

762

2765785
BK 5851 PG 250

E 2765785 B 5851 P 250-275
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
9/12/2013 11:00:00 AM
FEE \$60.00 Pgs: 26
DEP eCASH REC'D FOR FOUNDERS TITLE CO - LAYT

13-292-0001

Prepared by and
Mail after recording to:
Nexsen Pruet, PLLC (PFB)
227 W. Trade Street, Suite 1550
Charlotte, NC 28202

D-48844

DEED OF TRUST AND SECURITY AGREEMENT

DEED OF TRUST AND SECURITY AGREEMENT dated September 12, 2013 (together with any amendments or modifications hereto in effect from time to time, the "**Deed of Trust**"), by **HIGHMARK CHARTER SCHOOL**, a Utah non-profit corporation having an office at 2467 E. South Weber Drive, South Weber, Utah 84405 (hereinafter referred to as "**Trustor**"), to **U.S. Bank National Association**, having an office at 170 South Main Street, Suite 200, Salt Lake City, Utah 84101 (in its capacity as trustee under this Deed of Trust, the "**Trustee**"), for the benefit of **AGCREDIT, ACA**, for itself and as agent/nominee of AgCredit, FLCA (herein referred to as "**Beneficiary**"), having an office at 610 W. Lytle St., Fostoria, OH 44830, its successors and assigns, for itself and for the benefit of other owners of Bonds (as defined below) and the Bond Trustee (as defined below).

WITNESSETH:

WHEREAS, Trustor is indebted in the aggregate principal sum of FIVE MILLION and NO/100 Dollars (\$5,000,000) together with interest thereon, as evidenced by those certain Senior Secured Taxable Private Placement Bonds, Series 2013A (USDA Guaranteed) in the aggregate principal amount of \$4,500,000 and Senior Secured Taxable Private Placement Bonds, Series 2013B (Non-Guaranteed) in the aggregate principal amount of \$500,000 (together the "**Bonds**") each originally dated September 12, 2013 and mature on September 12, 2043, issued by Trustor, as Bond Issuer, to Beneficiary, as described with particularity in, and issued under, that certain Trust Indenture by and between Trustor, Beneficiary, as Servicer and U.S. Bank National Association, as Bond Trustee (in such capacity, the "**Bond Trustee**"), dated as of September 1, 2013 (the

“**Indenture**”) and all other obligations and liabilities due or to become due pursuant to the Indenture and other Bond Documents, as defined below, as the same agreements may be amended from time to time; and

WHEREAS, Beneficiary is also the “Servicer” for the Bonds under that certain Servicing Agreement dated as of September 1, 2013 between Trustor, as Bond Issuer, Beneficiary, as Servicer, and Bond Trustee (together with any amendments, the “**Servicing Agreement**”), and, in addition, Beneficiary is the “lender of record” for purposes of the guaranty for the Bonds issued by the United States of America acting through the Rural Housing Service, United States Department of Agriculture (“USDA”); and

WHEREAS, Trustor is the owner of fee simple title to the certain tracts of land located in Davis County, State of Utah, consisting of approximately 7.77 acres as more particularly described in Exhibit A attached hereto and made a part hereof (the “**Real Estate**”) together with the school facilities known as the HighMark Charter School, consisting of school facilities, with classrooms for formal instruction of children in kindergarten through ninth (9th) grades, and related buildings and improvements (collectively the “**School Facilities**”); and

WHEREAS, to induce Beneficiary to purchase the Bonds and to act in the capacity as Servicer and Lender of Record, and to secure payment of the Bonds and the other Liabilities described and defined below, Trustor has, among other things, executed and delivered this Deed of Trust.

NOW, THEREFORE, to secure to Beneficiary, for itself and for the benefit of all Holders of Bonds and the Bond Trustee, and in its capacity as Servicer and Lender of record, (i) the repayment of all sums due under this Deed of Trust, the Indenture, the Servicing Agreement, the Bonds and the other Bond Documents (as defined in the Servicing Agreement) (collectively, the “**Bond Documents**”); (ii) the payment of all interest on and principal of the Bonds when and as due under their terms, (iii) the performance of all terms, conditions and covenants set forth in the Bond Documents; (iv) the repayment of all other obligations due or that may become due under or in connection with any present or future financing by Beneficiary for the account of Trustor (subsections (i), (ii), (iii) and (iv) are referred to collectively as the “**Liabilities**”), Trustor has granted and conveyed and by these presents **DOES HEREBY GRANT AND CONVEY TO TRUSTEE, ITS SUCCESSORS AND ASSIGNS, IN TRUST, FOR THE BENEFIT OF BENEFICIARY, WITH POWER OF SALE**, all of Trustor’s right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the “**Property**”):

(A) The Real Estate;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Real Estate including but not limited to the School Facilities (the “**Improvements**”);

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, at any time now or hereafter installed in, attached to or situated in or upon the Real Estate, or Improvements now or hereafter erected thereon, or used or intended to be used in connection with the Real Estate, or in the operation of the Improvements whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; (iii) all fixtures as defined under the Uniform Commercial Code for the State of Utah, and (vi) all files, books, ledgers, reports and records relating to any of the foregoing (all of the foregoing herein called the “**Fixtures and Equipment**”);

(D) Any and all leases, subleases, tenancies, licenses, or agreements to lease all or any portion of the Real Estate, Improvements, Fixtures and Equipment or all or any other portion of the Property and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the “**Leases**”); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Real Estate, Improvements, Fixtures and Equipment or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the “**Rents**”); all of the following personal property (collectively referred to as the “**Contracts**”): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Real Estate, Improvements, Fixtures and Equipment or all or any other portion of the Property or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, utility agreements and deposits, building service contracts, maintenance contracts; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, occupancy, leasing, sale or operation of the Real Estate, Improvements, Fixtures and Equipment or all or any other portion of the Property;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders, appurtenances benefiting or appurtenant to the Real Estate, the Improvements or to all or any other portion of the Property; all means of access to and from the Real Estate, the Improvements or to all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses,

water and mineral rights relating to the Real Estate, the Improvements or to all or any other portion of the Property; and all other claims or demands of Trustor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate, the Improvements or to all or any other portion of the Property (all of the foregoing described in this subsection E herein are referred to as the “**Appurtenances**”);

(F) All of the Trust Estate as defined in the Indenture;

(G) All water rights, riparian rights, air rights, oil and gas rights and mineral rights, in each case of any kind or nature and shall include, but not be limited to, any and all revenues and royalties or other payments related thereto (together, “**Water and Mineral Rights**”);

(H) All Personal Property as defined in Section 3 hereof; and

(I) Any and all “proceeds” of any of the above-described Property, which term “proceeds” shall have the meaning given to it in the Uniform Commercial Code (the “**Code**”) of the State in which the Property is located (collectively, the “**Proceeds**”) and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Estate, Improvements, Fixtures and Equipment, Leases, Rents, Contracts, Trust Estate, Personal Property and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the above granted and conveyed Property unto Trustee, its successors and assigns, in fee simple, forever, for the benefit of Beneficiary.

The terms of the Bond Documents are hereby made a part of this Deed of Trust to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bond Documents.

AND Trustor covenants and agrees with and represents to Beneficiary as follows:

1. FUTURE ADVANCES; PROTECTION OF PROPERTY. This Deed of Trust shall secure any additional bonds, notes and other forms of debt as well as any and all present or future advances and readvances under the Liabilities made by Beneficiary to or for the benefit of Trustor or the Property, to the fullest extent permitted by applicable law, including, without limitation: (a) principal, interest, late charges, fees and other amounts due under the Liabilities or this Deed of Trust; (b) all advances by Beneficiary to Trustor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Beneficiary for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums,

appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Beneficiary for the enforcement and protection of the Property or the lien of this Deed of Trust; (d) all legal fees, costs and other expenses incurred by Beneficiary by reason of any default or otherwise in connection with the Liabilities; and (e) as otherwise permitted pursuant to the laws of the State of Utah. The amount of the present Liabilities secured hereby is FIVE MILLION and NO/100 Dollars (\$5,000,000) and the maximum principal amount, including present and future Liabilities, which may be secured hereby at any one time shall not exceed Fourteen Million and No/100 Dollars (\$14,000,000). The time period within which such future Liabilities may be incurred and such future advances may be made shall not extend for more than thirty (30) years from the date of this Deed of Trust.

Trustor agrees that if, at any time during the term of this Deed of Trust or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Trustor fails to perform or observe any covenant or obligation under this Deed of Trust including, without limitation, payment of any of the foregoing, Beneficiary may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Beneficiary shall be added to the amount secured by this Deed of Trust and the other Bond Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the Default Rate set forth in the Indenture, such interest to be calculated from the date of such advance to the date of repayment thereof.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS.

2.1 Payment and Performance. Trustor shall (a) pay to Beneficiary all sums required to be paid by Trustor under the Bonds and the Bond Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Bond Documents by which Trustor is bound; and (c) perform and comply with all of Trustor's obligations and duties as landlord under any Leases and as needed to operate and maintain the School Facilities as a fully licensed educational facility.

2.2 Seisin and Warranty. Trustor hereby warrants that (a) Trustor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property; (b) Trustor has the right, full power and lawful authority to grant, convey and assign the same to Trustee in the manner and form set forth herein; and (c) this Deed of Trust is a valid encumbrance on the Property. Trustor hereby covenants that Trustor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Trustee against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be reasonably required by Trustee or Beneficiary to protect fully the lien of this Deed of Trust.

2.3 **Insurance.** (a) Trustor shall obtain and maintain at all times throughout the term of this Deed of Trust the following insurance: (i) comprehensive general public liability insurance covering all operations of Trustor; (ii) "All-Risk" fire and extended coverage hazard insurance (non-reporting Commercial Property Policy with Special Cause of Loss form) covering the Facility and all Fixtures and Equipment in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of such Property, including, coverage for loss of rents or business interruption; (iii) if the Facility is required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the Facility (less any value attributable to the Real Estate) or the maximum limit of coverage available; (iv) insurance which complies with the workers' compensation and employers' liability laws of all states in which Trustor shall be required to maintain such insurance; and (v) such other insurance as Beneficiary may reasonably require.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company authorized or licensed to do business in the state within which the Property is located having an Alfred M. Best Company, Inc. rating of "A" or higher and a financial size category of not less than IX; (ii) be for terms of a least one year, with premium prepaid; (iii) be subject to the reasonable approval of Beneficiary as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Beneficiary, its successors and assigns: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee, under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies and (3) as loss payee.

(c) Trustor further agrees that each insurance policy: (i) shall provide at least thirty (30) days' prior written notice to Beneficiary prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Trustor; and (iv) shall exclude Beneficiary from the operation of any coinsurance clause.

(d) At least thirty (30) days prior to the expiration of any insurance policy, Trustor shall furnish evidence satisfactory to Beneficiary that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Trustor fails to maintain insurance in accordance with this Section 2.3, and Beneficiary elects to obtain insurance to protect its interests hereunder, Beneficiary may obtain insurance in any amount and of any type Beneficiary deems appropriate to protect Beneficiary's interest only and Beneficiary shall have no duty or obligation to Trustor to maintain insurance in any greater amount or of any other type for the benefit of Trustor. All insurance premiums incurred or paid by Beneficiary shall be at Trustor's sole cost and expense in accordance

with Section 1 hereof. Beneficiary's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

2.4 **Taxes and Other Charges.** Trustor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Trustor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Trustor has established on its books or by deposit of cash with Beneficiary, at the option of Beneficiary, a reserve for the payment thereof in such amount as Beneficiary may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Property to pay such item. Trustor shall promptly provide to Beneficiary, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Beneficiary evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Trustor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Deed of Trust.

2.5 **Escrows.** Subsequent to an Event of Default, and if required by Beneficiary, Trustor shall pay to Beneficiary at the time of each installment of principal and interest due under the Bonds, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (b) the premiums which will next become due on the insurance policies required by this Deed of Trust, all in amounts as estimated by Beneficiary, less all sums already paid therefor or deposited with Beneficiary for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Beneficiary to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Trustor shall pay to Beneficiary, upon request, such additional amounts as Beneficiary shall estimate to be sufficient to make up any deficiency. No amount paid to Beneficiary hereunder shall be deemed to be trust funds but may be commingled with general funds of Beneficiary and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Beneficiary shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6 **Transfer of Title.** Trustor shall not, without the prior written consent of Beneficiary in each instance, cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, nor shall Trustor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect

sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Trustor, or any general partner or member of Trustor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (d) if Trustor, or any general partner or member of Trustor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Trustor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases. The foregoing shall not prohibit Trustor from selling and acquiring equipment and school supplies in the ordinary course of business of owning and operating the School Facilities as a charter school.

2.7 **No Encumbrances.** Trustor will not create or permit to exist any mortgage, deed of trust, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty) whether superior or inferior to the lien of this Deed of Trust, without the prior written consent of Beneficiary. If any lien or encumbrance is filed or entered without Trustor's consent, Trustor shall have it removed of record within sixty (60) days after it is filed or entered, or within such earlier time as necessary to prevent forfeiture of title to the Property.

2.8 **Removal of Fixtures.** Trustor shall not remove or permit to be removed from the Property any fixtures (as defined under Utah law) presently or in the future owned by Trustor, unless such fixtures have been replaced with similar fixtures of equal or greater utility and value.

2.9 **Maintenance and Repair; Alterations.**

(a) Trustor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property, at Trustor's own cost and expense and to the extent there are any improvements on the same, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Deed of Trust.

(b) Beneficiary, and any persons authorized by Beneficiary, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals,

in the sole discretion of Beneficiary, the necessity for any repair, alteration, replacement, clean-up or maintenance, Trustor shall, at the discretion of Beneficiary, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Beneficiary in an amount determined by Beneficiary for the purpose of effecting such work.

2.10 **Compliance with Applicable Laws.** Trustor agrees to observe, conform and comply, and to cause any tenants and occupants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990, as amended and with all Education Laws as defined in the Servicing Agreement (collectively, the “**Legal Requirements**”), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Trustor represents and warrants that the Property currently is, in compliance with all Legal Requirements applicable to the Property.

2.11 **Damage, Destruction and Condemnation.**

(a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or reduction in the amounts payable by Trustor under the Bond Documents and Trustor shall continue to be obligated to make such payments.

(b) If all or any part of the Property is partially or totally damaged or destroyed, Trustor shall give prompt notice thereof to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Trustor hereby authorizes and directs any affected insurance company to make payment under such insurance, including return of unearned premiums, to Beneficiary instead of to Trustor and Beneficiary jointly, and Trustor appoints Beneficiary as Trustor’s attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable. Beneficiary is hereby authorized and empowered by Trustor to settle, adjust or compromise, in consultation with Trustor, any claims for loss, damage or destruction to the Property. Trustor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Trustor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Beneficiary as security for payment of the Liabilities. Beneficiary shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to (i) reduction of the Liabilities or (ii) to Trustor.

(c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Property, Trustor shall give notice to Beneficiary. Trustor shall, at its sole cost and expense, diligently prosecute any

such proceeding and shall consult with Beneficiary, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Beneficiary and Trustee may participate in any such proceeding and Trustor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation. Trustor shall not, without Beneficiary's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Property, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Beneficiary, and Trustor, upon request by Beneficiary, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Beneficiary to collect the same. Such awards and proceeds shall be paid or applied by Beneficiary, in its sole discretion, to (i) reduction of the Liabilities or (ii) to Trustor.

(d) Nothing herein shall relieve Trustor of its duty to repair, restore, rebuild or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement.

2.12 **Required Notices.** Trustor shall notify Beneficiary within three (3) business days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use or occupancy of the Property or alleging a violation of any Legal Requirements; (b) a substantial change in the occupancy or use of all or any part of the Property; (c) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (d) commencement of any litigation affecting or potentially affecting the financial ability of Trustor or the value of the Property; (e) a pending or threatened condemnation of all or any part of the Property; (f) a fire or other casualty causing damage to all or any part of the Property; (g) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Trustor's interest therein; (h) receipt of any request for information, demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Trustor; (i) receipt of any notice from any tenant of all or any part of the Property alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (j) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Property.

2.13 **Books and Records; Inspection.** Trustor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Property, and (b) copies of all written contracts, leases and other agreements affecting the Property. Beneficiary or its designated representatives shall, upon reasonable prior notice to Trustor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts and records of Trustor relating to the Property.

2.14 **Right to Reappraise.** Beneficiary shall have the right to conduct or have conducted by an independent appraiser acceptable to Beneficiary appraisals of the Property in form and substance satisfactory to Beneficiary at the sole cost and expense of Trustor; provided, however, that Trustor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Beneficiary. The cost of such appraisals, if chargeable to Trustor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

3. **SECURITY AGREEMENT.** This Deed of Trust constitutes a security agreement under the Code and, in addition, shall be deemed to constitute a fixture financing statement on all of Debtor's fixtures. Trustor, as "Debtor", hereby grants to Beneficiary, as "Secured Party", a first lien security interest in all personal property owned by Debtor or in which Debtor has an interest, including, but not limited to, all assets and property described on Exhibit B attached hereto and incorporated herein, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof (collectively, the "**Personal Property**") as additional security for the Liabilities. Secured Party is hereby authorized to file one or more financing statements, fixture filings and continuation statements under the Code in all filing offices to perfect its security interest (and to maintain such security interest) in the Personal Property and in all Fixtures and Equipment and other collateral; such filings may be made without the signature or participation of Debtor. In addition, Debtor shall, at Debtor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements that Secured Party may request from time to time as needed to perfect, confirm or maintain the lien of this Deed of Trust with respect to such property. A photocopy of a financing statement shall be effective as an original. Without limiting the foregoing, Debtor hereby irrevocably appoints Secured Party as attorney-in-fact for Debtor and hereby authorizes Secured Party in its own name to execute, deliver and file such instruments for or on behalf of Debtor at Debtor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable. With respect to goods that become fixtures after the recording of this Deed of Trust and before the completion of construction of any improvements, if applicable, this Deed of Trust is, and shall be construed to be, a "Construction Mortgage" under the Code, and any deed of trust given to refinance this Deed of Trust shall be, and shall be construed to be, a deed of trust given to refinance a construction mortgage. Secured Party may exercise its rights and remedies under the Code separately or in conjunction with its other foreclosure rights and other remedies under this Deed of Trust.

4. **ASSIGNMENT OF LEASES AND CONTRACTS.**

4.1 Trustor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Beneficiary all of Trustor's right, title and interest, now existing or hereafter arising, in and to the Leases, Rents and Contracts, as applicable. Notwithstanding that this assignment is effective immediately, so long as no Event of

Default exists, Trustor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Trustor shall receive and hold such Rents in trust as a fund to be applied, and Trustor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Trustor shall automatically, without notice or any other action by Beneficiary, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary. Nothing contained in this Section 4.1, and no collection by Beneficiary of Rents, shall be construed as imposing on Beneficiary any of the obligations of the lessor under the Leases and Contracts.

4.2 Trustor shall timely perform all of its obligations under the Leases and Contracts, if any. Trustor represents and warrants that to the extent any Leases and Contracts exist: (a) Trustor has title to and full right to assign presently, absolutely and unconditionally the Leases, Rents and Contracts; (b) no other assignment of any interest in any of the Leases, Rents or Contracts has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect except the Leases, true and complete copies of which have been furnished to Beneficiary, and no written or oral modifications have been made thereto; (d) there is no existing default by Trustor or by any tenant under any of the Leases, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases and, to the best of Trustor's knowledge, no tenant has any defenses, set-offs or counterclaims against Trustor; (e) the Leases are in full force and effect; and (f) Trustor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; (g) there is no existing default by Trustor under any of the Contracts, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Contracts; (h) the Contracts are in full force and effect.

4.3 Trustor shall not, without the prior written consent of Beneficiary, enter into any lease of all or substantially all of the Property.

5. DECLARATION OF NO OFFSET. Trustor represents to Beneficiary that Trustor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Trustor shall, within three (3) business days upon request in person or within seven (7) business days upon request by mail, furnish to Beneficiary or Beneficiary's designee a written statement in form satisfactory to Beneficiary stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. ENVIRONMENTAL MATTERS.

6.1 **Definitions.** As used herein, “Environmental Laws” shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2 **Representations, Warranties and Covenants.** Trustor represents, warrants, covenants and agrees as follows:

(a) To the best of its knowledge after due investigation, neither Trustor nor the Property or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Trustor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law, and shall promptly notify Beneficiary in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Trustor shall provide Beneficiary with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Trustor’s giving or receiving of same.

(b) Trustor has taken all steps necessary to determine and has determined, to the best of its knowledge after due investigation, that there has been no release, spill, discharge, leak, disposal or emission (individually a “**Release**” and collectively, “**Releases**”) of any Hazardous Material, Hazardous Substance or Hazardous Waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, “**Hazardous Substances**”) at, upon, under or within the Property. The use which Trustor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Deed of Trust, Trustor shall take all steps necessary to determine whether there has been a Release of any Hazardous Substances on or to the Property and if Trustor finds a Release has occurred, Trustor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(c) To the best of its knowledge after due investigation, the Property has never been used by the present or previous owners and/or operators nor will be used in

the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle or dispose of Hazardous Substances.

(d) The Property: (i) is being and to the best of its knowledge has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (ii) does not have any Hazardous Substances present excepting those substances that are necessary for the construction or operation of the commercial business of Trustor and its tenants, and the usual waste products therefrom and which use is in compliance with all applicable laws, rules and regulations (“**Permitted Substances**”).

(e) Trustor will and will cause its tenants (if any) to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed any Hazardous Substances on the Property.

(f) To the best of its knowledge after due investigation, no lien has been attached to or threatened to be imposed upon the Property, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Trustor nor any other person has been, is or will be involved in operations at the Property which could lead to the imposition of environmental liability on Trustor, or on any subsequent or former owner of the Property, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Trustor shall, within (30) days from the date that the Trustor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Beneficiary in an amount sufficient to discharge the claim out of which the lien arises.

6.3 **Right to Inspect and Cure.** Beneficiary shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as Beneficiary shall deem necessary or advisable from time to time at the sole cost and expense of Trustor; provided, however, that Trustor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (i) no Event of Default exists, and (ii) Beneficiary has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property or that Trustor or the Property is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Trustor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust. Trustor shall, and shall cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property. In the event that Trustor fails to comply with any Environmental Law, Beneficiary may, in addition to any of its other remedies under this Deed of Trust, cause the Property to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

7. **EVENTS OF DEFAULT.** Each of the following shall, after the lapse of any applicable notice and cure period specifically set forth herein or in the applicable Bond Document, shall constitute an event of default by Trustor hereunder (each, an “Event of Default”):

7.1 Non-payment of any sum that is to be paid under the Bonds, or under any of the Bond Documents, when due, or failure to pay any of the other Liabilities when due (subject to receipt of notice of such failure to pay such other Liabilities and Trustor has not paid such Liability within five (5) Business Days after notice has been given);

7.2 A breach of any covenant contained in Sections 2.3., 2.4., 2.6., 2.7. or 2.12. hereof and said breach is not cured within five (5) business days following the delivery of written notice of such breach to Trustor. Notwithstanding the foregoing, Beneficiary shall not be obligated to provide written notice to Trustor for the above referenced defaults on more than two (2) occasions (thereafter any such breach shall automatically be an Event of Default, without a notice or cure period);

7.3 A breach by Trustor of any other term, covenant, condition, obligation or agreement under this Deed of Trust which is not otherwise set forth in this Section 7, and which is not cured by Trustor to the satisfaction of Beneficiary within thirty (30) days following the receipt of written notice from Beneficiary;

7.4 An Event of Default under the Indenture, the Servicing Agreement or under any other Bond Document which remains uncured after any applicable notice and cure period;

7.5 Any representation or warranty made by Trustor in any Bond Document, or made by Trustor to induce Beneficiary to enter into the transactions contemplated hereunder, shall prove to be false, incorrect or misleading in any material respect as of the date when made;

7.6 The filing by Trustor of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Trustor; the appointment of a custodian, receiver, liquidator or trustee for Trustor or for any of the property of Trustor, or any action by Trustor to effect any of the foregoing; if Trustor becomes insolvent (however defined) or is not paying its debts generally as they become due; or the filing by any third party of an action seeking relief under the Federal Bankruptcy Code against Trustor unless such proceeding, custodianship or involuntary bankruptcy is dismissed within sixty (60) days of its filing;

7.7 The dissolution, liquidation, merger, consolidation or reorganization of Trustor, or the institution of any proceeding to effect any of the foregoing, unless it has been approved in writing by Beneficiary prior to its occurrence;

7.8 The filing, entry or issuance of a judgment, execution, garnishment, attachment, distraint or lien against Trustor or its property, subject to the provisions of Section 2.7 hereof provided the same is not bonded or dismissed within sixty (60) days of its filing or entry or within such earlier time as is necessary to prevent forfeiture of title to the property;

7.9 A default which remains uncured after any applicable notice and right to cure period under any other obligation secured by the Property or any part thereof;

7.10 The failure of Trustee to pay any of the Liabilities when and as due; and

7.11 The occurrence of a default or event of default under that certain loan from the United States Department of Agriculture to Trustor in the original principal amount of \$6,539,000.

8. REMEDIES. If an Event of Default shall have occurred, in addition to all rights and remedies available under the Bond Documents and under law or in equity, Beneficiary may take any of the following actions:

8.1 **Acceleration.** Beneficiary may declare the entire amount of the Bonds and other Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Bond Documents. Beneficiary may charge and collect interest from the date of default on the unpaid balance of the Bonds and other Liabilities, at the default rate set forth in the Indenture.

8.2 **Possession.** Beneficiary may enter upon and take possession of all or any portion of the Property, with or without legal action, to operate, maintain and/or protect all or any portion of the Property. Beneficiary may also lease all or any portion of the Property to any party, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Beneficiary, in Beneficiary's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Liabilities. Beneficiary is given full authority to do any act which Trustor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Trustor shall pay monthly in advance to Beneficiary or to any receiver appointed to collect said rents the fair and reasonable rental value for Trustor's use and occupation of the Property, and upon default in any such payment Trustor shall vacate and surrender the possession of the Property to Beneficiary or to such receiver. If Trustor does not vacate and surrender the Property then Trustor may be evicted by summary proceedings.

8.3 **Foreclosure and Sale.** Beneficiary may (a) direct Trustee to sell (and Trustee is hereby empowered to sell) all or any part of the Property, including but not limited to the School Facilities, Improvements, the Real Estate and all Fixtures and Equipment, in whole or in part in every case, at public auction to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, courtesy or other exemption, all of which are expressly waived by Trustor) at such time and place and upon such terms and conditions as may be required by applicable law or rule of court and after having complied with the Utah law applicable to power of sale foreclosures (a **“Power of Sale Foreclosure”**); (b) elect to foreclose this Deed of Trust pursuant to a judicial foreclosure action; or (c) take such other action at law, equity or by contract for the enforcement of this Deed of Trust and realization on the security herein or elsewhere provided for, as the law may allow. In any action or proceeding to foreclose this Deed of Trust or to collect the sums secured hereby, Beneficiary may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities, together with all future advances and any other sums due by Trustor in accordance with the provisions of this Deed of Trust, together with interest from the date of default at the default rate set forth in the Indenture and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys’ fees. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate.

In the event that Beneficiary elects to direct the Trustee to sell the Property or party thereof pursuant to a Power of Sale Foreclosure, the following provisions shall apply: (a) in exercising the power of sale and selling such Property, the Trustee shall comply with the provisions of Utah law governing power of sale foreclosures and shall give such notice of hearing as to the commencement of foreclosure proceedings, obtain such findings and leave of court, and give such notice of and advertise such foreclosure sale all as may then be required by such law; (b) upon such foreclosure sale or any required resale, it shall be lawful for the Trustee to convey the Property (or such portion thereof as may have been sold) to the successful bidder by way of a Trustee’s deed without any covenant or warranty and any recitals of fact in such Trustee’s deed shall be prima facie evidence of such facts; (c) the Trustee shall be entitled to a reasonable Trustee’s fee, not to exceed the maximum fee allowed by applicable law (the **“Commission”**) as well as reimbursement for any attorney’s fees incurred by Trustee; (d) the Trustee shall apply the proceeds of the sale first to the payment of all expenses and costs incurred in connection with such sale, including without limitation, advertising costs, title examination fees, transfer taxes, and court costs; second to the payment of the Trustee’s Commission; third to payment of any taxes or governmental assessments which may be a lien against the Property, unless Trustee advertised and sold the Property subject to such taxes or assessments; and fourth, to the payment of the Liabilities and sums secured hereby, with the excess, if any, of such proceeds after the payment in full of the Liabilities and secured sums being distributed to the person or persons entitled thereto as their interests may appear; (e) if the Trustee commences a Power of Sale Foreclosure and such proceeding is terminated prior to the completion thereof, Trustor shall pay to Trustee all expenses incurred by Trustee in connection with such proceeding and sale and a reasonable commission or compensation for services rendered by such Trustee but not

more than the maximum fee allowed by applicable law; (f) at any sale conducted by the Trustee, Beneficiary may bid for and become the purchaser of the Property or such portion thereof as has been offered for sale and in lieu of paying cash therefor Beneficiary may take settlement of the purchase price by a credit upon the Liabilities due and payable to it and secured by this Deed of Trust; (g) any sale scheduled by the Trustee may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law; and (h) the sale by Trustee of less than the whole of the Property shall not exhaust the right to sell any remainder of the Property and Trustee is specifically empowered to make a successive sale or sales until the whole of the Property shall be sold; and if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Liabilities, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made.

8.4 **Appointment of Receiver.** In addition to all other rights and remedies, Beneficiary may petition a court of competent jurisdiction to appoint a receiver for the Property or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Trustor has committed waste or allowed deterioration of the Property, and Beneficiary or any agent of Beneficiary may be appointed as such receiver. Trustor hereby agrees that Beneficiary has a special interest in the Property and absent the appointment of such receiver the Property shall suffer waste and deterioration and Trustor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Beneficiary pursuant to Section 8.2 above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period as a school or for any other purpose.

8.5 **Rights as a Secured Party.** Beneficiary shall have, in addition to other rights and remedies available hereunder and at law or in equity, all rights and remedies of a secured party under the Code with respect to all Personal Property, and may sell or transfer any and all Personal Property, in whole or in part and in one or more occasions, and apply the proceeds thereof to the Liabilities (after payment of costs and fees associated with all such sales and transfers). Beneficiary may elect to foreclose on such of the Property as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Trustor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.6 **Excess Monies.** Beneficiary may apply on account of the Liabilities any unexpended monies still retained by Beneficiary that were paid by Trustor to Beneficiary: (a) for the payment of, or as security for the payment of, taxes, assessments or other

governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Trustor.

8.7 **Other Remedies.** Beneficiary shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Trustor under the terms of this Deed of Trust, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any default by Trustor existing at the time the earlier action was commenced. In addition, Beneficiary shall have the right to set-off all or any part of any amount due by Trustor to Beneficiary under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Beneficiary in any capacity to Trustor, including any obligation to disburse to Trustor any funds or other property on deposit with or otherwise in the possession, control or custody of Beneficiary.

8.8 **Rights under Law and in Equity.** In addition to all other rights and remedies granted hereunder, Trustee and Beneficiary shall have all rights and remedies available under law and in equity.

9. **MISCELLANEOUS.**

9.1 **Substitute Trustee.** Beneficiary may, at any time and from time to time, without notice, at the Beneficiary's discretion, remove Trustee and appoint a substitute trustee (the "Substitute Trustee") by filing in the records where this Deed of Trust is recorded an instrument affecting such removal and appointment. A Substitute Trustee shall be vested with title to the Property and with all rights, powers, and duties of the original Trustee herein and all provisions hereof pertaining to the Trustee shall similarly affect any Substitute Trustee. The necessity of Trustee, or any Substitute Trustee, making oath or giving bond is expressly waived.

9.2 **Notices.** All notices and communications under this Deed of Trust shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Deed of Trust. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (c) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

9.3 **Remedies Cumulative.** The rights and remedies of Beneficiary as provided in this Deed of Trust or in any other Bond Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment

thereof, release any security, change any of the terms of the Bond Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Deed of Trust or the rights of Beneficiary.

9.4 **No Implied Waiver.** Beneficiary shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Beneficiary, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.5 **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Deed of Trust shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.6 **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Deed of Trust shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Deed of Trust cannot be assigned by Trustor without the prior written consent of Beneficiary, and any such assignment or attempted assignment by Trustor shall be void and of no effect with respect to Beneficiary.

9.7 **Modifications.** This Deed of Trust may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.8 **Bond Purpose.** Trustor represents and warrants that the Bonds or other financial accommodations included as Liabilities secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

9.9 **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the substantive laws of the State of Utah without reference to conflict of laws principles.

9.10 **Joint and Several Liability.** If Trustor consists of more than one person or entity, the word "Trustor" shall mean each of them and their liability shall be joint and several.

[Signature Page Follows]

IN WITNESS WHEREOF, Trustor, intending to be legally bound, has duly executed and delivered this Deed of Trust and Security Agreement under seal as of the day and year first above written.

TRUSTOR:

HIGHMARK CHARTER SCHOOL, a Utah non-profit corporation

By: *Bentley McEntire*
Name: Bentley McEntire
Title: Board Chair

Witness:

By: *Blake v Petersen*
Name: Blake v Petersen
Title: Board ~~Secretary~~
Treasurer

STATE OF UTAH
COUNTY OF Salt Lake

On the 11th of September, 2013, before me, the undersigned Notary Public, personally appeared Bentley McEntire, Board Chair of HighMark Charter School, a Utah nonprofit corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

Claudia B. Kunz
Notary Public

[SEAL]

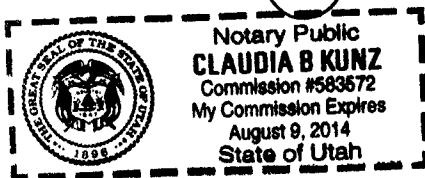


Exhibit A

All of Lot 1, **HIGHMARK SUBDIVISION**, according to the Official Plat thereof, recorded in the Office of the County Recorder of **DAVIS** County, State of Utah.

The following is shown for informational purposes only: Tax Parcel No. 13-292-0001

EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY

All of HighMark Charter School's (referred to as "Debtor") right, title and interest in and to all assets of Debtor, including, but not limited to, the following property (collectively referred to as the "Collateral"):

(a) All accounts, accounts receivable, contract rights, chattel paper and instruments, and all other rights of Debtor to the payment of money of every nature, type and description, whether now owing to Debtor or hereafter arising, and all monies and other proceeds (cash and non-cash), including, without limitation, the following: all accounts, accounts receivable, book debts, instruments and chattel paper, books of account, computer storage media, ledger books and records of Debtor, deposit account balances, notes, drafts, acceptances, rents, payments under leases or sales of equipment or inventory and other forms of obligations now or hereafter received by or belonging or owing to Debtor for goods sold or leases and/or services rendered by it, and all of Debtor's rights in, to and under all purchase orders, instruments and other documents now or hereafter received by it evidencing obligations for and representing payment for goods sold or leases and/or services rendered, and all monies due or to become due to Debtor under all contracts for the sale or lease of goods and/or the performance of services by it, now in existence or hereafter arising, including, without limitation, the right to receive the proceeds of said purchase orders and contracts; all contracts, leases, instruments, undertakings, documents or other agreements in or under which Debtor may now or hereafter have any right, title or interest; all customer lists, tax refunds due Debtor from any governmental agency and any and all proceeds of any of the above and any and all replacements of or accessions to and property similar to the foregoing;

(b) All inventory now owned or hereafter acquired by Debtor, of every nature, type and description, wherever located, including, without limitation, all of Debtor's goods or personal property held for lease or sale or being processed for lease or sale, all raw materials, work in progress, finished goods, packaging materials, and all other materials or supplies used or consumed or to be used or consumed in Debtor's business or in the processing, packaging or shipping of the same; and any and all instruments, documents, property, books and records, computer storage media and ledger books arising out of or related in any way to any of the foregoing;

(c) All rights of the Debtor as an unpaid vendor or lienor (including, without limitation, stoppage in transit, replevin and reclamation) with respect to any inventory or other related properties of the Debtor;

(d) All books, records, files, computer programs, computer software and hardware, data processing records and correspondence in any way related to any of the Collateral;

(e) All materials, reserves, deferred payments, deposits or advance payment for materials, undisbursed loan proceeds, or refunds for overpayment relating to any of the Debtor's accounts or inventory;

(f) Any and all accounts and funds under the Indenture (as defined in the Servicing Agreement) to secure the Bonds issued thereunder and all cash, money, investments or instruments held therein;

(g) Any and all of Debtor's goods held as equipment, including, without limitation, all machinery, tools, dies, furnishings, or fixtures, wherever located, whether now owned or hereafter acquired, and any computer programs embedded in such equipment and any supporting information provided in connection with a transaction relating to the computer program if the program is associated with the equipment in a manner that it customarily is considered part of the equipment, or by becoming the owner of the equipment, a person acquires a right to use the program in connection with the equipment, together with all increases, parts, fittings, accessories, equipment, and special tools now or hereafter affixed to any part thereof or used in connection therewith;

(h) Any and all fixtures (as defined in the UCC), whether now existing or hereafter acquired which are or will become fixtures on the real property identified on Exhibit A attached hereto ("Real Property");

(i) Any and all of Debtor's rights and interests in instruments and/or documents (as such terms are defined in the UCC), whether now owned or hereafter acquired, including, without limitation, negotiable instruments, promissory notes (as defined in the UCC), documents of title owned or to be owned by Debtor, and all liens, security agreements, leases, and other contracts securing or otherwise relating to any of said instruments or documents;

(j) All of Debtor's rights and interests in the Trust Estate under the Indenture and all rights and interest in the Bond Fund, Cost of Issuance and School Acquisition Fund, Reserve Fund and Revenue Fund, each as defined in the Indenture and subject to the lien of the Bond Trustee under the Indenture;

(k) Any and all of Debtor's rights and interests in chattel paper, electronic chattel paper, and tangible chattel paper (as such terms are defined in the UCC), including security interests in software and license of software used in specific goods and leases of specific goods and license of software used in the goods;

(l) Any and all of Debtor's rights and interests in and to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance;

(m) Any and all of Debtor's rights and interests in and to a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, or an instrument (as such terms are defined in the UCC);

(n) Any and all of Debtor's general intangible property, including payment intangibles (as defined in the UCC), whether now owned or hereafter acquired by Debtor or used in Debtor's business currently or hereafter, including, without limitation, all patents, trademarks, service marks, trade secrets, copyrights and exclusive licenses (whether issued or pending), literary rights, contract rights and all documents, applications, materials and other matters related thereto, all inventions, all manufacturing, engineering and production plans, drawings, specifications, processes and systems, all trade names, goodwill and all chattel paper, documents, and instruments relating to such general intangibles;

(o) All Revenues of Debtor from whatever source, including but not limited to, all pledges and contributions (subject in each case to any restrictions on the use thereof from the contributing party). "Revenues" refers to all revenue, income, receipts and money received in any period by or on behalf of Debtor (other than the proceeds of any permitted borrowing, and other than interest earned on such proceeds if and to the extent such interest is required to be excluded by the terms of the borrowing), including but without limiting the generality of the foregoing, all (a) tuition payments, fees and other revenues derived from the operations of HighMark Charter School in South Weber, Utah (and any other school facilities) (the "School"), (b) payments made by the State of Utah or any political subdivision or agency thereof to or for the benefit of Debtor or the School and the right to receive all such payments, (c) gifts, grants, bequests, donations and contributions to Debtor for the School exclusive of any gifts, grants, bequests, donations and contributions to the extent specifically restricted by the donor in writing at the time of initial donation to a particular purpose inconsistent with their use for payment under the Indenture, (d) proceeds derived from (i) insurance maintained with respect to the School, and (ii) condemnation awards relating to the School or sales under a reasonably apprehended threat of condemnation of the School (e) accounts and accounts receivable relating to or derived from operations of the School, (f) securities and other investments owned by Debtor either directly or indirectly, (g) inventory and other tangible and intangible property, (h) rental, lease or licensing payments relating to the use of the School, (i) payments for the naming rights for the School and all components thereof, (j) fees, rents and other payments received relating to the provision of concessions and the sale of food, beverages and merchandise at the School or relating thereto or relating to any events at the School, (k) funds received or due under any contract rights and other rights and assets now or hereafter owned, held or possessed by or on behalf of Debtor, (l) all payments, receipts, claims or other payments relating to the operations of the School, (m) federal, state, local, county or city funds received for the School, (n) any revenues and income of any kind or from any source not otherwise listed above, (o) all income earned from the investment of all moneys held from time to time in each fund and account established under the Indenture (but only to secure the Bonds issued pursuant to the Indenture) and (p) any revenues and income of any kind or from any source not otherwise listed above;

(p) All rights in and to all crops, livestock, timber and agricultural products of any nature or kind and all mineral, oil, gas and water rights and interests;

(q) All deposit accounts and bank accounts in all financial institutions and all funds on deposit in such accounts from time to time; and

(r) Any and all products and proceeds of any of the foregoing (including, but not limited to, any claims to any items referred to in this definition, and any claims of the Debtor against third parties for loss of, damage to or destruction of any or all of the collateral or for proceeds payable under, or unearned premiums with respect to, policies of insurance) in whatever form, including, but not limited to, cash, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements and other documents and the proceeds of such proceeds.

All terms used herein which are defined in the Uniform Commercial Code of the State of Utah, as amended from time to time (the "UCC"), shall have the meaning assigned to them in the UCC.