

FIRST AMENDMENT TO LOAN AGREEMENT AND LOAN DOCUMENTS

THIS FIRST AMENDMENT TO LOAN AGREEMENT AND LOAN DOCUMENTS (this "**Amendment**") is dated to be effective as of March 26, 2012 (the "**Effective Date**"), and is entered into by and among LEGACY PUBLIC CHARTER SCHOOL, INC., an Idaho nonprofit corporation ("**Borrower**"), and VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association ("**Bank**").

RECITALS

A. Borrower and Bank entered into that certain Loan Agreement, dated effective as of February 15, 2012 (as amended, restated or supplemented from time to time, the "**Loan Agreement**"), pursuant to which Bank made a loan (the "**Loan**") to Borrower in the original principal amount of \$2,585,412. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

B. The Loan is evidenced by a Promissory Note, dated effective as of February 15, 2012, made by Borrower and payable to the order of the Bank in the original principal amount of the Loan (the "**Original Note**"), and is secured by, among other things, that certain Deed of Trust With Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated effective as of February 15, 2012 (as amended, restated or supplemented from time to time, the "**Deed of Trust**"), encumbering property located at 4015 South Legacy Way in Nampa, Idaho and more particularly described therein (the "**Property**").

C. Borrower has requested that Bank increase the amount of the Loan and Bank has agreed subject to the terms and conditions set forth herein.

D. In connection therewith, Borrower is executing (i) that certain Amended and Restated Note, dated effective as of the date hereof (the "**Amended and Restated Note**"), payable to the order of Bank in the principal face amount of \$2,670,412, which amends and restates the Original Note in its entirety and (ii) that certain Amendment to Deed of Trust, dated effective as of the date hereof (the "**Deed of Trust Amendment**"), which amends certain terms of the Deed of Trust.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Bank hereby agree as follows:

1. Increase in Loan Amount. Bank hereby agrees to increase the Loan by \$85,000 so that the maximum amount of the Loan is \$2,670,412. Accordingly, (a) all references in the Loan Documents to the maximum amount of the Loan are hereby amended to be \$2,670,412 and (b) the definition of "Loan" set forth in Section 1.42 of the Loan Agreement is hereby deleted and replaced in its entirety as follows:

1.42 "**Loan**" shall mean the construction and mini-perm loan in the maximum amount of \$2,670,412.00 to be made by Bank to Borrower pursuant to this Agreement, which loan shall be used, subject to the provisions of this Agreement,

to fund the costs described in the Construction Budget.

2. Amended and Restated Note. All references in the Loan Documents to the Note are hereby amended to mean the Amended and Restated Note.

3. Construction Budget. Exhibit B [Construction Budget] to the Loan Agreement is hereby deleted and replaced with Exhibit B attached hereto.

4. Loan Documents. Any and all references to the Loan Documents contained in the Loan Agreement or any other Loan Document shall be deemed to include, without limitation, this Amendment, the Amended and Restated Note and the Deed of Trust Amendment (collectively, the "**Modification Documents**").

5. No Other Modifications. Except as expressly amended and modified by the terms of the Modification Documents, the terms and conditions of the Loan Documents shall remain unchanged and in full force and effect and are hereby ratified and confirmed by Borrower.

6. Ratification. The parties hereby ratify and confirm the continued force and effect of the Loan Documents, as modified by the Modification Documents, without change except as specifically amended by the Modification Documents. It is expressly understood and agreed that the Modification Documents shall in no manner alter or affect (except as expressly provided herein or therein), extinguish or impair the indebtedness evidenced by the Note, and shall not extinguish or impair any rights and remedies of the Bank thereunder and under the other Loan Documents.

7. No Release. Borrower specifically acknowledges and agrees that nothing contained in the Modification Documents shall be understood or construed to be a satisfaction or release in whole or in part of any indebtedness evidenced by the Loan Documents, or to be an amendment or waiver of any of the provisions of the Loan Documents, except as specifically set forth in the Modification Documents or as reasonably necessary to effectuate the amendments contained herein or therein. Borrower hereby affirms its agreements to be bound by all of the obligations, covenants, liabilities and warranties set forth in the Loan Documents in accordance with their respective terms, as amended by the Modification Documents, and acknowledges that no defenses exist to the enforcement of the Loan Documents and no basis exists for asserting any offset or other claim against the Bank.

8. Bank's Fees and Costs. Concurrently herewith, Borrower agrees to pay to Bank all out-of-pocket expenses incurred by Bank in connection with the Modification Documents and the transactions contemplated herein and therein, including, without limitation, the reasonable fees and expenses of Bank's counsel, appraisal fees, title charges and expenses and recording and filing fees.

9. Representations and Warranties of Borrower. To induce Bank to enter into this Amendment, Borrower represents and warrants to Bank that:

(a) Compliance with Loan Documents. As of the Effective Date, Borrower, is in compliance with all of the terms and provisions set forth in the Loan Agreement and

the other Loan Documents and no Default or Event of Default has occurred and is continuing.

(b) Representation and Warranties. The representations and warranties set forth in the Loan Agreement are true and correct with the same effect as though such representations and warranties had been made on the Effective Date, except to the extent that such representations and warranties expressly related to an earlier date.

(c) Amendment as Binding Agreement. The Loan Documents, as amended by the Modification Documents, constitute the valid and legally binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

(d) No Claims. Borrower has no claims, counterclaims, defenses, or set-offs against the Bank with respect to the Loan or the Loan Documents.

(e) Material Adverse Change. No Material Adverse Occurrence has occurred and is continuing.

(f) Authorization. Borrower is a legal entity, validly existing under the laws of the state of its formation and has the requisite power and authority to execute and deliver the Modification Documents and to perform the Loan Documents to which it is signatory. The execution and delivery of the Modification Documents and the performance of the Loan Documents as modified have been duly authorized by all requisite action by or on behalf of Borrower. The Modification Documents have been duly executed and delivered on behalf of Borrower. The execution and delivery of the Modification Documents and the performance of the Loan Documents, do not and will not conflict with, or be in contravention of, any of Borrower's governing documents, any law, order, rule or regulation applicable to Borrower or any agreement or instrument to which Borrower is a party or by which the Property is bound or affected, and will not result in the creation of any lien, charge or encumbrance of any nature upon the Property other than as contemplated under the Loan Documents.

10. Release. Borrower fully, finally, and forever releases and discharges the Bank and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity of Borrower, whether known or unknown to Borrower, (a) in respect of the Loan, the Loan Documents, or the actions or omissions of the Bank in respect of the Loan or the Loan Documents and (b) arising from events occurring prior to the Effective Date. This paragraph shall survive the repayment in full of the Loan.

11. Conditions Precedent. This amendments contemplated by the Modification Documents are subject to the satisfaction of the following conditions precedent:

(a) Borrower shall have executed and delivered the Modification Documents and such other documents, instruments, certifications and agreements as the Bank may reasonably require;

(b) the representation and warranties set forth in Section 9 above are true and correct as of the Effective Date;

(c) Bank shall have received payment of the fees, costs and expenses set forth in Section 8 above;

(d) Borrower shall have provided to Bank such consents, resolutions and certificates as Bank may reasonably require to evidence the authority of the Borrower to enter into the Modification Documents and perform its obligations thereunder and under the Loan Documents; and

(e) Bank shall have received such endorsements to Bank's Title Policy as Bank reasonably requires, including without limitation endorsements insuring the priority of the Deed of Trust, as amended by the Deed of Trust Amendment, and bringing the date of the Title Policy current.

12. Headings. The titles and headings of the sections of this Amendment have been inserted for convenience of reference only and are not intended to summarize or otherwise describe the subject matter of such paragraphs and shall not be given any consideration in the construction of this Amendment.

13. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. However, this Amendment shall not be binding on any party until it has been executed and delivered by Bank and Borrower.

14. Entire Agreement; Conflict. The Modification Documents and the other Loan Documents embody the final, entire agreement among the parties hereto with respect to the subject matter hereof. There are no oral agreements among the parties hereto. If there shall be any inconsistency between any provision in this Amendment and any provision in any of the Loan Documents, then, unless this Amendment expressly provides otherwise, the provisions of this Amendment shall govern the rights and obligations of the parties. This Amendment may be changed or modified only by a writing signed by the party against whom enforcement of such change or modification is sought.

15. Provisions Several/Illegality. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Amendment a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

16. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Idaho.

17. Waiver of Jury Trial. Borrower and Bank hereby waive any right to jury trial of any claim, cross-claim or counterclaim relating to or arising out of or in connection with this Amendment or the other Modification Documents.

18. No Waiver. Execution of this Amendment and the other Modification Documents is not intended to and shall not constitute a waiver by Bank of any Default or Event of Default.

19. **ARBITRATION DISCLOSURES.**

(a) Any claim or controversy (“*Dispute*”) between or among the parties and their employees, agents, affiliates, and assigns, including, but not limited to, Disputes arising out of or relating to this agreement, this arbitration provision (“*arbitration clause*”), or any related agreements or instruments relating hereto or delivered in connection herewith (“*Related Agreements*”), and including, but not limited to, a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the applicable arbitration rules of the American Arbitration Association (the “*Administrator*”). The provisions of this arbitration clause shall survive any termination, amendment, or expiration of this agreement or Related Agreements. The provisions of this arbitration clause shall supersede any prior arbitration agreement between or among the parties.

(b) The arbitration proceedings shall be conducted in a city mutually agreed by the parties. Absent such an agreement, arbitration will be conducted in Denver, Colorado or such other place as may be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)' award issued within 150 days of the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator(s), including the sanction of summarily dismissing any Dispute or defense with prejudice. The arbitrator(s) shall have the authority to resolve any Dispute regarding the terms of this agreement, this arbitration clause, or Related Agreements, including any claim or controversy regarding the arbitrability of any Dispute. All limitations periods applicable to any Dispute or defense, whether by statute or agreement, shall apply to any arbitration proceeding hereunder and the arbitrator(s) shall have the authority to decide whether any Dispute or defense is barred by a limitations period and, if so, to summarily enter an award dismissing any Dispute or defense on that basis. The doctrines of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder so that a party must state as a counterclaim in the arbitration proceeding any claim or controversy which arises out of the transaction or occurrence that is the subject matter of the Dispute. The arbitrator(s) may in the arbitrator(s)' discretion and at the request of any party: (1) consolidate in a single arbitration proceeding any other claim arising out of the same transaction involving another party to that transaction that is bound by an arbitration clause with Bank, such as borrowers, guarantors, sureties, and owners of collateral; and (2) consolidate or administer multiple arbitration claims or controversies as a class action in accordance with Rule 23 of the Federal Rules of Civil Procedure.

(c) The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees). The arbitrator(s), either during the pendency of the arbitration proceeding or as part of the arbitration award, also may grant provisional or ancillary remedies including but not limited to an award of injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver.

(d) Judgment upon an arbitration award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration award is binding upon the parties only if the amount does not exceed Four Million Dollars (\$4,000,000); if the award exceeds that limit, either party may demand the right to a court trial. Such a demand must be filed with the Administrator within thirty (30) days following the date of the arbitration award; if such a demand is not made within that time period, the amount of the arbitration award shall be binding. The computation of the total amount of an arbitration award shall include amounts awarded for attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees.

(e) No provision of this arbitration clause, nor the exercise of any rights hereunder, shall limit the right of any party to: (1) judicially or non-judicially foreclose against any real or personal property collateral or other security; (2) exercise self-help remedies, including but not limited to repossession and setoff rights; or (3) obtain from a court having jurisdiction thereover any provisional or ancillary remedies including but not limited to injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver. Such rights can be exercised at any time, before or after initiation of an arbitration proceeding, except to the extent such action is contrary to the arbitration award. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration, and any claim or controversy related to the exercise of such rights shall be a Dispute to be resolved under the provisions of this arbitration clause. Any party may initiate arbitration with the Administrator. If any party desires to arbitrate a Dispute asserted against such party in a complaint, counterclaim, cross-claim, or third-party complaint thereto, or in an answer or other reply to any such pleading, such party must make an appropriate motion to the trial court seeking to compel arbitration, which motion must be filed with the court within 45 days of service of the pleading, or amendment thereto, setting forth such Dispute. If arbitration is compelled after commencement of litigation of a Dispute, the party obtaining an order compelling arbitration shall commence arbitration and pay the Administrator's filing fees and costs within 45 days of entry of such order. Failure to do so shall constitute an agreement to proceed with litigation and waiver of the right to arbitrate. In any arbitration commenced by a consumer regarding a consumer Dispute, Bank shall pay one half of the Administrator's filing fee, up to \$250.

(f) Notwithstanding the applicability of any other law to this agreement, the arbitration clause, or Related Agreements between or among the parties, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., shall apply to the construction and interpretation of this arbitration clause. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

(g) Borrower acknowledges and agrees as follows:

(1) ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

(2) IN ARBITRATION THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT INCLUDING THEIR RIGHT TO A JURY TRIAL.

(3) DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.

(4) ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.

(5) A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE BANKING INDUSTRY.

(6) ARBITRATION WILL APPLY TO ALL DISPUTES BETWEEN THE PARTIES NOT JUST THOSE CONCERNING THE AGREEMENT.

(7) IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower and Bank have executed this Amendment as of the day and year first above written.

BORROWER:

LEGACY PUBLIC CHARTER SCHOOL, INC,
an Idaho nonprofit corporation company

By: Bart McKNIGHT
Name: Bart McKNIGHT
Title: CHAIRMAN

BANK:

**VECTRA BANK COLORADO, NATIONAL
ASSOCIATION**

By: _____
Name: Conrad Freeman
Title: Senior Vice President

IN WITNESS WHEREOF, Borrower and Bank have executed this Amendment as of the day and year first above written.

BORROWER:

LEGACY PUBLIC CHARTER SCHOOL, INC,
an Idaho nonprofit corporation company

By: _____

Name: _____

Title: _____

BANK:

**VECTRA BANK COLORADO, NATIONAL
ASSOCIATION**

By:  _____

Name: Conrad Freeman

Title: Senior Vice President

EXHIBIT B

CONSTRUCTION BUDGET

Construction Budget Summary		
	As Requested	
<u>Phase One Construction Costs</u>		
Land Purchase	100,000	3.2%
Equipment	100,000	3.2%
Land Entitlements	23,500	0.7%
Permits & Fees	22,500	0.7%
Phase One Construction Costs	<u>235,340</u>	7.5%
Total Phase One Costs	481,340	15.3%
<u>Phase Two-Permanent Building</u>		
Design Costs	105,329	3.4%
Permits	69,303	2.2%
Construction Costs	2,193,223	69.8%
Lenders Contingency (5% Construction Costs)	<u>118,393</u>	3.8%
Total Phase Two Costs	2,486,248	79.1%
Closing Costs	35,000	1.1%
Loan Origination Fee	26,500	0.8%
Legal Expenses	40,000	1.3%
Capitalized Interest	<u>72,573</u>	2.3%
Total Financing Expenses	174,073	
Total Land & Construction Costs	3,141,661	100.0%
Advance Rate	85%	
Proposed VBC Loan	2,670,412	85.0%
Phase One Costs Expended	481,340	
Equipment, Furniture, Food Service	<u>-</u>	
Total School Equity Contribution	481,340	15.3%
	3,151,752	
Appraised Value (Approved by ARD)	3,200,000	
Loan to Value	83%	
Loan to Cost	85%	
Loan Amount Change	85,000	
% Increase	3%	