

Second Draft
Friday, December 7, 2018

ASSIGNMENT OF COVENANT AGREEMENT

By and Between

CUTLER CHARITABLE FOUNDATION,
as Foundation,

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of December 1, 2018

and relating to

\$ _____
Public Finance Authority
Charter School Lease Revenue Bonds
(21st Century Public Academy Project)
Series 2018A

\$ _____
Public Finance Authority
Taxable Charter School Lease Revenue Bonds
(21st Century Public Academy Project)
Series 2018B

This instrument drafted by:
Barnes & Thornburg LLP (BWJ)
225 South Sixth Street, Suite 2800
Minneapolis, Minnesota 55402

ASSIGNMENT OF COVENANT AGREEMENT

THIS ASSIGNMENT OF COVENANT AGREEMENT (this "Assignment of Covenant Agreement" or "Assignment") is made and entered into as of December 1, 2018, between CUTLER CHARITABLE FOUNDATION, a New Mexico nonprofit corporation and 501(c)(3) organization (the "Foundation") and U.S. BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns (the "Trustee").

RECITALS

WHEREAS, the 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 (21st 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 (21st 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 \$_____, pursuant to an Indenture of Trust, dated as of December 1, 2018 (the "Indenture"), between the Authority and the Trustee; and

WHEREAS, the Authority will loan the proceeds of the Series 2018 Bonds to the Foundation pursuant to a Loan Agreement, dated as of December 1, 2018 (the "Loan Agreement"), between the Authority and the Foundation; and

WHEREAS, the Foundation will use the proceeds of the Series 2018 Bonds 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, renovation, expansion, and improvement 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; and

WHEREAS, in connection with the issuance of the Series 2018 Bonds, 21st Century Public Academy (the "Charter School"), a New Mexico public charter school, the Charter School entered into a Covenant Agreement, dated as of December 1, 2018 (the "Covenant Agreement"), for the benefit of the Foundation; and

WHEREAS, as additional security for the Series 2018 Bonds, the Foundation agrees to assign its rights and interests in the Covenant Agreement to the Trustee pursuant to this Assignment and, in the Covenant Agreement, the Charter School has consented to this Assignment in connection with the acceptance of the School Facility as improved by Phase II.

NOW, THEREFORE, the Foundation and the Trustee agree as follows:

1. Assignment of Covenant Agreement. The Foundation assigns to and grants to the Trustee all of the Foundation's right, title and interest in and to the Covenant Agreement.
2. Foundation Representation and Warranty. The Foundation represents and warrants to the Trustee that the Foundation is the owner of its rights, title and interest in and to the Covenant Agreement and all rights incident thereto.

3. Exercise of Rights and Remedies. The Foundation authorizes the Trustee to exercise, whether or not an Event of Default has occurred under the Covenant Agreement, in the Foundation's name, any and all rights or remedies available to the Foundation under the Covenant Agreement, including the rights of the Foundation to grant consents or approvals under the Covenant Agreement. The Foundation agrees, on request of the Trustee, to execute and deliver to the Trustee such other documents or instruments as shall be deemed reasonably necessary or appropriate by the Trustee at any time to confirm or perfect the security interest granted by this Assignment. The Foundation irrevocably appoints the Trustee its attorney-in-fact to execute on behalf of the Foundation, and in its name, any and all such assignments, financing statements or other documents or instruments which the Trustee may deem necessary.

4. Parties. Whenever any of the parties is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Assignment contained by or on behalf of the Foundation or the Trustee shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

5. Continuing Validity. The unenforceability or invalidity of any provision or provisions of this Assignment shall not render any other provision or provisions herein contained unenforceable or invalid.

6. Governing Law. This Assignment shall in all respects be construed in accordance with and governed by the laws of the State of New Mexico. This Assignment may not be amended or modified except in writing signed by the Foundation and the Trustee.

7. Counterparts. This Assignment may be executed, acknowledged and delivered in any number of counterparts and each of such counterparts shall constitute an original but all of which together shall constitute one agreement.

8. Defined Terms. The capitalized terms used in this Assignment which are defined in the Covenant Agreement shall have the meanings specified therein, unless the context of this Assignment otherwise requires, or unless such terms are otherwise defined in this Assignment.

9. Electronic Signatures. The parties agree that the electronic signature of a party to this Assignment shall be as valid as an original signature of such party and shall be effective to bind such party to this Assignment. 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 Foundation and the Trustee have executed this Assignment of Covenant Agreement as of the date and year first written above.

CUTLER CHARITABLE FOUNDATION

By: _____
Name: _____
Its: _____

(Signature page to Assignment of Covenant Agreement – 21st Century Public Academy)

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Name: _____
Its: _____

(Signature page to Assignment of Covenant Agreement – 21st Century Public Academy)

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