

## LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into to be effective as of February 15, 2012, and is by and between VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association, whose address is 2000 South Colorado Blvd., Suite 2-1200, Denver, Colorado 80222 (the "**Bank**"); and LEGACY PUBLIC CHARTER SCHOOL, INC., an Idaho nonprofit corporation and a charter school duly organized and validly existing pursuant to the Act (as defined below), whose address is 2422 12 Avenue Rd #225, Nampa, Idaho 83686 (the "**Borrower**").

### RECITALS

This Agreement is made with respect to the following facts:

A. Borrower has applied to the Bank for construction and mini-term financing for the purpose of constructing an approximate 25,500 square foot charter school facility on real property located at 4015 South Legacy Way in Nampa, Idaho, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Property**"). The Property is owned by Borrower and used to operate a charter school pursuant to the Charter.

B. The Bank is willing to make such financing available to Borrower for the purposes and on the conditions set forth in this Loan Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions, representations and warranties, and agreements contained herein, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties hereto, Borrower and Bank hereby promise and agree as follows:

### ARTICLE 1 DEFINITIONS

In this Agreement, the following terms shall have the following meanings (such definitions to be equally applicable to the singular and the plural forms):

1.1 "**Act**" shall mean the Public Charter Schools Act of 1998, Idaho Code 33-5201 et seq., as amended from time to time.

1.2 "**Agreement**" shall mean this Loan Agreement, as it may be amended, modified, extended, renewed, restated, or supplemented from time to time.

1.3 "**Appraisal**" shall mean an appraisal of the Property prepared by an appraiser licensed by the State of Idaho, engaged by and acceptable to the Bank, which appraisal shall be in form and substance satisfactory to the Bank. In the event the Bank has obtained a new appraisal in accordance with Section 8.4, the term "Appraisal" shall refer to such new appraisal.

1.4 "**Approvals and Permits**" shall mean each and all approvals, authorizations, bonds, consents, certificates, franchises, licenses, permits, registrations, qualifications, and other

actions and rights granted by or filings with any Persons necessary, appropriate, or desirable for ownership, operation and use by Borrower of the Property.

1.5 “**Architect**” means Tomlinson Designs, LLC.

1.6 “**Assignment of Architect’s Agreements and Plans and Specifications**” means the Assignment of Architect’s Agreements and Plans and Specifications of even date herewith, from Borrower for the benefit of Bank.

1.7 “**Assignment of Contractor’s Agreements**” means the Assignment of Contractor’s Agreements of even date herewith, from Borrower for the benefit of Bank.

1.8 “**Assignment of Contracts**” means the Assignment of Contracts associated with the Property of even date herewith, from Borrower for the benefit of Bank.

1.9 “**Assignments of Leases and Rents**” means the Assignment of Leases and Rents of even date herewith, from Borrower for the benefit of Bank.

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1.10 “**Authorized Officer**” shall mean any authorized agent of Borrower certified by the Borrower to the Bank for the purpose of making certifications required by this Agreement. Unless otherwise identified to the Bank in writing by Borrower, the Authorized Officer for Borrower is Rebecca Stallcop.

1.11 “**Business Day**” shall mean every day except a Saturday, Sunday, national holiday, or a day on which the Bank is obligated or permitted to be closed.

1.12 “**Charter**” shall mean the petition approved by Public Charter School Commission Decision Approving Charter, Case No. 2010-01, dated March 9, 2010, which permits the operation of a charter school on the Property.

1.13 “**Charter Board**” shall mean the Idaho Public Charter School Commission.

1.14 “**Closing**” shall mean the day the Deed of Trust is recorded.

1.15 “**Collateral**” shall mean, individually or collectively, the property encumbered by the Loan Documents in connection with the Loan (including, without limitation, the Property, any Improvements thereon and any personal property associated therewith).

1.16 “**Completion Date**” shall mean the earlier of (a) receipt by Borrower of a certificate of occupancy for the Property, or (b) September 30, 2012.

1.17 “**Construction Budget**” means the budget for the construction of the Improvements attached hereto as Exhibit B and incorporated herein by this reference, as amended from time to time consistently with the provisions of this Agreement.

1.18 “**Construction Contract**” means the Standard Form of Agreement Between Owner and Design – Builder where the basis of payment is a stipulated sum, dated January 17, 2012, between Borrower and Contractor.

1.19 “**Construction Schedule**” means the schedule for construction of the Improvements delivered to and approved by Bank prior to the Closing, as amended from time to time consistently with the provisions of this Agreement.

1.20 “**Contractor**” means Alta Construction, Inc., an Idaho corporation.

1.21 “**Covenants**” has the meaning set forth in Section 4.7.

1.22 “**Debt**” means, with respect to any Person, all liabilities, obligations and indebtedness to any other Person, of any kind or nature, now or hereafter owing, arising, due or payable, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and includes capitalized leases.

1.23 “**Debt Service Payment Schedule**” shall mean the schedule of estimated debt service payments attached to the Escrow Agreement as Schedule 1, as it may be updated from time to time by the Bank in accordance with the Escrow Agreement.

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1.24 “**Deed of Trust**” shall mean the Deed of Trust With Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, given by the Borrower to the Title Company, as trustee, for the use and benefit of the Bank and granting a valid and perfected first lien on the Property and the other Collateral described therein, securing the Note and the other Obligations, as it may be amended, modified, extended, renewed, restated, or supplemented from time to time.

1.25 “**Default**” shall mean any event which if continued uncured would, with notice or lapse of time or both, constitute an Event of Default.

1.26 “**Default Rate**” has the meaning set forth in the Note.

1.27 “**Deposit Accounts**” has the meaning set forth in Section 5.13.

1.28 “**Disbursement Account**” shall mean the operating account established with Bank by Borrower into which disbursements are made by Bank pursuant to Section 3.4, which account is more particularly described on Exhibit E hereof.

1.29 “**Escrow Account**” means that certain Escrow Account (under and as defined in the Escrow Agreement) established by Borrower with the Escrow Agent in which all payments under the Payment Directive are deposited and are disbursed by the Escrow Agent in accordance with the terms of the Escrow Agreement.

1.30 “**Escrow Agent**” means Zions First National Bank, in its capacity as the escrow agent under the Escrow Agreement.

1.31 “**Escrow Agreement**” means the Escrow Agreement among the Borrower, Bank and the Escrow Agent, as amended and supplemented by Agreement Regarding Specific Instructions attached thereto as Exhibit B.

1.32 “**Estimate of Construction Costs**” means any reasonable estimate made by Bank from time to time, at its option, of the total cost of construction of the Improvements payable by Borrower, including without limitation an allowance for Reserves.

1.33 “**Event of Default**” shall mean any event described in Section 8.1.

1.34 “**GAAP**” shall mean any generally accepted accounting principles consistently applied and maintained throughout the period indicated. Whenever any accounting term is used herein which is not otherwise defined, it shall be interpreted in accordance with GAAP.

1.35 “**Governmental Entity**” and “**Governmental Entities**” shall mean any governmental or quasi-governmental entity, agency, authority, board, commission, or governing body authorized by federal, state or local laws or regulations as having jurisdiction over the Bank, Borrower, the Property and/or Collateral.

1.36 “**Improvements**” shall mean any and all structures, buildings and other improvements now existing or hereafter constructed on the Property in accordance with the Plans and Specifications.

1.37 “**Inspector**” shall mean the Construction Management Group of Vectra Bank, Colorado, or any other party approved by Bank.

1.38 “**Interest Rate**” shall mean the interest rate then in effect under the terms of the Note, whether at the stated rate or the Default Rate.

1.39 “**Late Charge**” has the meaning set forth in the Note.

1.40 “**Legal Opinions**” has the meaning set forth in Section 3.1(c)(xi).

1.41 “**Lien or Encumbrance**” and “**Liens and Encumbrances**” mean, respectively, each and all of the following: (i) any lease or other right to use; (ii) any assignment as security, conditional sale, grant in trust, lien, mortgage, pledge, security interest, title retention arrangement, other encumbrance, or other interest or right securing the payment of money or the performance of any other liability or obligation, whether voluntarily or involuntarily created and whether arising by agreement, document, or instrument, under any law, ordinance, regulation, or rule (federal, state, or local), or otherwise not approved in advance by Bank; and (iii) any option, right of first refusal, or other interest or right.

1.42 “**Loan**” shall mean the construction and mini-perm loan in the maximum amount of \$2,585,412.00 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.

1.43 “**Loan Documents**” shall mean this Agreement, the Note, the Deed of Trust, the Assignment of Leases and Rents, the Subordination Agreement, the Assignment of Architect’s Agreements and Plans and Specification, the Assignment of Contractor’s Agreements, the Assignment of Contracts, the Escrow Agreement, and any other agreements, documents, or instruments evidencing, guarantying, securing, or otherwise relating to the Loan, as such

agreements, documents, and instruments may be amended, modified, extended, renewed, or supplemented from time to time.

1.44 “**Management Agreement**” shall mean the Management Agreement, dated January 19, 2012, made and entered by and between Borrower and BMED, Inc., an Idaho corporation, as manager.

1.45 “**Material Adverse Occurrence**” shall mean any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which, individually or in the aggregate, materially adversely affects the present or prospective financial condition or operations of Borrower or materially impairs the ability of Borrower to perform its obligations under the Loan Documents and remains unsatisfied or is not discharged or eliminated after sixty (60) days following written notice from the Bank or materially impairs the operations or economic value of the Property and remains unsatisfied or is not discharged or eliminated after sixty (60) days following written notice from the Bank.

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1.46 “**Maturity Date**” shall mean the earlier of (i) thirty-six (36) months from the Completion Date; or (ii) September 30, 2015.

1.47 “**Mini-Perm Date**” shall mean December 1, 2012.

1.48 “**Note**” shall mean the Promissory Note of even date herewith, made by Borrower and payable to the order of Bank in the face amount of the Loan, as it may be amended, modified, extended, renewed, restated, or supplemented from time to time.

1.49 “**Obligations**” shall mean the obligations of Borrower under the Loan Documents.

1.50 “**Official Records**” shall mean the records of the Clerk and Recorder of the County in which the Property is located.

1.51 “**Offsite Materials**” means all materials, supplies, equipment and other similar items relating to the construction of the Improvements not stored or kept on the Property.

1.52 “**Payment Directive**” has the meaning set forth in Section 5.14.

1.53 “**Permitted Encumbrances**” has the meaning set forth in the Deed of Trust.

1.54 “**Person**” shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Entity, whether acting in an individual, fiduciary or other capacity.

1.55 “**Plans and Specifications**” means the plans and specifications for construction of the Improvements delivered to and approved by Bank, as amended from time to time consistently with the provisions of this Agreement.

1.56 “**Prepaid Debt Service Account**” means that certain Prepaid Debt Service Account (under and as defined in the Escrow Agreement) established by Borrower with the

Escrow Agent in which all prepaid debt service payments on the Loan are deposited by the Escrow Agent in accordance with the terms of the Escrow Agreement.

1.57 “*Property*” has the meaning set forth in the Recitals.

1.58 “*Reserve*” has the meaning set forth in Section 2.6.

1.59 “*Subcontractor*” means all persons performing services and providing material in connection with the Improvements other than the Contractor.

1.60 “*Survey*” has the meaning set forth in Section 3.1(j).

1.61 “*Title Company*” shall mean Pioneer Title Company of Canyon County and any reinsurers or coinsurers required by Bank, which company, reinsurers, and coinsurers shall be satisfactory to Bank in its absolute and sole discretion.

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1.62 “*Title Policy*” shall mean the title insurance policy and endorsements thereto and reinsurance or coinsurance agreements and endorsements, as further described in Section 3.1(g) of this Agreement, insuring the Deed of Trust.

1.63 “*Utility Services*” shall mean water, sewer, gas, telephone, and electrical services.

## ARTICLE 2 LOAN AGREEMENT

2.1 The Loan. In reliance upon the Borrower’s representations and warranties, and subject to the terms and conditions of this Agreement and the Loan Documents, the Bank agrees to loan to Borrower a sum of money not to exceed \$2,585,412 for the purpose of providing a construction and mini-perm loan on the Property, to be advanced and disbursed by the Bank in accordance with this Agreement.

(a) Type of Loan. The Loan is a non-revolving, multiple advance loan and amounts advanced under the Loan may not be reborrowed after being repaid, in whole or in part.

(b) Interest on the Loan; Payment Terms. Interest on each advance made hereunder shall accrue at the Interest Rate, and shall be payable as further provided in the Note.

(c) Term of the Loan. The Loan shall have a term which commences on the date hereof and expires on the Maturity Date, at which time the outstanding principal amount of the Loan, together with accrued and unpaid interest and other charges due and owing thereon shall be due and payable in full.

(d) Loan Fee. The Borrower shall pay the Bank a fee equal to one percent (1.00%) of the maximum amount of the Loan, payable at the time of the Closing. The fee shall be earned when paid and shall be non-refundable to the Borrower.

2.2 Professional Fees.

(a) Attorneys' Costs, Expenses, and Fees. Reasonable attorneys costs, expenses, and fees for Bank's counsel with respect to the Loan shall be payable on or before Closing and shall be payable by the Borrower.

(b) Appraisal Fees, Title Insurance Premium, and Other Costs, Expenses, and Fees. Appraisal fees, environmental and engineering consultant fees, title insurance premiums, recording or filing fees, fees for release or reconveyance of the Deed of Trust and UCC filings, closing costs and other costs, expenses, and fees in the amounts specified by Bank, shall be payable on or before the date hereof with respect to the Closing and shall be paid by the Borrower. Title insurance premiums, recording or filing fees, and other costs and expenses associated with recording a modification of the Deed of Trust or filing a UCC-1 Financing Statement in connection with personal property subsequently acquired by the Borrower or release costs to release a portion of the Property under the Loan shall be payable concurrently with the modification or release by the Borrower.

(c) Consultant Fees. Borrower shall, on or before the fifth (5th) Business Day after any bill rendered by Bank to Borrower with respect thereto, pay directly or reimburse to Bank, at Bank's option, for the aggregate costs of any appraisals of any portion of the Collateral, environmental, engineering or architectural studies or consultants' fees, attorneys' fees and costs, or other costs and expenses reasonably incurred by the Bank in connection with review or approval of Collateral, enforcing payment and performance of the Obligations, exercising the rights and remedies of the Bank under the Loan Documents or in negotiation or documentation of any further amendment or modification of the Loan Documents.

2.3 Default Rate/Late Charges. Upon the occurrence of an Event of Default under the Loan, the Bank shall have the right to collect interest on the outstanding principal balances under the Loan at the Default Rate set forth in the Note. In the event any payment of principal, interest, or other sum due in connection with the Loan is not made when due, the Bank may, at its option, require the payment of a Late Charge as set forth in the Note.

2.4 Prepayment. Borrower may prepay any or all of the outstanding principal under the Loan, in whole or in part, without penalty or premium.

2.5 Independent Obligations. Bank may maintain successive actions for defaults. Bank's rights hereunder shall not be exhausted by its exercise of any of its rights and remedies or by any such action or by any number of successive actions until and unless the Obligations have been paid and fully performed.

2.6 Reserves. Bank may, from time to time after prior notice to Borrower, establish and set aside reserves (the "**Reserves**") out of the undisbursed proceeds of the Loan, and from time to time, increase, decrease or adjust the Reserves, as it may reasonably estimate is necessary to cover the following items as they accrue or become payable, provided that such Reserves shall not be added to the outstanding principal amount of the Loan unless and until actually disbursed by Bank for such items:

- (a) all unpaid professional fees required to be paid pursuant to Section 2.2;

(b) payment of interest on the Loan (as estimated by Bank) which may accrue prior to repayment of the Loan;

(c) payment of real estate taxes and assessments, as estimated by Bank, that shall accrue with respect to the Property while the Loan is outstanding; provided, however, that such reserves shall only be required after the occurrence of an Event of Default;

(d) additional or unanticipated costs incurred in connection with the construction of the Improvements;

(e) payment of premiums on insurance policies required to be furnished by Borrower hereunder; provided, however, that such reserves shall only be required after the occurrence of an Event of Default; and

(f) one hundred and fifty percent (150%) of the amount of liens filed against the Property.

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No interest shall be earned by Borrower upon any Reserve while held by Bank.

### ARTICLE 3 DISBURSEMENTS AND PAYMENTS

3.1 Conditions Precedent to Closing and Disbursement of Loan Proceeds. Bank shall have no obligation to close the Loan or make any disbursements of the proceeds of the Loan unless all of the following conditions precedent are satisfied, as applicable, at the time of Closing and at the time of each disbursement; with the understanding, however, that Bank may, in its reasonable discretion, close the Loan and make disbursements of the Loan prior to the satisfaction of any or all such conditions, and any such action shall not constitute a waiver of Bank's right to require satisfaction of any or all of the following conditions precedent before any subsequent disbursement is made (all documents, agreements and evidence to be delivered to the Bank pursuant to the terms of this Agreement shall be satisfactory in form and substance to Bank and its counsel in their sole discretion):

(a) Borrower shall have executed and delivered or caused to be executed and delivered this Agreement and all other Loan Documents;

(b) The representations and warranties by Borrower in the Loan Documents shall be correct on and as of the date of this Agreement and as of Closing;

(c) Bank shall have received and approved the following:

(i) Appraisal. A current Appraisal of the Property.

(ii) Construction Budget. The Construction Budget.

(iii) Plans and Specifications. The Plans and Specification for the Improvements.



(iv) Contractor Documents. (A) The financials for the Contractor and (B) the Construction Contract for the Improvements.

(v) Other Contract. (A) All contracts with all architects, engineers and Subcontractors as Bank may require, and (B) an assignment of any other contract or subcontract in connection with the construction of the Improvements designated by Bank, together with a consent to assignment by the applicable contractor or subcontractor.

(vi) Current Financial Statements. Current financial statements, tax returns and other financial information as the Bank may require for Borrower, each in form and substance satisfactory to Bank in its sole discretion.

(vii) Environmental Audits. Environmental audits prepared by an environmental engineering company approved by the Bank and in substance satisfactory to Bank regarding the Property.

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(viii) Zoning. Satisfactory evidence that Borrower has complied with all covenants, conditions, restrictions and reservations affecting the Property, including the Covenants, that the Property is duly and validly zoned for the intended use, and that the Property meets all applicable requirements of the zoning regulations and any local ordinances adopted pursuant thereto. Bank shall further require proof that all permits, consents and approvals required pursuant to this Section have been obtained, and any condition to such approvals must be acceptable to Bank.

(ix) Corporate Documents for Borrower. (A) Certified copies of resolutions of Borrower's board of directors authorizing Borrower to execute, deliver, and perform the Loan Documents and certifying the names and signatures of the officer(s) of Borrower authorized to execute such documents, (B) certified copies of the certificate of incorporation and bylaws of Borrower and all amendments thereto, and (C) a certificate of good standing from the jurisdiction of formation or organization of Borrower, and if such jurisdiction is not the State of Idaho, a certificate of qualification as a foreign corporation authorized to transact business in the State of Idaho.

(x) Opinion. Legal opinions of independent counsel (collectively, the "**Legal Opinions**") for Borrower, in form and substance satisfactory to the Bank (A) that Borrower is duly-formed and in good standing in the jurisdiction of Borrower's formation and, to the extent necessary, in the State of Idaho, (B) that the transaction described in the opinion and the execution and delivery of the documentation evidencing such transaction and the performance of obligations thereunder have been duly authorized by all necessary parties, (C) that the transaction documents are legal, valid and binding and enforceable in accordance with their terms, subject to customary exceptions, (D) concerning such other legal matters as the Bank may require regarding the specific transaction and the absence of conflicts with the governing documents of the entity or any other agreement, instrument or governmental order or rule to which the entity is subject and the absence of any material litigation against the entity which would materially or adversely affect the entity's ability to perform its legal obligations under the transaction documents, and (E) such other opinions specific to the entity or the transaction as the Bank may reasonably require.

(xi) Payment Directive. The Payment Directive.

(xii) Management Agreement. The Management Agreement.

(xiii) Development Studies. If required by the Bank, copies of all engineer reports, engineering contracts, Property planning maps, soils tests, drainage studies, traffic studies, erosion control plans, landscaping plans, and other documents prepared and existing for the development of the Property or construction of the Improvements, available to the Borrower.

(xiv) Utilities. Evidence of availability of Utility Services to the Property's boundaries.

(xv) Lien Waivers. Releases and waivers of mechanics' and materialmen's liens in form satisfactory to Bank, executed by each Person who performed work or provided materials prior to the date of this Agreement, releasing any right to a lien through the date of Closing.

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(xvi) Certification of Charter. A certification from Borrower in connection with the Charter, in a form substantially similar to Exhibit C.

(xvii) Paid Invoices. Copies of paid invoices, in form and substance satisfactory to Bank in its sole discretion, to prove the amount of equity of Borrower in the Property (copies of cancelled checks are not acceptable).

(xviii) Other Information. Such other information and evidences as may be requested or required by Bank.

(d) Borrower shall have established with the Bank all required Deposit Accounts.

(e) Borrower shall have established with the Escrow Agent the Escrow Account and the Prepaid Debt Service Account and Bank shall have received a fully executed copy of the Escrow Agreement.

(f) Bank shall have received evidence that all taxes, fees and other charges in connection with the execution, delivery and recording of the Loan Documents shall have been paid, and all delinquent taxes, assessments or other governmental charges or liens affecting the Property, if any, shall have been paid including without limitation real property taxes for the year 2011.

(g) Borrower shall have delivered to Bank an irrevocable and unconditional commitment to issue an ALTA 1992 loan policy of title insurance issued by the Title Company (the "**Title Policy**"), which Title Policy (i) shall have a liability limit of not less than the maximum amount of the Loan, (ii) shall insure Bank's interest under the Deed of Trust as a valid first lien on the Property, (iii) shall be accompanied by such reinsurance and coinsurance agreements and endorsements as Bank may require in its sole discretion, and (iv) shall commit to delete the standard exceptions and contain as exceptions only the Permitted Encumbrances.

(h) All costs, expenses, and fees to be paid by the Borrower under the Loan Documents on or before the effectiveness of this Agreement have been paid in full.

(i) Bank shall have received certificates of insurance evidencing that all insurance required under this Agreement is in full force and effect.

(j) Borrower shall have furnished to Bank, at Borrower's expense, a current ALTA improvement survey plat ("**Survey**") of the Property acceptable to Bank and the Title Company issuing the Title Policy, which Survey (i) shall show the legal description of the Property as it will be insured by the Title Company, the courses and distances of lot lines, all appurtenant and servient easements, setbacks, building lines and width of abutting streets, distance to nearest intersecting streets affording ingress and egress to and from each of the Property, and the location and dimensions of all encroachments, improvements, above or below ground easements and utilities, and designated parking spaces, (ii) shall certify whether or not any portion of the Property is located within a Federal Emergency Management Agency ~~identified flood-prone area of a community and if located thereon, state the map number and~~ whether or not the Property appear in a "**Flood Hazard Area**," and (iii) shall be certified as accurate by a licensed surveyor in the State of Idaho and contain a certificate imprinted thereon in the form approved by the American Property Title Association and the Bank stating that the Survey is made for the benefit of the Bank and the Title Company.

(k) Borrower shall provide to the Bank satisfactory evidence that Borrower has complied with all covenants, conditions, restrictions and reservations affecting the Property.

(l) The Borrower shall have performed such other actions as the Bank may reasonably require.

(m) Borrower shall have provided to Bank a list of names of all suppliers, subcontractors and suppliers of subcontractors, who are to provide material or services for the Improvements and a description of their services.

(n) Bank shall have received from Borrower the certifications and waivers described in Section 3.2.

(o) Bank shall have received from its Inspector a certification verifying the draw request described in Section 3.2.

(p) Borrower shall have provided to Bank (i) evidence that Borrower has obtained all governmental permits and consents required for the construction of the Improvements on or before the dates on which such construction is commenced, (ii) evidence that the Improvements have been approved by all architectural control committees and all other entities having the right to review and approve the Improvements, (iii) a certificate from Architect, in form and content acceptable to Bank, certifying that the construction of the Improvements, if constructed according to the Plans and Specifications heretofore delivered to the Bank, will comply with all such permits, consents and approvals, and (iv) a zoning letter, in form and content acceptable to Bank, from the proper Governmental Entity indicating that the proposed use of the Property will comply with all applicable land use and zoning laws.

(q) Borrower shall have theretofore complied with all of its covenants and agreements contained in this Agreement and the Loan Documents and all representations and warranties of Borrower contained in any of those documents shall in all material respects be true as of the date of disbursement as if first made on that date; and there shall exist no Default or Event of Default.

(r) Any portion of the Improvements which has been constructed have been completed substantially in accordance with the Plans and Specifications, the latest Estimate of Construction Costs and the Construction Schedule, and if the latest Estimate of Construction Costs shall exceed the Construction Budget, Borrower shall have deposited funds with Bank in accordance with the requirements of Section 5.16.

(s) The Improvements shall not have been materially damaged by any casualty, unless Bank shall have received insurance proceeds in an amount deemed by Bank to be sufficient for complete repair of the damage and, when added to the undisbursed balance of the Loan and any Reserves, are sufficient to complete the Improvements substantially in accordance with the Plans and Specifications.

(t) The disbursements shall be used solely to pay the costs and expenses to be funded from the Loan as set forth in the Construction Budget and the aggregate disbursements from the Loan for each category of costs or expenses, including without limitation, soft costs and any contingency reserve, shall not, without the Bank's consent, exceed the total amount for that category set forth in the Construction Budget.

(u) No Material Adverse Occurrence has occurred.

(v) In the case of the final disbursement at the option of the Bank, (i) Bank shall have received a copy of the temporary certificate or certificates of compliance and occupancy or equivalent acceptable to Bank in its sole and absolute discretion, issued by the appropriate Governmental Entity for the Property in its entirety, and (ii) the period that laborers, subcontractors and materialmen have for filing mechanic's and materialmen's liens against the Property shall have expired or the Bank shall have received final unconditional lien waivers acceptable to the Bank.

3.2 Construction Funds Advances/Draw Procedure and Documents. On or about the fifth day of each month, Borrower shall deliver to Bank such of the following as the Bank may request or require (with respect to the previous month):

(a) a draw request on a form prescribed by Bank and a certification from Borrower that (i) the Loan is "in balance" as required in Section 5.16 (ii) all proceeds of the Loan theretofore advanced have been spent in accordance with the draw request applicable thereto and (iii) the Improvements have been and are being constructed in accordance with the Plans and Specifications;

(b) a list, certified by Borrower identifying the Contractor and all Subcontractors who have provided services or materials for the Improvements and who are entitled to any of the proceeds of the next scheduled disbursement, together with copies of supporting invoices and copies of checks drawn on the Disbursement Account by Borrower

payable to each Contractor and Subcontractor in the above mentioned certificate as Bank may reasonably request;

(c) releases and waivers of mechanics' and materialmen's liens in form satisfactory to Bank, executed by the Contractor and all Subcontractor who was listed to be paid pursuant to Section 3.2(b) above in the disbursement which is one disbursement prior to the current disbursement (i.e., Bank shall receive lien waivers in March for amounts paid with the February draw), releasing any right to a lien through a date not more than 60 days prior to the next scheduled disbursement, and conditional lien waivers from the Contractor and all Subcontractors who are listed to be paid pursuant to Section 3.2(b) above in the current disbursement;

(d) at Bank's discretion, checks drawn on the Disbursement Account and signed by Borrower payable to Contractor and each Subcontractor identified in Section 3.2(b);

(e) ~~certifications from the Inspector, in such form as Bank may reasonably request, that the Improvements have been and are being constructed substantially in accordance with the Plans and Specifications, and that all materials for which payment is requested have been delivered to and remain on the Property;~~

(f) certifications from Contractor, in the form attached hereto as Exhibit D, that there are no outstanding change orders in connection with the construction of the Improvements and no other amounts in dispute; and

(g) such other documents, instruments and agreements as Bank may reasonably request.

### 3.3 Amount of Disbursements of Construction Funds/Limitations.

(a) Subject to the satisfaction of the conditions precedent set forth in Section 3.1, after receipt of the documents delivered pursuant to Section 3.2 and subject to the limitations set forth herein and in Section 3.4, Bank shall make monthly disbursements of the Loan into the Disbursement Account in the manner set forth in Section 3.4 in amounts equal to (i) the total purchase price of uninstalled materials delivered to and stored on the Property in a manner reasonably acceptable to Bank for later installation in the Improvements; plus (ii) the cost of all materials in and work completed on the Improvements approved by Bank and set forth in the Construction Budget; plus (iii) the total of all other costs and expenses previously incurred for items listed in the Construction Budget to be funded from the construction funds; less (iv) any Reserve; less (v) any retainage as provided for in the agreement between Borrower and the Contractor; and less (vi) the sum of all previous disbursements.

(b) Bank shall have no obligation to make disbursements of the Loan for Off-Site Materials unless Bank, in its sole discretion, has consented to such off-site storage and Borrower shall have complied with such conditions as Bank may reasonably require in connection with such Off-Site Materials.

(c) Borrower may use the Loan funds only to pay costs and expenses set forth in the Construction Budget. The aggregate disbursements from the Loan for each category of

costs or expenses, including without limitation, soft costs and any contingency reserve, shall not, without the Bank's consent, exceed the total amount for that category set forth in the Construction Budget. All payments made by Borrower shall be made by checks drawn on the Disbursement Account or by wire directly from the Disbursement Account to the payee. Any disbursements from the contingency line item in the Construction Budget reserve are subject to Bank's consent, which consent may be granted or denied in Bank's sole discretion. Bank (at its sole option) may make advances of the Loan directly to the Contractor, any Subcontractor or any other third party to pay such costs.

(d) Borrower may not use the Loan for items not detailed on the Construction Budget. In the event that Borrower or the Inspector discovers structural defects in the construction of the Improvements after the Closing requiring construction work not contemplated by the Construction Budget, Borrower shall immediately notify Bank in detail in writing of the same with an estimate of the cost to complete such work. Any cost overruns associated with such work may not be paid from construction funds unless Bank otherwise consents in writing, which consent may be withheld in Bank's sole and absolute discretion.

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3.4 Manner of Disbursement. Within seven (7) Business Days after Bank's receipt of all the documents required to be delivered pursuant to the provisions of this ARTICLE 3, Bank shall make disbursement of the proceeds of the Loan by depositing in the Disbursement Account the amount of the disbursement, determined in the manner set forth in Section 3.3. In no event, however, shall Bank be required to make more than one disbursement of the proceeds of the Loan per month. If at any time there shall exist a Default or Event of Default, Bank may, in its sole discretion, make no further disbursements or disburse directly to any person or persons entitled to any of the proceeds of such disbursement.

3.5 Other Payments. At its discretion, Bank may pay from the undisbursed proceeds of the Loan any of the following:

- (a) any professional fees required to be paid under Section 2.2;
- (b) any amounts necessary to clear title to the Property and Improvements or to pay liens and encumbrances upon the Property and Improvements provided the same are prior to the lien of the Deed of Trust;
- (c) any other amounts Bank may reasonably determine are due and payable in connection with the terms and provisions hereof or of the Note or the Loan Documents, or to preserve any Collateral;
- (d) interest or principal due on the Loan, if not otherwise paid by Borrower or the Bank in accordance with Section 5.14; and
- (e) amounts necessary to fund Reserves.

Any such payments shall for all purposes be deemed to be disbursements of the principal of the Loan.

ARTICLE 4  
REPRESENTATIONS AND WARRANTIES

In order to induce Bank to make the Loan, Borrower represents, warrants and covenants as follows, which representations, warranties and covenants shall be true and correct as of the execution hereof and as of Closing and shall survive the execution and delivery of the Loan Documents:

4.1 Organization of Borrower; Authority to Enter into Agreement. Borrower is a nonprofit corporation and a charter school duly formed and validly existing under the Act and is in good standing under the laws of the State of Idaho and authorized to do business and to own real property in the State of Idaho. Borrower is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business makes such qualification necessary and where the failure to so qualify permanently precludes the Borrower from enforcing its contracts. Borrower has full power and authority to enter into this Agreement, to borrow money ~~as contemplated herein and to execute and carry out the provisions of the Loan Documents.~~ The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action of the Borrower, and no other action of the Borrower is required for the execution, delivery and performance of the Loan Documents. The Loan Documents which have been executed and delivered pursuant to this Agreement constitute, or, if not yet executed or delivered, will when so executed and delivered, constitute valid and binding obligations of the Borrower, each enforceable in accordance with its respective terms.

4.2 Valid Charter. Borrower has delivered to the Bank a true and complete copy of the Charter and the Charter is in full force and effect according to its terms.

4.3 Financial Statements. Any loan applications, financial statements, supporting schedules, and financial reports now or hereafter delivered to the Bank in connection with the Loan Documents by or on behalf of Borrower including any officer of Borrower are or will be true and correct in all material respects as of the dates thereof, have been or will be prepared in accordance with GAAP, consistently applied and fairly represent the respective financial conditions of the subjects thereof as of the dates thereof and for the periods covered thereby, and no Material Adverse Occurrence has occurred in the financial conditions presented therein since the respective dates thereof.

4.4 No Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened against or affecting Borrower, or any of the property or assets of Borrower, in any court at law or in equity, or before or by any Governmental Entity which might materially adversely affect the ability of Borrower to perform its obligations hereunder or under any of the Loan Documents to which Borrower is a party, or might adversely affect the priority of the Bank's liens and security interests with respect to the Borrower's property or assets.

4.5 Marketable Title. Borrower has good and marketable title to the Property, free and clear of all Liens and Encumbrances, excepting only the Permitted Encumbrances, and subject only to the Covenants, defined below, and has good and marketable title to all of its property and assets, real and personal, which secure repayment of the Loan. Unless otherwise

previously disclosed to the Bank in writing, Borrower has not entered into or granted any mortgages, agreements, or permitted the filing or attachment of any security interests, liens or encumbrances on or affecting the Property or other Collateral directly or indirectly securing repayment of the Loan, that would be prior or that might in any way be superior or junior to the Bank's security interests and rights in and to the Property and other Collateral.

4.6 Covenants, Zoning and Codes. Borrower has complied and will continue to comply with all applicable statutes and regulations to be complied with in connection with the use and occupancy of and operation on the Property. All permits, consents, approvals or authorizations by, or registrations, declarations, withholding of objections or filings with any Governmental Entity or private entity necessary in connection with the valid execution, delivery and performance of this Agreement, the Loan Documents, and any and all other documents executed in connection with any of the foregoing have been obtained and are valid, adequate and in full force and effect. The use, occupancy and operation of the Property by Borrower will in all respects conform to and comply with all covenants, conditions, restrictions and reservations affecting the Property and with all applicable zoning, subdivision, environmental protection, use and building codes, laws, regulations and ordinances with respect to future operations (collectively, the "**Covenants**").

4.7 Utilities. All Utility Services necessary for the use and occupancy of and operation on the Property for its intended use are fully available to and operational on the Property.

4.8 Use of Proceeds. The proceeds of the Loan will be used by Borrower solely for the purposes stated herein. The purpose of the Loan is a business purpose and not a personal, family or household purpose. The proceeds of the Loan shall not be used to make loans to, or investments in, or purchases of any corporation, partnership, joint venture, or third party. No part of the proceeds of the Loan hereunder will be used by Borrower for any purpose which violates, or which is inconsistent with, any regulations promulgated by the Board of Governors of the Federal Reserve System.

4.9 Solvency. Borrower has (a) not entered into the transaction evidenced by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any present or future creditor of Borrower and (b) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Borrower (i) is not and will not become "insolvent" as that term is defined in Section 101(32) of the United States Bankruptcy Code, Title 11 U.S.C. (the "**Bankruptcy Code**"), Section 2 of the Uniform Fraudulent Transfer Act ("**UFTA**") or Section 2 of the Uniform Fraudulent Conveyance Act ("**UFCA**"), (ii) does not have "unreasonably small capital," as that term is used in Section 548(a)(1)(B)(ii)(II) of the Bankruptcy Code or Section 5 of the UFCA, (iii) is neither engaged nor about to engage in a business or a transaction for which its remaining property is "unreasonably small" in relation to such business or transaction as that term is used in Section 4 of the UFTA, and (iv) is not unable to pay its debts as they mature or become due, within the meaning of Section 548(a)(1)(B)(ii)(II) of the Bankruptcy Code, Section 4 of the UFTA and Section 6 of the UFCA. (As used in this Section, all terms used or defined in the Bankruptcy Code, UFTA or UFCA shall be subject to the statutory definitions and interpretive case law applicable thereto.) No petition in bankruptcy has been filed against Borrower in the last seven



(7) years, and Borrower in the last seven (7) years has not taken advantage of any law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, receivership, arrangement, adjustment, winding-up, liquidation, dissolution, assignment for the benefit of creditors, composition or other relief with respect to its debts or debtors ("**Creditors Rights Laws**"). Borrower is not contemplating either the filing of a petition by it under any Creditors Rights Laws or the liquidation of all or the majority of the present fair market value of its assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower.

4.10 No Conflicts. The execution, delivery, and performance by Borrower of the Loan Documents will not conflict with, or result in a violation of or a default under: (a) any applicable law, ordinance, regulation, or rule (federal, state, or local); (b) any judgment, order, or decree of any arbitrator, other private adjudicator, or Governmental Entity to which Borrower is a party or by which Borrower or any of the assets or property of Borrower is bound; (c) any of the Approvals and Permits; or (d) any agreement, document, or instrument to which Borrower is a party or by which Borrower or any of the assets or property of Borrower is bound.

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4.11 Execution and Delivery and Binding Nature of Loan Documents. The Loan Documents have been duly executed and delivered by or on behalf of Borrower. The Loan Documents are legal, valid, and binding obligations of Borrower, enforceable in accordance with their terms against Borrower, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization, or similar laws and by equitable principles of general application.

4.12 Accurate Information. All information in any loan application, financial statement, certificate, or other document, and all other information delivered by or on behalf of Borrower or its officers, if applicable, to Bank in obtaining the Loan is correct and complete in all material respects, and there are no omissions therefrom that result in any such information being materially incomplete, incorrect, or misleading as of the date thereof. There has been no Material Adverse Occurrence relative to Borrower since the date of such information.

4.13 Approvals and Permits; Assets and Property. Borrower has obtained and there are in full force and effect all Approvals and Permits necessary for construction of the Improvements, the conduct of the business of Borrower and the use and occupancy of and operation on the Property by Borrower. Borrower owns or leases all assets and property necessary for conduct of the business and operations of Borrower. Such assets and property are not subject to any Liens and Encumbrances, other than the Permitted Encumbrances.

4.14 Taxes. Borrower has filed or caused to be filed all tax returns (federal, state, and local) required to be filed by Borrower and has paid all taxes and other amounts shown thereon to be due (including, without limitation, any interest or penalties).

4.15 Compliance with Law. To the best of Borrower's knowledge, neither Borrower nor the Property are in violation of any law, ordinance, regulation, or rule (federal, state, or local).

4.16 Representations and Warranties Upon Delivery of Financial Statements, Documents, and Other Information. Each delivery by Borrower to Bank of financial statements, other documents, or information after the date of this Agreement shall be a representation and warranty that such financial statements, other documents, or information is correct and complete in all material respects, that there are no omissions therefrom that result in such financial statements, other documents, or information being materially incomplete, incorrect, or misleading as of the date thereof, and that such financial statements accurately present the financial condition and results of operations of Borrower as of the dates thereof and for the periods covered thereby.

4.17 No Default. There exists no default and no act or omission has occurred such that, with the giving of notice or the passage of time, would constitute a default under the provisions of any instrument evidencing debt incurred or assumed by Borrower or any material agreement relating thereto or any other agreement or instrument to which Borrower is a party.

4.18 No Burdensome Agreements. ~~Borrower is not a party to, and is not bound by, any~~ agreement, instrument or undertaking, or subject to any other restriction (a) that materially adversely affects or might in the future so affect the property, financial condition or business operations of Borrower, or (b) under or pursuant to which Borrower is or will be required to place (or under which any other Person may place) a lien upon any of its property or assets securing debt either upon demand or upon the happening of a condition, with or without such demand.

4.19 Subdivision Laws. Borrower has complied and will comply with all applicable subdivision laws and similar statutes and requirements.

4.20 Survival of Representations. All representations and warranties contained in this ARTICLE 4 and elsewhere in this Agreement shall survive the delivery of the Note and the Loan Documents, and the making of the Loan evidenced thereby and any investigation at any time made by or on behalf of the Bank shall not diminish its rights to rely on all of such representations and warranties and all agreements, representations and warranties made herein shall continue in full force and effect until the Obligations have been fully paid and satisfied.

## ARTICLE 5 AFFIRMATIVE COVENANTS

Until the Obligations are paid and performed in full, Borrower agrees that, unless Bank otherwise agrees in writing in Bank's absolute and sole discretion:

5.1 Books and Records: Access By Bank. Borrower will maintain a single, standard system of accounting, including, without limitation, a single, complete, and accurate set of books and records of its assets, business, financial condition, operations, property, prospects, and results of operations in accordance with good accounting practices. The Bank shall have the right from time to time to examine such assets and property and to audit, copy, and make excerpts from such books, records, and documents upon reasonable notice and during normal business hours.

5.2 Taxes and Other Indebtedness. Borrower shall pay and discharge before delinquency, all taxes, assessments, and governmental charges or levies imposed upon it, upon its income or profits, or upon any property belonging to it, when due, all valid and lawful claims (including, without limitation, claims for labor, materials, and supplies), which, if unpaid, might become a Lien or Encumbrance upon any of its assets or property, and before delinquency, all its other indebtedness. Borrower shall provide evidence to the Bank no later than thirty (30) days after the date on which ad valorem taxes would be delinquent that such taxes have been paid in full. Nothing herein contained shall prohibit Borrower from contesting in good faith and at its own expense any tax, assessment or governmental charge, provided, however, the Borrower shall, not later than twenty (20) days after the notice of such tax, assessment or charge which is disputed or contested by Borrower, provide a surety protecting the Bank's interest from any claim or lien against the collateral satisfactory to the Bank.

5.3 Payment of Claims. Borrower agrees to pay and discharge all claims for labor performed and material and services furnished in connection with the Collateral, and to take all other steps necessary to forestall the assertion of claims or liens either against the Collateral, or any part thereof or right or interest appurtenant thereto, or of claims against the Bank. Nothing herein contained shall require the Borrower to pay any claims for labor, materials or services which Borrower in good faith disputes and which the Borrower, at its own expense, is currently and diligently contesting, provided, however, that the Borrower shall, not later than twenty (20) days after the notice of the filing of any claim or lien against the Collateral or notice of intent to file such a lien, which is disputed or contested by the Borrower, either file a surety bond sufficient to release said claim or lien and promptly give notice of such filing to the lienholder or claimant, all as permitted by Idaho statute, or make other arrangements therefor satisfactory to the Bank. The Bank shall not be required to extend the Completion Date or the Maturity Date by reason of the Borrower's failure to pay such claims.

5.4 Law; Judgments; Material Agreements; Approvals and Permits. Borrower shall comply with all laws, ordinances, regulations, and rules (federal, state, and local) and all judgments, orders, and decrees of any arbitrator, other private adjudicator, or Governmental Entity relating to the Borrower, the Collateral, or the assets, business, operations, or property of the Borrower. The Borrower shall comply in all material respects with all material agreements, documents, and instruments to which the Borrower is a party or by which the Borrower, the Property, or any of the other assets or property of the Borrower is bound or affected. Borrower shall comply with all requirements contained in or required under any Covenants and all conditions and requirements of all Approvals and Permits. Borrower shall obtain and maintain in effect from time to time all Approvals and Permits required for the business activities and operations then being conducted by the Borrower.

5.5 Insurance. At all times, Borrower shall obtain and maintain in force, and pay the cost of property, commercial general liability, builder's risk and other types and forms of insurance coverage with respect to the Property or the Loan as may be required by Bank in accordance with Bank's insurance requirements as delivered to Borrower from time to time, including but not limited to the following:

(a) Property All-Risk Insurance. Each policy of insurance shall be in an amount, for a term and in a form and content, shall insure against such risks of loss or damage as

are commonly covered by all risk extended coverage policies of insurance and such other risks as Bank may from time to time designate for coverage under Borrower's policies, which amount shall not be less than the outstanding balance of the Loan, and shall be provided through such insurance companies, as may be satisfactory to Bank, with loss payable to Bank and shall, if required by Bank, be delivered to and remain in the possession of Bank as further security for the performance by Borrower under the Loan Documents. Such policy of insurance shall include a Bank's Loss Payable Endorsement or Mortgagee Clause in favor of and in form acceptable to Bank. The amount of such insurance shall in no event be less than (i) the original amount of the Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser. Borrower hereby assigns to Bank all unearned premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Bank upon acquisition by Bank of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Bank is hereby authorized and empowered at its option to adjust or ~~compromise any loss under any insurance policies on the Property and to collect and receive the~~ proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Bank alone and not to Borrower and Bank jointly. So long as Borrower is not in default under the Loan Documents, Borrower shall be entitled to participate in the adjustment or compromise of any insurance loss.

(b) Commercial General Liability Insurance And Loss Of Income Insurance. Borrower shall, at its sole expense, purchase and maintain commercial general liability insurance coverage for the ownership, maintenance and use of the Property. Bank may require such policies to: (i) be no less than a certain minimum amount; (ii) insure against such risks of liability as are commonly covered by broad form commercial liability policies in general use for owners of Property similar to the Property and such other risks as Bank may from time to time designate for coverage under Borrower's policies; (iii) be provided through such insurance companies as may be satisfactory to Bank; and (iv) include Bank and its successors and assigns, as additional insureds or additional loss payees. Bank may further require that Borrower provide, and maintain in force, at Borrower's sole expense, or other forms of coverage to protect the income or earnings of the Property, in form, coverage and liability amount acceptable to Bank.

(c) Other Insurance. Borrower shall, at its sole expense, obtain and maintain such additional insurance coverages as Bank may from time to time reasonably require against other insurable hazards or risks, including but not limited to, environmental impairment liability coverage; provided that Bank may only require coverage for risks not required by Bank at origination of the Loan if such hazards or risks are commonly insured against, and provided such insurance is reasonably available, for property similarly situated, due regard being given to the height and type of any buildings, their construction, use and occupancy.

(d) Premiums. Borrower shall promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Bank with written evidence of such payment. At least 30 days prior to the expiration of any such policies required by Bank, a policy form renewing or extending such expiring insurance shall be delivered to Bank if Bank requests delivery of such policies to it.

(e) Bank May Purchase. In the event Borrower fails to provide insurance complying with the provisions hereof, Bank may, but without obligation so to do, without notice to Borrower, without demand upon Borrower, without releasing Borrower from any obligation hereof, and without curing any default of Borrower, obtain insurance, in any amounts determined by Bank, through or from any insurance agency or insurer or insurance underwriter acceptable to Bank, and pay the premium therefore, and Bank by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company. Bank, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Bank pursuant hereto and any information concerning the Loan, Borrower, or the Property.

(f) Assignment of Insurance Proceeds. Borrower hereby assigns to Bank all insurance proceeds from each and every kind of insurance obtained by Borrower related to the Property, including without limitation, all proceeds from insurance not specifically required by Bank at the origination of the Loan or thereafter but which may be carried by Borrower from time to time with respect to the Property or the ownership, operation or income thereof, including, without limitation, earthquake insurance. If at any time Borrower obtains insurance related to the Property or the ownership, operation or income thereof, which is not specifically required by Bank, including, without limitation, earthquake insurance, then Borrower shall nevertheless include Bank and its successors and assigns as additional insureds or additional loss payees thereto.

#### 5.6 Damage or Destruction.

(a) If the Improvements or the Property, or any portions or part thereof, are damaged or destroyed by fire or any other cause, which damage or destruction is in an amount in excess of \$10,000, Borrower shall, at the request of the Bank and subject to the provisions of this Section, immediately proceed with the restoration thereof in accordance with the Plans and Specifications, and shall diligently complete the work of restoration, provided that Bank makes available to Borrower as restoration progresses any insurance proceeds actually paid to Bank in respect to such damage or destruction. If (i) in the Bank's sole discretionary judgment the insurance proceeds are sufficient to complete the restoration within one hundred twenty (120) days; (ii) the Bank determines that its security is not impaired; and (iii) no Default exists under the Loan Documents (collectively, the "**Restoration Conditions**"), the Bank shall advance the insurance proceeds to Borrower as restoration progresses in the same manner as the Bank disburses advances of construction funds under this Agreement. If any one or more of the Restoration Conditions does not exist, the Bank may call the Loan immediately due and payable in accordance with the following paragraph; provided, however, if, in the Bank's sole discretionary judgment the insurance proceeds are insufficient to complete the restoration, Borrower may satisfy such condition by depositing with the Bank additional money as in the Bank's sole discretionary judgment is sufficient to complete the restoration in a timely manner and fully pay the costs thereof.

(b) If in the Bank's sole discretionary judgment the Improvements cannot be restored in a timely manner as described above or, if Borrower does not or cannot deposit additional money as in the Bank's sole discretionary judgment is required to complete the

restoration and fully pay the cost thereof, or if a Default exists under the Loan Documents, such event shall be deemed an Event of Default hereunder, and the Bank's obligation to make insurance proceeds available for restoration shall immediately terminate. The Bank may in such case apply any insurance proceeds and/or owner's equity in the manner set forth in Section 5.6(a) hereof, to reduce the outstanding Obligations of Borrower under the Loan and may exercise any of the other remedies which are described in Section 8.2 hereof or in the Loan Documents.

(c) In the case of loss as described in subsection (a), the Bank is hereby authorized to participate in any settlement or adjustment of claims under insurance policies, as its interest may appear, and to collect and receipt for any proceeds. In the event the Bank elects to apply the proceeds to restoration, in keeping with the Restoration Conditions, such proceeds shall be made available, from time to time, in the same manner as the Bank disburses advances of construction funds under this Agreement.

5.7 Condemnation. If all or any part of the Property is expropriated, condemned, ~~taken by power of eminent domain, or transferred in anticipation of any such circumstances by~~ any competent authority, then the proceeds of any such award or settlement made as compensation or damages for such expropriation, condemnation, exercise of the power of eminent domain or the transfer in anticipation of any such circumstance shall be paid to the Bank. The Bank, at its election, may pay or apply such amount in any one or more of the following ways and in such order as the Bank shall determine:

- (a) to costs of collection thereof;
- (b) payment of any expenses and fees of the Bank associated with this Agreement and the other Obligations of the Borrower hereunder, the payment of accrued and unpaid interest on the Loan, and the reduction of unpaid principal of the Loan;
- (c) to the payment of obligations incurred by the Bank or the Borrower in the repair or replacement of damage to the Improvements; or
- (d) to make payment to the Borrower for the costs of restoration and repair of the Improvements.

If the Improvements or the Property or any part thereof is taken by condemnation or subject to imminent threat of condemnation, the Bank may elect not to authorize application of any proceeds from any condemnation award to the restoration of the Improvements unless, in the Bank's sole discretionary judgment, (i) the Bank's security is not impaired, (ii) the Improvements can be replaced and restored in a manner which will enable it to be functionally and economically utilized and occupied as originally intended, and (iii) the condemnation proceeds (when taken together with such additional owner's equity as Borrower may elect to deposit with the Bank) shall be sufficient to replace or restore the Improvements to a functional and economically feasible condition. Whether the Bank, in its sole judgment, determines that the Improvements can be so restored and replaced or not, the rights and obligations of Bank and Borrower thereafter, and the handling and utilization of any condemnation proceeds actually paid to the Bank and undisbursed owner's equity, shall be the same as described in the immediately preceding section hereof.

5.8 Fixtures. No Collateral which is personal property shall be purchased or installed on the Property by Borrower under any security agreement, conditional sales contract or other agreement wherein the seller reserves a security interest in, or the right to remove or to repossess, such items or to consider them personal property after their incorporation onto the Property.

5.9 Further Assurances. Borrower will at any time and from time to time upon request of the Bank take or cause to be taken any action, execute, acknowledge, deliver or record any further documents, opinions, mortgages, security agreements, financing statements or other instruments or obtain such additional insurance as Bank in its discretion deems necessary or appropriate to carry out the purposes of this Agreement and to preserve, protect and perfect the security interests intended to be created and preserved in the Collateral, the Property, and other properties and assets securing the obligations of Borrower under this Agreement and the Loan Documents.

5.10 Subsequent Actions. Borrower shall immediately notify the Bank of any actions, suits or proceedings involving Borrower or its members or officers or managers that could materially and adversely affect the repayment of the Loan, the performance of Borrower under this Agreement, or the financial condition, business or operations of Borrower or its members or officers or managers.

5.11 Charter. Borrower shall, at all times, comply with its obligations under the Charter and will deliver to Bank, concurrently with delivery of the same to the Charter Board, all correspondence, financial reports and other information delivered to the Charter Board.

5.12 Construction of Improvements. Borrower shall cause the Improvements to be constructed with diligence and continuity and completed substantially in accordance with the Plans and Specifications, Construction Budget (or if deposit is made as required by Section 5.16, the latest Estimate of Construction Costs) and Construction Schedule, all in accordance with the terms and conditions of this Agreement.

5.13 Deposit Accounts; Security Agreement. Borrower has opened with Bank (or, if applicable, will open when required by Bank) those accounts described in Exhibit E attached hereto and all operating and other accounts related to the Property (collectively, the “*Deposit Accounts*”). Borrower hereby grants to Bank a first lien security interest in and collateral assignment of each of the Deposit Accounts, now or hereafter established, and all funds from time to time on deposit therein. Upon the occurrence of an Event of Default, Borrower grants to Bank a full right of set-off with respect to all or any portion of the funds on deposit in the Deposit Accounts and any and all interest accrued thereon, if any. Bank may, to the maximum extent permissible by law, apply any or all of the funds in the Deposit Accounts, including accrued interest, if any, toward the unpaid balance of the Loan and/or to any other amounts which may be due and owing under the Loan Documents. The Bank shall at all times have “control” of the Deposit Accounts for purposes of maintaining its first and prior perfected security interest therein. The Bank shall have the right to direct the disposition of funds from any Deposit Accounts described on Exhibit E as “Bank Directed.” Borrower shall retain the right, subject to the terms of this Agreement, to direct the disposition of funds from those Deposit Accounts described on Exhibit E as “Borrower Directed”; provided, however, that

following the occurrence of an Event of Default, the Bank shall have the sole right to direct the disposition of funds from the “Borrower Directed” Deposit Accounts.

5.14 Payment Directive. Borrower shall provide a directive to the Idaho Department of Education (the “*Payment Directive*”) that all amounts due and payable to Borrower pursuant to or under the terms of the Act shall be paid directly to the Escrow Account. When such funds are deposited into the Escrow Account, the Escrow Agent will immediately, but in any event within one (1) Business Day, disburse funds from the Escrow Account into the Prepaid Debt Service Account in the amounts and on the dates reflected on the Debt Service Payment Schedule. Subsequently, the Escrow Agent shall disburse funds from the Prepaid Debt Service Account in accordance with the Debt Service Payment Schedule in order to make monthly debt service payments on the Loan. In the event Borrower takes any action to revoke or otherwise amend the Payment Directive, it shall constitute an immediate Event of Default hereunder. Bank will apply any funds received by Escrow Agent in the following order of priority:

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(a) ~~to past due interest, principal or other amounts owing to the Bank under the Loan Documents;~~

(b) to accrued and currently due principal and interest under the Loan Documents; and

(c) any remaining funds after the above disbursements, if applicable, shall be transferred as directed by Borrower.

5.15 Correction of Defects. Borrower shall proceed diligently to correct any defect in the Improvements or any departure from the Plans and Specifications not approved by Bank.

5.16 Deposit of Funds/Loan Balancing. If at any time the latest Estimate of Construction Costs shall exceed the Construction Budget, and if the undistributed proceeds of the Loan shall be insufficient, based on the Estimate of Construction Costs, to complete substantially the Improvements, then within 30 days after request by Bank, Borrower shall deposit the amount of such deficiency with Bank for disbursement for construction of the Improvements, or provide such other assurances that such deficiency shall be paid as Bank in its sole discretion shall require prior to any further disbursement of Loan proceeds. If such amounts are not deposited with the Bank within the time period required by this Section 5.16, it shall constitute an immediate Event of Default hereunder.

5.17 Americans with Disabilities Act. The Improvements shall be completed in conformance with the requirements of the Americans with Disabilities Act of 1990, 47 U.S.C. Section 12101 et seq. (“*ADA*”), as amended from time to time, or any regulations promulgated thereunder.

5.18 Other Charter School Covenants.

(a) Borrower shall conform to all requirements of the Act and other applicable law, the Idaho Department of Education, the Charter and the Charter Board, including without limitation all reporting requirements, and shall maintain its existence in good standing.



(b) Borrower shall promptly notify the Borrower and the Bank of any material adverse event including without limitation a material adverse change in its financial position, a decrease of more than 5% in enrollment, any notice of default from the Charter Board or any other event that could result in termination of the Charter. In the event of the latter, Borrower shall remedy the situation within 90 days or such shorter time as allowed by the Charter Board.

(c) Borrower shall provide to the Borrower and the Bank copies of all filings, financial reports and correspondence to and from the chartering district and/or the Charter Board.

(d) Borrower shall operate in such a manner as to maintain the current enrollment and increase future enrollment consistent with projections provided to Bank.

(e) In the event Borrower fails to operate in such a manner as to maintain the current enrollment and increase future enrollment as set forth in clause (d) above, Borrower shall, at the request of Bank, agree to implement any reasonable administrative programs, oversight or training, engage qualified consultants to provide specialized or targeted technical assistance, or enter into a charter school management services agreement with a recognized charter school management company acceptable to Bank, providing the necessary financial and personnel resources reasonably required for successful operation.

5.19 Completion of Improvements. Borrower shall substantially complete construction of the Improvements no later than the Completion Date. The Bank shall have no further obligation to make advances or disbursements of the Loan on or after the Mini-Perm Date.

5.20 Notices. Borrower, as soon as practicable, shall give notice to Bank of:

(a) The commencement of any uninsured litigation relating to Borrower or relating to the transactions contemplated by this Agreement;

(b) The commencement of any material arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Bank in writing which has been instituted or, to the knowledge of Borrower, threatened against Borrower or to which its properties or assets are subject;

(c) Any adverse development which occurs in any litigation, arbitration or governmental investigation or proceeding previously disclosed by Borrower to Bank;

(d) Any Default or Event of Default under this Agreement or the Loan Documents; and

(e) Any Material Adverse Occurrence.

5.21 Additional Banking Laws. The Borrower shall (a) ensure, and cause each affiliate to ensure, that no person who owns a controlling interest in or otherwise controls the Borrower or any affiliate is or shall be listed on the "Specially Designated Nationals and Blocked Person List" or other similar lists maintained by the Office of Foreign Assets Control ("**OFAC**"), the Department of the Treasury, or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any

enabling statute or Executive Order relating thereto, and (c) comply, and cause each affiliate to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

## ARTICLE 6 FINANCIAL COVENANTS

6.1 Special Definitions. In this Article, the following terms shall have the following meanings as to any Person:

(a) “*Appraised Value*” shall mean the “as-is” appraised value of the Property as determined pursuant to the Appraisal submitted to Bank pursuant to 3.1(c)(i) or, if Bank has obtained an Appraisal pursuant to Section 8.4, the “as-is” appraised value of the Property as determined pursuant to such updated Appraisal.

(b) “*Debt Service Coverage Ratio*” shall mean the ratio of (i) Net Operating Income to (ii) the Debt Service Expense for the Loan.

(c) “*Debt Service Expense*” shall mean, for any period, the maximum debt service (including, without limitation, principal, interest, credit enhancement fees such as letter of credit fees and/or other payment requirements) due under the Loan.

(d) “*Loan to Value Ratio*” shall mean the percentage that the maximum principal amount of the Loan bears to the Appraised Value.

(e) “*Net Operating Income*” shall mean, for any period, the total aggregate income generated by the Property, including interest earned on any reserves, before interest expense, taxes, depreciation or amortization, determined in conformity with GAAP, less costs of utilities, management fees, operating and administrative expense, site management staff, insurance, repairs and maintenance.

6.2 Financial Covenants. Until the Loan and all indebtedness hereunder have been paid in full and all Obligations hereunder have been fully discharged, Borrower covenants and agrees as follows:

(a) The Debt Service Coverage Ratio, as determined at the end of each calendar quarter, commencing on September 30, 2012, based on a rolling four (4) quarter basis, shall not fall below 1.25:1.

(b) The Loan to Value Ratio shall not exceed eighty-five percent (85%). Should the Loan to Value Ratio at any time exceed 85%, then, within ten (10) days of the Bank’s written demand, Borrower shall pay down the principal balance of the Loan in such amount as will bring the Loan to Value Ratio into compliance with this Section 6.2(b).

6.3 Financial Information. In addition to any financial statements or reports reasonably required by the Bank from time to time, Borrower shall furnish the Bank with the following financial statements, reports and information without additional notice:

(a) As soon as available and in any event within one-hundred eighty (180) days after the end of each fiscal year of Borrower, commencing with the fiscal year ending December 31, 2012, audited annual financial statements of Borrower, including balance sheets, related statements of earnings, income statements and cash flow statements for the fiscal year covered with comparable figures for the preceding calendar year, certified without qualification or exception by a certified public accountant and an appropriate officer of Borrower, in form and detail satisfactory to the Bank.

(b) As soon as available, and in any event within forty-five (45) calendar days after the end of each calendar quarter, commencing with the calendar quarter ending September 30, 2012, internally prepared quarterly financial statements of Borrower, including balance sheets, related statements of earnings, income statements and cash flow statements for the quarter covered with comparable figures for the preceding calendar quarter, certified by an appropriate officer of Borrower to be complete, correct and accurate in all material respects, in form and detail satisfactory to the Bank.

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(c) Annually, on or before October 31 of each year, actual enrollment and wait list figures, concurrently with Borrower's delivery to the Charter Board.

(d) Annually, within thirty (30) days after the end of each calendar year, verification by Borrower that all real estate taxes for the Property have been paid, in form and detail satisfactory to Bank.

(e) Annually, within thirty (30) days after the end of each calendar year, verification by Borrower that all insurance required by the Bank remains in force and effect, in form and detail satisfactory to Bank.

All financial data provided to the Bank shall be prepared in accordance with GAAP or other generally recognized accounting system satisfactory to the Bank.

6.4 Other Items and Information. Borrower shall provide such other information concerning Borrower, the Property, and the assets, business, financial condition, operations, property, prospects, and results of operations of Borrower as Bank reasonably requests from time to time. In this regard, immediately upon request of Bank, Borrower shall deliver to Bank counterparts and/or conditional assignments as security of any and all receipted invoices, bills of sale, statements, conveyances, and other agreements, documents, and instruments of any nature relating to the Property or under which Borrower claim title to any materials or supplies used or to be used on the Property.

## ARTICLE 7 NEGATIVE COVENANTS

Until the Obligations are paid and performed in full, the Loan Parties agree that, unless Bank otherwise agrees in writing in Bank's absolute and sole discretion:

7.1 Further Indebtedness. Borrower shall not create, incur, assume, or allow to exist any indebtedness of any kind or description, except the following:

- (a) Indebtedness of \$60,000 or less;
- (b) Indebtedness to trade creditors incurred in the ordinary course of business, to the extent that it is not overdue past the original due date by more than ninety (90) days or is being contested in good faith by the Borrower with the Bank's reasonable consent; or
- (c) the Obligations under the Loan.

7.2 Alteration of Plans and Specifications. Borrower shall not make or permit any material change in the Plans and Specifications or permit the performance of any work or a change in any agreement or arrangement that would result in a material change in the Plans and Specifications.

7.3 Alteration of Other Documents. Borrower shall not make or permit any material change in any of the documents furnished to Bank in connection with the Loan.

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7.4 Distributions, Dividends and Compensation. Borrower shall not declare, pay, set aside funds for or make any distribution or dividend, in cash or assets or trust.

## ARTICLE 8 DEFAULT AND REMEDIES

8.1 Event of Default. The occurrence of any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any installment of principal or interest on the Note or any other monetary obligation under any Loan Document when due (after giving consideration to any grace period which may be applicable);
- (b) A default shall occur in the due performance and observance of any covenant or condition of this Agreement or any other Loan Document not otherwise described in this Section 8.1, which breach is not cured to Bank's reasonable satisfaction within the applicable cure period for breach of such covenant or condition, and, if no specific cure period is provided, within thirty (30) days of notice of such default being sent by Bank to Borrower;
- (c) Any representation, warranty or disclosure made by Borrower proves to be materially false or misleading as of the date when made, regardless of whether such representation or disclosure appears in this Agreement, the Loan Documents, or items submitted by Borrower in connection therewith;
- (d) Borrower fails to comply with any term, covenant or agreement contained in ARTICLE 6 of this Agreement;
- (e) Borrower fails to comply with any term, covenant or agreement contained in ARTICLE 7 of this Agreement;
- (f) Borrower fails to comply with Section 5.16 of this Agreement;

(g) Borrower defaults under its Charter or the Charter is terminated for any reason whatsoever;

(h) There shall occur a default or event of default under any other loan made by Bank to Borrower or any entity affiliated with Borrower, if such default has not been cured within any applicable cure period;

(i) A final judgment (i) is entered against Borrower and when added together with any other unsatisfied final judgments entered against Borrower, exceeds the sum of \$50,000, (ii) is not covered by insurance and (iii) remains unsatisfied or not appealed for a period of 60 days after the entry thereof;

(j) An "Event of Default" (as defined under any other Loan Document not already mentioned in this Section) shall occur and such Event of Default continues beyond any applicable grace period provided in such Loan Document;

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(k) Any claim or lien shall be filed against the Collateral or any part thereof; provided, however, that no default shall exist hereunder as long as Borrower has fully complied with any conditions provided in the Loan Documents to permit Borrower's contest of such claim or lien;

(l) Borrower fails to make any deposit of funds required hereunder, or under the Loan Documents within the time required for payment;

(m) The Escrow Agent does not receive funds in accordance with the terms of the Payment Directive or does not comply with the terms of the Escrow Agreement;

(n) Borrower shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by Borrower seeking to adjudicate Borrower bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, or other similar official for it or for any substantial and material part of its property; or Borrower shall take any action to authorize any of the actions set forth above in this Section 8.1;

(o) Borrower (i) becomes insolvent or the subject of state insolvency proceedings, (ii) fails generally to pay debts as they become due, (iii) fails to perform on any term, covenant or agreement made by Borrower relating to debt of Borrower that results in the holder of such debt being able to accelerate the debt, (iv) makes an assignment for the benefit of creditors, (v) has a receiver, trustee, custodian or other similar official appointed with respect to its assets, (vi) has a substantial part of its property taken into the possession of a receiver, trustee or custodian and such appointment remains in place for a period of sixty days;

(p) The taking of action by Borrower to make itself the subject of proceedings under the United States Bankruptcy Code; or the execution by Borrower of a petition to become a debtor under the United States Bankruptcy Code; or the filing of an involuntary petition against

Borrower under the United States Bankruptcy Code that remains undismissed for a period of sixty days; or an order for relief under the United States Bankruptcy Code is entered against Borrower;

(q) There occurs any Material Adverse Occurrence;

(r) A Transfer (as defined in the Deed of Trust) occurs under Section 3.18(a) of the Deed of Trust; or

(s) Bank does not receive the following on or before September 30, 2012: (i) evidence that the Property is substantially complete and (ii) a copy of the certificate of occupancy.

Borrower acknowledges and agrees that all material non-monetary defaults are conclusively deemed to be and are defaults which impair the security of the Loan Documents, and that Bank shall be entitled to exercise any appropriate remedy, including without limitation, foreclosure of the Loan Documents upon the occurrence of any such material non-monetary default after the expiration of any cure period, if applicable.

8.2 Remedies. Upon the occurrence of an Event of Default, Bank may, in addition to any other remedies which Bank may have hereunder or under the Loan Documents or by law, at its option and without prior demand or notice take any or all of the following actions:

(a) Use any funds of Borrower held by the Bank to reimburse the Bank for any costs incurred under the Note or this Agreement.

(b) Declare the Obligations immediately due and payable.

(c) Bank shall have the right to take possession of the Property and perform any and all work it deems advisable or necessary to protect the Property and Improvements. Borrower hereby irrevocably constitutes and appoints Bank its attorney-in-fact with full power and authority upon the occurrence of an Event of Default to:

(i) take possession of and protect the Improvements;

(ii) pay, settle or compromise all existing claims relating to the clearance of title to the Property for protection of its interest;

(iii) prosecute and defend all actions and proceedings in connection with the Improvements and to apply the proceeds of any judgment received by Borrower in any such action against any of the Obligations as it sees fit;

(iv) enter into leases in connection with the Property; and

(v) execute, acknowledge and deliver all instruments and documents in the name of Borrower and do and perform all acts in the name of Borrower that Bank deems necessary or appropriate to commence or continue operations on the Property.

(d) Obtain the appointment of a receiver and foreclose on or realize upon any security for the Loan without waiving its rights to proceed against any other security or other entities or individuals directly or indirectly responsible for repayment of the Obligations or waive any and all security for the Obligations as Bank may in its discretion so determine, and pursue any such other remedy or remedies as Bank may so determine to be in its best interest as provided herein or in the Loan Documents. All remedies of Bank provided for herein and in any other Loan Document are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by Bank hereunder shall not in any way constitute a cure or waiver of Default hereunder or under any other Loan Document or invalidate any act done pursuant to any notice of Default, or prejudice Bank in the exercise of any of its rights hereunder or under any other Loan Documents unless, in the exercise of its rights, Bank realizes all amounts owed to it under such Loan Documents.

8.3 Setoff. As security for the payment of the Obligations, Borrower hereby grants to the Bank a security interest in and lien on any credit balance now or hereafter owed to Borrower by the Bank. ~~In addition, Borrower each agree that the Bank may, at any time after the occurrence of an Event of Default, without prior notice or demand, set off against any such credit balance or other money all or any part of the unpaid balance of the Obligations.~~

8.4 Recertified Appraisal. If at any time (a) the Bank believes that an Event of Default under the Loan Documents has occurred (giving effect to applicable cure and notice periods, if any, contained in the Loan Documents), (b) the Bank determines, in its sole judgment, that the collateral position of the Bank in relation to the credit extended for the benefit of the Borrower has adversely changed as a consequence of material, physical or economic impairment of the pledged collateral, or (c) Bank is required by law or regulation to obtain a new Appraisal, the Bank may require a new Appraisal of the Property in form and content acceptable to the Bank to be prepared at Borrower's expense.

8.5 Inspections. Bank and its agents, employees, and representatives shall have the right upon reasonable notice and during normal business hours (except in the event of an emergency) from time to time to enter upon the Property in order to inspect the Property. Inspection by Bank or the Bank's Inspector of the Property is for the sole purpose of protecting the security of Bank and is not to be construed as a representation by Bank that there has been compliance with applicable law or the applicable Covenants or that the Improvements are free of defects in materials or workmanship. Borrower may make or cause to be made such other independent inspections as Borrower may desire for its own protection.

In any case, Bank may proceed with every remedy available at law or in equity or provided for herein or in any document executed in connection herewith, and all expenses incurred by Bank in connection with any remedy shall be deemed indebtedness of Borrower to Bank and a part of the Obligations. Bank may apply the proceeds from any collateral for the Loan or from any other source against any of the Obligations as and in any order it sees fit.

ARTICLE 9  
MISCELLANEOUS

9.1 No Waiver. No waiver of any Default or breach by Borrower hereunder shall be implied from any failure by Bank to take action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Bank to, or of, any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to, or of, any subsequent similar act.

9.2 Successors and Assigns. This Agreement is made and entered into for the sole protection and benefit of Bank and Borrower, their successors and assigns, and no other person or persons shall have any right of action hereunder. The terms hereof shall inure to the benefit of ~~the successors and assigns of the parties hereto; provided, however, that the Borrower's interest~~ hereunder cannot be assigned or otherwise transferred without the prior consent of Bank which may be withheld in Bank's sole and absolute discretion.

9.3 Notices. Any notice required or permitted to be given by Borrower or Bank under this Agreement shall be in writing and will be deemed given (a) upon personal delivery or upon confirmed transmission by telecopier or similar facsimile transmission device, (b) on the first business day after receipted delivery to a courier service which guarantees next business-day delivery, or (c) on the third business day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Borrower:

Legacy Public Charter School, Inc.  
2422 12 Avenue Rd #225  
Nampa, Idaho 83686  
Attn: Rebecca Stallcop, Administrator  
Telecopy No.: (208) 466-7952

With copy to:

Kirton & McConkie, P.C.  
60 East South Temple, Suite 1800  
Salt Lake City, Utah 84145  
Attn: Joel D. Wright, Esq.  
Telecopy No.: (801) 426-2100

If to Bank:

Vectra Bank Colorado, National Association  
2000 S. Colorado Blvd., Suite 2-1200  
Denver, CO 80222  
Attn: Conrad Freeman, Senior Vice-President  
Telecopy No.: (720) 947-7654



With copy to:

Bryan Cave HRO  
1700 Lincoln Street, Suite 4100  
Denver, Colorado 80203  
Attn: Alison Wadle, Esq.  
Telecopy No.: (303) 866-0200

Any person may change such person's address for notices or copies of notices by giving notice to the other party in accordance with this section.

9.4 Authority to File Notices. Borrower irrevocably appoints, designates and authorizes Bank as its agent (said agency being coupled with an interest), upon the occurrence of an Event of Default, to send to any third party any other notice or documents or take any other action that Bank deems necessary or desirable to protect its interest hereunder, or under the Loan Documents, and will upon request by Bank, execute such additional documents as Bank may require to further evidence the grant of the aforesaid right to Bank.

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9.5 Time. Time is of the essence hereof.

9.6 Amendments, etc. No amendment, modification, termination or waiver of any provisions of this Agreement or of any of the Loan Documents nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.7 Headings. The article and section headings in no way define, limit, extend or interpret the scope of this Agreement or of any particular article or section.

9.8 Number and Gender. When the context in which the words are used in this Agreement indicate that such is the intent, words in the singular number shall include the plural and vice-versa. References to any one gender shall also include the other gender if applicable under the circumstances.

9.9 No Joint Venture. The Bank and the Borrower each have separate and independent rights and obligations under this Agreement. Nothing contained herein shall be construed as creating, forming or constituting any partnership, joint venture, merger or consolidation of Borrower and the Bank for any purpose or in any respect.

9.10 Indemnify Bank. Borrower shall indemnify and hold the Bank harmless from all liability for any actual or alleged damage or injury of whatsoever nature arising out of or in any way connected with the Property or arising out of Borrower's breach of the provisions of this Agreement, except to the extent such damage or injury is caused by the Bank's gross negligence or willful misconduct. The Bank may commence, appear in or defend, in its own name or in the name of Borrower, any action or proceeding purporting to affect the rights, duties or liabilities of the parties hereto, or the Property or the Improvements and Borrower shall pay all of Bank's costs and expenses incurred thereby on demand. This Section shall survive execution, delivery and performance of this Agreement, the Deed of Trust, and the Loan Documents.

9.11 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without giving effect to principles of conflict of laws. Without limiting the right of Bank to bring any action or proceeding against Borrower or against any property of Borrower (an “*Action*”) arising out of or relating to this Note or any indebtedness evidenced hereby in the courts of other jurisdictions, Borrower hereby irrevocably submit to the jurisdiction, process and venue of any Idaho State or Federal court sitting in or for Canyon County, Idaho, and hereby irrevocably agree that any Action may be heard and determined in such Idaho State court or in such Federal court. Borrower hereby irrevocably waives, to the fullest extent it may effectively do so, the defenses of lack of jurisdiction over any person, inconvenient forum or improper venue, to the maintenance of any Action in any jurisdiction.

9.12 Automatic Acceleration. Should there occur a Default or Event of Default and if a petition under the United States Bankruptcy Code thereafter is filed by or against Borrower while such event remains uncured, all obligations hereunder shall be automatically accelerated and due and payable and the Default Rate provided for in the Note shall automatically apply as of the date of the first occurrence of the event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default, without any notice, demand or action of any type on the part of Bank (including any action evidencing the acceleration or imposition of the Default Rate). The fact that the Bank has, prior to the filing of the voluntary petition under the United States Bankruptcy Code, acted in a manner which is inconsistent with the acceleration and imposition of the Default Rate provided for in the Note, shall not constitute a waiver of this Section 9.12 or estop Bank from asserting or enforcing Bank’s rights hereunder.

9.13 Severability. If any provision of this Loan Agreement or of any other Loan Document securing or executed in connection with this Loan Agreement is, for any reason and to any extent, invalid or unenforceable, then neither the remainder of the Loan Document in which such provision is contained, or the application of the provision to other persons, entities or circumstances, nor any other document referred to in this Loan Agreement, shall be affected by such invalidity or unenforceability, and there shall be deemed substituted for the invalid or unenforceable provision the most similar provision which would be valid and enforceable under applicable law.

9.14 Attorneys Fees and Other Costs. Borrower shall reimburse Bank for all attorneys’ fees and expenses reasonably incurred by Bank in connection with the enforcement of Bank’s rights under this Agreement and each of the other Loan Documents, including, without limitation, reasonable attorneys’ fees and reimbursements for trial, appellate proceedings, out-of-court workouts and settlements and for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys’ fees incurred in bankruptcy and insolvency proceedings such as in connection with seeking relief from stay in a bankruptcy proceeding or negotiating and documenting any amendment or modification of the Loan or reviewing subsequent Loan submission items. Borrower shall pay all costs, including without limitation costs of title searches, title commitments, appraisals, environmental audits, third-party consultants UCC searches reasonably incurred by the Bank in enforcing payment and performance of the Loan, exercising rights and remedies of Bank under the Loan Documents, or reviewing Loan submission items. Borrower’s reimbursement obligation shall be part of the Obligations evidenced and secured by the Loan Documents.

9.15 Right to Participate or Assign Loan. Bank shall retain the right at all times, with or without the consent of the Loan Parties, to grant participation in the Loan or any portion thereof, together with the collateral for repayment of the Note, to any other entity acceptable to Bank, and the Loan Parties acknowledge that Bank shall have the right to share any and all information concerning the Loan Parties with any prospective loan participant.

9.16 Marshalling. Borrower, for itself and for all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien and security interests of the Loan Documents.

9.17 **WAIVER OF RIGHTS. BANK AND BORROWER, EACH FOR ITSELF AND FOR ALL WHO MAY CLAIM THROUGH OR UNDER IT, WAIVES THE RIGHT TO TRIAL BY JURY ON ANY ISSUES BETWEEN BORROWER AND BANK AND TO ANY ISSUES PERTAINING TO THE LOAN DOCUMENTS, AS TO MATTERS PERTAINING TO THE ACTS OF THE BANK PRIOR TO THE DATE HEREOF OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION. BORROWER WILL NOT SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH OF BORROWER ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COUNSEL WITH RESPECT TO THIS WAIVER.**

9.18 **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.

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(g) Borrower acknowledges and agrees as follows:

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

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

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

(iv) 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.

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

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

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

**9.19 LIMITATION OF LIABILITY. BORROWER AND BANK HEREBY WAIVE ANY RIGHT EITHER OF THEM MIGHT HAVE TO CLAIM OR RECOVER FROM ANY OTHER PARTY ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES, OF WHATEVER NATURE, OTHER THAN ACTUAL DAMAGES.**

9.20 Waiver of Defenses and Release of Claims. Borrower hereby (i) represents that neither Borrower nor any affiliate of Borrower has any defenses to or setoffs against any Debt or other obligations owing by Borrower, or by Borrower's affiliates, to Bank or Bank's affiliates

(the “*Other Obligations*”), nor any claims against Bank or Bank’s affiliates for any matter whatsoever, related or unrelated to the Other Obligations, and (ii) releases Bank and Bank’s affiliates, officers, directors, employees and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that the undersigned has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Other Obligations or arising under any loan document, including the Loan Documents. Borrower acknowledges that Bank has been induced to enter into this Agreement and make the Loan by, among other things, the waivers and releases in this paragraph.

9.21 Increased Costs Generally. If any Change in Law (as defined below):

(a) subjects the Bank to any tax or changes the basis of taxation with respect to this Agreement, the Note, the Loan or payments by Borrower of principal, interest, fees or other amounts due from Borrower hereunder or under the Note (except for taxes on the overall net income of Bank);

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(b) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, or assets (funded or contingent) of, deposits with or for the account of, or other acquisition of funds by, Bank; or

(c) imposes, modifies or deems applicable any capital adequacy or similar requirement (i) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, Bank, or (ii) otherwise applicable to the obligations of Bank under this Agreement,

and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon Bank with respect to this Agreement, the Note or the making, maintenance or funding of any part of the Loan (or, in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on Bank’s capital, taking into consideration Bank’s customary policies with respect to capital adequacy) by an amount which Bank in its sole discretion deems to be material, Bank may from time to time notify Borrower of the amount determined in good faith (using any averaging and attribution methods employed in good faith) by Bank (which determination shall be conclusive absent manifest error) to be necessary to compensate Bank for such increase in cost, reduction of income, additional expense or reduced rate of return. Such notice shall set forth in reasonable detail the basis for such determination. Such amount shall be due and payable by Borrower to Bank within ten (10) Business Days after such notice is given. “*Change In Law*” shall mean the occurrence after the date of this Agreement of any of the following: (i) the adoption or taking effect of any law, rule or regulation, (ii) any change in any law, rule or regulation or in the administration, interpretation or application thereof by any Governmental Entity or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Entity.

9.22 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

9.23 Entire Agreement. This Agreement and the other Loan Documents shall constitute the entire agreement of the Borrower and Bank pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements and understandings of such parties in connection therewith.

9.24 Document Imaging. Bank shall be entitled, in its sole discretion, to image all or any selection of the Loan Documents, and other instruments, documents, items and records governing, arising from or relating to any of Borrower's loan or loans, and may destroy or archive the paper originals. The parties hereto waive any right to insist Bank produce paper originals, agree that such images shall be accorded the same force and effect as the paper originals, and further agree that Bank is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or proceedings.

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**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Borrower and Bank have executed this Agreement as of the date first written above by and through their duly authorized representatives.

**BANK:**

**VECTRA BANK COLORADO, NATIONAL ASSOCIATION**

By:  \_\_\_\_\_

Name: Conrad Freeman

Title: Senior Vice President

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**BORROWER:**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



IN WITNESS WHEREOF, Borrower and Bank have executed this Agreement as of the date first written above by and through their duly authorized representatives.

**BANK:**

**VECTRA BANK COLORADO, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name: Conrad Freeman

Title: Senior Vice President

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**BORROWER:**

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

By: 

Name: BART MCKNIGHT

Title: CHAIRMAN

**EXHIBIT A**

**LEGAL DESCRIPTION**

A PARCEL OF LAND BEING LOCATED IN THE NORTH ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 2 NORTH, RANGE 2 WEST, BOISE MERIDIAN, CITY OF NAMPA, CANYON COUNTY, IDAHO AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENT MARKING THE NORTHEAST CORNER OF SAID SECTION 11, THENCE ALONG THE NORTH LINE OF SAID SECTION, SOUTH 89° 58' 39" WEST A DISTANCE OF 768.72 FEET TO THE POINT OF INTERSECTION WITH THE CENTERLINE OF SOUTH LAVA SPRINGS DRIVE AND SAID NORTH LINE, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE EAST 1/16<sup>TH</sup> CORNER OF SAID SECTION BEARS SOUTH 89° 58' 39" WEST A DISTANCE OF 557.23 FEET; ~~THENCE SOUTH ALONG SAID CENTERLINE, SOUTH 00° 01' 39" EAST A~~ DISTANCE OF 328.73 FEET TO A 5/8 INCH IRON PIN AT THE POINT OF INTERSECTION OF SAID SOUTH LAVA SPRINGS DRIVE AND SOUTH LAVA SPRINGS LOOP; THENCE ALONG THE CENTERLINE OF SAID SOUTH LAVA SPRINGS LOOP, NORTH 87° 45' 43" WEST A DISTANCE OF 79.68 FEET TO A 5/8 INCH IRON PIN ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH LAVA SPRINGS LOOP; THENCE ALONG SAID RIGHT-OF-WAY LINE, SOUTH 02° 14' 17" WEST A DISTANCE OF 27.50 FEET TO A 5/8" IRON PIN AT THE POINT OF BEGINNING;

THENCE LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 02° 40' 49" EAST A DISTANCE OF 186.63 FEET TO A POINT; THENCE SOUTH 06° 45' 35" EAST A DISTANCE OF 139.25 FEET TO A POINT; THENCE SOUTH 20° 06' 25" WEST A DISTANCE OF 134.52 FEET TO A POINT; THENCE NORTH 86° 47' 46" WEST A DISTANCE OF 448.47 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 57.62 FEET, SAID CURVE HAVING A RADIUS OF 327.50 FEET, A CENTRAL ANGLE OF 10° 04' 51", AND A CHORD BEARING NORTH 05° 15' 18" WEST A CHORD DISTANCE OF 57.55 FEET TO A POINT; THENCE NORTH 10° 17' 44" WEST A DISTANCE OF 235.94 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 435.33 FEET, SAID CURVE HAVING A RADIUS OF 192.50 FEET, A CENTRAL ANGLE OF 129° 34' 19", AND A CHORD BEARING NORTH 54° 29' 26" EAST A CHORD DISTANCE OF 348.32 FEET TO A POINT; THENCE SOUTH 60° 43' 25" EAST A DISTANCE OF 67.53 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT AN ARC DISTANCE OF 112.07 FEET, SAID CURVE HAVING A RADIUS OF 237.50 FEET, A CENTRAL ANGLE OF 27° 02' 15", AND A LONG CHORD BEARING SOUTH 74° 14' 32" EAST A CHORD DISTANCE OF 111.04 FEET TO A POINT; THENCE SOUTH 87° 45' 43" EAST A DISTANCE OF 67.08 FEET TO THE POINT OF BEGINNING.

ALSO KNOWN AND NUMBERED AS: 4015 SOUTH LEGACY WAY, NAMPA, IDAHO 83686

CANYON COUNTY PIN: 29454010A0

**EXHIBIT B**  
**CONSTRUCTION BUDGET**

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<b>Construction Budget Summary</b>		
<b>Phase One Construction Costs</b>		
Land Purchase	100,000	3.3%
Land Entitlements	23,500	0.8%
Permits & Fees	22,500	0.7%
Phase One Construction Costs	<u>235,340</u>	7.7%
<b>Total Phase One Costs</b>	<b>381,340</b>	
<b>Phase Two-Permanent Building</b>		
Design Costs	105,329	3.5%
Permits	69,303	2.3%
Construction Costs	2,193,223	72.1%
Lenders Contingency (5% Construction Costs)	<u>118,393</u>	3.9%
<b>Total Phase Two Costs</b>	<b>2,486,248</b>	
Closing Costs	35,000	1.2%
Loan Origination Fee	26,500	0.9%
Legal Expenses	40,000	1.3%
Capitalized Interest	<u>72,573</u>	2.4%
<b>Total Financing Expenses</b>	<b>174,073</b>	
<b>Total Land &amp; Construction Costs</b>	<b>3,041,661</b>	100.0%
Advance Rate	85%	
<b>Proposed VBC Loan</b>	<b>2,585,412</b>	
Phase One Costs Expended	381,340	
Equipment, Furniture, Food Service	<u>100,000</u>	
<b>Total School Equity Contribution</b>	<b>481,340</b>	

**EXHIBIT C**

**FORM OF CERTIFICATION OF CHARTER**

Vectra Bank Colorado  
2000 S Colorado Blvd., Suite 2-1200  
Denver, CO 80222

Re: Petition approved by Public Charter School Commission Decision Approving Charter, Case No. \_\_\_\_\_, dated \_\_\_\_\_ (the "Charter Agreement")

Ladies and Gentlemen:

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The undersigned hereby certifies that attached hereto is a true and complete copy of the above-referenced Charter Agreement, the original of which has been duly approved and executed by and is on file with the Idaho Public Charter School Commission. As of the date of this certification, the Charter Agreement is in full force and effect according to its terms.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LEGACY PUBLIC CHARTER SCHOOL, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D**

**CONTRACTOR'S CERTIFICATE**

Borrower: Legacy Public Charter School, Inc.

Project: Construction of Charter School located at 4015 South Legacy Way in Nampa, Idaho

The undersigned (the "**Contractor**"), is the Contractor for the construction of the Project for Borrower, and in such capacity we are familiar with the plans and specifications for, and the construction of, the Project and with the nature, design and intended uses and operation of the Project.

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~~The Contractor hereby certifies to the best of its knowledge to and with VECTRA BANK COLORADO, that Contractor, as of the date hereof, is unaware of any (i) Project change orders that are outstanding and (ii) any amounts due to Contractor for work performed on the Project that are in dispute except as set forth hereunder.~~

Outstanding Change Orders:

Amounts in Dispute:

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR:**

**ALTA CONSTRUCTION, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT E**

**DEPOSIT ACCOUNTS**

***“Borrower Directed”***

Disbursement Account. Account No. 5110020145 established at Vectra Bank Colorado.

***“Bank Directed”***

Reserves. Any Reserve account opened pursuant to the terms of this Agreement.

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