BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Consent Calendar Item 5

RECOMMENDATION: Award the contract to provide services to add an additional advocate on campus to enhance The O'Farrell Charter School's achievement in the amount not to exceed $28,651.73 to Social Advocates for Youth (SAY).

BACKGROUND INFORMATION:

The O'Farrell Charter School is in a 20-year partnership with the Community Action Partnership (CAP) of San Diego County's Department of Health and Human Services to operate the Family Support Services program.

O'Farrell and CAP selected Social Advocates for Youth (SAY) to operate Family Support Services. CAP administers the contract with SAY and monitors the performance benchmarks required of SAY to receive payment.

CURRENT INFORMATION:

SAY San Diego currently has two student advocates, co-funded by County of San Diego and O'Farrell, out stationed at O'Farrell. This position would be added to address the addition of Elementary School – Grade K-5.

Agreement with SAY San Diego for School Based Family Self-Sufficiency Services.

This agreement is made between The O'Farrell Charter School and Contractor Social Advocates for Youth (SAY), a non-profit organization, located at 8755 Aero Drive Suite 100, San Diego, CA 92123 with reference to the following facts:

A. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.

Scope of Work/Purpose

1. See attached job description

2. Background information

School-Based Self-Sufficiency Services are designed to enhance The O'Farrell Charter School's achievement of its educational mission of attending to the social, intellectual, psychological, and physical needs of middle level youth so they will become responsible, literate, and contributing citizens.

SAY San Diego currently has 2 student advocates, co-funded by County of San Diego and O'Farrell, out stationed at O'Farrell. This position would be added to address the addition of Elementary School – Grade K-5.

3. Goals

Contractor shall provide the services described herein to accomplish the following goals: Contractor's program shall be designed to enhance The O'Farrell Charter School's achievement of its educational mission of attending to the social, intellectual, psychological, and physical needs of middle school level youth so they will become responsible, literate, and contributing citizens.

4. Outcomes

School Attendance – students who have been referred for attendance issues shall show improved school attendance as measured by school attendance records.

Health – families will be provided increased access to health care coordination and education.

Social Emotional – students who have been referred for behavioral issues will show a sustained improvement in behavior as documented by:

a) Teacher evaluation
b) Positive Report Card Comments
c) Decrease in "referrals" to school admin/ and/or Family Resource Center for unacceptable behavior

5. Payment:

This is a flat rate contract – One (1) time payment

The O'Farrell Charter School will pay SAY San Diego $28,651.73

SAY San Diego will contribute $28,651.73

Total for this position $57,303.46

Position will be effective from August 1st, 2016 through July 30th, 2017.

Confidentiality and Non-Discrimination Practices: The Health Insurance Portability and Accountability ACT (HIPAA). Both parties agree to adhere to all relevant HIPAA regulations and standards as they pertain to any treatment and healthcare operations activities related to this sub-contractual agreement, and will abide by all mandated statues for the protection of client confidentiality. The rights of a client will be respected without regard to color, creed, religion, sex, ethnicity, sexual orientation, nationality, legal status, health, and disability.

The O'Farrell Charter School

_____ _____

Jonathan Dean, Ed.D., Superintendent Date

SAY San Diego

_____ _____

Nancy Gannon Hornberger, Executive Director Date

Board Approval Date: May 9, 2016

SAY SAN DIEGO, INC.

STUDENT ADVOCATE

DEPARTMENT: O'Farrell
REPORTS TO: Family Support Coordinator
CLASSIFICATION: Non-Exempt
 # OF HOURS: Full-time; 40 hours/week
PAYRATE: TBD

POSITION PROFILE:
Functions as part of the O'Farrell Community School in supporting the educational mission of the school.

ESSENTIAL JOB FUNCTIONS AND RESPONSIBILITIES:

Serve the needs of "educational teams" by:

- Assisting in assessment of community/school needs and development of appropriate intervention strategies.
- Providing various training and activities for students, parents, school staff, and community.

Connect "educational teams" with the community to better meet the academic health and social/emotional needs of the students and families by:

- Maintaining communication and positive relationships with a wide variety of social service agencies, the juvenile justice system, public health, etc.
- Maintaining communication with school staff, students, parents, and community/health organizations.

Case Management

- Home visits
- Manage a caseload and provide casework, counseling, and group services to students and families, including psychosocial assessment and treatment planning, client advocacy, referrals and client follow-up.
- Maintain accurate updated case files and compile statistical data as required.
- Implement counseling interventions and facilitate support services.
- Refer families to partner agencies for health insurance coverage (SAY) and diabetes screening (Family Centers of San Diego) as needed.
- Refer families to local health clinics depending on their special needs.
- Advocate on behalf of families to improve access to health and other community services.
- When appropriate, intervene in crisis situations.

General

- Maintain required records and prepare reports as needed.
- Assist in project and provider evaluation as required.
- Participate in agency/school meetings and functions as required.
- Have and maintain positive and supportive relationships with coworkers.
- Maintain accurate knowledge about the agency, its programs and services.

- Accurately represent the agency to and maintain positive working relationships with the general public, clients, funding sources, government bodies, etc.
- Communicate feedback from the community through your supervisor to management.
- Utilize appropriate opportunities to pursue positive relations for the agency.
- Other tasks as assigned by the Program Coordinator.

QUALIFICATIONS (Education, Experience and Certifications):

- Bachelor's Degree in Social Work, Psychology, Counseling or related field.
- Two (2) years experience in individual and group counseling for youth and families, including case management.
- Experience in multi-ethnic and multi-cultural community work.
- Capacity to work cooperatively with students, school staff and parents.

KNOWDLEGE, SKILLS AND ABILITIES:

- Ability to work as part of a school based team.
- Ability to maintain effective working relationships with school staff, the community and other organizations.
- Knowledge of local resources and services.
- Able to prepare written and oral communications and communicate well with a wide variety of audiences.
- Access to reliable transportation and willing to use it for job-related tasks; Have a driving record that complies with SAY Driving Policies.
- Ability to lift up to 50lbs.

WORKING CONDITIONS:

ENVIRONMENT: Office, home and community settings. Job could include minimum to high intensity noise level.

PHYSICAL REQUIREMENTS: While performing the duties of this job, the employee is regularly required to sit, reach with hands and arms, and talk or hear. The employee is occasionally required to walk; use hands and arms to perform repetitive motions; and stoop, kneel, crouch, or crawl. The employee must occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, and ability to adjust focus. Typically an office environment with adequate lighting and ventilation and a normal range of temperature and noise level. Moderate dexterity application of basic skills (calculator, keyboard, eye/hand coordination.

MENTAL: Must be able to relate well to all people of the community regardless of color, national origin, religion, sex, pregnancy, age, marital status, veteran status, sexual orientation, disability or socio-economic level. Must be emotionally mature, stable, tactful and be able to provide professional leadership.

The Job Description is intended to describe the general nature and level of work being performed by people assigned to this classification. They are not to be constructed, as an exhaustive list of all responsibilities, duties and skills required of personnel so classified. All personnel may be required to perform duties outside of their normal responsibilities from time to time, as needed.

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 1

RECOMMENDATION: Approve a 4 % Cost-of-Living Adjustment (COLA) increase for all employees and other salary schedules at The O'Farrell Charter Schools for the 2016-2017 school year.

BACKGROUND INFORMATION:

Every year, the budget withstanding, the Board of Directors make the decision of whether to approve a cost of living adjustment to the salary schedules.

CURRENT INFORMATION:

Current updates include:

1. Certificated Salary Schedule
2. Classified/Para-educators Salary Schedule
3. Psychologist Salary Schedule
4. Ingenuity Salary Schedule
5. Assistant Principals/Vice Principals/Principals Salary Schedule
6. Academic Coach Salary Schedule
7. Stipend List

ADDITIONAL INFORMATION:

See attached salary schedules.

THE O'FARRELL CHARTER SCHOOL

2016-2017

Effective July 1, 2016

4% COLA

ANNUAL CERTIFICATED SALARY RATES

TRADITIONAL 188-DAY CONTRACT YEAR

	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
STEP	BA or MA	BA+60 or BA+54 w/MA	BA+72 w/MA	BA+90 w/MA
1	$47,070.69	$49,767.75	$52,473.82	$55,181.60
2	$48,726.53	$51,432.60	$54,140.36	$56,846.43
3	$50,457.66	$53,165.47	$55,871.52	$58,579.30
4	$52,260.11	$54,968.43	$57,676.21	$60,382.24
5	$54,135.02	$56,839.44	$59,548.85	$62,256.68
6	$56,084.84	$58,790.89	$61,498.71	$64,206.52
7	$58,113.52	$60,819.54	$63,527.36	$66,233.39
8	$60,220.95	$62,926.97	$65,634.77	$68,340.77
9	$62,410.88	$65,118.73	$67,824.71	$70,532.54
10	$64,688.54	$67,396.34	$70,102.39	$72,810.20
11	$67,057.70	$69,765.46	$72,473.29	$75,179.30
12	$69,523.55	$72,231.40	$74,937.40	$77,645.24
13	$69,523.55	$74,795.87	$77,503.67	$80,209.71
14	$69,523.55	$74,795.87	$80,168.58	$82,876.36
15	$69,523.55	$74,795.87	$80,168.58	$85,648.67
16	$71,788.85	$77,061.15	$82,433.84	$87,913.95
17	$74,573.64	$79,845.94	$85,218.63	$90,698.75
25	$74,573.64	$79,845.94	$85,218.63	$94,074.96

INTERN PAY	$43,070.69

*$30.00/hr. = Extra Pay

*Doctorate Degree (must be in the field of Education): $1,500.00 annually

Substitute Teacher Rate Pay:

Daily Rate	Hourly Rate
$155.00	$19.375

JD:5/09/16

	4%					
Classified 16_17 4%	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Administrative Assistant	4,918.74	5,163.95	5,421.96	5,692.62	5,977.68	6,169.49
12-month	59,025.00	61,967.54	65,063.49	68,311.51	71,732.24	74,033.85
Executive Assistant	5,719.53	6,031.15	6,360.22	6,705.21	7,067.70	7,447.62
11-month (sunset end of 06/2017)	62,914.90	66,342.63	69,962.55	73,757.44	77,744.76	81,923.80
Director of Technology	4,680.00	4,853.33	5,026.66	5,200.00	5,373.33	5,546.66
12-month	56,160.00	58,240.00	60,320.00	62,400.00	64,480.00	66,560.00
HR/Payroll Technician	4,106.25	4,312.43	4,527.85	4,754.11	4,991.38	5,112.75
12-month	49,275.03	51,749.19	54,334.18	57,049.31	59,896.58	61,352.98
Budget Technician & Buyer	4,106.25	4,312.43	4,527.85	4,754.11	4,991.38	5,112.75
12-month	49,275.03	51,749.19	54,334.18	57,049.31	59,896.58	61,352.98
Purchasing/Office Clerk	2,946.66	3,123.46	3,310.87	3,509.53	3,720.10	3,813.34
12-month	35,360.08	37,481.56	39,730.45	42,114.38	44,641.21	45,760.04
School Clerk	2,709.87	2,845.39	2,987.83	3,137.18	3,293.54	3,431.37
12-month	32,518.39	34,144.78	35,854.04	37,646.17	39,522.41	41,176.51
Registrar	2,987.83	3,137.18	3,293.54	3,458.58	3,632.26	3,972.01
12-month	35,854.03	37,646.17	39,522.42	41,502.99	43,587.15	47,664.12
School General Secretary	3,175.01	3,327.94	3,602.03	3,770.51	4,133.79	4,551.26
12-month	38,100.17	39,935.25	43,224.34	45,246.09	49,605.50	54,615.13
School Library Technician	3,137.18	3,293.54	3,458.58	3,632.26	3,812.93	4,032.69
11-month	34,509.00	36,228.89	38,044.42	39,954.85	41,942.24	44,359.62
Student Services Technician	2,938.08	3,084.99	3,238.73	3,513.58	3,868.58	4,074.40
12-month	35,257.01	37,019.92	38,864.79	42,163.01	46,422.99	48,892.79
Student Info System Site	3,137.18	3,293.54	3,458.58	3,632.26	3,812.93	4,032.69
Technician - 12 month	37,646.18	39,522.42	41,503.00	43,587.11	45,755.17	48,392.32
Custodian/Bus Driver	2,713.60	2,849.29	2,991.89	3,141.48	3,298.56	3,508.61
12-month	32,563.20	34,191.46	35,902.73	37,697.81	39,582.66	42,103.30
EL Classroom Aides	2,222.10	2,322.43	2,428.16	2,539.25	2,655.73	2,716.66
10-month	22,221.02	23,224.42	24,281.69	25,392.63	26,557.35	27,166.65
Warehouse Technician	2,303.76	2,418.60	2,535.18	2,650.02	2,763.12	2,879.70
12-month	27,645.12	29,023.20	30,422.16	31,800.24	33,157.44	34,556.40

Classified 16_17 4%	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Campus Security	15.07	15.82	16.62	2,675.51	2,797.35	2,996.80
10-month	-	-	-	26,755.23	27,973.50	29,968.03
After School Programs Coord.	16.64	17.68	18.72	19.76	20.80	21.84
10-month	25,292.80	26,873.60	28,454.40	30,035.20	31,616.00	33,196.80
Custodian	2,634.56	2,766.30	2,904.75	3,049.99	3,202.48	3,508.61
12-month	31,614.75	33,195.58	34,857.01	36,599.82	38,429.77	42,103.30
Groundskeeper	15.00	15.65	16.43	17.25	18.11	18.97
12-month	31,320.00	32,677.20	34,305.84	36,018.00	37,813.68	39,609.36
Custodian (Hourly)	14.55	15.36	16.13	16.95	17.25	18.23
12-month	-	-	-	-	-	-
School Clerk - Hourly	15.00	15.63	16.41	17.22	18.09	18.94
12-month	-	-	-	-	-	-
Computer Support Technician	14.56	15.60	16.64	17.68	18.72	19.76
12-month	2,523.73	2,704.00	2,884.26	3,064.53	3,257.28	3,438.24
	30,284.80	32,448.00	34,611.20	36,774.40	39,087.36	41,258.88
Classroom Assistant - Hourly (Sp.Ed, ELL, PE, ASES)	12.85	13.50	14.14	14.78	15.43	16.07
10-month	-	-	-	-	-	-
Warehouse Technician	13.24	13.90	14.57	15.23	15.88	16.55
Hourly	-	-	-	-	-	
ASSETS Aides Hourly	14	14.56	15.14	15.75	16.39	17.04
10-month						

JD:05/09/16

The O'Farrell Charter School
2016-2017
SCHOOL PSYCHOLOGISTS

ANNUAL SALARY RATES
TRADITIONAL 188-DAY SCHOOL YEAR

Effective July 1 2016
4% COLA

STEP	COLUMN 01	COLUMN 02	COLUMN 03	COLUMN 04
	BA+36 or MA	BA + 60 or BA +54 with MA	BA+72 with MA	BA+90 with MA
1	$76,428.32	$79,418.21	$82,406.22	$85,396.16
2	$79,044.29	$82,034.19	$85,024.13	$88,012.08
3	$81,767.07	$84,757.03	$87,744.98	$90,734.93
4	$81,767.07	$87,588.70	$90,578.61	$93,566.61
5	$81,767.07	$87,588.70	$93,521.18	$96,511.06
6	$81,767.07	$87,588.70	$93,521.18	$99,572.24
7	$81,767.07	$87,588.70	$93,521.18	$99,572.24
8	$81,767.07	$87,588.70	$93,521.18	$99,572.24
9	$81,767.07	$87,588.70	$93,521.18	$99,572.24
10	$84,268.39	$90,090.00	$96,022.44	$102,073.54
11	$84,268.39	$90,090.00	$96,022.44	$102,073.54
12	$84,268.39	$90,090.00	$96,022.44	$102,073.54
13	$84,268.39	$90,090.00	$96,022.44	$102,073.54
14	$87,255.46	$93,077.06	$99,009.53	$105,060.62

JD:5/09/16

2016-2017
Effective July 1, 2017
4% COLA
INGENUITY CHARTER SCHOOL
ANNUAL CERTIFICATED SALARY RATES
228-DAY CONTRACT YEAR

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Step	**Teach for America**	BA or MA	BA + HQ in 3 core subjects	BA+60 or BA+54 w/MA+3 HQ subjects	BA+72 w/MA+ 3 HQ subjects	BA+90 w/MA+ 3 HQ subjects
1	$53,328.17	$56,582.28	$57,713.93	$59,838.90	$63,093.00	$66,347.12
2	[redacted]	$58,586.54	$59,758.26	$61,840.66	$65,094.78	$68,348.89
3		$60,667.98	$61,881.34	$63,924.59	$67,176.21	$70,432.82
4		$62,836.56	$64,093.30	$66,090.68	$69,347.28	$72,601.40
5		$65,089.79	$66,391.59	$68,343.91	$71,598.03	$74,854.63
6		$67,432.66	$68,781.32	$70,686.77	$73,943.39	$77,199.99
7		$69,872.63	$71,270.08	$73,126.74	$76,383.35	$79,634.97
8		$72,407.20	$73,855.35	$75,661.32	$78,915.43	$82,169.55
9		$75,038.88	$76,539.66	$78,295.48	$81,549.60	$84,806.21
10		$77,777.62	$79,333.17	$81,034.22	$84,288.34	$87,542.45
11		$80,625.90	$82,238.42	$83,882.50	$87,139.11	$90,393.22
12		$83,591.21	$85,263.03	$86,847.81	$90,101.93	$93,356.04
13		$83,591.21	$85,263.03	$89,930.13	$93,186.74	$96,440.85
14		$83,591.21	$85,263.03	$89,930.13	$96,391.06	$99,647.66
15		$83,591.21	$85,263.03	$89,930.13	$96,391.06	$102,978.96
16		$86,315.00	$88,041.29	$92,653.93	$99,114.86	$105,702.76
17		$89,663.72	$91,457.00	$96,002.66	$102,463.59	$109,051.49
25		$93,140.24	$95,003.04	$99,479.17	$105,940.10	$112,528.00

Interns $49,168.17

JD:05/09/16

The O'Farrell Charter School
Assistant Principal/Principal Salary Schedule
(Step increases will be effective every July 1, 2016)
209 days (11 month)

	Step 1	Step 2	Step 3	Step 4	Step 5
Principal	$99,000	$102,000	$105,000	$108,000	$111,000

*Ten years of O'Farrell Administrative service: $116,00.00

*Doctorate Degree (must be in the field of Education): $1,500.00 annually

JD: 05/09/16

The O'Farrell Charter School Academic Coach Salary Schedule (Effective July 1, 2016) 200 days (10 month)					
	Step 1	**Step 2**	**Step 3**	**Step 4**	**Step 5**
Academic Coach	$79,000.00 $7,900.00	$82,000.00 $8,200.00	$85,000.00 $8,500.00	$88,000.00 $8,800.00	$91,000.00 $9,100.00

Jd:5/09/16

Stipend List
2015 - 2016

Purpose	Amount	End Date
Family Leader Stipend	$9,000.00	Sept. - June
Athletic Director	$3,500.00	May
Football Coach (MS)	$750.00	December
Boys Basketball (HS) - Varsity	$2,500.00	February
Boys Basketball (HS) - Junior Varsity	$2,000.00	February
Girls Basketball (HS) - Varsity	$2,500.00	February
7th/8th Boys Basketball (MS)	$750.00	January
7th/8th Girls Basketball (MS)	$750.00	January
6th Co-Ed Basketball	$750.00	January
Girls Volleyball (HS)	$2,500.00	November
Volleyball (MS)	$750.00	December
Track & Field (HS) - Varsity	$2,500.00	April
Girls Soccer (HS) - Varsity	$2,500.00	February
Girls Soccer (HS) - Junior Varsity	$2,000.00	February
Boys Soccer Assistant Coach	$500.00	February
Boys Soccer (HS) - Varsity	$2,000.00	February
Boys Socer (HS) - Junior Varsity	$2,000.00	February
Cross County (HS)	$2,500.00	Novmber
Cheer (HS) - Varsity	$2,500.00	January
Yearbook (HS)	$500.00	May
Yearbook (MS)	$500.00	May
Yearbook (ES)	$500.00	May
Soccer B (MS)	$750.00	May
Soccer A (MS)	$750.00	May
Boys Volleyball (HS) - Varsity	$2,500.00	April
0 period ($2,500 <22/$3,500 Att.>22) MS		May
MESA	$2,200.00	May
Summer School Lead 2015	$4,000.00	July
Pre-Calculus/AP (HS)	$4,500.00	May
Microsoft Training - Summer 2015 ($100/ea)	$700.00	July
Department Chair English (ES)	$1,500.00	May
Department Chair English (MS) - Head	$2,000.00	May
Department Chair English (HS)	$1,500.00	May
Department Chair Math (ES)	$1,500.00	May
Department Chair Math (MS) - Head	$2,000.00	May
Department Chair Math (HS)	$1,500.00	May
Department Chair Science (ES)	$1,500.00	May
Department Chair Science (MS)	$1,500.00	May
Department Chair Science (HS) - Head	$2,000.00	May
Department Chair History (ES)	$1,500.00	May
Department Chair History (MS)	$1,500.00	May

Stipend List
2015 - 2016

Purpose	Amount	End Date
Department Chair History (HS) - Head	$2,000.00	May
Department Chair Electives	$1,500.00	May
Summer Work 2015	$1,000.00	September
Assist w/Master Schedule	$1,000.00	September
Master Teacher SDSU	$875.00	Spring 2015
AVID Conference ($300/ea) - Summer 2015	$3,600.00	August
AVID Conference ($600/ea) - Summer 2015	$3,000.00	August
*Doctorate Annual Stipend (2016 - 2017 School year)	$1,500.00	
Total	**$82,625.00**	

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 2

RECOMMENDATION: Ratify the retail lease agreement for a new Resource Center for Ingenuity Charter School located at 6530 El Cajon Blvd., commencing June 1, 2016 and ending July 31, 2020 in the amount due upon execution of the lease of $7,492.00.

BACKGROUND INFORMATION:

Ingenuity Charter School has a current enrollment of 90 students with several others on the prospective list. We are in active talks with several other charter schools interested in having their students attend Ingenuity for the summer months.

We are estimating our enrollment to be well over 250 students. Counselors and administrators from local schools have requested numerous times that Ingenuity seek an additional location in the Helix, Diego Hills and SDSU college areas to accommodate their students.

CURRENT INFORMATION:

We were fortunate to find a suitable and affordable location at 6530 El Cajon Blvd. This location will enable us to further build enrollment while also serving a population needing an alternative education choice.

The site is approximately 1,278 square feet at $1.52 per square foot bringing the monthly base rent lease to $1,917.00.

Tenant improvement monies, to be provided by the owner, are in negotiations.

Link to the property website: http://www.crelisting.net/PHg0dbQ1w

Property Features Brand New: ADA Restrooms, HVAC Units, Title 24 Compliant Roof, Electrical Meters & Panels, Plumbing, Dual Pane Windows & Storefronts and Off Street Parking.

ADDITIONAL INFORMATION:

Ingenuity continues to seek additional locations for future enrollment increases. We predict that two new resource centers will be needed in a year or two.

AIR COMMERCIAL REAL ESTATE ASSOCIATION

STANDARD MULTI-TENANT SHOPPING CENTER LEASE - NET

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("**Lease**"), dated for reference purposes only 04/22/16 is made by and between DCT Holdings, LLC ("**Lessor**") and The O'Farrell Charter Schools DBA "Ingenuity Charter School" ("**Lessee**") (collectively the "**Parties**", or individually a "**Party**").

1.2 **Premises:** That certain portion of the Shopping Center (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 6530 El Cajon Boulevard located in the City of San Diego, County of San Diego, State of California, with zip code 92115, as outlined on Exhibit A attached hereto ("**Premises**") and generally described as (describe briefly the nature of the Premises): Suite 3 located in the larger 6526-6530 El Cajon Blvd building, consisting of approximately 1,278/RSF of a larger property that is approximately 3,239/SF

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Shopping Center. The Premises and the Building are situated within the Shopping Center known as The Crossroads. The Premises, the Building, the Common Areas and all other buildings and improvements within said Shopping Center, together with the land upon which they are located, are herein collectively referred to as the "**Shopping Center.**" (See also Paragraph 2)

1.3 **Term:** Four (4) years and Two (2) months ("**Original Term**") commencing June 1, 2016 ("**Commencement Date**") and ending July 31, 2020 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing Upon delivery of the fully executed Lease, and the payment of the first months Rent and Security Deposit ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $1,917.00 per month ("**Base Rent**"), payable on the first (1st) day of each month commencing June 1, 2016. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51

~~1.6 **Percentage Rent Rate:** percent (%) of Gross Sales. Percentage Rent shall be due and payable in accordance with the provisions of the Percentage Rent Addendum, if any, attached hereto and made a part hereof, and Paragraph 4 hereof.~~

1.7 **Lessee's Share of Common Area Operating Expenses:** Thirty nine point four four percent (39.44%) ("**Lessee's Share**"). In the event that that size of the Premises and/or the Shopping Center are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

~~1.8 **Merchants' Association Annual Dues:** $ per year ("**Merchants' Association Dues**"). Lessee shall pay Merchants' Association Dues and/or become a member of the Merchants' Association in accordance with the provisions of the Merchants' Association Addendum, if any, attached hereto.~~

1.9 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $1,917.00 for the period 06/01/2016 - 06/30/2016

(b) **Common Area Operating Expenses:** $575.00 for the period 06/01/2016 - 06/30/2016

(c) **Security Deposit:** $5,000.00 ("**Security Deposit**"). (See also Paragraph 5)

~~(d) **Merchants' Association Dues:** $ for the period~~

(e) **Other:** $N/A for N/A

(f) **Total Due Upon Execution of this Lease:** $7,492.00

1.10 **Agreed Use:** Resource center and for purposes incidental thereto (See also Paragraph 6)

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1.11 **Agreed Trade Name:** Ingenuity Charter School (See also Paragraph 6)

1.12 **Insuring Party.** Lessor is the "**Insuring Party**". (See also Paragraph 8)

~~1.13 **Real Estate Brokers:** (See also Paragraph 15 and 25)~~

~~(a) **Representation:** The following real estate brokers (the "**Brokers**") and brokerage relationships exist in this transaction (check applicable boxes):~~

~~☐ _____ represents Lessor exclusively ("**Lessor's Broker**");~~

~~☐ _____ represents Lessee exclusively ("**Lessee's Broker**"); or~~

~~☐ _____ represents both Lessor and Lessee ("**Dual Agency**").~~

~~(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____% of the total Base Rent) for the brokerage services rendered by the Brokers.~~

~~1.14 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by _____ ("**Guarantor**"). (See also Paragraph 37)~~

1.15 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an addendum consisting of Paragraphs 51 through 59.

☑ a site plan marked Exhibit A, depicting the Premises;

~~☐ a site plan marked Exhibit _____, depicting the Shopping Center;~~

☑ a current set of Rules and Regulations for the Shopping Center;

~~☐ a current set of the Sign Criteria for the Shopping Center;~~

~~☐ a work letter;~~

~~☐ other (specify):~~ _____

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within 30 days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Premises. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the Improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay each

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month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** Lessee shall not use and shall not permit its employees to use any parking spaces in the Shopping Center except for parking by vehicles that are no larger than full-size passenger automobiles or pick-up trucks, herein called **"Permitted Size Vehicles."** Lessee shall permit its employees to only occupy those parking spaces, if any, as depicted as employee parking spaces on the Shopping Center site plan. Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term **"Common Areas"** is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Shopping Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, nor the right to display merchandise or conduct sales in the Common Areas. Any such storage, display or sales shall be permitted only by the prior written consent of Lessor or Lessor's designated agent; as exercised in Lessor's sole discretion, which consent may be revoked at any time. In the event that any unauthorized storage or displays shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations **("Rules and Regulations")** for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Shopping Center and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Shopping Center.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes or additions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, elevations, landscaped areas, signage, walkways and utility raceways;

(b) To use and close temporarily any of the Common Areas for the purpose of maintaining, repairing and altering the Shopping Center, so long as reasonable access to the Premises remains available, and to close temporarily any of the Common Areas to whatever extent is required in the opinion of Lessor's counsel to prevent a dedication of or the accrual of any rights of any persons or of the public to any of the Common Areas;

(c) To designate other land outside the boundaries of the Shopping Center to be a part of the Common Areas or to be entitled to use the Common Areas on a reciprocal basis;

(d) To add additional buildings and improvements to the Common Areas; and

(e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and

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Shopping Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

2.11 **Common Areas - Promotional Events; Sidewalk Sales.** Lessor reserves the right, from time to time, in Lessor's sole discretion, to utilize portions of the Common Areas for promotional events, which may include but shall not be limited to entertainment. Lessor further reserves the right, in Lessor's sole discretion, to permit any one or more tenants of the Shopping Center to conduct the display and/or sale of merchandise from the sidewalks immediately adjacent to such tenants' respective premises.

2.12 **Common Areas - Remodeling.** At any time during the Term, Lessor may remodel or expand, in any manner, the existing Shopping Center, which work may include, without limitation, the addition of shops and/or new buildings to the Shopping Center (collectively, "**Remodeled Center**"). If Lessor deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Lessor shall give Lessee no less than ~~60~~ 30 days prior notice and Lessee shall allow such entry. Lessor shall use reasonable efforts to complete any work affecting the Premises in an efficient manner so as not to interfere unreasonably with Lessee's business. Lessee shall not be entitled to any damages for any inconvenience or any disruption to Lessee's business caused by such work; provided, however, the Base Rent paid by Lessee for the period of the inconvenience shall be abated in proportion to the degree that Lessee's use of the Premises is impaired. Lessor shall have the right to use portions of the Premises to accommodate any structures required for the Remodeled Center, provided that if as a result thereof there is a permanent decrease in the floor area of the Premises of 3% or more, there shall be a proportionate downward adjustment of Base Rent and Lessee's Share.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If an Early Possession Date has been specified in Paragraph 1.4, the Parties intend that Lessee shall have access to the Premises as of the Early Possession Date for purposes of preparing and fixturizing the Premises for the conduct of Lessee's business. If Lessee totally or partially occupies the Premises prior to the Commencement Date for any reason (and for purposes hereof, "occupancy" shall include, without limitation, Lessee's entry onto the Premises for purposes of preparing and fixturizing the Premises for business), the obligation to pay Base Rent and Percentage Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to Lessee's obligations to carry insurance and to maintain the Premises) shall be in effect during such period, except that Lessee's obligation to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums shall only be in effect prior to the Commencement Date if Lessee has opened for business in the Premises prior to the Commencement Date. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent and, if applicable, Percentage Rent, Lessee's Share (as specified in Paragraph 1.7) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Shopping Center, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and replacement as reasonably necessary, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, parking lot striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(dd) Common electrical, plumbing and other utilities servicing any building in the Shopping Center and/or the Common Areas.

(ee) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management (including, but not be limited to, a property management fee to Lessor equal to 5% of ~~Base~~ the Total Rent and ~~Percentage Rent~~), security services, and the costs of any environmental inspections.

(iv) Reserves set aside for equipment, maintenance, repair and replacement of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

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(viii) Auditors', accountants' and attorneys' fees and costs related to the operation of the Shopping Center.

(ix) The cost of any capital improvement to the Building or the Shopping Center not covered under the provisions of Paragraph 2.3; provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) If Lessor determines that the method of proration of any item included within Common Area Operating Expenses is inequitable, Lessor may prorate such item on the basis of usage or other equitable considerations. Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises, the Building or to any other premises or building in the Shopping Center or to the operation, repair and maintenance thereof shall be allocated entirely to such premises or building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to any premises or building or to the operation, repair and maintenance thereof shall be equitably allocated by Lessor to all buildings in the Shopping Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Shopping Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) If there are one or more Major Tenants (as hereinafter defined) within the Shopping Center, then at Lessor's sole option, the amount to be reimbursed by such Major Tenants to Lessor for all or a portion of the Common Area Operating Expenses may be determined by alternative equitable methods (e.g., a Major Tenant may pay directly for its own security), and the actual amount paid by such Major Tenants shall be credited against the Common Area Operating Expenses allocated to other tenants of the Shopping Center; provided, however, that in such event the rentable area of the buildings leased to such Major Tenants shall be excluded from the rentable area of the Shopping Center for purposes of determining Lessee's Share of Common Area Operating Expenses for those specific items, notwithstanding the percentage set forth in Paragraph 1.7. As used herein, the term "**Major Tenant**" shall mean a tenant leasing at least 15,000 square feet of rentable area within the Shopping Center.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.**

(a) **Agreed Use; Agreed Trade Name.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose, and Lessee shall operate at the Premises only under the Agreed Trade Name and under no other trade name. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvement on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises, and/or is not in conflict with or incompatible with the existing or proposed uses (whether or not exclusive) of other occupants of the Shopping Center. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Trade Name, so long as the same is not in conflict with or incompatible with the nature and character of the Shopping Center or other existing or proposed uses of other occupants of the Shopping Center. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use and/or Agreed Trade Name.

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(b) **Continuous Operation.** Lessee shall continuously (i) operate and conduct the Agreed Use under the Agreed Trade Name within the entire Premises in a reputable manner and in conformity with industry standards of practice prevailing in the field of business among merchants engaged in the same or similar business in the city in which the Premises are located, (ii) staff the Premises with sufficient sales personnel, stock the Premises with adequate merchandise and exercise sound business practices so as to maximize Gross Sales for the benefit of Lessor. At a minimum, Lessee shall keep the Premises continuously open for business Monday through Friday from 9:00 a.m. to 6:00 p.m., Saturday from 9:00 a.m. to 6:00 p.m., and Sunday from 10:00 a.m. to 6:00 p.m. If Lessee fails to comply with the requirements of this Paragraph 6.1(b), then in addition to any and all other rights and remedies of Lessor, Lessee shall pay to Lessor an amount equal to 1/15th of the Base Rent for each day or portion thereof that Lessee fails to so comply. Such sum shall be in addition to, and not a part of, the Base Rent otherwise due under this Lease.

(c) **Violations of Exclusive Use Rights.** Lessee acknowledges that Lessor may grant, or may have previously granted, exclusive use rights to other tenants of the Shopping Center and agrees that a material consideration to Lessor in entering into this Lease is Lessee's covenant to limit its use of the Premises to the Agreed Use under the Agreed Trade Name as set forth above. Lessee's violation of exclusive use rights granted to other tenants of the Shopping Center will result in Lessor suffering irreparable harm and, therefore, in addition to all other rights and remedies available to Lessor, Lessor may seek to enjoin Lessee's breach of such covenant and Lessee shall be liable for any damages incurred or sustained by Lessor to such other tenants whose exclusive use rights are breached by Lessee. In no event shall Lessor be liable to Lessee for any failure of any other tenants of the Shopping Center to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties.

(d) **Other Tenancies.** Lessor, at its sole discretion, reserves the absolute right to establish procedures to control other tenancies in the Shopping Center. Regardless of whether any specific tenants are shown on any site plan attached hereto, Lessee does not rely on that fact, nor does Lessor represent that any specific tenant or number or type of tenants shall or shall not during the Term occupy any portion of the Shopping Center, nor does Lessee rely on any other tenant operating its business in the Shopping Center at any particular time or times. Further, no conduct by any tenant, subtenant or other occupant of, or any customer of, or any supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Lessee from the Premises, and Lessee hereby waives any and all claims that it might otherwise have against Lessor by reason thereof.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Shopping Center not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request

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of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power

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panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per Paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee Owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirments. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. **Insurance; Indemnity.**

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an **"insured contract"** for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade

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Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (**"Rental Value Insurance"**). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Shopping Center if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Shopping Center, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee

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Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises or Common Areas which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total Replacement Cost of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full Replacement Cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Damage to Shopping Center.** In the event of any damage or destruction to other portions of the Building or to any other buildings in the Shopping Center, whether insured or uninsured (and whether or not there is also damage or destruction to the Premises), which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction, Lessor may either (i) repair such damage or destruction as soon as reasonably possible without expense to Lessee, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage or destruction. Such termination shall be effective 60 days following the date of such notice.

9.7 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Base Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced

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within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.8 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Shopping Center, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Shopping Center address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Shopping Center is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Shopping Center, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Shopping Center, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Shopping Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request, or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. To the extent any such utilities and/or services are not separately metered, Lessee shall pay Lessee's Share thereof in accordance with Paragraph 4.2. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent and Percentage Rent Rate to 110% of the Base Rent and Percentage Rent Rate then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting

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12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.(See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A **"Breach"** is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The vacating or abandonment of the Premises. Lessee shall be deemed to have vacated the Premises if Lessee ceases to continuously operate its business in the Premises for a period of 5 consecutive days.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of

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creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and

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thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the parking spaces situated within the parking area, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.13 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Shopping Center, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.13, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the Indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrances may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners,

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members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of

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this Lease. In the event that Lessee holds over, then the Base Rent and Percentage Rent Rate shall be increased to 150% of the Base Rent and Percentage Rent Rate applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion.

34. **Signs.** Lessor may place on the Premises ordinary "**For Sale**" signs at any time and ordinary "**For Lease**" signs during the last 6 months of the term hereof. All signs must comply with all Applicable Requirements. Lessee shall not place, construct, or maintain on the glass panes or supports of the show windows of the Premises, the doors, exterior walls or the roof of the Building, or anywhere else within the Shopping Center outside of the Premises, or on any interior portions of the Premises that are visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material or any other items without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion. Lessor shall designate the size, shape, color, design, and location of all exterior sign(s) to be installed by Lessee, and Lessee shall, at Lessee's sole cost and expense, fabricate, construct and install all such sign(s) in full compliance with Lessor's designation and in accordance with the Sign Criteria for the Shopping Center attached hereto, if any. Lessee agrees to submit plans and specifications for Lessee's sign(s) for Lessor's written approval within 30 days after the full execution hereof and to install such sign(s) prior to opening for business at the Premises. Lessor, at Lessee's cost, may remove any item placed, constructed or maintained in, upon or about the Premises or Shopping Center which does not comply with this paragraph. In the event there is a pole, pylon or monument sign for the Shopping Center, Lessor shall have the right, but not the obligation, to install lettering designating Lessee's business on such sign, at Lessee's expense, with Lessor's approval of location, size, style and color. All signs that are permanently attached to the Premises or Building shall become the property of Lessor at the expiration or earlier termination hereof; provided, however, that Lessee shall promptly remove all such signs if Lessor so elects, and Lessee shall promptly repair all damage caused by such removal. Lessee shall not place, construct or maintain in, upon or about the Premises any search lights, flashing lights, loudspeakers, phonographs or other visual or

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35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. In those express instances where consent is within the sole discretion of a party, the party shall have no obligation to adhere to a standard of reasonableness. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. While Lessor does not assume any responsibility to provide any security measures or any liability for failure to provide security measures or for any inadequacy thereof, Lessor shall have the authority to institute or continue such security measures as Lessor in its sole discretion deems necessary or appropriate from time to time, the cost and expenses of which shall be considered Common Area Operating Expenses. To the degree directed by Lessor, Lessee shall coordinate its security measures at the Premises with the security measures instituted by Lessor, if any.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Building Planning.** Lessor shall have the right at any time or times, upon giving Lessee not less than 60 days prior written notice, to provide and furnish Lessee with space of comparable visibility located elsewhere within any of the buildings within the Shopping Center and to move Lessee into such new space, provided that the usable area of such new space is not less than the usable area of the Premises and provided that all of Lessee's reasonable out-of-pocket moving expenses (including but not limited to the cost of moving Lessee's personal property, the cost of reprinting Lessee's stationery or other business materials with the new address, and the cost to relocate and reinstall tenant improvements and Lessee's telecommunications and computer equipment) shall be paid by Lessor, and provided further that Lessor shall construct at Lessor's expense such improvements to such new space as shall be necessary to place it in a condition that is substantially comparable to the Premises. Except as provided in the immediately preceding sentence, Lessor shall have no obligation to improve such space or pay any other expenses incurred by Lessee as a result of such relocation. On such relocation, the terms and conditions of this Lease shall remain in full force and effect, including but not limited to the Base Rent payable hereunder and Lessee's Share (even if the usable area of such relocated Premises is in excess of the usable area of the Premises), except that the Premises shall be in such new location. Upon Lessor's request, the Parties shall execute an amendment to this Lease in form required by Lessor confirming the relocation of the Premises to such new location. If the new space does not meet with Lessee's approval, which approval Lessee shall give or withhold in accordance with Paragraph 36, Lessee shall have the right to cancel this Lease by giving Lessor written notice thereof

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within 15 days of receipt of Lessor's notification of its intent to relocate Lessee. Lessee's failure to give such notice within such 15 day period shall be deemed Lessee's approval of the new space. If timely notice is given by Lessee, then this Lease shall terminate unless Lessor rescinds Lessor's prior notice of its intent to relocate Lessee within 10 days after Lessor's receipt of Lessee's notice of cancellation.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☑ is ☐ is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: ☑ have not undergone an inspection by a Certified Access Specialist (CASp). ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEE ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITHH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____	Executed at: _____
On: _____	On: _____
By LESSOR:	**By LESSEE:**
DCT Holdings, LLC	The O'Farrell Charter Schools DBA "Ingenuity Charter SChool"
By: _____	By: _____
Name Printed: Travis Jaedtke	Name Printed: _____
Title: Managing Member	Title: _____

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By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address: 4231 Balboa Ave, suite 156 San Diego, CA 92117	Address: 6130 Skyline Drive, San Diego, CA 92114
Telephone:(619) 500-9956	Telephone:(619) 487-1163
Facsimile: ( )	Facsimile:( )
Email: Travis@strategic-reg.com	Email:
Email:	Email:
Federal ID No.	Federal Id No.
BROKER:	**BROKER:**
Attn:	Attn:
Title:	Title:
Address:	Address:
Telephone: ( )	Telephone: ( )
Facsimile: ( )	Facsimile: ( )
Email:	Email:
Federeal ID No.:	Federal ID No.:
Broker/Agent BRE License #:	Broker/Agent BRE License #:

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ADDENDUM TO LEASE
(6530 El Cajon Blvd. "Suite 3", San Diego, CA)

THIS ADDENDUM TO LEASE is added to, and made a part of, that certain Standard Shopping Center Multi-Lessee Lease-Net, dated for reference purposes as of 04/22/16 ("**Lease**"), by and between DCT Holdings, LLC ("**Lessor**") and The O'Farrell Charter Schools DBA "Ingenuity Charter School". ("**Lessee**"), for Premises commonly known as 6530 El Cajon Blvd. "Suite 3", San Diego, California 92115 (the "**Premises**"). The parties further agree as follows:

51. Annual Rent Adjustments.

Between June 1, 2016 and May 31, 2017, the Base Rent shall be $1,917.00 per month.

Between June 1, 2017 and May 31, 2018, the Base Rent shall be $1,984.00 per month.

Between June 1, 2018 and May 31, 2019, the Base Rent shall be $2,054.00 per month.

Between June 1, 2019 and May 31, 2020, the Base Rent shall be $2,125.00 per month.

Between June 1, 2020 and July 31, 2020, the Base Rent shall be $2,200.00 per month.

Notwithstanding anything to the contrary contained herein and provided that Lessee faithfully performs all of the terms and conditions of this Lease, Lessor hereby agrees to abate Lessee's obligation to pay monthly Base Rent for the second (2nd) through third (3rd) full calendar months of the initial Term. During such abatement periods, Lessee shall still be responsible for the payment of all of its other monetary obligations under this Lease. In the event of a default of Lessee or if Lessee required to exercises termination right outlined in section 58 of the Lease, under the terms of this Lease that results in early termination pursuant to the provisions of Section 13 of this Lease, then as a part of the recovery set forth in Section 13 of this Lease, Lessor shall be entitled, amongst other remedies, to the recovery of the monthly Base Rent abated under the provisions of this paragraph.

52. Lessee Improvements. Lessee accepts the Premises is "AS IS" and "WHERE IS" condition. If Lessee intends to make Lessee improvements at the Premises (which are referred to in the Lease as Alterations or Utility Installations), Lessee shall comply with all of the requirements in the Lease, including but not limited to Section 7.3 of the Lease, concerning the installation and maintenance of such improvements. Lessee acknowledges that all Utility Installations and Alterations shall be performed by Lessee at its sole cost and expense (including but not limited to the cost of obtaining all permits and providing all security), and at no cost or expense to Lessor. For example, if a governmental entity requires any additional improvements to the Premises in connection with its issuance of a permit for Lessee's Alterations or Utility Installations, Lessee shall install such additional improvements at its sole cost. Each contractor performing work within the Premises shall, prior to commencing same, provide Lessor with an insurance certificate naming Lessor as an "Additional Insured" with CGL and Builder's Risk coverage of not less than $1 Million, from an insurance company reasonably acceptable to Lessor. Lessee's obligation to remit Base Rent shall commence on the Commencement Date whether or not Lessee's Lessee improvements are completed by such date.

53. Improvements in the Premises. Upon the full execution and delivery of this Lease, Lessee shall construct certain improvements in the Premises (the "**Lessee's Work**") pursuant to this Section 54.

(a) Within 10 days after the Parties have mutually executed and delivered the Lease, Lessee shall provide Lessor preliminary plans and specifications for completion of Lessee's intended improvements. In the event the Lessee Work is such that, in Lessor's sole but good faith discretion,

additional working drawings should be used, Lessee shall cause such working drawings to be prepared based on the Plan, and deliver the same to Lessor for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned. Lessor shall notify Lessee whether it approves or reasonably disapproves of the submitted working drawings within five (5) business days after Lessee's submission thereof. If Lessor reasonably disapproves of such working drawings, then Lessor shall notify Lessee thereof specifying in reasonable detail the reasons for such disapproval. Lessee shall revise such working drawings to address Lessor's objections in a manner reasonably acceptable to Lessor and submit the revised working drawings to Lessor for its review and reasonable approval. Lessor shall notify Lessee in writing whether it approves or reasonably disapproves of the revised working drawings within five (5) business days after its receipt thereof. If Lessor again reasonably disapproves of such working drawings, then Lessor shall notify Lessee thereof specifying in reasonable detail the reasons for such disapproval and the foregoing revision process shall be repeated until Lessor approves the revised working drawings. Any approved working drawings shall be referred to herein as the "**Approved Working Drawings.**"

(b) Lessee shall make no changes or modifications to the Plan, any Approved Working Drawings or the Lessee Work without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion. Unless specifically noted to the contrary on the Plan or any Approved Working Drawings, the Lessee Work shall be constructed using standard commercial specifications for the construction of improvements in the Shopping Center.

(c) If Lessee's costs to design, permit and construct the Lessee Work exceeds the Construction Allowance, then Lessee shall pay for such excess. If Lessee's costs to design, permit and construct the Lessee Work are less than the Construction Allowance, Lessor shall retain the unused portion of the Construction Allowance and Lessee shall not be entitled to the unused portion of the Construction Allowance.

54. Construction Requirements.

(a) Lessee shall submit to Lessor, at the time of making such request, copies of all plans and specifications for such alterations, additions, or improvements to the Premises, including, but not limited to, security systems, lighting fixtures, air conditioning, and telephone and telecommunication equipment.

(b) In the event that any alteration, addition or improvement is mandated by law, regulation, rule or the requirement of any insurance company (as a condition to the issuance or continuation of insurance coverage) to be made to the Premises, or any portion thereof, then, and in that event, such alteration, addition or improvement shall be made and paid for by Lessee.

(c) Lessee shall not make any penetration into or through the ceiling, roof or floor of the Premises or the Shopping Center without the prior written approval of Lessor. Lessee shall use Lessor's approved contractor for any such work. Lessee acknowledges that a master key system may be employed by Lessor or government agencies such as the fire department, and that any such lock change could hinder access to the Premises for such purposes as security and firefighting.

(d) No such alterations, additions, or improvements shall be undertaken to the Premises without first providing Lessor with a copy of the building permit issued, as required, by the appropriate governmental agency or agencies. Lessee shall give Lessor at least ten (10) days' prior Notice of the commencement of any work on the Premises. Before commencing any work, Lessee shall post and maintain on Lessor's behalf notices of non-responsibility and other notices that are provided for under the Mechanics' Lien Law of California and other applicable laws. In addition to the above, Lessor shall have the right to post and maintain on the Premises such notices.

(e) All alterations, additions, and improvements and utility installations made by Lessee, shall, upon installation, be deemed to have become the property of Lessor.

(f) Lessee's improvements shall be supervised by a contractor licensed in the State of California and made in accordance with plans and specifications approved in writing by Lessor. All alterations, additions, and improvements shall be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and diligently completed by a contractor approved by Lessor. In connection with the construction of any alterations, additions or improvements by Lessee, Lessee shall provide trash containers for construction debris and shall use and instruct Lessee's agents and/or contractors to use service entrances to the Premises, if any. In addition, Lessee shall not conduct any core drilling during business hours. Any alterations undertaken by Lessee shall be performed in a manner that will not interfere with the enjoyment of the other Lessees in the Shopping Center in which the Premises are located.

(g) Upon completion of any such work, Lessee shall provide Lessor with "as built" plans or sepias, copies of all construction contracts, and final lien waivers from Lessee's general contractor and all subcontractors and major material suppliers. Lessor may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to Lessor. Lessee shall pay when due all claims for labor and material furnished to the Premises. Lessee shall pay all taxes, permit and license fees imposed by reason of any improvements made by Lessee to the Premises, or imposed upon any personal property of Lessee located within the Premises.

(h) Lessee shall reimburse Lessor for all costs incurred by Lessor (including architectural and/or engineering fees) in approving Lessee's plans for improvements.

(i) Within one (1) business day of completion of such work, Lessee shall have recorded in the office of the County Recorder a Notice of Completion, a certified copy of which Lessee shall deliver to Lessor within ten (10) days of such recordation.

55. Lessee Improvement Allowance. Notwithstanding the above paragraphs, Lessor agrees to reimburse Lessee an amount not to exceed ten thousand dollars ($10,000) for its intended improvements to the Premises. These improvements include costs for architectural fees, building permits, building improvements and reimbursement of Lessor's third party construction management fee (if any), but excluding Lessee's machinery, equipment, fixtures and personal property to be installed or located within the Premises. Lessor shall deliver this improvement reimbursement to Lessee within thirty (30) days of Lessee's written request. Lessee's written request must include the following documents:

(a) Copy of detailed invoice from contractor(s) or vendor(s).

(b) Copy of Lessee's cleared check, evidencing payment to vendor(s) or contractor(s).

(c) Contractor(s) or vendor(s) Final Unconditional Lien Release.

(d) Copy of a recorded Notice of Completion with evidence satisfactory to Lessor that it was properly recorded at least thirty (30) days prior to Lessee's written request.

56. Lessee Signage. Lessee shall have the right to building standard signage on exterior of the building, in accordance with the requirements and approval of the city of San Diego and any other governmental agency, all of which shall be subject to Lessor's review and approval. All costs associated with said signage, including installation, maintenance, repairs, and ultimately the removal of and restoration of the building exterior if any is necessary, shall be at Lessee's sole cost and expense.

57. Arbitration Agreement. See Attached AIR Form

58. Lease Contingency Upon Third Party Approval. After the Delivery Date, Lessee shall use its best efforts to obtain approval from the City of San Diego and the San Diego Unified School District of this Lease (collectively, "Third Party Approval") by June 7, 2016 (the "Third Party Approval Date"). If Lessee is unable to obtain Third Party Approval on or prior to the Third Party Approval Date despite using Lessee's best efforts to obtain such Third Party Approval, Lessee or Lessor may terminate this Lease by providing written notice thereof. If Lessee fails to terminate this Lease by providing written notice thereof to Lessor on or prior to the Third Party Approval Date, Lessee shall be deemed to have waived Lessee's right to terminate this Lease as provided in this section 58 and shall have no further rights to terminate this Lease even if Lessee has not obtained Third Party Approval. If the Lessee elects to terminate this Lease on or prior to the Third Party Approval Date as provided in this Section 58, this Lease shall terminate, and Lessee shall surrender the Premises to Lessor in the condition provided in Section 2.2 of this Lease. Lessee

59. General Provisions. Terms defined in the Lease shall have the same meaning when used herein. If the terms of this Addendum and the Lease conflict, the terms of this Addendum shall govern and control. Signed copies of the Lease and this Addendum delivered by facsimile or as a PDF attachment to an email shall be deemed the same as originals.

Executed at San Diego, California, as of the first date written above.

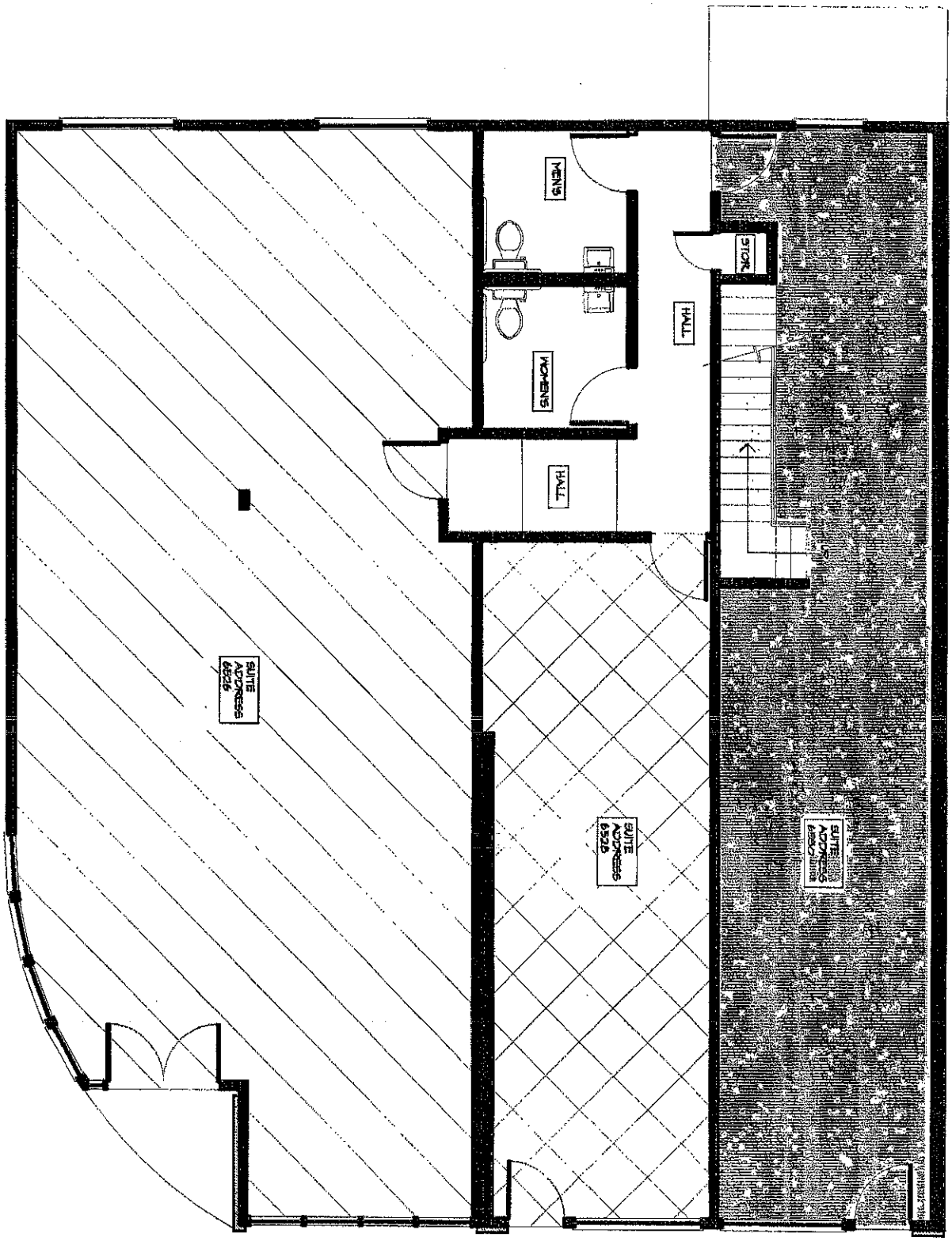
"**LESSOR**": DCT Holdings, LLC

Travis Jaedtke, Managing Member

"**LESSEE**": The O'Farrell Charter Schools DBA "Ingenuity Charter School"

Jonathan Dean, Ed.D., Superintendent

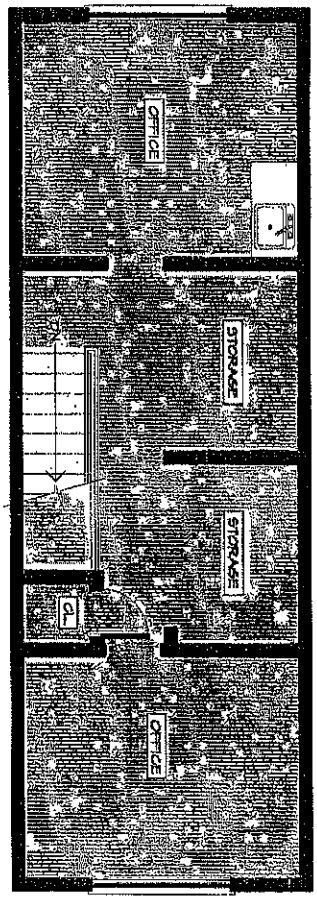
Exhibit A



LEASE AREA FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"

Exhibit A Continued



LEASE AREA SECOND FLOOR PLAN

SCALE: 1/8" = 1'-0"

ARBITRATION AGREEMENT

Standard Lease Addendum

Dated 04/22/2016

By and Between (Lessor) DCT Holdings, LLC

(Lessee) The O'Farrell Charter Schools DBA "Ingenuity Charter School"

Address of Premises: 6526-6530 El Cajon Boulevard

Paragraph 57

A. **ARBITRATION OF DISPUTES:**
Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. **DISPUTES EXCLUDED FROM ARBITRATION:**
The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

C. **APPOINTMENT OF AN ARBITRATOR:**
All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: ☑ a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), ☐ the American Arbitration Association ("AAA") under its commercial arbitration rules, ☐ _____
_____
or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) 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 the Arbitrator. 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. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D. **ARBITRATION PROCEDURE:**
1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the

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exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

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RULES AND REGULATIONS

Rule 1. No sign, placard, picture, advertisement, name or notice, or the like, shall be inscribed, displayed, printed or affixed on or to any part of the outside of the Premises without the prior written consent of Lessor. Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice thereto and at the expense of Lessee.

Lessee shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall, which may appear unsightly from outside the Premises. If Lessor objects to any curtains, blinds, shades, screens or hanging plants or other similar objects installed by Lessee, attached to or used in connection with any window or door of the Premises, or placed on any windowsill, which is visible from the exterior of the Premises, Lessee shall immediately discontinue such use.

Rule 2. Any directory of the Shopping Center maintained by Lessor will be provided exclusively for the display of the name and location of Lessee only, and Lessor reserves the right to exclude any other names therefrom.

Rule 3. The sidewalks, halls, passages, exits, entrances, elevators, and stairways shall not be obstructed by Lessee or used by Lessee for any purpose other than for ingress to and egress from the Premises, unless otherwise indicated. Lessees will not congregate in common areas, use common area tables and chairs for their own purposes. Certain halls, passages, exits, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Lessor, would be prejudicial to the safety, character, reputation and interests of the Shopping Center and its Lessees; provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals in such ordinary course of Lessee's business, unless such persons are engaged in illegal activities. Neither Lessee nor its employees or invitees shall go upon the roof of the Shopping Center.

Rule 4. Lessee shall not alter any lock nor install any new or additional locks or bolts on any door of the Premises without Lessor's prior written approval.

Rule 5. The toilet rooms and equipment therein shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Lessee in the event that employees or invitees of Lessee caused the same.

Rule 6. Lessee shall not overload the floor of the Premises or in any way deface the exterior of the Premises or the Shopping Center.

Rule 7. No furniture, freight or equipment of any kind shall be brought into the Shopping Center without the consent of Lessor, and all moving of the same into or out of the Shopping Center shall be done at such time and in manner as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment, fixtures or freight brought into the Shopping Center and also the times and manner of moving the same in and out of the Shopping Center. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips or similar material of such thickness as is necessary to properly distribute the weight. Lessor shall not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Shopping Center by moving or maintaining any such property shall be repaired at the expense of Lessee.

Rule 8. Lessee shall not employ any person or persons other than a qualified janitor or custodian for the purpose of cleaning the Premises unless otherwise agreed to by Lessor. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness.

Rule 9. Lessee shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied in a manner offensive or objectionable to Lessor or any other occupant of the Shopping Center by reason of noise, odors or vibrations, or interfere in any way with Lessees or those having business, nor shall any animals or birds be brought in or kept in or about the Premises or the Shopping Center.

Rule 10. No cooking shall be done or permitted by Lessee on the Premises without Lessor's consent, except Lessee's use of Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages, or use of microwave ovens for employee use shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations. No more than twenty-five percent (25%) of the square footage of the Premises shall be used for the storage of merchandise. The Premises shall not be used for washing clothes, for lodging, or for any improper, objectionable or immoral purposes.

Rule 11. Lessee shall not use or keep in the Premises or the Shopping Center any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Lessor.

Rule 12. Lessee shall not use, possess, or store in the Premises or the Shopping Center any substance, whether liquid, solid, or gaseous, that is statutorily described or defined as hazardous or toxic without the prior written consent of Lessor.

Rule 13. Telephone, telegraph, burglar alarm or similar services, and the equipment and wiring associated therewith, shall be introduced in such locations as may be determined by Lessor. In addition, if Lessee intends to affix any other office equipment to the Premises, Lessee shall receive the prior written approval of Lessor as to the location of such equipment. No boring or cutting for wires shall be allowed without the written consent of Lessor. The location of telephones, call boxes and other equipment affixed to the Premises shall first be subject to the approval of Lessor.

Rule 14. Lessor shall furnish Lessee, free of charge, with two keys to each door lock in the Premises. Lessor may charge a reasonable amount for any additional keys. Lessee shall not make or have made additional keys without the prior written approval of Lessor. Lessee, upon the expiration or sooner termination of the Lease, shall deliver to Lessor all keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefor.

Rule 15. Lessee shall not install linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor. The expense of repairing any damage resulting from a violation of this Rule or removal of any floor covering shall be borne by Lessee.

Rule 16. Lessee's initial move in and subsequent deliveries of bulky items, such as furniture, safes and similar items, shall, unless otherwise agreed in writing by Lessor, be made during the hours of 8:00

a.m. and 9:00 a.m. No deliveries shall be made which impede or interfere with other Lessees or the operation of the Shopping Center.

Rule 17. On Saturdays, Sundays and legal holidays, and on other days between the hours of 10:00 p.m. and 7:00 a.m., access to the Shopping Center, or to the halls, corridors or stairways in the Shopping Center, or to the Premises, may be refused unless the person seeking access is known to Lessor or its agent and has a pass or is properly identified. Lessor shall in no case be liable for damages for any error with regard to the admission to or exclusion to or exclusion from the Shopping Center of any person. In case of invasion, mob, riot, public excitement or other commotion, Lessor reserves the right to prevent access to the Shopping Center during the continuance of the same by closing the doors or otherwise, for the safety of the Lessees and protection of property in the Shopping Center.

Rule 18. Lessee shall not waste electricity, water or air conditioning and agrees to cooperate fully with Lessor to assure the most effective operation of the Shopping Center's heating and air conditioning and to comply with any governmental energy saving rules, laws or regulations of which Lessee has actual notice, and shall refrain from attempting to adjust controls. Lessee shall keep corridor doors closed and shall close window coverings at the end of each business day. Lessee shall bear the cost of all injuries sustained by other Lessees or occupants of the Shopping Center by Lessor as a result of Lessee's breach thereof.

Rule 19. Lessor reserves the right to exclude or expel from the Shopping Center any person who, in the judgment of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Shopping Center.

Rule 20. No vending machines or machines of any description, shall be installed, maintained or operated upon the Premises without the written consent of Lessor.

Rule 21. Lessee shall not disturb, solicit or canvass any other Lessee or their invitees and shall cooperate to prevent the same. Lessee shall not use the Premises for any business or activity other than that specifically provided for in Lessee's Lease.

Rule 22. Without the written consent of Lessor, Lessee shall not use the name of the Shopping Center in connection with or in promoting or advertising the business of Lessee except at Lessee's address.

Rule 23. The word "**Shopping Center**" as used herein means the land and building of which the Premises are a part.

Rule 24. Lessee shall not install any radio or television antenna, loudspeaker or other devices on the roof or exterior walls of the Shopping Center. Lessee shall not interfere with radio or television broadcasting or reception from or in the Shopping Center or elsewhere.

Rule 25. Lessee shall not use in any space or in the public halls of the Shopping Center any hand truck except those equipped with rubber tires and side guards or other such material-handling equipment as Lessor may approve. Lessee shall not bring any other vehicles of any kind into the Shopping Center.

Rule 26. Lessee shall comply with all safety, fire protection and evacuation procedures and regulations established by Lessor or any governmental agency.

Rule 27. Lessee shall not deposit any trash, refuse, cigarettes or other substances of any kind within or without the Shopping Center, except in the refuse containers provided by Lessor. Lessee shall not introduce into the Shopping Center any substance, which might add an undue burden to the cleaning or maintenance of the Premises or the Shopping Center. Lessee shall exercise its best efforts to keep the sidewalks, entrances, passages, courts, lobby areas, garages or parking areas, elevators, escalators, stairways, vestibules, public corridors and halls in and about the Shopping Center clean and free from rubbish.

Rule 28. Employees of Lessor shall not receive or carry messages for or to Lessee. Except as set forth in the Lease, employees of Lessor shall not render paid services to Lessee or Lessee's servants, employees, contractors, jobbers, agents, invitees, licensees, guests or visitors without Lessor's prior written consent. In the event that any of Lessor's employees perform any such services, such employees shall be deemed to be the agents of Lessee, regardless of whether or how payment is arranged for such services, and Lessee hereby indemnifies and holds Lessor harmless from any and all liability in connection with any such services and any associated injury or damage to property or injury or death to persons resulting therefrom.

Rule 29. These Rules and Regulations are in addition to, and shall not be construed to in any way modify, limit, or amend, in whole or in part, the terms, covenants, agreements and conditions of Lessee's Lease of its Premises in the Shopping Center.

Rule 30. Lessee shall be responsible for the observance of all of the foregoing rules by Lessee's employees, agents, clients, customers, invitees and guests.

Rule 31. Lessor reserves the right to make such other and further Rules and regulations as in its judgment may be appropriate for the operation, safety, care and cleanliness of the Shopping Center and for the preservation of good order therein. Lessee shall abide by all such Rules and Regulations hereinabove stated and any additional Rules and Regulations which may be adopted.

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 3

RECOMMENDATION: Adopt Resolution authorizing Approval of Budget and Granting of Signatory Authorization

BACKGROUND INFORMATION:

On April 11, 2016, the Board of Directors announced they approved Dr. Dean's request to purchase Property at 5275 Market St., San Diego, CA and Property at 5125 Market St., San Diego, CA in the amount not to exceed $5 million in order to open a new K-8 school.

CURRENT INFORMATION:

Adopting this resolution grants the officers of O'Farrell to act on its behalf and shall be an authorized signatory for purposes of executing any documents related to the transactions to acquire the Property, construct additional improvements on the Property, and lease the Property to the School

BOARD OF DIRECTORS
THE O'FARRELL CHARTER SCHOOL

Approval of Budget and Granting of Signatory Authorization

RESOLUTION

WHEREAS, The O'Farrell Charter Schools, a California nonprofit public benefit corporation ("O'Farrell" or the "Corporation"), is organized for charitable purposes;

WHEREAS, San Diego Education Foundation, a California nonprofit public benefit corporation ("SDEF"), was formed and is operated exclusively to support O'Farrell;

WHEREAS, O'Farrell proposes to operate a public charter school (the "School") at real property commonly known as 5125 and 5275 Market Street, San Diego, California 92114 (the "Property");

WHEREAS, O'Farrell and SDEF propose that SDEF, or a limited liability company of which SDEF is the sole member (together, the "Parties"), will acquire the Property, construct additional improvements on the Property, and lease the Property to the School;

WHEREAS, O'Farrell and SDEF propose that O'Farrell will make advances to the Parties and/or will incur costs on behalf of the Parties, which costs will be reimbursed by the Parties, to enable the Parties to acquire the Property, renovate and/or construct additional improvements on the Property, and lease the Property to the School, all substantially in accordance with the Project Budget attached hereto as Exhibit "A"; and

WHEREAS, the Board of Directors of the Corporation (the "Board") finds it to be fair, reasonable, in the best interest of the Corporation and in furtherance of the charitable purposes of the Corporation that the Corporation shall take all actions necessary or advisable to facilitate the foregoing transactions (collectively, the "Transactions");

NOW THEREFORE, BE IT RESOLVED, that the Board approves the Transactions and authorizes the execution, delivery and performance by O'Farrell of all documents and agreements as are necessary to facilitate the Transactions;

RESOLVED FURTHER, that the Board grants the officers of O'Farrell to act on its behalf and shall be an authorized signatory for purposes of executing any documents related to the Transactions referenced herein;

Name of Authorized Signatory: Jonathan Dean, Superintendent

PASS AND ADOPTED by the Board of Directors of The O'Farrell Charter School at a meeting held on May 9, 2016;

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

The undersigned hereby certifies that he/she is the duly elected and qualified Secretary and the custodian of the books and records of O'Farrell, a public benefit non-profit corporation duly formed pursuant to the laws of the state of California, and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Directors, and that said meeting was held in accordance with state law and the Bylaws of O'Farrell on the 9th day of May, 2016, and that said resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Secretary of O'Farrell on the date of the Board of Directors' meeting stated above.

_____ _____

Delano Jones, Secretary Date

Board Approval Date:

Exhibit A

O'Farrell Charter School

Budget Worksheet

Date: *Monday, May 02, 2016* *Version 1*

Budget Item	Budget Item	Vendor/Contractor	Low Budget	High Budget	Comments
	BUDGET FUNDING (THROUGH CUP ONLY)				
01.0	**General Fund**		$ -	$ -	
02.0	**State School Building Fund**		$ -	$ -	
03.0	**Other Funding Sources**		$ -	$ -	
04.0	**TOTAL FUNDING**		$ -	$ -	
	Funding Surplus/Deficit	*(Should always be $0)*	$ (393,532.00)	$ (595,000.00)	
	BUDGET EXPENDITURE (THROUGH CUP ONLY)				
05.0	**O'Farell Charter School Budget Expenditure**				
100	CUP/Master Planning/Conceptual Design		$ 75,000.00	$ 100,000.00	
101	Preliminary Geotechnical Report & Soil Testing		$ 20,000.00	$ 30,000.00	
102	Geological Fault Study/Survey		$ 40,000.00	$ 50,000.00	May be required.
103	PreliminaryTraffic Study		$ 20,000.00	$ 30,000.00	
104	Phase I ESA (Environmental Site Assessment)		$ 3,000.00	$ 5,000.00	
105	Phase II ESA (Environmental Site Assessment)		$ 20,000.00	$ 40,000.00	
106	EIR (Environmental Impact Report)		$ 75,000.00	$ 100,000.00	Estimated cost for MND (Mitigated Negative Declaration)
107	Economic Feasibility/Proforma's (Financial Consultant)		$ 20,000.00	$ 40,000.00	
108	ALTA Survey/Title		$ 8,000.00	$ 10,000.00	
109	Public Outreach Consultant		$ 15,000.00	$ 30,000.00	
110	Project/Program Management Firm		$ 32,532.00	$ 50,000.00	
111	Legal Fees (Land Use Attorney)		$ 20,000.00	$ 30,000.00	
112	City Fees (CUP Costs)		$ 20,000.00	$ 30,000.00	
113	Contingency		$ 25,000.00	$ 50,000.00	
	TOTAL		**$ 393,532.00**	**$ 595,000.00**	

All costs associated with the purchase of land, escrow etc are excluded from the above budget.

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 4

RECOMMENDATION: Adopt Resolution authorizing Declaration of Official Intent in order for San Diego Education Foundation, a California nonprofit public benefit corporation ("SDEF"), to be formed and operate exclusively to support O'Farrell.

BACKGROUND INFORMATION:

On April 11, 2016, the Board of Directors announced that they approved Dr. Dean's request to purchase property at 5275 Market St., San Diego, CA and property at 5125 Market St., San Diego, CA (Property) in the amount not to exceed $5 million in order to open a new K-8 school.

CURRENT INFORMATION:

The O'Farrell Charter School and San Diego Education Foundation propose to acquire the Property, renovate and/or construct additional improvements on the Property, and lease the Property to the School.

This Resolution is being adopted for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations, the Board of Directors of the Corporation (the "Board") hereby declares its official intent to use proceeds of indebtedness to reimburse the Borrower for Reimbursement Expenditures. This declaration does not bind the Borrower to make any expenditure, incur any indebtedness, or proceed with the Project at 5275 Market St and 5125 Market St., San Diego, CA.

BOARD OF DIRECTORS
THE O'FARRELL CHARTER SCHOOLS

RESOLUTION

In the Matter of Support of Declaration of Official Intent

WHEREAS, The O'Farrell Charter Schools, a California nonprofit public benefit corporation ("O'Farrell" or the "Corporation"), is organized for charitable purposes;

WHEREAS, San Diego Education Foundation, a California nonprofit public benefit corporation ("SDEF"), was formed and is operated exclusively to support O'Farrell;

WHEREAS, O'Farrell proposes to operate a public charter school (the "School") at real property commonly known as 5125 and 5275 Market Street, San Diego, California 92114 (the "Property");

WHEREAS, O'Farrell and SDEF propose that SDEF, or a limited liability company of which SDEF is the sole member, will acquire the Property, renovate and/or construct additional improvements on the Property, and lease the Property to the School;

WHEREAS, O'Farrell and SDEF propose that SDEF, or a limited liability company of which SDEF is the sole member, will finance or refinance the cost of acquiring, constructing, improving and equipping public charter school facilities as described in Appendix A attached hereto (the "Project") with the proceeds of loans (the "Loan") to be made by a conduit issuer from the proceeds of the issuance of tax-exempt and/or taxable bonds (the "Bonds") in a maximum aggregate amount of $20,000,0 00;

WHEREAS, O'Farrell, SDEF, or a limited liability company of which SDEF is the sole member (for purposes of these Resolutions and the Treasury Regulations (as defined below), any such entity referenced herein, the "Borrower") expects to pay certain expenditures (the "Reimbursement Expenditures") in connection with the Project prior to the issuance of indebtedness on behalf of the Borrower for the purpose of financing costs associated with the Project on a long term basis;

WHEREAS, the Borrower expects that it will be necessary to employ attorneys and consultants and to incur costs and expenses in preparing the proceedings for the issuance of said indebtedness on behalf of the Borrower, and in connection with the acquisition and construction of the Project and the lease thereof to the School;

WHEREAS, the Borrower reasonably expects that debt obligations in an amount not expected to exceed $20,000,000 will be issued on behalf of the Borrower in order to finance the Project, and that certain of the proceeds of such debt obligations will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, Section 1.150-2 of the regulations promulgated by the United States Department of the Treasury (the "Treasury Regulations") requires the Borrower to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing, if such proceeds are to be deemed spent upon the reimbursement allocation, for purposes of federal tax law;

NOW, THEREFORE, BE IT RESOLVED, that, for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations, the Board of Directors of the Corporation (the "Board") hereby declares its official intent to use proceeds of indebtedness to reimburse the Borrower for Reimbursement Expenditures. This declaration does not bind the Borrower to make any expenditure, incur any indebtedness, or proceed with the Project;

RESOLVED FURTHER, that all prior resolutions of the Board or any parts thereof in conflict with any or all of the foregoing resolutions are hereby repealed to the extent of such conflict; and

RESOLVED FURTHER, that these resolutions shall take effect and be in full force immediately after their adoption by the Board.

PASSED AND ADOPTED by the Board of Directors of The O'Farrell Charter School at a meeting held on May 9, 2016;

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

Certificate of Secretary

The undersigned certifies that the undersigned is the duly appointed and acting Secretary of The O'Farrell Charter Schools (the "Corporation"), a California nonprofit public benefit corporation, and that the foregoing Resolutions were duly adopted by a majority vote of the members of the Board of Directors (the "Board") of the Corporation then in office at a meeting of the Board duly held on May 9, 2016, in compliance with the bylaws of the Corporation and in compliance with the notice, agenda, and open meeting requirements of the Ralph M. Brown Act, and that a quorum of the Board was in attendance at the meeting at the time the resolutions were adopted.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the Corporation this 9th day of May 2016.

_____ _____
Delano Jones, Secretary Date

APPENDIX A

(Project Description)

Charter school educational facilities known as 5125 and 5275 Market Street, San Diego, California 92114, Assessor Parcel Numbers 548-040-06-00; 548-040-07-00; 548-040-08-00; 548-040-09-00; 548-040-10-00; 548-040-11-00; and 548-040-12-00.

The intent of the new school is to renovate this existing building while also adding additional 2 story modular, or conventional framed buildings (based on cost benefit analysis), as required to accommodate the school's enrollment needs. Also to be considered is the possible construction of recreation fields on the adjacent 2.5 acre parcel behind the existing building. The ultimate goal of this project is to provide the following campus features: (1) Renovate the existing building to accommodate a gym, cafeteria, classrooms, and admin support areas (2) Construct new modular buildings or conventional framed buildings to serve as classrooms (3) Create soccer or other recreation fields on the adjacent 2.5 acre parcel, with the understanding that future buildings may be constructed there. Further, the process timeline is expected to commence in April 2016 and will run to August 2018. The total costs, including property, is estimated to run between fifteen to seventeen million.

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 5

RECOMMENDATION: Award the Project Management Consulting Agreement as set forth in the Scope of Services Proposal for Construction Management Services for the construction of the O'Farrell K-8 charter school to Gafcon in the amount not to exceed $196,782. Final services shall be negotiated between Gafcon and O'Farrell.

BACKGROUND INFORMATION:

The project will consist of the purchase of a site, the construction of a K-8 school facility comprising of approximately 25 classrooms, an Administrative Office, a multipurpose room, cafeteria, kindergarten play area and sports fields. Our proposal elements include a comprehensive scope of the services, a schedule outline and estimated fees for service.

Compensation for the above scope of work is at a not to exceed amount of $196,782 (refer to Exhibit A) and shall be paid on a time & materials basis. If additional fees are required, Gafcon will notify client in writing.

This Scope of Services proposal is not a contract. Upon acceptance of this proposal, Gafcon will provide Client or Client will provide Gafcon with a contract fully describing the terms and conditions applicable to the Scope of Work for this project.

CURRENT INFORMATION:

Scope of Services Proposals:	Amount
Gafcon	**$196,782**
Hughes/Mario	$332,500
KCM Group	$260,000

Preliminary proposed project schedule is as follows:

Phase I through CUP
Site Acquisition, Entitlements, Schematic and Conceptual Design 8 Months

Phase II – from end of CUP to Construction Close Out
Design Development and Construction Documents - 4 months
DSA Review - 6 months
Bid and Award - 2 months
Construction - 20 months
Close Out - 1 month

PROJECT MANAGEMENT CONSULTING AGREEMENT

This Project Management Consulting Agreement (this "Agreement") is entered into on May 9, 2016 by and between O'FARRELL CHARTER SCHOOLS (the "Owner"), and GAFCON, INC., a California corporation ("Project Manager") concerning the project set forth on Exhibit A ("Project"). The Owner and the Project Manager agree as follows:

1. SERVICES

1.1 The Project Manager shall provide pre-construction and project management services as set forth in the Scope of Work attached as Exhibit A.

2. PROJECT MANAGER'S FEES AND REIMBURSABLE EXPENSES

2.1 The Owner shall pay the Project Manager on a time and material basis in accordance with the hourly rates set forth on the Fee Proposal attached as Exhibit A.

2.2 **Reimbursable Expenses:** The Owner shall reimburse the Project Manager for all out-of-pocket expenses associated with the Scope of Work, plus an administrative fee equal to ten percent (10%) of the expenses. The following are examples of the various expenses that are typically related to the Project Manager's services; however, these examples are not intended to be inclusive of all potential reimbursable expenses:

(a) Postage, shipping, couriers, telephone expenses, facsimiles and copies.
(b) Blueprinting, photo reproducing and photography for jobsite surveys or related activities.
(c) Mileage costs shall be charged at the prevailing IRS rate to and from the project site and the Project Manager's office.

The following expenses shall not be incurred without the Owner's written pre-approval.

(d) Software licenses, support and maintenance fees related to the services.
(e) Telecommunications, internet and hosting fees.
(f) Office set-up for new site locations including but not limited to, physical location rentals, furniture and technology rentals, equipment rental/leases and moving expenses.

In the event the Owner terminates the Project Manager's services prior to the expiration of this Agreement, the Owner shall reimburse the Project Manager for all of the previously incurred reimbursable expenses.

2.3 **Invoicing:** The Owner shall pay each invoice within thirty (30) days from the date of the invoice. Invoices not paid within thirty (30) days will accrue interest at the annual rate of twelve percent (12%) until paid.

3. TERM

3.1 **Initial Term:** The term of this Agreement shall commence on the date set forth above. The Project Manager's obligations to perform the services shall terminate upon the earlier of the following: (a) completion of the Scope of Work, (b) termination by the Owner, in accordance with Section 3.2, below or (c) termination by the Project Manager in accordance with Section 3.3, below.

Initial _____ / Initial _____ 191

Upon termination, the Project Manager shall immediately stop performing the services and shall generate a final invoice for fees and reimbursable expenses incurred up until the date of termination.

3.2 **Termination by the Owner:** The Owner, may terminate this Agreement (except for those provisions of this Agreement that survive termination) at any time for any reason by (a) giving fifteen (15) days' written notice to the Project Manager.

3.3 **Termination by the Project Manager for Cause:** The Project Manager may terminate this Agreement if: (a) the Owner, fails to pay the Project Manager's invoice within thirty (30) days of the invoice date, or (b) the Project is materially changed or completion of the Project is materially delayed, or (c) the Owner, breaches any of its obligations under this Agreement and fails to cure the breach within fifteen (15) days of written notice of such breach.

4. THE OWNER'S DUTIES

4.1. **Authorized Representative:** The Owner's instructions to and direction of the Project Manager shall be made and given by Jonathan Dean (the Authorized Representative"). The Project Manager may rely on the instructions or direction of the Authorized Representative. Any change of the Authorized Representative must be made in writing by the Owner.

4.2. **Indemnification by the Owner:** The Owner, shall defend, indemnify, and hold harmless the Project Manager and its principals, directors, officers, agents, employees, parents, subsidiaries and other affiliates, and each of their respective successors and assigns from and against any and all damages, claims, lawsuits, proceedings, actions, costs and expenses (including, without limitation, attorneys' and other the Project Managers' fees and reimbursable expenses) directly or indirectly relating to or arising out of the Owner's gross negligence or intentional misconduct. The obligations set forth in this paragraph survive the termination of this Agreement, or the completion of the services.

4.4 **Agreement with Contractor(s):** The Owner, agrees to require in its contract with the Contractor(s) that the Contractor(s) specifically name Gafcon, Inc. as an additional insured on Contractor(s) policies by an ISO endorsement CG 2010 1185 or equivalent and that the Contractor(s) provide that same indemnification to Gafcon, Inc. as it provides to the Owner.

5. INDEMNIFICATION BY THE PROJECT MANAGER.

5.1. **Indemnity by The Project Manager:** The Project Manager shall defend and hold harmless and indemnify the Owner, from any and all damages, claims, lawsuits, proceedings, actions, costs and expenses arising out of the Project Manager's gross negligence or willful misconduct. The Project Manager is not in any way responsible or liable for defects or deficiencies in the work product of any consultant, contractor, subcontractor, or material supplier in connection with the Project. The Project Manager shall not be held responsible for the errors, omissions, defects, or failures of the Owner, its contractors, consultants, subcontractors, or material suppliers for their failure to perform their services in accordance with their contracts, applicable building codes, or other standards of care.

5.2. **Limitation of Liability:** In no event may the Project Manager be liable for any special or consequential damages, either in contract or tort, whether or not the possibility of such damages is disclosed to the Project Manager in advance or could have been reasonably foreseen by the Project

Manager. The parties agree that the maximum amount of the Project Manager's liability to the Owner is limited to the total amount paid to the Project Manager by the Owner under this Agreement.

6. THE PROJECT MANAGER'S INSURANCE REQUIREMENTS.

6.1. **The Project Manager's Insurance:** At all times while performing the services, the Project Manager shall maintain policies of errors and omissions, vehicle and general liability insurance and worker's compensation insurance. The Project Manager's liability insurance must identify the Owner, as an additional insured and provide for notice to the Owner, from the insurance carrier at least thirty (30) days before the cancellation of the policy. The Project Manager shall provide general liability and automobile insurance coverages of not less than Two Million and 00/100 Dollars ($2,000,000.00) per occurrence. The Project Manager shall specifically name the "O'Farrell Charter Schools" as an additional insured on Contractor(s) policies by an ISO endorsement CG 2010 1185 or equivalent.

6.2 **Workers Compensations Insurance**: The Project Manager shall maintain worker's compensation insurance for all its employees performing work on behalf of the Project Manager for the Owner.

7. GENERAL PROVISIONS

7.1. **The Project Manager as Independent Contractor:** The Project Manager shall perform the services as an independent contractor having control over the manner in which the services are performed.

7.2. **Non-Solicitation of Employees:** The Owner may not solicit or hire any of the Project Manager's employees or contractors within one (1) year after the completion of all of the Project Manager's Scope of Work.

7.3. **Governing Law:** This Agreement is governed by and construed in accordance with the laws of the State of California, irrespective of California's choice of law principles.

7.4. **Further Assurances:** Each party to this Agreement shall execute and deliver all instruments and documents and take all actions as may be reasonably required or appropriate to carry out the purposes of this Agreement.

7.5. **Venue and Jurisdiction:** All actions and proceedings arising in connection with this Agreement shall be litigated exclusively in the Superior Court located in the County of San Diego, State of California.

7.6. **Counterparts and Exhibits:** This Agreement may be executed in counterparts, each of which is deemed an original and all of which together constitute one (1) contract. All exhibits attached to and referenced in this Agreement are incorporated into this Agreement.

7.7. **Attorney's Fees:** The prevailing party in any litigation, arbitration, mediation, bankruptcy, insolvency or other proceeding ("Proceeding") relating to the enforcement or interpretation of this Agreement shall recover from the unsuccessful party all costs, expenses, and actual attorney's fees (including expert witness fees and reimbursable expenses) relating to or arising out of: (a) the Proceeding (whether or not the Proceeding proceeds to judgment), and (b) any post judgment or

post award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the Proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorney's fees.

7.8. **Modification:** This Agreement may be modified only in writing executed by both parties.

7.9. **Prior Understandings:** This Agreement contains the entire and final Agreement of the parties to this Agreement with respect to the subject matter of this Agreement, and supersedes all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to the subject matter.

7.10. **Partial Invalidity:** Each provision of this Agreement is valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement (or the application of such provision to any person or circumstance) is or becomes invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, are not affected by such invalidity or unenforceability.

7.11. **Successors and Assigns:** Neither party may voluntarily or by operation of law assign, hypothecate, delegate or otherwise transfer or encumber all or any part of its rights, duties or other interests in this Agreement without the prior written consent of the other party. Any such transfer in violation of this paragraph is void. Subject to the foregoing and any other restrictions on transferability contained in this Agreement, this Agreement is binding upon and inures to the benefit of the successors and assigns of each party to this Agreement.

7.12 **Notices:** Each notice and other communication required or permitted to be given under this Agreement ("Notice") must be in writing. Notice is duly given to another party upon: (a) hand delivery to the other party, (b) three (3) business days after the Notice has been deposited with the United States postal service as first class certified mail, return receipt requested, postage prepaid, and addressed to the party as set forth below, or (c) the next business day after the Notice has been deposited with a reputable overnight delivery service, postage prepaid, addressed to the party as set forth below with next–business–day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

To Owner:

Mr. Jonathan C. Dean, Superintendent
O'FARRELL CHARTER SCHOOLS
6130 Skyline Drive
San Diego, California 92114
619.263.3009 x2002
619.263.4339 – Fax | 760.214.7719 – Cell
jonathan.dean@ofarrellschool.org

To the Project Manager:

Mr. Robin Duveen, Chief Operating Officer
GAFCON, INC.
5960 Cornerstone Court West, Suite 100
San Diego, California 92121
858.875.0010
rduveen@gafcon.com

Each party shall make a reasonable, good faith effort to ensure that it will accept or receive Notices given in accordance with this paragraph.

7.11. **Waiver:** Any waiver of a default or provision under this Agreement must be in writing. No such waiver constitutes a waiver of any other default or provision concerning the same or any other provision of this Agreement. No delay or omission by a party in the exercise of any of its rights or remedies constitutes a waiver of (or otherwise impairs) such right or remedy. A consent to or approval of an act does not waive or render unnecessary the consent to or approval of any other or subsequent act.

7.12. **Drafting Ambiguities:** Each party to this Agreement and its legal counsel have reviewed and revised this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party or in favor of the party receiving a particular benefit under an agreement may not be employed in the interpretation of this Agreement or any amendment to this Agreement.

7.13. **Third Party Beneficiaries:** Nothing in this Agreement is intended to confer any rights or remedies on any person or entity other than the parties to this Agreement and their respective successors–in–interest and permitted assignees, unless such rights are expressly granted in this Agreement to another person specifically identified as a "Third Party Beneficiary."

Owner:	**Project Manager:**
O'FARRELL CHARTER SCHOOLS	GAFCON, INC., a California Corporation
_____ Jonathan C. Dean, Superintendent	_____ Robin Duveen, Chief Operating Officer
_____ Date	_____ Date

Initial _____ / Initial _____

EXHIBIT A

See attached Proposal dated April 8, 2016 – 25 pages.

Initial _____ / Initial _____

O'Farrell Charter School

Scope of Services Proposal

April 8, 2016

gafcon

5960 Cornerstone Court West, Suite 100
San Diego, CA 92121
main 858.875.0010

Proprietary and Confidential

gafcon

April 8, 2016

Jonathan Dean
O'Farrell Charter School
6130 Skyline Drive
San Diego, CA 92114

RE: O'Farrell K-8 Charter School CM Services RFP
Gafcon Fee Proposal for Construction Management Services

Dear Jonathan:

Thank you for inviting us to submit our construction management services proposal for the management of the O'Farrell Charter School project. I appreciate the time you have spent with us on March 30, 2016 discussing your upcoming project.

To summarize our proposal, Clayton Craft, Senior Project Manager, will serve as your lead contact. Clayton's field experience on related projects underscore his ability to decisively assess project cost and schedule, and will support your desire to move accurately and intelligently through this fast-tracked project. Clayton has over 32 years of construction experience, including 15 years managing education / public works projects. Derek Contizano, Construction Manager, will work side-by-side with Clayton, and Casey Sanfilippo will support Clayton and Derek by providing project coordination services at no cost to the Client.

It is our understanding that your project will consist of the purchase of a site, the construction of a K-8 school facility comprising of approximately 25 classrooms, an Administrative Office, a multipurpose room, cafeteria, kindergarten play area and sports fields. Our proposal elements include a comprehensive scope of the services, a schedule outline and estimated fees for service.

Again, thank you for your interest in Gafcon. Please contact me directly at (858) 875-0010 or rduveen@gafcon.com with any questions.

Sincerely:

GAFCON, INC.

Robin Duveen

Chief Operating Officer

"This proposal contains confidential information proprietary to Gafcon, Inc. and is provided for the sole benefit of **O'Farrell Charter School.**

The information being provided is being delivered with the specific understanding that it is confidential and will not be distributed outside of your organization without the written consent of Gafcon, Inc."



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1. EXECUTIVE SUMMARY

A. Introduction

Gafcon, Inc. ("Gafcon") is pleased to submit this Scope of Services Proposal to O'Farrell Charter School for its K-8 project.

B. Background

Gafcon, Inc. is a woman-owned firm, providing program and construction management services to public and private agencies. Gafcon is recognized by Engineering News Record as a Top 50 Program Management Firm in the Nation and has been awarded the Vision Award from Constructech Magazine for our use of technology in Program Management. Incorporated on September 23, 1987, our core expertise is in managing complex design and construction activities. With more than 120 accomplished professionals serving both in-house and on-site, our size provides us with the aptitude to meet our clients' needs efficiently and effectively. We take pride in our longstanding professional relationships with our associates and specialists in the field.

Our team is currently providing program and project management services on more than $10 billion of public school projects in varying stages of design and construction in Southern California. Through these experiences, we have assembled a seasoned team and complementary technology that uniquely qualifies us to support O'Farrell Charter School in meeting your mission.

2. SCOPE OF WORK

A. Scope of Services

Below is an example of Gafcon's comprehensive scope of services. Final services shall be negotiated between Client and Gafcon.

A	GENERAL DESCRIPTION OF SERVICES
1	Develop a detailed understanding of the Client's goals, parameters, design guidelines, sustainability objectives, processes, stakeholders, budgets and schedules.
2	Project Management – the directing, managing, overseeing and monitoring of activities of the various Project Team members through the Entitlements, Design, Construction Document, Bidding/Negotiation, Construction and Project Closeout Phases.
3	Oversight of design and development planning.
4	Costing and Budget Control Management.
5	Constructability, design and interdisciplinary coordination reviews.
6	Construction scheduling management.
7	Implement a document management system for use on this project for storage of all project documents. Train all relevant stakeholders in the use of the document control system.

B	PRE-DESIGN
1	Coordinate and manage entitlement process.
2	Coordinate meetings with the Client and Project Team members to provide a general status of the project including schedule and budget reports, as required.
3	Meeting with the Client's insurance consultants to discuss and make recommendations and determinations regarding an effective risk management program for the project.
4	Prepare monthly reports on the status of the project. Include information on the budget, schedule, design issues and challenges.
5	Coordination with State agencies (i.e.: DSA, CDE, OPSC, DTSE, etc.).

C	CONSULTANT SELECTION AND MANAGEMENT
1	Meet with Client to discuss and confirm consultants required for the project (i.e.: architect, environmental, geotechnical, testing and inspection, etc.). Develop RFPs for each consultant. Review and provide recommendation to Client.
2	Prepare contracts for execution by Client.
3	Manage contracts and scopes. Review invoices and forward any correction notices to respective firms.
4	Manage progress invoices, review contractual commitments and make recommendations for payment to Client.

D	BUDGET AND SCHEDULE MANAGEMENT
1	Obtain all existing pertinent data relevant to project budget development. Prepare a project budget, which includes both hard and soft costs (total project costs). Track and update costs. Provide monthly update to Client, or sooner if required.
2	Prepare a Master Project Schedule establishing appropriate milestones, coordination, sequencing, and project completion. Include sufficient details to inform the Client and Project Team members of key dates, deadlines and milestones. Revise and update the Project Schedule (at least monthly) with real-time information to reflect the design and construction of the Project.

E	CONCEPTUAL DESIGN, SCHEMATIC DESIGN, DESIGN DEVELOPMENT AND CONSTRUCTION DOCUMENTATION
1	Oversee overall design process: Conduct design reviews. Review and comment on conceptual design, schematic design, design development and construction documents. Confer with Client on any desired changes that may improve the design or efficiency of the Project.
2	Schedule and conduct progress meetings with the Client and Project Team members for the exchange of information and resolution of design decisions; prepare meeting minutes and distribute to Client and Project Team.
3	Prepare monthly reports on the status of the project for Client.
4	Perform a cursory review of Architect's cost estimate for budget compliance at each phase of design, including providing value engineering recommendations/cost reduction options, if required.
5	Solicit input from Client as required at each phase of the design process.
6	Review materials, finishes and design approach with Client.

F	PRE-BID
1	Review and comment on any pre-purchases and make recommendations to the timely and economical purchases of materials and equipment to be made in advance of the award of the contract and subcontracts (long lead items).
2	Consult with the Client and Project Team members and recommend an effective method of bidding the construction work and manage the process of preparing the invitation for bid package(s).
3	Consult with the Client and Project Team members regarding general contractors and subcontractors qualified to bid the various portions of the work (prequalification process).

G	BIDDING AND AWARD
1	Prepare of bid packages for General Contractor.
2	Coordinate plan check approval with regulatory agencies, Design Professionals and others.
3	Prepare Advertisement for Bid; coordinate required public notices of bid.
4	Issue invitations to Bid.
5	Conduct Pre-bid meetings and job walk.
6	Receive and respond to bidders' questions and concerns.
7	In conjunction with the Design Professionals, prepare and issue Addenda as required.
8	Receive and open bids. Conduct bid opening. Review and analyze bids received for responsible bidders and responsiveness to bids. Rank responsive and responsible bidders.
9	Perform reference checks for the lowest responsive and responsible bidder.
10	Recommend contract award. Obtain approval to award contract.

H	AWARD OF CONTRACT
1	Issue contracts to General Contractor.
2	Request from the Contractors, if applicable the following items:
2a	Schedule of Values
2b	Project Baseline Schedule
2c	Submittal Schedule / Procurement Log
2d	Payment and Performance Bonds
2e	Original Certificate of Insurance and Endorsements (Workers Comp, General Liability, Automobile Liability, etc.)
2f	Executed Escrow Agreement (Deposit of Securities in lieu of Retention)
2g	Drug Free Workplace Certification (signed)
2h	Tobacco & Alcoholic Beverages Free Certification
2i	Asbestos Free Materials Certification
2j	Background Check Certification
2k	Fingerprinting Certification
2l	Recycled Content Certifications
2m	Lead Based Paint Requirements Form
2n	Completed and signed W-9 Form
3	Review Safety Plan and Injury and Illness Prevention Plan (IIPP) and provide comments as necessary.
4	Review Storm Water Pollution Prevention Plan (SWPPP) and provide comments as necessary.

I	PRE-CONSTRUCTION
1	Set-up construction files and system(s) for project.
2	Set-up and conduct pre-construction meetings with General Contractor, key subcontractors, Design Professionals, DSA Inspector, materials testing and inspection laboratories, etc.
3	Coordinate establishment and location of General Contractor and Inspector's field offices.
4	Review and approve original Schedule of Values (SOV).
5	Coordinate with General Contractor in setting up temporary facilities (if required).
6	Coordinate and approve site logistic plans with General Contractor.
7	Assist General Contractor and Design Professionals in obtaining all required permits.

J	CONSTRUCTION
1	Provide on-site construction supervision for compliance with contract documents and directives from Design Professionals. Coordinate and assist in the resolution of critical field issues.
2	Prepare daily job progress reports detailing work performed and describe working conditions, construction manpower and equipment used on site, etc.
3	Review General Contractor' daily reports and Inspector's reports for accuracy.
4	Conduct and chair weekly construction meetings. Record meeting minutes and distribute to all respective parties.
5	Review General Contractors' and Design Professional's monthly progress payment requests, conduct a walk-through of the work-in-place, and forward any correction notices to General Contractor and Design Professionals. Forward reviewed invoices including back-up documentation (e.g. Waiver and Release of Liens, expense receipts, etc.) to Client for final review, approval, and processing.

6	Maintain project record files, logs of meeting minutes, contract documents, bulletins, submittals and RFIs, claims, correspondence, compliance certification and other related documents including revisions and amendments thereto.
7	Review, on a monthly basis, record drawings of as-built conditions prepared by the General Contractor.
8	Maintain construction progress records and construction photographs.
9	Receive all Requests For Information's (RFIs) from General Contractor, review for clarity, log, prepare and process response from Design Professionals or to each request.
10	Review General Contractor's construction schedules for validity, monitor and report on any variances that will affect the daily procedures and completion of the project.
11	In conjunction with Client, review the construction budget and monitor and report on any variances. Obtain Client's approval for any budget adjustments.
12	Coordinate all communication with the General Contractor and involved parties.
13	Administer General Contractor and other Design Professional contracts for the work in accordance with the terms and conditions of the respective contracts.
14	Process submittals in a timely manner between Design Professionals, Consultants, and General Contractor and in accordance with contract requirements. Develop and maintain submittal logs.
15	Monitor inspection activities. Review reports, and resolve any inaccuracies. Report any non-compliance reports to Client, and coordinate correction/resolution with General Contractor. Maintain and file reports.
16	Monitor soils and materials testing activities. Review reports and resolve any inaccuracies. Report any non-compliance reports to Client, and coordinate correction/resolution with General Contractor. Maintain and file reports.
17	Submit a monthly written status update report to the Client.
18	Participate in or conduct negotiations to resolve claims or disputes.
19	Obtain and review special inspectors' tickets for work performed. Maintain and file tickets.
20	Verify laboratory invoices for accuracy (compare against inspectors' tickets and/or reports received). Verify invoice cost against contract amount.
21	Organize field meetings on an as-needed basis to discuss and resolve field problems.
22	Change Management: 1) Receive and review General Contractor's Change Order Requests (CORs). Review for entitlement, costs, and submittal of proper back-up. Accept, negotiate or reject submitted CORs. If accepted, prepare and process approval of Contract Change Orders to the Client. Develop, maintain and update Change Order Log. Coordinate execution of Change Orders with the respective parties.

K	CLOSE-OUT
1	With the Client, General Contractor and Design Professionals, conduct a thorough inspection of the project.
2	Jointly with the Design Professionals, prepare detailed punch lists and distribute to General Contractor.
3	Verify and document completion of punch lists activities in determining substantial and final completion of the project.
4	Notify General Contractor of substantial completion, final completion, and acceptance of project. Assist with execution of completion forms and distribute to applicable parties.
5	Distribute punch list of items for correction or action to General Contractor. Evaluate and confirm that all punch lists times have been completed in accordance with the contract documents prior to final completion.
6	Require, and if necessary, assist the General Contractor in obtaining Certificate of Occupancy or final agency inspections.

7	Review and confirm receipt of operating and maintenance manuals and keys (if applicable) for all equipment installed.
8	Obtain all field survey notes, as-built drawings, review and confirm the completeness and accuracy of any as-builts and other record documents.
9	Obtain all project warranties/guarantees from General Contractor and subcontractors.
10	Coordinate the removal of all temporary facilities by others.
11	Close-out General Contractor, Design Professionals and other contracts.
12	Negotiate and assist in bringing to a resolution all outstanding claims on the project to the extent possible during the course of the project.
13	Obtain General Contractor' and Design Professional's release to any future claims on the project.
14	Receive, review and recommend to Client the validity of General Contractor' final application for payment requesting release of retention.
15	Hand over all documents to Client.
16	Advise Client when project has been completed for filing and recording of Client's Notice of Completion.

3. PROJECT SCHEDULE

Preliminary proposed project schedule is as follows:

Phase I through CUP

Site Acquisition, Entitlements, Schematic and Conceptual Design	8 Months

Phase II – from end of CUP to Construction Close Out

Design Development and Construction Documents	4 months
DSA Review	6 months
Bid and Award	2 months
Construction	20 months
Close Out	1 month

4. PROPOSED TEAM

HIGHLIGHTS

- San Diego State's project liaison for one of the most challenging transportation projects in the county, the Mission Valley East Light Rail Transportation (LRT) extension.

Experience
30+ Years

Tenure with Gafcon
5 Years

Education History
B.S., Architecture, California State Polytechnic University, San Luis Obispo, CA

Licenses
Licensed Architect, California State License #C12083

Affiliations
Design Build Institute of America (DBIA)



gafcon

CLAYTON CRAFT

Senior Project Manager

Clayton is a California licensed architect with experience as a senior construction manager and project manager on a wide range of construction projects, and was San Diego State's project liaison for one of the most challenging transportation projects in the county, the Mission Valley East Light Rail Transportation (LRT) extension. He has more than 30 years of experience in all facets of the construction industry, including managing all phases of the construction process (planning, design, scope and cost analysis, bidding, contract negotiation, scheduling, and construction management). Project experience includes K-12 education, higher education, multi-phase projects, corporate headquarters, military, medical (OSHPD), transportation, tenant improvement, hazardous remediation, retail and commercial projects.

Relevant Projects

- **San Diego Unified School District Proposition S and Z Bond Programs - $4.9B**
  - O'Farrell WSM Modernization - $11M, construction management
  - O'Farrell Charter High School - $19M, construction management
  - O'Farrell Track & Field and Softball Field - $7M; design management
  - Audeo Charter School - $5M, design management
  - Museum School Charter, master plan and site acquisition services
  - Keiller Academy Charter School, master plan and design management
  - Salk Elementary School - $25M, construction management
- **San Diego Community College District, Math & Science Building, Mesa College - $109.8M**
  Project manager for the 206,000 gsf four-story building, including classrooms, computer classrooms, teaching lab classrooms and faculty, staff and administrative support space. Specialty spaces will include a greenhouse and astronomy observation center.

- **San Diego Community College District, Cafeteria Bookstore/ Storeroom, Mesa College - $45.7M**
  Project management services for the 65,000 square foot building that will house food service facility and bookstore; the project is currently in design.
- **San Diego State University, Speech, Language & Hearing Facility - $4M**
  Project architect/construction administrator for a 28,000 square foot, two-story design-build remodel. *Clayton worked on this project while employed by SDSU.
- **San Diego State University San Diego, CA - $1.4M**
  Project Architect/Construction Administrator of 8000 SF, Third Floor Laboratory tenant improvement.
- **San Diego State University, San Diego, CA - $17M**
  Project Architect/Construction Administrator for Parking Structure #6, 6-story, 2,500 spaces.
- **UC Irvine, Irvine, CA - $27M**
  Project Manager of 150,000 SF, Social Science Unit, 1-three story, 2-five story, classroom, laboratory, lecture halls and faculty offices.

Experience
12+ years

Education
B.S. Engineering Management Technology, Western Michigan University, Kalamazoo, MI

Certifications
Construction Document Technology (CDT), Construction Specifications Institute

Certified OSHA 10 hour and 30-hour (OSHA 500 course) University of California, San Diego and US Department of Labor

Certified OSHA 10-hour Safety, US Department of Labor



DEREK CONTIZANO

Construction Manager

Derek Contizano has a hands-on approach to Project Management and Project Controls Management. His recent experience ranges from small renovation projects to large capital construction bond programs. Derek also has substantial experience with coordination and communication with project staff including daily interaction with inspectors. He is very familiar with providing detailed reports on a weekly, monthly and quarterly basis, as required by the client. Past reports have included condition assessments, cost, and schedule reports that are easily accessible to project personnel.

Relevant Projects

- **Sharp Grossmont Healthcare, La Mesa, CA – $256M**
  As Program Liaison, Derek assisted the Program Manager, Sharp HealthCare Design and Construction Services, with contractor Change Management and Scheduling issues on the behalf of the public agency owner, the Grossmont Healthcare District. In addition, Derek provided risk management and financial reports to the CEO, Legal Counsel, Board of Directors and Citizens Bond Oversight Committee.
- **Rady Children's Hospital, San Diego, CA – $4.5M**
  As Facilities Project Manager, Derek managed the renovation of a day surgery center that included an Orthopedic Clinic (OSHPD 3) in a fully occupied Medical Office Building, installation of a fire sprinkler system (OSHPD 1) in a fully occupied Long Term Care Facility and renovation of an office space into an Ophthalmology suite. As part of his responsibilities, he coordinated daily with OSHPD inspectors.
- **Kern Community College District Measure G Program, Bakersfield, CA – $202M**
  Project Controls Manager for program management of new facilities and improvements for the Kern Community College District Program. Measure G, passed by Kern County voters in 2002, provides funding for construction program comprised of approximately 300 projects with an initial value of $180M. The program is providing critically required capital improvements and completion of backlogged schedule maintenance projects.
- **San Diego Community College District Prop S & N Program, San Diego, CA – $1.625B**
  Project Controls Manager program management of new facilities and improvements for the San Diego Community College District Program. Proposition S, passed by San Diego voters in 2002,

provides funding for construction program comprised of 70 projects cost of $685M. The program is providing critically required education classrooms, laboratories, libraries, technology training facilities, police and fire training academy expansion, parking and student facilities. The program is also seismically strengthening and repairing current campus structures and providing accessibility improvements, hazardous materials abatement, life safety and building systems upgrades, and improving and expanding space utilization and campus function. Proposition N, the $870M bond passed by voters in 2006, provides funding for additional new construction and renovation projects beyond those covered by Proposition S.

HIGHLIGHTS

- Public Agency experience includes City of Coronado, City of El Cajon.

Experience
12 Years

Tenure with Gafcon
8 Years

Education History
B.A. History, University of San Diego, CA



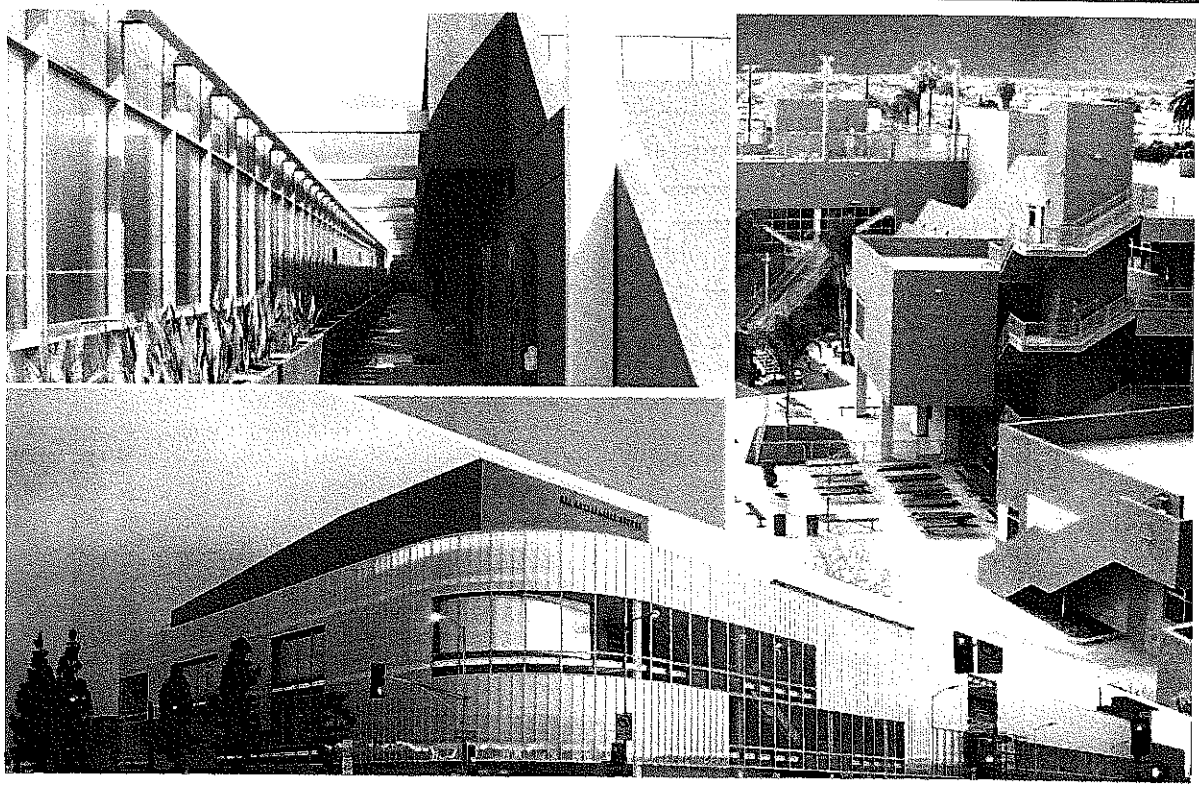
CASEY SANFILIPPO
Project Coordinator

Casey has more than eight years of experience in providing project and construction management coordination and support. She is highly experienced in supporting project and construction managers throughout all phases of a project, including the management and distribution of all project generated documentation. In her position, she works within the established file framework to assist project teams to assemble document packages, route documents for approval and transmit documents to the project and to clients as required. In her role at the City of Coronado, Casey will support John with project administration duties. She will also coordinate the flow of documents between the City, Architect, and contractor.

Relevant Projects

- **City of Coronado, Capital Projects, Coronado, CA**
  Project Assistant; established and maintained forms and document files in an appropriate and auditable condition. Assisted John Wilson in tracking submittals, change orders, and requests for information proposals.
  - Lifeguard Public Service Building
  - Lifeguard Tower and Restroom Facilities
  - Glorietta Bay Yacht Club and Marina Building
  - Glorietta Bay Dock Replacement
- **Correctional Alternative Inc. Ocean View, San Diego, CA**
  Project Assistant; established and maintained forms and document files in an appropriate and auditable condition. Assisted construction managers in tracking submittals, change orders, and requests for information proposals.
- **Pacific Furlough Properties, Inc. Boston Avenue, San Diego, CA**
  Project Assistant; established and maintained forms and document files in an appropriate and auditable condition. Assisted construction managers in tracking submittals, change orders, and requests for information proposals.
- **Martin Luther King Medical Center Los Angeles, CA**
  Project Assistant to Estimating Department, maintained forms, document files, plans/specs, contract documents, and estimating work product on the MACC and IPT projects.
- **San Diego Housing Commission San Diego, CA**
  Project Assistant to Estimating Department, maintained forms, document files, plans/specs, contract documents, and estimating work product on various estimating projects and property condition assessment reporting.

5. PROJECT EXPERIENCE



The Accelerated School (Lease-Leaseback) ($45M)

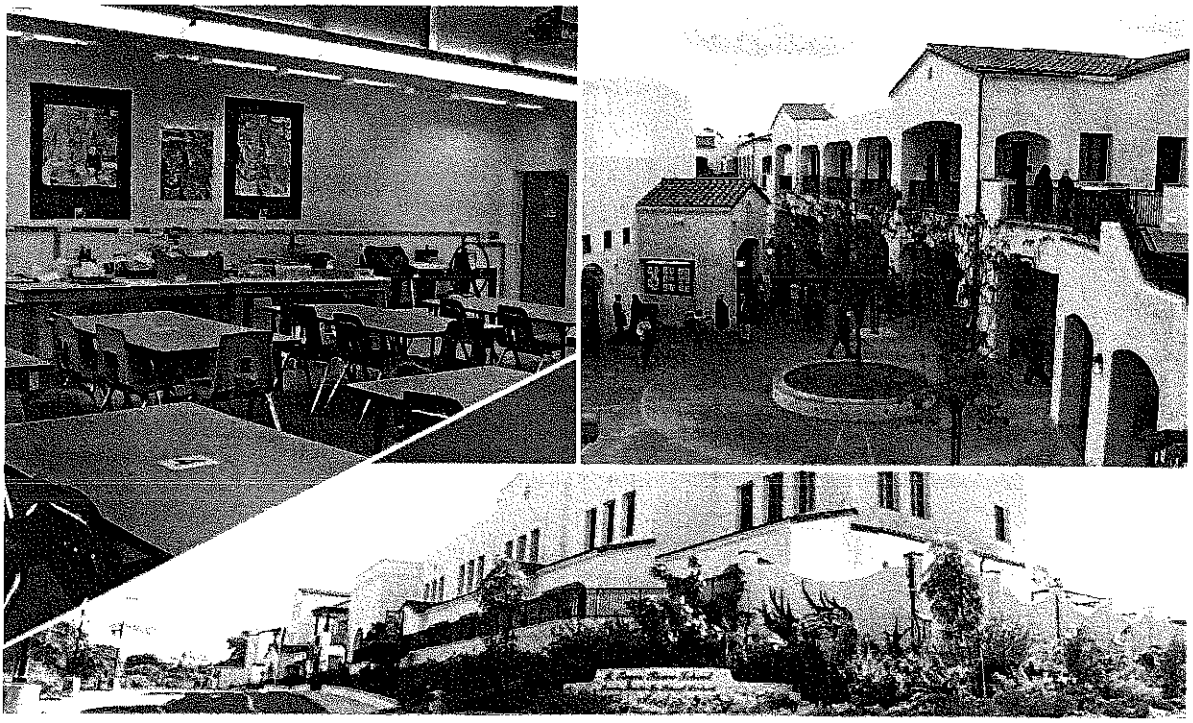
As the owner representative/construction manager, representing The Accelerated School (TAS), Gafcon led negotiations with LAUSD to build TAS, a 900-student K-12 public charter school in South Central Los Angeles. Both LAUSD Prop BB and private contributions funded the $45M project. The 160,000 sf four-story steel-braced framed building was built on the existing 4.1-acre campus while maintaining existing school operations. Gafcon was instrumental in establishing TAS as the first successful public/private partnership to implement a "turn-key" project delivery system within the LAUSD system. Gafcon acted as the Owner's Representative providing full program, project management and construction management services including preconstruction, architect/engineering coordination, bid analysis, contract administration, construction management, tenant improvements, and move-in coordination. Gafcon interfaced on a day-to-day basis with the Los Angeles Unified School District and the State Board Building Program in a collaborative effort in order to provide a quality school for the community.

"Commitment to the project, attention to detail, willingness to be flexible, creative thinking and diplomatic guidance of project under frustrating circumstances."

Eric Johnson
The Accelerated School

Accelerated Charter Elementary School – Expansion Project (Hard Bid) ($20M)

In 2011, The Accelerated Schools again selected Gafcon to provide owner representative services to expand the Accelerated Charter Elementary School (ACES) campus into a state-of-the-art LEED Silver certified pre-K through sixth-grade public school. Gafcon's team is providing design team coordination of conceptual planning and programming, schematic plan review, budget oversight, value engineering, contractor outreach and selection, and overall construction management for the $25 million project. Once completed, TAS will have a new parking structure and classroom building (pre-kindergarten to 6th). This project has qualified for state funding and funding by Los Angeles Unified School District, in addition to private donations.



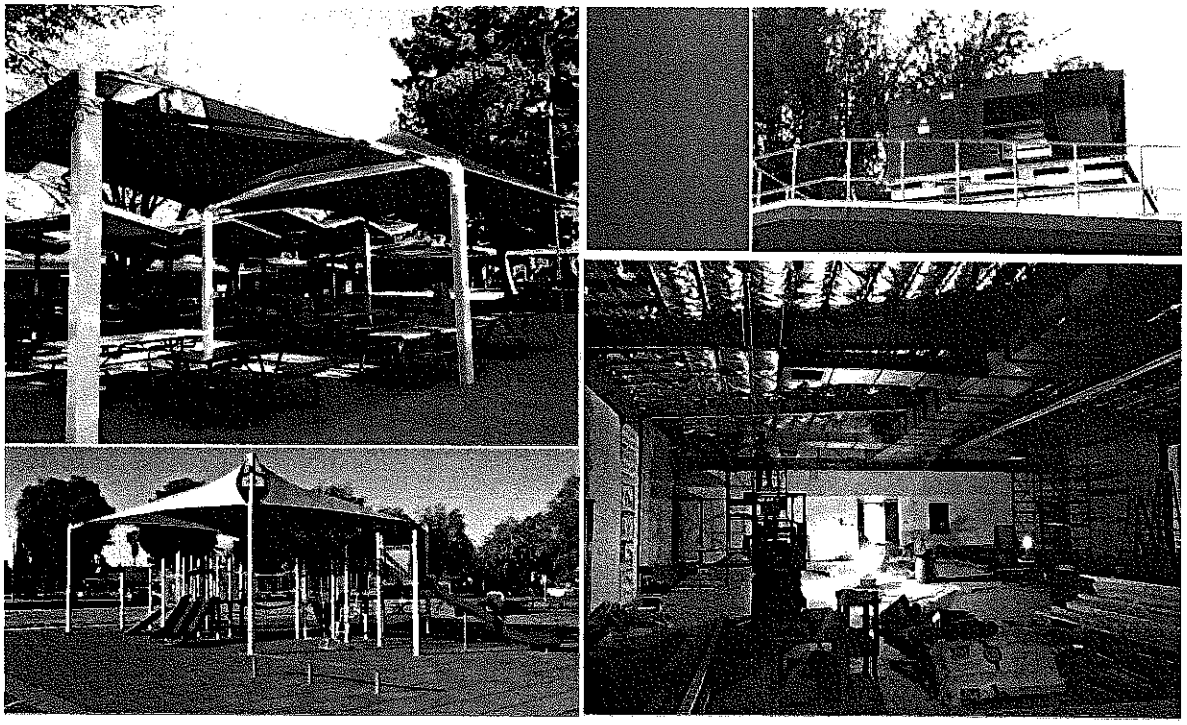
R. Roger Rowe School Modernization & Reconstruction ($39.5M)

In 2008, Gafcon was selected by Rancho Santa Fe School District to provide program management Services for the modernization of the R. Roger Rowe Elementary and Middle School. Originally built in 1919, the schools sit on a very small 7.5 gross acreage with a 40 foot varied elevation from entry to field. Five aging buildings were modernized and new two- and three-story buildings were constructed providing 55 new classrooms and labs, a 400-seat state-

of-the-art performing arts/multi-purpose building, a new technology center, new District and School offices, a staff lounge, conference rooms, and upgraded utilities.

The challenge of construction of this magnitude on such a small site while students occupied the campus was solved using a phased approach. Gafcon worked closely with the District, architect and contractors to make sure construction was completed within a two-year timeframe. Gafcon's team also provided construction management, estimating, constructability review and scheduling services.

"I would like to commend Gafcon, Inc. for their strong program and project management performance in providing construction consulting services to the R. Roger Rowe Campus $39.5M modernization and reconstruction program. Based on their performance, I would recommend Gafcon for similar assignments."
Lindy Delaney
Superintendent
Rancho Santa Fe School District



Our Community Charter School Modernization and New Construction ($4.2M)

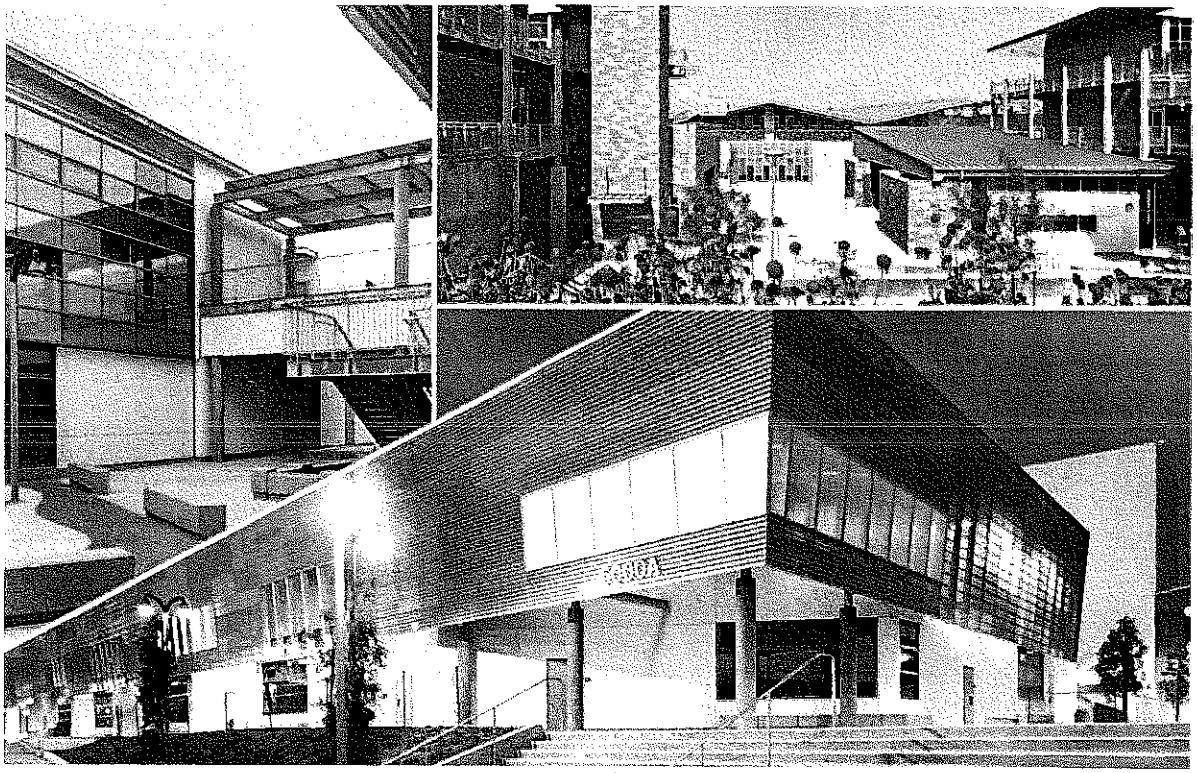
Gafcon was retained in May 2015 to provide project management services to Our Community Charter School in Chatsworth, CA. Currently under construction, the project includes site modernization and facility expansion, seismic upgrades; abatement of hazardous materials above and below ground; new security, fire alarm and public address systems, complete renovation of the multi-purpose Auditorium; the addition of change rooms in the Physical Education building; new staff and student restrooms; HVAC, plumbing and electrical system upgrades; five large shade structures; playground equipment with site surfacing; parking lot rework and restripe; landscape and irrigation; concrete replacement for ADA accessibility; and new school signage.

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Gafcon is working closely collaborating with the Client, Project Architect and Consultants to "speak with one voice" while addressing Contractor concerns, including keeping the project on time and on budget. Gafcon's management of Change Order Requests included negotiations with Contractor to reduce change orders totaling $842,000 down to $351,000, with no reduction in scope. The project is scheduled for completion in September 2016.

"I'm very happy and satisfied with Gafcon's overall project management; they were especially on point addressing schedule, phasing, and cost concerns." [In one instance alone on behalf of OCS, Gafcon successfully negotiated an $842,000 Contractor proposed Change Order down to $351,000, with no reduction in project scope.]

Jude Stabiler, Principal
Our Community Charter School



Carlsbad Unified School District ($198M)

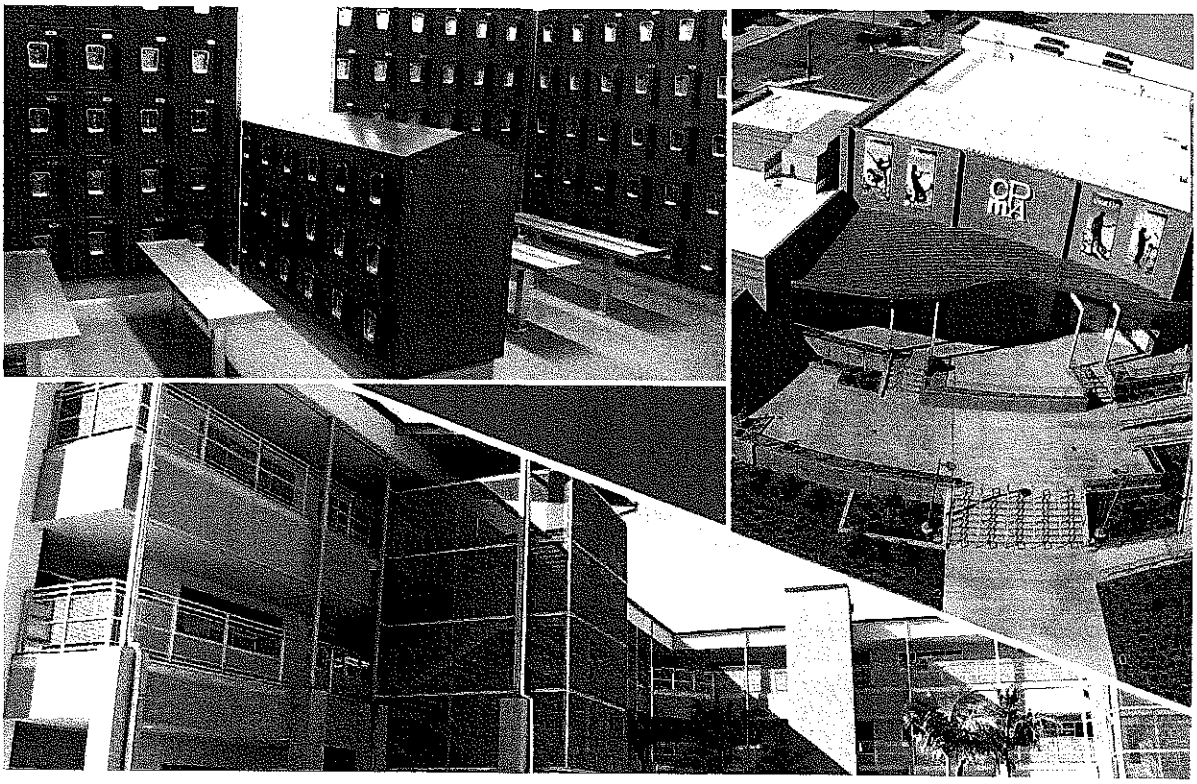
Gafcon was retained by the Carlsbad Unified School District in September 2007 as program/project manager for their Prop P Program. The Carlsbad Unified School District, which consists of 14 elementary, middle and high schools, passed a $198M bond in November of 2006.

The program consists of planning and construction of the new Sage Creek High School on a 57-acre environmentally sensitive site, major renovation of the 50-year old Carlsbad High School

which includes a state-of-the-art stadium, and renovation and technology upgrades to 10 elementary and middle schools.

As program and project managers, Gafcon's team insured that the modernization of Carlsbad High School was completed with little disruption to students and faculty. Many buildings were demolished and the campus was almost entirely rearranged, adding 11 new classroom buildings, a stadium, a wrestling building and renovation of all sports fields.

Building a new high school on an environmentally sensitive site can be a challenge. Gafcon's team successfully negotiated and incorporated mitigation measures from three Environmental Impact Reports (EIR) lawsuits into the project during design. Those efforts led to Division of State Architect (DSA) approval and completion of the EIR, saving 12 months on schedule. This campus received Verified Status as a Collaborative for High Performance School (CHPS), the American Public Works Association Project of the Year, American Society of Civil Engineers Award of Excellence and the Engineering News Record California Best Project Award of Excellence.

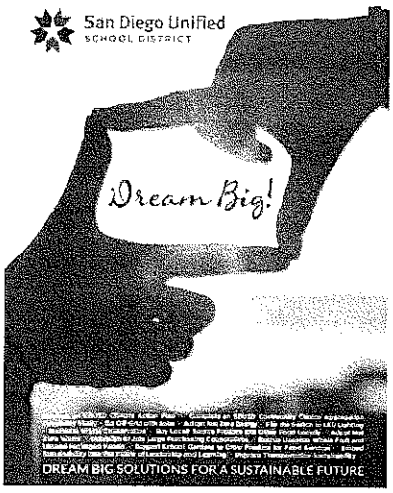


San Diego Unified School District ($4.9B)

Gafcon was selected in 2013 to provide project and construction management staff augmentation services under Proposition S and Z Bond Programs for San Diego County's largest school district.

As part of our services, Gafcon collaborated with District consultants to develop a Sustainability Implementation Study Report, which reviewed the District's 13 "Dream Big Ideas" and the

implementation costs resulting in the District's approval to proceed. The team also assisted with writing several chapters of the Council for Greater City Schools report, "Reversing the Cycle of Deterioration in the Nation's Public School Buildings".



Gafcon developed the plan to accelerate the installation of air-conditioning in approximately 2000 of the District's hottest classrooms. It involved expedited architectural/engineering assessments, planning and design development, and installation on off hours.

Additional services include communications and outreach, project controls, estimating, engineering, security assessments, master planning, construction management, oversight of the District's i21 Interactive Classroom Initiative, and development of the District's web-based contractor prequalification application software.

6. COMPENSATION

Compensation for the above scope of work is at a not to exceed amount of $196,782 (refer to Exhibit A) and shall be paid on a time & materials basis. If additional fees are required, Gafcon will notify client in writing.

This Scope of Services proposal is not a contract. Upon acceptance of this proposal, Gafcon will provide Client or Client will provide Gafcon with a contract fully describing the terms and conditions applicable to the Scope of Work for this project.

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7 EXHIBIT A – ESTIMATED FEE SCHEDULE

O'Farrell Charter School

Estimated Fee Schedule (Percentages)

April 7, 2016 Version 1.0

gafcon

KEY TASKS:

- PHASE I - THROUGH CUP
  - Site Acquisition, Entitlements, Conceptual & Schematic Design
- PHASE II - FROM END OF CUP TO CONSTRUCTION CLOSE OUT
  - Design Development & Construction Documents
  - DSA Review
  - Bid & Award Phase
  - Construction
  - Close Out
- GAFCON SUMMARY

Task Associate	Firm	Position	2016 Rate		Total	1 Apr-16	2 May-16	3 Jun-16	4 Jul-16	5 Aug-16	6 Sep-16	7 Oct-16	8 Nov-16	9 Dec-16	10 Jan-17	11 Feb-17	12 Mar-17	13 Apr-17	14 May-17	15 Jun-17	16 Jul-17	17 Aug-17	18 Sep-17	19 Oct-17	20 Nov-17	21 Dec-17
		Billable Monthly Hours				160	176	176	160	184	168	176	160	160	176	160	176	168	176	168	168	184	152	184	160	160
		Input Here																								
PHASE I - THROUGH CUP																										
Clayton Kraft/Derek Confiano	Gafcon	Project Manager	$	150	$ 30,420	15%	15%	15%	15%	13%	13%	15%	13%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Hennie Degenaar	Gafcon	Chief Estimator	$	150	$ 2,112	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Casey Sandrapoo	Gafcon	Project Coordinator (No Charge)	$	75	$ -	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
	DOLLARS:	PHASE I - THROUGH CUP	$		32,532	$ 3,800	$ 3,960	$ 3,960	$ 3,600	$ 4,140	$ 3,600	$ 3,960	$ 3,600	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
		CUMMULATIVE DOLLARS				$ 3,800	$ 7,760	$ 11,720	$ 15,320	$ 19,460	$ 23,060	$ 27,020	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620	$ 30,620
		CUMMULATIVE DOLLARS (% of Total)				11%	23%	35%	46%	58%	68%	80%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%
PHASE II – FROM END OF CUP TO CONSTRUCTION CLOSE OUT																										
Clayton Kraft/Derek Confiano	Gafcon	Project Manager	$	150	$ 154,602	0%	0%	0%	0%	0%	0%	0%	0%	25%	23%	25%	25%	10%	10%	10%	10%	10%	10%	20%	20%	20%
Hennie Degenaar	Gafcon	Chief Estimator	$	150	$ 12,648	0%	0%	0%	0%	0%	0%	0%	0%	6%	8%	6%	6%	0%	3%	0%	3%	0%	0%	0%	5%	3%
Casey Sandrapoo	Gafcon	Project Coordinator (No Charge)	$	75	$ -	0%	0%	0%	0%	0%	0%	0%	0%	10%	10%	10%	10%	5%	5%	5%	5%	5%	5%	5%	5%	5%
	DOLLARS:	PHASE II - FROM END OF CUP TO CONSTRUCTION CLOSE OUT	$		164,250	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,440	$ 8,184	$ 7,440	$ 8,184	$ 2,520	$ 2,508	$ 2,394	$ 2,394	$ 2,622	$ 2,166	$ 5,382	$ 5,880	$ 5,400
		CUMMULATIVE DOLLARS												$ 7,440	$ 15,624	$ 23,064	$ 31,248	$ 33,768	$ 36,276	$ 38,670	$ 41,064	$ 43,686	$ 45,852	$ 51,234	$ 57,114	$ 62,514
		CUMMULATIVE DOLLARS (% of Total)												5%	10%	14%	19%	21%	22%	24%	25%	27%	28%	31%	35%	38%
GAFCON SUMMARY																										
Clayton Kraft/Derek Confiano	Gafcon	Project Manager	$	150	$ 182,022	15%	15%	15%	13%	15%	13%	15%	13%	25%	23%	25%	25%	10%	10%	10%	10%	10%	10%	20%	20%	20%
Hennie Degenaar	Gafcon	Chief Estimator	$	150	$ 14,760	0%	0%	0%	0%	0%	0%	0%	0%	6%	8%	6%	6%	0%	0%	0%	0%	0%	0%	0%	5%	3%
Casey Sandrapoo	Gafcon	Project Coordinator (No Charge)	$	75	$ -	5%	5%	5%	5%	5%	5%	5%	5%	10%	10%	10%	10%	5%	5%	5%	5%	5%	5%	5%	5%	5%
	DOLLARS:	GAFCON SUMMARY	$		196,782	$ 3,800	$ 3,960	$ 3,960	$ 3,600	$ 4,140	$ 3,600	$ 3,960	$ 3,600	$ 7,440	$ 8,184	$ 7,440	$ 8,184	$ 2,520	$ 2,508	$ 2,394	$ 2,394	$ 2,622	$ 2,166	$ 5,382	$ 5,880	$ 5,400
		CUMMULATIVE DOLLARS				$ 3,800	$ 7,760	$ 11,720	$ 15,320	$ 19,460	$ 23,060	$ 27,020	$ 30,620	$ 38,060	$ 46,244	$ 53,684	$ 61,868	$ 64,388	$ 66,896	$ 69,290	$ 71,684	$ 74,306	$ 76,472	$ 81,854	$ 87,734	$ 93,134
		CUMMULATIVE DOLLARS (% of Total)				2%	4%	6%	8%	10%	12%	14%	16%	19%	23%	27%	31%	33%	34%	35%	36%	38%	39%	42%	45%	47%
		Cross Check >>				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Proprietary and Confidential

O'Farrell Charter School

Estimated Fee Schedule (Percentages)

April 7, 2016 Version 1.0

gafcon

KEY TASKS:

- PHASE I - THROUGH CUP
  - Site Acquisition, Entitlements, Conceptual & Schematic Design
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- GAFCON SUMMARY

Task Associate	Firm	Position	2016 Rate	Total	22 Jan-18	23 Feb-18	24 Mar-18	25 Apr-18	26 May-18	27 Jun-18	28 Jul-18	29 Aug-18	30 Sep-18	31 Oct-18	32 Nov-18	33 Dec-18	34 Jan-19	35 Feb-19	36 Mar-19	37 Apr-19	38 May-19	39 Jun-19	40 Jul-19	41 Aug-19	
			8 Basic Monthly Hours		176	160	168	176	176	160	176	176	160	184	152	168	176	160	176	176	160	176	176	168	x
			Blank Rates																						
PHASE I - THROUGH CUP																									
Clayton Kraft/Derek Contzano	Gafcon	Project Manager	$ 150	$ 30,420	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	x
Henrik Degenaar	Gafcon	Chief Estimator	$ 150	$ 2,112	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	x
Casey Sanfilippo	Gafcon	Project Coordinator (No Charge)	$ 75	$ -	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	x
	DOLLARS:		PHASE I - THROUGH CUP	$ 32,532	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	x
			CUMMULATIVE DOLLARS																						x
			CUMMULATIVE DOLLARS (% of Total)																						x
PHASE II - FROM END OF CUP TO CONSTRUCTION CLOSE OUT																									
Clayton Kraft/Derek Contzano	Gafcon	Project Manager	$ 150	$ 151,002	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	10%	x
Henrik Degenaar	Gafcon	Chief Estimator	$ 150	$ 12,648	0%	0%	0%	3%	0%	0%	0%	3%	0%	0%	0%	3%	0%	0%	0%	3%	0%	0%	3%	3%	x
Casey Sanfilippo	Gafcon	Project Coordinator (No Charge)	$ 75	$ -	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	x
	DOLLARS:		PHASE II - FROM END OF CUP TO CONSTRUCTION CLOSE OUT	$ 164,250	$ 5,342	$ 4,680	$ 4,914	$ 5,940	$ 5,148	$ 4,680	$ 5,148	$ 5,940	$ 4,680	$ 5,382	$ 4,446	$ 5,670	$ 5,148	$ 4,680	$ 5,148	$ 5,940	$ 4,680	$ 5,148	$ 5,940	$ 3,276	x
			CUMMULATIVE DOLLARS		$ 67,563	$ 72,242	$ 77,156	$ 83,196	$ 88,344	$ 93,024	$ 98,172	$ 104,112	$ 108,792	$ 114,174	$ 118,620	$ 124,290	$ 129,438	$ 134,118	$ 139,266	$ 145,206	$ 149,886	$ 155,034	$ 160,974	$ 164,250	x
			CUMMULATIVE DOLLARS (% of Total)		41%	44%	47%	51%	54%	57%	60%	63%	66%	70%	72%	76%	79%	82%	85%	88%	91%	94%	98%	100%	x
GAFCON SUMMARY																									
Clayton Kraft/Derek Contzano	Gafcon	Project Manager	$ 150	$ 182,022	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	10%	x
Henrik Degenaar	Gafcon	Chief Estimator	$ 150	$ 14,760	0%	0%	0%	3%	0%	0%	0%	3%	0%	0%	0%	3%	0%	0%	0%	3%	0%	0%	3%	3%	x
Casey Sanfilippo	Gafcon	Project Coordinator (No Charge)	$ 75	$ -	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	8%	x
	DOLLARS:		GAFCON SUMMARY	$ 196,782	$ 5,148	$ 4,680	$ 4,914	$ 5,940	$ 5,148	$ 4,680	$ 5,148	$ 5,940	$ 4,680	$ 5,382	$ 4,446	$ 5,670	$ 5,148	$ 4,680	$ 5,148	$ 5,940	$ 4,680	$ 5,148	$ 5,940	$ 3,276	x
			CUMMULATIVE DOLLARS		$ 67,384	$ 72,064	$ 76,978	$ 82,918	$ 88,066	$ 92,746	$ 97,894	$ 103,834	$ 108,514	$ 113,896	$ 118,342	$ 124,012	$ 129,160	$ 133,840	$ 138,988	$ 144,928	$ 149,608	$ 154,756	$ 160,696	$ 163,972	x
			CUMMULATIVE DOLLARS (% of Total)		51%	53%	56%	59%	61%	64%	66%	69%	72%	75%	77%	80%	82%	85%	87%	90%	93%	95%	98%	100%	x
			Cross Check no		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

Proprietary and Confidential

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Agenda Item 6

RECOMMENDATION: Approve the preliminary budget for The O'Farrell Charter School for the 2016-2017 school year.

BACKGROUND INFORMATION:

Revenue Projections: 16,212,344

Expense Projection: 15,949,326

Surplus/(deficit) Projection: -- 224,375

Certificated Positions: ---93 FTE (85 teachers, 1 Superintendent, 3 Principals, 1 Program Coordinators, 1 Pupil Support/Psych., 2 HS Counselors)

Administrator: 1.2 FTE

Classified Positions: 19 FTE

Student Enrollment: 1650

Student ADA: 1572

CURRENT INFORMATION:

This proposed budget includes an "internal special education encroachment" of $500 K for uncertainties.

Additionally, there is a 3% built in reserve for general uncertainties of $399K

Projected beginning fund balance as of July 2016 = $ 9.25 mil

188 Teacher Days
182 Student Days

Other Program Needs
LCAP implementation

THE O'FARRELL CHARTER SCHOOL

Budget Summary

Five Year Budget, 2016-17 to 2020-21

CSMC

SACS Code	Description	2016-17	2017-18	2018-19	2019-20	2020-21
Revenue						
	State	14,561,719	14,703,655	14,944,463	14,984,166	15,211,636
	Federal	900,625	785,146	798,029	812,355	827,626
	Local	750,000	750,000	750,000	750,000	750,000
Total Revenue		**$ 16,212,344**	**$ 16,238,801**	**$ 16,492,493**	**$ 16,546,521**	**$ 16,789,263**
Expenses						
1000	Certificated Salaries	6,067,348	6,175,013	6,287,607	6,375,001	6,142,662
2000	Classified Salaries	1,356,242	1,371,392	1,390,112	1,401,732	1,416,742
3000	Benefits	2,601,468	2,776,310	2,821,084	2,962,706	3,002,093
4000	Books and Supplies	1,361,378	1,396,774	1,434,487	1,473,218	1,511,522
5000	Services and Other Operating Expenses	2,876,533	2,631,848	2,590,783	2,451,309	2,711,167
6000	Capital Outlay	1,225,000	1,225,000	1,225,000	1,225,000	1,225,000
7000	Other Outgoing	500,000	513,000	526,851	541,076	555,144
Total Expenses		**$ 15,987,969**	**$ 16,089,336**	**$ 16,275,923**	**$ 16,430,042**	**$ 16,564,330**
Surplus / (Deficit)		**$ 224,375**	**$ 149,464**	**$ 216,570**	**$ 116,480**	**$ 224,933**
As a % of LCFF revenue		2%	1%	1%	1%	2%
Beginning Balance		9,250,000	9,474,375	9,623,839	9,840,409	9,956,889
Cash + Net AR/AP						
Loan / Charter School Revolving Loan Repayment (Princip		-				
Ending Balance		**$ 9,474,375**	**$ 9,623,839**	**$ 9,840,409**	**$ 9,956,889**	**$ 10,181,821**
As a % of LCFF revenue		69%	67%	67%	68%	68%

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Agenda Item 7

RECOMMENDATION: Approve the preliminary budget for Ingenuity Charter School for the 2016-2017 school year.

BACKGROUND INFORMATION:

Revenue Projections: 1,138,685

Expense Projection: 1,138,685

Surplus/(deficit) Projection: ---

Certificated Positions: -- 5.5 FTE

Administrator: 1.2 FTE

Classified Positions: 1.0 FTE

Student Enrollment: 125

Student ADA: 107

CURRENT INFORMATION:

Additionally, there is a 3% built in reserve for general uncertainties of $28,785.

Projected ending fund balance as of July 2016 = $50,000

228 Teacher Days
177 Student Days

Other Program Needs
LCAP implementation
Second Resource Center on El Cajon Blvd.

Ingenuity Charter School
Budget Summary
Five Year Budget, 2016-17 to 2020-21

CSMC

SACS Code	Description	2016-17	2017-18	2018-19	2019-20	2020-21
Revenue						
	State	1,043,860	2,555,195	4,524,878	4,530,274	4,645,565
	Federal	55,538	130,872	236,432	240,903	245,670
	Local	54,288	125,947	223,665	223,665	223,665
Total Revenue		**$ 1,153,685**	**$ 2,812,014**	**$ 4,984,974**	**$ 4,994,841**	**$ 5,114,899**
Expenses						
1000	Certificated Salaries	474,446	849,263	1,476,015	1,851,070	1,972,002
2000	Classified Salaries	44,200	90,168	183,943	234,527	239,218
3000	Benefits	178,386	184,919	365,929	495,921	520,333
4000	Books and Supplies	171,968	409,339	746,556	766,713	786,648
5000	Services and Other Operating Expenses	259,786	1,122,695	1,994,488	1,422,689	1,250,579
6000	Capital Outlay					
7000	Other Outgoing		72,500	132,226	135,796	139,327
Total Expenses		**$ 1,128,785**	**$ 2,728,885**	**$ 4,899,158**	**$ 4,906,718**	**$ 4,908,107**
Surplus / (Deficit)		**$ 24,900**	**$ 83,130**	**$ 85,817**	**$ 88,124**	**$ 206,792**
As a % of LCFF revenue		3%	3%	2%	2%	5%
Beginning Balance		50,000	24,900	108,029	193,846	281,970
Cash + Net AR/AP						
Loan / Charter School Revolving Loan Repayment (Principal)		50,000				
Ending Balance		**$ 24,900**	**$ 108,029**	**$ 193,846**	**$ 281,970**	**$ 488,762**
As a % of LCFF revenue		3%	5%	5%	7%	11%

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 8

RECOMMENDATION: Authorization to contract for the removal and new poured-in-place rubber surfacing in the amount not to exceed $49,700 for the elementary play structure surface.

BACKGROUND INFORMATION:

On June 13, 2011, the Board of Directors approved the elementary K-5 expansion. With this expansion, came the need of a playground.

On December 6, 2011, the Board of Directors approved the purchase of commercial play equipment for the new elementary expansion for $43,485.

CURRENT INFORMATION:

The existing play structure in the elementary academy playground currently has a wood chip surface. Every time it rains it gets flooded and the surface has to dry out which take a couple of weeks and a lot of work for our custodians. "Two students have fallen of the playground equipment this year requiring stitches. We believe the resurfacing of the area would reduce the risk to student injury."

Dr. Dean is currently requesting prices from local contractors.

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 9

RECOMMENDATION: Approve the 2016 Summer School Program in the amount not to exceed $55,000.

BACKGROUND INFORMATION: On May 11, 2015, the Board of Directors approved the 2015 Summer School Program in the amount not to exceed $55,000

Every year O'Farrell provides summer school for at-risk students to ensure they are prepared to promote and be successful in the next grade level.

CURRENT INFORMATION:

O'Farrell currently has a policy addressing students who are defined as "at risk" and/or "failing" students. To address both of these issues, the administration is recommending that O'Farrell continue its summer school program. Summer school classes, with support in all content areas, will be offered for grades two through eight. High school remediation and enrichment courses will be offered through Ingenuity Charter School. The high school program will produce no costs for O'Farrell.

The proposed program for elementary and middle school will last four weeks and involve seven to nine teachers, one clerical staff member and one lead teacher. A teacher leader, with an administrative credential or credential in progress will be hired to manage the day-to-day program for summer school. An O'Farrell principal or superintendent will also be on campus on all days.

ADDITIONAL DATA: Summer School will run from June 21, 2016 through July 15, 2016.

COST IMPLICATIONS: The cost will range from $35,000 to $55,000. The actual cost will depend on the final student count of "at risk/retained" students.

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Action Item 10

RECOMMENDATION: Ratify the contract for A+ Educational Tours in the amount of $23,320 for the chartered high school trip from June 28, 2016 to July 1, 2016.

CURRENT INFORMATION:

The high school Summer College Tour is a chartered trip up the coast of California to visit California Universities. Students will visit CSU Channel Islands, UC Santa Barbara, Cal Poly SLO, San Jose State, UC Berkley, University of San Francisco, and Menlo College during the four-day, three night trip. The trip is all-inclusive and the students are not paying anything. The trip is funded completely by the ASSETS after school grant. Three high school staff members will chaperone.

Number of students: 44
Dates: June 28, 2016 - July 1, 2016
Cost: $23,320 (ASSETS grant)

BOARD OF DIRECTORS AGENDA ITEM
Agenda Date: May 9, 2016
Agenda Item 11

RECOMMENDATION: Ratify the El Dorado SELPA Maintenance of Effort (MOE) and the Special Education Budget for The O'Farrell Charter School and the Ingenuity Charter School for 2015-2016.

BACKGROUND INFORMATION:

What is the Maintenance of Effort?

"The MOE is a requirement of Part B IDEA (Individuals with Disabilities Education Act). Funds shall not be used, except in specified situations, to reduce the level of expenditures for the education of children with disabilities made by the LEA from state and local funds or from local funds only, below the subsequent year's level. This test must be met on either an aggregate or a per capita basis. Section 1413 of Title 20 of the United State Code; Title 34, Section 300.203 of the Code of the Federal Regulations; and Education Code Section 56205"

CURRENT INFORMATION:

Application of Exemptions

As part of the year-end documentation, EDCOE will include a document that calculates the subsequent year expenditures and local contribution to the current year expenditures and local contribution. The calculation for budget data is also compared to subsequent year. Should the test indicate not passing, exemptions should be added to the test document and the exemption detail worksheet be completed.

2015-16 Actuals

Pupil Count (Dec 2015): 7

Ingenuity Charter 37 68338 0131979	STATE AID RS 6500	MH LEVEL 2 RS 6512	MH LEVEL 3 RS 6512	MH LEVEL 3 RS 3327	FEDERAL RS 3310	CHARTER TOTALS
SPECIAL EDUCATION REVENUE						
State Reserve (if applicable)	-					-
Prior Year Carry Over	-	-				-
State	28,403.00	-	-			28,403.00
State Re-Allocation						-
Federal Re-Allocation						-
Mental Health Re-Allocation						-
State Reserve (Needed)	-					-
Federal				-	-	-
Admin Fee	1,195.00					1,195.00
TOTAL AVAILABLE	**29,598.00**	-	-	-	-	**29,598.00**
SPECIAL EDUCATION EXPENDITURES						
Certificated Salaries	23,445.60					23,445.60
Classified Salaries	309.00					309.00
Employee Benefits	5,343.00					5,343.00
Books and Supplies						-
Services and other operating expend						-
Admin Fee	1,195.00				-	1,195.00
Capital Outlay						-
Total Direct Costs	**30,292.60**	-	-	-	-	**30,292.60**
Direct Support:		N/A	N/A	N/A	N/A	-
Indirect Cost Rate (15-16 Charter approved rate)	5.11%	5.11%	5.11%	5.11%	5.11%	
Allowable Indirect Costs (calculated, not included in total)	1,548.00	-	-	-	-	
Indirect Costs						-
TOTAL COSTS	**30,292.60**	-	-	-	-	**30,292.60**
Total Local Contribution	694.60	-	-	-	-	694.60
Total Carry over	-	-	-	-	-	-
						694.60

MOE Tests

To meet the MOE requirement, only one test must be met: **Met**

State/Local Tests		Local Only Tests		Checks:	
STATE/LOCAL TEST (Including Exemptions)		Local Only Test (Including Exemptions)		State Income Re-Allocation	
Subsequent Year of Comparison	No Base	Subsequent Year of Comparison	No Base		In Balance
Subsequent Year Comparison	-	Subsequent Year Comparison	-	Federal Re-Allocation	
Allowable Exemptions (from below)	-	Allowable Exemptions (from below)	-		In Balance
Adjusted Subsequent Year Comparison	-	Adjusted Subsequent Year Comparison	-	Federal Funds Spent	
					OK
Current Year State/Local	30,293	Current Year Local Only	695	MH Re-allocation	
					In Balance
Variance Subsequent Year to Current Year	30,293	Variance Subsequent Year to Current Year	695	Mental Health Funds Spent	
If positive met/If negative, not met	Met	If positive met/If negative, not met	Met		OK
State/Local Per Pupil Test (Including Exemptions)		Local Only Per Pupil Test (Including Exemptions)		Unspent Funds Percentage	
Subsequent Year of Comparison	No Base	Subsequent Year of Comparison	No Base		0%
Subsequent Year Comparison	-	Subsequent Year Comparison	-	Unspent Funds > 25%	
Pupil Count	-	Pupil Count	-		No
Adjusted Subsequent Year Comparison	-	Adjusted Subsequent Year Comparison	-	Allowable Indirect Costs	
				$	1,487.00
Current Year State/Local per pupil	4,328	Current Year Local Only per pupil	99		OK
Variance PY to CY state and local	4,328	Variance PY to CY state and local	99		
If positive met/If negative, not met	Met	If positive met/If negative, not met	Met		

Federal Award Exemptions

RTI Used (Yes or No)	No	
**If RTI used, Federal Award Exemption Not Allowed	Allowable	
Prior Year Federal Award		-
Current Year Federal Award		-
Increase in Funding		-
50% Allowance		-
Amount used to meet State/Local MOE	-	
If positive met/If negative, not met	Not Used	
Amount used to meet Local Only MOE		-
If positive met/If negative, not met		Not Used

One Time Exemptions

If exemptions below are used to pass MOE, please complete exemption worksheet, in addition to completing the data below.

	State/Local	Local Only
1. Vol.departure of staff replaced w/ lower-salaried staff		-
2. Termination of a costly program/student		-
3. One time prior year expenditures		-
4. Decrease in enrollment of children w/ disabilities		
2014-15 Dec 1 Pupil Count	-	-
2015-16 Dec 1 Pupil Count	7	7
Decrease in Pupil Count	-	-
Prior Year Per Pupil	-	-
Eligible Exemption	-	-

2015-16 Actuals

Pupil Count (Dec 2015): 134

The O'Farrell Charter 37-68338-6061964	STATE AID RS 6500	MH LEVEL 2 RS 6512	MH LEVEL 3 RS 6512	MH LEVEL 3 RS 3327	FEDERAL RS 3310	CHARTER TOTALS
SPECIAL EDUCATION REVENUE						
State Reserve (if applicable)	-					-
Prior Year Carry Over	-	-				-
State	*749,848.00*	-	-			*749,848.00*
State Re-Allocation						-
Federal Re-Allocation						-
Mental Health Re-Allocation						-
State Reserve (Needed)	-					-
Federal				-	*182,433.00*	*182,433.00*
Admin Fee	*38,868.00*					*38,868.00*
TOTAL AVAILABLE	788,716.00	-	-	-	182,433.00	971,149.00
SPECIAL EDUCATION EXPENDITURES						
Certificated Salaries	*292,612.10*				*97,309.00*	389,921.10
Classified Salaries	*267,731.10*					267,731.10
Employee Benefits	*156,730.00*					156,730.00
Books and Supplies	*23,837.00*					23,837.00
Services and other operating expend	*15,000.00*				*85,124.00*	100,124.00
Admin Fee	*38,868.00*				-	38,868.00
Capital Outlay						-
Total Direct Costs	794,778.20	-	-	-	182,433.00	977,211.20
Direct Support:		N/A	N/A	N/A	N/A	-
Indirect Cost Rate (15-16 Charter approved rate)	*5.11%*	5.11%	5.11%	5.11%	*5.11%*	
Allowable Indirect Costs (calculated, not included in total)	*40,613.00*	-	-	-	*9,322.00*	
Indirect Costs						-
TOTAL COSTS	794,778.20	-	-	-	182,433.00	977,211.20
Total Local Contribution	6,062.20	-	-	-	-	6,062.20
Total Carry over	-	-	-	-	-	-
						6,062.20

MOE Tests

To meet the MOE requirement, only one test must be met.

Met

State/Local Tests		Local Only Tests	
STATE/LOCAL TEST (Including Exemptions)		Local Only Test (Including Exemptions)	
Subsequent Year of Comparison	14-15	Subsequent Year of Comparison	10-11
Subsequent Year Comparison	774,141	Subsequent Year Comparison	74,748
Allowable Exemptions (from below)	-	Allowable Exemptions (from below)	-
Adjusted Subsequent Year Comparison	774,141	Adjusted Subsequent Year Comparison	74,748
Current Year State/Local	794,778	Current Year Local Only	6,062
Variance Subsequent Year to Current Year	20,637	Variance Subsequent Year to Current Year	(68,685)
If positive met/If negative, not met	Met	If positive met/If negative, not met	Not Met
State/Local Per Pupil Test (Including Exemptions)		Local Only Per Pupil Test (Including Exemptions)	
Subsequent Year of Comparison	14-15	Subsequent Year of Comparison	14-15
Subsequent Year Comparison	6,193	Subsequent Year Comparison	380
Pupil Count	125	Pupil Count	125
Adjusted Subsequent Year Comparison	6,193	Adjusted Subsequent Year Comparison	380
Current Year State/Local per pupil	5,931	Current Year Local Only per pupil	45
Variance PY to CY state and local	(262)	Variance PY to CY state and local	(335)
If positive met/If negative, not met	Not Met	If positive met/If negative, not met	Not Met

Federal Award Exemptions

RTI Used (Yes or No)	No
**If RTI used, Federal Award Exemption Not Allowed	Allowable
Prior Year Federal Award	161,211
Current Year Federal Award	182,433
Increase in Funding	21,222
50% Allowance	10,611

Amount used to meet State/Local MOE	-	Amount used to meet Local Only MOE	-
If positive met/If negative, not met	Not Used	If positive met/If negative, not met	Not Used

One Time Exemptions

If exemptions below are used to pass MOE, please complete exemption worksheet, in addition to completing the data below.

	State/Local	Local Only
1. Vol.departure of staff replaced w/ lower-salaried staff		-
2. Termination of a costly program/student		-
3. One time prior year expenditures		-
4. Decrease in enrollment of children w/ disabilities		
2014-15 Dec 1 Pupil Count	125	125
2015-16 Dec 1 Pupil Count	134	134
Decrease in Pupil Count	-	-
Prior Year Per Pupil	6,193	380
Eligible Exemption	-	-

Checks:

State Income Re-Allocation	In Balance
Federal Re-Allocation	In Balance
Federal Funds Spent	OK
MH Re-allocation	In Balance
Mental Health Funds Spent	OK
Unspent Funds Percentage	0%
Unspent Funds > 25%	No
Allowable Indirect Costs	$ 37,861.00
	OK