

**FACILITY USE AGREEMENT BETWEEN  
CHARTER SCHOOL OF MORGAN HILL  
AND THE MORGAN HILL UNIFIED SCHOOL DISTRICT  
FOR THE USE AND OCCUPATION OF  
Encinal Elementary School  
9530 Monterey Rd, Morgan Hill, CA 95037**

This FACILITY USE AGREEMENT (“Agreement”) is made by and between MORGAN HILL UNIFIED SCHOOL DISTRICT, a school district formed and existing under the laws of the State of California (“DISTRICT”), and SOUTH VALLEY CHARTER SCHOOL CORPORATION, a California nonprofit public benefit corporation (“CHARTER SCHOOL”), which operates the Charter School of Morgan Hill (“CSMH”). This Agreement includes the terms and conditions of CHARTER SCHOOL'S use and occupation of the Encinal Elementary School site, located at 9530 Monterey Rd., Morgan Hill, CA 95037, and the rehabilitation of public school facilities thereon using funds provided by the Charter School Facility Program (“CSFP”) administered by the California School Finance Authority (“CSFA”).

**RECITALS**

**WHEREAS**, the District is the owner of certain real property, known as Encinal Elementary School campus located at 9530 Monterey Rd, Morgan Hill, CA 95037 (referred to herein in its entirety as the “Site”;

**WHEREAS**, CHARTER SCHOOL was established in 2001, is accredited by the Western Association of Schools and Colleges (“WASC”), and currently provides educational and recreational activities for students in grades K-8 on the Site;

**WHEREAS**, by Resolution # 018, on September 29, 2015, the Board of Education renewed the charter petition for CSMH, authorizing CSMH to continue to serve Grades K-8 through June 30, 2021;

**WHEREAS**, CHARTER SCHOOL requires classrooms and facilities for its in-district students for the purposes of operating its educational program in accordance with CSMH's charter;

**WHEREAS**, CHARTER SCHOOL has received an award of funds under the Charter School Facilities Program (“Proposition 51”) to perform improvements to certain portions of the Site, such improvements (hereafter referred to as the “Prop 51 Project” or “Prop 51 Project Improvements”), being defined with more specificity in **Exhibit A**.

**WHEREAS**, the parties agree that the provisions of Proposition 51 only apply to the Prop 51 Project Improvement made and paid for out of funding received by the Charter School under the Charter School Facilities Program.

**WHEREAS**, the Facility Master Plan identified a conceptual master plan for the Site that

called for the construction of a new administration building with new administrative, student services and media center space, as well as construction of a new two-story classroom building and reconfigured kindergarten classrooms and modernized first and second grade classrooms;

**WHEREAS**, the conceptual master plan in the Facility Master Plan also identified the addition of various site improvements, including parking lot improvements, a new digital marquee, new play equipment, a lunch shelter and new playfields and a running track;

**WHEREAS**, the District has been informed that the California High Speed Rail Authority is considering two alternative alignments in the vicinity of the Site, including an alternative in a viaduct along the west side of Highway 101 and an alternative on an embankment along the west side of Monterey Road;

**WHEREAS**, this Agreement is entered into by the Parties in conjunction with the separate "In-lieu Facilities Agreement" under Education Code section 47614, which allows the District and CHARTER SCHOOL to collaborate on the terms for use of the Site for CSMH, outside of the formal provisions of Proposition 39 and its implementing regulations ("Proposition 39"), and which governs the portion of the Site not subject to the Prop 51 Project, and upon which the CHARTER SCHOOL shall not be performing Prop 51 Improvements;

**NOW THEREFORE**, in consideration of the covenants and agreements herein after set forth, District and CHARTER SCHOOL agree as follows:

## **AGREEMENT**

### **1. USE OF PROP 51 PROJECT PERIMETER**

- 1.1. This Agreement covers the perimeter of and the area within the perimeter of that portion of the Site in which the CHARTER SCHOOL'S Prop 51 Project Improvements shall be made, and the Prop. 51 Project Improvements made therein, as depicted in Exhibit A. This portion shall be referred to in this Agreement as the "Prop 51 Project Perimeter."

The Parties acknowledge that the CHARTER SCHOOL has not yet determined with finality where the Prop 51 Project Improvements will be made. As such, Exhibit A includes two potential locations for the Prop 51 Project Perimeter. The Parties agree that at the time the CHARTER SCHOOL makes a final decision as to the location of the Prop 51 Project Perimeter, the Parties will amend this Agreement to specify the correct Prop 51 Project Perimeter. However, the Prop 51 Project Perimeter shall only constitute 1 of the two potential locations set forth in Exhibit A.

The Parties acknowledge that CHARTER SCHOOL may also elect, if it has sufficient funding, to perform improvements to other portions of the

Site (“Additional Prop 51 Project Improvements”). If CHARTER SCHOOL does elect to perform, and DISTRICT approves, the Additional Prop 51 Project Improvements, the Parties agree to amend this Agreement to define the Prop 51 Project Perimeter to include the portion of the Site where the Additional Prop 51 Project Improvements are located.

- 1.2. District hereby leases to CHARTER SCHOOL, and CHARTER SCHOOL hereby leases from District, the Prop 51 Project Perimeter upon the covenants and conditions set forth in this Agreement. District agrees to allow use of the Prop 51 Project Perimeter by CHARTER SCHOOL for purposes of operating a public charter school providing educational instruction to public school students and all associated uses (the “Program” or “Activities”), consistent with CHARTER SCHOOL's Charter Petition so long as CHARTER SCHOOL occupies the facilities located within the Prop 51 Project Perimeter.
- 1.3. Use of the Prop 51 Project Perimeter shall be for the sole purpose of operating a charter educational program in accordance with all applicable federal, state and local regulations relating to the Prop 51 Project Perimeter, and to the operation of the educational program, including associated uses such as summer school and programs procured through third Party entities, e.g. childcare and after-school program providers. CHARTER SCHOOL shall not use the Prop 51 Project Perimeter for any use other than that specified in this Agreement without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned or delayed.
- 1.4. CHARTER SCHOOL shall not commit, or suffer to be committed, any waste upon the Prop 51 Project Perimeter, or allow the Prop 51 Project Perimeter to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or knowingly place any harmful liquids in the plumbing, sewer or storm water drainage system of the Prop 51 Project Perimeter . No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Prop 51 Project Perimeter except in trash containers designated for that purpose.
- 1.5. CHARTER SCHOOL shall prohibit the use of tobacco products, e-cigarettes, alcohol, and unlawful controlled substances on the Prop 51 Project Perimeter at all times unless permitted by law.
- 1.6. CHARTER SCHOOL shall not intentionally do or permit anything to be done in or about the Prop 51 Project Perimeter nor bring or keep anything therein which will in any way increase the District's existing insurance rate or effect any fire or other insurance upon the Prop 51 Project Perimeter, or cause a cancellation of any insurance policy covering the Prop 51 Project Perimeter or any part thereof or any of the contents of the Prop 51 Project

Perimeter.

- 1.7. CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Prop 51 Project Perimeter accessible to members of the community. The Parties understand that the Prop 51 Project Perimeter are to be used primarily for educational programs and activities and as such, any use of the Prop 51 Project Perimeter by the Community shall not interfere with CHARTER SCHOOL's educational program.
- 1.8. All provisions of this Agreement applicable to the Prop 51 Project Perimeter shall also apply with equal force to the Prop 51 Project Improvements contained thereon. The provisions of the Charter School Facilities Program shall only apply to the CHARTER SCHOOL's Prop 51 Project Improvements.
- 1.9 To the extent that the facilities built by the CHARTER SCHOOL within the Prop 51 Project Perimeter require access to the existing infrastructure at the Site (including but not limited to gas, electricity, water, technology, security, telephone, and sewage), the CHARTER SCHOOL may utilize the infrastructure at the Site to ensure the functionality of the facilities within the Prop 51 Project Perimeter. However, in no event shall the CHARTER SCHOOL's use of the infrastructure at the Site confer any right, title or interest in the CHARTER SCHOOL to such infrastructure, and the CHARTER SCHOOL's use and access to such infrastructure shall be entirely within the discretion of the DISTRICT. In no event shall any of the obligations or restrictions imposed by Proposition 51 apply to such infrastructure.

To the extent that CHARTER SCHOOL is required to construct upgrades to existing infrastructure or facility enhancements outside of the Prop 51 Project Perimeter to support the Prop 51 Project, these improvements shall be the sole financial responsibility of the CHARTER SCHOOL. This provision applies to any and all upgrades required by the Division of State Architect or under applicable law (including but not limited to path of travel, water fountains, restrooms in the existing buildings, or disability access) or replacement/upgrade of infrastructure to handle new facilities, for which the DISTRICT bears no financial responsibility.

## **2. CONDITION OF PROP 51 PROJECT PERIMETERPROP 51 PROJECT PERIMETER**

- 2.1 The Prop 51 Project Perimeter are leased to CHARTER SCHOOL on an "AS IS" basis. Except as expressly provided herein, District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Prop 51 Project Perimeter.

2.2 CHARTER SCHOOL acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Prop 51 Project Perimeter for CHARTER SCHOOL's Activities, except as set forth herein. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or CHARTER SCHOOL, and District and CHARTER SCHOOL expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

### **3. TITLE TO SCHOOL SITE / CLASSROOM BUILDINGS**

3.1 The Parties acknowledge that title to the Prop 51 Project Perimeter is held by District. All Prop 51 Project Improvements in the Prop 51 Project Perimeter at the expiration of the term of this Agreement, or any options or mutually agreed to extensions shall become District's property. The Prop 51 Project Improvements constructed by CHARTER SCHOOL shall be DSA approved.

### **4. TERM.**

4.1 The term ("Initial Term") of this Agreement shall commence on July 1, 2019, for ten (10) years and shall end on June 30, 2028. The Term may be extended for three additional terms of ten (10) years each (each a "Renewal Term") upon CHARTER SCHOOL's written exercise of option in each case given not less than 180 days before the then-existing Term ends, unless subject to earlier termination under any provision of this Agreement, including but not limited to the following reasons:

4.1.1 CHARTER SCHOOL'S program ceases to operate after a revocation, nonrenewal or surrender of the charter, and all administrative (e.g., Education Code 47605 or 47607), nonjudicial appeals have been exhausted;

4.1.2 CHARTER SCHOOL fails to commence construction of significant capital outlay improvements Prop 51 Project Perimeter under the Prop 51 Project within five (5) years of the Commencement Date of this Agreement, in which case the term of this Agreement shall only be for five (5) years, until June 30, 2024;

4.1.3 CHARTER SCHOOL's default under the terms and conditions herein and CHARTER SCHOOL's failure to complete any cure of such default as provided herein.

## 4.2 Option to Terminate

CHARTER SCHOOL at its option, and without any penalties, damages or other compensation to the District, may elect not to proceed with the new construction project contemplated by Article 6 of this Agreement. CHARTER SCHOOL acknowledges and understands that if it exercises the option not to proceed with the new construction project contemplated by Article 6, this Agreement shall terminate effective June 30, 2024, provided however, the Parties by mutual agreement may negotiate a new agreement for use of the Site or the CHARTER SCHOOL may submit a timely Prop. 39 request for the 2024-25 school year. In the event that CHARTER SCHOOL determines, in its reasonable judgment, that it is not feasible for CHARTER SCHOOL to proceed with the new construction project contemplated by Article 6, then CHARTER SCHOOL may elect to terminate this Lease without penalties, damages, or other compensation to the District, effective on the next July 1st, by written notice to District and the CHARTER SCHOOL may submit a Prop. 39 request for the upcoming school year.

## 5. FACILITY USE FEE

The CHARTER SCHOOL presently pays an administrative oversight fee of one percent (1%) of its Local Control Funding Formula (LCFF) revenue ("LCFF Revenue") to the District in accordance with the Charter Schools Act for use and occupation of the entire Site. For and in consideration of the use of the Prop 51 Project Perimeter, as an oversight fee and in accordance with Education Code Section 47613(b), the CHARTER SCHOOL shall pay the District the following percentage of its revenues (as defined by Education Code Section 47613(f)):

- 5.1 **Initial Year (2019-20):** During the 2019-20 school year, CHARTER SCHOOL shall pay a facility use fee of two percent (2%) of the LCFF Revenue of the CHARTER SCHOOL for use of the Prop 51 Project Perimeter.
- 5.2 **Facility Use Fee After Completion of New Construction:** As provided in Article 6 of this Agreement, but subject to CHARTER SCHOOL's Option to Terminate as provided in Section 4.2 above, CHARTER SCHOOL intends to make significant improvements to the Prop 51 Project Perimeter at its sole cost and expense. The Parties therefore agree that as consideration for the cost of construction of the Prop 51 Project Improvements on District's property, after completion of the Prop 51 Project Improvements (defined as (i) issuance of Certificate of Occupancy (not partial) and (ii) the facility placed into use for its intended purpose), the CHARTER SCHOOL will pay a yearly Facility Use Fee in the amount of 2% of LCFF Revenue.

The Facility Use Fee set forth in this Section is intended to constitute the

entire compensation for CHARTER SCHOOL's use and occupation of both the Prop 51 Project Perimeter under this Agreement, and the portion of the Site not including the Prop 51 Project Perimeter covered by the "In-Lieu Facilities Agreement" referenced on page 2 of this Agreement, and the CHARTER SCHOOL will not owe the DISTRICT any further amounts for use of the facilities allocated pursuant to the In-Lieu Facilities Agreement.

- 5.3 Facility Use Fee shall be paid quarterly, in equal installments based on estimated LCFF revenues, as follows:
- July 1 - Based on Adopted Budget LCFF Revenues
  - October 1 - Based on Adopted Budget LCFF Revenues
  - January 1 - Based on First Interim Budget LCFF Revenues
  - April 1 - Based on Second Interim Budget LCFF Revenues
  - October 1 – "True-up" of any difference between estimated LCFF revenues and actual LCFF revenues as determined in the Unaudited Actuals
- 5.4 CHARTER SCHOOL shall pay promptly to District the Facility Use Fee when due during the Term, without deduction, setoff, prior notice or demand.
- 5.5 The Facility Use Fee does not include the utility charges for the Prop 51 Project Perimeter or the facilities contained therein. The CHARTER SCHOOL shall pay for all utilities charges for the Prop 51 Project Perimeter. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. CHARTER SCHOOL shall be responsible, at its sole cost (and expense) for the furnishing of all services and utilities to the Prop 51 Project Perimeter, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, telephone, trash collection, sewage disposal, janitorial and interior and exterior Prop 51 Project Perimeter security services. CHARTER SCHOOL shall pay the cost of all utilities and other services directly to the applicable utility or service provider. the DISTRICT shall include the Prop 51 Project Perimeter on the DISTRICT's bulk energy contracts upon request by CHARTER SCHOOL so long as permissible by the bulk energy contractor. If CHARTER SCHOOL is included in the DISTRICT's billing from contractor, CHARTER SCHOOL shall reimburse the DISTRICT for all direct costs.

5.5.1 Except to the extent the discontinuance, failure or interruption is caused or permitted by the DISTRICT's negligence or willful misconduct, CHARTER SCHOOL agrees that the DISTRICT shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service

(including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of CHARTER SCHOOL's use and possession of the Prop 51 Project Perimeter or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Agreement. Notwithstanding anything herein to the contrary, the DISTRICT shall use its good faith efforts to assist CHARTER SCHOOL in restoring such services so long as the DISTRICT is not required to incur any costs or expenses.

- 5.6 CHARTER SCHOOL acknowledges that late payment by CHARTER SCHOOL to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, If District does not receive any installment of Rent or any other sum due from CHARTER SCHOOL by 4:00 p.m. within ten (10) days after such amount is due, CHARTER SCHOOL shall pay to District, as additional rent, a "late charge" equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs District will incur by reason of late payment by CHARTER SCHOOL.
- 5.7 **Taxes; Assessments.** CHARTER SCHOOL shall pay any assessment on the Prop 51 Project Perimeter, including on any improvements which CHARTER SCHOOL constructs or causes to be constructed on the Prop 51 Project Perimeter, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Prop 51 Project Perimeter or CHARTER SCHOOL's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon CHARTER SCHOOL's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Prop 51 Project Perimeter address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement unless CHARTER SCHOOL voluntarily no longer occupies the Prop 51 Improvements and the DISTRICT has taken occupancy of the Prop 51 Project Perimeter or is intending to sell the Prop 51 Project Perimeter as surplus. However, CHARTER SCHOOL shall not be responsible for payments under this section if it no longer occupies the Prop 51 Improvements by virtue of revocation or non-renewal of its Charter.

## 6. ALTERATIONS

- 6.1 CHARTER SCHOOL may at its sole cost and expense, make or perform improvements, alterations, or additions to the Prop 51 Project Perimeter, provided that any Improvements requiring approval of the Division of the State Architect shall require prior written notice and approval of the District, which shall not be unreasonably condition, delayed or withheld. If the District fails to respond within thirty (30) days after CHARTER SCHOOL's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with District specifications and all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act and regulations promulgated thereunder.
- 6.2 All contractors and subcontractors of CHARTER SCHOOL, if any, shall be duly licensed in the State of California. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of CHARTER SCHOOL's Improvements to the extent such approval is required by law.
- 6.3 CHARTER SCHOOL shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any Site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies. However, the District agrees to act as the Lead Agency for any required CEQA approvals or proceedings, provided, that CHARTER SCHOOL shall reimburse District for any reasonable costs associated with serving as Lead Agency. The Parties agree that the Project likely involves the rehabilitation and replacement of existing public school facilities, and to pursue lawful use of the "Class 2" Categorical Exemption from CEQA (14 CCR § 15302). The Parties further agree that it is their intent that the Project shall not increase the original student capacity of the Site by more than twenty-five percent (25%) or ten classrooms, whichever is less, which activity is within the "Class 14" Categorical Exemption from CEQA (14 CCR § 15314). The Parties agree to cooperate in good faith to ensure that the Project remains within the scope of the foregoing Categorical Exemptions to CEQA. The provisions of Article 8 ("Indemnification and Waiver") shall apply without exception in favor of the DISTRICT to any claims made under CEQA.

- 6.4 Except as to warranties made by District herein, CHARTER SCHOOL shall be solely responsible for maintaining the Prop 51 Project Perimeter and CHARTER SCHOOL'S improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations. The ongoing daily operations and maintenance of the facilities and equipment on the Prop 51 Project Perimeter is the responsibility of CHARTER SCHOOL. CHARTER SCHOOL and CHARTER SCHOOL's agents and employees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the DISTRICT for the maintenance, care, protection, and cleanliness, and operation of the Prop 51 Project Perimeter (except where the DISTRICT's practice is different from its policies, rules and regulations, in which case the CHARTER SCHOOL will comply with the DISTRICT's practice), and the facilities, furnishings and equipment thereon, and shall comply with all applicable laws. CHARTER SCHOOL's students, visitors, and invitees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the DISTRICT for the use and care of the Prop 51 Project Perimeter.

The CHARTER SCHOOL shall bear all major facilities maintenance costs with respect to the buildings and grounds subject to the Prop 51 Project Improvements. "Major facilities maintenance" include all non-routine maintenance, replacement and repair services, including major maintenance and replacement of the roof, mechanical systems (heat, ventilation, air conditioning, electrical, plumbing), and other major maintenance and upgrades and any projects identified during the term of this Agreement that the DISTRICT deems eligible to be designated as deferred maintenance as defined under Education Code section 17582, at a level comparable with other DISTRICT schools. CHARTER SCHOOL shall also bear all costs of deferred maintenance for the Prop 51 Project Perimeter, and all facilities located thereon.

- 6.5 CHARTER SCHOOL shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. CHARTER SCHOOL shall be solely responsible for the administration (and resolution) of any claims or disputes that may arise in connection with the design or construction of the Prop 51 Project Improvements.
- 6.6 CHARTER SCHOOL and any person performing work for construction of the Prop 51 Project Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the Prop 51 Project Perimeter and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of CHARTER SCHOOL by reason of the exercise of privileges given in this section. CHARTER SCHOOL shall

indemnify and hold District harmless from any damage caused by the CHARTER SCHOOL's activities authorized in this section, except to the extent such damage was caused by District's negligence or misconduct. CHARTER SCHOOL shall either reimburse the District for any damage or destruction to the Prop 51 Project Perimeter, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.

- 6.7 The Prop 51 Project Improvements shall be made by CHARTER SCHOOL at its sole expense. the DISTRICT shall have no obligation to provide to CHARTER SCHOOL additional funding for the construction of any improvements, funding to pay or settle outstanding debts and/or liens attaching to the Prop 51 Project Improvements such as, but not limited to, mechanic's liens, taxes or assessments, or funding to operate the charter school.
- 6.8 Within 30 days of the completion of work, CHARTER SCHOOL shall Cause a Notice of Completion to be recorded in the office of the Recorder of Santa Clara County in accordance with Section 3093 of the Civil Code or any successor statute, and CHARTER SCHOOL shall deliver to the DISTRICT within 30 days of the recordation of the Notice of Completion a reproducible copy of the "as built" drawings, which will be prepared by the architect to include the initial drawings stamped by the California Division of State Architect plus any subsequent field changes, plus any subsequent approvals from the California Division of State Architect, if applicable.
- 6.9 **Compliance with Field Act and the DISTRICT Consent.** CHARTER SCHOOL agrees that all Prop 51 Project Improvements constructed under this Article 6, including any mechanical, electrical, plumbing or HVAC facilities or systems shall be in compliance with the Field Act.
- 6.10 The parties understand that the Prop 51 Project Perimeter, and all facilities located thereon, are owned by the District and therefore are immune to the lien remedies of Civil Code Section 8000 et seq.; the Prop 51 Project Improvements are regarded by the Parties as public improvements. CHARTER SCHOOL shall, during the term hereof, keep the Prop 51 Project Perimeter free from any liens or encumbrances arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL, and shall protect, defend, indemnify and hold the DISTRICT harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement. The foregoing indemnity shall not

apply to any liability, cost, obligation, expense or claim of lien to the extent arising from the negligence or misconduct of the DISTRICT.

6.10.1 CHARTER SCHOOL shall remove any such lien or encumbrance by bond or otherwise as soon as reasonably possible after receipt of written notice by the DISTRICT, but in any event CHARTER SCHOOL shall commence the necessary action to remove such lien or encumbrance within 30 days of CHARTER SCHOOL having knowledge of such lien or encumbrance and diligently prosecute to completion the removal of such lien or encumbrance. If CHARTER SCHOOL fails to commence the action as required in the foregoing sentence or the DISTRICT believes that the removal of such lien or encumbrance is not being prosecuted diligently, the DISTRICT may provide written notice to CHARTER SCHOOL and if CHARTER SCHOOL cannot cause the lien or encumbrance to be removed within 30 days its receipt of this second notice: (i) the DISTRICT may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof; (ii) The amount so paid and the DISTRICT's actual costs and expenses in handling the matter culminating in the DISTRICT's payment and release of the lien or encumbrance shall be paid by the CHARTER SCHOOL without dispute; and (iii) such lien or encumbrance, regardless of whether it is paid by the DISTRICT, shall constitute a default under this Agreement (but the remedy for such default shall be solely in damages and such shall not be a ground to terminate this Lease or revoke the CHARTER SCHOOL charter). Nothing contained in this Agreement shall authorize CHARTER SCHOOL to do any act which shall subject the title to the Prop 51 Project Perimeter to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Improvements or Project Improvements arising in connection with any such work or respecting the Prop 51 Project Perimeter not performed by or at the request of the DISTRICT shall be null and void, or at the DISTRICT's option shall attach only against CHARTER SCHOOL's interest in the Improvements and shall in all respects be subordinate to the title to the Prop 51 Project Perimeter held in trust by the DISTRICT.

6.11 When applicable under law, CHARTER SCHOOL must follow all procurement laws; issue requests for proposals to obtain competitive pricing; and adhere to prevailing wage laws. CHARTER SCHOOL is encouraged to incorporate Collaborative for High-Performing Schools standards into the design of all improvements to the site, and shall comply with all editions of the California Green Building Standards Code. CHARTER SCHOOL shall also follow all sustainability guidelines under the Division of the State Architect's 7x7x7: Design Energy Water sustainability initiative.

## **7. HAZARDOUS SUBSTANCES**

7.1 Compliance. CHARTER SCHOOL shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Prop 51 Project Perimeter, including but not limited to, air, soil and ground water conditions. CHARTER SCHOOL shall not use Hazardous Substances on, under or about the Prop 51 Project Perimeter ; provided, however, that CHARTER SCHOOL may use

normal and customary cleaning solutions and office supplies so long as the use of those 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 those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. 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 Prop 51 Project Perimeter 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 Prop 51 Project Perimeter, during the Term of the Agreement. District represents that it is not currently aware of any Hazardous Substances on the Premises. In no event shall the District bear any financial responsibility for the remediation of any Hazardous Substances present at the Premises.

7.2 Notice. CHARTER SCHOOL will promptly notify District in writing if CHARTER SCHOOL has or acquires notice or knowledge that any Hazardous Substance exists prior to construction or has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Prop 51 Project Perimeter in violation of Environmental Laws. District has disclosed in writing, prior to execution of this Lease, the District's knowledge, if any, of any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Prop 51 Project Perimeter or otherwise exists on the Prop 51 Project Perimeter as of the date of delivery of possession to CHARTER SCHOOL. District will promptly notify CHARTER SCHOOL in writing if District acquires new notice or knowledge during the term of this Lease that any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Prop 51 Project Perimeter or otherwise exists on the Prop 51 Project Perimeter, CHARTER SCHOOL shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Prop 51 Project Perimeter or compliance with Environmental Laws. CHARTER SCHOOL shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by CHARTER SCHOOL to the United States Environmental Protection Agency, the United States Occupation 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 District of any liens threatened or attached against the Prop 51 Project Perimeter pursuant to any Environmental Laws.

- 7.3 Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than three (3) business days' notice to CHARTER SCHOOL (except in the event of an emergency, in which case, only such notice as shall be reasonable under the circumstances will be required) inspect the Prop 51 Project Perimeter to determine whether CHARTER SCHOOL is complying with CHARTER SCHOOL's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and CHARTER SCHOOL may agree.
- 7.4 Mutual Indemnification. CHARTER SCHOOL shall indemnify, defend, protect, release, save and hold harmless District from and against any and all Claims arising from any breach of CHARTER SCHOOL's covenants under this Section, except to the extent caused by the negligence or misconduct of District. District shall indemnify, defend (by counsel reasonably approved in writing by CHARTER SCHOOL), protect, release, save and hold harmless CHARTER SCHOOL from and against any and all Claims arising from any breach of District's covenants under this Section, except to the extent caused by the negligence or willful misconduct of CHARTER SCHOOL.

## **8. INDEMNIFICATION AND WAIVER**

- 8.1 CHARTER SCHOOL agrees that the DISTRICT, its Board of Education, officers, employees, agents, consultants and independent contractors (collectively, "DISTRICT Parties") shall not be liable for, and are hereby released from any responsibility for, any death or injury to person or damage to or destruction of property or resulting from the loss of use thereof, which damage is sustained by CHARTER SCHOOL or by other persons claiming through CHARTER SCHOOL; provided, that the foregoing release shall not apply to the negligence or misconduct of the DISTRICT Parties or the DISTRICT's breach of any obligation or warranty under this Agreement.
- 8.2. CHARTER SCHOOL shall indemnify, defend, protect, and hold harmless the DISTRICT Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Improvements, any violation of any of the requirements, ordinances, statutes, regulations or other laws, including, without limitation, any environmental laws, by CHARTER SCHOOL, or any breach of the terms of this Agreement by CHARTER SCHOOL either prior to, during, or after the expiration of the Agreement Term; PROVIDED THAT the terms of the

foregoing indemnity shall not apply to the negligence or misconduct of the DISTRICT Parties or the DISTRICT's breach of any obligation or warranty under this Agreement.

- 8.3 Should the DISTRICT be named as a defendant in any suit brought against CHARTER SCHOOL in connection with or arising out of CHARTER SCHOOL's construction of the Prop 51 Project Improvements, or its occupancy or use of the Prop 51 Project Perimeter, CHARTER SCHOOL shall pay to the DISTRICT its costs and expenses incurred in such suit, including without limitation, its actual reasonable professional fees such as appraisers', accountants' and attorneys' fees; provided, however, that CHARTER SCHOOL shall not be liable for any costs or expenses arising from the DISTRICT's negligence or misconduct or misconduct of the DISTRICT Parties or the DISTRICT's breach of any obligation or warranty under this Agreement.
- 8.4 Further, CHARTER SCHOOL's agreement to indemnify the DISTRICT is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by CHARTER SCHOOL pursuant to the provisions of this Agreement or the requirements and conditions required by the DISTRICT as the school district approving the petition of CHARTER SCHOOL, to the extent such policies cover the matters subject to CHARTER SCHOOL's indemnification obligations.
- 8.5 The provisions of this Article 8 shall survive the expiration or sooner termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement.

## **9. INSURANCE**

- 9.1 CHARTER SCHOOL, at its sole cost and expense, shall observe and comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated herein by reference.

## **10. DAMAGE AND DESTRUCTION**

- 10.1 Repair of Prop 51 Project Perimeter. CHARTER SCHOOL shall promptly notify the DISTRICT of any damage to the Prop 51 Project Perimeter resulting from fire, earthquake or any other casualty. In the case of damage or destruction, regardless of the nature of the casualty, CHARTER SCHOOL, at its sole cost and expense (even if repair costs exceed insurance proceeds) shall restore, repair, replace, rebuild or alter all aspects of the Prop 51 Project Perimeter and improvements located thereon to as nearly as possible to their value, condition and character immediately prior to such damage or destruction. CHARTER SCHOOL

shall commence such restoration, repairs, replacements, rebuilding or alterations within 90 days following the occurrence of such damage or destruction and prosecute to completion with due diligence and in good faith. The DISTRICT and the CHARTER SCHOOL shall work together to agree on as quickly as possible to provide the CHARTER SCHOOL with temporary facilities to accommodate the portion of its program displaced by the damage or destruction during the repair.

10.2. The DISTRICT shall not be liable for any inconvenience or annoyance to CHARTER SCHOOL or its visitors, or injury to CHARTER SCHOOL's business resulting in any way from such damage or the repair thereof; provided, that the foregoing sentence shall not apply to the extent the DISTRICT's negligence or misconduct is the cause of such damage or destruction. CHARTER SCHOOL shall not be entitled to any compensation or damages from the DISTRICT for loss of use of the whole or any part of the Prop 51 Project Perimeter, or CHARTER SCHOOL's personal property used or located at the Prop 51 Project Perimeter, or for any inconvenience or annoyance occasioned by such damage or destruction; provided, that the foregoing sentence shall not apply to any damage or destruction caused by the negligence or willful misconduct of the DISTRICT.

10.3 Disbursement of Insurance Proceeds. All insurance proceeds, from policies obtained and maintained by CHARTER SCHOOL, recovered on account of damage or destruction to the Prop 51 Project Perimeter or the Prop 51 Project (the "Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the Prop 51 Project Improvements so damaged or destroyed and for replacing CHARTER SCHOOL's personal property damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to the DISTRICT and under the exclusive control of CHARTER SCHOOL (the "Depository"). If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work CHARTER SCHOOL may deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"), or re-scope the repairs so that they can be covered by Proceeds. The Depository shall disburse the Proceeds and CHARTER SCHOOL's Funds, if applicable, during the course of Reconstruction in accordance with customary construction disbursements, including a percentage retention that CHARTER SCHOOL and the DISTRICT shall mutually agree. If there are funds remaining after the completion of the Reconstruction in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL. If the DISTRICT is required to obtain any of the property insurance on behalf of and CHARTER SCHOOL is

paying or has paid the DISTRICT for said property insurance policies, all insurance proceeds recovered on account of damage or destruction to the Prop 51 Project Improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Reconstruction. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, CHARTER SCHOOL shall be responsible for the payment of same.

10.3.1 If the DISTRICT is required to obtain any of the property insurance that CHARTER SCHOOL is required to obtain under this Agreement and CHARTER SCHOOL is not paying or has not paid, or is disputing the payment or acquisition of, said property insurance policy(ies) (the "the DISTRICT Acquired Policy"), any act or event damaging or destroying all or a portion of the Prop 51 Project Improvements shall cause to expire immediately any right of CHARTER SCHOOL to cure the default of not obtaining or maintaining the required insurance or cure the payment for said DISTRICT Acquired Policy. All proceeds recovered on account of damage or destruction to the Prop 51 Project Improvements from said the DISTRICT Acquired Policy shall be considered the property of the DISTRICT, and the DISTRICT shall determine the use of such proceeds, except that if the District elects not to use the proceeds to repair the Prop 51 Project Improvements, this Agreement shall terminate.

10.4 Destruction As a Release Event. If there is destruction of or damage to the Prop 51 Project Improvements or any part thereof or the Prop 51 Project Perimeter or any part thereof by earthquake, fire or any other cause, and if the reasonably estimated cost to restore and repair the damage is more than 50% of the replacement cost of the entire Prop 51 Project Perimeter and Project Improvements, and if insurance proceeds are insufficient to pay at least 90% of the reasonably estimated cost of repair and restoration, then by notice in writing to District, CHARTER SCHOOL may terminate this Agreement and such termination shall relieve CHARTER SCHOOL from its obligation to pay all fees, premiums, if applicable, charges, Hold Over Rent, if applicable, or other amounts due and owing under this Agreement or from any of its other lease obligations under this Agreement. If CHARTER SCHOOL so terminates, it shall pay over to District all Proceeds received as a result of the damage or destruction, and assign to District all Proceeds to be so received.

10.5 Waiver of Statutory Provisions. The provisions of this Agreement, including this Section, constitute an express agreement between the DISTRICT and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the Prop 51 Project Improvements, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in

the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Agreement or any damage or destruction to all or any part of the Prop 51 Project Improvements.

## 11. CONDEMNATION

CHARTER SCHOOL hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the Code of Civil Procedure.

- 11.1 Condemnation of Entire Prop 51 Project Perimeter. In the event the Prop 51 Project Perimeter is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if the DISTRICT shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for the Prop 51 Project Perimeter (any such events to be referred to herein as a "Full Taking"), this Agreement shall automatically terminate on that date, the CHARTER SCHOOL shall be released from any and all payment obligations under Section 5.2 of this Agreement, and the District will assume complete financial responsibility for the Prop 51 Project Perimeter, whichever shall first occur, when: (i) CHARTER SCHOOL completely vacates the Prop 51 Project Perimeter and such vacation has been mutually agreed upon by CHARTER SCHOOL, the DISTRICT and the condemning authority; or (ii) a court of competent jurisdiction over the condemnation proceeding issues an Order for Prejudgment Possession ("OPP") or similar order granting possession of the Prop 51 Project Perimeter to the condemning entity and the condemning entity exercises its right to possession of the Prop 51 Project Perimeter; or (iii) If an OPP is not obtained, the condemnation proceeding is concluded.
- 11.2 Condemnation of a Portion of the Prop 51 Project Perimeter. In the event any portion of the Prop 51 Project Perimeter is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner so as to require the use, reconstruction, or remodeling of the Prop 51 Project Perimeter, or any portion thereof, or if the DISTRICT shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for said portion of the Prop 51 Project Perimeter (any such events to be referred to herein as a "Partial Taking") the following shall apply:
- 11.3 Abatement. Any fees and other amounts due and owing to the DISTRICT under this Agreement shall be abated or reduced as a result of any Partial Taking in direct proportion to the square footage taken by the condemning entity. The abatement or reduction shall not apply to: any insurance

premiums or other fees, charges or amounts due and owing that do not correspondingly decrease with the reduction in the size of the Prop 51 Project Perimeter.

11.4 Right to Terminate. If the remaining portion of the Prop 51 Project Perimeter is such that CHARTER SCHOOL cannot reasonably operate its educational programs, CHARTER SCHOOL may terminate this Agreement by providing written notice to the DISTRICT of its intention to do so. CHARTER SCHOOL may exercise this right of termination at any time after the condemning entity has commenced action to acquire a portion of the Prop 51 Project Perimeter and up to six (6) months after the occurrence of Section 11.1 or 11.2 above. The DISTRICT discloses that it is allowing CHARTER SCHOOL the ability to terminate this Agreement for a period of six (6) months after the occurrence of Section 11.1 or 11.2 to allow CHARTER SCHOOL to make a good faith effort to adapt its educational programs to the remaining portion of the Prop 51 Project Perimeter. CHARTER SCHOOL's written notice of termination shall set forth the date when CHARTER SCHOOL shall vacate the remaining portion of the Prop 51 Project Perimeter. CHARTER SCHOOL's notice of termination shall effectuate a termination of any right to redeem provided in this Agreement.

11.5 Award and Payments.

11.5.1 Real Property. Regardless of whether it is a Full Taking or Partial Taking, the DISTRICT shall be entitled to receive the entire award or payment in connection with the real property underlying the Prop 51 Project Perimeter.

11.5.2. Prop 51 Project Perimeter /Improvements. The DISTRICT shall receive the entire award or payment in connection with the Prop 51 Project Perimeter (excluding the underlying real property) and shall have no obligation to tender to CHARTER SCHOOL the award or payment less any actual costs or expenses incurred by the DISTRICT arising from the Full Taking or Partial Taking, except that CHARTER SCHOOL shall be entitled to any part of the award explicitly designated to compensate it for the unamortized value of its Improvements, including the Prop 51 Improvements so that CHARTER SCHOOL is able to retire its obligations to the STATE under the Funding Agreement, to the extent permitted by law.

11.5.3 Personal Property. CHARTER SCHOOL shall be entitled to any separate award or payment designated by the condemning entity, including, without limitation, for the Full Taking or Partial Taking of CHARTER SCHOOL's personal property, interruption to CHARTER SCHOOL's business, and relocating expenses, as allowed by law.

## 12. ASSIGNMENT AND SUBLETTING

- 12.1 Transfers. CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any Interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Prop 51 Project Perimeter or Improvements or any part thereof, or otherwise permit the occupancy or use of the Prop 51 Project Perimeter or Improvements or any part thereof by any persons other than CHARTER SCHOOL and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"), without first procuring the written consent of the DISTRICT.
- 12.2. Any Transfer made without the prior written consent of the DISTRICT shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Agreement. Any Transferee approved by the DISTRICT, shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Prop 51 Project Perimeter for the purposes set forth in this Agreement. Whether or not the DISTRICT consents to any proposed Transfer, CHARTER SCHOOL shall pay, if applicable, the DISTRICT's reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) actually incurred by the party (which shall include the costs or expenses of the Party's employees performing the review and processing if said party does not retain a third party to do so) within 10 business days of CHARTER SCHOOL's receipt of the invoice setting forth the expenses.
- 12.3 CHARTER SCHOOL shall have the right, with consent from District, to Transfer to an Affiliate. As used herein, an "Affiliate" is a non-profit entity, or limited liability company, that is not regarded as separate entity from CHARTER SCHOOL for federal and state income tax purposes, or an organization described in Section 509(a)(3) of the Internal Revenue Code that supports CHARTER SCHOOL, or an entity which controls, or is controlled by, or is under common control with CHARTER SCHOOL.
- 12.4 The District shall not unreasonably withhold, condition, or delay its consent to any Transfer upon receipt of request from CHARTER SCHOOL.

## 13. NONWAIVER

- 13.1. No provision of this Agreement shall be deemed waived by either party

hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained.

#### **14. NON-TERMINABILITY**

14.1 Except as otherwise expressly set forth in this Agreement to the contrary, this Agreement and the rights and obligations of the DISTRICT or CHARTER SCHOOL hereunder shall not be affected by any event or for any reason, including the following: (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting the DISTRICT, (ii) the exercise of any remedy, including foreclosure, under any mortgage or assignment, (iii) any action with respect to this Agreement (including the disaffirmance hereof) which may be taken by the DISTRICT, any trustee, receiver or liquidator of the DISTRICT or any court under the Federal Bankruptcy Code or otherwise, (iv) any interference with CHARTER SCHOOL's use of the Prop 51 Project Perimeter, provided such interference is not caused or permitted by the DISTRICT, or (v) market or economic changes.

#### **15. NO MERGER; OWNERSHIP AND REMOVAL OF PERSONAL PROPERTY**

- 15.1 No Merger. The voluntary or other surrender of this Agreement by CHARTER SCHOOL, whether accepted by the DISTRICT or not, or the mutual termination hereof, shall not work as a merger, and at the option of the DISTRICT shall operate as an assignment to the DISTRICT of all sub-Agreements or sub-tenancies affecting the Prop 51 Project Perimeter or terminate any or all such sublessees or subtenancies.
- 15.2. Removal of Personal Property by CHARTER SCHOOL. Upon the expiration of the Term, or upon any earlier termination of this Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Prop 51 Project Perimeter to the DISTRICT in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, ordinary wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to the DISTRICT, remove or cause to be removed from the Prop 51 Project Perimeter all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Prop 51 Project Perimeter that can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL. Any fixtures or securely attached items may remain.

## **16. HOLDING OVER**

16.1 If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of the DISTRICT, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case rent for such hold over period shall be 110%, of the then current rent for the Prop 51 Project Perimeter (the "Hold Over Rent"). Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Section shall be construed as consent by the DISTRICT to any holding over by CHARTER SCHOOL, and the DISTRICT expressly reserves the right to require CHARTER SCHOOL to surrender possession as provided in this Agreement upon the expiration or other termination of this Agreement. If CHARTER SCHOOL fails to surrender the Prop 51 Project Perimeter upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to the DISTRICT accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold the DISTRICT harmless from all losses, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding CHARTER SCHOOL founded upon such failure to surrender and any losses to the DISTRICT resulting therefrom; provided, that the foregoing indemnification shall not apply to the negligence or willful misconduct of the DISTRICT.

## **17. EVENTS OF DEFAULT**

The occurrence of any of the following shall constitute a default of this Agreement by CHARTER SCHOOL:

- 17.1 Any failure by CHARTER SCHOOL to pay any fee, premium, if applicable, charge or other amounts due and owing under this Agreement, or any part thereof, when due unless such failure is cured within 10 calendar days after CHARTER SCHOOL's receipt of written notice of default from the District; or
- 17.2 Any failure by CHARTER SCHOOL to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by CHARTER SCHOOL where such failure continues for 30 days after written notice of default from the DISTRICT to CHARTER SCHOOL; provided, that if the nature of such default is that the same cannot reasonably be cured within a 30 day period, CHARTER SCHOOL shall not be deemed to be in default if within said 30 day commences such cure and diligently commences and prosecutes to completion such cure; or

- 17.3 To the extent permitted by law, (i) a general assignment by CHARTER SCHOOL or any guarantor of this Agreement for the benefit of creditors, (ii) or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, (iii) or the filing by or against CHARTER SCHOOL or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against CHARTER SCHOOL or any guarantor the same is dismissed within 60 days, (iv) or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of CHARTER SCHOOL or any guarantor, unless possession is restored to CHARTER SCHOOL or such guarantor within 60 days, (v) or any execution or other judicially authorized seizure of all or substantially all of CHARTER SCHOOL's assets located upon the Prop 51 Project Perimeter or of CHARTER SCHOOL's interest in this Agreement, unless such seizure is discharged within 60 days; or
- 17.4 Abandonment of all or 80% of the indoor spaces other than the gymnasium on the Prop 51 Project Perimeter or Improvements occupied by CHARTER SCHOOL during the school year; or
- 17.5 The failure by CHARTER SCHOOL to maintain a current and active charter petition following written notice of default and the time provided in Section 17.2 to cure (after exhaustion of all nonjudicial appeals and remedies).
- 17.6 The DISTRICT shall bear no financial responsibility for either the CHARTER SCHOOL's or the State's financial obligations, including but not limited to payment of the CHARTER SCHOOL's Local Matching Share Obligations, or the State's 50% obligation to pay grant funding under the Charter School Facilities Program.

## **18. REMEDIES UPON DEFAULT**

- 18.1 Upon the occurrence of any event of default by CHARTER SCHOOL and after the expiration of all notice and cure periods as provided in this Agreement, the DISTRICT shall have, in addition to any other remedies available to the DISTRICT at law or in equity, the option to pursue any one or more of the following remedies:

18.1.1 Terminate this Agreement, in which event CHARTER SCHOOL shall immediately surrender the Prop 51 Project Perimeter to the DISTRICT, and if CHARTER SCHOOL fails to do so, the DISTRICT may, without prejudice to any other remedy which it may have for possession or arrearages, enter upon and take possession of the Prop 51 Project Perimeter and expel or remove CHARTER SCHOOL and any other person

who may be occupying the Prop 51 Project Perimeter or any part thereof, without being liable for prosecution or any claim or damages therefor.

18.1.2 The DISTRICT shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Agreement in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if the DISTRICT does not elect to terminate this Agreement on account of any default by CHARTER SCHOOL, the DISTRICT may, from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

18.1.3 The DISTRICT shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available hereinabove, or any law or other provision of this Agreement), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision hereof.

## **19. COVENANT OF QUIET ENJOYMENT**

19.1 the DISTRICT covenants that CHARTER SCHOOL shall, during the Term, exclusively, peaceably and quietly have, hold and enjoy the Prop 51 Project Perimeter subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through the DISTRICT.

## **20. COMPLIANCE WITH LAW**

20.1 CHARTER SCHOOL shall not do anything or suffer anything to be done in or about the Prop 51 Project Perimeter which will in any way conflict with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, but not limited to, (i) any such measures promulgated by the Department of State Architecture, the Department of Toxic Substance Control, and/or the State Department of Education, (ii) any such measures promulgated under the California Environmental Quality Act ("CEQA") or arising from any CEQA proceedings, and (iii) any such measures which relate to CHARTER SCHOOL's use of the Prop 51 Project Perimeter as a school or which are applicable to the Prop 51 Project Perimeter by reason of CHARTER SCHOOL being an educational institution. At its sole cost and expense, CHARTER SCHOOL shall promptly comply with all such governmental

measures, regardless of whether such measures may require structural or non-structural alterations or Improvements to the Prop 51 Project Perimeter. Should any standard or regulation now or hereafter be imposed on the DISTRICT or CHARTER SCHOOL in connection with the Prop 51 Project Perimeter by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, school districts or charter schools, then CHARTER SCHOOL agrees, at its sole cost and expense, to comply promptly with such standards or regulations. CHARTER SCHOOL shall be responsible, at its sole cost and expense, for making all improvements and alterations to the Prop 51 Project Perimeter as are required to comply with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

## **21. SIGNAGE**

21.1 CHARTER SCHOOL may install signage at the Site including, but not limited to, one electronic marquee sign at the CHARTER SCHOOL's main entrance stating the CHARTER SCHOOL name and other pertinent information, a sign indicating the main office of the CHARTER SCHOOL, and other directional signs as appropriate. At the termination of this Agreement, CHARTER SCHOOL shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

## **22. MISCELLANEOUS PROVISIONS**

22.1 No Air Rights. No rights to any view or to light or air over any property, whether belonging to the DISTRICT or any other person, are granted to CHARTER SCHOOL by this Agreement.

22.2 Modification of Agreement. This Agreement may only be modified or amended by written instrument executed by CHARTER SCHOOL and the DISTRICT.

22.3 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

22.4 No Warranty. In executing and delivering this Agreement, CHARTER SCHOOL has not relied on any representations, warranties or statements of the DISTRICT which is not set forth herein or in one or more of the exhibits attached hereto.

22.5 Entire Agreement. It is understood and acknowledged that there are no

oral agreements between the parties hereto affecting this Agreement and this Agreement constitutes the parties' entire agreement with respect to the use and occupancy of the Prop 51 Project Perimeter and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by the DISTRICT to CHARTER SCHOOL with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement.

- 22.6 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, a "Force Majeure") shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure; provided, however, that this Force Majeure exception to timely performance shall not apply to any obligations imposed with regard to amounts due under this Agreement to be paid by CHARTER SCHOOL. The delay due to Force Majeure will be calculated using historical data for the site location, general area or similar businesses.
- 22.7 Authority. If CHARTER SCHOOL is a corporation, trust or partnership, each individual executing this Agreement on behalf of CHARTER SCHOOL hereby represents and warrants that CHARTER SCHOOL is a duly formed and existing entity qualified to do business in California and that CHARTER SCHOOL has full right and authority to execute and deliver this Agreement and that each person signing on behalf of CHARTER SCHOOL is authorized to do so. In such event, CHARTER SCHOOL shall, within 10 days after execution of this Agreement, deliver to the DISTRICT satisfactory evidence of such authority and, if a corporation, upon demand by the DISTRICT, also deliver to the DISTRICT satisfactory evidence of (i) good standing in CHARTER SCHOOL's state of incorporation and (ii) qualification to do business in California.
- 22.8 Drug-Free Workplace. CHARTER SCHOOL's employees shall comply with the District's policy of maintaining a drug free workplace by enacting its own policy to maintain a drug free workplace. Neither CHARTER SCHOOL nor CHARTER SCHOOL's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S.C. § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the Site. If CHARTER SCHOOL or any employee of CHARTER SCHOOL is convicted or pleads nolo contendere to a criminal

drug statute violation occurring at the Site, CHARTER SCHOOL within five (5) days thereafter shall notify the District. Violation of this provision shall constitute a material breach of this Agreement, but District's remedies for such a violation shall be limited to damages reasonably incurred and shall not result in dispossession of CHARTER SCHOOL or termination of this Agreement.

22.9 Inspection of Prop 51 Project Perimeter. District shall have the right to enter the Prop 51 Project Perimeter as set forth in Section 7.3 to conduct inspections of the Prop 51 Project Perimeter to insure that proper pest management control and maintenance is being conducted on the Prop 51 Project Perimeter. District will act reasonably during the course of any access of the Prop 51 Project Perimeter to not disrupt CHARTER SCHOOL's classroom and instructional activities.

22.10 Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, email or facsimile transmission, addressed as follows:

**District:**

Superintendent  
Morgan Hill Unified School District  
15600 Concord Circle  
Morgan Hill, CA 95037  
betandos@mhusd.org

With copy to:

Business Services  
Morgan Hill Unified School District  
15600 Concord Circle  
Morgan Hill, CA 95037  
perezk@mhusd.org

**CHARTER SCHOOL:**

Executive Director  
Charter School of Morgan Hill  
9530 Monterey Road  
Morgan Hill, CA 95037  
pcisewski@csmh.org

With copy to:

Sarah Kollman  
Young Minney & Corr, LLP  
655 University Avenue, Suite 150  
Sacramento, CA 95825  
skollman@mycharterlaw.com

Any notice personally given or sent by facsimile transmission or email shall be effective upon confirmation of transmission. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

- 23.12 California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County.
- 23.13 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. The District certifies to the best of its knowledge and belief that it and its officials are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and CHARTER SCHOOL, by signing this contract, certifies that CHARTER SCHOOL does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>.
- 23.14 Memorandum of Lease/Further Identification of Prop 51 Project Perimeter. Following execution of this Lease, the parties agree that Tenant will, at its sole cost and expense, prepare, and the parties will thereafter execute, acknowledge and record (at Tenant's expense) in the Official Records of Santa Clara County a short form or memorandum of this Lease in form satisfactory to both Landlord and Tenant, setting forth the required information relating to the Lease and attaching the property description.

**SOUTH VALLEY CHARTER SCHOOL CORPORATION**

  
\_\_\_\_\_  
Chair, Board of Directors

**MORGAN HILL UNIFIED SCHOOL DISTRICT**

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President, Board of Education  
Morgan Hill Unified School District

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Secretary, Board of Education  
Morgan Hill Unified School District

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROP 51 PROJECT PERIMETER**

**[TO BE PROVIDED]**

**LEGAL DESCRIPTION OF PERIMETER OF CURRENT 9 MODULAR CLASSROOMS  
("Building Area 1, 2 and 3")**

**OR**

**LEGAL DESCRIPTION OF AREA ON FIELD FOR POTENTIAL LOCATION OF NEW  
CLASSROOM BUILDINGS (1 OF 2) ("Building Area 4.")**

**EXHIBIT A-1**

**[TO BE INSERTED]**

**EXHIBIT "A"**  
**Legal Description**  
**Building Envelope "Location-1"**

All that certain real property situated in the County of Santa Clara, State of California and being a portion of "*Lands of Encinal Elementary School District*" of Santa Clara County, as described in the Grant Deed, Recorded June 02, 1965 in Book 6978, page 295 (Document No. 2860387) Santa Clara County Official Records, and being more particularly described as follows:

Commencing at the southerly most corner of said lands at a found 1/2 inch rod in a monument box, lying in the northeasterly line of Monterey Road (State Highway, 879 official records, page 403); thence running along the southeasterly line of said lands, a distance of 204.83 feet; thence leaving said southeasterly line and running N.41°08'48"W., a distance of 147.57 feet to the POINT OF BEGINNING; thence N.39°24'48"W., a distance of 53.80 feet; thence N.50°35'12"E., a distance of 50.90 feet; thence S.39°24'48"E., a distance of 53.80 feet; thence S.50°35'12"W., a distance of 50.90 feet to the POINT OF BEGINNING, containing 2,738 square feet, more or less.

END OF DESCRIPTION.

**See Exhibit "B & C" attached hereto and made a part hereof.**

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

\_\_\_\_\_  
Harinder Singla, PLS 8347  
Expires: 12/31/2019

\_\_\_\_\_  
Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2019\219001-MHUSD Legal Bldg Location-1.doc



**EXHIBIT "A"**  
**Legal Description**  
**Building Envelope "Location-2"**

All that certain real property situated in the County of Santa Clara, State of California and being a portion of "*Lands of Encinal Elementary School District*" of Santa Clara County, as described in the Grant Deed, Recorded June 02, 1965 in Book 6978, page 295 (Document No. 2860387) Santa Clara County Official Records, and being more particularly described as follows:

Commencing at the southerly most corner of said lands at a found 1/2 inch rod in a monument box, lying in the northeasterly line of Monterey Road (State Highway, 879 official records, page 403); thence running along the southeasterly line of said lands, a distance of 337.92 feet; thence leaving said southeasterly line and running N.41°08'48"W., a distance of 150.46 feet to the POINT OF BEGINNING; thence N.39°23'21"W., a distance of 57.29 feet; thence N.50°36'39"E., a distance of 27.88 feet; thence S.39°23'21"E., a distance of 57.29 feet; thence S.50°36'39"W., a distance of 27.88 feet to the POINT OF BEGINNING, containing 1,597 square feet more or less.

END OF DESCRIPTION.

**See Exhibit "B & C" attached hereto and made a part hereof.**

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

\_\_\_\_\_  
Harinder Singla, PLS 8347  
Expires: 12/31/2019

\_\_\_\_\_  
Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2019\219001-MHUSD Legal Bldg Location-2.doc



**EXHIBIT "A"**  
**Legal Description**  
**Building Envelope "Location-3"**

All that certain real property situated in the County of Santa Clara, State of California and being a portion of "*Lands of Encinal Elementary School District*" of Santa Clara County, as described in the Grant Deed, Recorded June 02, 1965 in Book 6978, page 295 (Document No. 2860387) Santa Clara County Official Records, and being more particularly described as follows:

Commencing at the southerly most corner of said lands at a found 1/2 inch rod in a monument box, lying in the northeasterly line of Monterey Road (State Highway, 879 official records, page 403); thence running along the southeasterly line of said lands, a distance of 547.39 feet; thence leaving said southeasterly line and running N.41°08'48"W., a distance of 217.93 feet to the POINT OF BEGINNING; thence S.76°21'43"W., a distance of 177.31 feet; thence N.13°38'17"W., a distance of 50.04 feet; thence N.76°21'43"E., a distance of 79.74 feet; thence N.13°48'01"W., a distance of 52.39 feet; thence N.76°11'59"E., a distance of 105.33 feet; thence S.13°48'01"E., a distance of 43.61 feet; thence S.76°11'59"W., a distance of 7.73 feet; thence S.13°38'17"E., a distance of 59.10 feet to the POINT OF BEGINNING, containing 14,337 square more or less.

END OF DESCRIPTION.

**See Exhibit "B & D" attached hereto and made a part hereof.**

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

\_\_\_\_\_  
Harinder Singla, PLS 8347  
Expires: 12/31/2019

\_\_\_\_\_  
Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

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**EXHIBIT "A"**  
**Legal Description**  
**Building Envelope "Location-4"**

All that certain real property situated in the County of Santa Clara, State of California and being a portion of "*Lands of Encinal Elementary School District*" of Santa Clara County, as described in the Grant Deed, Recorded June 02, 1965 in Book 6978, page 295 (Document No. 2860387) Santa Clara County Official Records, and being more particularly described as follows:

Commencing at the southerly most corner of said lands at a found 1/2 inch rod in a monument box, lying in the northeasterly line of Monterey Road (State Highway, 879 official records, page 403); thence running along the southeasterly line of said lands, a distance of 573.67 feet; thence leaving said southeasterly line and running N.41°08'48"W., a distance of 216.72 feet to the POINT OF BEGINNING; thence N.13°48'01"W., a distance of 143.83 feet; thence N.76°11'59"E., a distance of 86.00 feet; thence S.13°48'01"E., a distance of 143.83 feet; thence S.76°11'59"W., a distance of 86.00 feet to the POINT OF BEGINNING, containing 12,369 square feet more or less.

END OF DESCRIPTION.

**See Exhibit "B & D" attached hereto and made a part hereof.**

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

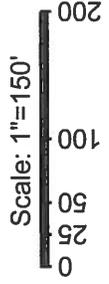
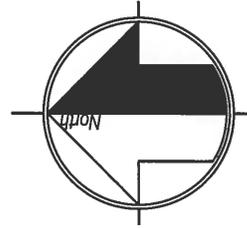
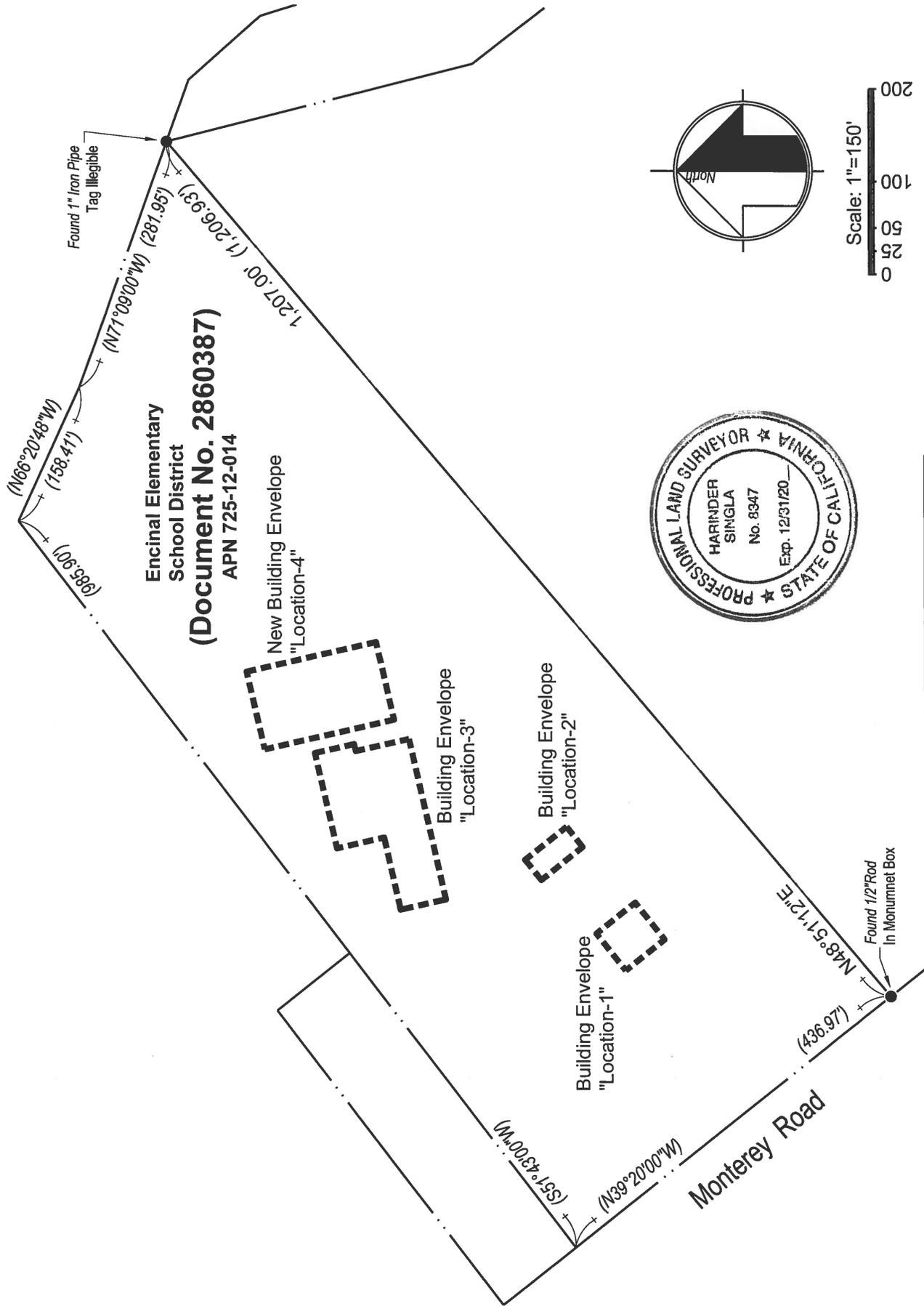
\_\_\_\_\_  
Harinder Singla, PLS 8347  
Expires: 12/31/2019

\_\_\_\_\_  
Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2019\219001-MHU'SD Legal Bldg Location-4.doc





Encinal Elementary  
School District  
**(Document No. 2860387)**  
APN 725-12-014

New Building Envelope  
"Location-4"

Building Envelope  
"Location-3"

Building Envelope  
"Location-2"

Building Envelope  
"Location-1"

Monterey Road

**Site Overall (Exhibit "B")**  
Plat to accompany a Legal Description

**MH engineering Co.**  
18075 VINEYARD BOULEVARD, MORGAN HILL, CA 95037  
(408) 778-7381

SCALE: 1" = 150'  
DRAWN BY: mm  
JOB #: 219001  
DATE: January 11, 2018  
SHEET 1 of 1

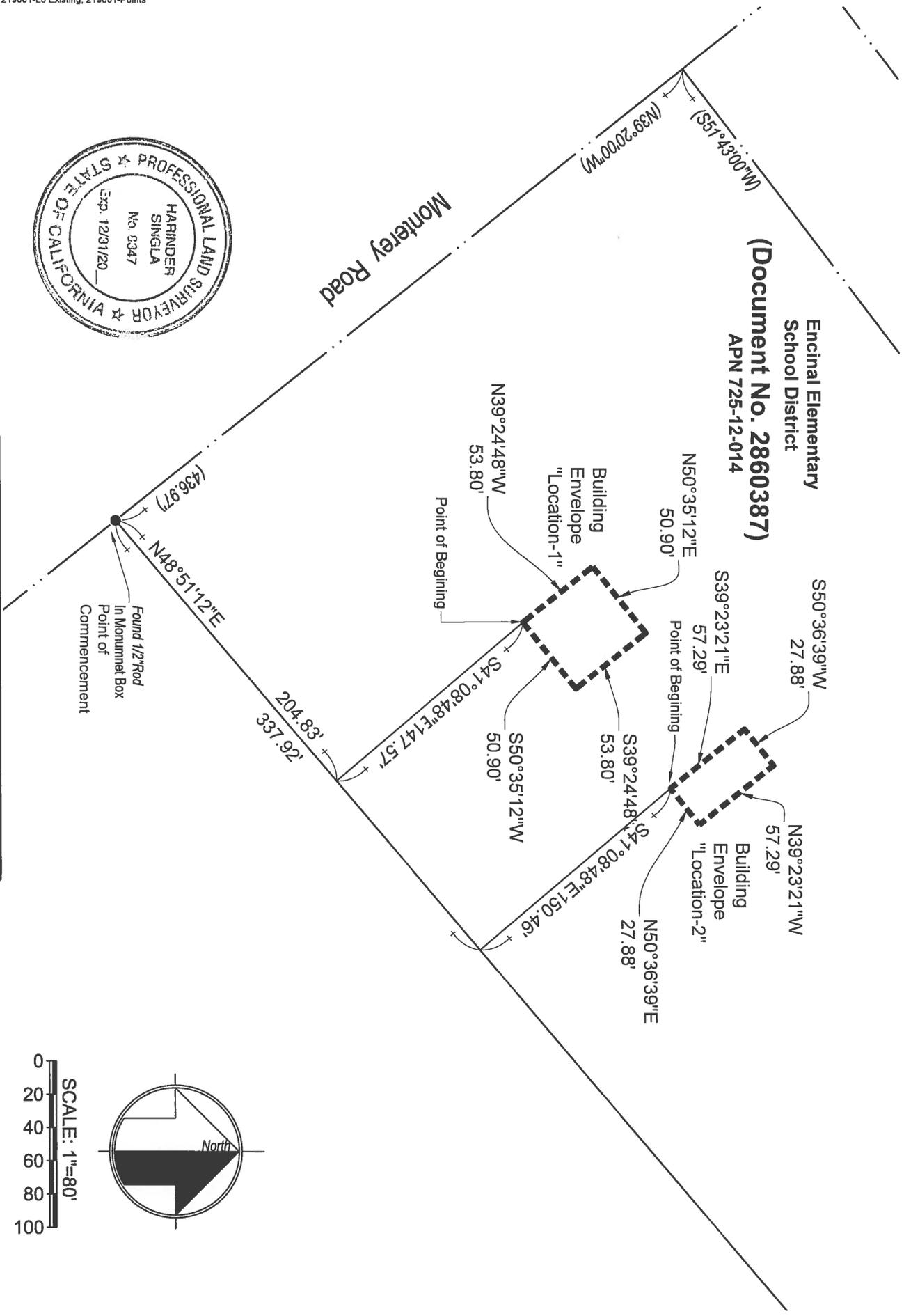
Xrefs: 219001-Lo Existing; 219001-Points



**MH engineering Co.**  
 16075 VINEYARD BOULEVARD MORRIS HILL, CA 95037  
 (408) 779-7381

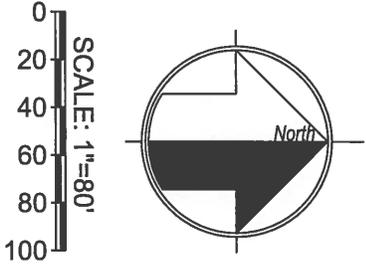


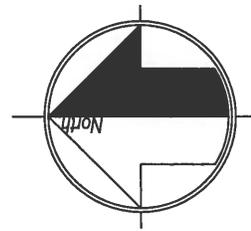
**(Document No. 2860387)**  
 Encinal Elementary  
 School District  
 APN 725-12-014



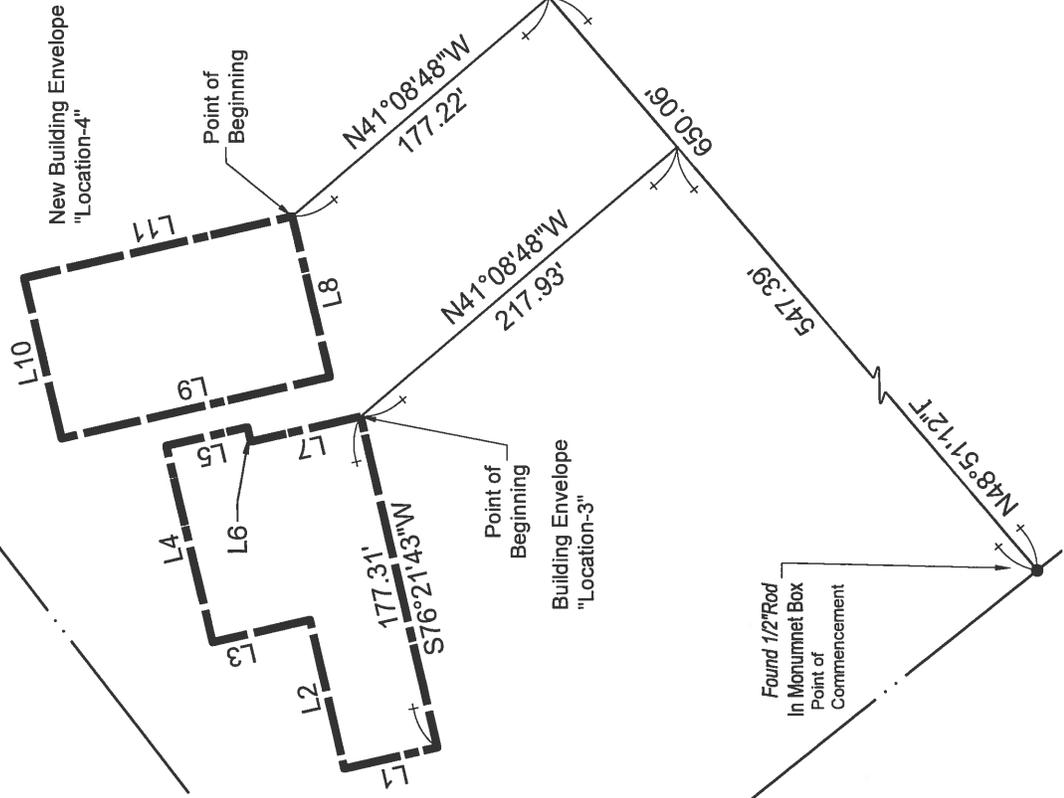
**Exhibit "C"**  
 Plat to accompany a Legal Description

SCALE: 1" = 80'	JOB #: 219001	SHEET
DRAWN BY: mm	DATE: January 11, 2018	1 of 1





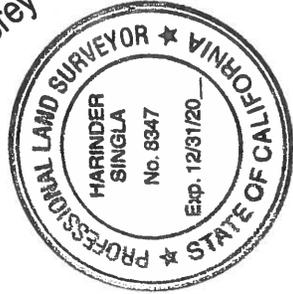
Encinal Elementary  
School District  
**(Document No. 2860387)**  
APN 725-12-014



Line Table		
#	Direction	Length
L8	S76°11'59"W	86.00'
L9	N13°48'01"W	143.83'
L10	N76°11'59"E	86.00'
L11	S13°48'01"E	143.83'

Line Table		
#	Direction	Length
L1	N13°38'17"W	50.04'
L2	N76°21'43"E	79.74'
L3	N13°48'01"W	52.39'
L4	N76°11'59"E	105.33'
L5	S13°48'01"E	43.61'
L6	S76°11'59"W	7.73'
L7	S13°38'17"E	59.10'

Monterey Road



Found 1/2" Rod  
In Monument Box  
Point of  
Commencement

**Exhibit "D"**  
Plat to accompany a Legal Description

SCALE: 1" = 80'	JOB #: 219001	SHEET
DRAWN BY: mm	DATE: January 11, 2018	1 of 1

**MH engineering Co.**  
16075 VINEYARD BOULEVARD MORGAN HILL, CA 95037  
(408) 779-7381

## EXHIBIT B

### INSURANCE

- A. Throughout the Term of the Agreement, CHARTER SCHOOL shall secure and maintain, as a minimum, all of the insurance as set forth below with a joint powers authority or insurance companies acceptable to the DISTRICT.
1. Worker's Compensation Insurance in accordance with provisions of the California Labor Code, adequate to protect CHARTER SCHOOL from claims under Workers' Compensation Acts which may arise from its operations, including Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000.
  2. Commercial General Liability coverage of not less than \$5,000,000 for each occurrence. The policy shall be endorsed to name the DISTRICT and the Board of Education of the Morgan Hill Unified School District as additional insureds and shall provide specifically that any insurance carried by the DISTRICT which may be applicable to any claims or loss shall be deemed excess and CHARTER SCHOOL's insurance primary despite any conflicting provisions in CHARTER SCHOOL's policy. Coverage shall be maintained with no self-insured retention above \$25,000 without approval of the DISTRICT.
  3. Commercial Auto Liability coverage with limits of \$1,000,000 combined single limit unless CHARTER SCHOOL operates bus services for students; provided, that if CHARTER SCHOOL is providing any bus services for students, CHARTER SCHOOL shall maintain coverage limits not less than \$5,000,000 combined single limit.
  4. Professional Educators Errors and Omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the CGL or by separate policy) with minimum limits of \$3,000,000 per occurrence.
  5. Insurance covering the loss, damage or destruction of the Prop 51 Project Perimeter for 100% of the full replacement cost of the Prop 51 Project Perimeter, which shall provide protection against all perils including, but not limited to, fire, extended coverage, vandalism, malicious mischief and causes of loss special form.
- B. CHARTER SCHOOL agrees that the following terms and conditions shall also apply to its obligations to secure and maintain insurance coverage during the Term of the Agreement:
1. CHARTER SCHOOL understands and agrees that the DISTRICT may review the insurance coverage maintained by CHARTER SCHOOL and/or the insurance requirements of this Exhibit B at any time during the Term of the Agreement, and may adjust the insurance requirements as the DISTRICT, in

its reasonable discretion, deems appropriate. Upon receipt of written notice of any adjustment in the insurance coverage required under this Agreement, CHARTER SCHOOL shall deliver evidence of compliance with said insurance requirements within 10 days of CHARTER SCHOOL's receipt of the written notice.

2. No coverage shall be provided to CHARTER SCHOOL by the DISTRICT under any of the DISTRICT's self-insured programs or commercial insurance policies. the DISTRICT shall not have any obligation to secure insurance coverage for CHARTER SCHOOL.
3. CHARTER SCHOOL's insurance coverage shall be primary and any insurance carried by the DISTRICT that may be applicable to any claims or loss shall be deemed excess despite any conflicting provisions in the insurance coverages maintained by CHARTER SCHOOL.
4. Coverages and limits of insurance may be accomplished through individual primary policies or through a combination of primary and excess policies.
5. Within 10 days of CHARTER SCHOOL's execution of the Agreement, CHARTER SCHOOL shall furnish to the DISTRICT's Business Services evidence of insurance in compliance with this Exhibit B. If CHARTER SCHOOL fails to submit evidence of insurance in compliance with this Exhibit B or the DISTRICT determines the CHARTER SCHOOL has not complied with the Insurance requirements set forth in this Exhibit B, the DISTRICT and/or the STATE may deny the occupancy and use of the Prop 51 Project Perimeter until CHARTER SCHOOL provides satisfactory evidence of compliance or the DISTRICT and/or the STATE may declare CHARTER SCHOOL in default of the Agreement.

Thereafter, CHARTER SCHOOL shall furnish to the DISTRICT Risk Management within 30 days of all new policies inception, renewals or changes, certificates of such insurance signed by an authorized representative of the insurance carrier.

6. Nothing in this Exhibit B shall prohibit CHARTER SCHOOL, at its sole cost and expense, from purchasing and maintaining additional insurance coverage for damage or theft to the Prop 51 Project Perimeter, personal property, business interruption, employee or student property, for student accident or any other type of insurance coverage not listed above in 1 through 5, inclusive, of Section A.