

LEASE AGREEMENT BY AND BETWEEN

THE CITY OF DEL MAR

AND

THE WINSTON SCHOOL

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GROUND LEASE

RECITALS

A. Pursuant to a lease dated July 1, 2004 ("District Lease"), between The Winston School of San Diego, Inc., a California corporation, ("Tenant") and the Del Mar Unified School District ("District"), Tenant currently occupies and uses for educational purposes portions of real property and the buildings, structures, and other improvements located at 215 Ninth Street, Del Mar, California, 92014.

B. The lease between Tenant and District is subject to an Addendum that extended the term of the District Lease to June 30, 2008.

C. The City of Del Mar ("Landlord") purchased property from the District and is currently the owner of record of all of that certain real property situated in San Diego, California, commonly known as 215 and 225 Ninth Street, Del Mar, California 92014, APN's 300-200-01, 300-200-22, 300-200-23, and more particularly described in *Exhibit A* ("Property").

D. District currently leases from Landlord a portion of the Property and Premises pursuant to a lease dated as of May 15, 2008 between the District and Landlord, which lease provides pursuant to its terms that it may be extended through May 15, 2011 ("District-City Lease"), which lease includes Unit B of the Premises.

E. Tenant agreed to support Landlord's efforts to acquire the Property in exchange for Landlord's entering into a lease with Tenant that permitted Tenant to continue operating its school on the Property.

F. Pursuant to the Assignment of Lease dated May 15, 2008, District transferred its interest in the District Lease to Landlord.

G. Landlord intends to lease to Tenant that portion of the Property identified in *Exhibit B*, attached hereto and incorporated herein (the "Premises").

H. This Ground Lease ("Lease") is entered into as contemplated by the Memorandum of Understanding between the Winston School of San Diego and the City of Del Mar, dated February 21, 2006 ("MOU").

I. In accordance with that Bill of Sale attached hereto as *Exhibit C*, and upon execution of this Lease, Landlord will convey to Tenant Landlord's interest in the buildings, structures, fixtures, and other personal property (identified in *Exhibit C* as the "Transferred Property" and hereinafter referred to as "Improvements") located on the Premises, provided, however, that title to Unit B shall be conveyed separately, upon termination of the District-City Lease. Upon such separate conveyance, Unit B shall be deemed part of the Improvements as defined and referenced in this Lease.

RESOLUTION NO. 2010 - 52

A RESOLUTION APPROVING A GROUND LEASE BETWEEN THE CITY OF DEL MAR AND THE WINSTON SCHOOL OF SAN DIEGO FOR PORTIONS OF THE PROPERTY LOCATED AT 215-225 NINTH STREET, DEL MAR, CA AND AUTHORIZING THE SALE OF CERTAIN IMPROVEMENTS LOCATED ON THE PROPERTY

WHEREAS, on July 31, 2007, the City purchased real property consisting of Assessor Parcel Numbers 300-200-01, 300-200-22 and 300-200-23, commonly known as the Shores Property ("Property"), from the Del Mar Union School District; and

WHEREAS, as part of the City's purchase of the Property, the City assumed an existing lease between the Del Mar Union School District and The Winston School of San Diego for a portion of the Property; and

WHEREAS, on February 21, 2006, the City and The Winston School entered into a Memorandum of Understanding that established certain terms and conditions related to the continued use and occupancy of the Property by The Winston School of San Diego; and

WHEREAS, in accordance with the Memorandum of Understanding, the City and The Winston School have negotiated the proposed fifty-five (55) year ground lease between the City of Del Mar, as landlord, and The Winston School, as tenant ("Ground Lease"); and

WHEREAS, the proposed Ground Lease permits The Winston School to use portions of the Property for up to 55 years, subject to the terms and conditions of the Ground Lease; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City has determined that approval of the Ground Lease is exempt from CEQA review because the lease authorizes the continued use of an existing facility with no presently authorized expansion or construction and includes terms and conditions related to the future development of improvements on the portions of the Property subject to the ground lease, including that any future redevelopment or construction be reviewed by the City consistent with applicable local, State and federal law; and

WHEREAS, the City's lease of the property is authorized by Government Code §§ 37350 and 37380; and

WHEREAS, the City has conducted all actions necessary and proper to approve the lease in accordance with Government Code §37380,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar as follows:

1. The City Council approves the Ground Lease between the City of Del Mar and The Winston School, in substantially the form as attached as Exhibit A to this Resolution.

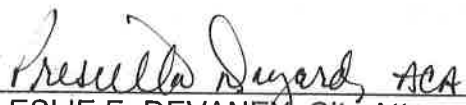
2. The City Council authorizes the sale of the Improvements as provided in the Ground Lease.
3. The City Manager is hereby authorized and directed to execute the Ground Lease, including the Exhibits attached thereto upon satisfaction of the conditions required prior to execution, as provided in the Ground Lease.
4. The City Manager is authorized to take such further action as may be necessary and proper to effectuate and consummate the agreement.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at a regular meeting held the 12th day of July 2010.



RICHARD EARNEST, Mayor

APPROVED AS TO FORM:



LESLIE E. DEVANEY, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, Mercedes Martin, City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution 2010-52, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 12th day of July 2010, by the following vote:

AYES: Mayor Earnest, Councilmembers Crawford, Filanc and Hilliard
NOES: None
ABSENT: Deputy Mayor Mosier
ABSTAIN: None



MERCEDES MARTIN, City Clerk
City of Del Mar

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and pursuant to the terms set forth herein, the City of Del Mar ("Landlord") and The Winston School, Inc. ("Tenant") hereby enter into this Ground Lease, ("Lease") effective the 1st day of July, 2008 (the "Effective Date").

1. **Basic Terms.** For the convenience of the parties, certain basic terms of this Lease are below. The basic terms are subject to the remaining terms and conditions of this Lease and are to be used for reference subject to the remaining terms and conditions. If there is any inconsistency between the basic terms and the other provisions of the Lease, the other provisions control.

(a) **Leased Premises.** The leased Premises is a portion of that certain property situated in the County of San Diego, California, commonly known as 215 and 225 Ninth Street, Del Mar, California, 92014, APN's 300-200-01, 300-200-22, 300-200-23, and more particularly depicted in *Exhibit B*.

(b) **Term Commencement Date.** July 1, 2008.

(c) **Term Expiration Date.** Term is fifty-five (55) years, expiring on June 30, 2063, unless sooner terminated as provided in the Lease.

(d) **Permitted Use.** The Premises is leased for educational uses and such other incidental activities and events that are related to or ancillary to such use.

(e) **Address for Rent Payment and Notices:**

Del Mar:

1050 Camino Del Mar
Del Mar, California 92014

Winston School:

215 Ninth Street
Del Mar, California 92014

2. **Lease of Premises.**

(a) Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Premises depicted in *Exhibit B* for the terms and upon the agreements, covenants and conditions set forth in this Lease; provided, however that Landlord reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises and reserves the right of access along the easement depicted on *Exhibit B*. On or before July 1, 2010, Landlord shall arrange for a survey to be completed to develop a metes and bounds legal description of the Premises, according to the graphic depiction of the Premises on *Exhibit B*. Tenant shall contribute 50% towards the cost of such survey, to a maximum of \$2,500. Once such survey is completed and approved by Landlord and Tenant, such metes and bounds description shall become the description of the Premises for all purposes under this Lease.

(b) Tenant agrees that its use of that portion of the Premises currently occupied by the District pursuant to the District – City Lease shall be subject to the District's rights under such lease until the first to occur of (a) May 31, 2011 or (b) the earlier termination of the District's use of the Premises under the District - City Lease.

(c) Additionally, Tenant has a non-exclusive right to use the parking lot to the south of the Premises (the "Parking Non-Exclusive Use Area") and the athletic field located to the southeast of the

Premises (the "Athletic Field Non-Exclusive Use Area"), together with necessary rights of ingress and egress during the term of this Lease. Tenant's use of the Athletic Field Non-Exclusive Use Area shall be subject to Landlord's rights to reconfigure or improve the Athletic Field Non-Exclusive Use Area, provided that Tenant's ability to use the Athletic Field Non-Exclusive Use Area shall not be materially adversely affected. Tenant's use of the Parking Non-Exclusive Use Area shall be subject to Landlord's right to develop the Parking Non-Exclusive Use Area and to Landlord's right to establish reasonable restrictions on Tenant's use of the Parking Non-Exclusive Use Area that do not substantially and materially interfere with Tenant's use of the Premises. Landlord agrees to consult with Tenant during the initial planning stage for any proposed development of the Parking Non-Exclusive Use Area or Athletic Field Non-Exclusive Use Area. Such consultation shall occur during any conceptual or preliminary stage, and shall also include, without limitation, meetings with Tenant and its designated representatives to solicit input on potential development prior to scheduling of any public hearing or entering into any agreement for such development.

3. **Commencement Date and Term.**

(a) **Term.** The term of this Lease shall be fifty-five (55) years ("Term") commencing on July 1, 2008 ("Commencement Date"), and shall terminate on June 30, 2063, unless sooner terminated or modified as herein provided.

(b) **Reduction in Term of Lease.** If Tenant fails to achieve a Redevelopment Milestone (as defined below) within the deadline associated with that Redevelopment Milestone (see below) then Landlord may, in its sole discretion and as its sole remedy, either (i) terminate this Lease or (ii) reduce the term of this Lease to forty (40) years, such that the expiration of the term occurs on June 30, 2048. The proposed demolition, removal, and replacement (or major remodel) of the Improvements (as defined in *Exhibit C*) on the Premises by Tenant is referred to in this Lease as the "Redevelopment."

REDEVELOPMENT MILESTONE	MILESTONE DEADLINE
Submission of a complete development application to the City of Del Mar for the proposed Redevelopment	On or before December 31, 2019
Acquisition of all necessary permits and approvals and the commencement of construction of the Redevelopment	On or before December 31, 2025
Issuance of Certificate of Occupancy with respect to structures comprising not less than 50 percent of the Redevelopment	On or before December 31, 2027

(i) An election by Landlord to reduce the term of this Lease pursuant to this Section 3(b) due to Tenant's failure to timely satisfy a Redevelopment Milestone may be exercised by Landlord giving written notice to Tenant of such election within ninety (90) days after the Milestone Deadline applicable to that Redevelopment Milestone; provided however that if Tenant satisfies the Redevelopment Milestone within ninety (90) days after the giving of such notice by Landlord, then (a) such election shall be deemed ineffective, (b) Landlord shall have no further right to terminate or reduce the term of this Lease due to Tenant's failure to satisfy such Redevelopment Milestone, and (c) this Lease shall remain in full force and effect for the balance of the original term, subject only to Landlord's rights under this Section 3(b) for Tenant's failure to satisfy other future Redevelopment Milestones.

(ii) An election by Landlord to terminate this Lease pursuant to this Section 3(b) due to Tenant's failure to timely satisfy a Redevelopment Milestone may only be exercised by Landlord giving written notice to Tenant of such election within ninety (90) days after the Milestone Deadline applicable to that Redevelopment Milestone. Such election shall be effective as of the July 1 following the first anniversary of the date upon which Landlord gives written notice to Tenant of such election; provided however that if Tenant satisfies the Redevelopment Milestone within ninety (90) days after the giving of such notice by Landlord, then (a) such election shall be deemed ineffective, (b) Landlord shall have no further right to terminate or reduce the term of this Lease due to Tenant's failure to satisfy such Redevelopment Milestone, and (c) this Lease shall remain in full force and effect for the balance of the original term, subject only to Landlord's rights under this Section 3(b) for Tenant's failure to satisfy other future Redevelopment Milestones.

(iii) If Landlord fails to timely exercise its election to terminate or reduce the term of this Lease due to Tenant's failure to satisfy a Redevelopment Milestone on or before the Milestone Deadline applicable to that Redevelopment Milestone, then this Lease shall remain in full force and effect and Landlord's ability to terminate this Lease pursuant to this Section 3 shall no longer be of any force or effect, subject only to Landlord's rights under this Section 3(b) for Tenant's failure to satisfy other future Redevelopment Milestones.

(c) The Redevelopment Deadlines set forth above shall be extended to the extent that Tenant's performance is prevented or hindered by circumstances out of Tenant's reasonable control including an act of God, casualty, epidemic, war, terrorism, insurrection, riot, fire, flood, earthquake, strike, or boycott. Tenant's inability to fund the Redevelopment or to timely process entitlements and proceed with construction shall not extend the Redevelopment Deadlines.

(d) Should Tenant hold over after the termination or expiration of this Lease, or any renewal thereof, such holding over shall be deemed a tenancy for month-to-month only.

(e) If Tenant determines, in its sole discretion, that Redevelopment is not feasible for any reason, it may terminate this Lease without liability by providing written notice to Landlord not earlier than December 31, 2018 and not later than December 31, 2022. Such notice by Tenant shall set forth the effective date of such termination, which shall not be later than two (2) years after the date of such notice. If, upon any early termination of this Lease at Tenant's election pursuant to this Section 3(e), there remains Rent Credit, then Tenant waives the right to any refund or return of such Rent Credit.

(f) If, upon any early termination of this Lease at Landlord's election pursuant to Section 3(b) above due to Tenant's failure to timely satisfy a Redevelopment Milestone, Landlord shall pay to Tenant cash equal to the remaining Rent Credit within six (6) months after the effective date of such termination.

4. **Rent.** Tenant shall pay to Landlord as rental for the use and occupancy of the Premises, at the times and in the manner provided herein, the following sums of money:

(a) **Rent.** Tenant shall pay to Landlord annual rent (the "Rent") in the following amounts:

(i) Rent (calculated as of July 1, 2007) shall be \$197,245.39 per year ("Initial Rent") until the First Adjustment Date (as defined in Section 4(a)(iii) below). Commencing as of the July 1 immediately following the First Adjustment Date and continuing on each July 1st during the term of this Lease (each such July 1, an "Adjustment Date"), Rent shall be increased annually on each Adjustment Date by the percentage increase in the CPI obtained by comparing the CPI in effect as of the then-current Adjustment Date to the CPI in effect as of the immediately preceding Adjustment Date. As used in this

Lease, the term "CPI" shall mean and refer to the Consumer Price Index ("CPI") published by the Bureau of Labor Statistics, United States Department of Labor ("Bureau"), for All Items – in the Los Angeles-Riverside-Orange County, CA (1982-84=100). If the Bureau discontinues publication of the CPI, or publishes it less frequently, or alters it in some other manner, then Landlord shall adopt a substitute index or procedure that reasonably monitors and reflects a similar market.

(ii) As of the Effective Date Tenant has a credit with prepaid rent ("Rent Credit") in the amount of \$2,954,023.93 (which amount includes the \$89,000 paid by Tenant pursuant to Section 3(c)(i) below and also includes the monthly installment of Rent that will be deducted for July, 2008). For the Lease Year (as hereinafter defined) commencing on July 1, 2008 and for each Lease Year thereafter, the Rent Credit shall be applied on an annual basis to Rent due as provided in this Section 4(a), excluding any CPI adjustment. For purposes of this Lease, the term "Lease Year" means each period of twelve (12) consecutive calendar months during the Term, commencing on July 1, 2008, provided, however, that if the Term expires or terminates before June 30 of any year, the last Lease Year shall be the fractional year that ends upon the date of the expiration or termination of the Term.

(iii) As used in this Lease, the term "First Adjustment Date" shall mean and refer to the first day of the calendar month immediately following the month in which all Rent Credit is exhausted and applied to Rent. For example, if the final amount of Rent Credit is applied to the monthly installment of rent due and payable for August 2023, the First Adjustment Date would be September 1, 2023. Upon the First Adjustment Date, Rent shall be increased by the percentage increase in the CPI obtained by comparing the CPI in effect as of the First Adjustment Date to the CPI in effect as of July 1, 2008. Rent shall thereafter continue to be adjusted annually as provided in Section 4(a)(i) during the term of this Lease.

(iv) Landlord reserves the right to adjust the Rent to reflect the fair market rental value of the Premises for the Permitted Use if Tenant fails to retain its status as a tax exempt organization.

(b) Payment. Rent shall be paid in advance on a monthly basis on or before the first day of each and every successive calendar month, one-twelfth (1/12) of the amount of the annual Rent then in effect. If the Lease terminates on other than the last day of a calendar month, rental payments shall be prorated on the basis of a thirty (30) day month.

(c) Rent Credit.

(i) The MOU requires Tenant to pay to Landlord not less than 35 percent of the Landlord's cost of acquisition of the Property. In accordance with the terms of the MOU, Tenant's obligation for such contribution shall be deemed satisfied upon Tenant's payment of an additional \$89,000 which Landlord acknowledges having received concurrently with the execution of this Lease by Landlord.

(ii) On or before July 1 of each year, Landlord shall deliver to Tenant a written statement showing the amount charged against the Rent Credit until all funds constituting Rent Credit have been exhausted. As of June 1, 2010 (after the application of the monthly installment of rent due June 1, 2010), there was a balance of Rent Credit remaining in the amount of \$2,554,129.16.

(d) Location for Payment. All Rent (and all other moneys and charges payable by Tenant to Landlord hereunder) shall be paid by Tenant to Landlord in lawful money of the United States of America at Landlord's address for notices hereunder, or to such other person or at such other place as Landlord may from time to time designate by notice in writing to Tenant.

5. **Taxes and Assessment.**

(a) Tenant shall pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, including clean water fees, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or any Improvements which are now or hereafter located thereon, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby, including a possessory interest tax (R&T Code Section 107.6).

(b) Tenant shall pay any tax assessed exclusively on rental income of Landlord to the extent such income is allocable to this Lease, if and only if such tax is assessed by State or local authorities upon the elimination and in lieu of taxation based on the ownership of real property.

(c) Any taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the Commencement Date and at the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the commencement and preceding the end of the Term bears to the entire fiscal year.

(d) Tenant shall pay any documentary transfer tax assessed upon the creation of a leasehold interest in the Premises created by this Lease.

(e) Nothing in this Lease shall preclude Tenant from claiming any exemption or credit available to it by virtue of its status as a 501(c)(3) tax-exempt organization.

(f) Tenant shall have the right, at Tenant's sole expense, to contest the amount or validity, or otherwise seek an exemption or abatement, of any tax or assessment, by appropriate proceedings diligently conducted in good faith, provided that Tenant shall first have notified Landlord of its intent to do so. In any instance where any such action or proceeding is being undertaken by Tenant, Landlord shall cooperate with Tenant to execute any and all documents required in connection therewith and, if required by any law, rule or regulation of the taxing authority, shall join with Tenant in the prosecution of such protest, provided that Tenant reimburses all costs incurred by Landlord, including attorneys fees. If Tenant fails to reimburse such costs with thirty (30) days of receipt of an invoice from Landlord for same, Landlord shall be entitled to deduct the reimbursement amount as Rent from uncredited Rent Credit. Tenant shall be entitled to a refund of any overpayment of such tax or assessment when such refund is a result of Tenant exercising its rights under this subsection (f).

6. **Quiet Enjoyment.** Landlord covenants that upon payment by Tenant of the Rent herein reserved and upon performance and observance by Tenant of all of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed, Tenant shall peaceably hold and quietly enjoy the Premises during the entire Term without hindrance, molestation or interruption by Landlord or by anyone lawfully or equitably claiming by, through or under Landlord; provided however, that Landlord shall have the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

7. **Use of Premises and Non-Exclusive Areas.**

(a) Tenant shall use the Premises only for the Permitted Use in accordance with the terms and conditions of this Lease.

(b) At all times during the term of this Lease, Tenant, at Tenant's own cost and expense, shall do all of the following:

(i) Make all alterations, additions or repairs to the Premises or the Improvements on the Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;

(ii) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Premises or the Improvements on the Premises by any federal, state, local or other governmental agency or entity; and,

(iii) Indemnify and hold Landlord and the property of Landlord, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Tenant's failure to comply with and perform the requirements of this Section.

(c) Tenant shall not use or conduct activities on the Premises in a manner that causes, creates, or results in a public or private nuisance.

(d) Tenant shall be responsible for obtaining all required authorizations and approvals for Tenant's use of the Premises, including Tenant's Redevelopment of the Premises as provided in this Lease, and shall comply with any and all conditions imposed upon the issuance of such approvals.

(e) Notwithstanding the foregoing, and subject to written agreement of the Parties, following the construction of replacement Improvements referred to in Section 12 below, the City of Del Mar shall have limited rights to use facilities on the Premises as agreed upon by the Parties for community needs and events. Such rights shall be subject to availability based on Tenant's use of the facilities in accordance with this Lease. Landlord shall pay the expenses attributable to such use and shall indemnify and defend Tenant against any claims for loss, damage or injury arising out of such use. Landlord shall be responsible to clean the facilities after use and to repair any damage caused by the use of occupancy of the facilities by Landlord. In the event that the Parties are unable to agree upon the nature and/or extent of such shared use then they will submit to mediation for a determination of the reasonableness of such use.

(f) Subject to the limitations set forth in Section 2(c) above, Landlord may enlarge, reduce or reconfigure the Parking Non-Exclusive Use Area and Athletic Field Non-Exclusive Use Area or demolish, improve or otherwise make changes to the buildings, structures or other improvements located within the Parking Non-Exclusive Use Area and Athletic Field Non-Exclusive Use Area.

8. Utilities.

(a) In addition to any other obligations imposed on Tenant by this Lease, Tenant shall maintain, repair, replace and otherwise keep the mains, laterals, and conduits that convey water, gas, sewage disposal, electricity and telephone services to the Premises, as well as all meters and submeters for such utilities, in serviceable condition during the Term, subject to ordinary wear and tear, replacements, repairs, and alterations, additions and improvements approved in writing by Landlord as provided herein. Such maintenance, repair and replacements shall be at Tenant's expense, except that Landlord shall reimburse Tenant for the reasonable cost of any such maintenance, repair and replacements to any mains, laterals, and conduits that do not service the Premises, provided that the need for such maintenance was not the result of Tenant's activities on the Premises.

(b) Tenant shall pay when due all of the costs of gas, electricity, sewage, trash collection and any other utility services to the Premises, including all costs associated with any meters required for such services.

(c) Until such time as the Redevelopment of the Premises by Tenant and the installation of separate meters for water and sewer facilities, Tenant shall pay to Landlord an amount equal to 75.2% of Landlord's cost for water and sewer services for the Property.

(d) Tenant shall pay fifty percent (50%) of the cost of irrigation of the Athletic Field Non-Exclusive Use Areas.

(e) From and after the Commencement Date and continuing during the Term, Tenant shall open an account in its name with the utility providers for all utilities to be used by it on, or in connection with Tenant's use of, the Premises and to pay all connection fees, deposits and other fees and charges required by the applicable utility providers. Notwithstanding the foregoing, Tenant shall not be obligated to install separate utility meters, except in connection with the Redevelopment.

(f) Except as otherwise provided in this Section 8, Landlord shall not be obligated to furnish any utilities or services to the Premises, and Landlord does not make any warranty or representation as to the quantity, availability, amount or duration of any such utilities or services. Tenant acknowledges the capacity, condition and locations of all utilities, utility conduits, any utility stubs, and agrees that they are adequate for Tenant's use.

9. **Title to Improvements.**

(a) Title to all the Improvements identified in *Exhibit C*, including all carpets, draperies, partitions, machinery, equipment and fixtures that are used, or intended to be used in connection with the Premises, shall be and remain in Tenant. Title to Improvements that remain in place after the expiration or earlier termination of this Lease shall pass to and vest in Landlord, at Landlord's option, without cost or charge to Landlord; provided, however, Tenant shall, upon request of Landlord and at Tenants' sole cost and expense, remove any or all Improvements on the Premises pursuant to Section 12 of this Lease and shall, as part of such removal, restore the Premises to a graded soil condition free of all contaminants or residues of any kind or nature.

(b) Tenant, on termination of this Lease, shall execute and deliver any and all deeds, bills of sale, assignments, and other documents which in Landlord's sole judgment may be necessary or appropriate to transfer, to evidence or to vest in Landlord clear title to any of the property described in the foregoing subsection (a) located on the Premises after the time of such termination.

(c) Tenant, in addition, shall deliver to Landlord on termination of this Lease originals or certified copies of any plans, reports, contracts or other items relating to the ownership or operation of the Premises.

10. **Landlord's Consent Required.**

(a) If and as required by any municipal, county, state, or Federal authority and provided that Tenant is not in default of any provisions of this Lease, Landlord will, solely in its capacity as owner of the Property, sign applications for permits, licenses or other authorizations related to the Premises and the construction, reconstruction, repair or alteration of the Improvements, provided that Landlord's consent shall not be deemed construed to be (1) an assumption of any liability in connection with such Improvements, their construction or use or (2) consent to the encumbrance of the Property in connection

with such Improvements or permitting activity. Landlord in its capacity as owner of the Property, authorizes Tenant to submit an application for a parcel map to map the Premises as a separate parcel under the Subdivision Map Act.

(b) Landlord will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, and other public utilities reasonably required for the use and occupancy of the Premises and any alterations, additions and improvements permitted to be made by Tenant under this Lease. Tenant shall reimburse Landlord for any reasonable sum paid by Landlord in respect of the matters specified in this Section 10, including reasonable attorney fees.

11. **Maintenance, Repairs, Governmental Regulations and Waste.**

(a) Tenant shall, during the Term, at its own cost and expense and without any cost or expense to Landlord:

(i) Keep and maintain all Improvements now or hereafter located on the Premises (subject to Tenant's rights and obligations under this Lease to demolish and remove such Improvements) and all appurtenances thereto in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Tenant shall likewise keep and maintain the grounds within the Premises, including sidewalks, driveways and parking areas, landscaped areas and irrigation systems, in good and neat order and repair. Subject to Section 8 above with regard to Landlord's limited obligation to reimburse Tenant for the costs of certain maintenance, Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Property, the Premises or any Improvements now or hereafter located thereon, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof; and

(ii) Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises, all Improvements now or hereafter located thereon, or any activity or condition on or in the Premises.

(b) Landlord may, during normal business hours after at least 72 hours written notice except in the case of an emergency involving impending damage or injury, enter upon the Property for the purpose of inspecting the Improvements now or hereafter located thereon and for such other purposes as may be necessary or proper for the reasonable protection of its interests.

(c) Landlord has no obligation and has made no promises to alter, remodel, improve or repair the Premises or any part of the Premises and no representations respecting the condition of the Premises have been made by Landlord to Tenant.

(d) Tenant accepts the Premises, including Improvements, in as "as-is" condition, and agrees to be responsible for any activities and costs related to asbestos removal, seismic retrofit, ADA, Title 24, or any other accessibility regulations, including any other state or federal requirements.

12. **Improvements, Changes, Alterations, Demolition, Redevelopment and Replacement.**

(a) Provided that Tenant is not in default of this Lease beyond any applicable notice and cure period, Tenant shall have the right to make such improvements to the Premises and such changes and alterations, structural or otherwise, to any Improvements and equipment now or hereafter located on the

Premises, including demolition of any or all Improvements and removal of equipment now or hereafter located on the Premises and replacement thereof.

(b) Any demolition activity and all improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment or improvements) pursuant to subsection (a) above shall be undertaken in all cases subject to the following additional conditions which Tenant covenants to observe and perform:

(i) No improvement, change or alteration, and no demolition and replacements shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction.

(ii) All work done in connection with any improvement, change, alteration or demolition and replacement shall be done promptly and in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All such work shall be at the sole cost and expense of Tenant. Landlord acknowledges that it has recently replaced the sidewalk fronting the Premises in the area delineated on *Exhibit B* as "improved sidewalk" in compliance with ADA requirements.

(iii) Tenant acknowledges that by entering into this Lease, Landlord is not obligating itself, as a regulatory agency, with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises.

(iv) In addition to the insurance coverage referred to in Section 16 below, Tenant shall maintain, at its sole cost and expense, Workers' Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Landlord, Tenant or the Premises naming Landlord as an additional insured, with limits of not less than Five Million Dollars (\$5,000,000), at Tenant's sole cost and expense, at all times when any work is in process in connection with any improvement, change, alteration or demolition and replacement. All such insurance shall be obtained and kept in force as otherwise provided in Section 16 below.

(c) If Tenant demolishes, with or without intent to reconstruct, the Improvements located on the Premises for any reason other than as required to comply with governmental regulations or similar independent causes, Tenant shall continue to be liable for the Rent that accrues during the Term.

(d) Landlord shall cooperate with Tenant to allow Tenant to occupy other portions of the Property during Redevelopment construction, provided such accommodation does not unreasonably interfere with Landlord's continued use of the Property, which determination shall be in Landlord's sole discretion.

(e) Upon the termination of this Lease, unless Landlord requests otherwise and Tenant agrees, the Improvements located on the Property shall be removed and the grounds restored to a graded lot. Such removal shall be completed within one (1) year after the termination of this Lease.

13. **Damage and Destruction.** No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of any Improvements on the Property, shall operate to terminate this Lease, or to relieve or discharge Tenant from the payment of rents or

amounts payable as rent as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed. Tenant hereby waives the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time. Notwithstanding the foregoing, Tenant retains the right to terminate this Lease pursuant to Section 3(e) above. In the event of such a termination, Tenant shall retain the right to receive all available insurance proceeds from Tenant's insurance subject to the provisions of Section 16(e).

14. **Assignment and Subletting.** Subject to the terms set forth in this Lease, Tenant may assign, sublease, or convey any interest therein at any time provided the following:

(a) No default exists in the performance or observance of any covenant or obligation on the part of Tenant to be performed or observed under this Lease as of the date of such assignment;

(b) The assignment is in writing and duly executed and acknowledged by Tenant and the assignee;

(c) The assignment provides that the assignee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Lease on the part of Tenant to be performed and observed;

(d) The proposed assignee or subtenant provides evidence reasonably satisfactory to Landlord of financial capability to perform the provisions of this Lease;

(e) Landlord agrees in writing to the assignment, which said approval shall not be unreasonably withheld; and,

(f) An executed original of such assignment is delivered to Landlord.

For the avoidance of confusion, this Section shall not apply to any management contract between Tenant and a management company.

15. **Mortgage of Leasehold and Protection of Lender.** Tenant shall have the right to encumber the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument ("Leasehold Mortgage"), to secure repayment of a loan to Tenant, and associated obligations, from an institutional lender whose loans are regulated by law ("Lender") when such loan is obtained for Redevelopment purposes, subject to Landlord's prior written consent. Tenant shall provide written notice to Landlord of the name, address and contact information for each entity or person that would be entitled to claim the status of Lender under this Section 15.

For the purposes of this Section 15, during the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

(a) Except as otherwise provided for in this Lease, Landlord shall not terminate this Lease or interfere with the occupancy, use, and enjoyment of the Premises unless (i) an event of default shall have occurred and is continuing, (ii) Landlord has given any Lender written notice of such event of default, and (iii) the Lender(s) has failed to 1) remedy such default 2) acquire Tenant's leasehold estate created hereby or 3) commence foreclosure or other appropriate proceedings, all as set forth in, and within the time specified by this Section 15.

(b) Any Lender shall have the right, but not the obligation, to cure any default of this Lease at any time prior to thirty (30) days after the expiration of any applicable cure period given to Tenant. If a Lender commences such cure within said thirty (30) day period and diligently prosecutes such cure to completion, Lender shall be entitled to an additional thirty (30) days to cure the default; provided however, Lender shall not be entitled to an additional thirty (30) day period if the default is for the payment of money or it is not practicable to cure the default in the thirty (30) day period.

(c) Foreclosure of the Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any assignment or conveyance of the leasehold estate created by this Lease from Tenant to a Lender or other purchaser through, or in lieu of, foreclosure or other appropriate proceedings of a similar nature shall not constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance Landlord shall recognize the Lender as Tenant hereunder and Lender shall be liable for the obligations of Tenant under this Lease until Lender has assigned or otherwise conveyed its interest in this Lease in accordance with the provisions governing such assignments. Upon the effective date of an assignment of Lender's interest under this Lease, Lender shall be fully released from liability arising under this Lease from and after the date of such assignment.

(d) If Landlord terminates this Lease by reason of any default by Tenant hereunder, Landlord shall execute and deliver a new lease of the Premises to a Lender for the remainder of the Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained herein and with priority equal to that hereof upon receipt of a written request by a Lender when the request is received within thirty (30) days of the date of termination. A Lender's right to possession of the Premises shall not arise until Tenant has vacated the Premises. Additionally, a Lender shall promptly cure any defaults of Tenant susceptible to cure by Lender. Upon execution and delivery of such new lease, Landlord, at the expense of the new tenant, which expenses shall be paid by the new tenant as they are incurred, shall take such action as shall be necessary to cancel and discharge this Lease and to remove the Tenant named herein from the Premises.

(e) Landlord and Tenant will cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be necessary to implement the provisions of this Section 15; provided, however, that such amendment shall not in any way affect the Term of this Lease or materially alter the rights of Landlord under this Lease.

16. Insurance Requirements.

(a) During the entire term of this Lease, including during any period of Redevelopment or construction of any improvements upon the Premises, Tenant shall at its sole expense obtain and keep in force the following insurance and shall name or have named Landlord as an additional insured under all such policies:

(i) **Builder's Risk Coverage:** During any period of Redevelopment, coverage against all risks of physical loss and/or damage from any cause (exclusive of earthquake and subject to usual policy exclusions) to all buildings, structures, materials and real property to be improved, located on or forming a part of the Premises.

(ii) **Fire and extended coverage insurance** (excluding earthquake insurance), in the customary form in the City of Del Mar for buildings and improvements of similar character, on all Improvements and the Premises. The amount of such insurance at all times during the Term shall not be less than ninety percent (90%) of the actual replacement cost of such Improvements.

The actual replacement cost of such Improvements shall be determined by mutual agreement of Landlord and Tenant at the time the fire and extended coverage insurance is initially taken out and periodically over time as to increases in value, and in the event the parties cannot agree as to such actual replacement cost, such disagreement shall be submitted to arbitration in the manner provided by Section 27 hereof.

(iii) General liability insurance with limits of not less than Five Million Dollars (\$5,000,000) for injury to or death of any number of persons in one occurrence, and not less than Five Million Dollars (\$5,000,000) for damage to property, insuring against any and all liability of Landlord and Tenant including, without limitation, coverage for contractual liability, broad form property damage, host liquor law liability, personal injury, and non-owned automobile liability, with respect to the Premises and the Parking Non-Exclusive Use Area and Athletic Field Non-Exclusive Use Area or arising out of the maintenance, use or occupancy thereof, and insurance on all boilers and other pressure vessels, whether fired or unfired, located in, on, or about the Premises, without exclusion for explosion, collapse and underground damage, in an amount not less than Five Million Dollars (\$5,000,000).

(b) All of such insurance shall be noncontributing with any insurance which may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord, its agents and employees, or the property of such persons.

(c) Tenant agrees that each such policy of fire and extended coverage insurance and all other policies of insurance on the Premises obtained by Tenant, whether required by the provisions of this Lease or not, shall be made expressly subject to the provisions of Section 16(b) and all Tenant's insurers hereunder shall waive any right of subrogation against Landlord to the extent such insurers permit.

(d) All insurance provided for in this Section, and all renewals thereof, shall be issued by California admitted companies rated at least A-VII by Best's Insurance Reports (Property Liability) or approved by Landlord. All insurance policies shall be subject to approval by Landlord and Lender as to form and substance and shall expressly provide that such policies, except for the boiler insurance specified in subsection (a)(iii) above, shall not be cancelled or altered without thirty (30) days prior written notice to Landlord. The limits and coverage of all such insurance shall be adjusted by agreement of Landlord and Tenant during every fifth Lease Year during the Term in conformity with the then prevailing custom of insuring property similar to the Premises in the City of Del Mar, and any disagreement regarding such adjustment shall be settled by arbitration in the manner provided in Section 27 of this Lease. Upon the issuance thereof, each insurance policy or a duplicate or certificate thereof shall be delivered to Landlord.

(e) All amounts that shall be received under any insurance policy specified in this Section 16 shall be first applied to the payment of the cost of repair, reconstruction or replacement of any Improvements that are damaged or destroyed or removal of Improvements as required by Section 12(e). Any amount remaining from the proceeds of any such insurance funds, after the repairing, reconstructing and replacing of any Improvements, as herein required, shall be immediately paid to and be the sole property of Tenant; provided that, if any governmental law or regulation governing land use prohibits the restoration or reconstruction of the Improvements damaged or destroyed to their pre-casualty state, any excess insurance proceeds over restoration or reconstruction costs that are the consequence of such prohibition shall be allocated to reimburse Landlord for lost rent for the Lease term. If said insurance proceeds shall be insufficient in amount to cover the cost of repairing, reconstructing or replacing any Improvements, as herein required, Tenant shall promptly pay any deficiency.

(f) Evidence of all such insurance, including certificates of same and endorsements naming Landlord as an additional insured, shall be provided to Landlord immediately upon execution of this

Lease by Tenant. As often as any such policy expires or terminates, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. Failure to maintain and provide evidence of continued insurance shall be a material default.

17. **Mechanics' and Other Liens.** Tenant shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof, any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the Premises for or in connection with any operations of Tenant, any alterations, improvements, repairs or additions which Tenant may make or permit or cause to be made, or any work or construction by, for or permitted by Tenant on or about the Premises, and to save and hold Landlord, all of the Premises, all Improvements thereon, and Landlord's adjacent Property and any improvements thereon, free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto. Tenant covenants and agrees to give Landlord written notice not less than twenty (20) days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of Twenty Five Thousand Dollars (\$25,000) in order that Landlord may post appropriate notices of Landlord's non-responsibility.

18. **Indemnity.**

(a) Tenant shall protect, defend and indemnify Landlord against all loss, cost, expense, and damage resulting from any lien of the nature or the amount or validity of any tax, assessment, charge, or other item to be paid by Tenant. Upon Tenant's failure to remove any such lien within ten (10) business days after written demand from Landlord, Tenant shall furnish Landlord a corporate surety bond payable to Landlord, in one hundred and twenty percent (120%) of the amount of the lien, tax, assessment, charge, or item contested, as the case may be, conditioned upon the satisfaction and discharge of such lien or the payment of such tax, assessment, charge, or other item, and all penalties, interest, and costs in connection therewith

(b) To the fullest extent allowed by law, Tenant covenants and agrees that Landlord shall not at any time or to any extent whatsoever be liable, responsible or in anywise accountable for any loss, injury, death, or damage to persons or property which, at any time may be suffered or sustained by Tenant or by any person who may at any time be using, occupying, or visiting the Premises or be in, on or about the Premises, from any cause whatsoever, except when such loss, injury, death, or damage shall be caused by or in any way results from or arises out of the sole negligence or willful misconduct of Landlord.

(c) Tenant shall forever indemnify, defend (with legal counsel reasonably acceptable to Landlord), hold, and save Landlord free and harmless of, from and against any claims, liability, loss or damage arising from any loss, injury, death, or damage to persons or property which, at any time may be suffered or sustained by Tenant or by any person who may at any time be using, occupying, or visiting the Premises or be in, on or about the Premises, from any cause whatsoever, except to the extent caused by Landlord's intentional or negligent acts or omissions. Tenant hereby waives all claims against Landlord for damages to the Improvements now or hereafter located on the Property and to the property of Tenant in, upon or about the Premises, and for injuries to persons or property in, on or about the Premises, from any cause arising at any time, except for any such claims arising from actively negligent or intentional acts or omissions committed by Landlord. Tenant's indemnity obligation set forth in this Section shall survive the termination or expiration of this Lease with respect to any claims or liabilities arising out of injury or damage to person or property which occurs during the Term.

19. **Hazardous Substances.**

(a) Tenant shall not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances.

(b) If any release of a hazardous substance occurs, Tenant shall be responsible for all costs of remediation and removal of such substance in accordance with all applicable rules and regulations of governmental authorities.

(c) Tenant shall defend, indemnify, and hold Landlord harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Tenant's operations on the Premises, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

(d) If Tenant knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, Tenant shall give written notice to Landlord within ten (10) days of receipt of such knowledge or cause for belief; provided, however, if Tenant knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Tenant shall notify Landlord immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. Tenant shall notify Landlord immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, Tenant shall not use or sell any hazardous substance on the Premises without the prior written consent of Landlord other than reasonable amounts of substances commonly found at facilities similar to those of Tenant and used in accordance with applicable law, such as cleaning supplies, paint supplies, and other substances typically used in connection with operations, use and maintenance of a school.

20. **Eminent Domain.** If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of Landlord and Tenant will be as follows:

(a) If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

(b) In the event of a partial taking occurring prior to the expiration of the Rent Credit, the Landlord, shall determine, in its sole discretion, whether the remaining part of the Premises is suitable for the lease operation. If Landlord determines the remaining part is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs. If the Landlord determines the remaining part is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The Rent shall be equitably reduced to reflect the portion of the Premises taken.

(c) If a partial taking occurs after expiration of the Rent Credit, termination of the Lease shall be in Tenant's discretion and shall otherwise be subject to the same terms as provided in Section 20(b).

(d) All monies awarded in any such taking shall belong to Landlord, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Tenant shall be entitled to compensation separately awarded to it, if any, for Tenant's improvements made and pertaining to the Premises, the unused portion of the Rent Credit, and loss of goodwill. Landlord shall have no liability to Tenant for any award not provided by the condemning authority.

(e) Landlord has the right to transfer Landlord's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Tenant shall retain whatever interest it may have in the fair market value of any Improvements placed by it on the Premises in accordance with this Lease and to any unused portion of the Rent Credit.

(f) The exercise of any Landlord right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon Landlord for inverse condemnation.

21. **Tenant's Defaults and Landlord's Remedies.**

(a) It shall be an event of default hereunder (each an "Event of Default") if:

(i) Tenant fails to pay rent or other moneys due under this Lease for more than ten (10) days after Landlord provides written notice to Tenant of the non-payment; or

(ii) Tenant fails to perform or comply with the covenants or other obligations of Tenant under this Lease and such default continues for thirty (30) or more days after written notice of such failure to Tenant; or,

(iii) For a default that cannot be cured by the payment of money or cannot be cured within thirty (30) days, where such default continues for an unreasonable period, as defined by Landlord, after such written notice; or

(iv) Tenant abandons the Premises; or

(v) Tenant admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, makes an assignment for the benefit of its creditors, consents to, or acquiesces in the appointment of a receiver of itself or of the whole or any substantial part of the Premises; or judgment or decree is not vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or,

(vi) A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree is not vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or

(vii) Under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction assumes custody or control of Tenant or of the whole or any substantial part of the Premises, and such custody or control is not terminated within sixty (60) days from the date of assumption of such custody or control.

(b) Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the following rights and remedies, in addition to all other rights and remedies of Landlord provided hereunder or by law and shall have the right to select such remedy in its sole and exclusive discretion:

(i) The right to terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises, and pay to Landlord all rent and all other amounts payable by Tenant hereunder to the date of such termination;

(ii) Tenant shall remain liable for any damages arising out of its failure to perform any terms, covenants or conditions of this Lease;

(iii) The remedies described in California Civil Code section 1951.2, including, without limitation, the right to recover the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of section 1951.2 of the California Civil Code;

(iv) The remedies described in California Civil Code section 1951.4, including, without limitation, the right to collect, by suit or otherwise, each installment of rent or other sums that become due hereunder, or to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed; or

(v) The right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises or to collect the rents or profits therefrom. Neither appointment of such receiver nor any other action taken by Landlord shall constitute an election on the part of Landlord to terminate this Lease unless written notice of termination is given to Tenant.

22. **Nonwaiver.** If any action or proceeding is instituted or if any other steps are taken by Landlord or Tenant, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord or Tenant of any agreement, covenant or condition of this Lease or of any subsequent breach thereof. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated rent or other sums due Landlord shall operate only as a payment on account of such rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Tenant and pursue any remedy provided under this Lease or by law.

23. **No Merger.**

(a) There shall be no merger of the leasehold estate created by this Lease with any other estate in the Premises, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Lease, or an interest in such leasehold estate, and such other estate in

the Premises, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until Landlord, Tenant and any Lender shall join in a written instrument effecting such merger and shall duly record the same.

(b) No termination of this Lease shall cause a merger of the estates of Landlord and Tenant, unless Landlord so elects and any such termination shall, at the option of Landlord, either work a termination of any sublease in effect or act as an assignment to Landlord of Tenant's interest in any such sublease. Notwithstanding the foregoing, in the event of the termination of this Lease and the execution of a new lease with Lender or its nominee pursuant to Section 15(d) above, the termination of this Lease shall neither work a merger of estates nor a termination of any subleases in effect unless Lender so elects.

24. **Covenants Run With Land.**

(a) The agreements, covenants and conditions contained in this Lease are and shall be deemed to be covenants running with the land and subject to any reversionary interests and shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns and all subsequent Landlords and Tenants respectively hereunder.

(b) Landlord shall have the right to encumber the Property by bank notes, Deeds of Trust, Promissory Notes or any other legal instruments; provided however that Tenant's leasehold interest under this Lease shall be senior to and not subordinated to any interest asserted by the holder of any such notes, Deeds of Trust, Promissory Notes or instruments. Tenant shall have no obligation to subordinate its rights under this Lease to the holder of any encumbrance.

(c) All references in this Lease to "Tenant" or "Landlord" shall be deemed to refer to and include successors and assigns of Tenant or Landlord, respectively, without specific mention of such successors or assigns.

25. **Notices.** Except as otherwise provided hereunder; any notice or communication to Landlord, Tenant shall be in writing and be mailed by certified mail, postage prepaid. Notices or communications shall be addressed to Landlord at 1050 Camino Del Mar, Del Mar, California 92014 or such other address or addresses as Landlord shall from time to time designate, or to such agent of Landlord as it may from time to time designate, by notice in writing to Tenant. Notices or communications shall be addressed to Tenant at Headmaster, 215 Ninth Street, Del Mar, California 92014, or such other address or addresses as Tenant shall from time to time designate, or to such agent of Tenant as it may from time to time designate, by notice in writing to Landlord. Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office.

26. **Holding Over.** This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration of the Term shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the Premises, except as otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant.

27. **Dispute Resolution.** Whenever, under any provision of this Lease, arbitration is required, then the matter shall be determined by first mediation, and if unresolved, arbitration under the rules of the American Arbitration Association, in San Diego County, with a three-person panel, all three arbitrators to be neutral. Each party shall bear its own costs for the services sought under this Section 27.

28. **Late Charge.** Tenant acknowledges that Tenant's failure to pay any installment of Rent, or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated

by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of Rent, or any other amount due under this Lease is not received by Landlord within fifteen (15) days after such amount is due, then, without any notice to Tenant, Tenant shall pay to Landlord the sum of five percent (5%) of such overdue amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

29. **Default Interest.** In the event that Tenant shall fail to pay any amount of Rent, or any other monetary obligations owed to Landlord hereunder within ten (10) days of the date that such amounts are due and payable, Tenant shall pay to Landlord, in addition to such amounts, interest thereon at three percent (3%) above the London Interbank Offered Rate, ("LIBOR"), announced to the public from time to time, not to exceed the legal rate of interest. Such interest will accrue from the first day of the month in which such monetary obligation was payable until the date on which Landlord receives payment of all past due amounts owing under the terms and provisions of this Lease.

30. **Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

31. **Time of the Essence.** Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.

32. **Consents.** Whenever in this Lease the consent or approval of either Landlord or Tenant is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.

33. **Attorney Fees.** In the event of any action or proceeding at law or in equity, including arbitration, between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney fees shall be included in and as a part of such judgment.

34. **Integration.** This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers, memoranda of understandings, and negotiations, oral or written.

35. **Rent.** All monetary obligations of Tenant to Landlord under this Lease, including but not limited to the Rent, shall be deemed rent.

36. **Amendments.** This Lease may only be amended or modified in any respect whatsoever by a writing signed by Landlord and Tenant and, if required by a Lender, by Lender.

37. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

38. **Estoppel Certificates.** Landlord and Tenant, within ten (10) days after notice from the other, shall execute and deliver to the other, in recordable form, a certificate stating (a) that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating all modifications, (b) the then-current Rent, (c) the dates to which Rent has been paid in advance, or, if there

is a balance of unapplied Rent Credit remaining, the amount of such balance, (d) whether or not Tenant or Landlord is in default under this Lease, and (e) such other matters as such requesting party shall reasonably request.

39. **Memorandum of Lease.** Upon the execution of this Lease, Landlord and Tenant shall execute, acknowledge and deliver to the other a memorandum of this Lease, in a form mutually agreed by Landlord and Tenant which shall be recorded in the Office of the County Recorder of San Diego County.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

LANDLORD:

CITY OF DEL MAR

By: *[Signature]*
Name: *Kevin P. Brust*
Its: *City Manager*

TENANT:

THE WINSTON SCHOOL

By: *[Signature]*
Name: *MARK D. KIMBALL*
Its: *President*

By: *[Signature]*
Name: *SARITA EASTMAN*
Its: *Secretary*

[Attach exhibits]

ADDENDUM TO:

**LEASE AGREEMENT BY AND BETWEEN
THE CITY OF DEL MAR
AND
THE WINSTON SCHOOL**

APPROVED AS TO FORM:



Leslie E. Devaney, City Attorney
City of Del Mar

EXHIBIT C

Bill of Sale

**BILL OF SALE
AND
INSTRUMENT OF ASSIGNMENT AND ASSUMPTION**

This BILL OF SALE AND INSTRUMENT AND ASSUMPTION (this "Agreement") is made and entered into as of July 1, 2010, by and between the City of Del Mar ("Assignor"), and The Winston School ("Assignee").

Background

A. Assignor and Assignee are parties to that certain Memorandum of Understanding, dated as of February 21, 2006, (the "MOU"), which was entered into in contemplation of Assignor's purchase of that certain real property located at 215 Ninth Street, Del Mar, California (the "Shores") from the Del Mar Union School District ("School District").

B. As contemplated by the MOU, Assignor (as "Landlord") and Assignee (as "Tenant") entered into a ground lease ("Lease") for the Premises (as defined in the Lease) as of July 1, 2008.

C. In accordance with the terms of the Lease and as contemplated by the MOU, Assignor desires to assign and transfer to Assignee all of Assignor's right, title and interest in, to certain buildings located on the Shores that are shown on Exhibit A attached hereto (the "Transferred Property"), and Assignee desires to assume all of the obligations and/or liabilities of Assignor that relate in any way to the Transferred Property on the terms and conditions set forth in this Agreement.

D. The execution and delivery of this Agreement is a condition of the Lease between Assignor and Assignee.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Background. The background paragraphs set forth above are incorporated herein as part of this Agreement.

2. Definitions. Capitalized terms used but not defined herein have the respective meanings given to them in the Lease.

3. Bill of Sale: Assignment and Assumption of the Transferred Property. Effective immediately upon execution of the Lease between Assignor and Assignee, Assignor hereby sells, transfers, grants, assigns, conveys, and delivers to Assignee all of Assignor's right, title and interest in, to, and under the Transferred Property, and for the sum of \$1.00 and other good and

valuable consideration, Assignee hereby purchases from and accepts the assignment of the Transferred Property from Assignor and expressly assumes and agrees for the benefit of Assignor to pay, perform, satisfy, and discharge when due or required to be performed every obligation or liability (whether existing now or arising in the future) of Assignor relating in any way to the Transferred Property.

4. Covenant of Further Assurances. Each of the parties hereto, at all times and from time to time hereafter, and upon every reasonable written request to do so by another party hereto, shall make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be reasonably required to further implement and carry out the intent and purposes of this Agreement.

5. No Representations or Warranties. ALL OF THE TRANSFERRED PROPERTY AND THE ASSIGNOR'S RIGHT, TITLE AND INTEREST THEREIN, ARE BEING SOLD AND TRANSFERRED TO ASSIGNEE "AS IS, WHERE IS" AND "WITH ALL FAULTS," AND ASSIGNEE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH TRANSFERRED PROPERTY OR RIGHT, TITLE OR INTEREST. BY WAY OF EXAMPLE AND NOT LIMITATION, ASSIGNOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE MERCHANT ABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR CONDITION WITH RESPECT TO THE TRANSFERRED PROPERTY ARISING UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE, AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED. FROM AND AFTER THE CLOSING, ASSIGNEE SHALL HAVE NO RIGHTS, REMEDIES OR RECOURSE AGAINST ASSIGNOR WITH RESPECT TO THE TRANSFERRED PROPERTY OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

6. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, Assignor and Assignee and their respective successors and permitted assigns.

7. Amendment; Waiver. Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented or waived, except by a written instrument signed by Assignor and Assignee (or, in the case of a waiver, by the party granting such waiver). No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No failure of any party hereto to insist upon strict compliance by any other party with any obligation, covenant, agreement, or condition contained in this Agreement shall operate as a waiver of, or estoppels with respect to, any subsequent or other failure.

8. Confirmation of Obligations Under Memorandum of Understanding. No provision of this Agreement shall in any way modify the express provisions contained in the Lease, this Agreement being intended only to effect the transfer of certain assets and obligations from Assignor to Assignee in accordance with the terms of the Lease.

9. Headings. The headings contained in this Agreement are included for purposes of convenience only, and do not affect the meaning or interpretation of this Agreement.

10. Severability. If any provision of this Agreement or the application of any provision of this Agreement to any party or circumstance is, to any extent, adjudged invalid or unenforceable, then the application of the remainder of such provision to such party or circumstance, the application of such provision to other parties or circumstances, and the application of the remainder of this Agreement will not be affected thereby.

11. Governing Law. This Agreement will be governed by and construed and enforced in accordance with the laws of the state of California without regard to principles of conflicts of law.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed signature page to this Agreement by facsimile or electronic transmission will be effective as delivery of a manually executed counterpart to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ASSIGNOR:

City of Del Mar

By: 

Name: Karen P. Brust

Title: City Manager

ASSIGNEE:

The Winston School

By: 

Name: R. Michael Peterson

Title: Headmaster

Exhibit A to Bill of Sale

Transferred Property

Unit B

Daycare Facility

Unit C

Classrooms 4-6, Office, Storage Room

Unit D

Administrative Office, Nurses Office, Teacher's Room, Toilets, Heater Cupboard

Unit E

Auditorium

Unit F

Classrooms 7, 8, 10, 11 and 12 and all unnumbered classrooms, Toilets, Janitor, Furnace, Office

Including all personal property, fixture, tangible improvements, structures, and the like contained within the above described Units.

LEGAL DESCRIPTION
LEASE AND ACCESS AREAS

PARCEL A: (APN: 300-200-01)

THAT PORTION OF LOTS FOUR, FIVE AND SIX, IN BLOCK TWENTY-EIGHT, AND LOTS ONE, TWO AND THREE, IN BLOCK TWENTY-NINE, IN DEL MAR, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 368 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY OCTOBER 7, 1885;

TOGETHER WITH THAT PORTION OF THE SOUTH HALF OF THE ALLEY ADJOINING LOTS FOUR AND FIVE, WHICH UPON VACATION, WILL REVERT TO SAID LAND BY OPERATION OF LAW.

ALSO THOSE PORTIONS OF 8TH STREET AND 9TH STREET AND THAT PORTION OF RAILROAD AVENUE AS VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, APRIL 12, 1926.

ALSO THAT PORTION OF THE TRACT OF LAND GRANTED TO THE CALIFORNIA SOUTHERN RAILROAD COMPANY FOR A RIGHT OF WAY UNDER THE PROVISION OF THE ACT OF CONGRESS MARCH 3, 1875 (18 STATUTE 428), LYING BETWEEN THE SOUTHERLY LINE OF DEL MAR, ACCORDING TO MAP THEREOF NO. 368, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 7, 1885, AND THE NORTHERLY LINE OF 9TH STREET AS SHOWN ON SAID MAP, ALL IN DEL MAR, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 368, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY OCTOBER 7, 1885.

ALSO THAT PORTION OF THE 150 FOOT STRIP OF LAND LYING EASTERLY OF AND ADJACENT TO THE EAST LINE OF SAID TRACT OF LAND GRANTED TO CALIFORNIA SOUTHERN RAILROAD COMPANY FOR A RIGHT OF WAY, INCLUDED IN THE FOLLOWING DESCRIBED BOUNDARY:

BEGINNING AT A POINT IN THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID ABOVE MENTIONED BLOCK 28, DISTANT THEREON 20 FEET NORTHERLY FROM THE NORTHWESTERLY CORNER OF SAID BLOCK 28; THENCE SOUTH 72°06'45" WEST ALONG A LINE WHICH IS PARALLEL WITH AND 20 FEET AT RIGHT ANGLES NORTHERLY FROM THE SOUTHERLY LINE OF SAID 9TH STREET 179.73 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID LINE 225.58 FEET TO THE BEGINNING OF A NON-TANGENT 18.00 FOOT RADIUS CURVE CONCAVE EASTERLY. A RADIAL BEARING THROUGH SAID POINT BEARS NORTH 66°29'36" WEST. THENCE ALONG THE ARC OF SAID CURVE 11.86 FEET THROUGH A CENTRAL ANGLE OF 37°45'12" TO THE BEGINNING OF A REVERSE 283.24 FOOT RADIUS CURVE. THENCE ALONG THE ARC OF SAID CURVE 61.87 FEET THROUGH A CENTRAL ANGLE OF 12°30'57". THENCE SOUTH 1°43'51" EAST, 26.00 FEET; SAID POINT

HEREINAFTER REFERRED TO A POINT 'X'. THENCE CONTINUING ALONG SAID LINE 43.51 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 40 FEET, MEASURED AT RIGHT ANGLES, WESTERLY FROM THE EASTERLY LINE OF RAILROAD AVENUE; THENCE ALONG SAID PARALLEL LINE SOUTH 17°53'15" EAST, 191.65 FEET; THENCE LEAVING SAID LINE NORTH 72°06'45" EAST, 185.00 FEET; THENCE NORTH 27°06'45" EAST, 106.07 FEET; THENCE NORTH 17°53'15" WEST, 255.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THERFROM THAT PORTION DESCRIBED AS FOLLOWS:

THE NORTHERLY 25 FEET OF LOT 6, OF SAID BLOCK 28 OF DEL MAR.

CONTAINING 1.847 ACRES, MORE OR LESS.

PARCEL 'B':

BEGINNING AT POINT 'X' DESCRIBED ABOVE IN PARCEL 'A'; THENCE SOUTH 1°43'51" EAST, 43.51 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 40 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, WESTERLY FROM THE EASTERLY LINE OF RAILROAD AVENUE; THENCE ALONG SAID PARALLEL LINE SOUTH 17°53'15" EAST, 191.65 FEET; THENCE LEAVING SAID LINE NORTH 72°06'45" EAST, 25.00 FEET; THENCE NORTH 17°53'15" WEST, 229.70 FEET; THENCE SOUTH 88°16'09" WEST, 13.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.128 ACRES, MORE OR LESS.

