction, renovation and equipping of a charter school and associated site amenities to be owned by The ASK Academy Education Foundation (the “Company”) to be leased to and operated by the School, and to finance related costs, all as set forth in the Indenture; and

WHEREAS, at the time of execution and delivery of the Bonds, the School executed and delivered to the Trustee for the benefit of the holders of the Bonds that certain Pledge and Covenant Agreement dated as of February 1, 2015 between the School and the Trustee (the “Original Pledge Agreement”), whereby, *inter alia*, the School granted the Trustee a security interest in certain of its assets and undertook certain covenants in favor of the Trustee; and

WHEREAS, the Company proposes to acquire, expand, and renovate a 5,000 square-foot building on 0.82 acres, located adjacent to the Project, with an address of 4500 Sundt Road NE, Rio Rancho, New Mexico (the “New Facility”), and lease it to the School for additional classroom space; and

WHEREAS, the Company proposes to enter into that certain Real Estate Contract dated [____], 2018 between the Company, as buyer, and Rachel Matthew Development, a New Mexico corporation, as Seller, in order to finance the acquisition of the New Facility; and

WHEREAS, it is proposed that the Company lease the New Facility to the School pursuant to a Lease Agreement dated as of [____], 2018 (“2018 Lease”), which may be succeeded to by a Lease Purchase Arrangement; and

WHEREAS, the School and the Company have requested that the Trustee obtain Bondholder approval for the School to enter into the 2018 Lease to provide the New Facility for use by the School in its operations; and

WHEREAS, the School and the Company propose to enter into the 2018 Lease, whereby the School would make rental payments to the Company for the New Facility on a subordinate basis to the Lease; and

WHEREAS, in partial consideration for its approval of the 2018 Lease, the Trustee and the School now desire to supplement and amend the Original Pledge Agreement, as provided herein, to augment certain covenants in favor of the Trustee for the benefit of the Bondholders; and

WHEREAS, *Section 9* of the Original Pledge Agreement provides that the Original Pledge Agreement may be amended with the consent of all parties thereto; and

WHEREAS, the School and the Company agree that an amendment clarifying the calculation of the "coverage ratio" as set forth in *Paragraph 3.P* of the Original Pledge Agreement is necessary to obtain Bondholder approval of the 2018 Lease; and

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Original Pledge Agreement is hereby supplemented and amended, and the parties hereto agree as follows:

Section 1. Additional Definitions. Capitalized terms used without definition herein shall have the meanings ascribed in the Indenture or Original Pledge Agreement. In addition, the following terms shall have the meanings set forth below when used in the Pledge Agreement and in the other agreements relating to the Bonds:

"First Supplemental Pledge Agreement" means this First Supplemental Pledge Agreement dated as of [_____] 1, 2018 between the School and the Trustee.

"Original Pledge Agreement" means that certain Pledge and Covenant Agreement dated as of February 1, 2015 delivered by the School in favor of the Trustee.

"Pledge Agreement" means the Original Pledge Agreement as supplemented by this First Supplemental Pledge Agreement.

"Subordination Agreement" means that certain Subordination Agreement dated as of [_____] 1, 2018 among the Company, the School and the Trustee.

"2018 Lease" means that certain Lease Agreement dated as of [_____] 1, 2018 between the Company and the School providing for the School's occupancy of 4500 Sundt Road NE, Rio Rancho, New Mexico 87124, as such document may be substituted for a Lease Purchase Arrangement between the Company and the School substantially in the form set forth in Exhibit C to the 2018 Lease.--

Section 2. Amendment of Paragraph 3.P of the Original Pledge Agreement. *Paragraph 3.P* of the Original Pledge Agreement is hereby deleted in its entirety and replaced with the following:

(P) The School shall, to the extent permitted by law, maintain a "coverage ratio" of not less than 1.20 to 1.00 in any Fiscal Year. The "coverage ratio" shall be determined by a ratio the numerator of which is the difference between the "gross

revenues” and “operating expenses” of the School determined in accordance with generally accepted accounting principles, consistently applied, and the denominator of which is the “Annual Debt Service Obligations of the School” (as hereinafter defined). In the event the School’s “coverage ratio” is less than 1.10 to 1.00 in any Fiscal Year, the School shall retain an independent management consultant, experienced in New Mexico charter school management and financial matters and not unacceptable to any Significant Bondholder following receipt of reasonable notification of the selection thereof, to review and analyze the reports required by the Pledge Agreement, to inspect the facilities occupied by the School and the School’s operation and administration and to make such recommendations as to the operation and administration of the School and the School’s facilities as such management consultant deems appropriate; and the School shall accept or adopt the consultant’s recommendations unless they are contrary to State or federal law. The term “Annual Debt Service Obligations of the School” shall mean the sum of (i) all Base Rent payable under the Lease and the 2018 Lease, (ii) any base rent payments owed on facilities leases entered into after the date of this First Supplemental Pledge Agreement, (iii) any payments under a lease purchase arrangement entered into after the date of this First Supplemental Pledge Agreement, and (iv) any principal of and interest on Indebtedness payable by the School during the then current Fiscal Year of the School.

Section 3. Amendment of Paragraph 4.C of the Original Pledge Agreement. *Paragraph 4.C.* of the Original Pledge Agreement is hereby deleted in its entirety and replaced with the following:

(C) Any event of default on the part of the Company under the Loan Agreement or the Lease; or any event of default by either the Company or the School under the Subordination Agreement.

Section 4. Notice of this First Supplemental Pledge Agreement. The School shall cause a notice of the amendments contained herein to be electronically filed with the Municipal Securities Rulemaking Board on its EMMA website (<https://emma.msrb.org/>).

Section 5. Effect of this First Supplemental Pledge Agreement. Except as herein supplemented and amended, all terms, covenants and conditions of the Original Pledge Agreement are hereby reaffirmed and shall remain in full force and effect.

[Balance of page intentionally left blank.]

IN WITNESS WHEREOF, the School, acting pursuant to and in conformity with a properly considered and adopted resolution and acting by and through its duly authorized officers, and the Trustee, acting through its duly authorized officers, have caused this First Supplemental Pledge Agreement to be signed and delivered all as of the date hereof.

THE ASK ACADEMY, a New Mexico public
(charter) school

By: _____
Its Governing Council Chair

WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee under the Indenture described in this Agreement

By: _____

Its: _____

The undersigned hereby consents to and acknowledges the foregoing First Supplemental Pledge and Covenant Agreement dated as of [_____] 1, 2018, between The ASK Academy and Wells Fargo Bank, National Association.

**THE ASK ACADEMY EDUCATION
FOUNDATION,** a New Mexico nonprofit
corporation

By: _____
Its: President

**CERTIFICATE OF
THE ASK ACADEMY**

PUBLIC FINANCE AUTHORITY

\$6,340,000 Educational Facility Revenue Bonds

(The ASK Academy Project)

Series 2015A

and

\$340,000 Taxable Educational Facility Revenue Bonds

(The ASK Academy Project)

Series 2015B

I, the undersigned, hereby certify that I am, as of _____, 2018, the duly chosen, qualified, and acting chief financial officer of The ASK Academy, a public charter school (the "Charter School"), and that:

1. The Charter School is a public charter school authorized by the New Mexico Public Education Commission and duly organized and validly existing under the Constitution and laws of the State of New Mexico (the "State"), particularly Sections 22-8B-1 et seq., NMSA 1978, as amended (the "Charter Schools Act").

2. The Charter School has previously consummated all transactions contemplated by the Lease Agreement, dated as of February 12, 2015 (the "Lease"), by and between The ASK Academy Education Foundation (the "Foundation") and the Charter School; the Pledge and Covenant Agreement, dated as of February 1, 2015 (the "Pledge Agreement") by and between the Charter School and Wells Fargo Bank, National Association, as trustee (the "Trustee") under the Indenture of Trust, dated as of February 1, 2015, between the Public Finance Authority (the "Authority") and the Trustee (the "Indenture"); and the Account Control Agreement, dated as of February 1, 2015 (the "Account Control Agreement"), by and between the Charter School, the Trustee, and the depository bank named therein, all in connection with the issuance of the Public Finance Authority Educational Facility Revenue Bonds (The ASK Academy Project), Series 2015A in the aggregate principal amount of \$6,340,000 and Public Finance Authority Taxable Educational Facility Revenue Bonds (The ASK Academy Project), Series 2015B in the aggregate principal amount of \$340,000 (collectively, the "Bonds").

3. The Foundation has proposed to acquire, expand, and renovate a 5,000 square-foot building on 0.82 acres, located adjacent to the Project (as defined in the Indenture), and with the address of 4500 Sundt Road NE, Rio Rancho, New Mexico ("New Facility"), and lease it to the Charter School for additional necessary space, pursuant to a subordinate Lease Agreement of even date herewith between the Foundation and the Charter School (and with any succeeding Lease Purchase Arrangement, the "Subordinate Lease").

4. To the best knowledge of the undersigned, there is no event of default under the Lease, the Pledge Agreement, or the Account Control Agreement.

5. The undersigned hereby certifies that entering into the Subordinate Lease, and undertaking the financial obligations therein, will not impair the financial operations of the Charter School.

6. In executing this Certificate, the undersigned is acting solely in the undersigned's official capacity as an officer of the Charter School herein indicated. The undersigned officer of the Charter School assumes no personal liability whatsoever in the execution of this Certificate as to the matters set forth herein.

IN WITNESS WHEREOF, the undersigned has set their hands as of the date set forth above.

THE ASK ACADEMY, a New Mexico public charter school

By _____
Its _____

[Signature page for Certificate of the Charter School



A New Mexico Public Charter School
The ASK Academy
21st Century Design Thinking

4550 Sundt Rd NE
Rio Rancho, NM 87124
Phone (505) 891-0757
Fax (505) 891-2115

September 27, 2018

Funding the 6th Grade Academy Expansion

The ASK Academy Administration performed a thorough review of the current 2018-2019 budget. Two estimated funding sources from the budget development process have been updated as of last week. Both the lease reimbursement award and the cash carry over exceed our initial estimates. Below summarizes the impact as it relates to the operation of The ASK Academy.

Description	Initial estimate	Currently Anticipated	Difference
PSCOC Lease Award	\$293,530	\$366,300	\$72,770
Cash Carry Over	\$98,000	\$200,000	\$102,000
Total	\$391,530	\$566,300	\$174,770

After allocating a portion of this amount for ancillary contracts and higher than expected utility costs, we anticipate approximately \$100,000 available for the acquisition to be allocated \$65,000 for improvements and \$35,000 for furnishings.

A five-year budget projection analysis under current conditions reveals The ASK Academy is able to acquire the new facility and maintain the ongoing operating costs well into the future.

Daniel Barbour
Director of Finance
The ASK Academy