ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 04/04/16
FOR CITY COUNCIL MEETING OF 04/13/16

ISSUE:

24. Request for Approval of Amended and Restated Lease – Improvements Premises at 1600 St. Michael's Drive; Santa Fe University of Art and Design LLC. (Kelley Brennan)

FINANCE COMMITTEE ACTION:

Approved as consent item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR VILLAREAL	X		
COUNCILOR IVES	X		
COUNCILOR LINDELL	Excused		
COUNCILOR HARRIS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

City of Santa Fe, New Mexico

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Javier M. Gonzales, Mayor

Councilors:
Signe I. Lindell, Mayor Pro Tem, Dist. 1
Renee Villarreal, Dist. 1
Peter N. Ives, Dist. 2
Joseph M. Maestas, Dist. 2
Carmichael A. Dominguez, Dist. 3
Chris Rivera, Dist. 3
Ronald S. Trujillo, Dist. 4
Mike Harris, Dist. 4

Memorandum

To: Members of the Governing Body

From: Kelley Brennan, City Attorney
Matthew O'Reilly, Asset Development Director

Re: Request for Approval of Amended and Restated Lease between City of Santa Fe and Santa Fe University of Art and Design for the Premises at 1600 St. Michael's Drive

Date: March 25, 2016 for the April 4, 2016 Finance Committee Meeting and the April 13, 2016 Meeting of the Governing Body

On September 15, 2009 the City of Santa Fe, as Landlord (City) and Santa Fe Higher Education, LLC (now known as Santa Fe University of Art and Design, LLC) (SFUAD), as Tenant, executed a lease (the Lease) for approximately 62 acres of land and buildings (the Premises) purchased by the City from the College of Santa Fe. The Premises, together with several adjacent parcels of improved and unimproved land had been acquired by the City immediately prior to the execution of the Lease as part of a unified transaction undertaken by the City to assure the continued operation of the College, which had closed its doors earlier in 2009 due to financial difficulties. The acquisition was financed with a loan (the Loan) from the New Mexico Finance Authority (NMFA) which funded the Loan through the sale of bonds.

The Lease provided for, among other things, $15,000,000 of deferred maintenance work (the DM Work) to be performed by SFUAD and paid for out of a fund established by the City for that purpose (the DM Fund). The Lease also established an Electricity Fund funded by the City to pay for the repair, maintenance and replacement of electrical infrastructure serving the Premises. In addition, the Lease assigned shifting responsibility for the costs of sewer, gas and water infrastructure repair, maintenance and replacement. A number of these various Lease obligations have been fulfilled. In addition, the date when the responsibility for certain costs shifted from

the City to SFUAD – "the last day of the fifth (5th) full Lease Year", or September 14, 2014 – has passed.

Finally, as a result of favorable market conditions leading to a lower interest rate than anticipated, the City's annual debt service on the Loan is lower than the annual rent (Rent) it receives for the Premises. Under the Lease, the excess constitutes a credit to the Tenant against the purchase price if and when the Tenant elects to buy the Premises.

As a result of the foregoing changes in condition, the City and SFUAD undertook to reconcile all outstanding accounts and Rent. That effort is complete, and the attached Amended and Restated Lease drafted to reflect current conditions (the New Lease).

The New Lease addresses the completion of the DM Work and the drawdown of funds in the DM Fund (Section 7.11), as well as the distribution of the Electricity Fund (Section 6.02(b)) and certain other obligations of the parties triggered by the completion of the 5th complete lease year, such as responsibility for utility payments (Section 6.02 (a)). A revised Exhibit G-1 lists the DM Work approved by the City and its costs. The New Lease also provides for (1) a credit against future Rent of a total of the accumulated $1.15 million excess of past Rent over debt service payments, with a 12-month extension of the Term (Section 3.01) or (2) a credit against the purchase price in the event SFUAD purchases the Premises, or (3) a combination of the two. The New Lease also provides for a reduction in future Rent of $120,000/year ($30,000/quarter) to address the excess of Rent over debt service costs (Sections 1.07 and 3.01, Schedule 1). The New Lease also provides an alternative approval method for a proposed assignee which has been approved by SFUAD's accrediting agency, which requires an extended and thorough review process addressing financial capacity, physical plant and academic standards (Section 12.03). Finally, the New Lease clarifies that in the event SFUAD elects to purchase the Premises, the purchase price will equal the appraised fair market value of the Premises, less certain credits, but in no event less than the amount required for the City to pay off the Loan, as well as reasonable costs (Section 37.03). Our insurer has also recommended certain modifications to the Section 8 insurance provisions, which are pending and are also attached as a separate document. Certain other minor technical and formatting changes have been made as well. Otherwise the terms and conditions of the original lease remain unchanged.

Staff recommends approval of the New Lease in substantially the form attached to this memorandum, noting that only those exhibits and schedules which the New Lease modifies are included. A copy of the Lease, without exhibits, is attached for your reference.

AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (Lease), dated and effective as of March 30, 2016, amends, restates, supersedes and replaces in its entirety that certain Lease dated as of September 15, 2009 (the Lease Commencement Date), as amended on March 29, 2010 and on May 23, 2011, (collectively, the Original Lease), identified respectively in the records of the City of Santa Fe as Item # 09-0984, Item # 10-0242 and Item # 11-0349, by and between the CITY OF SANTA FE, NEW MEXICO, a municipal corporation existing under the laws of the State of New Mexico (Landlord), and SANTA FE UNIVERSITY OF ART AND DESIGN, LLC, a New Mexico limited liability company (Tenant).

WHEREAS, the Original Lease provided for the establishment and funding by the Landlord of an Electricity Repair Fund (the Electricity Fund) and a Deferred Maintenance Fund (the DM Fund); and

WHEREAS, the Original Lease assigned to the Landlord, for a fixed period of time, the responsibility for the repair, maintenance and replacement of all pipes, lines, cables, conduits and other systems relating to the supply of gas, water and sewer services to, from and on the Premises, subject to the obligation of Tenant to contribute a pro rata share of such costs upon the happening of certain conditions (the Landlord Sewer, Gas and Water Obligations); and

WHEREAS, the Electricity Fund and the DM Fund have been fully expended in accordance with the terms and conditions of the Original Lease and the Landlord Sewer, Gas and Water Obligations have been fully performed and Landlord and Tenant have reconciled all accounts related to said funds and obligations; and

WHEREAS, in connection with such reconciliation of accounts Landlord and Tenant have identified approximately $1.15 million of annual Rent payments made by Tenant in excess of the Landlord's annual payments to the New Mexico Finance Authority (NMFA) to service the debt incurred by Landlord to, among other things, acquire the Premises and fund in part the DM Fund and the Electricity Fund (the Debt Service Reserve); and

WHEREAS, the Original Lease provided for a credit to Lender against the Purchase Price equal to the Debt Service Reserve in the event that the Lender exercised its right under the Lease to purchase the Premises, but did not provide for a credit against Rent; and

WHEREAS, Landlord and Tenant wish to permit the Tenant to apply the Debt Service Reserve to Rent and to reduce Rent to adjust for such excess payments of Rent for the remainder of the Term; and

WHEREAS, Landlord and Tenant now wish to enter into an Amended and Restated Lease reflecting the foregoing and making such other modifications and technical changes as are necessary to correct or clarify the terms and conditions of the Original Lease;

NOW THEREFORE, in consideration of the mutual promises contained herein, the foregoing considerations and the following terms and conditions, and other good and valuable consideration the receipt of which is hereby acknowledged, the Landlord and the Tenant agree as follows:

1. LEASE TERMS

1.01 Premises. The Premises referred to in this Lease shall mean, collectively: (i) the real property located at 1600 St. Michael's Drive in Santa Fe, New Mexico and more particularly described on **Exhibit A-1** hereto and depicted on the drawing attached as **Exhibit A-2** hereto (the Land), together with all easements and all Appurtenances thereto; (ii) the approximately 490,000 square feet of rentable area (without representation or warranty by Landlord) located within the buildings (collectively, the Building) described on **Exhibit B-1** hereto, together with all other structures and improvements now or hereafter installed and/or located at the Land from time to time, including all vehicle parking areas of any kind or nature (collectively, with the Building, the Improvements), (iii) the Building Systems Equipment and (iv) the personal property described on **Exhibit B-2** (the Landlord Personal Assets).

1.02 Definitions. Defined terms used herein shall have the meanings set forth in **Schedule 2**, attached hereto and made a part hereof.

1.03 Tenant's Notice Address. Santa Fe Higher Education, LLC, c/o Laureate Education, Inc., 650 S. Exeter Street, Baltimore, Maryland 21202, Attention: Patrick Richards.

1.04 Landlord's Notice Address. The City of Santa Fe, New Mexico, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico 87501, Attention: City Manager; with a copy to The City of Santa Fe, New Mexico, P.O. Box 909, Santa Fe, New Mexico, 87504, Attention: City Attorney.

1.05 Permitted Use. The Premises may be used solely for the following, in each case, to the extent such use is permitted under applicable Laws and Requirements: (i) an accredited four-year graduate and undergraduate degree granting liberal arts college offering full-time, part-time, and night and weekend continuing education programs, including, without limitation, a creative arts school with studio, production, classroom and office facilities, restaurant facilities (including refrigeration and storage areas) in support of such educational goals or purposes, and including additional programs, including, without limitation, culinary arts, architecture, hospitality, business, education, liberal arts and general education (such operations, the School Use), (ii) dorms, apartments and other residences in connection with the School Use, (iii) general office purposes incidental or ancillary to the School Use, and general office use that is unrelated to the School Use so long as not more than 70,000 square feet of gross leasable area of the Improvements shall be used for such unrelated general office use at any given time without the prior written consent of Landlord (such consent not to be unreasonably withheld, conditioned or delayed), (iv) general retail purposes within certain areas, which are incidental to or related to the School Use and which retail may include a gym and/or physical fitness center and/or lifestyle and entertainment facilities, movie theatre, movie production, performing theatre and library facilities (the Retail Portion), (v) other uses incidental and ancillary to each of the foregoing, and

(vi) such other uses as may be approved by Landlord in writing, which approval will not be unreasonably withheld.

1.06 Term. The term of this Lease (the Term) shall commence on the Lease Commencement Date and shall expire at 11:59 p.m. at the Premises on the last day of the calendar month in which the twenty-sixth (26th) anniversary of the Lease Commencement Date occurs, unless extended or sooner terminated as provided herein (the Expiration Date).

1.07 Base Rent. Base Rent shall be payable in lawful money of the United States of America in amounts as shown on **Schedule "1" (Amended)**, attached hereto and made a part hereof. Base Rent shall be paid in quarterly installments, in advance, as provided in Article 3 below.

2. DEMISE AND POSSESSION

2.01 Lease. Commencing on the Lease Commencement Date, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, subject to the provisions of this Lease. The rights granted by Landlord to Tenant include, without limitation:

(a) The exclusive right, except as otherwise set forth herein, to use all portions of the Land and all facilities and equipment which are located on the Premises;

(b) The exclusive right, except as otherwise set forth herein, to use the Landlord Personal Assets in furtherance of the School Use;

(c) The exclusive right to use the roof of the Building for any purposes permitted under Laws and Requirements so long as same is related to the Permitted Use, including for purposes of maintaining heating, air conditioning and ventilation (HVAC) units, satellite dishes, wireless equipment and antennae, and for the installation and maintenance of security equipment;

(d) The exclusive right to install, use, maintain, replace and repair signage upon any Building or on the Land, in compliance with all Laws and Requirements, subject to the terms of Section 10.01 hereof, together with the exclusive naming rights to the Building; and

(e) The right to restrict access to, and provide security for, the Premises by use of (among other things) existing or future fences, gates and/or security personnel, all in a manner determined by Tenant (subject to the provisions hereof including, without limitation, Landlord's rights in Section 11.01 below).

The rights set forth in clauses (a) through (e) above shall be without additional rental payment by Tenant to Landlord.

2.02 Net Lease: No Other Occupants.

(a) This Lease is a net lease and all Base Rent and other monetary obligations of Tenant hereunder shall be paid without notice or demand (except as otherwise expressly provided herein), and without set-off, counterclaim, recoupment, abatement, suspension, deferment,

diminution, deduction, reduction or defense. The obligations of Tenant hereunder shall be separate and independent covenants and agreements, all monetary obligations shall continue to be payable in all events and the obligations of Tenant hereunder shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

(b) Tenant acknowledges that, except for the obligations of Landlord as expressly set forth herein, Landlord shall not provide or be responsible for, and Tenant shall, at its sole cost and expense, be responsible for, any utilities or other services of any kind or nature, any and all costs related to or associated with the use, non-use, possession, condition, design, operation, maintenance, alteration, repair or replacement of the Premises or any part thereof or any Tenant Party's business or operations thereat. The Premises are demised and let subject to (i) the Permitted Encumbrances set forth on **Exhibit F** attached hereto, (ii) all Requirements and Laws, (iii) the condition of the Premises as of the commencement of the Term, and (iv) the provisions of this Lease.

(c) Landlord covenants and agrees that, except to the extent required in order to perform its obligations or to take any action permitted to be taken by Landlord under this Lease, Landlord will not grant any person or entity, other than Tenant, its agents, representatives, employees, directors, officers, shareholders, affiliates, invitees, consultants, independent contractors, and permitted subtenants, licensees, successors and assigns (collectively, Tenant Parties), any easement, license, lease or similar rights of use or occupancy with respect to any portion of the Premises during the Term, without Tenant's prior written consent, provided that Landlord may, without Tenant's consent, but with at least thirty (30) days' advance notice to Tenant, grant utility easements, licenses, rights of way or similar rights or privileges to a utility provider, municipal agency or other governmental authority with respect to the Premises that directly or indirectly benefit (or are intended to benefit) the Premises or the Adjacent Land (or enhance its value or utility), that do not underlie any Improvements (other than exterior on-grade parking or landscaped areas) and, which will not, when completed, materially and adversely affect Tenant's use and/or occupancy of the Premises for the uses permitted hereunder.

2.03 Grant of Easements and Other Rights.

(a) So long as no monetary or material non-monetary Default has occurred and is then continuing, Tenant may from time to time in writing request that Landlord execute (or join with Tenant in executing) and reasonably cooperate with Tenant (at no cost to Landlord) in connection with (i) granting easements, licenses, rights of way and other similar rights and privileges on the Premises, (ii) releasing, amending or modifying existing easements, licenses, and such other similar rights, documents and Appurtenances relating to the Premises, (iii) conveyances in the nature of dedications of roads, utilities or similar matters, (iv) taking actions with respect to governmental entities or other third parties to enhance the use and enjoyment of the Premises for the Permitted Use and/or the enforcement or exercise of rights under Laws or other Requirements, and (v) executing and delivering any instrument, in form and substance reasonably acceptable to Landlord, necessary or appropriate to make or confirm the foregoing to any person or entity, with or without consideration, and Landlord

shall execute or join in the execution of the same (at no cost to Landlord); provided, in each case, that such action shall not adversely affect, in any material respect, the value or utility of the Premises or impose any future cost or obligation on Landlord (beyond a *de minimis* extent).

(b) Landlord is the owner of that certain real property located adjacent to the Premises and more particularly described on **Exhibit C** (the Adjacent Land). To the extent access to the Adjacent Land is over roadways located on the Land or parking for the improvements on the Adjacent Land is provided by parking areas located on the Land, Landlord and the tenants of the Adjacent Land or the improvements thereupon, and their invitees shall have the non-exclusive right during the Term to use such roadways and parking areas on the Land in common with the use thereof by Tenant; provided, however, that such use by Landlord, tenants or invitees of the Adjacent Land shall not unreasonably interfere with Tenant's use of the Premises and shall be on terms acceptable to Tenant as set forth in a cost sharing agreement in form mutually acceptable to Tenant and Landlord pursuant to which Landlord agrees to pay to Tenant a proportionate share of the costs that Tenant incurs in maintaining such shared use roadways and parking areas. If Tenant exercises a right or option granted in Section 37 to purchase the Purchase Option Property, at the time of closing of the purchase of the Purchase Option Property from Landlord, Tenant and Landlord shall enter into necessary and appropriate easements for the benefit of the Adjacent Land to provide ingress and egress to the Adjacent Land and non-exclusive parking rights, such easements to contain such terms and conditions as are mutually acceptable to Landlord and Tenant; provided, however, Tenant shall have no obligation to enter into any such easements which Tenant determines will adversely affect Tenant's use of the Purchase Option Property.

(c) Tenant agrees to participate in Landlord's master planning project for the area which contains the Premises. In addition, Tenant and Landlord each agree to coordinate with the other to grant easements and rights of way across the Premises to provide for parking, walking paths, biking paths and transit related improvements, which easements and rights of way must be on terms mutually acceptable to each of Tenant and Landlord and shall not materially and adversely affect Tenant's use and/or occupancy of the Premises for the uses permitted hereunder. In no event shall any easement or right of way result in a public thoroughfare through the Premises, unless otherwise agreed to in writing by Tenant, in Tenant's sole and absolute discretion.

2.04 Assignment of Warranties. Landlord hereby assigns to Tenant, without recourse or warranty whatsoever, all assignable warranties, guaranties, indemnities and similar rights, if any (collectively, Warranties), which Landlord may have against any manufacturer, seller, engineer, contractor or builder in respect of any of the Premises. Such assignment shall remain in effect until the expiration or earlier termination of this Lease, whereupon such assignment shall cease and all of the Warranties shall automatically revert to Landlord. In confirmation of such reversion Tenant shall execute and deliver promptly any certificate or other document reasonably required by Landlord. Landlord shall also retain the right to enforce any Warranties upon the occurrence of a Default. Tenant shall use commercially reasonable efforts to enforce the Warranties in accordance with their respective terms. In the event that any Warranty is not assignable to Tenant or if Landlord's rights under any Warranty cannot otherwise be exercised by

Tenant, Landlord shall reasonably cooperate (at no cost to Landlord) with Tenant with respect to such actions as may be reasonably requested by Tenant (including execution of documents in form and substance reasonably acceptable to Landlord) in order to exercise Landlord's rights under the Warranties. Landlord shall assign its interest in the Warranties to any purchaser of the Premises effective upon the sale of the Premises.

2.05 Access to Premises by Tenant; Easements. The Premises has direct access to public rights of way, including, without limitation, St. Michaels Drive. Landlord agrees not to take any action during the Term that will materially impair access to the Premises. This provision shall not be construed to prohibit the temporary closure of a public street for repair or reconstruction purposes; provided, however, that Tenant must have access to the Premises for vehicular and pedestrian ingress and egress during such time (whether through alternative points of access or easement over adjacent property or otherwise).

2.06 Community Facilities. The Premises includes the following facilities which have in the past been open to and operated, in part, to benefit the surrounding community: the Visual Arts Center, the Fogelson Library, the Greer Garson Theatre Center, Alumni Hall and The Screen (collectively, the Community Facilities). Notwithstanding anything herein to the contrary, Tenant agrees during the Term of this Lease to permit public access to and to operate the Community Facilities substantially in the manner as they have been operated in the past. Such public access to the Community Facilities shall not be counted as trips in the calculation of the Landlord's pro rata share of road repair and maintenance costs under Section 9.03 of this Lease. In the event that public access to the Community Facilities needs to be modified for use in connection with the School Use, Tenant will use reasonable efforts to cause a smooth transition and to honor existing access for the public use. The Driscoll Fitness Center will be made available to the public for access consistent with the manner in which the public was given access thereto in the past. In addition, unless otherwise approved by Landlord, the name of a Community Facility shall not be changed by Tenant.

2.07 Landlord's Personal Assets. The Landlord's Personal Assets will be leased to Tenant during the Term and, except as otherwise hereinafter specified, Tenant shall have the exclusive right to use the Landlord's Personal Assets for the School Use during the Term. If Tenant exercises its Purchase Option with respect to the Purchase Option Property, Tenant and Landlord shall enter into a lease agreement regarding the Landlord's Personal Assets pursuant to which Landlord shall lease to Tenant (or Option Party) the Landlord's Personal Assets for so long as the Purchase Option Property is used for the School Use, and the rent to be paid by Tenant for the lease of Landlord's Personal Assets shall be One Dollar ($1) each lease year. The Parties acknowledge and agree that the Landlord's Personal Assets are of significant importance to Tenant's operation of the Premises for the School Use. Accordingly, Landlord shall not be permitted to remove the Landlord's Personal Assets from the Premises without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall have the right, with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to temporarily remove Landlord's Personal Assets from the Premises for use in exhibitions.

2.08 Joint Programming. Tenant agrees to collaborate with other higher education institutions in the area on joint programming opportunities on terms acceptable to Tenant. Any such programs shall be complementary to programs offered by the Santa Fe University of Art and Design (SFUAD) operated by Tenant on the Premises and not in competition therewith. Tenant also agrees to cooperate and participate with the Santa Fe public schools to develop college preparatory programs that encourage and promote the enrollment at SFUAD of Santa Fe high school students.

2.09 Governance. Tenant's governance structure for SFUAD will provide for the following:

(a) Two (2) members of the Board of Directors (the Board) will be from the local Santa Fe community selected based upon the recommendations of Landlord and approved by Tenant. Tenant will consider the recommendations by Landlord for the Board, but under no circumstances shall Tenant be obligated to approve or accept such recommendations by Landlord.

(b) A Local Advisory Group comprised of seven (7) members, four (4) appointed by Landlord and three (3) appointed by the Board, responsible for working with and advising the local community subcommittee of the Board on matters pertaining to the relationship between SFUAD and the Santa Fe community.

2.10 Programs for Local Students. Tenant will establish the following programs to encourage and support matriculation at SFUAD by state and local City and County of Santa Fe students:

(a) Tenant will award three (3) full-tuition four-year scholarships per year, one (1) to a student selected by the Mayor and City Council of the City of Santa Fe, one (1) to a student selected by the Governor of the State of New Mexico, and one (1) to a student selected by the College of the Christian Brothers of New Mexico, a New Mexico non-profit corporation, provided that no such scholarship shall be awarded to any student who (i) has not been a full-time resident of the State of New Mexico for at least one (1) year immediately preceding the award of such scholarships; (ii) has not been admitted to SFUAD; and (iii) has not met the criteria established by the selecting entity for such scholarship.

(b) Tenant will cause SFUAD to offer tuition scholarships to residents of the State of New Mexico and of Santa Fe County of twenty percent (20%) and twenty-five percent (25%) respectively from its gross tuition rates.

3. BASE RENT

3.01 Base Rent. Tenant shall pay Base Rent quarterly in advance on the dates set forth on **Schedule "1" (Amended)** (each a Base Rent Payment Date), in the amounts set forth opposite each such applicable Base Rent Payment Date on **Schedule "1" (Amended)**, by wire transfer (if wire instructions are provided to Tenant) or by check to Landlord's address for notices set forth in Section 1.04 above to the attention of the Finance Director. If the Commencement Date is not a Base Rent Payment Date or the last day of the Term is not the last day of the quarter in which Base Rent was previously paid, Base Rent (and Additional Rent, to the extent applicable) for any

partial calendar quarter occurring during the Term shall be prorated with respect to such partial quarter (based on the actual number of days within such quarter). Tenant may at any time during the Term after the last day of the fifth (5th) full Lease Year notify Landlord that it wishes to apply the Debt Service Reserve against future Base Rent and in what amounts and for which payments. Such notice shall be given in writing no less than sixty (60) days prior to the Base Rent Payment Date on which such credit will be taken. In the event that Tenant elects to apply the Debt Service Reserve to future Rent, this Lease shall be amended to extend the Term by twelve (12) months. Notwithstanding anything to the contrary contained in this Section 3.01, Tenant shall not have the right to apply the Debt Service Reserve against Rent at any time that Default exists or after Tenant has given Landlord Early Termination Notice.

3.02 Late Fees and Default Interest. If any item or installment of Rent due from Tenant to Landlord is not paid within ten (10) days after the date due, an amount (the Late Charge) equal to four percent (4%) of such unpaid amount or portion shall be due and payable by Tenant in order to reimburse Landlord for its cost and inconvenience incurred as a result of Tenant's delinquency. Tenant acknowledges that the damages to and costs incurred by Landlord resulting from Tenant's late payment of Rent would be difficult, if not impossible, to ascertain with any accuracy, and that the four percent (4%) charge represents Landlord and Tenant's efforts to approximate such potential damages. In addition, if any installment of Rent or other amount payable by Tenant to Landlord is not paid within ten (10) days after the due date therefor, then same shall accrue interest at the rate that is the lesser of: (i) the interest rate accruing on the Transaction Bonds as of the date of issuance of the Transaction Bonds plus three percent (3%) per annum, or (ii) the maximum rate allowable under Laws (the Default Rate) during the period commencing upon the expiration of any and all applicable cure periods until paid in full.

3.03 Maximum Amount Permitted by Law. In no event shall amounts payable hereunder or elsewhere in this Lease exceed the maximum amount permitted by applicable Law.

4. ADDITIONAL RENT; TAXES

4.01 Additional Rent. All charges payable by Tenant to Landlord under this Lease other than Base Rent are called Additional Rent. Unless this Lease or the applicable Landlord notice (in which case the Additional Rent payments that are the subject of Landlord's notice will be due no sooner than thirty (30) days after the receipt of such notice by Tenant) provides otherwise, Additional Rent is to be paid with the next quarterly installment of Base Rent. Any notice from Landlord to Tenant regarding the payment of Additional Rent shall set forth in reasonable detail the basis for such Additional Rent. The term Rent whenever used in this Lease means Base Rent and Additional Rent. Notwithstanding the foregoing, Tenant shall not be responsible for and Additional Rent shall not include: (a) any costs incurred by Landlord to the extent same are incurred by reason of any breach of this Lease by Landlord, or the negligence or intentional misconduct of Landlord or its agents, invitees, representatives, employees, directors, officers, shareholders, Affiliates, consultants, independent contractors, successors and assigns (collectively, Landlord Parties), (b) interest on, and amortization of, funds borrowed by Landlord, or rent under any ground lease or master lease entered into by Landlord, (c) except as otherwise provided in this Lease or as a result of Tenant's failure to timely make a payment of any item of Additional Rent hereunder, any costs, fines, penalties or fees incurred due to

Landlord's failure to make any payment when due, (d) the costs of items provided by Affiliates of Landlord, but only to the extent that such costs exceed reasonable and customary charges for such services, (e) any costs and expenses (including court costs, attorneys' fees and disbursements) related to or in connection with disputes with any holder of a mortgage or by or among any persons having an interest in the Premises unless same is the result of a breach or violation by Tenant of the terms of, or its obligations under, this Lease, (f) except as otherwise provided in this Lease, any costs incurred in connection with a sale, lease or transfer of all or any part of the Premises or any interest therein, (g) all costs and expenses (including utilities) payable directly by Tenant, unless paid by Landlord following Tenant's failure to do so, and (h) any costs and expenses incurred by Landlord associated with the administration or general overhead of Landlord (as opposed to operation of the Premises). The terms of this Section 4.01 shall survive the termination of this Lease.

4.02 Taxes. Tenant will pay any taxes charged against the Premises and any personal property of the Tenant by the date that such taxes are due; provided however, Tenant shall not be obligated to pay any such taxes that are being disputed or challenged by Tenant, so long as Tenant diligently pursues such dispute or challenge. Tenant will use reasonable efforts to cause taxes on its personal property to be billed separately from the Premises.

5. USE OF PREMISES; QUIET CONDUCT

5.01 Generally; Compliance with Laws. The Premises may be used and occupied only for the Permitted Use and for no other purpose. Tenant shall, at all times during the Term, comply with all Laws and Requirements respecting all matters of occupancy, condition, use or maintenance of the Premises.

(a) Tenant shall not use or occupy or permit any of the Premises to be used or occupied, nor do or permit anything to be done in or on any of the Premises, in a manner which would or might (i) violate any Laws, Requirements or Permitted Encumbrances in any material respect, (ii) cause any insurer to cancel any insurance required by this Lease, (iii) cancel or release any of the Warranties, (iv) cause material structural injury to any of the Improvements or Building Systems Equipment, or (v) constitute a public or private nuisance or constitute active waste.

(b) In no event shall any portion of the Premises be used or occupied or permitted to be used or occupied for any of the following purposes: (i) any nightclub, bar (except for any bar used in connection with any dining establishment operated by Tenant on the Premises) or discotheque; (ii) any adult bookstore or video shop, nude or semi-nude or "adult" entertainment establishment or any lewd, obscene or pornographic purpose; (iii) any store in which a material portion of the inventory is not available for sale or rental to children under 18 years of age because such inventory explicitly deals with, relates to, or depicts human sexuality, or in which any of the inventory constitutes drug paraphernalia of the kind associated with or sold by so-called "head shops"; (iv) any dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters and/or recycling bins and garbage disposal in the ordinary course of business); (v) any mortuary; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vii) any gas station; (viii) any automobile, truck, trailer or RV sales, leasing, display or repair; (ix) any "flea market", secondhand, surplus or other "off- price" or deep discount store; (x) any gambling or off-track betting operation; (xi) any massage parlor or carnival; or (xii) any other use which is not a Permitted Use.

(c) Subject to the provisions hereof, so long as no Default has occurred and is continuing, Tenant shall quietly hold, occupy and enjoy the Premises throughout the Term, without any hindrance, ejection or molestation by Landlord with respect to matters that arise after the date hereof, provided that Landlord or its agents may enter upon and examine any of the Premises at such reasonable times during normal business hours as Landlord may select and upon reasonable advance written notice to Tenant (except in the case of an emergency, in which case no notice shall be required) for the purpose of inspecting the Premises, showing the Premises to prospective lenders and purchasers, making any repairs and taking such other action with respect to the Premises as is permitted by any provision hereof.

5.02 Hazardous Substances. As used in this Lease, the term Hazardous Substances means:

(a) Those substances defined as "hazardous substances," "hazardous materials," "toxic substances," "regulated substances," "pollutants", "contaminants" or "solid waste" in the Toxic Substance Control Act, 15 U.S.C. § 2601 et. seq., as now existing or hereafter amended (TSCA), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,42 U.S.C. § 9601 et. seq., as now existing or hereafter amended (CERCLA), the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et. seq., as now existing or hereafter amended (RCRA), the Clean Air Act, 42 U.S.C. Section 7401 et. seq., as now existing or hereafter amended, the Water Pollution Act, 33 U.S.C. 1251 et. seq., as now existing or hereafter amended, the Federal Hazardous Substances Act, 15 U.S.C. §1261 et. seq., as now existing or hereafter amended (FHSA), the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et. seq., as now existing or hereafter amended (OSHA), the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et. seq., as now existing or hereafter amended (HMTA), or in similar New Mexico and local laws, and the rules and regulations and in each case as now in effect or promulgated hereafter pursuant to each law referenced above;

(b) Those substances listed in the United States Department of Transportation table (49 CFR § 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); and

(c) Such other substances, mixtures, minerals (including asbestos), chemicals, gases, medical wastes, or other pollutants, materials and waste, in any case, whether man made, naturally occurring or the product of any process which are regulated under applicable Laws, microbial matter (including but not limited to mold, mildew or other fungi or bacterial matter which reproduces through the release of spores or the splitting of cells) or which are classified as hazardous or are toxic, harmful or hazardous or acutely hazardous to the environment or public health or safety under federal, state or local laws or regulations.

(d) All laws referenced in Sections (a), (b) and (c) above together with any rules, regulations or codes promulgated thereunder, any judicial decisions interpreting the same and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that impose liability or obligations for injuries or damages due to or threatened as a result of the presence of, exposure to or ingestion of any Hazardous Substance are collectively referred to as Environmental Laws.

5.03 Tenant's Covenants.

(a) Except as provided below, Tenant will not, nor will Tenant knowingly allow any party at any time, during the Term, to manufacture, process, store, distribute, use, discharge or dispose of any Hazardous Substances at, under or on or about the Premises. Notwithstanding the foregoing, Landlord agrees Tenant may use and store at the Premises: (i) Hazardous Substances contained in office and cleaning supplies customarily used in connection with general office uses in equipment with School Use and/or otherwise used in connection with Tenant's business at the Premises in quantities consistent with such uses, (ii) Hazardous Substances customarily used in connection with the School Use and/or otherwise used in connection with Tenant's business at the Premises, including, without limitation, chemicals and other Hazardous Substances used in connection with the photography lab, and (iii) batteries and other fuels necessary in the conduct of Tenant's business at the Premises (so long as such business is a Permitted Use); provided that, in each case, Tenant's use, storage, handling and disposition thereof complies with all Environmental Laws and Requirements in all material respects at all times.

(b) Tenant and any Tenant Party or the Existing Tenants will not be involved in (and Tenant shall not permit any Existing Tenants or other occupants of the Premises to be involved in) operations at the Premises which would lead to the imposition on the Tenant or the Landlord of liability, or the creation of a lien on the Premises, under the Environmental Laws.

(c) Tenant shall, upon fifteen (15) days' prior notice by Landlord, permit Landlord or Landlord's agent access to the Premises to conduct an environmental site assessment with respect to the Premises; provided, that such right shall not be exercised in a manner which unreasonably interferes with Tenant's use and occupancy of the Premises, and Tenant shall have the right to have a Tenant representative accompany Landlord or its agent in connection with any such entry, which representative Tenant agrees to make available for such purpose. The cost of performing and reporting any such site assessments shall be paid by Tenant if a material violation of any Environmental Law is actually discovered at, on or under the Premises. Except as provided in the immediately preceding sentence, the cost and expense of any environmental site assessments shall be at the sole cost and expense of Landlord and shall not be Additional Rent or otherwise reimbursable by Tenant.

(d) If Tenant fails to promptly take action required to cure any violation of Environmental Law, or any spill or release of any Hazardous Substance, which occurs or is found to exist, Landlord shall have the right (but no obligation) to take any and all actions as Landlord shall

deem necessary or advisable in order to cure such violation in accordance with applicable Environmental Law.

(e) Tenant shall notify Landlord immediately after becoming aware of any Hazardous Substances found to have been spilled or released at, on or under the Premises or of any violation (or alleged violation) of Environmental Law or Requirements or of noncompliance with any of the covenants contained in this Section 5.03 and shall forward to Landlord immediately upon receipt thereof copies of all orders, reports, notices, permits, applications or other communications relating to any such violation or noncompliance.

(f) All future subleases entered into by Tenant shall contain covenants of the other party thereto which are substantially similar to the covenants contained in this Section 5.03 or expressly refer to same and incorporate same by reference.

5.04 Tenant Indemnity. Tenant for itself, the Tenant Parties and their respective successors and assigns hereby agrees and undertakes to protect, indemnify, save and defend Landlord, its employees, directors, officers, shareholders, Affiliates, successors and assigns (collectively, the Landlord Indemnitees) harmless from any and all liabilities, losses, damages (including punitive damages), penalties, expenses, costs (including reasonable attorneys' fees and costs), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, without regard to the form of action and whether based on strict liability, negligence or any other theory of recovery at law or in equity (collectively, Claims and Losses) that Landlord or any other Landlord Indemnitee, may suffer as a result of, or with respect to:

(a) Any violation of any Environmental Law at the Premises arising or occurring at any time during the Term, except to the extent caused by or arising from acts of Landlord or any Landlord Party, including the assertion of any lien thereunder and any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency, but only if such lien or suit is based solely upon a claim that the actual or alleged acts of Tenant or a Tenant Party constituted a violation of any Environmental Law at the Premises;

(b) Any spill or release of or the presence of any Hazardous Substances on or about the Premises at any time during the Term, but only if and to the extent that the same is caused by or arises from the acts of Tenant or any Tenant Party; and

(c) Any breach or failure to perform any of Tenant's covenants set forth in Section 5.03 hereof.

Notwithstanding anything to the contrary set forth in this Section 5.04 or any other provision of this Lease, Tenant shall not be liable or responsible for any acts or failure to act by any person, other than Tenant or a Tenant Party, before and during the Term of this Lease. The terms of this Section 5.04 shall survive the termination or expiration of this Lease.

5.05 Landlord Indemnity. Landlord will for itself, the Landlord Parties and their respective successors and assigns undertake to protect, indemnify, save and defend Tenant, its employees,

directors, officers, shareholders, Affiliates, successors and assigns (collectively, the Tenant Indemnitees) harmless from any and all Claims and Losses that Tenant or any other Tenant Indemnitee may suffer as a result of or with respect to:

(a) The assertion of any environmental lien and/or any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency but only if such lien or suit is based solely upon a claim that the actual or alleged acts of Landlord or a Landlord Party constituted a violation of any Environmental Law at the Premises; and

(b) To the extent caused by or arising from acts of Landlord or a Landlord Party, any spill or release of or the presence of any Hazardous Substances brought upon the Premises by Landlord or any Landlord Party.

Landlord, at Landlord's sole cost and expense, will obtain and maintain at all times during the Term of this Lease, pollution insurance in the amount of $1,000,000 annual coverage for any violation of any Environmental Law at the Premises arising or occurring at any time prior to the Lease Commencement Date. Landlord shall cause Tenant to be named as an additional insured on such pollution insurance policy. Landlord shall deliver to Tenant evidence of payment of the full premium for the pollution insurance described in this paragraph then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Tenant original insurance certificates evidencing such coverage. The pollution insurance policy shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Tenant. The terms of this Section 5.05 shall survive the termination or expiration of this Lease.

6. UTILITIES

6.01 Generally. During the Term, Tenant shall be responsible for and shall pay directly to the applicable utility companies, charges for all water, gas, heat, light, power, sewer, electricity, telephone, cable, or other communications or other utilities metered, chargeable to or provided to the Premises. Notwithstanding the foregoing, Landlord will reasonably cooperate with Tenant (at no cost to Landlord) in acquiring and maintaining utility services to the extent Landlord's cooperation is reasonably necessary. Landlord and Tenant acknowledge that certain utility services are provided to the Premises, or a portion thereof, and to the Adjacent Land and are not currently separately metered. Neither Landlord nor Tenant shall have any obligation to install a separate meter or submeter to measure utility services consumed on the Adjacent Land (but either Landlord or Tenant may do so at its own cost and expense if it so chooses). With respect to any invoices received by Tenant for utilities consumed on the Premises and on the Adjacent Land, Tenant shall pay such invoices, and shall, each month, bill Landlord and/or each tenant using any portion of the Adjacent Land their pro rata share of such utilities consumed on the Adjacent Land, which pro rata share shall be determined by multiplying the applicable charge for the utility service by a fraction, the numerator of which is the number of square feet of space in the building or buildings on the Adjacent Land which are not separately metered or submetered and the denominator of which is the total number of square feet of space in the buildings on the Premises and Adjacent Land covered by the applicable invoice for such utility services. Any bill

delivered by Tenant to Landlord and any tenant of the Adjacent Land for payment of its pro rata share of utilities shall include a copy of the invoice Tenant received from utility service provider and shall be paid to Tenant within 30 days after receipt of such invoice from Tenant.

6.02 Utility Repair and Maintenance Obligations.

(a) Sewer, Gas and Water. Commencing on the first day of the sixth (6th) Lease Year and thereafter during the Term, Tenant shall be responsible for, at Tenant's sole cost and expense, the repair, maintenance and replacement of all pipes, lines, cables, conduits and other systems relating to the supply of gas, water and sewer services to, from and on the Premises, and any Landlord's obligations with respect thereto shall cease. Landlord and Tenant acknowledge and agree that the Landlord has fulfilled its Section 6.02 A. obligations under the Original Lease to the satisfaction of Tenant.

(b) Electricity. Commencing on the first day of the sixth (6th) Lease Year, Tenant shall be responsible for, at Tenant's sole cost and expense, the repair, maintenance and replacement of all lines, cables, conduits and other systems relating to the supply of electricity to and on the Premises, and Landlord's obligations with respect thereto shall cease. Landlord and Tenant acknowledge and agree that they have reconciled all accounts related to the Electricity Fund and that there are no funds remaining in said fund to be released to Tenant under Section 6.02 B of the Original Lease.

7. ALTERATIONS, MECHANIC'S LIENS, RETURN CONDITION; LANDLORD'S AND TENANT'S PROPERTY

7.01 Alterations Generally. Subject to the terms and limitations of this Article 7, Tenant shall have the right, at its sole cost and expense, without the consent of Landlord, to make any additions, changes, alterations, replacements or improvements, including with respect to any Building Systems Equipment (Alterations), in and to the Premises and Improvements. Without limiting the generality of the foregoing, it is specifically agreed that Tenant's right to perform Alterations shall include, without limitation, the right (a) to install conduit, cabling and wiring within the Premises or within any shafts, conduits or risers running within the Premises, (b) to carpet or provide other floor coverings (such as tile or linoleum), paint or decorate or make other Decorative Changes, (c) to reinforce floors and columns, (d) to make slab cuts for purpose of running risers, conduits and ducts, (e) to make beam cuts, (f) to install stone floors and/or raised floors, (g) to install additional toilets and other plumbing facilities, and (h) to install, remove and relocate non-structural walls in the Premises. Notwithstanding anything to the contrary in the foregoing, Tenant shall not make any Major Alterations (as defined hereinafter), until Tenant has delivered the items required by Section 7.02 to Landlord and such Major Alterations have been approved (or deemed approved) by Landlord. For purposes of this Lease, each of the following Alterations shall be deemed a Major Alteration: (i) any Alteration that costs (or is reasonably estimated to cost) in excess of $500,000 (the Threshold Amount), (ii) any Alterations that would materially affect the structure of the Building; and (iii) any Alterations to basic systems of the Building that would materially and adversely affect the mechanical, electrical, plumbing, HVAC, life safety, security or other basic systems of the Premises. Alterations to the Premises which consist of changes that are primarily cosmetic or decorative in nature and do not require a building permit, such as painting, wallpapering or installation of other wall coverings,

installation of window treatments, carpet, tile, linoleum, or other removable floor coverings over the existing subfloors are referred to herein as Decorative Changes. Notwithstanding anything herein to the contrary, nothing herein shall be deemed or construed as permitting Tenant to construct any new buildings upon the Premises, to make any additions to buildings or to demolish any building on the Premises without the express prior written consent of Landlord.

7.02 Major Alterations Deliveries. Whenever Tenant proposes to make any Major Alteration, Tenant shall provide Landlord with the following items or information, all subject to Landlord's approval, not to be unreasonably withheld, conditioned or delayed: (i) the identity of Tenant's contractor(s) who will perform the Major Alteration, qualifications of such contractor(s) and a copy of such contractor's bid for the Major Alteration, (ii) plans and specifications for such work, (iii) construction schedule, and (iv) anticipated completion date for the Major Alteration. Landlord shall within ten (10) business days' after receipt of all of the items set forth in the preceding sentence notify Tenant whether Landlord approvals or disapproves the proposed Major Alteration, which approval or disapproval must be reasonable and consistent with the then customary requirements of a prudent institutional landlord for similar properties. If Landlord fails to notify Tenant of Landlord's approval or disapproval of the proposed Major Alteration within the ten (10) business day period specified in the preceding sentence, such Major Alteration shall be deemed approved by Landlord. Any items to be provided to Landlord pursuant to this Section 7.02 shall be delivered to the City of Santa Fe Asset Development Department and addressed to its Director.

7.03 Requirements for all Alterations. Before commencing any Alterations, Tenant shall obtain any building permits or other permits or licenses required under Laws therefor and shall promptly thereafter provide Landlord with copies of same. Landlord shall cooperate with Tenant in obtaining such building permits or other permits when necessary at no expense to Landlord. If Tenant makes any Alterations (such Alterations and the act of completing such Alterations being hereinafter collectively referred to as Work), whether or not Landlord's consent is required, then (i) all such Work shall be performed by Tenant in a good and workmanlike manner and any damage caused during or by such Work shall be repaired by Tenant, (ii) all such Work shall be expeditiously completed in compliance with all Requirements, and (iii) if any such Work involves the replacement of Building Systems Equipment or parts thereto, all replacement Building Systems Equipment or parts shall have a value and useful life at least equal to the value and useful life customary for building systems equipment being installed in similar buildings and for similar uses. All Alterations made to the Premises shall be considered Tenant's Property (as defined below) during the Term of this Lease, and upon the termination or expiration of this Lease shall immediately cease to be Tenant's Property and shall become Landlord's Property. Landlord shall have the right to enter the Premises, upon prior reasonable notice to Tenant, to inspect the work during and after the completion of Alterations.

7.04 Installation of Personal Property. Notwithstanding anything to the contrary in this Article 7, Tenant may at any time during the Term, without the consent of Landlord, install, remove and relocate Tenant's Property, provided that installation, removal or relocation of such items will not (i) adversely affect the structure of the Premises, or (ii) materially and adversely affect any Building Systems Equipment, including any mechanical, electrical, plumbing, HVAC, life safety, security or other basic systems of the Premises.

7.05 Liens. Tenant will pay all costs for Alterations performed by, or for, Tenant and will keep the Premises free from any liens arising out of work performed for, materials furnished to, or obligation incurred by Tenant. Within sixty (60) days after written notice from Landlord, Tenant shall pay or otherwise satisfy any lien claim by a contractor or supplier who provided work or supplies for Alterations or provide a title insurance endorsement over same reasonably satisfactory to Landlord; provided that, if Tenant desires to contest such lien Tenant shall cause such lien to be removed of record (by bond or otherwise), no longer enforceable against the Premises, and cover all costs of defense, in which case, Tenant shall not be deemed to be in breach and shall have the right to contest in good faith or otherwise deal with such lien claims as Tenant deems best. If Tenant shall fail to do so, Landlord may, after delivery of notice to Tenant of Landlord's intent so to act, bond over, insure over, or pay the amount necessary to remove such lien, and any amount so expended by Landlord in connection therewith shall be deemed Additional Rent under this Lease payable within ten (10) days after Tenant's receipt of a demand for payment from Landlord.

7.06 Alterations by Landlord. Landlord shall not be required to, and will not make, any Alterations at the Premises without Tenant's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed), except to the extent permitted by Section 9.02 hereof. If Landlord wishes to undertake any construction (a) to remedy existing defects in the Premises, (b) to repair, replace or maintain the Premises as provided in Section 9.02, or (c) to prevent damages, Landlord shall give Tenant not less than ten (10) days' prior written notice of such intent (except that if Landlord needs to undertake such construction to prevent immediate harm to any persons on the Premises, then only such notice as shall be reasonable under the circumstances) to undertake such construction, which notice shall include a description of the construction to take place, when such construction shall commence and the estimated time needed to complete such construction. Any such construction shall not interfere with Tenant's use and operations of the Premises. Landlord shall work diligently to complete and perform any such construction that it commences. If any such construction is expected to take more than fifteen (15) days to complete, Landlord shall only commence such construction during those times that Tenant has identified to Landlord as time during which there are "breaks" in the normal operations of the Premises (such as between semesters or at other times when students are not in attendance of school). All work by or on behalf of Landlord pursuant to this Section 7.06 shall be performed in a good and workmanlike manner, in compliance with all Requirements and in an expeditious manner.

7.07 End of Term; Return Condition. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in substantially the same condition as existed on the Lease Commencement Date, normal wear and tear, Alterations made by Tenant in accordance with the terms and provisions of this Lease, acts of Landlord and the Landlord Parties, and damage by reason of fire or other casualty which Tenant is not required to repair or restore hereunder and condemnation excepted; provided further, however, upon the expiration or earlier termination of this Lease, Landlord may require Tenant to remove any Alterations installed in violation of applicable Laws or Requirements or made without the approval or deemed approval of Landlord if required under this Lease. Tenant shall, upon the expiration or earlier termination of this Lease remove from the Premises all items of Tenant's Property, other than Alterations which shall

become Landlord's Property as stated in Section 7.03 and built-in equipment or machinery which cannot be removed without irreparable material damage to the Premises. In addition, (i) Tenant acknowledges that any security cameras or related security systems are Landlord's Property (but may be upgraded or replaced by Tenant during the Term in its sole but reasonable determination without Landlord's prior approval, provided that such system and cameras as existing as of the expiration of the Term shall not be removed by Tenant), and (ii) if the removal of any larger items of Tenant's Property will result in large holes, gaps or unfinished areas, Tenant shall properly cap-off all electric, gas and water lines and install or repair as necessary interior walls to an unfinished "ready for paint" condition. If Tenant fails to remove Tenant's Property upon the expiration of this Lease, and such failure continues for thirty (30) days after notice thereof from Landlord, then such Tenant's Property shall be deemed abandoned and shall become the property of the Landlord at Landlord's option and/or Landlord may remove and dispose of same in any manner it sees fit, without compensation or liability to Tenant, but at Tenant's sole cost and expense. Upon the expiration of the Term, Tenant shall deliver all keys and or access cards to the Building to Landlord. Nothing in this Section 7.07 is intended or shall be construed as altering or diminishing Tenants' obligations under Section 5.03 hereof.

7.08 Fees. Tenant shall reimburse Landlord for its reasonable, actual out-of-pocket third-party costs and expenses incurred in connection with Landlord's review and/or approval of any Major Alterations and/or the installation or removal thereof that required Landlord's consent or approval pursuant to the terms hereof. Tenant shall not be required to pay any fee of any kind to Landlord (or its agents) for internal costs such as profit, overhead, general conditions, or supervision with respect to any work being conducted on the Premises, including any Alterations or capital improvements, or in connection with the removal of any Alterations.

7.09 Landlord and Tenant's Property. The Building, Land and all Building Systems Equipment shall be deemed the property of Landlord for purposes hereof (the Landlord's Property). All Alterations to the Premises, all personal property and trade fixtures located at the Premises, and the equipment, fixtures and machinery located at the Premises which is specific to Tenant's use of the Premises, and all replacements, modifications and alterations thereto from time to time, including, without limitation, the specific property listed on **Exhibit E** attached hereto and made a part hereof, shall be deemed the property of Tenant for purposes hereof (the Tenant's Property). All Alterations made to the Premises shall be considered Tenant's Property during the Term of this Lease, but upon the termination or expiration of this Lease shall immediately cease to be Tenant's Property, and shall become Landlord's Property. Except as otherwise provided in Section 7.07, Tenant may remove all of Tenant's Property from the Premises upon the expiration or earlier termination of this Lease without compensation or credit to Landlord. All Landlord's Property shall be and remain a part of the Premises, without compensation or credit to Tenant, and shall not be removed by Tenant upon the expiration or earlier termination of this Lease.

7.10 Financing of Expansions. Should Tenant, during the Term of this Lease, desire to undertake Alterations for expansions of the Improvements at the Premises (an Expansion) for which the costs to complete (the Expansion Costs) are reasonably estimated by Tenant to be in excess of $3,000,000, and for which Tenant requires financing from a person or entity that is not an Affiliate of Tenant, Tenant shall have the right to pursue financing for such Expansion Costs

from any other person. Tenant shall be permitted to secure such financing with a lien or mortgage on Tenant's leasehold interest on the Premises, as provided in Section 15.

7.11 Deferred Maintenance Work. Landlord and Tenant acknowledge and agree that they have reconciled all accounts related to the DM Fund and that there are no funds remaining in said fund. The deferred maintenance work approved by the Landlord and performed by Tenant is set forth on Exhibit G-1 (Amended) attached hereto (the Deferred Maintenance Work).

8. INSURANCE

8.01 Tenant's Insurance. Tenant shall obtain, pay for and maintain at all times during the Term the following insurance on or in connection with the Premises:

(a) Insurance against all risk of physical loss or damage to the Improvements and Building Systems Equipment as provided under "Special Causes of Loss" form coverage, and including customarily excluded perils of hail, windstorm, flood coverage, earthquake and, to the extent required by Landlord, terrorism, in amounts no less than the actual replacement cost of the Improvements and Building Systems Equipment; provided that, if Tenant's insurance company is unable or unwilling to include any orall of such excluded perils, Tenant shall have the option of purchasing coverage against such perils from another insurer on a "Difference in Conditions" form or through a stand-alone policy. Such policies shall contain Replacement Cost and Agreed Amount Endorsements and "Law and Ordinance" coverage (at full replacement cost). Such policies and endorsements shall contain deductibles of not more than $500,000 per occurrence.

(b) Commercial General Liability Insurance, against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Premises, in an amount not less than $25,000,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $5,000,000 per occurrence/annual aggregate, such policies to have deductibles of not more than $500,000 per occurrence.

(c) Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability), against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Premises, in an amount of not less than $25,000,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $5,000,000 per occurrence/annual aggregate, such policies to have deductibles of not more than $500,000 per occurrence.

(d) Workers' compensation insurance in the amount required by applicable Law and employers' liability insurance covering all persons employed by Tenant in connection with any work done on or about any of the Premises, in an amount not less than $1,000,000 per occurrence.

(e) Comprehensive Boiler and Machinery/Equipment Breakdown Insurance on any of the Building Systems Equipment or any other equipment on or in the Premises, in an amount not less than $5,000,000 per accident for damage to property (and which may be carried as part of the coverage required under clause (a) above or pursuant to a separate policy or endorsement). Either such Boiler and Machinery policy or the Special Causes of Loss policy required in clause (a) above shall include at least (a) $3,000,000 per incidence for Off-Premises Service Interruption, (b) $2,000,000 per incidence for Expediting Expenses, (c) $2,000,000 per incidence for Ammonia Contamination, and (d) $2,000,000 per incidence for Hazardous Materials Clean-Up Expense; and may contain deductibles not to exceed $50,000.

(f) Business Interruption Insurance at limits sufficient to cover 100% of the period of indemnity not less than twelve (12) months from time of loss, including extended period of indemnity which provides that after the physical loss to the Improvements and equipment has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Premises are repaired or replaced and operations are resumed, whichever first occurs.

(g) During any period in which Major Alterations of any other substantial Alterations at the Premises are being undertaken, builder's risk insurance covering the total completed value, including all hard and soft costs (which shall include business interruption coverage) with respect to the Improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction, alteration or repair of Improvements or Building Systems Equipment, together with such other endorsements as Landlord may reasonably require, and general liability, worker's compensation and automobile liability insurance with respect to the Improvements being constructed, altered or repaired.

(h) Tenant shall, at all times during the Term, maintain, at Tenant's sole cost and expense, an insurance policy naming Landlord as an additional insured covering the Landlord's Personal Assets, insuring the Landlord's Personal Assets against loss by fire and other casualty or theft, with such coverage and deductibles to be agreed to between Landlord and Tenant and consistent with insurance coverage previously maintained on the Landlord's Personal Assets (whether by Landlord or any prior owner of the Landlord's Personal Assets).

(i) Such other insurance (or other or different terms with respect to any insurance required pursuant to this Article 8, including without limitation amounts and types of coverage, deductibles, form of mortgagee clause, insurer rating) on or in connection with any of the Premises as Landlord may reasonably require; provided that such insurance is available to Tenant on a commercially reasonable basis and is consistent, as to types of coverage and amounts, with the requirements generally of prudent owners or operators of similar properties.

8.02 The insurance required by Section 8.01 shall be written by companies having a Best's rating of A:X or above and a claims paying ability rating of AA or better by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc. or equivalent rating agency

approved by Landlord in its sole discretion and are authorized to write insurance policies by, the State Insurance Department (or its equivalent) for the State. The insurance policies (i) shall be for such terms as Landlord may reasonably approve and (ii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. If said insurance or any part thereof shall expire, be withdrawn, become void, voidable, unreliable or unsafe for any reason, including a breach of any condition thereof by Tenant or the failure or impairment of the capital of any insurer, or if for any other reason whatsoever said insurance shall become reasonably unsatisfactory to Landlord, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord. The insurance referred to in clauses 8.01(a), 8.01(e) and 8.01(g) shall name Landlord as owner and Tenant as its interest may appear. The insurance referred to in clause 8.01(c) shall name Landlord as additional insured, and the insurance referred to in clause 8.01(f) shall name Landlord as insured and as loss payee.

8.03 Each policy required by any provision of Section 8.01, except clause (d) thereof, shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Landlord.

8.04 Tenant shall pay as they become due all premiums for the insurance required by Section 8.01, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefor or installment then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Landlord all original certificates of insurance evidencing such coverages. All certificates of insurance (including liability coverage) provided to Landlord shall be on ACORD Form 28 (or its equivalent).

8.05 Anything in this Article 8 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to clause 8.01(a) may be carried under a "blanket' policy or policies covering other properties of Tenant or under an "umbrella" policy or policies covering other liabilities of Tenant, as applicable; provided that, such blanket or umbrella policy or policies otherwise comply with the provisions of this Article 8, and upon request, Tenant shall provide to Landlord a Statement of Values which may be reviewed annually and shall be amended to the extent determined necessary by Landlord based on revised Replacement Cost Valuations. A certificate evidencing such blanket or umbrella policy (or a certified copy of such policy of requested by Landlord) shall promptly be delivered to Landlord.

8.06 Tenant shall not carry separate insurance concurrent in form or contributing in the event of a casualty with that required in this Article 8 unless (i) Landlord is included therein as named insured, with loss payable as provided herein, and (ii) such separate insurance complies with the other provisions of this Article 8. Tenant shall immediately notify Landlord of such separate insurance and shall deliver to Landlord certified copies (or original policies, if requested) thereof.

8.07 Each policy obtained by Tenant shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Landlord and shall contain a full waiver of subrogation against the Landlord. Each policy obtained by Landlord, if any, shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Tenant and shall contain a full waiver of subrogation against Tenant. Tenant waives subrogation

against Landlord to extent of insurance proceeds actually received or would have been received if adequate coverage had been in place.

8.08 Proceeds. The proceeds of any insurance required under Section 8.01 shall be payable as follows:

(a) proceeds payable under clauses (b), (c) and (d) of Section 8.01 and proceeds attributable to the general liability coverage of Builder's Risk insurance under clause (f) of Section 8.01 shall be payable to the person or entity entitled to receive such proceeds; and

(b) proceeds of insurance required under clause (a) of Section 8.01 and proceeds attributable to Builder's Risk insurance (other than its general liability coverage provisions) under clause (f) of Section 8.01 shall be payable to Landlord and applied as set forth in Articles 23 or 24, as applicable. Tenant shall apply the Loss Proceeds to restoration of the Premises in accordance with the applicable provisions of this Lease unless a Termination Event shall have occurred and Tenant has given a Termination Notice.

8.09 Landlord's Right to Obtain Tenant's Insurance. Notwithstanding anything to the contrary contained in this Article 8, if at any time Tenant fails to provide evidence of the insurance required to be maintained by Tenant hereunder within ten (10) Business Days of Landlord's request for same (said requests not to be made more than once per calendar quarter), Landlord shall have the right, but not the obligation, by providing written notice of such election to Tenant, to itself obtain and maintain all or any portion of such insurance, in which event Landlord shall charge Tenant the cost of such insurance as Additional Rent hereunder. In the event that Landlord so elects to obtain and maintain such insurance, Landlord shall cause Tenant, if Tenant so requests in writing, to be added as additional insureds and loss payees under the applicable insurance policy(ies), as its interests may appear. Landlord and Tenant agree to reasonably cooperate with each other in order to coordinate the acquisition and maintenance of any such insurance by Landlord, which may include, without limitation, the execution of any required forms and applications and providing relevant information to Landlord's insurance carrier.

9. MAINTENANCE AND REPAIRS

9.01 Tenant Repairs. Except as expressly set forth in this Lease as an obligation of Landlord, if any, or any other tenant on the Adjacent Land, Tenant shall at all times during the Term, at its sole expense, keep and maintain the Premises, Improvements and Building Systems Equipment and every part thereof, structural and non-structural, interior and exterior, including all parking and landscaped areas, in good working order and condition (and in compliance with all Requirements) and, in any event, in substantially the same condition, order and repair as the same were in on the Lease Commencement Date (normal wear and tear, condemnation, damage by reason of fire or other casualty for which Tenant is not liable for repair hereunder excepted) and furnish all expendables (light bulbs, paper goods, soaps, etc.) used in the Premises. Notwithstanding the foregoing, Tenant shall not be responsible for repairs of any damage actually caused by the negligent acts or intentional misconduct of Landlord or any Landlord

Party, in which case Landlord shall cause such damage to be repaired promptly and in a manner that does not unreasonably disrupt the operation of Tenant's business at the Premises.

9.02 Landlord Self Help. If Tenant fails to perform any maintenance or repair required of it as and when required under this Lease, and such failure continues for thirty (30) days after notice from Landlord (provided that, in the event of an emergency or hazardous condition Landlord shall only be required to provide such notice (prior or subsequent) as is reasonable under the circumstances), then Landlord shall have the right (but not the obligation) to perform such maintenance or repair on Tenant's account, in which event Tenant will reimburse Landlord, as Additional Rent hereunder, for all reasonable, actual costs incurred by Landlord in connection therewith within ten (10) days after Tenant's receipt of an invoice therefor from Landlord.

9.03 Road Maintenance. Landlord and Tenant acknowledge that Landlord, Tenant and other tenants of Landlord on the Adjacent Land will use roadways located on the Premises. Accordingly, the repair and maintenance of such roadways shall be shared among Landlord, Tenant and all tenants of the Adjacent Land, with each such person paying their pro rata share of the costs of such repair and maintenance. A person's pro rata share of the costs for repair and maintenance of the roadways shall be determined by multiplying the applicable costs for such repair or maintenance by a fraction, the numerator of which is the number of trips made by such person or its invitees across such roadways and the denominator of which is the total number of trips made by Landlord, Tenant and all tenants of the Adjacent Land and their respective invitees across the roadways or as otherwise agreed upon by Landlord and Tenant.

10. SIGNS AND LANDSCAPING

10.01 Subject to applicable Laws and all Permitted Encumbrances, Tenant shall have the right, from time to time during the Term, without Landlord's consent, to modify existing landscaping and signage at the Premises and to install additional landscaping and, subject to Section 2.01(d), signage at the Premises, together with exclusive naming rights to the Building; provided, however, all signage must be related to the Permitted Use. Landlord shall not install or permit any person or entity other than Tenant to install or place any signs on the Premises during the Term, without the prior written consent of Tenant (which may be withheld in Tenant's sole discretion). If requested by Landlord, Tenant shall cause all signage that Tenant installed to be removed (and seal all penetrations and repair any damage therefrom) upon the expiration or earlier termination of this Lease at its own expense.

11. ENTRY BY LANDLORD

11.01 Right of Entry by Landlord. Tenant will permit Landlord and Landlord's agents to enter the Premises at reasonable times for the purpose of inspecting the same, for the purpose of showing the Premises to prospective tenants during the last year of the Term and for showing the Premises to prospective purchasers, lenders and investors, without any rebate of rents and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; all without material or unreasonable interference to Tenant, and upon at least five (5) days' prior written notice to Tenant. Tenant and/or its agents shall have the right to

accompany Landlord and/or its agents in connection with any entry into the Premises by Landlord and/or its agents.

12. ASSIGNMENT. SUBLETTING AND TRANSFERS OF OWNERSHIP

12.01 Assignments Generally. Except as otherwise provided below in this Article 12, Tenant shall not voluntarily or involuntarily assign its interest in this Lease, including by operation of law (through merger, consolidation or otherwise) (a Tenant Assignment), in any case, without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Any consent to any Tenant Assignment which may be given by Landlord will not constitute a waiver by Landlord of the provisions of this Lease or a release of Tenant from its obligations hereunder. Any consent given by Landlord to any Tenant Assignment will not relieve Tenant (or any transferee of Tenant) from the above requirements for obtaining the written consent of Landlord to any subsequent Tenant Assignment. In the event Tenant requests Landlord's consent to a Tenant Assignment, Tenant agrees to pay Landlord all reasonable attorneys' fees incurred by Landlord for any legal services for document review and/or negotiation of any and all documents deemed necessary by Landlord and/or Tenant to effect such Tenant Assignment. Any purported Tenant Assignment in violation of this Article 12 shall be null and void. In addition, notwithstanding anything to the contrary contained in this Article 12, Tenant shall not have the right to assign this Lease (voluntarily or involuntarily, whether by operation of law or otherwise) to any party at any time that Default exists.

12.02 Permitted Assignments. Notwithstanding anything to the contrary contained in Section 12.01, an assignment by Tenant of all of its rights under this Lease to an Affiliate or wholly-owned subsidiary of Tenant who is acquiring all of Tenant's Property shall be a Permitted Assignment and shall not require the consent of, or notice to Landlord prior to such Permitted Assignment. As used herein Affiliate means with respect to any entity, an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the first such person or entity, and (ii) control means the ownership of more than 50% of the outstanding voting stock of a corporation (or other majority equity control if such entity is not a corporation) and the power, directly or indirectly, by contract or otherwise, to direct or cause the direction of the management or policies of such entity. Tenant shall provide Landlord with notice of any Permitted Assignment described above within ten (10) days after the consummation thereof. Any assignee pursuant to a Permitted Assignment shall be required to use the Premises solely for the Permitted Use.

12.03 Review Criteria for Assignments. If Tenant desires to consummate a Tenant Assignment other than a Permitted Assignment (a Non-Preapproved Assignment), then Tenant shall, not less than fifteen (15) days prior to the date on which it desires to make a Non-Preapproved Assignment, submit to Landlord either (a) information regarding the following with respect to the proposed assignee (collectively, the Review Criteria): (i) financial reports for its previous three (3) fiscal years (or, if same are not then available, a reasonable equivalent or alternative thereto), (ii) a list of its senior management, and (iii) a summary of its operating history, or (b) evidence that the proposed assignee has maintained accreditation with Tenant's accrediting agency or, in the event the proposed assignee has already gained accreditation with said agency, that it has been approved by said agency to operate the Premises for the School Use . Landlord

shall review such information and shall in the former instance, approve or disapprove of the proposed Tenant Assignment based solely on such Review Criteria no later than the fifteenth (15th) day following receipt of all such information; Landlord shall be deemed to have acted reasonably in granting or withholding consent if such grant or disapproval is based on their review of the Review Criteria applying prudent business judgment. In the latter instance, Landlord shall accept the accreditation or other relevant approval of the accrediting agency as sufficient, and shall approve the Tenant Assignment no later than the fifteenth (15th) day following evidence of such approval. Any assignee pursuant to Tenant Assignment approved by Landlord shall be required to use the Premises solely for the Permitted Use.

12.04 Subletting. Tenant shall have the right to sublet, sub-sublet, or grant any concession or occupancy rights to all or any portion of the Premises (each a Sublease) to any person (whether such person be an Affiliate of Tenant or an unrelated third party). Tenant shall not be required to obtain Landlord's consent to, or to give prior notice to Landlord of, any Sublease of the Premises. Tenant shall deliver to Landlord a copy of each Sublease entered into by Tenant within fifteen (15) days after such Sublease is fully executed by Tenant and applicable sublessee. Notwithstanding the foregoing, Tenant shall not have the right to Sublease the Premises at any time during which a Default exists. Any sublessee pursuant to a Sublease shall be required to use the Premises solely for the Permitted Use.

12.05 No Release. No Sublease shall affect or reduce any obligations of Tenant or the rights of Landlord hereunder, and all obligations of Tenant hereunder shall continue in full effect as the obligations of a principal and not of a guarantor or surety, as though no Sublease had been made. Tenant shall not be released from its obligations under this Lease upon an assignment by Tenant of its rights and obligations under this Lease unless such release is consented to by Landlord.

12.06 Recognition Agreement. Landlord agrees, upon the request of Tenant, to execute and deliver a recognition agreement in form and substance mutually satisfactory to Landlord and Tenant (Recognition Agreement) with respect to each Sublease.

12.07 Existing Tenants. If any portion of the Premises are currently occupied pursuant to leases (each, as it may be amended, supplemented, assigned, restated, replaced or otherwise modified from time to time, an Existing Lease) entered into by a prior owner of the Premises with tenants (each, collectively with their successors, assigns and sublessees, an Existing Tenant) and such Existing Leases are hereby deemed approved Subleases. Concurrently with the conveyance of the Premises to Landlord and the execution of this Lease, Tenant has taken over the obligations of lessor under the Existing Leases pursuant to an assignment and assumption agreement and has caused such Existing Tenants to agree to look solely to Tenant for performance of the obligations of lessor thereunder and to acknowledge that their respective Existing Lease is subject and subordinate to this Lease. During the Term, Tenant shall have the exclusive right to exercise all rights (including, without limitation, the right to collect and retain all rents due under the Existing Leases, the right to terminate Existing Leases, the right to dispossess Existing Tenants and the right to expand and contract their respective premises) and shall fulfill all of the obligations under the Existing Leases to be paid or performed by the lessor thereunder.

12.08 Asset Transfers. Tenant shall not, in a single transaction or series of related transactions (including any interim merger or consolidation), sell or convey, transfer or lease (excluding Subleases permitted hereunder), all or substantially all of its assets (an Asset Transfer) to any person or entity, and any such Asset Transfer shall be deemed a Tenant Assignment in violation of this Lease; except that Tenant shall have the right to conduct an Asset Transfer without Landlord's consent if the following conditions are met: (i) the Asset Transfer is to a person or entity that (a) is an Affiliate or wholly-owned subsidiary of Tenant or (b) is approved in writing by Landlord under the Review Criteria as a Non-Preapproved Assignment in accordance with the provisions of Section 12.03 of this Lease, and (ii) in each case, this Lease is assigned to and assumed by such person or entity as a part of such Asset Transfer.

13. BREACH BY TENANT

13.01 Tenant will be in Default under this Lease if at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings in law, in equity or before any administrative tribunal which have or might have the effect of preventing Tenant from complying with the terms of this Lease) the following occur and are continuing:

(a) Tenant fails to make payment of any installment of (i) Base Rent when due and such failure continues for three (3) Business Days after Landlord's written notice to Tenant of such failure, or (ii) any item of Additional Rent when due and such failure continues for ten (10) Business Days after Landlord's written notice to Tenant of such failure; or

(b) Tenant fails to observe or perform any of its other covenants, agreements or obligations hereunder (other than those provided in Sections 2.09, 2.10 and 2.11), and such failure is not cured within thirty (30) days after Landlord's written notice to Tenant of such failure; provided, however, that if the nature of Tenant's obligation is such that more than thirty (30) days are required for performance, then Tenant will not be in Default if Tenant commences performance within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion; provided, further, however, that if Tenant's failure to perform its covenants hereunder is related to the college on the Leased Premises failing to have accreditation as required in Section 1.05, Tenant shall have twelve (12) months after Tenant first becomes aware of such failure to cure such default. For avoidance of doubt any failure by Tenant to observe or perform any of its covenants, agreement or obligations set forth in Sections 2.09, 2.10 or 2.11 hereunder shall be subject to the foregoing notice and cure provisions, but otherwise shall not be considered to be, or result in, a Default under this Lease;

(c) Tenant becomes insolvent, makes a transfer for the benefit of its creditors, is the subject of a bankruptcy petition, is adjudged bankrupt or insolvent in proceedings filed against Tenant (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), a receiver, trustee, or custodian is appointed for all or substantially all of Tenant's assets where possession is not restored to Tenant within ninety (90) days, or performs any act of bankruptcy or insolvency; or

(d) Tenant permits the Premises, other than the Retail Portion, in whole or in substantial part to "go dark" or if the Premises shall be vacated or abandoned, in either case, without the express prior written approval of Landlord in its sole discretion; provided that notwithstanding the foregoing, for purposes hereof, the Premises shall not be deemed to have been vacated or allowed to "go dark" (i) during the performance of restoration or repair following a material casualty or partial taking, (ii) in connection with major renovations or refurbishment of the Improvements for the benefit of Tenant (or its Affiliates in occupancy), (iii) in connection with the preparation of the Premises for initial occupancy by a permitted assignee or sublessee pursuant to an executed assignment or sublease agreement then in force and effect or (iv) during any period in which the college operated on the Premises is not in session, is on break or is in between semesters; so long as, in the case of events in clauses (i), (ii) and (iii) of this sentence, such period of actual repair or renovation or refurbishment does not exceed one (1) year (without giving effect to any period of time relating to development of architectural plans and designs, any approval or permitting process or any Landlord review) and Tenant is diligently pursuing same to completion.

14. REMEDIES OF LANDLORD

14.01 Landlord shall use reasonable efforts to mitigate its damages in the event of a Default by Tenant hereunder. No mitigation of damages by Landlord shall constitute a waiver of any Default by Tenant hereunder, nor shall anything in this Section adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damages to persons or property occurring prior to a termination of this Lease.

14.02 All cure periods provided herein shall run concurrently with any periods provided at Law (but nothing contained in the foregoing shall be deemed to limit the notice and cure rights to which Tenant is entitled under this Lease).

14.03 During the continuance of a Default, as designated hereinabove, in addition to any other rights or remedies provided for herein or at law or in equity in the State at the time in question, Landlord shall have the following rights:

(a) The right to declare the Term ended and reenter the Premises and take possession thereof (with process of law), and to terminate all of the rights of Tenant in and to the Premises; or

(b) The right, without declaring the Term ended, to reenter the Premises and to occupy the same (with process of law), for and on account of the Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord on demand all such reasonable expenses as Landlord may have paid, assumed or incurred in recovering possession of the Premises, including reasonable costs, expenses, attorney's fees and expenditures of placing the same in good order, and all other reasonable expenses, commissions and charges paid by the Landlord in connection with reletting the Premises or a portion thereof (other than costs and expenses relating to the construction or installation of alterations and/or improvements to the Premises); provided, however, the amount that Tenant shall be liable to pay pursuant to this sentence shall be limited to the Early Termination Payment, if any. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. Such reletting

shall be for such rent and on such other terms and conditions as Landlord, in its reasonable discretion, deems appropriate. Landlord may assume Tenant's interest in any existing subleases to any tenant of the Premises, as Landlord may see fit, and Tenant shall have no right or authority whatsoever to collect any rent from such subtenants of the Premises or Existing Tenants. In any case, and whether or not the Premises or any part thereof is relet, Tenant, shall be liable to Landlord only for an amount equal to the Early Termination Payment, if any. Tenant shall be entitled to receive any excess rent received by Landlord over and above the Early Termination Payment; or

(c) The right, even though it may have relet all or any portion of the Premises in accordance with the provisions of subsection (b) above, to thereafter at any time elect to terminate this Lease for such Default on the part of the Tenant, and to terminate all the rights of Tenant in and to the Premises.

14.04 Pursuant to the rights of re-entry provided above, Landlord may, in each case with process of law, remove all persons from the Premises and may, but shall not be obligated to, remove all property therefrom, and may, but shall not be obligated to, enforce any rights Landlord may have against said property or store the same in any public or private warehouse or any other reasonably secure location at the cost and for the account of Tenant or the owner or owners thereof. Tenant agrees to hold Landlord free and harmless from any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, unless Landlord acted in a manner that was grossly negligent or with willful misconduct in connection with the removal or storage of such property. Such action by the Landlord shall not be deemed to be an election by Landlord to terminate this Lease.

14.05 In the event of a termination of this Lease by reason of a Default by Tenant, Landlord may recover from Tenant, the amount equal to the Early Termination Payment, if any. Landlord would not be entitled to receive any additional amounts upon termination of this Lease by reason of Default by Tenant.

14.06 In any action brought by the Landlord to enforce any of its rights under or arising from this Lease during the continuance of a Default by Tenant, Landlord shall be entitled to receive its reasonable costs and legal expenses including reasonable attorneys' fees, but only to the extent that Landlord prevails in the determination that any such Default by Tenant shall in fact have occurred.

14.07 The waiver by Landlord of any Default of Tenant hereunder shall not be a waiver of any preceding or subsequent breach of the same or any other term. Acceptance of any Rent payment shall not be construed to be a waiver of the Landlord of any preceding breach of the Tenant.

14.08 Landlord shall have the right (but shall not be required) to perform any obligation that Tenant fails to perform under this Lease after thirty (30) days written notice to Tenant from Landlord; provided, however, that if the nature of Tenant's obligation is such that more than thirty (30) days are required for performance, then Landlord will not have the right to perform such obligation of Tenant if Tenant commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion; and provided further that in the

event that any failure of Tenant to perform its obligations hereunder would result in an emergency, then Landlord shall only be required to provide such notice thereof to Tenant as is practical under the circumstances prior to performing such obligation of Tenant. Tenant shall reimburse Landlord for any reasonable, out-of-pocket costs incurred by Landlord pursuant to the preceding sentence as Additional Rent within thirty (30) days after receipt of written notice thereof.

15. TENANT FINANCING AND LEASEHOLD MORTGAGES

15.01 Tenant shall have the right and be permitted to obtain financing from any third party lenders to finance Expansions, Tenant's repair and maintenance obligations under this Lease, general operations of Tenant or any other financing as Tenant deems necessary and appropriate. In connection with any such financing, Tenant shall have the right to grant to such lender a leasehold mortgage on all of Tenant's right, title and leasehold interest in and to the Premises and/or a security interest in and to all of Tenant's right, title and interest in and to any personal property of Tenant, regardless of whether such personal property is located at the Premises or any other location.

16. SURRENDER OF LEASE NOT MERGER

16.01 No Merger. The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, will not constitute a merger.

17. ESTOPPEL CERTIFICATE

17.01 Tenant Estoppel. Tenant will execute and deliver to Landlord, within ten (10) Business Days of Landlord's written demand, a statement in writing certifying that this Lease is in full force and effect, and that the Base Rent and Additional Rent payable hereunder is unmodified and in full force and effect (or, if modified, stating the nature of such modification) and the date to which Rent and other charges are paid, if any, and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults if they are claimed and such other matters as Landlord may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises. In no event shall Tenant be required to execute or deliver any such statement which would modify or amend any of the terms or provisions of this Lease.

17.02 Landlord Estoppel. Landlord will execute and deliver to Tenant, within ten (10) Business Days of Tenant's written demand, a statement in writing certifying that this Lease is in full force and effect, and that the Base Rent and Additional Rent payable hereunder is unmodified and in full force and effect (or, if modified, stating the nature of such modification) and the date to which Rent and other charges are paid, if any, and acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder or specifying such defaults if they are claimed and such other matters as Tenant may reasonably request. In no event shall Landlord be required to execute or deliver any such statement which would modify or amend any of the terms or provisions of this Lease.

18. SALE BY LANDLORD

18.01 Sale by Landlord. In the event of a sale or conveyance by Landlord of the Premises, the same shall: (a) be subject to Tenant's Right of First Offer, Right of First Refusal, and Purchase Option under Sections 37.01, 37.02 and 37.03 hereof, (b) provide that the purchaser or buyer agrees in writing to assume all of Landlord's obligations and liabilities hereunder; (c) operate to release Landlord from any liability with respect to any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, which arise after such sale, and Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease with respect to any matters arising after such sale. This Lease will not be affected by any such sale, and Tenant agrees to attorn to the purchaser or assignee. Upon request by Landlord, Tenant agrees to enter into a separate attornment agreement.

19. NOTICES

19.01 All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Lease by either party to the other will be in writing and will be considered sufficiently given and served upon the other party if sent by certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service and addressed as indicated in Sections 1.03 and 1.04. All notices shall be effective upon receipt (or refusal of receipt) thereof. Any party may change its address for notices (or add or subtract addresses for notices) under this Lease from time to time by written notice thereof given to the other party as above provided.

20. WAIVER

20.01 The failure of either party to insist in any one or more cases upon the strict performance of any term, covenant or condition of the Lease will not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either party to seek a remedy for any breach of this Lease be deemed a waiver by such party of its remedies or rights with respect to such a breach.

21. HOLDOVER

21.01 If Tenant does not surrender the Premises to Landlord on the Expiration Date in the condition required by this Lease, such continuance of possession by Tenant will be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice at any time by either party. All provisions of this Lease, except those pertaining to term and rent, will apply to the month-to-month tenancy. Tenant will pay a new Base Rent monthly at a rate equal to one hundred fifty percent (150%) of the amount of Base Rent payable for the last full calendar month during the Term. Nothing herein shall be deemed or construed as permitting or granting Tenant any right to holdover after the expiration or termination of this Lease, and upon any failure by Tenant to vacate and surrender the Premises after the expiration of a thirty (30) day notice given by Landlord as set forth hereinabove, Landlord may exercise any rights or remedies available at law or in equity to dispossess Tenant of the Premises and to recover any damages resulting from such holdover.

22. CONDEMNATION

22.01 Termination. If (x) all or substantially all of the Premises, (y) any material portion of the rentable area of the Improvements at the Premises, or (z) any portion of the Land which results in the permanent loss of all reasonable means of access to or from the Land, is taken for any public or quasi-public purpose by any lawful government power or authority, by exercise of the right of appropriation, reverse condemnation, condemnation or eminent domain, or is sold under threat of such taking to the applicable governmental authority and, in the case of (y) or (z) above, despite the good faith and commercially reasonable efforts of Tenant, the Premises cannot be reconfigured and restored to a condition that would allow for the continued economically practicable operation of Tenant's business thereat in compliance with Laws and Requirements (as determined by a reputable, independent architect selected by Tenant and reasonably acceptable to Landlord), then Tenant may at its option terminate this Lease by notifying Landlord of such election in writing not later than sixty (60) days after the date of such taking. Tenant will not because of such taking assert any claim against the Landlord or the taking authority for any compensation because of such taking, and Landlord will be entitled to receive the entire amount of any award (an Award) without deduction for any estate or interest of Tenant. Subject to the provisions of this Section 22.01 below and except for the claims reserved therein, Tenant hereby irrevocably assigns to Landlord any award or payment to which Tenant is or may be entitled by reason of any condemnation, whether the same shall be paid or payable for Tenant's leasehold interest hereunder or otherwise; but nothing in this Lease shall impair Tenant's right to any award or payment on account of Tenant's Property (including, without limitation, Alterations made by and paid for by Tenant), moving and relocation expenses (including fees of consultants, brokers, attorneys and other professionals incurred by Tenant in connection with moving to another location) to the extent and so long as Tenant shall have the right to make (and does so make) a separate and independent claim therefor against the condemnor.

22.02 Restoration. If this Lease is not terminated in connection with any such taking or condemnation, then: (i) Landlord shall make any Award available to Tenant for restoration of the Premises in accordance with Section 24 hereof, (ii) Tenant will promptly proceed to restore the Premises to as close to its same condition prior to such taking or condemnation as reasonably possible, allowing for any reasonable effects of such taking (to the extent of such Award), and, (iii) this Lease shall continue in full force and effect without any abatement or reduction of the Rent due hereunder.

23. CASUALTY

23.01 Repair. If the Premises shall be damaged by fire or other casualty that does not constitute a Termination Event under Section 23.03 below, then Tenant shall, at Tenant's sole cost and expense (whether or not Loss Proceeds are sufficient therefor and without any abatement of Rent hereunder), repair and restore the same as promptly as possible to substantially the condition existing prior to the casualty, except for modifications required by zoning and building codes and other Laws then in effect. Such repair and restoration shall be subject to the insurance and lien removal obligations set forth in Sections 7.03 and 7.06 hereof, and if the Loss Proceeds (other than business interruption and rent loss proceeds) exceed $500,000.00 (the Proceeds Threshold),

then the Loss Proceeds shall be held in the Restoration Fund and disbursed in accordance with Article 24 hereof.

23.02 Insurance. So long as Tenant is not then in Default hereunder, all insurance proceeds payable under any property, fire, and/or rental insurance of Tenant (Loss Proceeds) under the Proceeds Threshold shall be payable solely to Tenant and Landlord shall have no interest therein. Loss Proceeds in excess of the Insurance Proceeds Threshold shall be payable to Landlord and made available for restoration of the Premises from the Restoration Fund in accordance with Article 24 hereof; provided that, if Tenant elects to terminate the Lease as may be permitted pursuant to the terms of this Article 23, then Landlord shall be entitled to all Loss Proceeds and Tenant shall make such assignment of rights or take such other reasonable action necessary to cause such Loss Proceeds to be paid to Landlord. Notwithstanding any of the foregoing to the contrary, Tenant shall be entitled to retain (or if same are paid to Landlord, shall be paid over to Tenant) all insurance proceeds paid to Tenant for the rental of temporary space, relocation costs and the replacement of Tenant's Property, and such proceeds shall not be included in the definition of "Loss Proceeds" as such term is used in this Lease.

23.03 Termination Event. If all or any substantial portion of the Premises shall be damaged or destroyed by casualty (a Termination Event), then Tenant shall have the option, exercisable within ninety (90) days after such casualty, to give to Landlord written notice in the form described in Section 23.04 of the Tenant's exercise of option to terminate this Lease (a Termination Notice). If Tenant does not elect, or fails to timely elect, to give Landlord a Termination Notice, then Tenant shall rebuild or repair the Premises in accordance with the provisions of Section 23.01 above. For purposes hereof, a "substantial portion of the Premises" means and refers to more than twenty percent (20%) of the square feet of rentable area of the Building.

23.04 Termination Notice. A Termination Notice shall contain notice of Tenant's desire to terminate this Lease on the first Base Rent Payment Date which occurs at least thirty (30) days after the date of such Termination Notice (the Termination Date).

23.05 Obligations on Termination Date. If Tenant has timely exercised its option to terminate, this Lease shall terminate on the Termination Date and Tenant shall have no obligation to rebuild the Premises. Upon such termination (i) all obligations of Tenant hereunder shall terminate except for any obligations expressly provided to survive the expiration or termination of this Lease, (ii) Tenant shall immediately vacate and shall have no further right, title or interest in or to any of the Premises and (iii) all Loss Proceeds shall be paid over to and retained by Landlord. Notwithstanding anything to the contrary hereinabove contained, if on the date when this Lease would otherwise terminate, Landlord shall not have received the full amount of the Loss Proceeds payable by reason of the applicable Termination Event, then the date on which this Lease is to terminate shall be automatically extended to the date of the receipt by Landlord of the full amount of such Loss Proceeds; but in no event beyond the date which is five (5) years after the Termination Date (the Outside Termination Date).

23.06 Late Term Termination Right. Notwithstanding anything in this Article 23 to the contrary, if a Termination Event occurs during the last two (2) years of the Term (taking into

account any exercised or deemed exercised Extension Term) or during the last two (2) years of any Extension Term, Tenant shall have no obligation to rebuild the Premises and may terminate this Lease effective as of the Termination Date. Upon such termination (i) all obligations of Tenant hereunder shall terminate except for any obligations expressly provided to survive the expiration or termination of this Lease, (ii) Tenant shall immediately vacate and shall have no further right, title or interest in or to any of the Premises and (iii) all Loss Proceeds shall be paid over to and retained by Landlord. Notwithstanding anything to the contrary hereinabove contained, if on the date when this Lease would otherwise terminate, Landlord shall not have received the full amount of the Loss Proceeds payable by reason of the applicable Termination Event, then the date on which this Lease is to terminate shall be automatically extended to the date of the receipt by Landlord of the full amount of such Loss Proceeds; but in no event beyond the Outside Termination Date.

24. RESTORATION

24.01 Restoration Fund. Any portion of the Award or Loss Proceeds equal to or less than the Proceeds Threshold shall be paid to Tenant to be used only to commence restoration of the Premises (or to take appropriate action to mitigate further damage to the Premises) in accordance with the terms hereof. Any portion of the Award or Loss Proceeds in excess of the Proceeds Threshold shall be delivered to Landlord and Landlord shall hold such amounts in a reserve fund created for this purpose (the Restoration Fund) and disburse amounts from the Restoration Fund for payment of costs of the restoration of the Premises in accordance with the following conditions:

(a) Prior to commencement of restoration, (i) the architects, contracts, contractors, plans and specifications and a budget for the restoration shall have been approved by Landlord, (ii) Landlord shall be provided with mechanics' lien insurance (if available) and acceptable performance and payment bonds from the general contractor (or designer/builder, as the case may be) which insure satisfactory completion of and payment for the restoration, are in an amount and form and have a surety acceptable to Landlord, and name Landlord as additional payee, and (iii) to the extent permitted by applicable Laws, appropriate waivers of mechanics' and materialmen's liens shall have been obtained and/or filed;

(b) At the time of any disbursement, no Default shall exist and no mechanics' or materialmen's liens shall have been filed against any of the Premises and remain undischarged and Landlord shall be reimbursed for its reasonable out-of-pocket third-party costs (which shall in no event include any fee of any kind to Landlord for overhead or supervision) incurred in connection with obtaining the Award and making such disbursements;

(c) All costs of restoration shall first be paid by Tenant to the extent of the amount of the Award or Loss Proceeds below the Proceeds Threshold received by Tenant;

(d) After Tenant has paid for costs of Restoration from the Award or Loss Proceeds below the Proceeds Threshold received by Tenant, disbursements from the Restoration Fund shall be made from time to time by Landlord (but not more than once in each thirty (30) day

period) in an amount not exceeding the cost of the work completed since the last disbursement, upon receipt of (i) satisfactory evidence, including architects' certificates, of the stage of completion, the estimated total cost of completion and performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (ii) waivers of liens, (iii) contractors' and subcontractors' sworn statements as to completed work and the cost thereof for which payment is requested, (iv) a satisfactory bringdown of title insurance and (v) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed, in place and free and clear of mechanics' and materialmen's lien claims;

(e) Each request for disbursement shall be accompanied by a certificate of Tenant, signed by an authorized signatory of Tenant, describing the restoration work for which payment is requested, stating the cost incurred in connection therewith, stating that Tenant has not previously received payment for such work and stating that such work has been fully completed and complies with the applicable requirements of this Lease;

(f) Landlord shall maintain the Restoration Fund in accordance with the accounting principles and standards issued by the Financial Accounting Foundation's Governmental Accounting Standards Board. Landlord shall provide to Tenant on an annual basis, no later than 120 days after the end of Landlord's fiscal year, copies of the unaudited financial statements for such then-ending fiscal year; and shall provide copies of the audited financial statements promptly upon receipt of same by the Landlord; and

(g) Such other reasonable conditions (which shall not include any obligation to provide additional collateral) as Landlord may impose, so long as same are reasonably consistent with conditions then being customarily required by prudent institutional owners under similar circumstances.

24.02 Deficiency. If the estimated cost of completing the restoration work free and clear of all liens, as reasonably determined by Landlord, exceeds the amount of the Loss Proceeds or Award available for such restoration, Landlord may require that Tenant expend its own funds toward the restoration work in an amount equal to such deficiency prior to the disbursement of any sums (or any further sums, as the case may be) from the Restoration Fund.

24.03 Remaining Sums. If any sum remains in the Restoration Fund after completion of the restoration work, such sum shall be paid to Tenant promptly upon completion of such work and Tenant's compliance with the provisions of this Article 24, including obtaining appropriate lien waivers and releases, and all permits required for legal occupancy of the Improvements.

24.04 Refunds of Costs. The operation of the conditions to advances under Section 24.01 shall not constitute a basis for Landlord to withhold reimbursement to Tenant of costs expended by Tenant in connection with such restoration to the extent same were expended in compliance with the delivery requirements of Section 24.01, within thirty (30) days after Tenant's request therefor, provided that after such payment the estimated cost of completing the restoration work free and clear of all liens, as reasonably determined by Landlord, does not exceed the amount

remaining in the Restoration Fund less any amounts that may be due Landlord under this Article 24.

25. EARLY TERMINATION BY TENANT

25.01 Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have the right to terminate this Lease at any time, for any or no reason, upon not less than 225 days' prior written notice to Landlord (Early Termination Notice), which Early Termination Notice shall specify the date on which this Lease shall terminate (Early Termination Date); provided, however, that such Early Termination Date shall not be during any term or semester at the college operated pursuant to the School Use. As a condition of the right of termination provided in this Section 25.01, on or prior to the Early Termination Date, Wengen Alberta, Limited Partnership, an Alberta limited partnership (Wengen), shall have funded not less than $20,000,000 in capital to Tenant as described in that certain letter dated September 10, 2009 from Wengen to Mayor of Santa Fe and Members of the City Council of Santa Fe (the Capital Commitment Letter). On the Early Termination Date (i) all obligations of Tenant hereunder shall terminate, except those that by their terms expressly survive the termination hereof, (ii) Tenant shall immediately vacate the Premises and shall have no further right, title or interest in or to any of the Premises, including, without limitation, the preferential purchase rights under Article 37 hereof and (iii) Tenant shall pay to Landlord the Early Termination Payment, if any. For purposes of this Lease, Early Termination Payment shall mean the amount equal to (a) $20,000,000 minus (b) the aggregate amount of all capital funded to Tenant by Wengen as described in the Capital Commitment Letter and expended by Tenant in connection with the Premises for payment of costs related to, among other things, repairs, maintenance or improvements to the Premises and the operation of the college thereon. Landlord acknowledges and agrees that other than Landlord's right to receive the Early Termination Payment, if applicable, Landlord shall not be entitled to receive, and shall not seek to recover, any additional compensation or payment from, or on behalf of, Tenant in connection with an early termination of this Lease pursuant to this Section 25.01, provided that all Rent due on or before the Early Termination Date is timely paid.

26. SUBORDINATION; LANDLORD WAIVER

26.01 Provided that Landlord and any mortgagee or beneficiary with a lien on the Premises shall execute and deliver to Tenant a subordination and non-disturbance and attornment agreement (SNDA) in customary form and otherwise reasonably acceptable to Tenant and such mortgagee or beneficiary, this Lease shall be subject and subordinate at all times to the lien of the mortgage or deed of trust of such mortgagee or beneficiary (whether now existing or hereafter executed), and Tenant covenants and agrees to execute and deliver to Landlord such SNDA if requested by Landlord, a mortgagee or beneficiary. In the event that any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant will, notwithstanding any subordination, attorn to and become the tenant of the successor in interest to Landlord, provided that such successor in interest has executed an SNDA. In the event that a mortgage or deed of trust affects the Premises on the Lease Commencement Date, Landlord shall, concurrently with the execution and delivery of this Lease, deliver to Tenant an SNDA executed by Landlord and the holder of such mortgage or deed of trust.

26.02 Landlord agrees that, upon the request of any party that shall be Tenant's senior secured lender, subordinate secured lender, purchase money equipment lender or an equipment lessor of Tenant, Landlord shall execute and deliver a commercially reasonable waiver of Landlord's statutory lien rights, if any, and a consent and agreement with respect to the respective rights of Landlord and such party regarding the security interests in, and the timing and removal of, any inventory, equipment or other collateral owned by Tenant in which such party has a secured interest (the Collateral), in form and substance reasonably acceptable to Landlord, so long as such waiver and agreement (i) provides for the indemnification of Landlord against any claims by Tenant or any party claiming through Tenant and against any physical damage caused to the Premises, in connection with the removal of any of the Collateral by such party, (ii) expressly excludes any claim by such party to any right, title or interest in or to any of the Building Systems Equipment as defined in this Lease, (iii) provides for a reasonable, but limited, timeframe for the removal of such Collateral by such party after the expiration of which same shall be deemed abandoned, and (iv) provides for the per diem payment of Base Rent due hereunder by such party for each day following the date of the expiration or termination of this Lease thereafter that Landlord permits such party's Collateral to remain in the Premises.

27. GOVERNING LAW; JURISDICTION

27.01 This Lease shall be construed in accordance with the Laws of the State of New Mexico, without regard to principles of conflicts of law. Landlord and Tenant hereby submit to local jurisdiction in the County of Santa Fe, State of New Mexico and each agrees that any action by Tenant against Landlord or Landlord against Tenant, as the case may be, shall be instituted in the County of Santa Fe, State of New Mexico, and that courts located in Santa Fe County shall have personal jurisdiction over Tenant for any action brought by Landlord against Tenant, and courts located in Santa Fe County shall have personal jurisdiction over Landlord for any action brought by Tenant against Landlord, in the County of Santa Fe, State of New Mexico.

28. NEGOTIATED TERMS

28.01 This Lease is the result of the negotiations of the parties and has been agreed to by both Landlord and Tenant after prolonged discussion.

29. SEVERABILITY

29.01 If any provision of this Lease is found to be unenforceable, all other provisions shall remain in full force and effect.

30. BROKERS

30.01 Each party represents and warrants to the other that it has had no dealings with any broker or agent in connection with this Lease. Each party agrees to hold harmless and indemnify the other from and against any and all Claims and Losses from any breach by the indemnifying party of the representation and warranty set forth in the first sentence of this Section 30.01. The terms of this Section 30.01 shall survive the termination or expiration of this Lease.

31. QUIET POSSESSION

31.01 So long as a Default has not occurred and is continuing, Tenant shall quietly have, hold and enjoy the Premises during the Term without disturbance from Landlord or from any other person claiming by, through or under Landlord.

32. MISCELLANEOUS PROVISIONS

32.01 Multiple Parties. Whenever the singular number is used in this Lease and when required by the context, the same will include the plural, and the masculine gender will include the feminine and neuter genders, and the word "person" will include corporation, firm, partnership, or association. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease will be joint and several.

32.02 Captions. The headings or titles to sections of this Lease are not a part of this Lease and will have no effect upon the construction or interpretation of any part of this Lease.

32.03 Entire Agreement. This instrument, including the exhibits and attachments hereto, contains all of the agreements and conditions made between the parties to this Lease.

32.04 Time. Time is of the essence of each term and provision of this Lease.

32.05 Payments. Except as otherwise expressly stated, each payment required to be made by Tenant is in addition to and not in substitution for other payments to be made by Tenant.

32.06 Successors Bound. Subject to Articles 12 and 18, the terms and provisions of this Lease are binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of Landlord and Tenant.

32.07 Interpretational Rule. For purposes of this Lease, whenever the words "include," "includes," "including," "e.g.," or "for example" are used, they shall be deemed to be followed by the words "without limitation" (to the extent that such words do not, in fact, so follow).

32.08 Press Releases. Neither Party shall issue or release any public notice, statement and/or press release or make any public comment concerning this Lease (including Landlord's and Tenant's negotiation and execution of this Lease or the individuals involved in the negotiation and execution of this Lease) without the prior written approval of the other Party.

32.09 Unavoidable Delay.

(a) Generally. Whenever a day is appointed herein on which, or a period of time is appointed in which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is reasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lockouts, labor

disputes, civil commotion, war, warlike operation or conditions, acts of terrorism, sabotage, legal requirements, governmental actions, inactions, regulations or control, fire or other casualty, shortages or inability to obtain materials or equipment, or to obtain fuel or energy, adverse weather conditions or other acts of God, or other causes beyond such party's reasonable control (financial inability excepted) (Unavoidable Delays); provided, however, that nothing contained herein shall excuse either party hereto from payment of any amount or charge required of it hereunder.

(b) Notice of Unavoidable Delay; Mitigation. It shall be a condition of a party's right to claim delay by Unavoidable Delay that that party seeking to be excused from performing (the Excused Party) notify the other party in writing thereof. If such notice of the Excused Party is given within five (5) Business Days after the Excused Party has actual knowledge of a delay by Unavoidable Delay, then such delay shall relate back to the actual commencement of such delay; but if the Excused Party fails to notify the other party of any such delay within the foregoing five (5) Business Day period, then the delay shall be deemed to commence upon the date of any such notification. The Excused Party shall also provide written notice of the estimated length of any applicable delay as promptly as is reasonably practicable after its determination of the estimated length of delay. In each and every case of delay, the Excused Party shall take reasonable measures to mitigate, and shall use commercially reasonable efforts to cause its contractors (if applicable) to mitigate, the extent of delay caused by any delay (which shall, if the other party so requests, include the use of overtime labor), except, however, that to the extent that the Excused Party would be required to bear any additional costs (which may include the use of overtime labor, if necessary) in order to mitigate such delay or costs, the Excused Party shall be obligated to take such measures only if the other party has agreed in advance, in a form reasonably acceptable to the Excused Party, to pay such additional costs.

32.10 Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original hereof, and all of which, taken together, shall constitute one and the same agreement.

32.11 No Consequential or Punitive Damages. Notwithstanding anything to the contrary contained in this Lease, in no event shall either party hereto be liable for, and each party, on behalf of itself and (in the case of Tenant) the Tenant Parties and Tenant Indemnitees, and (in the case of Landlord) the Landlord Parties and Landlord Indemnitees, and their respective successors and assigns, hereby waives any claim against the other (and the other's Affiliates) for any consequential or punitive damages (including loss of profits or business opportunity) arising under or in connection with this Lease.

32.12 Prevailing Party. In the event of any litigation between the parties, the prevailing party (as determined by the applicable judge) in the action or proceeding shall be entitled to obtain, as part of the judgment, all reasonable attorneys' fees, costs and expenses incurred in connection with such litigation, except as may be limited by applicable Laws.

32.13 Waiver of Jury Trial. THE PARTIES HEREBY EACH IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER OR ARISING OUT OF OR RELATED TO THIS LEASE OR THE PREMISES.

32.14 Costs. Whenever in this Lease it provides that Landlord shall do anything, take or perform any action, or cooperate with Tenant, at "no cost to Landlord" or "subject to reimbursement by Tenant" or language of similar import, same shall be interpreted to mean that Landlord shall be entitled to payment or reimbursement from Tenant, as Additional Rent hereunder, for all of Landlord's actual and reasonable out-of-pocket costs and expenses incurred in connection with such thing, act or cooperation, including, without limitation, reasonable attorney's fees and expenses.

33. BOOKS AND RECORDS

33.01 Tenant shall keep adequate records and books of account with respect to the finances and business of Tenant generally and with respect to the Premises, in accordance with generally accepted accounting principles (GAAP) consistently applied.

33.02 Tenant shall deliver to Landlord annual audited financial statements of Tenant certified by a nationally recognized firm of independent certified public accountants (a "CPA") on or before the day that is one hundred twenty (120) days after the close of each fiscal year of Tenant. All financial statements shall be prepared in accordance with GAAP consistently applied. All annual financial statements shall be accompanied by an opinion of said accounting firm stating that (A) there are no qualifications as to the scope of the audit and (B) the audit was performed in accordance with GAAP.

34. MEMORANDUM OR SHORT FORM OF LEASE

34.01 Concurrently with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver a recordable memorandum or short form of this Lease, in the form attached hereto as **Exhibit H**. Landlord or Tenant shall have the right to record any such memorandum or short form of this Lease against the Premises at its sole cost and expense. In the event that any such memorandum or short form of this Lease is so recorded, then, within ten (10) days following the expiration or termination of this Lease, Landlord and Tenant shall enter into such documentation as may be reasonably required to remove the same of record, if appropriate.

35. EXTENSION OPTIONS

35.01 Generally. Tenant is hereby granted four (4) options (collectively, the Extension Options and individually an Extension Option) to extend the Term for an additional term often (10) years each (each, an Extension Term, and collectively, Extension Terms), each beginning on the day after the expiration of the initial Term or subsequent Extension Term, as the case may be, and expiring on the date that is immediately prior to the tenth (10th) anniversary thereof (unless terminated sooner pursuant to any other terms or provisions of the Lease), on all of the same terms and conditions as set forth in this Lease (including Tenant's obligations with regard to taxes), but the Base Rent for such Extension Term shall be determined as set forth on **Schedule**

"1" (Amended) hereto (and without any additional options to extend the Term after the expiration of the fourth (4th) Extension Term). Unless Tenant delivers written notice of its election not to extend the Term to Landlord at least eighteen (18) months before the expiration of the initial lease Term or subsequent Extension Term, as applicable, the Term of this Lease shall be automatically deemed extended for the applicable Extension Term without the need for any further instrument. If Tenant timely delivers a notice of non-renewal, or if this Lease is terminated pursuant to any of its other terms or provisions prior to the expiration of the initial Term or subsequent Extension Term, as applicable, all then remaining Extension Options shall lapse, and Tenant shall thereafter have no right to extend or further extend the Term.

35.02 Confirmatory Amendment. Within a reasonable time after the exercise of an Extension Option as provided above, Landlord and Tenant shall execute and deliver a mutually acceptable amendment to this Lease, confirming the fact that the Term has been extended for the applicable Extension Term, the amount of Base Rent due with respect to such Extension Term and other pertinent matters. The failure of either party to execute and deliver any such amendment shall not, however, affect the validity of the determination of the Base Rent with respect to the applicable Extension Term, as provided above.

36. TAX TREATMENT; REPORTING

36.01 Landlord and Tenant each acknowledge that each shall treat this transaction as a true lease for state law purposes and shall report this transaction as a lease for Federal income tax purposes. For Federal income tax purposes each shall report this Lease as a true lease with Landlord as the owner of the Premises and Building Systems Equipment and Tenant as the lessee of such Premises and Building Systems Equipment including: (1) treating Landlord as the owner of the property eligible to claim depreciation deductions under Section 167 or 168 of the Internal Revenue Code of 1986 (the Code) with respect to the Premises and Building Systems Equipment, (2) Tenant reporting its Rent payments as rent expense under Section 162 of the Code, and (3) Landlord reporting the Rent payments as rental income. For the avoidance of doubt, nothing in this Lease shall be deemed to constitute a guaranty, warranty or representation by either Landlord or Tenant as to the actual treatment of this transaction for state law purposes and for federal income tax purposes. Notwithstanding any provision in this Lease to the contrary, Landlord and Tenant agree that Tenant shall have the right to claim, during the Term of this Lease, all depreciation expenses associated with the cost of Alterations performed by or on behalf of Tenant after the date of this Lease in connection with the construction of the classroom and educational facilities and other related improvements constructed in the Building unless the costs of such Alterations were paid for by Landlord subsequent to the date of this Lease.

37. TENANT'S RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

37.01 Right of First Offer.

(a) If, at any time during the Term of this Lease, Landlord intends to sell, or offer to sell, the Purchase Option Property in a bona fide arms' length sale to a third party purchaser (a Third Party Purchaser), then Landlord shall deliver to Tenant a written notice (the Landlord Offer)

prepared in good faith by Landlord stating the terms upon which Landlord intends to sell the Purchase Option Property, including the sales price, method of payment, all material contingencies, including, without limitation, any financing contingency, the proposed time period for the conduct of due diligence and the proposed date of closing. The right of Tenant set forth in this Section 37.01 shall be referred to herein as the Right of First Offer.

(b) Tenant shall have a period of thirty (30) days from the date of its receipt of the Landlord Offer (the Offer Period) to notify Landlord in writing that it is interested in purchasing the Purchase Option Property and to indicate which terms of the Landlord Offer it accepts or rejects and provide alternative terms for terms that Tenant rejects (the Tenant Counteroffer). If Tenant so notifies Landlord of its interest in purchasing the Purchase Option Property and/or provides a Tenant Counteroffer, thereafter, the parties shall have an additional thirty (30) days (the Term Sheet Period) to negotiate in good faith to attempt to agree upon and sign a term sheet (the Term Sheet), but nothing herein shall be construed to require Landlord to agree to the Tenant Counteroffer. Within thirty (30) days after the execution of a Term Sheet (the P&S Period), if applicable, the parties will use all reasonable and diligent efforts to prepare, negotiate in good faith and execute a contract of sale (Purchase & Sale Agreement) reflecting the principal terms contained in the Term Sheet and such other terms as are reasonable and customary in connection with the purchase and sale of similar use and size real property in the City of Santa Fe, New Mexico.

(c) If (i) Tenant does not deliver to the Landlord in writing its Tenant Counteroffer prior to the expiration of the Offer Period, (ii) the parties fail to execute a Term Sheet within the Term Sheet Period despite having used reasonable and diligent efforts to do so within such time period, (iii) the parties fail to execute a Purchase & Sale Agreement during the P&S Period despite having used reasonable and diligent efforts to do so within such time period, or (iv) Tenant rejects the Landlord Offer, then Tenant's Right of First Offer shall terminate with respect to the Purchase Option Property and Landlord shall have the right to sell the Purchase Option Property to any other Third Party Purchaser; provided, however, that if the Landlord is prepared to accept a bona fide offer to purchase the Purchase Option Property from a Third Party Purchaser (the Third Party Offer) on terms that include a purchase price which is less than the purchase price set forth in the Tenant Counteroffer or, if Tenant does not deliver a Tenant Counteroffer, in the Landlord Offer (including for purposes of determining said purchase price any other terms that when their financial or economic impact on the overall transaction proposed by the Third Party Purchaser are taken into account along with the stated purchase price in such bona fide offer would result in a purchase price which is less than the purchase price contained in the Tenant Counteroffer or, if Tenant does not deliver a Counteroffer, in the Landlord Offer), then before Landlord may accept such Third Party Offer, Landlord must provide a new Landlord Offer to Tenant on the same economic terms as the Third Party Offer, except that the offer period shall be ten (10) days rather than thirty (30) days. In addition, if Landlord fails to consummate a sale of the Purchase Option Property to a Third Party Purchaser within two-hundred forty (240) days after the expiration of the Offer Period, then the Landlord must provide a new Landlord Offer pursuant to Section 37.01.A. above before the Landlord may accept any other Third Party Offer. If Tenant's Right of First Offer terminates, then within five (5) Business Days following a

written request from the Landlord, Tenant shall execute an acknowledgment of such termination of its Right of First Offer in recordable form.

(d) Without limitation of any rights of the Tenant otherwise set forth in this Article 37, the provisions of this Section 37.01 shall not apply in connection with the following: (i) any sale, transfer, lease, disposition or other transaction between Landlord and any other City of Santa Fe governmental or quasi-governmental entity, (ii) any transfer of the Purchase Option Property to any governmental or quasi-governmental entity with power of condemnation or pursuant to any other similar proceeding affecting the Purchase Option Property, or (iii) the granting of any bona fide mortgage on the Purchase Option Property and any other similar instrument and other related financing documents (Financing Documents) entered into with a bank or other third party in the business of providing financing or economic assistance secured all or in part by real estate (a Financing Transaction). Tenant shall have no further rights pursuant to this Article 37 from and after any foreclosure of the Purchase Option Property, deed- in-lieu or similar transfer to or at the direction of the holder of such Financing Documents following an event of default thereunder or any other form of termination of the Landlord's interest in the Purchase Option Property after a Financing Transaction following an event of default under the Financing Documents.

37.02 Right of First Refusal. If Landlord shall receive any unsolicited offer from a Third Party Purchaser to purchase the Purchase Option Property that Landlord wishes to accept, Landlord shall deliver to Tenant a written notice setting forth the terms of the offer received by Landlord from the Third Party Purchaser (including, the sales price, method of payment, all material contingencies, including, without limitation, any financing contingency, the proposed time period for the conduct of due diligence, and the proposed date of closing). Upon receipt by Tenant of any such information regarding an offer to purchase by a Third Party Purchaser, Tenant shall have thirty (30) days to respond to such offer. Any such response by Tenant to such offer or election by Tenant to purchase the Purchase Option Property shall be given in accordance with and in the time frames provided for notices and the sale completed in accordance with the terms and provisions of Section 37.01. The right of Tenant set forth in this Section 37.02 shall be referred to herein as the Right of First Refusal.

37.03 Right to Purchase.

(a) Landlord does hereby give and grant to Tenant the exclusive right and option to purchase the Purchase Option Property (the Purchase Option). The Purchase Option may be assigned in whole, but not in part, at any time by Tenant to any Affiliate of Tenant, without Landlord's consent. Tenant or any assignee of Tenant with respect to the Purchase Option shall be referred to herein sometimes as the Option Party. The Purchase Option may be exercised by the Option Party, in the Option Party's sole and absolute discretion, at any time during the Term of this Lease, as the same may be extended or renewed from time to time (the Option Period). The purchase price for the Purchase Option Property to be paid by the Option Party to the Landlord (Purchase Price) shall be equal to the fair market value of the Purchase Option Property determined by a written appraisal of the Purchase Option Property made by a qualified appraiser with at least five (5) years of full-time commercial appraisal experience in the geographical area where the Purchase Option Property is located and who

is mutually acceptable to Landlord and Tenant, reduced by (i) the aggregate amount of all Purchase Price Credit Payments in accordance with **Schedule 3** attached hereto made by Tenant (i.e., the aggregate of all lease payments made by Tenant) over the Term up to the date of closing (as modified by Schedule "1" (Amended), (ii) the total amount of capital improvements made over the Term up to the date of closing by Tenant to the Premises, but not including any work items funded by the Electrical Fund, the DM Fund or otherwise by Landlord in payment of the Landlord Sewer, Water and Gas Obligations, (iii) any positive balances in escrows and reserves established pursuant to this Lease or in connection with the Transaction Bonds (including, without limitation, any unexpended Debt Service Reserves), (iv) any Economic Development Benefits and (v) any other credits due to Tenant, provided that in no event shall the Purchase Price be less than the amount necessary on the date of closing to pay off Landlord's debt to the NMFA on account of funds advanced by NMFA to Landlord on the Lease Commencement Date, including any penalties or other charges imposed by NMFA for the early refunding and defeasance of the Transaction Bonds or other similar charges, together with Landlord's reasonable costs incurred by Landlord in connection with the payoff of such debt and with closing, including, without limitation, attorneys' and accountants' fees for any legal and accounting services for document review and/or negotiation of any and all documents deemed necessary by Landlord and/or Tenant to effect such payoff of debt and closing.

(b) If the Option Party intends to exercise the Purchase Option, the Option Party must give written notice (the Option Exercise Notice) to Landlord to such effect on or prior to the last day of the Option Period (the Option Termination Date). If the Option Party gives the Option Exercise Notice on or prior to the Option Termination Date, the purchase of the Purchase Option Property shall be closed within ninety (90) days after the date on which the Option Exercise Notice has been received by Landlord or on such other later date as may be agreed to in writing by Landlord and the Option Party in order to comply with any applicable Laws and Requirements (the Purchase Date).

(c) Landlord agrees that except as expressly permitted herein Landlord shall not create, incur or cause to exist any lien, encumbrance, easement, restriction or other obligation on or against the Land or the other Purchase Option Property during the term of this Agreement, other than the Permitted Encumbrances, without the prior written consent of the Option Party, which consent may be withheld or granted in the Option Party's sole and absolute discretion. Landlord and Tenant agree that on the Purchase Date, Purchase Option Property shall be subject only to the Permitted Encumbrances and such other liens, encumbrances, easements, restrictions or obligations that Option Party has agreed to pursuant to the immediately preceding sentence (collectively, the "Permitted Exceptions"), and Landlord shall be obligated to cause any liens, encumbrances, easements, restrictions or other obligations on or against the Purchase Option Property that are not Permitted Exceptions to be removed, terminated or otherwise satisfied in full prior to the Purchase Date and the conveyance of the Purchase Option Property to the Option Party. For the avoidance of doubt, if any collateral documents or other documents relating to any financing or indebtedness by or of Landlord are included as a Permitted Exception, such I I indebtedness and obligations with respect thereto must be paid in full and satisfied and released prior to the conveyance of the Purchase Option Property to the Option Party. Option Party shall not be

obligated to assume any indebtedness or other obligations of Landlord in connection with the conveyance of the Purchase Option Property pursuant to the Purchase Option.

37.04 Use Restriction; City's Right of First Refusal.

(a) In the event that Tenant exercises the Purchase Option, Right of First Refusal or Right of First Offer, Tenant will retain the School Use for a period equal to seven (7) years less the number of years elapsed from the Lease Commencement Date to the Purchase Date.

(b) In the event that Tenant exercises the Purchase Option, Right of First Refusal or Right of First Offer, Landlord will have a right of first refusal to repurchase the Purchase Option Property for a period equal to ten (10) years less the number of years that have elapsed from the Lease Commencement Date to the Purchase Date, provided that such right of first refusal may be exercised only if the former Tenant, now owner of the Purchase Option Property, elects to sell the Purchase Option Property during such period to a third party in a non-sale-leaseback transaction.

38. LANDLORD PROVISIONS

38.01 Authority of Landlord. Landlord represents and warrants to Tenant that Landlord has all necessary and proper power and authority to lease the Premises to Tenant and grant the Purchase Option to Tenant and the power and authority to execute, deliver and perform this Lease and any and all other documents executed in connection herewith, including, without limitation, the Memorandum of Lease and Memorandum of Rights. The execution, delivery and performance of this Lease and the documents executed in connection herewith have been duly authorized by all requisite action on the part of Landlord and will not contravene any provision of Law. This Lease and the documents executed in connection herewith have been duly and validly executed by Landlord and constitute the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms.

39. CONFIDENTIALITY

39.01 Subject to the requirements of Chapter 14, Article 2 NMSA 1978, the Inspection of Public Records Act (Public Records Act), Chapter 6, Article 25 NMSA 1978, the Statewide Economic Development Finance Act (Economic Development Act), and any other Laws and Requirements regulating the release and disclosure of information in the hands of public bodies or excepting certain information from such disclosure (collectively, Public Information Laws), information obtained by Landlord from Tenant that is specifically exempt from disclosure under any Public Information Law (Protected Information) and is prominently identified by Tenant as such on its face shall not be disclosed by Landlord to any other person or entity other than employees, affiliates, elected and appointed officials of the City, outside advisors or agents of Landlord or such other Landlord Party (collectively, Representatives) who need to have access to such information in order for Landlord to carry out its obligations under this Lease. Landlord and each Landlord Party will exercise the same standard of care to prevent the

unauthorized disclosure of Tenant's Protected Information as it exercises to prevent the unauthorized disclosure of its own Protected Information.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

CITY OF SANTA FE, NEW MEXICO

By:_____
Javier M. Gonzales
Mayor

ATTEST:

_____
Yolanda Y, Vigil, City Clerk

APPROVED AS TO FORM:

_____
Kelley A. Brennan, City Attorney

APPROVED:

_____
Oscar S. Rodriguez, Finance Director

TENANT:

SANTA FE UNIVERSITY OF ART AND DESIGN, LLC
a New Mexico Limited Liability Company

By:_____

_____

Its _____

Schedule "1" (Amended) to Lease

BASE RENT

1. Base Rent.

(a) Initial Term. This Schedule "1" (Amended) amends and supersedes that part of Schedule "1" identified as 1.(a), entitled "Base Rent" of the Lease between Landlord and Tenant dated September 15, 2009 as amended. All other parts of Schedule "1" remain unchanged and in full force and effect. Effective August 1, 2016 Base Rent payable on the following Base Rent Payable Dates shall be $2,230,000.00 per annum, payable quarterly in advance on each Base Rent Payment Date and in the amounts for each such Base Rent Payment Date as follows:

Base Rent Payment Date	Base Rent Payment Amount
15-Sep-09	$293,750
1-Nov-09	$587,500
1-Dec-09	
1-Feb-10	$587,500
1-May-10	$587,500
1-Jun-10	
1-Aug-10	$587,500
1-Nov-10	$587,500
1-Dec-10	
1-Feb-11	$587,500
1-May-11	$587,500
1-Jun-11	
1-Aug-11	$587,500
1-Nov-11	$587,500
1-Dec-11	
1-Feb-12	$587,500
1-May-12	$587,500
1-Jun-12	
1-Aug-12	$587,500
1-Nov-12	$587,500
1-Dec-12	
1-Feb-13	$587,500
1-May-13	$587,500
1-Jun-13	
1-Aug-13	$587,500
1-Nov-13	$587,500
1-Dec-13	

1-Feb-14	$587,500
1-May-14	$587,500
1-Jun-14	
1-Aug-14	$587,500
1-Nov-14	$587,500
1-Dec-14	
1-Feb-15	$587,500
1-May-15	$587,500
1-Jun-15	
1-Aug-15	$587,500
1-Nov-15	$587,500
1-Dec-15	
1-Feb-16	$587,500
1-May-16	$587,500
1-Jun-16	
1-Aug-16	$557,500
1-Nov-16	$557,500
1-Dec-16	
1-Feb-17	$557,500
1-May-17	$557,500
1-Jun-17	]
1-Aug-17	$557,500
1-Nov-17	$557,500
1-Dec-17	
1-Feb-18	$557,500
1-May-18	$557,500
1-Jun-18	
1-Aug-18	$557,500
1-Nov-18	$557,500
1-Dec-18	
1-Feb-19	$557,500
1-May-19	$557,500
1-Jun-19	
1-Aug-19	$557,500
1-Nov-19	$557,500
1-Dec-19	
1-Feb-20	$557,500
1-May-20	$557,500
1-Jun-20	
1-Aug-20	$557,500
1-Nov-20	$557,500

1-Dec-20	
1-Feb-21	$557,500
1-May-21	$557,500
1-Jun-21	
1-Aug-21	$557,500
1-Nov-21	$557,500
1-Dec-21	
1-Feb-22	$557,500
1-May-22	$557,500
1-Jun-22	
1-Aug-22	$557,500
1-Nov-22	$557,500
1-Dec-22	
1-Feb-23	$557,500
1-May-23	$557,500
1-Jun-23	
1-Aug-23	$557,500
1-Nov-23	$557,500
1-Dec-23	
1-Feb-24	$557,500
1-May-24	$557,500
1-Jun-24	
1-Aug-24	$557,500
1-Nov-24	$557,500
1-Dec-24	
1-Feb-25	$557,500
1-May-25	$557,500
1-Jun-25	
1-Aug-25	$557,500
1-Nov-25	$557,500
1-Dec-25	
1-Feb-26	$557,500
1-May-26	$557,500
1-Jun-26	
1-Aug-26	$557,500
1-Nov-26	$557,500
1-Dec-26	
1-Feb-27	$557,500
1-May-27	$557,500
1-Jun-27	
1-Aug-27	$557,500

1-Nov-27	$557,500
1-Dec-27	
1-Feb-28	$557,500
1-May-28	$557,500
1-Jun-28	
1-Aug-28	$557,500
1-Nov-28	$557,500
1-Dec-28	
1-Feb-29	$557,500
1-May-29	$557,500
1-Jun-29	
1-Aug-29	$557,500
1-Nov-29	$557,500
1-Dec-29	
1-Feb-30	$557,500
1-May-30	$557,500
1-Jun-30	
1-Aug-30	$557,500
1-Nov-30	$557,500
1-Dec-30	
1-Feb-31	$557,500
1-May-31	$557,500
1-Jun-31	
1-Aug-31	$557,500
1-Nov-31	$557,500
1-Dec-31	
1-Feb-32	$557,500
1-May-32	$557,500
1-Jun-32	
1-Aug-32	$557,500
1-Nov-32	$557,500
1-Dec-32	
1-Feb-33	$557,500
1-May-33	$557,500
1-Jun-33	
1-Aug-33	$557,500
1-Nov-33	$557,500
1-Dec-33	
1-Feb-34	$557,500
1-May-34	$557,500
1-Jun-34	

1-Aug-34	$557,500
1-Nov-34	$557,500
1-Dec-34	
1-Feb-35	$557,500
1-May-35	$557,500
1-Jun-35	
1-Aug-35*	$278,750

*Note: Term may be extended pursuant to Lease Section 3.01.

Schedule "3" (Amended) to Lease

PURCHASE PRICE CREDIT PAYMENTS

See attached. The amounts identified in this Schedule "3" shall be amended to correspond to those amounts in Schedule "1" (Amended).

Santa Fe University of Art and Design
Deferred Maintenance List Update

March 28, 2016
Lisa Martinez, Project Administrator

Building	Roof	HVAC	Boilers	Asbestos Abatement	Asbestos Study	Security/Safety (fire alarm/sprinkler)	Plumbing	Electrical	Interior	Exterior Caulking/Finishing	ADA Accessiblity	Hydraulic Elevator	Signs	Windows/Doors	General Miscellaneous	Building Totals
Administration	122,224	41,832	0	4,868	0	0	6,144	2,890	242,840	0	8,078	0	0	920	2,272	429,796
Garson Theater	288,706	535,902	0	0	0	0	0	0	326,563	0	8,078	0	681	0	0	1,159,930
Forum	0	152,746	0	0	0	0	0	0	0	0	0	0	0	0	0	152,746
Fogelson Library	163,843	917,104	0	8,069	0	1,729	0	7,973	35,276	0	0	0	0	0	0	1,133,993
Southwest Annex	51,682	80,205	0	0	0	0	0	0	0	0	0	0	0	0	8,544	131,887
La Salle	0	0	0	0	0	21,944	0	833	256,909	0	0	0	0	0	1,343,658	279,686
St. Michaels	0	554	0	0	0	21,944	0	0	124,381	0	0	0	0	13,162	1,660,586	160,041
Student Apts	0	1,273	0	0	0	0	0	0	58,824	0	0	0	0	0	0	60,097
King	0	67,192	0	0	0	21,944	745	2,482	163,612	0	0	0	0	11,899	2,748,348	267,874
Kennedy	0	0	0	0	0	3,035	0	0	42,136	0	0	0	0	18,442	0	63,614
Den Bookstore	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Garson Studios	448,318	911,641	0	0	0	0	0	0	0	300,851	0	0	10,643	1,913	25,667	1,673,365
Driscoll	195,623	840	0	0	0	0	0	0	4,032	0	0	0	0	0	0	200,495
Alumni Hall	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Visual Arts Center	2,683	478,772	0	0	0	600	0	0	12,158	3,080	0	0	0	0	0	497,294
Luke Hall	0	841	0	0	0	0	0	0	0	0	0	0	0	0	0	841
Student Health	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Benildus	0	93,935	0	0	0	340	0	0	0	0	0	0	0	0	0	94,275
Cafeteria	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,321,257	0
Maintenance Bldg	0	0	0	0	0	0	0	0	0	0	0	0	0	0	225,459	0
Campus-wide	143,872	18,030	0	90,971	48,468	-59,988	6,488	16,113	0	0	0	0	247,787	11,327	703,946	523,068
Totals:	1,416,952	3,300,867	0	103,908	48,468	11,548	13,377	30,292	1,266,731	303,931	16,156	0	259,110	57,663	8,039,736	6,829,003

	Paid
Building Totals	6,829,003
General Miscellaneous	8,039,736
TOTAL	14,868,739

	Payment Pending
DM Invoice Final Review 3-28-16	131,261
GRAND TOTAL	15,000,000

ITEM # 09-0984

Execution Copy

LEASE

by and between

CITY OF SANTA FE, NEW MEXICO,

a municipal corporation existing under the laws of the State of New Mexico,

as LANDLORD

and

SANTA FE HIGHER EDUCATION, LLC

a New Mexico limited liability company,

as TENANT

Premises: 1600 St. Michaels Drive

Santa Fe, New Mexico 87505

Dated as of: September 15, 2009

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Exhibit "H"	**FORM OF MEMORANDUM OF LEASE**
Exhibit "I"	**FORM OF MEMORANDUM OF RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL AND PURCHASE OPTION**

LEASE

THIS LEASE ("Lease") is made as of September 15, 2009 (the "Lease Commencement Date"), between CITY OF SANTA FE, NEW MEXICO, a municipal corporation existing under the laws of the State of New Mexico ("Landlord"), and SANTA FE HIGHER EDUCATION, LLC, a New Mexico limited liability company ("Tenant").

1. LEASE TERMS

1.01 Premises: The "Premises" referred to in this Lease shall mean, collectively: (i) the real property located at 1600 St. Michael's Drive in Santa Fe, New Mexico and more particularly described on Exhibit "A-1" hereto and depicted on the drawing attached as Exhibit "A-2" hereto (the "Land"), together with all easements and all Appurtenances thereto, (ii) the approximately 490,000 square feet of rentable area (without representation or warranty by Landlord) located within the buildings (collectively, the "Building") described on Exhibit "B-1" hereto, together with all other structures and improvements now or hereafter installed and/or located at the Land from time to time, including all vehicle parking areas of any kind or nature (collectively, with the Building, the "Improvements"), (iii) the Building Systems Equipment and (iv) the personal property described on Exhibit "B-2" (the "Landlord Personal Assets").

1.02 Definitions: Defined terms used herein shall have the meanings set forth in Schedule "2" attached hereto and made a part hereof.

1.03 Tenant's Notice Address: Santa Fe Higher Education, LLC, c/o Laureate Education, Inc., 650 S. Exeter Street, Baltimore, Maryland 21202, Attention: Patrick Richards; with a copy to Rubin Katz Law Firm, 123 East Marcy Street, Suite 200, Santa Fe, New Mexico 87501.

1.04 Landlord's Notice Address: The City of Santa Fe, New Mexico, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico 87501, Attention: City Manager; with a copy to The City of Santa Fe, New Mexico, P.O. Box 909, Santa Fe, New Mexico, 87504, Attention: City Attorney.

1.05 Permitted Use: The Premises may be used solely for the following, in each case, to the extent such use is permitted under applicable Laws and Requirements: (i) an accredited four-year graduate and undergraduate degree granting liberal arts college offering full-time, part-time, and night and weekend continuing education programs, including, without limitation, a creative arts school with studio, production, classroom and office facilities, restaurant facilities (including refrigeration and storage areas) in support of such educational goals or purposes, and including additional programs, including, without limitation, culinary arts, architecture, hospitality, business, education, liberal arts and general education (such operations, the "School Use"), (ii) dorms, apartments and other residences in connection with the School Use, (iii) general office purposes incidental or ancillary to the School Use, and general office use that is unrelated to the School Use so long as not more than 70,000 square feet of gross leasable area of the Improvements shall be used for such unrelated general office use at any given time without the prior written consent of Landlord (such consent not to be unreasonably withheld, conditioned or delayed), (iv) general retail purposes within certain areas, which are incidental to or related to

the School Use and which retail may include a gym and/or physical fitness center and/or lifestyle and entertainment facilities, movie theatre, movie production, performing theatre and library facilities (the "Retail Portion"), (v) other uses incidental and ancillary to each of the foregoing, and (vi) such other uses as may be approved by Landlord in writing, which approval will not be unreasonably withheld.

1.06 Term: The term of this Lease (the "Term") shall commence on the Lease Commencement Date and shall expire at 11:59 p.m. at the Premises on the last day of the calendar month in which the twenty-sixth (26th) anniversary of the Lease Commencement Date occurs, unless extended or sooner terminated as provided herein (the "Expiration Date").

1.07 Base Rent: "Base Rent" shall be payable in lawful money of the United States of America in amounts as shown on Schedule "1" attached hereto and made a part hereof. Base Rent shall be paid in quarterly installments, in advance, as provided in Article 3 below.

2. DEMISE AND POSSESSION

2.01 Lease. Commencing on the Lease Commencement Date, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, subject to the provisions of this Lease. The rights granted by Landlord to Tenant include, without limitation:

(a) The exclusive right, except as otherwise set forth herein, to use all portions of the Land and all facilities and equipment which are located on the Premises;

(b) The exclusive right, except as otherwise set forth herein, to use the Landlord Personal Assets in furtherance of the School Use;

(c) The exclusive right to use the roof of the Building for any purposes permitted under Laws and Requirements so long as same is related to the Permitted Use, including for purposes of maintaining heating, air conditioning and ventilation ("HVAC") units, satellite dishes, wireless equipment and antennae, and for the installation and maintenance of security equipment; and

(d) The exclusive right to install, use, maintain, replace and repair signage upon any Building or on the Land, in compliance with all Laws and Requirements, subject to the terms of Section 10.01 hereof, together with the exclusive naming rights to the Building;

(e) The right to restrict access to, and provide security for, the Premises by use of (among other things) existing or future fences, gates and/or security personnel, all in a manner determined by Tenant (subject to the provisions hereof including, without limitation, Landlord's rights in Section 11.01 below);

The rights set forth in clauses (a) through (e) above shall be without additional rental payment by Tenant to Landlord.

2.02 Net Lease; No Other Occupants.

(a) This Lease is a net lease and all Base Rent and other monetary obligations of Tenant hereunder shall be paid without notice or demand (except as otherwise expressly provided herein), and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense. The obligations of Tenant hereunder shall be separate and independent covenants and agreements, all monetary obligations shall continue to be payable in all events and the obligations of Tenant hereunder shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

(b) Tenant acknowledges that, except for the obligations of Landlord in Section 6.02 and as otherwise expressly set forth herein, Landlord shall not provide or be responsible for, and Tenant shall, at its sole cost and expense, be responsible for, any utilities or other services of any kind or nature, any and all costs related to or associated with the use, non-use, possession, condition, design, operation, maintenance, alteration, repair or replacement of the Premises or any part thereof or any Tenant Party's business or operations thereat. The Premises are demised and let subject to (i) the Permitted Encumbrances set forth on Exhibit "F" attached hereto, (ii) all Requirements and Laws, (iii) the condition of the Premises as of the commencement of the Term, and (iv) the provisions of this Lease.

(c) Landlord covenants and agrees that, except to the extent required in order to perform its obligations or to take any action permitted to be taken by Landlord under this Lease, Landlord will not grant any person or entity, other than Tenant, its agents, representatives, employees, directors, officers, shareholders, affiliates, invitees, consultants, independent contractors, and permitted subtenants, licensees, successors and assigns (collectively, "Tenant Parties"), any easement, license, lease or similar rights of use or occupancy with respect to any portion of the Premises during the Term, without Tenant's prior written consent; provided, that Landlord may, without Tenant's consent, but with at least thirty (30) days' advance notice to Tenant, grant utility easements, licenses, rights of way or similar rights or privileges to a utility provider, municipal agency or other governmental authority with respect to the Premises that directly or indirectly benefit (or are intended to benefit) the Premises or the Adjacent Land (or enhance its value or utility), that do not underlie any Improvements (other than exterior on-grade parking or landscaped areas) and, which will not, when completed, materially and adversely affect Tenant's use and/or occupancy of the Premises for the uses permitted hereunder.

2.03 Grant of Easements and Other Rights.

A. So long as no monetary or material non-monetary Default has occurred and is then continuing, Tenant may from time to time in writing request that Landlord execute (or join with Tenant in executing) and reasonably cooperate with Tenant (at no cost to Landlord) in connection with (i) granting easements, licenses, rights of way and other similar rights and privileges on the Premises, (ii) releasing, amending or modifying existing easements, licenses, and such other similar rights, documents and Appurtenances relating to the Premises, (iii) conveyances in the nature of dedications of roads, utilities or similar matters, (iv) taking

actions with respect to governmental entities or other third parties to enhance the use and enjoyment of the Premises for the Permitted Use and/or the enforcement or exercise of rights under Laws or other Requirements, and (v) executing and delivering any instrument, in form and substance reasonably acceptable to Landlord, necessary or appropriate to make or confirm the foregoing to any person or entity, with or without consideration, and Landlord shall execute or join in the execution of the same (at no cost to Landlord); provided, in each case, that such action shall not adversely affect, in any material respect, the value or utility of the Premises or impose any future cost or obligation on Landlord (beyond a de minimis extent).

B. Landlord is the owner of that certain real property located adjacent to the Premises and more particularly described on Exhibit "C" (the "Adjacent Land"). To the extent access to the Adjacent Land is over roadways located on the Land or parking for the improvements on the Adjacent Land is provided by parking areas located on the Land, Landlord and the tenants of the Adjacent Land or the improvements thereupon, and their invitees shall have the non-exclusive right during the Term to use such roadways and parking areas on the Land in common with the use thereof by Tenant; provided, however, that such use by Landlord, tenants or invitees of the Adjacent Land shall not unreasonably interfere with Tenant's use of the Premises and shall be on terms acceptable to Tenant as set forth in a cost sharing agreement in form mutually acceptable to Tenant and Landlord pursuant to which Landlord agrees to pay to Tenant a proportionate share of the costs that Tenant incurs in maintaining such shared use roadways and parking areas. If Tenant exercises a right or option granted in Section 37 to purchase the Purchase Option Property, at the time of closing of the purchase of the Purchase Option Property from Landlord, Tenant and Landlord shall enter into necessary and appropriate easements for the benefit of the Adjacent Land to provide ingress and egress to the Adjacent Land and non-exclusive parking rights, such easements to contain such terms and conditions as are mutually acceptable to Landlord and Tenant; provided, however, Tenant shall have no obligation to enter into any such easements which Tenant determines will adversely affect Tenant's use of the Purchase Option Property.

C. Tenant agrees to participate in Landlord's master planning project for the area which contains the Premises. In addition, Tenant and Landlord each agree to coordinate with the other to grant easements and rights of way across the Premises to provide for parking, walking paths, biking paths and transit related improvements, which easements and rights of way must be on terms mutually acceptable to each of Tenant and Landlord and shall not materially and adversely affect Tenant's use and/or occupancy of the Premises for the uses permitted hereunder. In no event shall any easement or right of way result in a public thoroughfare through the Premises, unless otherwise agreed to in writing by Tenant, in Tenant's sole and absolute discretion.

2.04 Assignment of Warranties. Landlord hereby assigns to Tenant, without recourse or warranty whatsoever, all assignable warranties, guaranties, indemnities and similar rights, if any (collectively, "Warranties"), which Landlord may have against any manufacturer, seller, engineer, contractor or builder in respect of any of the Premises. Such assignment shall remain in effect until the expiration or earlier termination of this Lease, whereupon such assignment shall cease and all of the Warranties shall automatically revert to Landlord. In confirmation of such reversion Tenant shall execute and deliver promptly any certificate or other document reasonably required by Landlord. Landlord shall also retain the right to enforce any Warranties

upon the occurrence of a Default. Tenant shall use commercially reasonable efforts to enforce the Warranties in accordance with their respective terms. In the event that any Warranty is not assignable to Tenant or if Landlord's rights under any Warranty cannot otherwise be exercised by Tenant, Landlord shall reasonably cooperate (at no cost to Landlord) with Tenant with respect such actions as may be reasonably requested by Tenant (including execution of documents in form and substance reasonably acceptable to Landlord) in order to exercise Landlord's rights under the Warranties. Landlord shall assign its interest in the Warranties to any purchaser of the Premises effective upon the sale of the Premises.

2.05 Access to Premises by Tenant; Easements The Premises has direct access to public rights of way, including, without limitation, St. Michaels Drive. Landlord agrees not to take any action during the Term that will materially impair access to the Premises. This provision shall not be construed to prohibit the temporary closure of a public street for repair or reconstruction purposes; provided, however, that Tenant must have access to the Premises for vehicular and pedestrian ingress and egress during such time (whether through alternative point of access or easement over adjacent property or otherwise).

2.06 Community Facilities. The Premises includes the following facilities which have in the past been open to and operated, in part, to benefit the surrounding community: the Visual Arts Center, the Fogelson Library, the Greer Garson Theatre Center, Alumni Hall and The Screen (collectively, the "Community Facilities"). Notwithstanding anything herein to the contrary, Tenant agrees during the term of this Lease to permit public access to and to operate the Community Facilities substantially in the manner as they have been operated in the past. Such public access to the Community Facilities shall not be counted as trips in the calculation of the Landlord's pro rata share of road repair and maintenance costs under Section 9.03 of this Lease. In the event that public access to the Community Facilities needs to be modified for use in connection with the School Use, Tenant will use reasonable efforts to cause a smooth transition and to honor existing access for the public use. The Driscoll Fitness Center will be made available to the public for access consistent with the manner in which the public was given access thereto in the past. In addition, unless otherwise approved by Landlord, the name of a Community Facility shall not be changed by Tenant.

2.07 Landlord's Personal Assets. The Landlord's Personal Assets will be leased to Tenant during the Term and, except as otherwise hereinafter specified, Tenant shall have the exclusive right to use the Landlord's Personal Assets for the School Use during the Term. If Tenant exercises its Purchase Option with respect to the Purchase Option Property, Tenant and Landlord shall enter into a lease agreement regarding the Landlord's Personal Assets pursuant to which Landlord shall lease to Tenant (or Option Party) the Landlord's Personal Assets for so long as the Purchase Option Property is used for the School Use, and the rent to be paid by Tenant for the lease of Landlord's Personal Assets shall be One Dollar ($1) each lease year. The Parties acknowledge and agree that the Landlord's Personal Assets are of significant importance to Tenant's operation of the Premises for the School Use. Accordingly, Landlord shall not be permitted to remove the Landlord's Personal Assets from the Premises; provided, however, Landlord has the right to request Tenant's consent for Landlord to borrow the Landlord's Personal Assets from time to time for use in exhibits, which consent shall be granted, withheld or conditioned in Tenant's sole and absolute discretion. Tenant shall have the right, with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned

or delayed, to temporarily remove Landlord's Personal Assets from the Premises for use in exhibitions.

2.08 Joint Programming. Tenant agrees to collaborate with other higher education institutions in the area on joint programming opportunities on terms acceptable to Tenant. Any such programs shall be complementary to programs offered by the College of Santa Fe operated by Tenant on the Premises and not in competition therewith. Tenant also agrees to cooperate and participate with the Santa Fe public schools to develop college preparatory programs that encourage and promote the enrollment at the College of Santa Fe of Santa Fe high school students.

2.09 Governance. Tenant's governance structure for the College of Santa Fe will provide for the following:

A. Two (2) members of the Board of Directors (the "Board") will be from the local Santa Fe community selected based upon the recommendations of Landlord and approved by Tenant. Tenant will consider the recommendations by Landlord for the Board, but under no circumstances shall Tenant be obligated to approve or accept such recommendations by Landlord.

B. A Local Advisory Group comprised of seven (7) members, four (4) appointed by Landlord and three (3) appointed by the Board, responsible for working with and advising the local community subcommittee of the Board on matters pertaining to the relationship between the College of Santa Fe and the Santa Fe community.

2.10 Programs for Local Students. Tenant will establish the following programs to encourage and support matriculation at the College of Santa Fe by state and local City and County of Santa Fe students:

A. Tenant will award three (3) full-tuition four-year scholarships per year, one (1) to a student selected by the Mayor and City Council of the City of Santa Fe, one (1) to a student selected by the Governor of the State of New Mexico, and one (1) to a student selected by the College of the Christian Brothers of New Mexico, a New Mexico non-profit corporation, provided that no such scholarship shall be awarded to any student who (i) has not been a full-time resident of the State of New Mexico for at least one (1) year immediately preceding the award of such scholarships; (ii) has not been admitted to the College of Santa Fe; and (iii) has not met the criteria established by the selecting entity for such scholarship.

B. Tenant will cause the College of Santa Fe to offer tuition scholarships to residents of the State of New Mexico and of Santa Fe County of twenty percent (20%) and twenty-five percent (25%) respectively from its gross tuition rates.

2.11 College Name. Tenant agrees that it will use the name "College of Santa Fe" for the college operated on the Premises; provided that Tenant may change the name of the college if the words "College of Santa Fe" remain in such name and in that order, but with words added (for example, "College of Santa Fe Art and Design"); and provided, further, that if at any time after the passage of six (6) months after the Lease Commencement Date Tenant determines that such name has a negative effect on Tenant's efforts to market the college to prospective students,

or otherwise on its operation of the college, then Tenant may report to the Governing Body of the City of Santa Fe its basis for such determination and identify the new name under which it intends to operate the college and no less than sixty (60) days after the delivery of such report, may change the name of the college in accordance with such report. Such new name: (i) must contain the following words: "college" or "university" and "Santa Fe"; and (ii) may have "tags" (for example, "of Arts" (Santa Fe College of Arts), "of Art and Design" (Santa Fe University of Art and Design), or a named school ("Riley School of Education at the College of Santa Fe")). The basis for such determination by Tenant shall be a market analysis, including brand awareness, brand recognition, brand opinions, focus group results; enrollment: inquiries, new enrollment, attrition, conversion; college evolution to offering graduate programs, expansion of design programs, and international appeal, or other similar information.

3. BASE RENT

3.01 Base Rent: Tenant shall pay Base Rent quarterly in advance on the dates set forth on Schedule "1" (each a "Base Rent Payment Date"), in the amounts set forth opposite each such applicable Base Rent Payment Date on Schedule "1", by wire transfer (if wire instructions are provided to Tenant) or by check to Landlord's address for notices set forth in Section 1.04 above to the attention of the Finance Director. If the Commencement Date is not a Base Rent Payment Date or the last day of the Term is not the last day of the quarter in which Base Rent was previously paid, Base Rent (and Additional Rent, to the extent applicable) for any partial calendar quarter occurring during the Term shall be prorated with respect to such partial quarter (based on the actual number of days within such quarter).

3.02 Late Fees and Default Interest. If any item or installment of Rent due from Tenant to Landlord is not paid within ten (10) days after the date due, an amount (the "Late Charge") equal to four percent (4%) of such unpaid amount or portion shall be due and payable by Tenant in order to reimburse Landlord for its cost and inconvenience incurred as a result of Tenant's delinquency. Tenant acknowledges that the damages to and costs incurred by Landlord resulting from Tenant's late payment of Rent would be difficult, if not impossible, to ascertain with any accuracy, and that the four percent (4%) charge represents Landlord and Tenant's efforts to approximate such potential damages. In addition, if any installment of Rent or other amount payable by Tenant to Landlord is not paid within ten (10) days after the due date therefor, then same shall accrue interest at the rate that is the lesser of: (i) the interest rate accruing on the Transaction Bonds as of the date of issuance of the Transaction Bonds plus three percent (3%) per annum, or (ii) the maximum rate allowable under Laws (the "Default Rate") during the period commencing upon the expiration of any and all applicable cure periods until paid in full.

3.03 Maximum Amount Permitted by Law. In no event shall amounts payable hereunder or elsewhere in this Lease exceed the maximum amount permitted by applicable Law.

4. ADDITIONAL RENT; TAXES

4.01 Additional Rent. All charges payable by Tenant to Landlord under this Lease other than Base Rent are called "Additional Rent." Unless this Lease or the applicable Landlord notice (in which case the Additional Rent payments that are the subject of Landlord's notice will

be due no sooner than thirty (30) days after the receipt of such notice by Tenant) provides otherwise, Additional Rent is to be paid with the next quarterly installment of Base Rent. Any notice from Landlord to Tenant regarding the payment of Additional Rent shall set forth in reasonable detail the basis for such Additional Rent. The term "Rent" whenever used in this Lease means Base Rent and Additional Rent. Notwithstanding the foregoing, Tenant shall not be responsible for and Additional Rent shall not include: (a) any costs incurred by Landlord to the extent same are incurred by reason of any breach of this Lease by Landlord, or the negligence or intentional misconduct of Landlord or its agents, invitees, representatives, employees, directors, officers, shareholders, Affiliates, consultants, independent contractors, successors and assigns (collectively, "Landlord Parties"), (b) interest on, and amortization of, funds borrowed by Landlord, or rent under any ground lease or master lease entered into by Landlord, (c) except as otherwise provided in this Lease or as a result of Tenant's failure to timely make a payment of any item of Additional Rent hereunder, any costs, fines, penalties or fees incurred due to Landlord's failure to make any payment when due, (d) the costs of items provided by Affiliates of Landlord, but only to the extent that such costs exceed reasonable and customary charges for such services, (e) any costs and expenses (including court costs, attorneys' fees and disbursements) related to or in connection with disputes with any holder of a mortgage or by or among any persons having an interest in the Premises unless same is the result of a breach or violation by Tenant of the terms of, or its obligations under, this Lease, (f) except as otherwise provided in this Lease, any costs incurred in connection with a sale, lease or transfer of all or any part of the Premises or any interest therein, (g) all costs and expenses (including utilities) payable directly by Tenant, unless paid by Landlord following Tenant's failure to do so, and (h) any costs and expenses incurred by Landlord associated with the administration or general overhead of Landlord (as opposed to operation of the Premises). Notwithstanding anything to the contrary set forth in this Lease and for the avoidance of doubt, Landlord and Tenant acknowledge and agree that Tenant shall not be obligated to pay to Landlord any Rent or any other amounts with respect to the Second Deferred Maintenance Amount and the Third Deferred Maintenance Amount (as such terms are defined in Section 7.11). The terms of this Section 4.01 shall survive the termination of this Lease.

4.02 Taxes. Tenant will pay any taxes charged against the Premises and any personal property of the Tenant by the date that such taxes are due; provided, however, Tenant shall not be obligated to pay any such taxes that are being disputed or challenged by Tenant, so long as Tenant diligently pursues such dispute or challenge. Tenant will use reasonable efforts to cause taxes on its personal property to be billed separately from the Premises.

5. USE OF PREMISES; QUIET CONDUCT

5.01 Generally; Compliance with Laws. The Premises may be used and occupied only for the Permitted Use and for no other purpose. Tenant shall, at all times during the Term, comply with all Laws and Requirements respecting all matters of occupancy, condition, use or maintenance of the Premises.

A. Tenant shall not use or occupy or permit any of the Premises to be used or occupied, nor do or permit anything to be done in or on any of the Premises, in a manner which would or might (i) violate any Laws, Requirements or Permitted Encumbrances in any material respect, (ii) cause any insurer to cancel any insurance required by this Lease, (iii) cancel or

release any of the Warranties, (iv) cause material structural injury to any of the Improvements or Building Systems Equipment, or (v) constitute a public or private nuisance or constitute active waste.

B. In no event shall any portion of the Premises be used or occupied or permitted to be used or occupied for any of the following purposes: (i) any nightclub, bar (except for any bar used in connection with any dining establishment operated by Tenant on the Premises) or discotheque; (ii) any adult bookstore or video shop, nude or semi-nude or "adult" entertainment establishment or any lewd, obscene or pornographic purpose; (iii) any store in which a material portion of the inventory is not available for sale or rental to children under 18 years of age because such inventory explicitly deals with, relates to, or depicts human sexuality, or in which any of the inventory constitutes drug paraphernalia of the kind associated with or sold by so-called "head shops"; (iv) any dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters and/or recycling bins and garbage disposal in the ordinary course of business); (v) any mortuary; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (vii) any gas station; (viii) any automobile, truck, trailer or RV sales, leasing, display or repair; (ix) any "flea market", secondhand, surplus or other "off-price" or deep discount store; (x) any gambling or off-track betting operation; (xi) any massage parlor or carnival; or (xii) any other use which is not a Permitted Use.

C. Subject to the provisions hereof, so long as no Default has occurred and is continuing, Tenant shall quietly hold, occupy and enjoy the Premises throughout the Term, without any hindrance, ejection or molestation by Landlord with respect to matters that arise after the date hereof, provided that Landlord or its agents may enter upon and examine any of the Premises at such reasonable times during normal business hours as Landlord may select and upon reasonable advance written notice to Tenant (except in the case of an emergency, in which case no notice shall be required) for the purpose of inspecting the Premises, showing the Premises to prospective lenders and purchasers, making any repairs and taking such other action with respect to the Premises as is permitted by any provision hereof.

5.02 Hazardous Substances. As used in this Lease, the term "Hazardous Substances" means:

A. Those substances defined as "hazardous substances," "hazardous materials," "toxic substances," "regulated substances," "pollutants", "contaminants" or "solid waste" in the Toxic Substance Control Act, 15 U.S.C. § 2601 et. seq., as now existing or hereafter amended ("TSCA"), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et. seq., as now existing or hereafter amended ("CERCLA"), the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et. seq., as now existing or hereafter amended ("RCRA"), the Clean Air Act, 42 U.S.C. Section 7401 et. seq., as now existing or hereafter amended, the Water Pollution Act, 33 U.S.C. 1251 et. seq., as now existing or hereafter amended, the Federal Hazardous Substances Act, 15 U.S.C. § 1261 et. seq., as now existing or hereafter amended ("FHSA"), the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et. seq., as now existing or hereafter amended ("OSHA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et. seq., as now existing or hereafter amended ("HMTA"), or in similar New Mexico and local laws, and the rules and

regulations and in each case as now in effect or promulgated hereafter pursuant to each law referenced above;

B. Those substances listed in the United States Department of Transportation table (49 CFR § 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); and

C. Such other substances, mixtures, minerals (including asbestos), chemicals, gases, medical wastes, or other pollutants, materials and waste, in any case, whether man made, naturally occurring or the product of any process which are regulated under applicable Laws, microbial matter (including but not limited to mold, mildew or other fungi or bacterial matter which reproduces through the release of spores or the splitting of cells) or which are classified as hazardous or are toxic, harmful or hazardous or acutely hazardous to the environment or public health or safety under federal, state or local laws or regulations.

D. All laws referenced in Sections A, B, and C above together with any rules, regulations or codes promulgated thereunder, any judicial decisions interpreting the same and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that impose liability or obligations for injuries or damages due to or threatened as a result of the presence of, exposure to or ingestion of any Hazardous Substance are collectively referred to as "Environmental Laws".

5.03 Tenant's Covenants.

A. Except as provided below, Tenant will not, nor will Tenant knowingly allow any party at any time, during the Term, to manufacture, process, store, distribute, use, discharge or dispose of any Hazardous Substances at, under or on or about the Premises. Notwithstanding the foregoing, Landlord agrees Tenant may use and store at the Premises: (i) Hazardous Substances contained in office and cleaning supplies customarily used in connection with general office uses in equipment with School Use and/or otherwise used in connection with Tenant's business at the Premises in quantities consistent with such uses, (ii) Hazardous Substances customarily used in connection with the School Use and/or otherwise used in connection with Tenant's business at the Premises, including, without limitation, chemicals and other Hazardous Substances used in connection with the photography lab, and (iii) batteries and other fuels necessary in the conduct of Tenant's business at the Premises (so long as such business is a Permitted Use); provided that, in each case, Tenant's use, storage, handling and disposition thereof complies with all Environmental Laws and Requirements in all material respects at all times.

B. Tenant and any Tenant Party or the Existing Tenants will not be involved in (and Tenant shall not permit any Existing Tenants or other occupants of the Premises to be involved in) operations at the Premises which would lead to the imposition on the Tenant or the Landlord of liability, or the creation of a lien on the Premises, under the Environmental Laws.

C. Tenant shall, upon fifteen (15) days' prior notice by Landlord, permit Landlord or Landlord's agent access to the Premises to conduct an environmental site assessment

with respect to the Premises; provided, that such right shall not be exercised in a manner which unreasonably interferes with Tenant's use and occupancy of the Premises, and Tenant shall have the right to have a Tenant representative accompany Landlord or its agent in connection with any such entry, which representative Tenant agrees to make available for such purpose. The cost of performing and reporting any such site assessments shall be paid by Tenant if a material violation of any Environmental Law is actually discovered at on or under the Premises. Except as provided in the immediately preceding sentence, the cost and expense of any environmental site assessments shall be at the sole cost and expense of Landlord and shall not be Additional Rent or otherwise reimbursable by Tenant.

D. If Tenant fails to promptly take action required to cure any violation of Environmental Law, or any spill or release of any Hazardous Substance, which occurs or is found to exist, Landlord shall have the right (but no obligation) to take any and all actions as Landlord shall deem necessary or advisable in order to cure such violation in accordance with applicable Environmental Law.

E. Tenant shall notify Landlord immediately after becoming aware of any Hazardous Substances found to have been spilled or released at, on or under the Premises or of any violation (or alleged violation) of Environmental Law or Requirements or of noncompliance with any of the covenants contained in this Section 5.03 and shall forward to Landlord immediately upon receipt thereof copies of all orders, reports, notices, permits, applications or other communications relating to any such violation or noncompliance.

F. All future subleases entered into by Tenant shall contain covenants of the other party thereto which are substantially similar to the covenants contained in this Section 5.03 or expressly refer to same and incorporate same by reference.

5.04 Tenant Indemnity. Tenant for itself, the Tenant Parties and their respective successors and assigns hereby agrees and undertakes to protect, indemnify, save and defend Landlord, its employees, directors, officers, shareholders, Affiliates, successors and assigns (collectively the "Landlord Indemnitees") harmless from any and all liabilities, losses, damages (including punitive damages), penalties, expenses, costs (including reasonable attorneys' fees and costs), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, without regard to the form of action and whether based on strict liability, negligence or any other theory of recovery at law or in equity (collectively, "Claims and Losses") that Landlord or any other Landlord Indemnitee, may suffer as a result of, or with respect to:

A. Any violation of any Environmental Law at the Premises arising or occurring at any time during the Term, except to the extent caused by or arising from acts of Landlord or any Landlord Party, including the assertion of any lien thereunder and any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency, but only if such lien or suit is based solely upon a claim that the actual or alleged acts of Tenant or a Tenant Party constituted a violation of any Environmental Law at the Premises; and

B. Any spill or release of or the presence of any Hazardous Substances on or about the Premises at any time during the Term, but only if and to the extent that the same is caused by or arises from the acts of Tenant or any Tenant Party; and

C. Any breach or failure to perform any of Tenant's covenants set forth in Section 5.03 hereof.

Notwithstanding anything to the contrary set forth in this Section 5.04 or any other provision of this Lease, Tenant shall not be liable or responsible for any acts or failure to act by any person, other than Tenant or a Tenant Party, before and during the Term of this Lease. The terms of this Section 5.04 shall survive the termination or expiration of this Lease.

5.05 Landlord Indemnity. Landlord will for itself, the Landlord Parties and their respective successors and assigns undertake to protect, indemnify, save and defend Tenant, its employees, directors, officers, shareholders, Affiliates, successors and assigns (collectively, the "Tenant Indemnitees") harmless from any and all Claims and Losses that Tenant or any other Tenant Indemnitee may suffer as a result of or with respect to:

A. The assertion of any environmental lien and/or any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency but only if such lien or suit is based solely upon a claim that the actual or alleged acts of Landlord or a Landlord Party constituted a violation of any Environmental Law at the Premises; and

B. To the extent caused by or arising from acts of Landlord or a Landlord Party, any spill or release of or the presence of any Hazardous Substances brought upon the Premises by Landlord or any Landlord Party.

Landlord, at Landlord's sole cost and expense, will obtain and maintain at all times during the Term of this Lease, pollution insurance in the amount of $1,000,000 annual coverage for any violation of any Environmental Law at the Premises arising or occurring at any time prior to the Lease Commencement Date. Landlord shall cause Tenant to be named as an additional insured on such pollution insurance policy. Landlord shall deliver to Tenant evidence of payment of the full premium for the pollution insurance described in this paragraph then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Tenant original insurance certificates evidencing such coverage. The pollution insurance policy shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Tenant. The terms of this Section 5.05 shall survive the termination or expiration of this Lease.

6. UTILITIES

6.01 Generally. During the Term, Tenant shall be responsible for and shall pay directly to the applicable utility companies' charges for all water, gas, heat, light, power, sewer, electricity, telephone, cable, or other communications or other utilities metered, chargeable to or provided to the Premises. Notwithstanding the foregoing, Landlord will reasonably cooperate with Tenant (at no cost to Landlord) in acquiring and maintaining utility services to the extent Landlord's cooperation is reasonably necessary. Landlord and Tenant acknowledge that certain

utility services are provided to the Premises, or a portion thereof, and to the Adjacent Land and are not currently separately metered. Neither Landlord nor Tenant shall have any obligation to install a separate meter or submeter to measure utility services consumed on the Adjacent Land (but either Landlord or Tenant may do so at its own cost and expense if it so chooses). With respect to any invoices received by Tenant for utilities consumed on the Premises and on the Adjacent Land, Tenant shall pay such invoices, and shall, each month, bill Landlord and/or each tenant using any portion of the Adjacent Land their pro rata share of such utilities consumed on the Adjacent Land, which pro rata share shall be determined by multiplying the applicable charge for the utility service by a fraction, the numerator of which is the number of square feet of space in the building or buildings on the Adjacent Land which are not separately metered or submetered and the denominator of which is the total number of square feet of space in the buildings on the Premises and Adjacent Land covered by the applicable invoice for such utility services. Any bill delivered by Tenant to Landlord and any tenant of the Adjacent Land for payment of its pro rata share of utilities shall include a copy of the invoice Tenant received from utility service provider and shall be paid to Tenant within 30 days after receipt of such invoice from Tenant.

6.02 Utility Repair and Maintenance Obligations.

A. Sewer, Gas and Water. For the period commencing on the Lease Commencement Date and ending on the last day of the fifth (5^{th}) full Lease Year, Landlord shall be responsible for, at Landlord's sole cost and expense, the repair, maintenance and replacement of all pipes, lines, cables, conduits and other systems relating to the supply of gas, water and sewer services to, from and on the Premises, and to the extent the number of full-time students on the Premises does not exceed 800 during such time, Tenant shall have no liability or obligations with respect thereto; provided that for any time during those five (5) years the number of full-time students on the Premises exceeds 800, Tenant shall pay a pro rata share of such repair, maintenance and replacement costs, which pro rata portion shall be determined by multiplying the applicable costs for such repairs, maintenance and replacement by a fraction, the numerator of which shall be the number of full-time students in that year over 800 and the denominator of which shall be the total number of all full-time students in that year. Commencing on the first day of the sixth (6^{th}) Lease Year and thereafter during the Term, Tenant shall be responsible for, at Tenant's sole cost and expense, the repair, maintenance and replacement of all pipes, lines, cables, conduits and other systems relating to the supply of gas, water and sewer services to, from and on the Premises, and Landlord's obligations with respect thereto shall cease.

B. Electricity. Landlord shall establish a reserve fund (the "Electricity Repair Fund") in the amount of $1,600,000 therein on the Lease Commencement Date. For the period commencing on the Lease Commencement Date and ending on the last day of the fifth (5^{th}) full Lease Year, (i) Landlord shall be responsible for the repair, maintenance and replacement of all existing lines, cables, conduits or other systems relating to the supply of electricity to and on the Premises, (ii) the costs and expenses relating to any repair, maintenance or replacement described in clause (i) of this sentence shall be paid first from the Electricity Repair Fund, and (iii) to the extent that the aggregate costs and expenses relating to any repair, maintenance or replacement described in clause (i) of this sentence exceed the amount in the Electricity Repair Fund, such excess costs shall be paid fifty percent (50%) by Landlord and fifty percent (50%) by

Tenant. Commencing on the first day of the sixth (6th) Lease Year, Tenant shall be responsible for, at Tenant's sole cost and expense, the repair, maintenance and replacement of all lines, cables, conduits and other systems relating to the supply of electricity to and on the Premises, and Landlord's obligations with respect thereto shall cease. On the first day of the sixth (6th) Lease Year, any funds remaining in the Electricity Repair Fund shall be released to and become the property of Tenant. If Tenant (or any other Option Party, as the case may be) shall exercise its Purchase Option as provided in Section 37.03, all amounts remaining in the Electricity Repair Fund as of the date of closing on the purchase of the Purchase Option Property pursuant thereto shall, at Tenant's option (or the option of the Option Party, as the case may be) be (i) credited against the Purchase Price of the Purchase Option Property or (ii) remitted to and become the property of the Tenant (or the Option Party, if applicable). Landlord shall maintain the Electricity Repair Fund in accordance with the accounting principles and standards issued by the Financial Accounting Foundation's Governmental Accounting Standards Board. Landlord shall provide to Tenant on an annual basis, no later than 120 days after the end of Landlord's fiscal year, copies of the unaudited financial statements for such then-ending fiscal year, and shall provide copies of the audited financial statements promptly upon receipt of same by the Landlord.

7. ALTERATIONS, MECHANIC'S LIENS, RETURN CONDITION; LANDLORD'S AND TENANT'S PROPERTY

7.01 Alterations Generally. Subject to the terms and limitations of this Article 7, Tenant shall have the right, at its sole cost and expense, without the consent of Landlord, to make any additions, changes, alterations, replacements or improvements, including with respect to any Building Systems Equipment ("Alterations"), in and to the Premises and Improvements. Without limiting the generality of the foregoing, it is specifically agreed that Tenant's right to perform Alterations shall include, without limitation, the right (a) to install conduit, cabling and wiring within the Premises or within any shafts, conduits or risers running within the Premises, (b) to carpet or provide other floor coverings (such as tile or linoleum), paint or decorate or make other Decorative Changes, (c) to reinforce floors and columns, (d) to make slab cuts for purpose of running risers, conduits and ducts, (e) to make beam cuts, (f) to install stone floors and/or raised floors, (g) to install additional toilets and other plumbing facilities, and (h) to install, remove and relocate non-structural walls in the Premises. Notwithstanding anything to the contrary in the foregoing, Tenant shall not make any Major Alterations (as defined hereinafter), until Tenant has delivered the items required by Section 7.02 to Landlord and such Major Alterations have been approved (or deemed approved) by Landlord. For purposes of this Lease, each of the following Alterations (other than Alterations that are part of the Deferred Maintenance Work) shall be deemed a "Major Alteration": (i) any Alteration that costs (or is reasonably estimated to cost) in excess of $500,000 (the "Threshold Amount"), (ii) any Alterations that would materially affect the structure of the Building; and (iii) any Alterations to basic systems of the Building that would materially and adversely affect the mechanical, electrical, plumbing, HVAC, life safety, security or other basic systems of the Premises. Alterations to the Premises which consist of changes that are primarily cosmetic or decorative in nature and do not require a building permit, such as painting, wallpapering or installation of other wall coverings, installation of window treatments, carpet, tile, linoleum, or other removable floor coverings over the existing subfloors are referred to herein as "Decorative Changes". Notwithstanding anything herein to the contrary, nothing herein shall be deemed or construed as

permitting Tenant to construct any new buildings upon the Premises, to make any additions to buildings or to demolish any building on the Premises without the express prior written consent of Landlord.

7.02 Major Alterations Deliveries. Whenever Tenant proposes to make any Major Alteration, Tenant shall provide Landlord with the following items or information, all subject to Landlord's approval, not to be unreasonably withheld, conditioned or delayed: (i) the identity of Tenant's contractor(s) who will perform the Major Alteration, qualifications of such contractor(s) and a copy of such contractor's bid for the Major Alteration, (ii) plans and specifications for such work, (iii) construction schedule, and (iv) anticipated completion date for the Major Alteration. Landlord shall within ten (10) business days' after receipt of all of the items set forth in the preceding sentence notify Tenant whether Landlord approvals or disapproves the proposed Major Alteration, which approval or disapproval must be reasonable and consistent with the then customary requirements of a prudent institutional landlord for similar properties. If Landlord fails to notify Tenant of Landlord's approval or disapproval of the proposed Major Alteration within the ten (10) business day period specified in the preceding sentence, such Major Alteration shall be deemed approved by Landlord. Any items to be provided to Landlord pursuant to this Section 7.02 shall be delivered to The City of Santa Fe Public Works Department and addressed to its Director.

7.03 Requirements for all Alterations. Before commencing any Alterations, Tenant shall obtain any building permits or other permits or licenses required under Laws therefor and shall promptly thereafter provide Landlord with copies of same. Landlord shall cooperate with Tenant in obtaining such building permits or other permits when necessary at no expense to Landlord. If Tenant makes any Alterations (such Alterations and the act of completing such Alterations being hereinafter collectively referred to as "Work"), whether or not Landlord's consent is required, then (i) all such Work shall be performed by Tenant in a good and workmanlike manner and any damage caused during or by such Work shall be repaired by Tenant, (ii) all such Work shall be expeditiously completed in compliance with all Requirements, and (iii) if any such Work involves the replacement of Building Systems Equipment or parts thereto, all replacement Building Systems Equipment or parts shall have a value and useful life at least equal to the value and useful life customary for building systems equipment being installed in similar buildings and for similar uses. All Alterations made to the Premises shall be considered Tenant's Property (as defined below) during the Term of this Lease, and upon the termination or expiration of this Lease shall immediately cease to be Tenant's Property and shall become Landlord's Property. Landlord shall have the right to enter the Premises, upon prior reasonable notice to Tenant, to inspect the work during and after the completion of Alterations.

7.04 Installation of Personal Property. Notwithstanding anything to the contrary in this Article 7, Tenant may at any time during the Term, without the consent of Landlord, install, remove and relocate Tenant's Property, provided that installation, removal or relocation of such items will not (i) adversely affect the structure of the Premises, or (ii) materially and adversely affect any Building Systems Equipment, including any mechanical, electrical, plumbing, HVAC, life safety, security or other basic systems of the Premises.

7.05 Liens. Tenant will pay all costs for Alterations performed by, or for, Tenant and will keep the Premises free from any liens arising out of work performed for, materials furnished

to or obligation incurred by Tenant. Within sixty (60) days after written notice from Landlord, Tenant shall pay or otherwise satisfy any lien claim by a contractor or supplier who provided work or supplies for Alterations or provide a title insurance endorsement over same reasonably satisfactory to Landlord; provided that, if Tenant desires to contest such lien Tenant shall cause such lien to be removed of record (by bond or otherwise), no longer enforceable against the Premises, and cover all costs of defense, in which case, Tenant shall not be deemed to be in breach and shall have the right to contest in good faith or otherwise deal with such lien claims as Tenant deems best. If Tenant shall fail to do so, Landlord may, after delivery of notice to Tenant of Landlord's intent so to act, bond over, insure over, or pay the amount necessary to remove such lien, and any amount so expended by Landlord in connection therewith shall be deemed Additional Rent under this Lease payable within ten (10) days after Tenant's receipt of a demand for payment from Landlord.

7.06 Alterations by Landlord. Landlord shall not be required to, and will not make, any Alterations at the Premises without Tenant's prior written consent (which consent will not be unreasonably withheld), except to the extent permitted by Sections 6.02 and 9.02 hereof. If Landlord wishes to undertake any construction (a) to remedy existing defects in the Premises, (b) to repair, replace or maintain the Premises as provided in Sections 6.02 and 9.02, or (c) to prevent damages, Landlord shall give Tenant not less than ten (10) days' prior written notice of such intent (except that if Landlord needs to undertake such construction to prevent immediate harm to any persons on the Premises, then only such notice as shall be reasonable under the circumstances) to undertake such construction, which notice shall include a description of the construction to take place, when such construction shall commence and the estimated time needed to complete such construction. Any such construction shall not interfere with Tenant's use and operations of the Premises. Landlord shall work diligently to complete and perform any such construction that it commences. If any such construction is expected to take more than fifteen (15) days to complete, Landlord shall only commence such construction during those times that Tenant has identified to Landlord as time during which there are "breaks" in the normal operations of the Premises (such as between semesters or at other times when students are not in attendance of school). All work by or on behalf of Landlord pursuant to this Section 7.06 shall be performed in a good and workmanlike manner, in compliance with all Requirements and in an expeditious manner.

7.07 End of Term; Return Condition. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in substantially the same condition as existed on the Lease Commencement Date, normal wear and tear, Alterations made by Tenant in accordance with the terms and provisions of this Lease, acts of Landlord and the Landlord Parties, and damage by reason of fire or other casualty which Tenant is not required to repair or restore hereunder and condemnation excepted; provided further, however, upon the expiration or earlier termination of this Lease, Landlord may require Tenant to remove any Alterations installed in violation of applicable Laws or Requirements or made without the approval or deemed approval of Landlord if required under this Lease. Tenant shall, upon the expiration or earlier termination of this Lease remove from the Premises all items of Tenant's Property, other than Alterations which shall become Landlord's Property as stated in Section 7.03 and built-in equipment or machinery which cannot be removed without irreparable material damage to the Premises. In addition, (i) Tenant acknowledges that any security cameras or related security systems are Landlord's Property (but may be upgraded or replaced by Tenant during the Term in its sole but

reasonable determination without Landlord's prior approval, provided that such system and cameras as existing as of the expiration of the Term shall not be removed by Tenant), and (ii) if the removal of any larger items of Tenant's Property will result in large holes, gaps or unfinished areas, Tenant shall properly cap-off all electric, gas and water lines and install or repair as necessary interior walls to an unfinished "ready for paint" condition. If Tenant fails to remove Tenant's Property upon the expiration of this Lease, and such failure continues for thirty (30) days after notice thereof from Landlord, then such Tenant's Property shall be deemed abandoned and shall become the property of the Landlord at Landlord's option and/or Landlord may remove and dispose of same in any manner it sees fit, without compensation or liability to Tenant, but at Tenant's sole cost and expense. Upon the expiration of the Term, Tenant shall deliver all keys and or access cards to the Buildings to Landlord. Nothing in this Section 7.07 is intended or shall be construed as altering or diminishing Tenants' obligations under Section 5.03 hereof.

7.08 Fees. Tenant shall reimburse Landlord for its reasonable, actual out-of-pocket third-party costs and expenses incurred in connection with Landlord's review and/or approval of any Major Alterations and/or the installation or removal thereof that required Landlord's consent or approval pursuant to the terms hereof. Tenant shall not be required to pay any fee of any kind to Landlord (or its agents) for internal costs such as profit, overhead, general conditions, or supervision with respect to any work being conducted on the Premises, including any Alterations or capital improvements, or in connection with the removal of any Alterations.

7.09 Landlord and Tenant's Property. The Building, Land and all Building Systems Equipment shall be deemed the property of Landlord for purposes hereof (the "Landlord's Property"). All Alterations to the Premises, all personal property and trade fixtures located at the Premises, and the equipment, fixtures and machinery located at the Premises which is specific to Tenant's use of the Premises, and all replacements, modifications and alterations thereto from time to time, including, without limitation, the specific property listed on Exhibit "E" attached hereto and made a part hereof, shall be deemed the property of Tenant for purposes hereof (the "Tenant's Property"). All Alterations made to the Premises shall be considered Tenant's Property during the Term of this Lease, but upon the termination or expiration of this Lease shall immediately cease to be Tenant's Property, and shall become Landlord's Property. Except as otherwise provided in Section 7.07, Tenant may remove all of Tenant's Property from the Premises upon the expiration or earlier termination of this Lease without compensation or credit to Landlord. All Landlord's Property shall be and remain a part of the Premises, without compensation or credit to Tenant, and shall not be removed by Tenant upon the expiration or earlier termination of this Lease.

7.10 Financing of Expansions. Should Tenant, during the Term of this Lease, desire to undertake Alterations for expansions of the Improvements at the Premises (an "Expansion") for which the costs to complete (the "Expansion Costs") are reasonably estimated by Tenant to be in excess of $3,000,000, and for which Tenant requires financing from a person or entity that is not an Affiliate of Tenant, Tenant shall have the right to pursue financing for such Expansion Costs from any other person. Tenant shall be permitted to secure such financing with a lien or mortgage on Tenant's leasehold interest on the Premises, as provided in Section 15.

7.11 Deferred Maintenance Work

A. Landlord and Tenant have approved the items of deferred maintenance work for the Premises as set forth on Exhibit "G-1" attached hereto (the "Deferred Maintenance Work"). Tenant shall be responsible for completing the Deferred Maintenance Work in accordance with the schedule set forth on Exhibit "G-2" attached hereto, which schedule may be amended from time to time as agreed to by Landlord and Tenant.

B. Landlord shall establish a reserve fund (the "Deferred Maintenance Fund") initially in the amount of $6,000,000 on the Lease Commencement Date (the "Initial Deferred Maintenance Amount"). On the first anniversary date of the Lease Commencement Date, Landlord shall increase the reserve for the Deferred Maintenance Fund by an amount not less than $4,500,000 (the "Second Deferred Maintenance Amount"). On the second anniversary of the Lease Commencement Date, Landlord shall increase the reserve for the Deferred Maintenance Fund by an amount equal to the higher of (i) $4,500,000 and (ii) (a) $15,000,000 minus (b) the sum of the Initial Deferred Maintenance Amount and the Second Deferred Maintenance Amount (the "Third Deferred Maintenance Amount" and together with the Initial Deferred Maintenance Amount and the Second Deferred Maintenance Amount, the "Deferred Maintenance Amount"). Landlord and Tenant acknowledge and agree that the aggregate Deferred Maintenance Amount shall not be less than $15,000,000, which is the estimated amount required to complete the Deferred Maintenance Work. Landlord shall disburse amounts from the Deferred Maintenance Fund in payment of or reimbursement to Tenant of costs incurred by Tenant in connection with the Deferred Maintenance Work in accordance with the following conditions:

(i) Prior to commencement of work with respect to any Deferred Maintenance Work, (a) the architects, contracts, contractors, plans and specifications and a budget for the restoration shall have been approved by Landlord, (b) Landlord shall be provided with mechanics' lien insurance (if available) and acceptable performance and payment bonds from the general contractor (or designer/builder, as the case may be) which insure satisfactory completion of and payment for the work, are in an amount and form and have a surety acceptable to Landlord, and name Landlord as additional payee, and (c) to the extent permitted by applicable Laws, appropriate waivers of mechanics' and materialmen's liens shall have been obtained and/or filed.

(ii) At the time of any disbursement, no Default shall exist and no mechanics' or materialmen's liens shall have been filed against any of the Premises and remain undischarged.

(iii) Disbursements shall be made from time to time but not more than once in any thirty (30) day period in an amount not exceeding the cost of the work completed since the last disbursement, (A) upon receipt of (i) satisfactory evidence, including architects' certificates, of the stage of completion, the estimated total cost of completion and performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (ii) waivers of liens, (iii) contractors' and subcontractors' sworn statements as to completed work and the cost thereof for which payment is requested, (iv) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed, in place and free and clear of mechanics' and materialmen's lien claims and (B) upon completion of an inspection of the work by Landlord or its representative, if requested by Landlord.

(iv) Each request for disbursement shall be accompanied by a certificate of Tenant, signed by an authorized signatory of Tenant, describing the work for which payment is requested, stating the cost incurred in connection therewith and accompanied by invoices and other documentation of costs reasonably acceptable to Landlord, and stating that Tenant has not previously received payment for such work.

C. Landlord shall maintain the Deferred Maintenance Fund in accordance with the accounting principles and standards issued by the Financial Accounting Foundation's Governmental Accounting Standards Board. Landlord shall provide to Tenant on an annual basis, no later than 120 days after the end of Landlord's fiscal year, copies of the unaudited financial statements for such then-ending fiscal year, and shall provide copies of the audited financial statements promptly upon receipt of same by the Landlord.

D. Tenant shall be responsible for payment of all costs of the Deferred Maintenance Work in excess of the $15,000,000 Deferred Maintenance Fund.

8. INSURANCE

8.01 Tenant's Insurance. Tenant shall obtain, pay for and maintain at all times during the Term the following insurance on or in connection with the Premises:

A. Insurance against all risk of physical loss or damage to the Improvements and Building Systems Equipment as provided under "Special Causes of Loss" form coverage, and including customarily excluded perils of hail, windstorm, flood coverage, earthquake and, to the extent required by Landlord, terrorism, in amounts no less than the actual replacement cost of the Improvements and Building Systems Equipment; provided that, if Tenant's insurance company is unable or unwilling to include any of all of such excluded perils, Tenant shall have the option of purchasing coverage against such perils from another insurer on a "Difference in Conditions" form or through a stand-alone policy. Such policies shall contain Replacement Cost and Agreed Amount Endorsements and "Law and Ordinance" coverage (at full replacement cost). Such policies and endorsements shall contain deductibles of not more than $500,000 per occurrence.

B. Commercial General Liability Insurance, against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Premises, in an amount not less than $25,000,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $5,000,000 per occurrence/annual aggregate, such policies to have deductibles of not more than $500,000 per occurrence.

C. Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability), against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Premises, in an amount not less than $25,000,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $5,000,000 per occurrence/annual aggregate, such policies to have deductibles of not more than $500,000 per occurrence.

D. Workers' compensation insurance in the amount required by applicable Law and employers' liability insurance covering all persons employed by Tenant in connection with any work done on or about any of the Premises, in an amount not less than $1,000,000 per occurrence.

E. Comprehensive Boiler and Machinery/Equipment Breakdown Insurance on any of the Building Systems Equipment or any other equipment on or in the Premises, in an amount not less than $5,000,000 per accident for damage to property (and which may be carried as part of the coverage required under clause (A) above or pursuant to a separate policy or endorsement). Either such Boiler and Machinery policy or the Special Causes of Loss policy required in clause (A) above shall include at least (a) $3,000,000 per incidence for Off-Premises Service Interruption, (b) $2,000,000 per incidence for Expediting Expenses, (c) $2,000,000 per incidence for Ammonia Contamination, and (d) $2,000,000 per incidence for Hazardous Materials Clean-Up Expense; and may contain deductibles not to exceed $50,000.

F. Business Interruption Insurance at limits sufficient to cover 100% of the period of indemnity not less than twelve (12) months from time of loss, including extended period of indemnity which provides that after the physical loss to the Improvements and equipment has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Premises are repaired or replaced and operations are resumed, whichever first occurs.

G. During any period in which Deferred Maintenance Work, Major Alterations or any other substantial Alterations at the Premises are being undertaken, builder's risk insurance covering the total completed value, including all hard and soft costs (which shall include business interruption coverage) with respect to the Improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction, alteration or repair of Improvements or Building Systems Equipment, together with such other endorsements as Landlord may reasonably require, and general liability, worker's compensation and automobile liability insurance with respect to the Improvements being constructed, altered or repaired.

H. Tenant shall, at all times during the Term, maintain, at Tenant's sole cost and expense, an insurance policy naming Landlord as an additional insured covering the Landlord's Personal Assets, insuring the Landlord's Personal Assets against loss by fire and other casualty or theft, with such coverage and deductibles to be agreed to between Landlord and Tenant and consistent with insurance coverage previously maintained on the Landlord's Personal Assets (whether by Landlord or any prior owner of the Landlord's Personal Assets).

I. Such other insurance (or other or different terms with respect to any insurance required pursuant to this Article 8, including without limitation amounts and types of coverage, deductibles, form of mortgagee clause, insurer rating) on or in connection with any of the Premises as Landlord may reasonably require; provided that such insurance is available to Tenant on a commercially reasonable basis and is consistent, as to types of coverage and amounts, with the requirements generally of prudent owners or operators of similar properties.

8.02 The insurance required by Section 8.01 shall be written by companies having a Best's rating of A:X or above and a claims paying ability rating of AA or better by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc. or equivalent rating agency approved by Landlord in its sole discretion and are authorized to write insurance policies by, the State Insurance Department (or its equivalent) for the State. The insurance policies (i) shall be for such terms as Landlord may reasonably approve and (ii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. If said insurance or any part thereof shall expire, be withdrawn, become void, voidable, unreliable or unsafe for any reason, including a breach of any condition thereof by Tenant or the failure or impairment of the capital of any insurer, or if for any other reason whatsoever said insurance shall become reasonably unsatisfactory to Landlord, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord. The insurance referred to in clauses 8.01A, 8.01E and 8.01G shall name Landlord as owner and Tenant as its interest may appear. The insurance referred to in clause 8.01C shall name Landlord as additional insured, and the insurance referred to in clause 8.01F shall name Landlord as insured and as loss payee.

8.03 Each policy required by any provision of Section 8.01, except clause D thereof, shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Landlord.

8.04 Tenant shall pay as they become due all premiums for the insurance required by Section 8.01, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefor or installment then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Landlord all original certificates of insurance evidencing such coverages. All certificates of insurance (including liability coverage) provided to Landlord shall be on ACORD Form 28 (or its equivalent).

8.05 Anything in this Article 8 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to clause 8.01A may be carried under a "blanket" policy or policies covering other properties of Tenant or under an "umbrella" policy or policies covering other liabilities of Tenant, as applicable; provided that, such blanket or umbrella policy or policies otherwise comply with the provisions of this Article 8, and upon request, Tenant shall provide to Landlord a Statement of Values which may be reviewed annually and shall be amended to the extent determined necessary by Landlord based on revised Replacement Cost Valuations. A certificate evidencing such blanket or umbrella policy (or a certified copy of such policy of requested by Landlord) shall promptly be delivered to Landlord.

8.06 Tenant shall not carry separate insurance concurrent in form or contributing in the event of a casualty with that required in this Article 8 unless (i) Landlord is included therein as named insured, with loss payable as provided herein, and (ii) such separate insurance complies with the other provisions of this Article 8. Tenant shall immediately notify Landlord of such separate insurance and shall deliver to Landlord certified copies (or original policies, if requested) thereof.

8.07 Each policy obtained by Tenant shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Landlord and shall contain a full waiver of subrogation against the Landlord. Each policy obtained by Landlord, if any, shall

contain an effective waiver by the carrier against all claims for payment of insurance premiums against Tenant and shall contain a full waiver of subrogation against Tenant. Tenant waives subrogation against Landlord to extent of insurance proceeds actually received or would have been received if adequate coverage had been in place.

8.08 The proceeds of any insurance required under Section 8.01 shall be payable as follows:

A. proceeds payable under clauses B, C and D of Section 8.01 and proceeds attributable to the general liability coverage of Builder's Risk insurance under clause F of Section 8.01 shall be payable to the person or entity entitled to receive such proceeds; and

B. proceeds of insurance required under clause A of Section 8.01 and proceeds attributable to Builder's Risk insurance (other than its general liability coverage provisions) under clause F of Section 8.01 shall be payable to Landlord and applied as set forth in Articles 23 or 24, as applicable. Tenant shall apply the Loss Proceeds to restoration of the Premises in accordance with the applicable provisions of this Lease unless a Termination Event shall have occurred and Tenant has given a Termination Notice.

8.09 Landlord's Right to Obtain Tenant's Insurance. Notwithstanding anything to the contrary contained in this Article 8, if at any time Tenant fails to provide evidence of the insurance required to be maintained by Tenant hereunder within ten (10) Business Days of Landlord's request for same (said requests not to be made more than once per calendar quarter), Landlord shall have the right, but not the obligation, by providing written notice of such election to Tenant, to itself obtain and maintain all or any portion of such insurance, in which event Landlord shall charge Tenant the cost of such insurance as Additional Rent hereunder. In the event that Landlord so elects to obtain and maintain such insurance, Landlord shall cause Tenant, if Tenant so requests in writing, to be added as additional insureds and loss payees under the applicable insurance policy(ies), as its interests may appear. Landlord and Tenant agree to reasonably cooperate with each other in order to coordinate the acquisition and maintenance of any such insurance by Landlord, which may include, without limitation, the execution of any required forms and applications and providing relevant information to Landlord's insurance carrier.

9. MAINTENANCE AND REPAIRS

9.01 Tenant Repairs. Except as expressly set forth in this Lease as an obligation of Landlord, if any, or any other tenant on the Adjacent Land, Tenant shall at all times during the Term, at its sole expense, keep and maintain the Premises, Improvements and Building Systems Equipment and every part thereof, structural and non-structural, interior and exterior, including all parking and landscaped areas, in good working order and condition (and in compliance with all Requirements) and, in any event, in substantially the same condition, order and repair as the same were in on the Lease Commencement Date (normal wear and tear, condemnation, damage by reason of fire or other casualty for which Tenant is not liable for repair hereunder excepted) and furnish all expendables (light bulbs, paper goods, soaps, etc.) used in the Premises. Notwithstanding the foregoing, Tenant shall not be responsible for (A) repairs of any damage actually caused by the negligent acts or intentional misconduct of Landlord or any Landlord

Party, in which case Landlord shall cause such damage to be repaired promptly and in a manner that does not unreasonably disrupt the operation of Tenant's business at the Premises or (B) any repairs relating to Deferred Maintenance Work unless Landlord disbursed funds for payment as required by Section 7.11 hereof.

9.02 Landlord Self Help. If Tenant fails to perform any maintenance or repair required of it as and when required under this Lease, and such failure continues for thirty (30) days after notice from Landlord (provided that, in the event of an emergency or hazardous condition Landlord shall only be required to provide such notice (prior or subsequent) as is reasonable under the circumstances), then Landlord shall have the right (but not the obligation) to perform such maintenance or repair on Tenant's account, in which event Tenant will reimburse Landlord, as Additional Rent hereunder, for all reasonable, actual costs incurred by Landlord in connection therewith within ten (10) days after Tenant's receipt of an invoice therefor from Landlord.

9.03 Road Maintenance. Landlord and Tenant acknowledge that Landlord, Tenant and other tenants of Landlord on the Adjacent Land will use roadways located on the Premises. Accordingly, the repair and maintenance of such roadways shall be shared among Landlord, Tenant and all tenants of the Adjacent Land, with each such person paying their pro rata share of the costs of such repair and maintenance. A person's pro rata share of the costs for repair and maintenance of the roadways shall be determined by multiplying the applicable costs for such repair or maintenance by a fraction, the numerator of which is the number of trips made by such person or its invitees across such roadways and the denominator of which is the total number of trips made by Landlord, Tenant and all tenants of the Adjacent Land and their respective invitees across the roadways or as otherwise agreed upon by Landlord and Tenant.

10. SIGNS AND LANDSCAPING

10.01 Subject to applicable Laws and all Permitted Encumbrances, Tenant shall have the right, from time to time during the Term, without Landlord's consent, to modify existing landscaping and signage at the Premises and to install additional landscaping and, subject to Section 2.01(d), signage at the Premises, together with exclusive naming rights to the Building; provided, however, all signage must be related to the Permitted Use. Landlord shall not install or permit any person or entity other than Tenant to install or place any signs on the Premises during the Term, without the prior written consent of Tenant (which may be withheld in Tenant's sole discretion). If requested by Landlord, Tenant shall cause all signage that Tenant installed to be removed (and seal all penetrations and repair any damage therefrom) upon the expiration or earlier termination of this Lease at its own expense.

11. ENTRY BY LANDLORD

11.01 Tenant will permit Landlord and Landlord's agents to enter the Premises at reasonable times for the purpose of inspecting the same, for the purpose of showing the Premises to prospective tenants during the last year of the Term and for showing the Premises to prospective purchasers, lenders and investors, without any rebate of rents and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; all without material or unreasonable interference to Tenant, and upon at least five (5) days' prior written notice to Tenant. Tenant and/or its agents shall have the right to accompany

Landlord and/or its agents in connection with any entry into the Premises by Landlord and/or its agents.

12. ASSIGNMENT, SUBLETTING AND TRANSFERS OF OWNERSHIP

12.01 Assignments Generally. Except as otherwise provided below in this Article 12, Tenant shall not voluntarily or involuntarily assign its interest in this Lease, including by operation of law (through merger, consolidation or otherwise) (a "Tenant Assignment"), in any case, without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Any consent to any Tenant Assignment which may be given by Landlord will not constitute a waiver by Landlord of the provisions of this Lease or a release of Tenant from its obligations hereunder. Any consent given by Landlord to any Tenant Assignment will not relieve Tenant (or any transferee of Tenant) from the above requirements for obtaining the written consent of Landlord to any subsequent Tenant Assignment. In the event Tenant requests Landlord's consent to a Tenant Assignment, Tenant agrees to pay Landlord all reasonable attorneys' fees incurred by Landlord for any legal services for document review and/or negotiation of any and all documents deemed necessary by Landlord and/or Tenant to effect such Tenant Assignment. Any purported Tenant Assignment in violation of this Article 12 shall be null and void. In addition, notwithstanding anything to the contrary contained in this Article 12, Tenant shall not have the right to assign this Lease (voluntarily or involuntarily, whether by operation of law or otherwise) to any party at any time that Default exists.

12.02 Permitted Assignments. Notwithstanding anything to the contrary contained in Section 12.01, an assignment by Tenant of all of its rights under this Lease to an Affiliate or wholly-owned subsidiary of Tenant who is acquiring all of Tenant's Property shall be a "Permitted Assignment" and shall not require the consent of, or notice to Landlord prior to such Permitted Assignment. As used herein "Affiliate" means with respect to any entity, an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the first such person or entity, and (ii) "control" means the ownership of more than 50% of the outstanding voting stock of a corporation (or other majority equity control if such entity is not a corporation) and the power, directly or indirectly, by contract or otherwise, to direct or cause the direction of the management or policies of such entity. Tenant shall provide Landlord with notice of any Permitted Assignment described above within ten (10) days after the consummation thereof. Any assignee pursuant to a Permitted Assignment shall be required to use the Premises solely for the Permitted Use.

12.03 Review Criteria for Assignments. If Tenant desires consummate a Tenant Assignment other than a Permitted Assignment (a "Non-Preapproved Assignment"), then Tenant shall, not less than fifteen (15) days prior to the date on which it desires to make a Non-Preapproved Assignment, submit to Landlord information regarding the following with respect to the proposed assignee (collectively, the "Review Criteria"): (A) financial reports for its previous three (3) fiscal year (or, if same are not then available, a reasonable equivalent or alternative thereto), (B) a list of its senior management, and (C) a summary of its operating history. Landlord shall review such information and shall approve or disapprove of the proposed Tenant Assignment based solely on such Review Criteria no later than the fifteenth (15^{th}) day following receipt of all such information; Landlord shall be deemed to have acted reasonably in granting or withholding consent if such grant or disapproval is based on their review of the

Review Criteria applying prudent business judgment. Any assignee pursuant to Tenant Assignment approved by Landlord shall be required to use the Premises solely for the Permitted Use.

12.04 Subletting. Tenant shall have the right to sublet, sub sublet, or grant any concession or occupancy rights to all or any portion of the Premises (each a "Sublease") to any person (whether such person be an Affiliate of Tenant or an unrelated third party). Tenant shall not be required to obtain Landlord's consent to, or to give prior notice to Landlord of, any Sublease of the Premises. Tenant shall deliver to Landlord a copy of each Sublease entered into by Tenant within fifteen (15) days after such Sublease is fully executed by Tenant and applicable sublessee. Notwithstanding the foregoing, Tenant shall not have the right to Sublease the Premises at any time during which a Default exists. Any sublessee pursuant to a Sublease shall be required to use the Premises solely for the Permitted Use.

12.05 Release. No Sublease shall affect or reduce any obligations of Tenant or the rights of Landlord hereunder, and all obligations of Tenant hereunder shall continue in full effect as the obligations of a principal and not of a guarantor or surety, as though no Sublease had been made. Tenant shall not be released from its obligations under this Lease upon an assignment by Tenant of its rights and obligations under this Lease unless such release is consented to by Landlord.

12.06 Recognition Agreement. Landlord agrees, upon the request of Tenant, to execute and deliver a recognition agreement in form and substance mutually satisfactory to Landlord and Tenant ("Recognition Agreement") with respect to each Sublease.

12.07 Existing Tenants. If any portion of the Premises are currently occupied pursuant to leases (each, as it may be amended, supplemented, assigned, restated, replaced or otherwise modified from time to time, an "Existing Lease") entered into by a prior owner of the Premises with tenants (each, collectively with their successors, assigns and sublessees, an "Existing Tenant") and such Existing Leases are hereby deemed approved Subleases. Concurrently with the conveyance of the Premises to Landlord and the execution of this Lease, Tenant has taken over the obligations of lessor under the Existing Leases pursuant to an assignment and assumption agreement and has caused such Existing Tenants to agree to look solely to Tenant for performance of the obligations of lessor thereunder and to acknowledge that their respective Existing Lease is subject and subordinate to this Lease. During the Term, Tenant shall have the exclusive right to exercise all rights (including, without limitation, the right to collect and retain all rents due under the Existing Leases, the right to terminate Existing Leases, the right to dispossess Existing Tenants and the right to expand and contract their respective premises) and shall fulfill all of the obligations under the Existing Leases to be paid or performed by the lessor thereunder.

12.08 Asset Transfers. Tenant shall not, in a single transaction or series of related transactions (including any interim merger or consolidation), sell or convey, transfer or lease (excluding Subleases permitted hereunder), all or substantially all of its assets (an "Asset Transfer") to any person or entity, and any such Asset Transfer shall be deemed a Tenant Assignment in violation of this Lease; except that Tenant shall have the right to conduct an Asset Transfer without Landlord's consent if the following conditions are met: (i) the Asset Transfer is

to a person or entity that (A) is an Affiliate or wholly-owned subsidiary of Tenant or (B) is approved in writing by Landlord under the Review Criteria as a Non-Preapproved Assignment in accordance with the provisions of Section 12.03 of this Lease, and (ii) in each case, this Lease is assigned to and assumed by such person or entity as a part of such Asset Transfer.

13. BREACH BY TENANT

13.01 Tenant will be in "Default" under this Lease if at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings in law, in equity or before any administrative tribunal which have or might have the effect of preventing Tenant from complying with the terms of this Lease) the following occur and are continuing:

A. Tenant fails to make payment of any installment of (i) Base Rent when due and such failure continues for three (3) Business Days after Landlord's written notice to Tenant of such failure, or (ii) any item of Additional Rent when due and such failure continues for ten (10) Business Days after Landlord's written notice to Tenant of such failure; or

B. Tenant fails to observe or perform any of its other covenants, agreements or obligations hereunder (other than those provided in Sections 2.09, 2.10 and 2.11), and such failure is not cured within thirty (30) days after Landlord's written notice to Tenant of such failure; provided, however, that if the nature of Tenant's obligation is such that more than thirty (30) days are required for performance, then Tenant will not be in Default if Tenant commences performance within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion; provided, further, however, that if Tenant's failure to perform its covenants hereunder is related to the college on the Leased Premises failing to have accreditation as required in Section 1.05, Tenant shall have twelve (12) months after Tenant first becomes aware of such failure to cure such default. For avoidance of doubt any failure by Tenant to observe or perform any of its covenants, agreement or obligations set forth in Sections 2.09, 2.10 or 2.11 hereunder shall be subject to the foregoing notice and cure provisions, but otherwise shall not be considered to be, or result in, a Default under this Lease;

C. Tenant becomes insolvent, makes a transfer for the benefit of its creditors, is the subject of a bankruptcy petition, is adjudged bankrupt or insolvent in proceedings filed against Tenant (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), a receiver, trustee, or custodian is appointed for all or substantially all of Tenant's assets where possession is not restored to Tenant within ninety (90) days, or performs any act of bankruptcy or insolvency; or

D. Tenant permits the Premises, other than the Retail Portion, in whole or in substantial part to "go dark" or if the Premises shall be vacated or abandoned, in either case, without the express prior written approval of Landlord in its sole discretion; provided that notwithstanding the foregoing, for purposes hereof, the Premises shall not be deemed to have been vacated or allowed to "go dark" (i) during the performance of restoration or repair following a material casualty or partial taking, (ii) in connection with major renovations or refurbishment of the Improvements for the benefit of Tenant (or its Affiliates in occupancy), (iii) in connection with the preparation of the Premises for initial occupancy by a permitted assignee

or sublessee pursuant to an executed assignment or sublease agreement then in force and effect or (iv) during any period in which the college operated on the Premises is not in session, is on break or is in between semesters; so long as, in the case of events in clauses (i), (ii) and (iii) of this sentence, such period of actual repair or renovation or refurbishment does not exceed one (1) year (without giving effect to any period of time relating to development of architectural plans and designs, any approval or permitting process or any Landlord review) and Tenant is diligently pursuing same to completion.

14. REMEDIES OF LANDLORD

14.01 Landlord shall use reasonable efforts to mitigate its damages in the event of a Default by Tenant hereunder. No mitigation of damages by Landlord shall constitute a waiver of any Default by Tenant hereunder, nor shall anything in this Section adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damages to persons or property occurring prior to a termination of this Lease.

14.02 All cure periods provided herein shall run concurrently with any periods provided at Law (but nothing contained in the foregoing shall be deemed to limit the notice and cure rights to which Tenant is entitled under this Lease).

14.03 During the continuance of a Default, as designated hereinabove, in addition to any other rights or remedies provided for herein or at law or in equity in the State at the time in question, Landlord shall have the following rights:

A. The right to declare the Term ended and reenter the Premises and take possession thereof (with process of law), and to terminate all of the rights of Tenant in and to the Premises; or

B. The right, without declaring the Term ended, to reenter the Premises and to occupy the same (with process of law), for and on account of the Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord on demand all such reasonable expenses as Landlord may have paid, assumed or incurred in recovering possession of the Premises, including reasonable costs, expenses, attorney's fees and expenditures of placing the same in good order, and all other reasonable expenses, commissions and charges paid by the Landlord in connection with reletting the Premises or a portion thereof (other than costs and expenses relating to the construction or installation of alterations and/or improvements to the Premises); provided, however, the amount that Tenant shall be liable to pay pursuant to this sentence shall be limited to the Early Termination Payment, if any. Any such reletting may be for the remainder of the term of this Lease or for a longer or shorter period. Such reletting shall be for such rent and on such other terms and conditions as Landlord, in its reasonable discretion, deems appropriate. Landlord may assume Tenant's interest in any existing subleases to any tenant of the Premises, as Landlord may see fit, and Tenant shall have no right or authority whatsoever to collect any rent from such subtenants of the Premises or Existing Tenants. In any case, and whether or not the Premises or any part thereof is relet, Tenant, shall be liable to Landlord only for an amount equal to the Early Termination Payment, if any. Tenant shall be entitled to receive any excess rent received by Landlord over and above the Early Termination Payment; or

C. The right, even though it may have relet all or any portion of the Premises in accordance with the provisions of subsection B above, to thereafter at any time elect to terminate this Lease for such Default on the part of the Tenant, and to terminate all the rights of Tenant in and to the Premises.

14.04 Pursuant to the rights of re-entry provided above, Landlord may, in each case with process of law, remove all persons from the Premises and may, but shall not be obligated to, remove all property therefrom, and may, but shall not be obligated to, enforce any rights Landlord may have against said property or store the same in any public or private warehouse or any other reasonably secure location at the cost and for the account of Tenant or the owner or owners thereof. Tenant agrees to hold Landlord free and harmless from any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, unless Landlord acted in a manner that was grossly negligent or with willful misconduct in connection with the removal or storage of such property. Such action by the Landlord shall not be deemed to be an election by Landlord to terminate this Lease.

14.05 In the event of a termination of this Lease by reason of a Default by Tenant, Landlord may recover from Tenant, the amount equal to the Early Termination Payment, if any. Landlord would not be entitled to receive any additional amounts upon termination of this Lease by reason of Default by Tenant.

14.06 In any action brought by the Landlord to enforce any of its rights under or arising from this Lease during the continuance of a Default by Tenant, Landlord shall be entitled to receive its reasonable costs and legal expenses including reasonable attorneys' fees, but only to the extent that Landlord prevails in the determination that any such Default by Tenant shall in fact have occurred.

14.07 The waiver by Landlord of any Default of Tenant hereunder shall not be a waiver of any preceding or subsequent breach of the same or any other term. Acceptance of any Rent payment shall not be construed to be a waiver of the Landlord of any preceding breach of the Tenant.

14.08 Landlord shall have the right (but shall not be required) to perform any obligation that Tenant fails to perform under this Lease after thirty (30) days written notice to Tenant from Landlord; provided, however, that if the nature of Tenant's obligation is such that more than thirty (30) days are required for performance, then Landlord will not have the right to perform such obligation of Tenant if Tenant commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion; and provided further that in the event that any failure of Tenant to perform its obligations hereunder would result in an emergency, then Landlord shall only be required to provide such notice thereof to Tenant as is practical under the circumstances prior to performing such obligation of Tenant. Tenant shall reimburse Landlord for any reasonable, out-of-pocket costs incurred by Landlord pursuant to the preceding sentence as Additional Rent within thirty (30) days after receipt of written notice thereof.

15. TENANT FINANCING AND LEASEHOLD MORTGAGES

15.01 Tenant shall have the right and be permitted to obtain financing from any third party lenders to finance Expansions, Tenant's repair and maintenance obligations under this Lease, general operations of Tenant or any other financing as Tenant deems necessary and appropriate. In connection with any such financing, Tenant shall have the right to grant to such lender a leasehold mortgage on all of Tenant's right, title and leasehold interest in and to the Premises and/or a security interest in and to all of Tenant's right, title and interest in and to any personal property of Tenant, regardless of whether such personal property is located at the Premises or any other location.

16. SURRENDER OF LEASE NOT MERGER

16.01 No Merger. The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, will not constitute a merger.

17. ESTOPPEL CERTIFICATE

17.01 Tenant Estoppel. Tenant will execute and deliver to Landlord, within ten (10) Business Days of Landlord's written demand, a statement in writing certifying that this Lease is in full force and effect, and that the Base Rent and Additional Rent payable hereunder is unmodified and in full force and effect (or, if modified, stating the nature of such modification) and the date to which rent and other charges are paid, if any, and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults if they are claimed and such other matters as Landlord may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises. In no event shall Tenant be required to execute or deliver any such statement which would modify or amend any of the terms or provisions of this Lease.

17.02 Landlord Estoppel. Landlord will execute and deliver to Tenant, within ten (10) Business Days of Tenant's written demand, a statement in writing certifying that this Lease is in full force and effect, and that the Base Rent and Additional Rent payable hereunder is unmodified and in full force and effect (or, if modified, stating the nature of such modification) and the date to which rent and other charges are paid, if any, and acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder or specifying such defaults if they are claimed and such other matters as Tenant may reasonably request. In no event shall Landlord be required to execute or deliver any such statement which would modify or amend any of the terms or provisions of this Lease.

18. SALE BY LANDLORD

18.01 Sale by Landlord. In the event of a sale or conveyance by Landlord of the Premises, the same shall: (a) be subject to Tenant's Right of First Offer, Right of First Refusal, and Purchase Option, (b) provide that the purchaser or buyer agrees in writing to assume all of Landlord's obligations and liabilities hereunder; (c) operate to release Landlord from any liability with respect to any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, which arise after such sale, and Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease with respect to any

matters arising after such sale. This Lease will not be affected by any such sale, and Tenant agrees to attorn to the purchaser or assignee. Upon request by Landlord, Tenant agrees to enter into a separate attornment agreement.

19. NOTICES

19.01 All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Lease by either party to the other will be in writing and will be considered sufficiently given and served upon the other party if sent by certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service and addressed as indicated in Sections 1.03 and 1.04. All notices shall be effective upon receipt (or refusal of receipt) thereof. Any party may change its address for notices (or add or subtract addresses for notices) under this Lease from time to time by written notice thereof given to the other party as above provided.

20. WAIVER

20.01 The failure of either party to insist in any one or more cases upon the strict performance of any term, covenant or condition of the Lease will not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either party to seek a remedy for any breach of this Lease be deemed a waiver by such party of its remedies or rights with respect to such a breach.

21. HOLDOVER

21.01 If Tenant does not surrender the Premises to Landlord on the Expiration Date in the condition required by this Lease, such continuance of possession by Tenant will be deemed to be a month-to-month tenancy terminable on thirty (30) day notice at any time by either party. All provisions of this Lease, except those pertaining to term and rent, will apply to the month-to-month tenancy. Tenant will pay a new Base Rent monthly at a rate equal to one hundred fifty percent (150%) of the amount of Base Rent payable for the last full calendar month during the Term. Nothing herein shall be deemed or construed as permitting or granting Tenant any right to holdover after the expiration or termination of this Lease, and upon any failure by Tenant to vacate and surrender the Premises after the expiration of a thirty (30) day notice given by Landlord as set forth hereinabove, Landlord may exercise any rights or remedies available at law or in equity to dispossess Tenant of the Premises and to recover any damages resulting from such holdover.

22. CONDEMNATION

22.01 Termination. If (x) all or substantially all of the Premises, (y) any material portion of the rentable area of the Improvements at the Premises, or (z) any portion of the Land which results in the permanent loss of all reasonable means of access to or from the Land, is taken for any public or quasi-public purpose by any lawful government power or authority, by exercise of the right of appropriation, reverse condemnation, condemnation or eminent domain, or is sold under threat of such taking to the applicable governmental authority and, in the case of (y) or (z) above, despite the good faith and commercially reasonable efforts of Tenant, the Premises cannot be reconfigured and restored to a condition that would allow for the continued

economically practicable operation of Tenant's business thereat in compliance with Laws and Requirements (as determined by a reputable, independent architect selected by Tenant and reasonably acceptable to Landlord), then Tenant may at its option terminate this Lease by notifying Landlord of such election in writing not later than sixty (60) days after the date of such taking. Tenant will not because of such taking assert any claim against the Landlord or the taking authority for any compensation because of such taking, and Landlord will be entitled to receive the entire amount of any award (an "Award") without deduction for any estate or interest of Tenant. Subject to the provisions of this Section 22.01 below and except for the claims reserved therein, Tenant hereby irrevocably assigns to Landlord any award or payment to which Tenant is or may be entitled by reason of any condemnation, whether the same shall be paid or payable for Tenant's leasehold interest hereunder or otherwise; but nothing in this Lease shall impair Tenant's right to any award or payment on account of Tenant's Property (including, without limitation, Alterations made by and paid for by Tenant), moving and relocation expenses (including fees of consultants, brokers, attorneys and other professionals incurred by Tenant in connection with moving to another location) to the extent and so long as Tenant shall have the right to make (and does so make) a separate and independent claim therefor against the condemnor.

22.02 Restoration. If this Lease is not terminated in connection with any such taking or condemnation, then: (i) Landlord shall make any Award available to Tenant for restoration of the Premises in accordance with Section 24 hereof, (ii) Tenant will promptly proceed to restore the Premises to as close to its same condition prior to such taking or condemnation as reasonably possible, allowing for any reasonable effects of such taking (to the extent of such Award), and, (iii) this Lease shall continue in full force and effect without any abatement or reduction of the Rent due hereunder.

23. CASUALTY

23.01 Repair. If the Premises shall be damaged by fire or other casualty that does not constitute a Termination Event under Section 23.03 below, then Tenant shall, at Tenant's sole cost and expense (whether or not Loss Proceeds are sufficient therefor and without any abatement of Rent hereunder), repair and restore the same as promptly as possible to substantially the condition existing prior to the casualty, except for modifications required by zoning and building codes and other Laws then in effect. Such repair and restoration shall be subject to the insurance and lien removal obligations set forth in Sections 7.03 and 7.06 hereof, and if the Loss Proceeds (other than business interruption and rent loss proceeds) exceed $500,000.00 (the "Proceeds Threshold"), then the Loss Proceeds shall be held in the Restoration Fund and disbursed in accordance with Article 24 hereof.

23.02 Insurance. So long as Tenant is not then in Default hereunder, all insurance proceeds payable under any property, fire, and/or rental insurance of Tenant ("Loss Proceeds") under the Proceeds Threshold shall be payable solely to Tenant and Landlord shall have no interest therein. Loss Proceeds in excess of the Insurance Proceeds Threshold shall be payable to Landlord and made available for restoration of the Premises from the Restoration Fund in accordance with Article 24 hereof; provided that, if Tenant elects to terminate the Lease as may be permitted pursuant to the terms of this Article 23, then Landlord shall be entitled to all Loss Proceeds and Tenant shall make such assignment of rights or take such other reasonable action

necessary to cause such Loss Proceeds to be paid to Landlord. Notwithstanding any of the foregoing to the contrary, Tenant shall be entitled to retain (or if same are paid to Landlord, shall be paid over to Tenant) all insurance proceeds paid to Tenant for the rental of temporary space, relocation costs and the replacement of Tenant's Property, and such proceeds shall not be included in the definition of "Loss Proceeds" as such term is used in this Lease.

23.03 Termination Event. If all or any substantial portion of the Premises shall be damaged or destroyed by casualty (a "Termination Event"), then Tenant shall have the option, exercisable within ninety (90) days after such casualty, to give to Landlord written notice in the form described in Section 23.04 of the Tenant's exercise of option to terminate this Lease (a "Termination Notice"). If Tenant does not elect, or fails to timely elect, to give Landlord a Termination Notice, then Tenant shall rebuild or repair the Premises in accordance with the provisions of Section 23.01 above. For purposes hereof, a "substantial portion of the Premises" means and refers to more than twenty percent (20%) of the square feet of rentable area of the Building.

23.04 Termination Notice. A Termination Notice shall contain notice of Tenant's desire to terminate this Lease on the first Base Rent Payment Date which occurs at least thirty (30) days after the date of such Termination Notice (the "Termination Date").

23.05 Obligations on Termination Date. If Tenant has timely exercised its option to terminate, this Lease shall terminate on the Termination Date and Tenant shall have no obligation to rebuild the Premises. Upon such termination (i) all obligations of Tenant hereunder shall terminate except for any obligations expressly provided to survive the expiration or termination of this Lease, (ii) Tenant shall immediately vacate and shall have no further right, title or interest in or to any of the Premises and (iii) all Loss Proceeds shall be paid over to and retained by Landlord. Notwithstanding anything to the contrary hereinabove contained, if on the date when this Lease would otherwise terminate, Landlord shall not have received the full amount of the Loss Proceeds payable by reason of the applicable Termination Event, then the date on which this Lease is to terminate shall be automatically extended to the date of the receipt by Landlord of the full amount of such Loss Proceeds; but in no event beyond the date which is five (5) years after the Termination Date (the "Outside Termination Date").

23.06 Late Term Termination Right. Notwithstanding anything in this Article 23 to the contrary, if a Termination Event occurs during the last two (2) years of the Term (taking into account any exercised or deemed exercised Extension Term) or during the last two (2) years of any Extension Term, Tenant shall have no obligation to rebuild the Premises and may terminate this Lease effective as of the Termination Date. Upon such termination (i) all obligations of Tenant hereunder shall terminate except for any obligations expressly provided to survive the expiration or termination of this Lease, (ii) Tenant shall immediately vacate and shall have no further right, title or interest in or to any of the Premises and (iii) all Loss Proceeds shall be paid over to and retained by Landlord. Notwithstanding anything to the contrary hereinabove contained, if on the date when this Lease would otherwise terminate, Landlord shall not have received the full amount of the Loss Proceeds payable by reason of the applicable Termination Event, then the date on which this Lease is to terminate shall be automatically extended to the date of the receipt by Landlord of the full amount of such Loss Proceeds; but in no event beyond the Outside Termination Date.

24. RESTORATION

24.01 Restoration Fund. Any portion of the Award or Loss Proceeds equal to or less than the Proceeds Threshold shall be paid to Tenant to be used only to commence restoration of the Premises (or to take appropriate action to mitigate further damage to the Premises) in accordance with the terms hereof. Any portion of the Award or Loss Proceeds in excess of the Proceeds Threshold shall be delivered to Landlord and Landlord shall hold such amounts in a reserve fund created for this purpose (the "Restoration Fund") and disburse amounts from the Restoration Fund for payment of costs of the restoration of the Premises in accordance with the following conditions:

A. Prior to commencement of restoration, (i) the architects, contracts, contractors, plans and specifications and a budget for the restoration shall have been approved by Landlord, (ii) Landlord shall be provided with mechanics' lien insurance (if available) and acceptable performance and payment bonds from the general contractor (or designer/builder, as the case may be) which insure satisfactory completion of and payment for the restoration, are in an amount and form and have a surety acceptable to Landlord, and name Landlord as additional payee, and (iii) to the extent permitted by applicable Laws, appropriate waivers of mechanics' and materialmen's liens shall have been obtained and/or filed;

B. At the time of any disbursement, no Default shall exist and no mechanics' or materialmen's liens shall have been filed against any of the Premises and remain undischarged and Landlord shall be reimbursed for its reasonable out-of-pocket third-party costs (which shall in no event include any fee of any kind to Landlord for overhead or supervision) incurred in connection with obtaining the Award and making such disbursements;

C. All costs of restoration shall first be paid by Tenant to the extent of the amount of the Award or Loss Proceeds below the Proceeds Threshold received by Tenant;

D. After Tenant has paid for costs of Restoration from the Award or Loss Proceeds below the Proceeds Threshold received by Tenant, disbursements from the Restoration Fund shall be made from time to time by Landlord (but not more than once in each thirty (30) day period) in an amount not exceeding the cost of the work completed since the last disbursement, upon receipt of (i) satisfactory evidence, including architects' certificates, of the stage of completion, the estimated total cost of completion and performance of the work to date in a good and workmanlike manner in accordance with the contracts, plans and specifications, (ii) waivers of liens, (iii) contractors' and subcontractors' sworn statements as to completed work and the cost thereof for which payment is requested, (iv) a satisfactory bringdown of title insurance and (v) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed, in place and free and clear of mechanics' and materialmen's lien claims;

E. Each request for disbursement shall be accompanied by a certificate of Tenant, signed by an authorized signatory of Tenant, describing the restoration work for which payment is requested, stating the cost incurred in connection therewith, stating that Tenant has not previously received payment for such work and stating that such work has been fully completed and complies with the applicable requirements of this Lease;

F. Landlord shall maintain the Restoration Fund in accordance with the accounting principles and standards issued by the Financial Accounting Foundation's Governmental Accounting Standards Board. Landlord shall provide to Tenant on an annual basis, no later than 120 days after the end of Landlord's fiscal year, copies of the unaudited financial statements for such then-ending fiscal year; and shall provide copies of the audited financial statements promptly upon receipt of same by the Landlord; and

G. Such other reasonable conditions (which shall not include any obligation to provide additional collateral) as Landlord may impose, so long as same are reasonably consistent with conditions then being customarily required by prudent institutional owners under similar circumstances.

24.02 Deficiency. If the estimated cost of completing the restoration work free and clear of all liens, as reasonably determined by Landlord, exceeds the amount of the Loss Proceeds or Award available for such restoration, Landlord may require that Tenant expend its own funds toward the restoration Work in an amount equal to such deficiency prior to the disbursement of any sums (or any further sums, as the case may be) from the Restoration Fund.

24.03 Remaining Sums. If any sum remains in the Restoration Fund after completion of the restoration work, such sum shall be paid to Tenant promptly upon completion of such work and Tenant's compliance with the provisions of this Article 24, including obtaining appropriate lien waivers and releases, and all permits required for legal occupancy of the Improvements.

24.04 Refunds of Costs. The operation of the conditions to advances under Section 24.01 shall not constitute a basis for Landlord to withhold reimbursement to Tenant of costs expended by Tenant in connection with such restoration to the extent same were expended in compliance with the delivery requirements of Section 24.01, within thirty (30) days after Tenant's request therefor, provided that after such payment the estimated cost of completing the restoration work free and clear of all liens, as reasonably determined by Landlord, does not exceed the amount remaining in the Restoration Fund less any amounts that may be due Landlord under this Article 24.

25. EARLY TERMINATION BY TENANT

25.01 Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have the right to terminate this Lease at any time, for any or no reason, upon not less than 225 days' prior written notice to Landlord ("Early Termination Notice"), which Early Termination Notice shall specify the date on which this Lease shall terminate ("Early Termination Date"); provided, however, that such Early Termination Date shall not be during any term or semester at the college operated pursuant to the School Use. As a condition of the right of termination provided in this Section 25.01, on or prior to the Early Termination Date, Wengen Alberta, Limited Partnership, an Alberta limited partnership ("Wengen"), shall have funded not less than $20,000,000 in capital to Tenant as described in that certain letter dated September 10, 2009 from Wengen to Mayor of Santa Fe and Members of the City Council of Santa Fe (the "Capital Commitment Letter"). On the Early Termination Date (i) all obligations of Tenant hereunder shall terminate, except those that by their terms expressly survive the termination hereof, (ii) Tenant shall immediately vacate the Premises and shall have no further right, title or interest in

or to any of the Premises, including, without limitation, the preferential purchase rights under Article 37 hereof and (iii) Tenant shall pay to Landlord the Early Termination Payment, if any. For purposes of this Lease, "Early Termination Payment" shall mean the amount equal to (A) $20,000,000 minus (B) the aggregate amount of all capital funded to Tenant by Wengen as described in the Capital Commitment Letter and expended by Tenant in connection with the Premises for payment of costs related to, among other things, repairs, maintenance or improvements to the Premises and the operation of the college thereon. Landlord acknowledges and agrees that other than Landlord's right to receive the Early Termination Payment, if applicable, Landlord shall not be entitled to receive, and shall not seek to recover, any additional compensation or payment from, or on behalf of, Tenant in connection with an early termination of this Lease pursuant to this Section 25.01.

26. SUBORDINATION; LANDLORD WAIVER

26.01 Provided that Landlord and any mortgagee or beneficiary with a lien on the Premises shall execute and deliver to Tenant a subordination and non-disturbance and attornment agreement ("SNDA") in customary form and otherwise reasonably acceptable to Tenant and such mortgagee or beneficiary, this Lease shall be subject and subordinate at all times to the lien of the mortgage or deed of trust of such mortgagee or beneficiary (whether now existing or hereafter executed), and Tenant covenants and agrees to execute and deliver to Landlord such SNDA if requested by Landlord, a mortgagee or beneficiary. In the event that any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant will, notwithstanding any subordination, attorn to and become the tenant of the successor in interest to Landlord, provided that such successor in interest has executed an SNDA. In the event that a mortgage or deed of trust affects the Premises on the Lease Commencement Date, Landlord shall, concurrently with the execution and delivery of this Lease, deliver to Tenant an SNDA executed by Landlord and the holder of such mortgage or deed of trust.

26.02 Landlord agrees that, upon the request of any party that shall be Tenant's senior secured lender, subordinate secured lender, purchase money equipment lender or an equipment lessor of Tenant, Landlord shall execute and deliver a commercially reasonable waiver of Landlord's statutory lien rights, if any, and a consent and agreement with respect to the respective rights of Landlord and such party regarding the security interests in, and the timing and removal of, any inventory, equipment or other collateral owned by Tenant in which such party has a secured interest (the "Collateral"), in form and substance reasonably acceptable to Landlord, so long as such waiver and agreement (i) provides for the indemnification of Landlord against any claims by Tenant or any party claiming through Tenant and against any physical damage caused to the Premises, in connection with the removal of any of the Collateral by such party, (ii) expressly excludes any claim by such party to any right, title or interest in or to any of the Building Systems Equipment as defined in this Lease, (iii) provides for a reasonable, but limited, timeframe for the removal of such Collateral by such party after the expiration of which same shall be deemed abandoned, and (iv) provides for the per diem payment of Base Rent due hereunder by such party for each day following the date of the expiration or termination of this Lease thereafter that Landlord permits such party's Collateral to remain in the Premises.

27. GOVERNING LAW; JURISDICTION

27.01 This Lease shall be construed in accordance with the Laws of the State of New Mexico, without regard to principles of conflicts of law. Landlord and Tenant hereby submit to local jurisdiction in the County of Santa Fe, State of New Mexico and each agrees that any action by Tenant against Landlord or Landlord against Tenant, as the case may be, shall be instituted in the County of Santa Fe, State of New Mexico, and that courts located in Santa Fe County shall have personal jurisdiction over Tenant for any action brought by Landlord against Tenant, and courts located in Santa Fe County shall have personal jurisdiction over Landlord for any action brought by Tenant against Landlord, in the County of Santa Fe, State of New Mexico.

28. NEGOTIATED TERMS

28.01 This Lease is the result of the negotiations of the parties and has been agreed to by both Landlord and Tenant after prolonged discussion.

29. SEVERABILITY

29.01 If any provision of this Lease is found to be unenforceable, all other provisions shall remain in full force and effect.

30. BROKERS

30.01 Each party represents and warrants to the other that it has had no dealings with any broker or agent in connection with this Lease. Each party agrees to hold harmless and indemnify the other from and against any and all Claims and Losses from any breach by the indemnifying party of the representation and warranty set forth in the first sentence of this Section 30.01. The terms of this Section 30.01 shall survive the termination or expiration of this Lease.

31. QUIET POSSESSION

31.01 So long as a Default has not occurred and is continuing, Tenant shall quietly have, hold and enjoy the Premises during the Term without disturbance from Landlord or from any other person claiming by, through or under Landlord.

32. MISCELLANEOUS PROVISIONS

32.01 Multiple Parties. Whenever the singular number is used in this Lease and when required by the context, the same will include the plural, and the masculine gender will include the feminine and neuter genders, and the word "person" will include corporation, firm, partnership, or association. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease will be joint and several.

32.02 Captions. The headings or titles to sections of this Lease are not a part of this Lease and will have no effect upon the construction or interpretation of any part of this Lease.

32.03 Entire Agreement. This instrument, including the exhibits and attachments hereto, contains all of the agreements and conditions made between the parties to this Lease.

32.04 Time. Time is of the essence of each term and provision of this Lease.

32.05 Payments. Except as otherwise expressly stated, each payment required to be made by Tenant is in addition to and not in substitution for other payments to be made by Tenant.

32.06 Successors Bound. Subject to Articles 12 and 18, the terms and provisions of this Lease are binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of Landlord and Tenant.

32.07 Interpretational Rule. For purposes of this Lease, whenever the words "include," "includes," "including," "e.g.," or "for example" are used, they shall be deemed to be followed by the words "without limitation" (to the extent that such words do not, in fact, so follow).

32.08 Press Releases. Neither Party shall issue or release any public notice, statement and/or press release or make any public comment concerning this Lease (including Landlord's and Tenant's negotiation and execution of this Lease or the individuals involved in the negotiation and execution of this Lease) without the prior written approval of the other Party.

32.09 Unavoidable Delay.

A. Generally. Whenever a day is appointed herein on which, or a period of time is appointed in which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is reasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lockouts, labor disputes, civil commotion, war, warlike operation or conditions, acts of terrorism, sabotage, legal requirements, governmental actions, inactions, regulations or control, fire or other casualty, shortages or inability to obtain materials or equipment, or to obtain fuel or energy, adverse weather conditions or other acts of God, or other causes beyond such party's reasonable control (financial inability excepted) ("Unavoidable Delays"); provided, however, that nothing contained herein shall excuse either party hereto from payment of any amount or charge required of it hereunder.

B. Notice of Unavoidable Delay; Mitigation. It shall be a condition of a party's right to claim delay by Unavoidable Delay that that party seeking to be excused from performing (the "Excused Party") notify the other party in writing thereof. If such notice of the Excused Party is given within five (5) Business Days after the Excused Party has actual knowledge of a delay by Unavoidable Delay, then such delay shall relate back to the actual commencement of such delay; but if the Excused Party fails to notify the other party of any such delay within the foregoing five (5) Business Day period, then the delay shall be deemed to commence upon the date of any such notification. The Excused Party shall also provide written notice of the estimated length of any applicable delay as promptly as is reasonably practicable after its determination of the estimated length of delay. In each and every case of delay, the Excused Party shall take reasonable measures to mitigate, and shall use commercially reasonable

efforts to cause its contractors (if applicable) to mitigate, the extent of delay caused by any delay (which shall, if the other party so requests, include the use of overtime labor), except, however, that to the extent that the Excused Party would be required to bear any additional costs (which may include the use of overtime labor, if necessary) in order to mitigate such delay or costs, the Excused Party shall be obligated to take such measures only if the other party has agreed in advance, in a form reasonably acceptable to the Excused Party, to pay such additional costs.

32.10 Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original hereof, and all of which, taken together, shall constitute one and the same agreement.

32.11 No Consequential or Punitive Damages. Notwithstanding anything to the contrary contained in this Lease, in no event shall either party hereto be liable for, and each party, on behalf of itself and (in the case of Tenant) the Tenant Parties and Tenant Indemnitees, and (in the case of Landlord) the Landlord Parties and Landlord Indemnitees, and their respective successors and assigns, hereby waives any claim against the other (and the other's Affiliates) for, any consequential or punitive damages (including loss of profits or business opportunity) arising under or in connection with this Lease.

32.12 Prevailing Party. In the event of any litigation between the parties, the prevailing party (as determined by the applicable judge) in the action or proceeding shall be entitled to obtain, as part of the judgment, all reasonable attorneys' fees, costs and expenses incurred in connection with such litigation, except as may be limited by applicable Laws.

32.13 Waiver of Jury Trial. THE PARTIES HEREBY EACH IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER OR ARISING OUT OF OR RELATED TO THIS LEASE OR THE PREMISES.

32.14 Costs. Whenever in this Lease it provides that Landlord shall do any thing, take or perform any action, or cooperate with Tenant, at "no cost to Landlord" or "subject to reimbursement by Tenant" or language of similar import, same shall be interpreted to mean that Landlord shall be entitled to payment or reimbursement from Tenant, as Additional Rent hereunder, for all of Landlord's actual and reasonable out-of-pocket costs and expenses incurred in connection with such thing, act or cooperation, including, without limitation, reasonable attorneys fees and expenses.

33. BOOKS AND RECORDS

33.01 Tenant shall keep adequate records and books of account with respect to the finances and business of Tenant generally and with respect to the Premises, in accordance with generally accepted accounting principles ("GAAP") consistently applied.

33.02 Tenant shall deliver to Landlord annual audited financial statements of Tenant certified by a nationally recognized firm of independent certified public accountants (a "CPA") on or before the day that is one hundred twenty (120) days after the close of each fiscal year of Tenant. All financial statements shall be prepared in accordance with GAAP consistently applied. All annual financial statements shall be accompanied by an opinion of said accounting

firm stating that (A) there are no qualifications as to the scope of the audit and (B) the audit was performed in accordance with GAAP.

34. MEMORANDUM OR SHORT FORM OF LEASE

34.01 Concurrently with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver a recordable memorandum or short form of this Lease, in the form attached hereto as Exhibit "H". Landlord or Tenant shall have the right to record any such memorandum or short form of this Lease against the Premises at its sole cost and expense. In the event that any such memorandum or short form of this Lease is so recorded, then, within ten (10) days following the expiration or termination of this Lease, Landlord and Tenant shall enter into such documentation as may be reasonably required to remove the same of record, if appropriate.

35. EXTENSION OPTIONS

35.01 Generally. Tenant is hereby granted four (4) options (collectively, the "Extension Options" and individually an "Extension Option") to extend the Term for an additional term of ten (10) years each (each, an "Extension Term", and collectively, "Extension Terms"), each beginning on the day after the expiration of the initial Term or subsequent Extension Term, as the case may be, and expiring on the date that is immediately prior to the tenth (10^{th}) anniversary thereof (unless terminated sooner pursuant to any other terms or provisions of the Lease), on all of the same terms and conditions as set forth in this Lease (including Tenant's obligations with regard to taxes), but the Base Rent for such Extension Term shall be determined as set forth on Schedule 1 hereto (and without any additional options to extend the Term after the expiration of the fourth (4^{th}) Extension Term). Unless Tenant delivers written notice of its election not to extend the Term to Landlord at least eighteen (18) months before the expiration of the initial lease Term or subsequent Extension Term, as applicable, the Term of this Lease shall be automatically deemed extended for the applicable Extension Term without the need for any further instrument. If Tenant timely delivers a notice of non-renewal, or if this Lease is terminated pursuant to any of its other terms or provisions prior to the expiration of the initial Term or subsequent Extension Term, as applicable, all then remaining Extension Options shall lapse, and Tenant shall thereafter have no right to extend or further extend the Term.

35.02 Confirmatory Amendment. Within a reasonable time after the exercise of an Extension Option as provided above, Landlord and Tenant shall execute and deliver a mutually acceptable amendment to this Lease, confirming the fact that the Term has been extended for the applicable Extension Term, the amount of Base Rent due with respect to such Extension Term and other pertinent matters. The failure of either party to execute and deliver any such amendment shall not, however, affect the validity of the determination of the Base Rent with respect to the applicable Extension Term, as provided above.

36. TAX TREATMENT; REPORTING

36.01 Landlord and Tenant each acknowledge that each shall treat this transaction as a true lease for state law purposes and shall report this transaction as a lease for Federal income tax purposes. For Federal income tax purposes each shall report this Lease as a true lease with

Landlord as the owner of the Premises and Building Systems Equipment and Tenant as the lessee of such Premises and Building Systems Equipment including: (1) treating Landlord as the owner of the property eligible to claim depreciation deductions under Section 167 or 168 of the Internal Revenue Code of 1986 (the "Code") with respect to the Premises and Building Systems Equipment, (2) Tenant reporting its Rent payments as rent expense under Section 162 of the Code, and (3) Landlord reporting the Rent payments as rental income. For the avoidance of doubt, nothing in this Lease shall be deemed to constitute a guaranty, warranty or representation by either Landlord or Tenant as to the actual treatment of this transaction for state law purposes and for federal income tax purposes. Notwithstanding any provision in this Lease to the contrary, Landlord and Tenant agree that Tenant shall have the right to claim, during the Term of this Lease, all depreciation expenses associated with the cost of Alterations performed by or on behalf of Tenant after the date of this Lease in connection with the construction of the classroom and educational facilities and other related improvements constructed in the Building unless the costs of such Alterations were paid for by Landlord subsequent to the date of this Lease.

37. TENANT'S RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

37.01 Right of First Offer.

A. If, at any time during the Term of this Lease, Landlord intends to sell, or offer to sell, the Purchase Option Property in a bona fide arms' length sale to a third party purchaser (a "Third Party Purchaser"), then Landlord shall deliver to Tenant a written notice (the "Landlord Offer") prepared in good faith by Landlord stating the terms upon which Landlord intends to sell the Purchase Option Property, including the sales price, method of payment, all material contingencies, including, without limitation, any financing contingency, the proposed time period for the conduct of due diligence and the proposed date of closing. The right of Tenant set forth in this Section 37.01 shall be referred to herein as the "Right of First Offer".

B. Tenant shall have a period of thirty (30) days from the date of its receipt of the Landlord Offer (the "Offer Period") to notify Landlord in writing that it is interested in purchasing the Purchase Option Property and to indicate which terms of the Landlord Offer it accepts or rejects and provide alternative terms for terms that Tenant rejects (the "Tenant Counteroffer"). If Tenant so notifies Landlord of its interest in purchasing the Purchase Option Property and/or provides a Tenant Counteroffer, thereafter, the parties shall have an additional thirty (30) days (the "Term Sheet Period") to negotiate in good faith to attempt to agree upon and sign a term sheet (the "Term Sheet"), but nothing herein shall be construed to require Landlord to agree to the Tenant Counteroffer. Within thirty (30) days after the execution of a Term Sheet (the "P&S Period"), if applicable, the parties will use all reasonable and diligent efforts to prepare, negotiate in good faith and execute a contract of sale ("Purchase & Sale Agreement") reflecting the principal terms contained in the Term Sheet and such other terms as are reasonable and customary in connection with the purchase and sale of similar use and size real property in the City of Santa Fe, New Mexico.

C. If (i) Tenant does not deliver to the Landlord in writing its Tenant Counteroffer prior to the expiration of the Offer Period, (ii) the parties fail to execute a Term Sheet within the Term Sheet Period despite having used reasonable and diligent efforts to do so

within such time period, (iii) the parties fail to execute a Purchase & Sale Agreement during the P&S Period despite having used reasonable and diligent efforts to do so within such time period, or (iv) Tenant rejects the Landlord Offer, then Tenant's Right of First Offer shall terminate with respect to the Purchase Option Property and Landlord shall have the right to sell the Purchase Option Property to any other Third Party Purchaser; provided, however, that if the Landlord is prepared to accept a bona fide offer to purchase the Purchase Option Property from a Third Party Purchaser (the "Third Party Offer") on terms that include a purchase price which is less than the purchase price set forth in the Tenant Counteroffer or, if Tenant does not deliver a Tenant Counteroffer, in the Landlord Offer (including for purposes of determining said purchase price any other terms that when their financial or economic impact on the overall transaction proposed by the Third Party Purchaser are taken into account along with the stated purchase price in such bona fide offer would result in a purchase price which is less than the purchase price contained in the Tenant Counteroffer or, if Tenant does not deliver a Counteroffer, in the Landlord Offer), then before Landlord may accept such Third Party Offer, Landlord must provide a new Landlord Offer to Tenant on the same economic terms as the Third Party Offer, except that the offer period shall be ten (10) days rather than thirty (30) days. In addition, if Landlord fails to consummate a sale of the Purchase Option Property to a Third Party Purchaser within two-hundred forty (240) days after the expiration of the Offer Period, then the Landlord must provide a new Landlord Offer pursuant to Section 37.01.A. above before the Landlord may accept any other Third Party Offer. If Tenant's Right of First Offer terminates, then within five (5) Business Days following a written request from the Landlord, Tenant shall execute an acknowledgment of such termination of its Right of First Offer in recordable form.

D. Without limitation of any rights of the Tenant otherwise set forth in this Article 37, the provisions of this Section 37.01 shall not apply in connection with the following: (i) any sale, transfer, lease, disposition or other transaction between Landlord and any other City of Santa Fe governmental or quasi-governmental entity, (ii) any transfer of the Purchase Option Property to any governmental or quasi-governmental entity with power of condemnation or pursuant to any other similar proceeding affecting the Purchase Option Property, or (iii) the granting of any bona fide mortgage on the Purchase Option Property and any other similar instrument and other related financing documents ("Financing Documents") entered into with a bank or other third party in the business of providing financing or economic assistance secured all or in part by real estate (a "Financing Transaction"). Tenant shall have no further rights pursuant to this Article 37 from and after any foreclosure of the Purchase Option Property, deed-in-lieu or similar transfer to or at the direction of the holder of such Financing Documents following an event of default thereunder or any other form of termination of the Landlord's interest in the Purchase Option Property after a Financing Transaction following an event of default under the Financing Documents.

37.02 Right of First Refusal. If Landlord shall receive any unsolicited offer from a Third Party Purchaser to purchase the Purchase Option Property that Landlord wishes to accept, Landlord shall deliver to Tenant a written notice setting forth the terms of the offer received by Landlord from the Third Party Purchaser (including, the sales price, method of payment, all material contingencies, including, without limitation, any financing contingency, the proposed time period for the conduct of due diligence, and the proposed date of closing). Upon receipt by Tenant of any such information regarding an offer to purchase by a Third Party Purchaser, Tenant shall have thirty (30) days to respond to such offer. Any such response by Tenant to such

offer or election by Tenant to purchase the Purchase Option Property shall be given in accordance with and in the time frames provided for notices and the sale completed in accordance with the terms and provisions of Section 37.01. The right of Tenant set forth in this Section 37.02 shall be referred to herein as the "Right of First Refusal".

37.03 Right to Purchase.

A. Landlord does hereby give and grant to Tenant the exclusive right and option to purchase the Purchase Option Property (the "Purchase Option"). The Purchase Option may be assigned in whole, but not in part, at any time by Tenant to any Affiliate of Tenant, without Landlord's consent. Tenant or any assignee of Tenant with respect to the Purchase Option shall be referred to herein sometimes as the "Option Party". The Purchase Option may be exercised by the Option Party, in the Option Party's sole and absolute discretion, at any time during the Term of this Lease, as the same may be extended or renewed from time to time (the "Option Period"). The purchase price for the Purchase Option Property to be paid by the Option Party to the Landlord shall be equal to the greater of (i) the Minimum Purchase Price and (ii) the Net Adjusted Purchase Option Appraised Value (the "Purchase Price"). The "Minimum Purchase Price" shall be the amount equal to (i) $28,500,000.00, *plus* (ii) any and all other documented costs incurred by Landlord in the Premises over the Term up to the date of closing, *minus* (iii) any positive balances in reserve funds established pursuant to this Lease or in connection with the Transaction Bonds (including, without limitation, the Electrical Repair Fund and any debt service reserves). The "Purchase Option Appraised Value" shall be the fair market value of the Purchase Option Property determined by a written appraisal of the Purchase Option Property made by a qualified appraiser with at least five (5) years of full-time commercial appraisal experience in the geographical area where the Purchase Option Property is located and who is mutually acceptable to Landlord and Tenant. The Purchase Option Appraised Value shall be reduced by (i) aggregate amount of all Purchase Price Credit Payments in accordance with Schedule "3" attached hereto made by Tenant over the Term up to the date of closing, (ii) the total amount of capital improvements made over the Term up to the date of closing by Tenant to the Premises, but not including any work items identified in the Deferred Maintenance Schedule, (iii) any positive balances in escrows and reserves established pursuant to this Lease or in connection with the Transaction Bonds (including, without limitation, the Electrical Repair Fund and any debt service reserves), (iv) the Economic Development Benefits and (v) any other credits due to Tenant (such adjusted amount being the "Adjusted Purchase Price Appraised Value"). If the Adjusted Purchase Price Appraised Value is greater than the Minimum Purchase Price, then the "Net Adjusted Purchase Price Appraised Value" shall be determined and shall be an amount equal to (A) the Minimum Purchase Price, plus (B) the amount determined by (i) multiplying fifty percent (50%) by (ii) the amount equal to the Adjusted Purchase Price Appraised Value minus the Minimum Purchase Price. In order for Landlord or Tenant to receive credit toward the Minimum Purchase Price or the Adjusted Purchase Price Appraised Value, as the case may be, for capital improvements made by Landlord or Tenant, as the case may be, in excess of Five Thousand Dollars ($5,000) such party shall send to the other party, no later than ninety (90) days after the end of each calendar year, documentation sufficient to evidence the amount of capital improvements in excess of Five Thousand Dollars ($5,000) made to the Premises by such party during such calendar year. Landlord and Tenant shall have thirty (30) days to review the documentation regarding capital investments received from the other party. If the amounts reflected in such documentation are challenged by the receiving party, disputes shall

be resolved by arbitration, with such arbitration procedures to be agreed to by Landlord and Tenant. If Landlord or Tenant fails to deliver sufficient evidence to the other party for any calendar year regarding capital improvements in excess of Five Thousand Dollars ($5,000), such party shall not receive credit toward the Minimum Purchase Price or the Adjusted Purchase Price Appraised Value, as the case may be, for such capital improvements made during such calendar year. "Purchase Price Credit Payment" means the amount set forth opposite each Base Rent Payment Date set forth on Schedule "3" attached hereto.

B. If the Option Party intends to exercise the Purchase Option, the Option Party must give written notice (the "Option Exercise Notice") to Landlord to such effect on or prior to the last day of the Option Period (the "Option Termination Date"). If the Option Party gives the Option Exercise Notice on or prior to the Option Termination Date, the purchase of the Purchase Option Property shall be closed within ninety (90) days after the date on which the Option Exercise Notice has been received by Landlord or on such other later date as may be agreed to in writing by Landlord and the Option Party in order to comply with any applicable Laws and Requirements (the "Purchase Date").

C. Landlord agrees that except as expressly permitted herein Landlord shall not create, incur or cause to exist any lien, encumbrance, easement, restriction or other obligation on or against the Land or the other Purchase Option Property during the term of this Agreement, other than the Permitted Encumbrances, without the prior written consent of the Option Party, which consent may be withheld or granted in the Option Party's sole and absolute discretion. Landlord and Tenant agree that on the Purchase Date, Purchase Option Property shall be subject only to the Permitted Encumbrances and such other liens, encumbrances, easements, restrictions or obligations that Option Party has agreed to pursuant to the immediately preceding sentence (collectively, the "Permitted Exceptions"), and Landlord shall be obligated to cause any liens, encumbrances, easements, restrictions or other obligations on or against the Purchase Option Property that are not Permitted Exceptions to be removed, terminated or otherwise satisfied in full prior to the Purchase Date and the conveyance of the Purchase Option Property to the Option Party. For the avoidance of doubt, if any collateral documents or other documents relating to any financing or indebtedness by or of Landlord are included as a Permitted Exception, such indebtedness and obligations with respect thereto must be paid in full and satisfied and released prior to the conveyance of the Purchase Option Property to the Option Party. Option Party shall not be obligated to assume any indebtedness or other obligations of Landlord in connection with the conveyance of the Purchase Option Property pursuant to the Purchase Option.

37.04 Memorandum of Rights. On the date of this Lease, Landlord and Tenant agree to execute a Memorandum of Right of First Offer, Right of First Refusal and Purchase Option in the form attached hereto as Exhibit "I" (the "Memorandum of Rights") which Memorandum of Rights shall be recorded in the Office of the County Clerk of Santa Fe County, New Mexico and shall be recorded immediately after the recording of the deed evidencing Landlord's fee simple title in and to the Land and prior to any other encumbrances on the Land.

37.05 Use Restriction; City's Right of First Refusal

A. In the event that Tenant exercises the Purchase Option, Right of First Refusal or Right of First Offer, Tenant will retain the School Use for a period equal to seven (7)

years less the number of years elapsed from the Lease Commencement Date to the Purchase Date.

B. In the event that Tenant exercises the Purchase Option, Right of First Refusal or Right of First Offer, Landlord will have a right of first refusal to repurchase the Purchase Option Property for a period equal to ten (10) years less the number of years that have elapsed from the Lease Commencement Date to the Purchase Date, provided that such right of first refusal may be exercised only if the former Tenant, now owner of the Purchase Option Property, elects to sell the Purchase Option Property during such period to a third party in a non-sale-leaseback transaction.

38. LANDLORD PROVISIONS

38.01 Authority of Landlord Landlord represents and warrants to Tenant that Landlord has all necessary and proper power and authority to lease the Premises to Tenant and grant the Purchase Option to Tenant and the power and authority to execute, deliver and perform this Lease and any and all other documents executed in connection herewith, including, without limitation, the Memorandum of Lease and Memorandum of Rights. The execution, delivery and performance of this Lease and the documents executed in connection herewith have been duly authorized by all requisite action on the part of Landlord and will not contravene any provision of Law. This Lease and the documents executed in connection herewith have been duly and validly executed by Landlord and constitute the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms.

39. CONFIDENTIALITY

39.01 Subject to the requirements of Chapter 14, Article 2 NMSA 1978, the Inspection of Public Records Act (Public Records Act), Chapter 6, Article 25 NMSA 1978, the Statewide Economic Development Finance Act (Economic Development Act), and any other Laws and Requirements regulating the release and disclosure of information in the hands of public bodies or excepting certain information from such disclosure (collectively, "Public Information Laws"), information obtained by Landlord from Tenant that is specifically exempt from disclosure under any Public Information Law ("Protected Information") and is prominently identified by Tenant as such on its face shall not be disclosed by Landlord to any other person or entity other than employees, affiliates, elected and appointed officials of the City, outside advisors or agents of Landlord or such other Landlord Party (collectively, "Representatives") who need to have access to such information in order for Landlord to carry out its obligations under this Lease. Landlord and each Landlord Party will exercise the same standard of care to prevent the unauthorized disclosure of Tenant's Protected Information as it exercises to prevent the unauthorized disclosure of its own Protected Information.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

CITY OF SANTA FE, NEW MEXICO

By: _____
David Coss
Mayor

ATTEST:

_____
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

_____
FRANK D. KATZ, CITY ATTORNEY

APPROVED:

_____
DAVID N. MILLICAN, FINANCE DIRECTOR

TENANT:

SANTA FE HIGHER EDUCATION, LLC,
a New Mexico limited liability company

By: _____
Name: Paula R. Singer
Title: President

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

CITY OF SANTA FE, NEW MEXICO

By: _____
David Coss
Mayor

ATTEST:

_____
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

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FRANK D. KATZ, CITY ATTORNEY

APPROVED:

_____
DAVID N. MILLICAN, FINANCE DIRECTOR

TENANT:

SANTA FE HIGHER EDUCATION, LLC,
a New Mexico limited liability company

By: Paula R. Singer
Name: Paula R. Singer
Title: President

8. INSURANCE

8.01 Tenant's Insurance. Tenant shall obtain, pay for and maintain at all times during the Term the following insurance on or in connection with the Premises:

(a) Insurance against all risk of physical loss or damage to the Improvements and Building Systems Equipment as provided under "Special Causes of Loss" form coverage, and including customarily excluded perils of hail, windstorm, flood coverage, earthquake and, to the extent required by Landlord, terrorism, in amounts no less than the actual replacement cost of the Improvements and Building Systems Equipment; provided that, if Tenant's insurance company is unable or unwilling to include any orall of such excluded perils, Tenant shall have the option of purchasing coverage against such perils from another insurer on a "Difference in Conditions" form or through a stand-alone policy. Such policies shall contain Replacement Cost and Agreed Amount Endorsements and "Law and Ordinance" coverage (at full replacement cost). Such policies and endorsements shall contain deductibles of not more than $500,000 per occurrence.

(b) Commercial General Liability Insurance, against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Premises, in an amount not less than $25,000,000 per occurrence/annual aggregate on an ~~claims~~ occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $5,000,000 per occurrence/annual aggregate, such policies to have deductibles of not more than $500,000 per occurrence. **The Commercial General Liability policy shall include broad contractual liability coverage for liabilities assumed under this Lease by Tenant as an "insured contract."**

(c) Business Automobile Liability Insurance ~~(including Non-Owned and Hired Automobile Liability), against claims for personal and bodily injury~~**for all owned, non-owned and hired automobiles against claims for bodily injury**, death or property damage occurring on, in or as a result of the use of the Premises, in an amount of not less than $25,000,000 per occurrence/annual aggregate on a claims occurrence basis.~~; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $5,000,000 per occurrence/annual aggregate, such policies to have deductibles of not more than $500,000 per occurrence.~~

(d) Workers' compensation insurance in the amount required by applicable Law and employers' liability insurance covering all persons employed by Tenant in connection with any work done on or about any of the Premises, in an amount not less than $1,000,000 per ~~occurrence~~**accident or disease**.

(e) Comprehensive Boiler and Machinery/Equipment Breakdown Insurance on any of the Building Systems Equipment or any other equipment on or in the Premises, in an amount not less than $5,000,000 per accident for damage to property (and which may be carried as part of the coverage required under clause (a) above or pursuant to a separate policy or endorsement). Either such Boiler and Machinery policy or the Special Causes of Loss policy required in clause (a) above shall include at least (a) $3,000,000 per incidence for Off-

Premises Service Interruption, (b) $2,000,000 per incidence for Expediting Expenses, (c) $2,000,000 per incidence for Ammonia Contamination, and (d) $2,000,000 per incidence for Hazardous Materials Clean-Up Expense; and may contain deductibles not to exceed $50,000.

(f) Business Interruption Insurance at limits sufficient to cover 100% of the period of indemnity not less than twelve (12) months from time of loss, including extended period of indemnity which provides that after the physical loss to the Improvements and equipment has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Premises are repaired or replaced and operations are resumed, whichever first occurs.

(g) During any period in which Major Alterations of any other substantial Alterations at the Premises are being undertaken, builder's risk insurance covering the total completed value, including all hard and soft costs (which shall include business interruption coverage) with respect to the Improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction, alteration or repair of Improvements or Building Systems Equipment, together with such other endorsements as Landlord may reasonably require, and general liability, worker's compensation and automobile liability insurance with respect to the Improvements being constructed, altered or repaired.

(h) Tenant shall, at all times during the Term, maintain, at Tenant's sole cost and expense, an insurance policy naming Landlord as an additional insured covering the Landlord's Personal Assets, insuring the Landlord's Personal Assets against loss by fire and other casualty or theft, with such coverage and deductibles to be agreed to between Landlord and Tenant and consistent with insurance coverage previously maintained on the Landlord's Personal Assets (whether by Landlord or any prior owner of the Landlord's Personal Assets).

(i) Such other insurance (or other or different terms with respect to any insurance required pursuant to this Article 8, including without limitation amounts and types of coverage, deductibles, form of mortgagee clause, insurer rating) on or in connection with any of the Premises as Landlord may reasonably require; provided that such insurance is available to Tenant on a commercially reasonable basis and is consistent, as to types of coverage and amounts, with the requirements generally of prudent owners or operators of similar properties.

8.02 The insurance required by Section 8.01 shall be written by companies having a Best's rating of A:X or above and a claims paying ability rating of AA or better by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc. or equivalent rating agency approved by Landlord in its sole discretion and are authorized to write insurance policies by, the State Insurance Department (or its equivalent) for the State. The insurance policies (i) shall be for such terms as Landlord may reasonably approve and (ii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. If said insurance or any part thereof shall expire, be withdrawn, become void, voidable, unreliable or unsafe for any reason, including a breach of any condition thereof by Tenant or the failure or impairment of the capital of any

insurer, or if for any other reason whatsoever said insurance shall become reasonably unsatisfactory to Landlord, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord. ~~The insurance referred to in clauses 8.01(a), 8.01(e) and 8.01(g) shall name Landlord as owner and Tenant as its interest may appear. The insurance referred to in clause 8.01(e) shall name Landlord as additional insured, and the insurance referred to in clause 8.01(f) shall name Landlord as insured and as loss payee~~**The insurance referred to in clauses 8.001A, 8.01E, and 8.01H shall name Landlord as additional insured and as loss payee. The insurance referred to in clauses 8.01B, 8.01C, 8.01F, and 8.01G shall name Landlord as an additional insured.**

8.03 Each policy required by any provision of Section 8.01, except clause (d) thereof, shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Landlord.

8.04 Tenant shall pay as they become due all premiums for the insurance required by Section 8.01, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefor or installment then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Landlord all original certificates of insurance evidencing such coverages. All certificates of insurance (including liability coverage) provided to Landlord shall be on ACORD Form 28 (or its equivalent).

8.05 Anything in this Article 8 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to clause 8.01(a) may be carried under a "blanket' policy or policies covering other properties of Tenant or under an "umbrella" policy or policies covering other liabilities of Tenant, as applicable; provided that, such blanket or umbrella policy or policies otherwise comply with the provisions of this Article 8, and upon request, Tenant shall provide to Landlord a Statement of Values which may be reviewed annually and shall be amended to the extent determined necessary by Landlord based on revised Replacement Cost Valuations. A certificate evidencing such blanket or umbrella policy (or a certified copy of such policy of requested by Landlord) shall promptly be delivered to Landlord.

8.06 Tenant shall not carry separate insurance concurrent in form or contributing in the event of a casualty with that required in this Article 8 unless (i) Landlord is included therein as ~~named~~ **an additional insured** insured, with loss payable as provided herein, and (ii) such separate insurance complies with the other provisions of this Article 8. Tenant shall immediately notify Landlord of such separate insurance and shall deliver to Landlord certified copies (or original policies, if requested) thereof.

8.07 Each policy obtained by Tenant shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Landlord and shall contain a full waiver of subrogation against the Landlord. Each policy obtained by Landlord, if any, shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Tenant and shall contain a full waiver of subrogation against Tenant. Tenant waives subrogation against Landlord to extent of insurance proceeds actually received or would have been received if adequate coverage had been in place.

8.08 Proceeds. The proceeds of any insurance required under Section 8.01 shall be payable as follows:

(a) proceeds payable under clauses (b), (c) and (d) of Section 8.01 and proceeds attributable to the general liability coverage of Builder's Risk insurance under clause (f) of Section 8.01 shall be payable to the person or entity entitled to receive such proceeds; and

(b) proceeds of insurance required under clause (a) of Section 8.01 and proceeds attributable to Builder's Risk insurance (other than its general liability coverage provisions) under clause (f) of Section 8.01 shall be payable to Landlord **as loss payee**and applied as set forth in Articles 23 or 24, as applicable. Tenant shall apply the Loss Proceeds to restoration of the Premises in accordance with the applicable provisions of this Lease unless a Termination Event shall have occurred and Tenant has given a Termination Notice.

8.09 Landlord's Right to Obtain Tenant's Insurance. Notwithstanding anything to the contrary contained in this Article 8, if at any time Tenant fails to provide evidence of the insurance required to be maintained by Tenant hereunder within ten (10) Business Days of Landlord's request for same (said requests not to be made more than once per calendar quarter), Landlord shall have the right, but not the obligation, by providing written notice of such election to Tenant, to itself obtain and maintain all or any portion of such insurance, in which event Landlord shall charge Tenant the cost of such insurance as Additional Rent hereunder. In the event that Landlord so elects to obtain and maintain such insurance, Landlord shall cause Tenant, if Tenant so requests in writing, to be added as additional insureds and loss payees under the applicable insurance policy(ies), as its interests may appear. Landlord and Tenant agree to reasonably cooperate with each other in order to coordinate the acquisition and maintenance of any such insurance by Landlord, which may include, without limitation, the execution of any required forms and applications and providing relevant information to Landlord's insurance carrier.

8.10 Primary and Non-Contributory. The insurance required to be maintained by Tenant under this Section 8 shall be primary with respect to Tenant's use, occupancy, maintenance and operations on or in about the Premises, and any insurance or self-insurance maintained by Landlord shall not be required to contribute with it.

8.11 Waiver of subrogation. Tenant agrees to waive its rights of subrogation and all coverages required under this Lease shall be endorsed to provide a waiver of subrogation in favor of Landlord, its officials, officers, and employees. Tenant shall defend and pay any damages as a result of failure to provide the waivers of subrogation from its insurance carrier(S).

8.12 Certificates of Insurance. Acceptance of Certificates of Insurance by Landlord shall not relieve Tenant of any of the insurance requirements set forth herein, nor decrease the liability of the Tenant.

8.12 Increase Requirements and Limits. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of Tenant hereunder.

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8.13 Severability of Interests. A severability of interests provision shall apply to all additional insureds, ensuring that Tenant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

8.14 Excess or Umbrella Liability Insurance (Over Primary). If excess or umbrella policies are used to meet the insurance requirements of this Lease, they shall provide coverage as broad as specified for the underlying coverages, and the full limits of the excess or umbrella coverage shall be available to Landlord. To the fullest extent permitted by law, Landlord, its officials, officers, and employees shall be covered as additional insured and such policy or policies shall contain, or be endorsed to contain, that coverage shall apply on a primary and non-contributory basis to Landlord before Landlord's own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.

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