

DRAFT

CHARTER SCHOOL FACILITIES USE AGREEMENT

BETWEEN

MT. DIABLO UNIFIED SCHOOL DISTRICT,
a Unified School District duly organized and existing under the laws
of the State of California,

as OWNER,

CLAYTON VALLEY CHARTER HIGH SCHOOL, a California nonprofit corporation
operating a California public charter school,

as OCCUPANT,

July 1, 2013

CHARTER SCHOOL FACILITIES USE AGREEMENT PROVISIONS

The following fundamental provisions are incorporated into the Charter School Facilities Use Agreement attached hereto. The provisions shall have the following meanings throughout the Charter School Facilities Use Agreement.

- (a) District: Mt. Diablo Unified School District (“MDUSD”), a unified school district existing under the laws of the State of California
- (b) Charter School: Clayton Valley Charter High School, a non-profit corporation (“Occupant”) operating a conversion charter school pursuant to Education Code Section 47605(a)(2)
- (c) Premises: That certain real property located in the City of Clayton, County of Contra Costa, State of California, at 1101 Alberta Way, Clayton, California 94521 and more particularly described on **Exhibit “A”** attached hereto, together with all improvements thereon, including classrooms and other school buildings.
- (e) Commencement Date: July 1, 2013
- (f) Term: From the Commencement Date to June 30, 2014
- (g) Extension Options: None
- (h) Fees: \$342,039.86 per year, payable in four installments as specified.
- (i) Use: A charter 9-12 high school shall be operated by Charter School in a manner wholly consistent with all Applicable Law (as defined in this Use Agreement) governing the operation of charter schools, and the school’s chartering document. Charter School shall use the Premises to operate a charter school and for incidental related uses, but for no other purpose.
- (j) Charter School’s Address for Notices: Clayton Valley Charter High School
1101 Alberta Way, Clayton, California 94521
Attention: David Linzey, Executive Director

(k) District's Address for Notices: 1936 Carlotta Drive
Concord, CA 94519
Attn: Deborah A. Cooksey
Associate General Counsel

(l) Effective Date: The Charter School Use Agreement will become effective when signed by all Parties and delivered by MDUSD.

(n) Expiration Date: June 30, 2014

DRAFT

CHARTER SCHOOL FACILITIES USE AGREEMENT

Pursuant to Title 5, California Code of Regulations, § 11969.1(b), this 1st day of July 2013, by and between the Mt. Diablo Unified School District (“District” or “MDUSD”), a California unified school district and Clayton Valley Charter High School (“Charter School”), a California not-for-profit public benefit corporation whose charter was approved by the Contra Costa County Board of Education (“CCBOE”) (the “Parties,” or singularly, “Party”), with reference to the following:

ARTICLE 1. GENERAL TERMS

1.1 Definitions.

(a) Applicable Law. “Applicable Law” means and refers to all present and future, foreseeable and unforeseeable, laws (including, without limitation, the Education Code, the Public Contract Code, the California Building Standards Law and any requirements of the California Division of State Architect), ordinances, orders (including consent decrees), rules and regulations, and requirements of all federal, state, county and city government, courts, departments, commissions, boards and offices, any national or local Board of Fire Underwriters, and any other governmental body exercising jurisdiction over the Premises or exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary or extraordinary, and any covenants or conditions.

(b) Deferred Maintenance. “Deferred Maintenance” means “major maintenance”, including major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials pursuant to Education Code Section 17582.

(c) Environmental Laws. “Environmental Laws” means and refers to all federal, state and local laws, ordinances, court orders and administrative directives, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Substance Account Act, California Health & Safety Code § 25300 et seq.; the Hazardous Waste

Control Act, California Health & Safety Code § 25100 et seq.; the California Underground Storage of Hazardous Substances Act, California Health & Safety Code § 25280 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code 25249.5 et seq.; the Medical Waste Management Act, California Health & Safety Code § 15015 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000 et seq.; and California Education Code § 17210, et seq., and California Code of Regulations, Title 5, § 14010 et seq.

(d) Hazardous Substance. “Hazardous Substance” means and refers to any substance, material, product or waste or other material of any nature whatsoever that is listed, regulated, or addressed in or pursuant to the Environmental Laws or which may give rise to liability under Environmental Laws or under any statutory or common law theory based upon negligence, trespass, intentional tort nuisance or strict liability or under any reported decisions of a state or federal court, which includes but is not limited to asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

(e) Release. “Release” means and refers to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing, including continuing migration, into the environment of Hazardous Substance into or through soil, air, surface water or groundwater.

1.2 Statutory References. The specific statutory references in this Use Agreement are to the Codes and Regulations of the State of California unless otherwise specified.

1.3 Charter Revenues. “Charter Revenues” mean and refer to Charter School’s general purpose entitlement revenues (under Education Code section 47612) and categorical block grant revenues (as identified in Education Code section 47633 et seq.).

ARTICLE 2. PREMISES

2.1 Use of Premises. MDUSD hereby permits Charter School to use the Premises located at 1101 Alberta Way, Clayton, CA 94521, more specifically identified in **Exhibit “A”** attached hereto and incorporated by reference as though set forth in full, upon all of the conditions set forth herein as a 9-12 school (“School”). Charter School hereby accepts the use of the Premises from MDUSD upon all of the conditions hereinafter set forth. Charter School’s use of certain portions of the Premises shall be exclusive and use of other portions of the premises shall be shared as more specifically identified in **Exhibit “A”** attached hereto and incorporated by reference as though set forth in full, upon all of the conditions set forth herein as a 9-12 school (“School”).

2.2 Delivery of Premises. MDUSD shall deliver the Premises to Charter on July 1, 2013 (“Commencement Date”).

2.3 Condition of Premises. The District is not aware of any defect in or condition of the Premises that would prevent their use for the Charter School's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Premises that calls into question the appropriateness or sufficiency of the Premises for their intended purpose.

The Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Premises, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. The Charter School shall not be responsible for any and all environmental conditions that existed prior to the Charter School's occupancy of the Premises. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards regarding access for any existing compliance issue prior to the date of execution of this Agreement. The Charter School shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by the Charter School.

ARTICLE 3. TERM

3.1 Use Agreement Term. The term of this Use Agreement ("Term") shall commence on the Commencement Date and shall terminate on June 30, 2014. Notwithstanding anything to the contrary set forth in this Use Agreement, this Use Agreement shall automatically terminate if Charter School's charter is revoked or non-renewed (but not until the Charter School has exhausted any and all statutory and judicial appeal rights).

ARTICLE 4. FEES

4.1 Use Fee. Charter School shall pay Owner a Use Fee in the amount \$342,039.86 to be paid in equal quarterly installments which shall be due on the following schedule:

- 25% by September 1, 2013;
- 25% by December 31, 2013;
- 25% by March 31, 2014;
- 25% by June 30, 2014

Charter School and District stipulate that the amount of the Use Fee is equal to the pro rata share cost of the Premises.

ARTICLE 5. EXPENSES OF OCCUPANT

5.1 Generally. In addition to the Use Fee identified in Article 4, Charter School agrees to pay:

(a) Personal Property Taxes. All personal property taxes, charges, rates, duties and license fees (collectively, "Personal Property Taxes") assessed against or

levied upon Charter School's trade fixtures, furnishings, equipment or other personal property contained at the Premises. Charter School shall cause such Personal Property Taxes to be billed separately from the property of District. Charter School hereby shall defend, indemnify and hold District harmless from and against the payment of all such Personal Property Taxes.

(b) Utility Services. Charter School shall pay all utility costs and charges for the Premises, including gas, water, electricity, light, heat, power used, rendered or supplied upon or in connection with the Premises, that Charter School consumes throughout the Term of this Use Agreement.

ARTICLE 6. MAINTENANCE AND FURNISHINGS AND EQUIPMENT

6.1 Furnishings and Equipment. MDUSD shall provide, in accordance with the Proposition 39 regulations, furnishings, and equipment at the Premises. These furnishings and equipment shall remain the property of the District. The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with 5 C.C.R. Section 11969.3. MDUSD and the Charter School shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site. No later than October 1, 2013, the Charter School shall provide the District with a complete inventory of all Charter School owned furnishings and equipment at the Site. The Charter School inventory shall be updated as the Charter School purchases new furnishings and equipment and/or surpluses and sells furnishings and equipment. The allocation of furnishings and equipment shall include the band uniforms, weight room equipment, music instruments, textbooks and kitchen equipment located on the Dedicated Space during the 2012-2013 school year.

6.2 Maintenance. Facilities, furnishings, and equipment provided to the Charter School shall remain the property of the District. The ongoing operations and maintenance of the facilities and furnishings and equipment is the responsibility of the Charter School. For purposes of this section, "ongoing operations and maintenance" includes, but is not limited to custodial services, the changing of light bulbs, the changing of air conditioner filters and routine maintenance of gymnasium equipment. Projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with District schedules and practices shall remain the responsibility of the District. The Charter School shall comply with District policies regarding the operations and maintenance of the facilities and furnishings and equipment, except to the extent variation is approved by the District.

The District shall be responsible for the major maintenance of the facilities used by the Charter School. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance and shall be the responsibility of the Charter School.

ARTICLE 7. INSURANCE

7.1 Charter School's Insurance. Charter School, at Charter School's sole cost and expense, shall obtain and keep in full force and effect, beginning on the Commencement Date and continuing until the end of the Term of this Use Agreement, the following insurance:

(a) Liability Insurance. Charter School shall, during the term of this Agreement, maintain in force the required levels of insurance in the amounts specified by the District. Specifically, the coverage and limits as designated in the 2011/12 California Charter School Association Joint Powers Agreement which is attached as Exhibit E and incorporated herein by reference. Such insurance as is afforded by this policy for the benefit of MDUSD shall be primary with respect to any liability of claims arising out of the occupancy of the Premises by Charter School, or out of Charter School's operations, and any insurance carried by MDUSD shall be excess and non-contributory.

(b) Property Insurance. District shall maintain first party property insurance against fire, vandalism, malicious mischief and such other additional perils as now are or hereafter may be included in a standard "All Risks" coverage, including coverage for earthquake, sprinkler leakage, flood, fire, and other hazards. The Charter School shall secure and maintain property insurance for all assets listed in the Charter School's property inventory and consumables. The Charter School shall secure property coverage with a minimum policy limit of 80 percent of the fair market value of the Charter School's contents

(c) Workers' Compensation, Employer Liability. Workers' Compensation insurance as required by law and Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000).

(d) Professional Liability. Professional educators' errors and omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the commercial general liability policy), with minimum limits of \$1,000,000 per occurrence.

7.2 Insurance Policy Criteria. All policies of insurance required to be carried by Charter School shall be written by responsible insurance companies authorized to do business in the State of California, rated no less than the standard MDUSD requires for the schools within its district (A.M. Best, A-, VII, or better), or the equivalent provided through a risk-pooling joint powers authority operating pursuant to Government Code section 6500, et seq. Any such insurance required of Charter School hereunder may be furnished by Charter School under any blanket policy carried by it or under a separate policy therefor. A true and exact copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required and containing the provisions specified herein, shall be delivered to MDUSD prior to the date Charter School is given the right to possession of the Premises, and upon renewals, not less than thirty (30) days prior to the

expiration of such coverage. In addition, MDUSD shall be named as an additional insured on the liability policies. MDUSD may, at any time and from time to time, upon reasonable notice to Charter School and at no cost to Charter School, inspect and/or copy any and all insurance policies required hereunder, and in no event shall the then-limits of any policy be considered as limiting the liability of Charter School under this Use Agreement.

ARTICLE 8. USE OF PREMISES

8.1 Use. Charter School shall use the Premises only for School and related activities and for no other purpose, such use being subject to the terms of this Use Agreement and all Applicable Law, and the Charter School's charter. Charter School acknowledges and agrees that the use which Charter School is permitted to make of the Premises is a material provision of this Use Agreement.

8.2 Compliance with Laws. Charter School shall, at its sole cost and expense, promptly comply with all Applicable Laws in its use of the Premises by Charter School (including the use of the Premises as a charter school.) Charter School shall faithfully observe and comply in all material respects with all Applicable Law in the use and occupancy of the Premises.

ARTICLE 9. ADDITIONS AND ALTERATIONS

9.1 MDUSD's Consent. Charter School shall not make any alterations, additions, or improvements to, including signage installation on ("Alterations"), the Premises without first receiving prior written consent from MDUSD's Superintendent, which consent shall be in the Superintendent's reasonable discretion. Contractors retained by Charter School with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with MDUSD construction requirements. The construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable including, but not limited to building codes, and fingerprinting requirements. MDUSD or MDUSD's agent shall have a continuing right at all times during the period that improvements are being constructed or installed to enter the Premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students. Charter School shall indemnify, defend and hold harmless MDUSD, its directors, officers and employees from any loss, damage, claim, cause of action, cost, expense or liability arising out or caused by any violation by the Charter School or its directors, officers, employees or contractors of any applicable federal, state or local statute, ordinance, order, governmental requirement, law or regulation that applies to any work, including, without limitation, any labor laws and/or regulations requiring that persons performing work on any improvements be paid prevailing wage.

9.2 Signage. Charter School may install signage at the Premises subject to the provisions set forth in this Article 9, provided such signage shall be in compliance with the custom and practice in MDUSD for school signage and Charter School's receipt of any

applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations. Notwithstanding anything to the contrary herein, Charter School shall not place or affix, nor permit or allow Charter School's agents, representatives, employees, students, staff, third parties or invitees to place or affix, any advertisements, signboards and/or billboards on the Premises. Upon expiration of the Term, Charter School shall remove any signage it installed on the Premises, unless otherwise agreed by the Parties.

ARTICLE 10. SURRENDER; END OF THE TERM

10.1 Surrender of Premises. On the last day of the Term, Charter School shall surrender to MDUSD the Premises, vacant and in the same condition as when received or made, ordinary wear and tear excepted, free and clear of any liens or encumbrances. All alterations made by or for Charter School, whether temporary or permanent in character, made either by MDUSD or Charter School, shall be the Charter School's property and the Charter School shall remove from the Premises all Alterations, and repair all damage to the Premises caused by such removal; provided however, that MDUSD, exercisable by written notice to Charter School, may request that the Charter School leave any Alterations made to the Premises during the Term, and the Charter School may elect to do so. By the last day of the Term, Charter School shall remove completely all of Charter School's personal property, including moveable furniture, trade fixtures, and equipment not attached to the Premises, and repair all damage caused by such removal. Any of Charter School's personal property not so removed shall, at the option of MDUSD, automatically become the property of MDUSD upon the expiration of this Use Agreement. Thereafter, MDUSD may retain or dispose of in any manner the personal property not so removed, without any notice or liability whatsoever to Charter School.

10.2 Removal of Property. Notwithstanding the foregoing, Charter School's machinery, furniture, equipment and trade fixtures (including utility installations) which may be removed without irreparable or material damage to the Premises shall remain the property of Charter School and shall be removed by Charter School the last day of the Term, as it may be extended pursuant to the terms herein. Charter School shall repair any damage to the Premises occasioned by the removal of Charter School's furnishings, machinery, equipment and trade fixtures, which repair shall include the patching and filling of holes and repair of structural damage. Any machinery, furniture, equipment and trade fixtures not removed by Charter School from the Premises upon the end of the Term shall be conclusively presumed to have been abandoned by Charter School.

10.3 Compliance with Applicable Law. All removal of property is subject to Applicable Law, including any local permits and/or approval by the Division of State Architect of the State Department of General Services ("DSA").

10.4 Exception. Notwithstanding the foregoing, because the Charter School is a conversion charter school and thus entitled to occupy its conversion school site each year upon annual request pursuant to 5 CCR Section 11969.3(d), if the Charter School has made its annual request to continue occupying the Premises, this section shall not apply.

ARTICLE 11. HOLDING OVER

11.1 Holding Over. Charter School shall surrender possession of the Premises immediately upon the expiration of the Term of this Use Agreement. Charter School will not be permitted to hold over possession of the Premises after the expiration of the Term unless Charter School has requested to continue occupancy of the Premises pursuant to 5 CCR Section 11969.3(d), in which case Charter School shall be entitled to continue in possession of the Premises for the subsequent school year. Any holdover by Charter School not allowed for by law shall constitute a material breach of this Use Agreement by Charter School entitling MDUSD to pursue any and all remedies available at law and in equity, including without limitation consequential damages resulting therefrom.

11.2 No Extension of Use Agreement. No payment of money by Charter School to MDUSD after the termination of the Use Agreement by MDUSD, or after the giving of any notice of termination to Charter School by MDUSD which MDUSD is entitled to give Charter School under the Use Agreement, shall reinstate, continue or extend the Term of the Use Agreement or shall affect any such notice given to Charter School prior to the payment of such money, it being agreed that after the service of such notice or the commencement of any suit by MDUSD to obtain possession of the Premises, MDUSD may receive and collect when due any and all payments owed by Charter School under the Use Agreement, and otherwise exercise its rights and remedies. The making of any such payments by Charter School shall not waive such notice, or in any manner affect any pending suit or judgment obtained.

ARTICLE 12. MDUSD'S ACCESS

12.1 Entry. MDUSD and its authorized representatives shall have the right to enter the Premises during normal business hours for the purpose of inspection ("Inspection") with twenty-four (24) hours written notice to the Charter School; or to perform deferred maintenance in or on the Premises in a manner so as not to disrupt the normal classroom and school activities. In emergency situations, MDUSD shall give telephonic notice to Charter School at **(323) 369-0515** immediately upon MDUSD's receipt of notification of any such emergency. If Charter School shall not be present to open and permit an entry into the Premises in an emergency situation as reasonably determined by MDUSD, MDUSD may enter by means of a master key without liability to Charter School and without affecting this Use Agreement. If Charter School is violating the use restrictions of this Use Agreement or is not in material compliance with Applicable Law, as reasonably determined by the District after its Inspection, then all reasonable costs and expenses reasonably and actually incurred by MDUSD in connection with any Inspection shall become due and payable by Charter School as additional payment due MDUSD, within ten (10) days of presentation by MDUSD of an invoice therefor.

12.2 Right to Perform. If Charter School fails to perform any covenant or condition to be performed by Charter School pursuant to this Use Agreement or the Charter School Petition, MDUSD and its authorized representative shall have the right to enter the Premises during normal business hours for the purpose of performing such covenant or condition at MDUSD's option after thirty (30) days' written notice to and failure to perform by Charter School (provided, however, that no written notice is required in the case of emergencies). All costs incurred by MDUSD in so performing shall be reimbursed to MDUSD by Charter School within

ten (10) days of written demand therefor, together with interest at the Interest Rate computed from the date incurred by MDUSD until paid. Any performance by MDUSD of Charter School's obligations shall not waive or cure such default. MDUSD may perform Charter School's defaulted obligations at Charter School's sole cost and expense without notice in the case of any emergency, as reasonably determined by the District.

MDUSD may, during the progress of such work, keep and store on the Premises all necessary materials, tools, supplies and equipment. MDUSD shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Charter School by reason of making such repairs or the performance of any such work.

12.3 Routine Access. With twenty-four (24) hours written notice, MDUSD shall have the right to enter the Premises to conduct its own compatible operations, to perform any routine or major/deferred maintenance, custodial services, or conduct inspections of the Premises, including specifically the kitchen area during usual business hours in order to insure that proper pest management control is being conducted on the Premises. MDUSD will endeavor during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

ARTICLE 13. LIENS

13.1 Liens. Charter School shall not suffer or permit any liens to stand against the Premises, or any part thereof, by reason of any work, labor, services or materials done, supplied, or claimed to have been done or supplied. If any such lien shall at any time be filed against the Premises, Charter School shall provide MDUSD written notice thereof as soon as notice of such lien or action comes to the knowledge of Charter School. Charter School shall commence appropriate action to remove any lien or action and diligently pursue discharged of record within sixty (60) days after the date of the filing of same, either by payment, deposit or bond, unless a bond therefore is already in effect. Nothing in this Use Agreement shall be construed as consent or agreement by MDUSD to subject its estate in the Premises to liability under any mechanics' lien law or to any contractor or laborer for work performed.

13.2 Release of Liens by MDUSD. If any such liens are not so discharged within sixty (60) days after the date of the filing of the same, MDUSD may, without waiving its rights and remedies based on such breach by Charter School and without releasing Charter School from any of its obligations, cause such liens to be released by any reasonable means, including payment in satisfaction of the claim giving rise to such lien. Charter School shall pay to MDUSD within sixty (60) days of written demand therefor, any sum paid by MDUSD to remove such liens, together with interest at the Interest Rate from the date of such payment by MDUSD. Charter School shall indemnify, defend and protect against (by counsel reasonably approved in writing by MDUSD), and keep MDUSD free and harmless from, all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Charter School or any person claiming under Charter School.

ARTICLE 14. ALLOCATION OF RISK

14.1 Indemnity. MDUSD and Charter School hereby agree and acknowledge that the relationship between MDUSD and Charter School for purposes of this Agreement is solely a landlord/tenant relationship and not a principal/agent relationship or any other relationship. Charter School is acting on its own behalf in operating from the Premises any school thereon (or any other purpose(s) thereupon) and is not operating as an agent of MDUSD.

To the fullest extent permitted by law, Charter School (“Indemnifying Party”) shall indemnify, defend, release and protect MDUSD, its affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees (“Indemnified Party” or “Indemnified Parties”) and hold the Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys’ fees) incurred in connection with or arising from any cause (i) in the use or occupancy by Charter School of the Premises (including without limitation, the operation by Charter School of the School from the Premises), or (ii) in connection with the operations by Charter School at the Premises, including without limiting the generality of the foregoing:

- (a) Any default by Charter School in the observance or performance of any of the terms, covenants or conditions of the Use Agreement on Charter School’s part to be observed or performed;
- (b) The use or occupancy of the Premises by Charter School or any person claiming by, through or under Charter School or Charter School’s employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, or any such person in, on or about the Premises either during the Term of the Use Agreement (singularly, “Liability”; collectively, “Liabilities”); and
- (c) Any claim by a third party that MDUSD is responsible for any actions by Charter School in connection with any use or occupancy of the Premises or in any way related to this Use Agreement.

This indemnity and hold harmless provision shall exclude actions brought against MDUSD arising out of the negligence, intentional acts, misconduct, errors or omissions of MDUSD and/or MDUSD affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees.

To the fullest extent permitted by law, MDUSD (“Indemnifying Party”) shall indemnify, defend, release and protect Charter School, its affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees (“Indemnified Party” or “Indemnified Parties”) and hold the Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys’ fees) incurred in connection with or arising from any cause (i) in the use or occupancy by MDUSD of the Premises (including without limitation, the operation by

MDUSD of operations on the Premises), or (ii) in connection with the operations by MDUSD at the Premises, including without limiting the generality of the foregoing:

- (a) Any default by MDUSD in the observance or performance of any of the terms, covenants or conditions of the Use Agreement on MDUSD's part to be observed or performed;
- (b) The use or occupancy of the Premises by MDUSD or any person claiming by, through or under MDUSD or MDUSD's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, or any such person in, on or about the Premises either prior to, during, or after the expiration of the Term of the Use Agreement (singularly, "Liability"; collectively, "Liabilities"); and
- (c) Any claim by a third party that Charter School is responsible for any actions by MDUSD in connection with any use or occupancy of the Premises or in any way related to this Use Agreement.

This indemnity and hold harmless provision shall exclude actions brought against the Charter School arising out of the negligence, intentional acts, misconduct, errors or omissions of the Charter School and/or Charter School affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees.

The provisions of this Section 14.1 shall survive the expiration or sooner termination of this Use Agreement.

An Indemnifying Party shall, upon request by an Indemnified Parties, undertake the defense of any Liabilities threatened or asserted against such Indemnified Party on the following terms and conditions:

- (a) Notice of the assumption of such defense ("Notice") shall be delivered to such Indemnified Party within fifteen (15) days after transmittal by the Indemnified Party of a request that Indemnifying Party defend such Liability;
- (b) Such defense shall be conducted by reputable attorneys retained by Indemnifying Party and approved by the other Party, and with the prior written approval of all the Indemnified Parties against whom such Liability has been asserted or threatened, which approval shall not be unreasonably withheld, delayed or conditioned, all at Indemnifying Party's sole cost and expense. In the event the interests of Indemnifying Party and any such Indemnified Parties in the action conflict in such manner and to such an extent as to require, consistent with applicable standards of professional responsibility, the retention of separate counsel for any of the Indemnified Parties involved in the action, Indemnifying Party shall pay all fees and costs charged or incurred by separate counsel chosen by such Indemnified Parties.

(c) Indemnifying Party agrees to promptly notify the other Party of the commencement of any litigation or proceedings pending, threatened or commenced (whether or not served) against Indemnifying Party, or any of the directors, officers, agents or employees of Indemnifying Party, in connection with the matters set forth in this Use Agreement.

14.2 Civic Center Exception. Notwithstanding the foregoing, Charter School acknowledges that MDUSD is obligated to honor the Civic Center Act, which permits third parties to use the Premises from time to time for lawful activities during non-operational hours. MDUSD has no control over these activities and the provisions of this Article 14 do not apply to damages to Charter School which may result therefrom.

ARTICLE 15. DAMAGE AND DESTRUCTION

15.1 Loss Covered by Insurance. If, at any time prior to the expiration or termination of this Use Agreement, the Premises is wholly or partially damaged or destroyed by a casualty, the loss to MDUSD from which is (except for any applicable deductible) fully covered by insurance maintained by MDUSD or for MDUSD's benefit, and which casualty renders the Premises totally or partially inaccessible or unusable by Charter School in the ordinary conduct of Charter School's business, then MDUSD shall, at MDUSD's expense, repair the same and this Use Agreement shall remain in full force and effect. The District shall provide the Charter School temporary housing on the Premises, or another school site that is near to the Premises for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same. During the time of repair, the Charter School's pro rata share shall be proportionally reduced based on the square footage of the Premises that is not available to the Charter School during the repair.

15.2 Loss Not Covered by Insurance. If, any time prior to the expiration or termination of this Use Agreement, the Premises is totally damaged or destroyed by a casualty and the loss to MDUSD not fully covered by insurance maintained by MDUSD or for MDUSD's benefit or by Charter School, and which casualty renders the Premises inaccessible or unusable by Charter School in the ordinary conduct of its business, MDUSD may, at its option, upon written notice to Charter School within sixty (60) days after the date of notice to MDUSD of the occurrence of such damage or destruction, elect to repair or restore such damage or destruction. If MDUSD elects to repair or restore such damage or destruction, this Use Agreement shall continue in full force and effect. If MDUSD does not elect by notice to Charter School to repair such damage, Charter School shall have the option of repairing such damage providing written notice to MDUSD within forty-five (45) days after the date that MDUSD notifies Charter School that MDUSD has determined that it will not perform the repairs.

If Charter School opts to repair such damage, the District shall provide to the Charter School any and all insurance proceeds received by the District for the repair of the Premises; all costs and expenses incurred by Charter School above and beyond these proceeds in repairing or restoring the Premises shall be the sole obligation of Charter School unless, following the loss, the Parties agree to an alternate allocation between them of such repair costs and expenses. No alternate allocation of such repair costs and expenses shall be valid unless in writing, signed by all Parties

to this Agreement, and approved by MDUSD's governing board. If Charter School does not opt to repair such damage, then the Charter School shall have the option to terminate this Use Agreement. All costs and expenses incurred by the Charter School in repairing or restoring the Premises shall be credited against the pro rata share payments owed by the Charter School during the Term of the Agreement and any subsequent Term of future Facilities Use Agreements under which the Charter School occupies the repaired and restored Premises.

15.3 Destruction of Charter School's Property. In the event of any damage to or destruction of the Premises, under no circumstances shall MDUSD be required to repair any injury or damage to, or replace, Charter School's Property, except for the gross negligence or willful misconduct of MDUSD or MDUSD Parties.

15.4 Damages. No damages, compensation or claim shall be payable by MDUSD for any inconvenience, any interruption or cessation of Charter School's business, or any annoyance, arising from any damage to or destruction of, all or any portion of the Premises.

ARTICLE 16. EMINENT DOMAIN

16.1 Termination of Use Agreement. This Use Agreement shall terminate if all of the Premises is permanently taken under the power of eminent domain. This Use Agreement shall not terminate if only a part of the Premises is permanently taken under the power of eminent domain. If only a portion of the Premises is permanently taken, this Use Agreement shall continue; provided, however, if such portion of the Premises is permanently taken such that the School can no longer be operated in the manner and to the standards of MDUSD prior to such condemnation, either party may elect to terminate this Use Agreement on sixty (60) days prior written notice to the other. In the event of a permanent partial taking which does not result in termination of this Use Agreement, the fees identified in Article 4 shall be proportionately reduced based on the portion of the Premises rendered unusable, and MDUSD shall restore the Premises by constructing the repairs deemed necessary by MDUSD and Charter School to separate the Premises from the portion permanently taken.

16.2 Allocation of Condemnation Award. In the event of a permanent condemnation or taking of all or part of the Premises, MDUSD shall be entitled to any and all awards which may be made in such taking or condemnation relating to all interests, including the fee title, to the Premises. Nothing contained in this Article 16 shall be deemed to give MDUSD any interest in or to require Charter School to assign to MDUSD any separate award as designated by the condemning authority. Charter School shall be able to retain any separate award as designated by the condemning authority, made to Charter School for (i) the taking of Charter School's personal property, (ii) interruption of or damage to Charter School's business, or (iii) amounts attributable to Charter School's relocation expenses.

16.3 Temporary Taking. With the exception of temporary takings which render the Premises totally or partially inaccessible or unusable by Charter School in the ordinary conduct of Charter School's activities, no temporary taking of the Premises or any part of the Premises and/or of Charter School's rights to the Premises or under this Use Agreement shall terminate this Use Agreement or give Charter School any right to any abatement of any payments owed to

MDUSD pursuant to this Use Agreement. Any award made by reason of such temporary taking shall belong entirely to MDUSD, except as to compensation for (i) the temporary taking of Charter School's personal property, (ii) interruption of or damage to Charter School's activities, or (iii) amounts attributable to Charter School's temporary relocation expenses.

16.4 Exclusive Remedy. This Article 15 shall be Charter School's sole and exclusive remedy in the event of a taking or condemnation. Charter School hereby waives the benefit of Code of Civil Procedure section 1265.130.

ARTICLE 17. CHARTER SCHOOL'S DEFAULT; MDUSD'S REMEDIES

17.1 Charter School's Default. The occurrence of any one of the following events shall be considered a default of this Use Agreement by Charter School:

(a) The failure of Charter School to promptly pay the fees identified in Article 4 when due hereunder, which failure continues for fifteen (15) days after written notice thereof by MDUSD to Charter School; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and such three (3) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(b) The failure of Charter School to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) days after written notice thereof by MDUSD to Charter School (unless the nature of the default is such that more than thirty (30) days are required for its cure and Charter School shall have commenced such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion;; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and such thirty (30) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(c) Charter School's abandonment of the Premises for a period of thirty (30) consecutive days (with or without the payment of fees), it being agreed that the fact that any of Charter School's property remains in the Premises shall not be evidence that Charter School has not vacated or abandoned the Premises; provided, however, any normal School holidays or vacation days shall not constitute abandonment of the Premises;

(d) The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School or any guarantor of this Use Agreement of a petition to have or any guarantor of this Use Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Charter School or any guarantor of this Use Agreement, the same is

dismissed within sixty (60) days; the appointment of a trustee or received to take possession of substantially all of the Charter School's assets located at the Premises, or of Charter School's interest in this Use Agreement, where possession is not restored to Charter School within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Charter School's assets located at the Premises or of Charter School's interest in this Use Agreement, where such seizure is not discharged within thirty (30) days.

(f) The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of this Use Agreement in violation of Article 19.

17.2 MDUSD's Remedies.

(a) In the event of any default by Charter School due to a failure to perform any covenant or condition to be performed by Charter School, MDUSD may perform such covenant or condition at its option, after notice to Charter School. All costs incurred by MDUSD in so performing shall be reimbursed to MDUSD by Charter School within ten (10) days of written demand therefor, together with interest at the Interest Rate computed from the date incurred by MDUSD. Any performance by MDUSD of Charter School's obligations shall not waive or cure such default. In the case of any emergency as reasonably determined by MDUSD, MDUSD may perform Charter School's obligations at Charter School's sole cost and expense without notice and without waiting thirty (30) days for Charter School to perform such obligation. All out-of-pocket, reasonable costs and expenses actually incurred by MDUSD, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting payments due, or enforcing the obligations of Charter School, under this Use Agreement shall be paid by Charter School to MDUSD within ten (10) days of written demand therefor.

In the alternative, in the event of any default by Charter School, the Superintendent of MDUSD and the Executive Director of the Charter School shall meet within three (3) business days to attempt to resolve the default. If this informal meeting does not resolve the default, the Parties shall immediately proceed to mediation. If mediation does not resolve the default, the Charter School shall pay the District \$500 per day until the default is resolved.

(c) The rights and remedies of MDUSD set forth herein are not exclusive, and MDUSD may exercise any other right or remedy now or later available to it under this Use Agreement, at law or in equity.

ARTICLE 18. ASSIGNMENT AND SUBLETTING

18.1 No Assignment or Subletting. Charter School shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Use Agreement or sublet all or part of the Premises. MDUSD and Charter School acknowledge and agree that this Use Agreement is not a lease and is being entered into so that Charter School may operate a charter school. But for MDUSD's implementation of section 47614 of the Education Code, MDUSD would not be entering into this Use Agreement with Charter School. Thus, Charter School acknowledges and agrees that it has no right to assign or sublease this Use Agreement. Any purported transfer shall be void and shall, at MDUSD's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Article 18.

18.2 Civic Center Act. Without limiting the generality of the foregoing, Charter School will make available the Premises to the public pursuant to the Civic Center Act, Education Code section 38130 et seq. (the "Civic Center Act"). Charter School shall comply with District policies and/or practices regarding the operations and maintenance of the facilities, furnishings, and equipment. Although Charter School shall have use of the Premises, Charter School agrees to comply with the provisions of the Civic Center Act (Education Code section 38131, *et seq.*) in making use of the facilities accessible to members of the community. For purposes of Civic Center Act compliance, with respect to the Premises only, the Charter School governance council shall hold the same powers and obligations applicable to School District Board of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making the facilities accessible to members of the community. Charter School shall provide District with notice of all Civic Center Act applicants and District shall have final approval over Civic Center Act uses. All proceeds derived from the use of the Premises pursuant to the Civic Center Act above and beyond amounts paid by the Charter School to restore the Premises after community use under the Civic Center Act shall be the property of the District and shall be forwarded to the District within five (5) business days of receipt by the Charter School.

ARTICLE 19. HAZARDOUS SUBSTANCES

19.1 Compliance with Laws. Charter School shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. Charter School shall not use Hazardous Substances on, under or about the Premises; provided, however, that Charter School may use normal and customary cleaning solutions and office supplies so long as the use of such solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that Charter School may use normal and customary chemicals for classroom use so long as the use of such chemicals are in quantities and in a manner wholly consistent with all applicable school standards. Without limiting the generality of the foregoing, Charter School shall not, nor shall Charter School allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Use Agreement.

19.2 Notice. Charter School will promptly notify MDUSD in writing if Charter School has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. Charter School shall promptly provide copies to MDUSD of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. Charter School shall promptly supply MDUSD with copies of all notices, reports, correspondence, and submissions made by Charter School to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Charter School shall promptly notify MDUSD of any liens threatened or attached against the Premises pursuant to any Environmental Laws.

19.3 Inspection. MDUSD and MDUSD's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by MDUSD, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Charter School (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether Charter School is complying with Charter School's obligations set forth in this Article 19, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as MDUSD and Charter School may agree.

19.4 Indemnification. Charter School shall indemnify, defend (by counsel reasonably approved in writing by MDUSD), protect, release, save and hold harmless MDUSD and MDUSD Parties from and against any and all Claims arising from any breach of Charter School's covenants under this Article 20.

ARTICLE 20. NOTICE

20.1 Notices. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery by a representative of the party giving such notice, or (b) overnight delivery by recognized overnight courier, or (c) United States mail, postage prepaid, registered or certified mail, or (d) facsimile (provided that the same shall be followed by delivery of a copy by one of the other permitted means of delivery), addressed as provided in herein, as appropriate, or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery actually received by the addressee or a representative of the addressee at the address provided above, or, if delivered on a business day in the case of delivery service or certified or registered mail, as of the earlier of the date delivered or the date 72 hours following the date deposited in the United States mail, at the address provided herein, or if by telecopier, upon electronic confirmation of good receipt by the receiving telecopier. MDUSD and Charter School hereby agree that notices may be given hereunder by the Parties' respective legal counsel and that, if any communication is to be given hereunder by MDUSD's or Charter School's legal counsel, such counsel may communicate directly with all principals as required to comply with

the provisions of this Article 20. The parties to whom notices must be sent are set forth in **Exhibit “B.”**

ARTICLE 21. MISCELLANEOUS

21.1 Merger. The voluntary or other surrender of this Use Agreement by Charter School, or a mutual cancellation of this Use Agreement, shall not work a merger, and shall, at the option of MDUSD, terminate all or any existing subleases or subtenancies, or may, at the option of MDUSD, operate as an assignment to it of Charter School’s interest in any or all such subleases or subtenancies.

21.2 Dispute Resolution. Notwithstanding anything in this Agreement to the contrary, disputes between the Parties regarding this Agreement, including, the alleged violation, misinterpretation, or misapplication of this Agreement, or Proposition 39, shall be resolved using the dispute resolution process outlined in the Charter School’s charter (substituting MDUSD for the County) which language is hereby expressly modified to provide that mediation shall be held within forty five (45) business days of receipt of the dispute statement.

21.3 Relationship. The relationship between MDUSD and Charter School is not and shall not be deemed or construed either as a partnership or as a joint venture.

21.4 Quiet Enjoyment. Provided Charter School has performed all of the terms, covenants, agreements and conditions of this Use Agreement, including the payment of the Use Fee and all other sums due hereunder, Charter School shall peaceably and quietly hold and enjoy the Premises for the Term hereof, but subject to the provisions and conditions of this Use Agreement, against MDUSD and all persons claiming by, through or under MDUSD. Charter School’s right to use the Premises as herein provided shall be subject to restrictions or other limitations or prohibitions resulting from any Applicable Law now in force or which may hereafter be in force and no such event shall in any way affect this Use Agreement, abate the Use Fee, relieve Charter School of any liabilities or obligations under this Use Agreement or give rise to an claim whatsoever against MDUSD.

21.5 Partial Invalidity. If any term or provision of this Use Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Use Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Use Agreement shall be valid and be enforced to the fullest extent permitted by law.

21.6 Captions. The captions and headings of this Use Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Use Agreement of the intent of any provision hereof.

21.7 Amendment. No amendment or modification to this Use Agreement shall be effective for any purpose unless in a writing signed by MDUSD and Charter School.

21.8 Choice of Law. This Use Agreement shall be governed by the laws of the State of California and action arising out of or in connection with this Use Agreement shall be brought in the Superior Court of Contra Costa County.

21.9 Interpretation. This Use Agreement shall be deemed to be jointly prepared by both Parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either of the Parties.

21.10 Attorneys' Fees. In the event either party should commence an action against the other to enforce any obligation set forth herein (including, but not limited to, arbitration), each party shall bear its own costs of litigation or arbitration, including reasonable attorneys' fees, whether or not the suit is brought to judgment or conclusion in arbitration, and whether or not the party is successful in outcome.

21.11 Counterparts. This Use Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

21.12 Entire Agreement. This Use Agreement contains all of the agreements of the Parties with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated into the provisions of this Use Agreement. The provisions of this Use Agreement shall not be amended or altered except by an instrument in writing signed by both Parties.

21.13 Successors and Assigns. Subject to the provisions hereof relative to assignment, this Use Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective Parties hereto.

21.14 Time Is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Use Agreement.

21.15 Gender. As used herein, the neuter gender includes the feminine and the masculine, the masculine includes the feminine and the neuter, and the feminine includes the masculine and the neuter; and each includes corporation, partnership or other legal entity when the context so requires.

21.16 Confidentiality. The terms of this Use Agreement, and the covenants, obligations, and conditions contained in this Use Agreement shall not be considered confidential and may be subject to disclosure to the public upon appropriate request.

21.17 Waiver. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the Parties hereto shall not be deemed to render unnecessary the obtaining of such Party's consent to or approval of any subsequent act, nor shall any custom or practice which may grow between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of

MDUSD to insist upon the performance by Charter School in strict accordance with said terms. The acceptance of the any fees hereunder by MDUSD shall not be a waiver of any preceding breach by Charter School of any provision hereof, other than the failure of Charter School to pay the particular fee so accepted, regardless of MDUSD's knowledge of such preceding breach at the time of acceptance of any such fees.

21.18 Cumulative Remedies. No remedy herein shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Use Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient.

21.19 Force Majeure. Except for the payment of the fees herein, whenever either party hereto shall be required by the terms of this Use Agreement or by law to perform any contract, act, work, construction, labor or services, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, said party shall not be deemed to be in default herein and the other party shall not enforce or exercise any of its right under this Use Agreement, if and so long as nonperformance or default herein shall be directly caused by strikes, nonavailability of materials, war, terrorism, or national defense preemptions or civil disobedience, governmental restrictions, alien invasion, acts of God or other similar causes beyond the reasonable control of the non-performing party.

21.20 Reasonableness. Unless this Use Agreement provides for a contrary standard, whenever in this Use Agreement the consent or approval of MDUSD or Charter School is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed (except, however, with respect to any MDUSD consent, for matters which could possibly have an effect on the Premises' plumbing, heating, mechanical, life safety, ventilation, air-conditioning, electrical or telecommunications wiring and cabling systems, which could affect the structural integrity of any of the improvements at the Premises, which could affect the exterior appearance of the Premises, or which would cause the Premises or the use thereof to be in conflict with any Applicable Law, MDUSD may withhold such consent or approval in its sole and absolute discretion); and unless a contrary standard or right is set forth in this Use Agreement, whenever MDUSD or Charter School is granted a right to take action, exercise discretion, or make an allocation, judgment or other determination, MDUSD or Charter School shall act reasonably and in good faith and take no action which may result in the frustration of the reasonable expectations of a sophisticated tenant and a sophisticated landlord concerning the benefits to be enjoyed under this Use Agreement.

21.21 Authorization to Sign Use Agreement. If Charter School is a corporation, each individual executing this Use Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Use Agreement on behalf of Charter School in accordance with a duly adopted resolution of Charter School's Board of Directors, and that this Use Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of the Use Agreement, deliver to MDUSD upon its request a certified copy of a resolution of its Board of Directors authorizing the execution of this Use Agreement. If Charter School is a partnership or trust, each individual

executing this Use Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Use Agreement on behalf of Charter School in accordance with the terms of such entity's partnership agreement or trust agreement, respectively, and that this Use Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of the Use Agreement, deliver to MDUSD upon its request such certificates or written assurances from the partnership or trust as MDUSD may request authorizing the execution of this Use Agreement. Each individual executing this Use Agreement on behalf of MDUSD represents and warrants that he or she is duly authorized to execute and deliver this Use Agreement on behalf of MDUSD and this Use Agreement is binding upon MDUSD in accordance with its terms.

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21.22 Covenants and Conditions. All provisions, whether covenants or conditions, on the part of Charter School shall be deemed to be both covenants and conditions.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Use Agreement as of the day and year first above written.

OWNER:

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

OCCUPANT:

CLAYTON VALLEY CHARTER HIGH SCHOOL

By: _____

Name: _____

Title: _____

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