

**Fourth Draft  
Friday, December 7, 2018**

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**COVENANT AGREEMENT**

**between**

**21ST CENTURY PUBLIC ACADEMY,  
as School,**

**and**

**CUTLER CHARITABLE FOUNDATION,  
as Foundation**

**Dated as of December 1, 2018**

**Relating to:**

**\$ \_\_\_\_\_  
Public Finance Authority  
Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A**

**\$ \_\_\_\_\_  
Public Finance Authority  
Taxable Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018B**

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This instrument drafted by:  
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Minneapolis, Minnesota 55402

## COVENANT AGREEMENT

This COVENANT AGREEMENT, dated as of December 1, 2018 (this "Covenant Agreement") is made by 21<sup>ST</sup> CENTURY PUBLIC ACADEMY, a New Mexico public charter school (the "Charter School"), with and for the benefit of CUTLER CHARITABLE FOUNDATION, a New Mexico nonprofit corporation and 501(c)(3) organization (the "Foundation"), as borrower under that certain Loan Agreement, dated as of December 1, 2018 (the "Loan Agreement"), between the Authority (as hereinafter defined) and the Foundation. The rights, interest, and obligations of the parties to this Covenant Agreement may be assigned; however, the Charter School shall not assign its rights without the written consent of the Foundation. The Foundation is planning to assign its rights in this Covenant Agreement to U.S. Bank National Association, as trustee (the "Trustee"), pursuant to an Assignment of Covenant Agreement, dated as of December 1, 2018 (the "Covenant Assignment"), by and between the Foundation and the Trustee.

WHEREAS, Public Finance Authority, a unit of government and a body corporate and politic separate and distinct from, and independent of, the State of Wisconsin (the "Authority"), has agreed to issue its (i) Charter School Lease Revenue Bonds (21<sup>st</sup> Century Public Academy Project), Series 2018A (the "Series 2018A Bonds"), in the original aggregate principal amount of \$\_\_\_\_\_, and (ii) Taxable Charter School Lease Revenue Bonds (21<sup>st</sup> Century Public Academy Project), Series 2018B (the "Series 2018B Bonds," and together with the Series 2018A Bonds, the "Series 2018 Bonds"), in the original aggregate principal amount of \$\_\_\_\_\_; and

WHEREAS, the Series 2018 Bonds and any Additional Bonds (as defined in the Indenture (defined below)) are collectively referred to herein as the "Bonds"; and

WHEREAS, the Series 2018 Bonds will be issued by the Authority pursuant to the terms of (i) the resolution of the governing body of the Authority (the "Resolution") and (ii) the Indenture of Trust, dated as of December 1, 2018 (the "Indenture"), between the Authority and the Trustee; and

WHEREAS, the proceeds of the Series 2018 Bonds will be loaned by the Authority to the Foundation pursuant to the Loan Agreement; and

WHEREAS, proceeds of the Series 2018 Bonds will be used by the Foundation in order to: (i) refinance prior indebtedness previously incurred by the Foundation in connection with (a) the acquisition and initial improvements ("Phase I") of the school facility located at 4300 Cutler Avenue Northeast in Albuquerque, New Mexico (the "School Facility") for grades five through eight, and (b) the costs of the construction and equipping of an approximately 27,000 square foot addition to the School Facility, including 9 classrooms, a gymnasium, a music room, and other related facilities ("Phase II"); (ii) fund completion of the construction and equipping of Phase II; (iii) fund a deposit to the Reserve Fund for the Series 2018 Bonds; and (iv) pay the costs of issuance of the Series 2018 Bonds. The School Facility is owned by the Foundation and is leased to and operated by the Charter School pursuant to a Lease Purchase Agreement, dated May 10, 2017 (the "Original Lease"), between MELD, LLC ("MELD"), as amended by an Amendment to Lease Purchase Agreement (the "First Lease Amendment"), by and between MELD, the Charter School and the Foundation, as assigned pursuant to an Assignment and Assumption of Lease Purchase Agreement, dated June 29, 2018 (the "Lease Assumption"), from MELD, as assignor, to the Foundation, as assignee, as further amended by a Second Amendment to Lease Purchase Agreement, dated as of the date of issuance of the Series 2018 Bonds (the "Second Lease Amendment"), between the Foundation and the Charter School executed in connection with the issuance of the Series 2018 Bonds (the Original Lease as amended by the First Lease Amendment, the Lease

Assumption, the Second Lease Amendment and as may be further amended from time to time, the "Lease"); and

WHEREAS, in connection with the issuance of the Series 2018 Bonds, the Charter School has previously entered into the Lease and will also enter into (i) this Covenant Agreement, and (ii) the Subordination, Non-Disturbance and Attornment Agreement, dated as of December 1, 2018 (the "SNDA"), by and between the Foundation, the Charter School, and the Trustee; and

WHEREAS, the Series 2018 Bonds were issued pursuant to the Indenture; and

WHEREAS, the Charter School has agreed to fulfill certain covenants and agreements set forth in this Covenant Agreement in order to provide additional security for the timely payments of amounts due by the Charter School under the Lease;

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms shall have the meanings defined herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease, the Loan Agreement, or the Indenture.

"Additional Bonds" means any additional bonds issued and secured in accordance with the Indenture on a parity with the Outstanding Series 2018 Bonds.

"Additional Rent" means the amount paid by the Charter School under the Lease in addition to Base Rent.

"Authorizer" means Albuquerque Public Schools or any successor authorizer thereto.

"Base Rent" means the monthly base rent payment as set forth in the Base Rent Schedule attached as an exhibit to the Lease.

"Bonds" means the Series 2018 Bonds and any Additional Bonds.

"Capital Improvements" means the acquisition of land, easements, facilities, and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments, and extensions which, under generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board, are properly chargeable as capital items.

"Cash on Hand" means the sum of cash, cash equivalents, liquid investments and unrestricted marketable securities (valued at the lower of cost or market value) of the Charter School. Cash on Hand specifically does not include amounts held by the Trustee.

"Charter School Representative" shall mean the Chair or the Secretary of the Charter School or any other authorized representative of the Charter School designated in writing to the Trustee.

"Continuing Disclosure Agreement" shall mean the Continuing Disclosure Agreement, dated as of December 1, 2018, between the Foundation and the Trustee.

“Days Cash on Hand” means (a) Cash on Hand of the Charter School, as shown on the financial statements for each Fiscal Year divided by (b) the quotient of Operating Expenses, as shown on the financial statements of the Charter School for such Fiscal Year, divided by 365.

“Eliminated Expenses” means any Operating Expenses that the executive director of the Charter School certifies will be eliminated as a result of any proposed Long-Term Financial Obligation or Additional Bonds.

“Event of Nonappropriation” means (a) a failure by the New Mexico Legislature to appropriate sufficient education funds to the Charter School to make the payments of Rent required by the Lease during a fiscal year, or (b) the Charter School to appropriate sufficient amounts to proceed under the Lease after an event of destruction or condemnation.

“Financial Obligations” means (a) all Rent Payments, (b) all the indebtedness of the obligor for borrowed money which has been incurred in connection with the acquisition of assets and (c) the capitalized value of the liability under any lease of real or personal property which is properly capitalized on the statement of assets, liabilities and fund balances of the obligor in accordance with Generally Accepted Accounting Principles.

“Fiscal Year” shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 of each calendar year and ending on June 30 of the next calendar year, or such other fiscal year of similar length used by the Charter School for accounting purposes.

“Foundation” means the Cutler Charitable Foundation, a New Mexico nonprofit corporation and 501(c)(3) organization, its successors or assigns.

“Gross School Revenues” means all funds, money, grants, or other distributions received by the School from the State of New Mexico, including Capital Outlay Funds, Lease Reimbursement Program aid, and State Equalization Guarantee funding due under the Charter School Act, state distributions of federal Title I funds, or any other funding sources or other revenues sources of any kind whatsoever, but such amounts do not include donations that have been restricted by the donor.

“Independent Consultant” means a management consultant, bookkeeper or certified public accountant selected by the Charter School experienced in the management, operation and/or financing of charter schools in New Mexico.

“Lease” means the Lease Purchase Agreement with respect to the School Facility, dated May 10, 2017, by and between MELD, as lessor, and the Charter School, as lessee, as amended pursuant to an Amendment to Lease Purchase Agreement, by and between MELD, the Charter School, and the Foundation, as assigned pursuant to an Assignment and Assumption of Lease Purchase Agreement, dated June 29, 2018, from MELD, as assignor, to the Foundation, as assignee, and as further amended pursuant to a Second Amendment to Lease Purchase Agreement, dated as of December 1, 2018, between the Foundation and the Charter School, and all amendments thereof and supplements thereto.

“Long-Term Financial Obligation” means all Financial Obligations the final maturity of which (taking into account any extensions available at the sole option of the Charter School) is greater than one year after the initial incurrence thereof.

“Majority Bondholder” shall mean any registered owner of, or owners who together own, greater than 50% of the aggregate outstanding principal amount of the Bonds.

“Net Income Available for Financial Obligations” means, for any period of determination thereof, the aggregate Gross Revenues of the Charter School for such period minus the total Operating Expenses for such period but excluding (a) any profits or losses which would be regarded as extraordinary items under Generally Accepted Accounting Principles, (b) gain or loss in the extinguishment of Financial Obligations, (c) proceeds of the Bonds and any other Financial Obligations permitted by the Lease, and (d) proceeds of insurance policies, other than policies for business interruption insurance, maintained by or for the benefit of the Charter School, the proceeds of any sale, transfer or other disposition of the School Facility or any other of the Charter School’s assets by the Charter School, and any condemnation or any other damage award received by or owing to the Charter School, plus amounts that have been deducted for payments under the Lease with respect to principal and interest on the Bonds and deposits to the Capital Improvement Fund.

“Operating Expenses” means all fees and expenses incurred in the general operation of the Charter School as determined in accordance with general accepted accounting principles, including but not limited to items such as: (a) salaries, wages, benefits, payroll taxes, and other expenses for teachers and staff employed by the Charter School, (b) the cost of material and supplies used for current operations of the Charter School, (c) the cost of vehicles owned or leased by the Charter School, (d) the cost of equipment leases and service contracts, (e) taxes upon the operations of the Charter School not otherwise mentioned in this Covenant Agreement, (f) Charter School administrative and legal expenses, (g) costs and expenses incurred by the Charter School with respect to the School Facility, including maintenance, repair expenses, and utility expenses, (h) miscellaneous operating expenses, (i) advertising costs, (j) charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with Generally Accepted Accounting Principles, all in such amounts as reasonably determined by the Charter School; provided however, “Operating Expenses” shall not include (u) depreciation and amortization expenses; (v) other non-cash expenses; (w) those expenses which are actually paid from any revenues of the Charter School which are not Gross Revenues; (x) those expenses which are actually paid from any proceeds of Long-Term Financial Obligation; (y) one-time expenses; and (z) expenditures for capitalized assets.

“Principal and Interest Requirements on Long-Term Financial Obligations” means, for any Fiscal Year, the amount required to pay the interest and principal for Long-Term Financial Obligations of the Charter School in such Fiscal Year, excluding “funded interest” from the proceeds of indebtedness and excluding interest earnings on the Reserve Fund at the then current interest rate per annum, to be determined on the assumption that all indebtedness will be retired as scheduled.

“Rent” or “Rent Payments” means, collectively, Base Rent and Additional Rent.

“School Facility” means the facility that the Charter School leases from the Foundation under the terms of the Lease.

“Series 2018 Bonds” means the same as defined in the recitals of this Covenant Agreement.

“Short-Term Financial Obligations” shall mean indebtedness of the Charter School with a term of 365 days or less.

“Tax-Exempt Bonds” means the Series 2018A Bonds and any Additional Bonds the interest on which is intended to be excluded from gross income for federal income tax purposes.

“Trustee” means U.S. Bank National Association, its successors or assigns.

Section 2. Compliance with the Lease.

(A) The Charter School shall comply with the provisions of the Lease, including but not limited to the payment of Rent to the Foundation on the dates and in the amounts required under the terms of the Lease. The Charter School shall make all payments required under the Lease by electronic funds transfer (wire transfer, ACH, direct debit, or other electronic method).

(B) Subject to the limitation set forth in 2(F) below, the Charter School shall ensure that the Lease remains in force and effect for the term of the Series 2018 Bonds.

(C) The Charter School shall comply with the provisions of the Lease. As of the date of execution of this Covenant Agreement, the Charter School is in compliance with the provisions of the Lease and no event of default has occurred under the terms of the Lease.

(D) The Foundation shall direct U.S. Bank National Association, as depository bank (the "Depository Bank") to establish a depository account (the "Custody Account"), into which any and all amounts of Rent owed by the Charter School under the Lease shall be deposited. Other than those due and payable under the terms of the Lease, amounts on deposit in the Custody Account shall not otherwise be available to pay any expenses or secure any other obligations of the Charter School. Amounts on deposit in the Custody Account shall be used by the Foundation solely to make the required payments under the Loan Agreement.

(E) In the event that the deposits and withdrawals from the Custody Account are not sufficient to make the Foundation's payments of debt service due under the Loan Agreement, the Foundation understands that the Trustee shall be entitled to immediately direct the Depository Bank to request such a transfer from the Foundation's other accounts, if any. In addition, upon an Event of Default under the Indenture, the Trustee will have control of and have the right to make withdrawals from the operating account of the Foundation that is subject to the Account Control Agreement, dated as of December 1, 2018, between the Foundation and the Depository Bank.

(F) The Charter School's obligations to comply with the terms of the Lease and the provisions of this Covenant Agreement are at all times subject to the right of the Charter School for an Event of Nonappropriation to occur.

Section 3. Additional Representations and Covenants. During the term of the Lease, the Charter School shall perform the covenants and agreements imposed under the Lease and this Covenant Agreement and the ongoing notice and reporting requirements contained therein, including but not limited to:

(A) Commencing with the Fiscal Year ending June 30, 2019, furnish the Annual Report of the Charter School (as defined in the Continuing Disclosure Agreement) to the parties and by the times required pursuant to the Continuing Disclosure Agreement.

(B) Submit to the Foundation for filing with the Repository (as defined in the Continuing Disclosure Agreement) or the Dissemination Agent (as defined in the Continuing Disclosure Agreement) the operations reports required pursuant to Section 3(b)(4) of the Continuing Disclosure Agreement.

(C) Commencing with calendar quarter ending March 31, 2019, furnish the Charter School Quarterly Reports (as defined in the Continuing Disclosure Agreement) to the parties and by the times required pursuant to the Continuing Disclosure Agreement.

(D) On or before the deadline as provided by applicable State law, City ordinance or regulation as amended from time to time, make all applications or submissions and provide all supporting documentation to the State Public Education Department (or its successor), as applicable, that are necessary to receive full funding from the State and the City for all legally available general student aid funds, Education Aid, special education funding or other funding sources included in the Charter School's annual budgeted operating revenues.

(E) Make all necessary applications or submissions, including all supporting documentation, to the State Public Education Department (or its successor) necessary to receive any federal monies included in the Charter School's annual budgeted operating revenues.

(F) The Charter School shall, in a timely manner, make application each year for lease payment assistance funds pursuant to NMSA 1978, §22-24-4(1).

(G) On or before June 30, 2019 and for each year thereafter, the Charter School shall budget for and appropriate sufficient funds to make all scheduled payments under the Lease for the ensuing fiscal year and confirm such appropriation by sending written notice thereof to the Foundation and Trustee, unless or until an Event of Nonappropriation, as defined in the Lease, occurs.

(H) All of the applicable units of State government have approved the Lease in order for the Charter School to receive the maximum amount of State funding for the School Facility.

(I) *Short-Term Financial Obligations.* The Charter School may incur Short-Term Financial Obligations in an amount that does not exceed 10% of the Gross Revenues of the Charter School in any Fiscal Year based upon the Charter School's audited financial statements for the prior Fiscal Year. Any Short-Term Financial Obligation now outstanding and any future extension of such Short-Term Financial Obligation must comply with such limitations. Short-Term Financial Obligations incurred by the Charter School shall not be secured by any security interest in or lien against the School Facility.

(J) *Long-Term Financial Obligations.* Subsequent to the issuance of the Series 2018 Bonds, the Charter School shall only incur Long-Term Financial Obligations as provided in this Section 3(J) and never incur Long-Term Financial Obligations for the purpose of replacing the School Facility or moving the operations currently conducted at the School Facility unless the Foundation and the Charter School receive the written consent of the Majority Bondholder for such move or replacement of the School Facility.

(i) *Charter School Certificate.* Prior to incurring or otherwise becoming liable with respect to any Long-Term Financial Obligation, the Charter School shall furnish to the Foundation a certificate of the Charter School Representative which shall:

(a) state the general purpose for which such Long-Term Financial Obligation is proposed to be incurred;

(b) state the maximum aggregate principal amount of proposed Long-Term Financial Obligation to be incurred, the maturity date or dates thereof, and the interest rate or rates with respect thereto; and

(c) be accompanied by an opinion of Independent Counsel for the Charter School to the effect that all conditions precedent specified in this Covenant Agreement for incurring such Long-Term Financial Obligation have been satisfied.

(ii) *Partial Refunding.* Except as provided in paragraph (iv) below, the Charter School shall not incur any Long-Term Financial Obligation that refunds or may refund less than all of the Outstanding Bonds unless, in addition to the filing of the items described in subsection (i) above:

(a) the Charter School shall file with the Foundation a report of an independent certified public accountant selected by the Charter School to the effect that the proceeds of the Long-Term Financial Obligation will be not less than an amount sufficient to pay the principal of and the redemption premium, if any, on the Outstanding Bonds to be refunded and the interest which will become due and payable thereon on or prior to the redemption date or stated maturity thereof, or that the principal of and interest on Governmental Obligations purchased from such proceeds or from other funds provided by the Charter School and deposited in trust with a third party such as the Trustee, which Governmental Obligations do not permit redemption thereof at the option of the Authority, when due and payable (or redeemable at the option of the holder) will provide sufficient money, together with any other money which shall have been deposited irrevocably with a third party such as the Trustee for such purpose, to pay such principal, redemption premium, if any, and interest thereon; and

(b) the Charter School shall file with the Foundation an opinion of Bond Counsel to the effect that such Long-Term Financial Obligation and the refunding of Bonds with the proceeds thereof will not cause interest on any Tax Exempt Bonds to become included in gross income for federal income tax purposes.

(iii) *Coverage Test.* Except as provided in paragraphs (J)(iv) and (J)(v) below, the Charter School shall not incur any Long-Term Financial Obligation unless the Charter School shall furnish to the Trustee the following:

(a) an opinion or report of an independent certified public accountant selected by the Charter School to the effect that the Net Income Available for Financial Obligations for the Fiscal Year immediately preceding the date on which such Long-Term Financial Obligation is to be incurred for which audited financial statements are available, plus Eliminated Expenses, totals at least 100% of maximum Principal and Interest Requirements on Long-Term Financial Obligation of the Charter School payable in any Fiscal Year (including such requirements for the proposed Long-Term Financial Obligation but excluding such requirements for any then outstanding Long-Term Financial Obligation or bonds to be refinanced by the proposed Long-Term Financial Obligation), and

(b) a certificate of the Charter School Representative, verified or reviewed by an independent certified public accountant selected by the Charter School, to the effect that Net Income Available for Financial Obligations for the next Fiscal Year beginning after the Fiscal Year in which any improvements



being financed by such proposed Long-Term Financial Obligation are to be placed in service, or, if no improvements are to be financed thereby, beginning with the first Fiscal Year after the Fiscal Year in which the proposed Long-Term Financial Obligation is to be incurred, will be at least 125% of the maximum Principal and Interest Requirements on Long-Term Financial Obligation of the Charter School (including such requirements for the proposed Long-Term Financial Obligation but excluding such requirements for any then outstanding Long-Term Financial Obligation of the Charter School or Bonds to be refinanced by the proposed Long-Term Financial Obligation) for each Fiscal Year beginning with the second Fiscal Year after the Fiscal Year in which any improvements being financed by such proposed Long-Term Financial Obligation are to be placed in service, or, if no improvements are to be financed thereby, beginning with the first Fiscal Year after the Fiscal Year in which the proposed Long-Term Financial Obligation is to be incurred, but before the final stated maturity of all then Outstanding Bonds.

(iv) *Completion and Refunding without Coverage.* Notwithstanding the provisions of paragraph (iii) above, the Charter School may incur Long-Term Financial Obligation:

(a) if and to the extent necessary to provide additional funds (1) if the aggregate principal amount of such Long-Term Financial Obligations incurred in a Fiscal Year does not exceed 5% of Gross Revenue or (2) for payment of the cost of any improvements or alterations for which any Long-Term Financial Obligation shall have been incurred at one time or from time to time under this Section 3(J)(iv)(a); or

(b) for refinancing the principal amount of any outstanding Long-Term Financial Obligation provided the Principal and Interest Requirements on Long-Term Financial Obligation (including such requirements for the proposed Long-Term Financial Obligation but excluding such requirements for the Long-Term Financial Obligation to be refinanced thereby) for each Fiscal Year after the Fiscal Year in which the proposed Long-Term Financial Obligation is to be incurred but before the final stated maturity of all then Outstanding Bonds will not exceed the amount of Principal and Interest Requirements on Long-Term Financial Obligation that would have been required for each such Fiscal Year had such proposed Long-Term Financial Obligation not been incurred.

(v) *Purchase Money Indebtedness.* The Charter School may incur Long-Term Financial Obligation without regard to the limitations set forth in Section 3(J)(iii) if the Charter School certifies in a written statement delivered to the Foundation that the incurrence of such Long-Term Financial Obligation will not cause it to be in violation of this Section 3(J)(v) and:

(a) such Long-Term Financial Obligation is secured solely by a security interest in personal property financed with such Long-Term Financial Obligation; and

(b) the aggregate payments required to be made by the Charter School in each Fiscal Year with respect to all Long-Term Financial Obligations incurred pursuant to this Section 3(J)(v) shall not exceed 5% of the Gross

Revenues of the Charter School, as reported in the most recent audited financial statements of the Charter School, determined as of the date of such Long-Term Financial Obligation is to be incurred; and

(c) such Long-Term Financial Obligation amortizes within a 60 month period of the incurrence thereof; and

(d) the Charter School certifies that the incurrence of such Long-Term Financial Obligation will not cause it to be in violation of the operating covenants of the Charter School.

(vi) *No Other Indebtedness.* Except as provided herein, the Charter School shall not, without the Foundation, which the Foundation will not grant without the prior written consent of the Majority Bondholder, incur any indebtedness, whether or not secured on a basis subordinate to the payment of the Bonds.

(K) *Liquidity and Coverage Covenants.*

(i) *Minimum 45 Days Cash on Hand.* Maintain unrestricted Cash on Hand in its operation fund such that on each testing date the amount on deposit in such fund shall be equal to or greater than 45 Days Cash on Hand. The Charter School's Cash on Hand shall be tested annually as of each Fiscal Year, commencing June 30, 2020. The Charter School will provide the Foundation with a certification no later than two weeks after the completion of the Charter School's audit for each Fiscal Year that the operating reserve fund balance required above has been met. Amounts on deposit in such operating fund may be used to pay Operating Expenses or may be used for any other lawful purpose. The foregoing is subject to the qualification that if applicable state or federal laws or regulations, or the rules and regulations of agencies having jurisdiction (including, without limitation, changes in state or federal funding schedules), shall not permit or enable the Charter School to maintain such level of Cash on Hand, then the Charter School shall, in conformity with the then prevailing laws, rules or regulations, maintain its Cash on Hand equal to the maximum permissible level.

(ii) *Minimum Coverage.* Comply with either of the following covenants: (a) commencing with the Fiscal Year ending June 30, 2020, and each Fiscal Year thereafter, maintain Net Income Available for Financial Obligations in each Fiscal Year that will be at least one 100% of the Principal and Interest Requirements on Long-Term Financial Obligation during such Fiscal Year if the unrestricted Cash on Hand in its operation fund is at least 75 Days Cash on Hand; or (b) commencing with the Fiscal Year ending June 30, 2020 and each Fiscal Year thereafter, maintain Net Income Available for Financial Obligations in each Fiscal Year that will be at least 110% of the Principal and Interest Requirements on Long-Term Financial Obligation during such Fiscal Year if the unrestricted Cash on Hand in its operation fund is less than 75 Days Cash on Hand.

(iii) *Budgeting for Compliance.*

(a) If the Charter School maintains at least 75 Days Cash on Hand as measured on the last day of each Fiscal Year, then the Charter School will budget and set expenses and will operate the School Facility, subject to applicable requirements or restrictions imposed by law, such that the Charter School's Net Income Available for Financial Obligations for the Fiscal Year ending June 30,

2020, and each Fiscal Year thereafter, will be at least 100% of the Principal and Interest Requirements on Long-Term Financial Obligation during such Fiscal Year.

(b) If the Charter School has not maintained at least 75 Days Cash on Hand as measured on the last day of each Fiscal Year, then the Charter School will budget and set expenses and will operate the School Facility, subject to applicable requirements or restrictions imposed by law, such that the Charter School's Net Income Available for Financial Obligations for the Fiscal Year ending June 30, 2020, and each Fiscal Year thereafter, will be at least 110% of the Principal and Interest Requirements on Long-Term Financial Obligation during such Fiscal Year.

(c) The foregoing is subject to the qualification that if applicable state or federal laws or regulations, or the rules and regulations of agencies having jurisdiction, shall not permit the Charter School to produce such level of Net Income Available for Financial Obligations, then the Charter School shall, in conformity with the then prevailing laws, rules or regulations, maintain its Net Income Available for Financial Obligations equal to the maximum permissible level.

(iv) *Independent Consultant Required at Direction of Majority Bondholder.*

(a) *<45 Days Cash; No Default.* If the Cash on Hand at the end of any Fiscal Year is below the required amount, as provided in Section 3(K)(i) above, then upon the written direction of the Foundation, based upon the written direction of the Majority Bondholder, the Charter School will promptly employ an Independent Consultant, selected by or acceptable to the Majority Bondholder, to review and analyze the operations and administration of the Charter School, inspect the School Facility, and submit to the Charter School, the Foundation, and the Trustee written reports, and make such recommendations as to the financial operation and administration of the Charter School's charter school as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations.

Subject to Section 3(K)(iv)(d) below, so long as the Charter School is otherwise in full compliance with its obligations under this Covenant Agreement, including following, to the fullest extent practicable, the recommendations of the Independent Consultant, it shall not constitute an Event of Default if the Cash on Hand at the end of any Fiscal Year is less than the required amount of Cash on Hand, as provided in Section 3(K)(i) above. If requested, the Charter School shall provide the Foundation a written certification that the Charter School is, to the fullest extent practicable, in compliance with the recommendations of the Independent Consultant.

(b) *Net Income Available for Financial Obligations Less Than 110%; No Default.* If the Cash on Hand at the end of any Fiscal Year is below the amount provided in Section 3(K)(ii) above, and if the Net Income Available for Financial Obligations for any Fiscal Year ending on or after June 30, 2020, is

less than 110% of the Principal and Interest Requirements on Long-Term Financial Obligation during such Fiscal Year, then upon the written direction of the Foundation, based upon the written direction of the Majority Bondholder, the Charter School will promptly employ an Independent Consultant to review and analyze the operations and administration of the Charter School, inspect the School Facility, and submit to the Charter School, the Foundation, and the Trustee written reports, and make such recommendations as to the operation and administration of the Charter School's charter school as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations. If requested by the Foundation, the Charter School shall provide the Foundation and the Trustee with a written certification that the Charter School is, to the fullest extent practicable, in compliance with the recommendations of the Independent Consultant.

Subject to Section 3(K)(iv)(d) below, so long as the Charter School is otherwise in full compliance with its obligations under this Covenant Agreement, including following, to the fullest extent practicable, the recommendations of the Independent Consultant, it shall not constitute an Event of Default if the Net Income Available for Financial Obligations for any Fiscal Year ending on or after June 30, 2020, is less than 110% of the Principal and Interest Requirements on Long-Term Financial Obligation for such Fiscal Year (as evidenced by the Charter School's audited financial statements for such Fiscal Year).

(c) *Net Income Available for Financial Obligations Less Than 100%.* If the Cash on Hand at the end of any Fiscal Year is below the amount provided in Section 3(K)(i) or (K)(ii) above, and if the Net Income Available for Financial Obligations for any Fiscal Year ending on or after June 30, 2020, is less than 100% of the Principal and Interest Requirements on Long-Term Financial Obligation during such Fiscal Year (as evidenced by the Charter School's audited financial statements for such Fiscal Year), then upon the written direction of the Foundation, based upon the written direction of the Majority Bondholder, the Charter School will promptly employ an Independent Consultant selected by or acceptable to the Foundation, who's selection shall be based upon the written direction of the Majority Bondholder to review and analyze the financial operations and administration of the Charter School, inspect the School Facility, and submit to the Charter School, the Foundation, and the Trustee written reports, and make such recommendations as to the operation and administration of the Charter School's charter school as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations. If requested by the Foundation, the Charter School shall provide Foundation and the Trustee with a written certification that the Charter School is, to the fullest extent practicable, in compliance with the recommendations of the Independent Consultant.

(d) *Default at Direction of Majority or Trustee.* Notwithstanding Section 3(K)(iv)(a), (b) or (c), regardless of whether the Charter School has retained an Independent Consultant, if at the end of the Fiscal Year ending

June 30, 2020 or any subsequent Fiscal Year, the Net Income Available for Financial Obligations as of the end of such Fiscal Year is less than 100% of the Principal and Interest Requirements on Long-Term Financial Obligation for such Fiscal Year (as evidenced by the Charter School's audited financial statements for such Fiscal Year), then the Foundation shall give notice thereof to EMMA and the Majority Bondholder may either (a) direct the Foundation to declare an Event of Default under the Lease and the Trustee may declare an Event of Default under the Loan Agreement or (b) direct the Foundation to exercise one or more of the remedies permitted under this Covenant Agreement and the Trustee to exercise one or more of the remedies permitted under the Loan Agreement.

(L) Make all payments of Rent due under the Lease. In this regard, the Foundation agrees that it shall apply all amounts received by or on behalf of the Charter School under the Lease to the amounts payable pursuant to the Loan Agreement when due.

(M) The Charter School shall provide notice to the Foundation who in turn shall notify the Authority, Trustee, and the Original Purchaser, of (i) any notices from the Authorizer to the Charter School of noncompliance with or determination not to renew the Charter Contract within ten days of receipt of such notice by the Charter School and (ii) any default under the Lease and the steps to be taken by the Charter School to remedy such default, promptly after such default occurs.

(N) Carry business interruption insurance providing for rent loss coverage in an amount equal to at least one hundred twenty percent (120%) of the maximum debt service on the Series 2018 Bonds due for a period of 18 months. Any such policy will be payable directly to the Foundation upon the occurrence of any damage to the School Facility that renders all or any portion of the School Facility unusable.

(O) Pursuant to the Lease to the extent applicable, to carry (i) automobile insurance protecting the Charter School against liability for injuries to persons and property, (ii) errors and omissions insurance with a coverage limit not less than, and a deductible amount not greater than, those customarily included in similar policies carried by similar entities similarly situated, and (iii) workers compensation insurance, with statutory coverage.

(P) Maintain its existence as a public charter school described in the School Act under its Charter Contract and not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it without the prior written consent of the Foundation.

(Q) At its own expense and in its own name, in good faith contest any real estate taxes, assessments, utility and other charges, and the Foundation shall require notification of such good faith contest and, in the event of any such contest, the Charter School may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom but only if (1) nonpayment of any such items will not materially endanger the interest of the Foundation in the Premises, nor subject to loss or forfeiture the Premises or any part thereof, and (2) the Charter School files with the Foundation an opinion of Independent Counsel stating in effect that neither event will occur. If both conditions are not satisfied the Charter School shall be required by the Foundation to promptly pay such taxes, assessments, utility or other charges or provide the Charter School with full security against any loss that may result from nonpayment, in form satisfactory to the Foundation.

(R) Not have used the proceeds of the Tax-Exempt Bonds in such a manner as to cause the Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and applicable Treasury Regulations; to this end, comply with the provisions of the Tax Certificate.

(S) Participate in the annual conference call to be held by the Foundation pursuant to Section 4(c) of the Continuing Disclosure Agreement.

(T) Comply with and fulfill all other requirements and conditions of the Code and Treasury Regulations and rulings issued pursuant thereto relating to the construction and operation of the facilities financed or refinanced by the Tax-Exempt Bonds to the end that interest on the Tax-Exempt Bonds shall at all times be free from federal income taxation.

(U) Promptly comply or cause compliance with all legal requirements of duly constituted public authorities which may be applicable to the Charter School or to the repair and alteration thereof, or to the use or manner of use of the School Facility.

(V) Not (i) voluntarily initiate any proceeding for dissolution or liquidation or any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt, or any other form of debtor relief, or (ii) fail to promptly have discharged any execution, garnishment, or attachment of such consequence as would impair the ability of the Charter School to carry on its operations at the School Facility, or (iii) make an assignment for the benefit of creditors, or (iv) enter into an agreement of composition with creditors.

(W) The Charter School hereby consents to the Covenant Assignment.

In addition to the Charter School's obligations to deliver the items described above to the Foundation and the Original Purchaser (and to the Authority, upon request), the Foundation shall electronically file each of the items listed in subsections (A), (B) and (C) above with the Municipal Securities Rulemaking Board as provided at <http://www.emma.msrb.org>, or any successor thereto.

Section 4. Defaults and Remedies. Any of the following shall be an Event of Default:

(A) Failure by the Charter School to pay any payment required to be paid under the Rent Schedule set forth in the Lease in full at the time specified therein, and said failure in payment shall continue for ten days, but no later than the last Business Day of the month.

(B) Any event of default on the part of the Foundation under the Loan Agreement or the Lease.

(C) Failure of the Charter School to comply with or perform any of the covenants, conditions or provisions hereof and to remedy such default within 30 days after written notice thereof from the Authority or the Foundation to the Charter School; provided that, if such default cannot with due diligence and dispatch be wholly cured within 30 days but can be wholly cured, the failure of the Charter School to remedy such default within such 30 day period shall not constitute a default hereunder if the Charter School shall immediately upon receipt of such notice commence with due diligence and dispatch the curing of such default and, having so commenced the curing of such default, shall thereafter prosecute and complete the same with due diligence and dispatch.

(D) Any representation or warranty made by the Charter School in this Covenant Agreement or in any statement or certificate furnished to the Authority, the Foundation, the Trustee or the purchaser of any Series 2018 Bonds in connection with the sale of the Series 2018 Bonds or furnished by the Charter School pursuant hereto proves untrue in any material respect as of the date of the issuance of the Series 2018 Bonds or making thereof.

(E) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Charter School (other than bankruptcy proceedings instituted by the Charter School against third parties) and, if instituted against the Charter School, are allowed against the Charter School or are consented to or are not dismissed, stayed or otherwise nullified within 60 days after such institution.

Upon the occurrence of any Event of Default hereunder, Foundation and the Trustee as assignee of the Foundation under the terms of the Covenant Assignment shall have, in addition to all other rights and remedies provided herein or by law, the uniform commercial code as adopted in the State and any successor statute(s) thereto (the "UCC"). Any of the remedies for the violations of the covenants set forth in Sections 3(H)(i) and 3(H)(ii) are subject to the provisions of Section 3(H)(iv) of this Covenant Agreement. A default under the Continuing Disclosure Agreement shall not be an Event of Default under this Covenant Agreement.

Section 5. Termination. This Covenant Agreement shall terminate and any amounts on deposit in the Revenue Fund shall be delivered or transferred to the Charter School upon the Foundation providing for payment in full of amounts due with respect to the Bonds, whether at their stated maturity or by earlier prepayment and redemption.

Section 6. Governing Law. The obligations of the parties under this Covenant Agreement shall be governed by and construed in accordance with the State of New Mexico.

Section 7. Headings. Section headings in this Covenant Agreement are for convenience of reference only and shall not govern, or be used in, the interpretation of any of the provisions of this Covenant Agreement.

Section 8. Financing Statements. The Charter School agrees to execute and deliver to the Foundation or the Trustee, as applicable, such further agreements and assignments or other instruments and do all such other things as the Foundation or the Trustee, as applicable, may deem necessary and appropriate, including such financing statement or statements or amendments thereof or supplements thereto or other instruments as the Trustee may from time to time require in order to comply with the UCC. The Charter School and the Foundation agree that a carbon, photographic or other reproduction of this Covenant Agreement or any such financing statement is sufficient for filing as a financing statement by the Foundation or the Trustee without notice thereof to the Charter School wherever the Foundation or the Trustee, as applicable, in their sole discretion desires to file the same. In the event for any reason the law of any other jurisdiction than the State becomes or is applicable to the Indenture, the Series 2018 Bonds or this Covenant Agreement, the Charter School agrees to execute and deliver all such instruments and do all such other things as the Foundation or the Trustee in their sole discretion deem necessary or appropriate to preserve, protect and enforce the security interest of the Trustee under the law of such other jurisdiction to at least the same extent as such security interest would be protected under the UCC.

Section 9. Execution and Counterparts. This Covenant Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

Section 10. No Waiver; Cumulative Remedies. The Foundation (and the Trustee as assignee under the Covenant Assignment) shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Trustee, and then only to the extent therein set forth. A waiver by the Trustee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Trustee would otherwise have on any further occasion. No failure to exercise nor any delay in exercising by the Trustee of any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

Section 11. Waivers, Amendments. None of the terms or provisions of this Covenant Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Foundation and the Charter School and acknowledged by the Trustee.

Section 12. Notices. Unless otherwise provided for in this Covenant Agreement, any notice required or permitted to be given under this Covenant Agreement may be given by certified or registered mail, return receipt requested, or by telex or telecopy, charges prepaid, or by commercial overnight delivery service, prepaid, address as follows:

- (1) if to the Authority, to:

Public Finance Authority  
22 E. Mifflin Street, Suite 900  
Madison, WI 53703  
Attention: Scott Carper and Michael LaPierre

- (2) if to the Foundation, to:

Cutler Charitable Foundation  
6805 Academy Parkway West Northeast  
Albuquerque, NM 87109  
Attention: Board Chair

with a copy to

Sutin, Thayer & Browne Lawyers  
P.O. Box 1945  
Albuquerque, NM 87103  
Attention: Eduardo A. Duffy

- (3) if to the Charter School, to:

21<sup>st</sup> Century Public Academy  
4300 Cutler Avenue Northeast  
Albuquerque, NM 87110



Attention: \_\_\_\_\_

with a copy to

Fuentes Law Office  
2320 Lariat Road  
Rio Rancho, NM 87124  
Attention: Robert R. Fuentes

(4) if to the Trustee, to:

U.S. Bank National Association  
633 West 5<sup>th</sup> Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: U.S. Bank Global Corporate Trust

The Charter School and the Foundation may designate by writing delivered to the addresses stated in or pursuant to this Section 12, any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13. Electronic Signatures. The parties agree that the electronic signature of a party to this Covenant Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Covenant Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

(The remainder of this page is intentionally left blank.)

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

**21<sup>ST</sup> CENTURY PUBLIC ACADEMY**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

(Signature page to Covenant Agreement – 21<sup>st</sup> Century Public Academy 2018)

**CUTLER CHARITABLE FOUNDATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

(Signature page to Covenant Agreement – 21<sup>st</sup> Century Public Academy 2018)

**ACKNOWLEDGMENT OF THE TRUSTEE**

The undersigned hereby consents to and acknowledges the foregoing Covenant Agreement dated as of December 1, 2018, between 21<sup>st</sup> Century Public Academy and Cutler Charitable Foundation.

**U.S. BANK NATIONAL ASSOCIATION, as Trustee**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

(Signature page to Covenant Agreement – 21<sup>st</sup> Century Public Academy 2018)

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