

GROUND LEASE

This Ground Lease (“**Lease**”) is made this 1st day of July , 2022, by and between **DePonte Investments, Inc.**, a New Mexico corporation (“**Lessor**”) and **21st Century Public Academy**, a State Charter School under the chartering authority of the Public Education Authority Commission of the State of New Mexico (“**Lessee**”).

In consideration of the promises and covenants contained herein, the parties hereto agree as follows:

1. **Lease of the Premises.** For and in consideration of this agreement of Lessee to pay the rental and other sums herein provided for and to perform the terms, covenants and conditions on its part herein contained, Lessor hereby leases the following described undeveloped real property containing approximately 39,119.90 square feet located in Albuquerque, New Mexico, to Lessee:

Tract B-1D, Netherwood Park Addition, filed February 5, 1988,
Book 98C, page 4D.

Plat map of subject property attached hereto as **Exhibit A**.

Said property is hereafter referred to as “**the Premises.**” The Premises is subject to the following:

- a. Reservations, restrictions, easements and limitations, if any, of record;
- b. Zoning ordinances of the City of Albuquerque, New Mexico, and any other governmental body now existing or which may hereafter exist by reason of any legal authority during the term of this Lease.

2. **Term.** The initial term of this Lease shall be for a period of two (2) years beginning on July 1, 2022 (the “**Effective Date**”), and continuing, unless this Lease is terminated sooner pursuant to the provisions hereof, until the 30th day of June, 2024. Should Lessee retain possession after the end of the term hereof without a written extension of this Lease, Lessee shall become a tenant on a month-to-month basis upon all the terms, covenants, and conditions specified herein except that the rental will be adjusted by an increase of ten percent (10%).

3. **Rental.**

a. During the Term of this Lease, Lessee agrees to pay as rental to Lessor at 7411 Jefferson Street NE, Albuquerque, New Mexico 87109, the sum of \$3,259.86 per month, payable in lawful money of the United States, in advance on the first day of each calendar month during the Lease Term, without any deduction or offset whatsoever (“**Base Rent**”). The first payment on the Lease Term is due July 1, 2022. Lessee further agrees to pay Lessor any excise, sales, gross receipts or assessments of any kind

or privilege tax imposed or levied by any government or governmental agency upon lessor on account of this lease or the rental paid hereunder.

b. In the event any payment due hereunder is not received by Lessor within ten (10) days of its due date, Lessee shall pay a late charge equal to five percent (5%) of the monthly rental amount then due in addition to the monthly rental amount. Amounts not paid within thirty (30) days after their due date, will accrue interest until paid at the rate of eight and three-quarter percent per annum.

4. Assessments.

a. Lessor shall promptly furnish to Lessee any and all notices received by Lessor regarding any assessments for which Lessee is liable under this Lease. Lessee shall promptly provide Lessor copies of receipts, cancelled checks or other evidence of timely payment of all assessments for which Lessee is liable under this Lease. All assessments which Lessee covenants and agrees to pay pursuant to this Lease which are not paid when due may be paid by Lessor. Any amount so paid by Lessor will be due and payable by Lessee on demand by Lessor and shall include the amount paid by Lessor, any penalties imposed by the governmental bodies, reasonable attorneys' fees and interest on said amount at the rate of eight percent (8%) per annum.

b. Lessee shall have the right to contest or review by legal proceedings all or any part of any assessment which Lessee is required to pay hereunder provided that:

i. Neither the Premises nor any part thereof nor any interest therein shall be in immediate danger of being sold, forfeited, lost or interfered with;

ii. All expenses incurred in connection with said proceedings shall have been paid by Lessee; and

iii. Ten (10) days prior to the date upon which any assessment, or any part thereof, shall become delinquent, Lessee shall give written notice to Lessor of its intention to contest or review such assessment.

c. During the term of this Lease, Lessee shall pay all charges for utility services supplied to and used on the Premises including, without limitation, sewage, gas, water, electricity and trash collection. All such charges shall be paid when due and payable and before any fine, penalty, interest or cost is added thereto for nonpayment thereof. Lessor shall be protected and held harmless by Lessee from any such costs.

5. Insurance/Liability.

a. Lessee shall maintain and carry, at its sole cost and expense, at all times during the Term of this Lease, for the benefit of Lessee and Lessor, public liability and property damage procured from a responsible insurance company authorized to do business in the State of New Mexico. Until modified, such insurance policy or policies shall provide coverage in the minimum amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) for damage to property, TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) for personal injury to each person and FOUR MILLION AND 00/100 (\$4,000,000.00) for personal injury in each accident and shall be in such form as shall be reasonably satisfactory to Lessor.

b. Lessee shall maintain and carry, at its sole cost and expense, at all times during the Term of this Lease, for the benefit of Lessor and Lessee, insurance against loss or damage by fire and such other risks and hazards as are normally insurable under the standard forms of fire and extended coverage insurance policies. Such policy or policies shall be in the amount of the maximum insurable value of the Premises.

c. Lessee shall deliver to Lessor the insurance policies in effect or certificates of insurance showing that said policies are in effect within thirty (30) days of the Effective Date of this Lease.

d. Lessee agrees that Lessor shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage to persons or property, from any cause or causes whatsoever which at any time may be suffered or sustained by Lessee, or by any person whatsoever at any time may be using, occupying or visiting the Premises, and Lessee shall indemnify and hold Lessor harmless from any and all claims, liabilities, losses, damages, costs and expenses whatsoever arising out of any such loss, injury, death or damage however occurring.

6. Use of the Premises/Improvements.

a. Lessee shall lease the Premises for the purpose of placing portable buildings on the property to be used for the purpose of auxiliary classrooms, offices, or similar uses, solely by Lessee.

b. Lessee shall not use or permit the use of the Premises or any part thereof for any purpose prohibited by law and Lessee agrees, at its sole expense, to comply with and conform to all of the requirements of all governmental authorities having jurisdiction thereof, present and future, relating in any way to the condition, use and occupancy of the Premises throughout the entire term of this Lease.

c. All improvements now existing or constructed on the Premises by Lessee during the Term of the Lease or during an extension period of the Lease, (except the perimeter fence if constructed by Lessee) shall be and shall remain the property of Lessee. The perimeter fence if constructed by Lessee shall be the sole property of the Lessor. Upon termination of this Lease for any reason, Lessee shall remove its property and shall return the Premises to the

condition existing prior to the construction of improvements thereon by Lessee, unless otherwise agreed to by Lessor. Lessee shall have twenty (20) days after notice to return the Premises to such condition.

d. Lessee shall, at Lessee's sole cost and expense, prepare the Premises for construction and construct or install all improvements in accordance with the final plans and specifications submitted by Lessee to Lessor for Lessor's written approval. Lessor shall not unreasonably withhold such approval. Any building, structure or improvement constructed by Lessee on the Premises shall be constructed in a good and workmanlike manner.

e. It is agreed:

i. That any and all buildings, structures or improvements constructed or located by Lessee on the Premises shall be constructed in accordance with the laws, rules and regulations of all governmental bodies and agencies having jurisdiction over the manner and method of construction;

ii. That Lessor shall have no responsibility for the construction of any building or improvement or the location of portable buildings on the Premises or any loss or damages suffered by Lessee or any third party in connection therewith and Lessee shall hold and save Lessor harmless from any liability claim, cost and/or expense of any kind or nature whatsoever on account thereof; and

iii. That once Lessee begins construction of any building, structure or improvement on the Premises, Lessee shall diligently prosecute such construction to completion.

f. The entire cost and expense of construction of any building, structure or improvement on the Premises shall be borne and paid by Lessee. Lessee shall hold and save Lessor harmless from any liability, lien, claim, cost and/or expense of any kind or nature whatsoever on account thereof.

g. Lessee agrees to indemnify Lessor against and to hold Lessor harmless from any and all damages of any kind or nature suffered by owners of adjacent properties by reason of any activity or non-activity of Lessee on the Premises.

7. Maintenance.

a. During the Term of this Lease, Lessee will keep in a good state of repair any and all buildings, furnishings, fixtures and equipment which are brought, constructed or placed on the Premises by Lessee. Lessee will not suffer any waste of the Premises or any property brought, constructed or placed upon the Premises. Lessee will clean, repair, replace or renovate any such property as often as may be necessary in order to keep such property in good repair and condition. Lessor shall not be required, during the Term of this Lease, to make any repair of the Premises.

b. *Mechanics' Lien.* Lessee will not permit or cause the filing of any mechanics', materialmen's or other similar lien of any kind against the interest of the Lessor in the Premises. If such a lien is filed, it shall be the duty of Lessee, within thirty (30) days after Lessor has given written notice to Lessee of the filing of such lien, to take such steps as are necessary to obtain the release of Lessor's interest in the Premise from such lien. Notwithstanding anything set forth herein, Lessee shall have the right to contest any lien upon escrowing funds necessary to pay such lien and upon notice to Lessor that it desires to contest such lien.

8. **Assignment and Sublease.**

a. Lessee may not assign or otherwise transfer this Lease or Lessee's interest in the Premises, in whole or in part, hereunder or sublease all or a portion of the Premises.

b. No such assignment, subletting or transfer by Lessee, whether with or without Lessor's consent, whether voluntarily or involuntarily, by operation of law under legal process, receivership, bankruptcy or otherwise, shall in any way alter or waive the terms, conditions, covenants and agreements herein set forth, and shall not release or relieve Lessee of any default existing prior to the assignment or occurring thereafter in the full and faithful performance in each and every term, condition, covenant and agreement of Lessee under this Lease, or release or relieve Lessee's liability hereunder. Such assignment or subletting shall not operate to discharge Lessee or Lessee's heirs, personal representatives, assigns, and successors in interest from this liability upon the agreements and covenants of this Lease, and Lessee, Lessee's personal representatives, assigns and successors in interest shall remain liable for the full and complete performance of all the terms, conditions, covenants and agreements herein contained as principals and not as guarantors or sureties to the same extent as though no assignment or sublease has been made.

c. Lessor may, without prior written approval of Lessee, assign or otherwise transfer this Lease or any interest hereunder, in whole or in part; provided, however, that any such transfer shall be subject to the terms of this Lease and any transferee shall agree to act in accordance with and be bound by the terms and conditions of this Lease.

d. Nothing herein shall be construed to permit Lessee, its assignees, sublessee or transferees to mortgage or encumber all or parts of the Premises. Nothing in this Lease shall require Lessor to subordinate its interest in the Premises in any manner. No consent by Lessor to assignment, subletting or other transfer by Lessee shall be deemed a waiver of Lessor's statutory or contractual landlord lien rights.

9. **Condemnation.** If during the Term of this Lease all or any part of the Premises shall be taken or condemned by any competent authority, Lessor shall have the right to terminate this lease, in which case Lessee will vacate the premises including removal of the portable buildings placed on the Premises and neither party shall have any further rights or obligations under this Lease. Lessee will not be entitled to share in any condemnation proceeds.

10. **Default.**

a. The following shall constitute a default by Lessee and breach of this Lease:

i. Failure to pay when due any installment of rent or any other sum required to be paid by Lessee under the terms of this Lease.

ii. Failure to perform any covenant or condition other than the payment of rent in this Lease.

iii. Abandonment or surrender of the Premises or the leasehold estate for a continuous period of thirty (30) days.

iv. The filing of a voluntary petition for bankruptcy by Lessee, the filing of an involuntary petition in bankruptcy against Lessee unless such petition is dismissed within thirty (30) days after filing, the appointment of a receiver, liquidator, trustee or other similar party for Lessee, the execution of an assignment for the benefit of creditors by Lessee or other similar act by Lessee.

b. If Lessee shall continue in default for thirty (30) days after written notice thereof from Lessor to Lessee, then Lessor, in addition to all rights and remedies provided by law or in equity, shall have the right to terminate this Lease. Upon said termination, all of Lessee's rights in the Premises, including all improvements, shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises. In such event, Lessor may re-enter and take possession of the Premises and eject all parties in possession, eject some of the parties in possession and not others, or eject none of the parties in possession. Termination under this paragraph shall not relieve Lessee from the payment of any sum then due or to become due to Lessor or from any claim for damages previously accrued or then accruing to date of termination against Lessee.

c. All remedies herein conferred upon Lessor shall be cumulative and no one exclusive of any other remedy conferred herein or by law. If Lessee is in default, Lessor may prevent removal of property from the Premises by any lawful means it deems necessary to protect its interest.

d. As a condition of curing any default hereunder, in addition to all other amounts which may be due, Lessee shall pay to Lessor, Lessor's reasonable attorneys' fees and costs incurred in connection with the default, including, without limitation, consultation and research fees.

11. **Representations and Warranties of Lessee.** Lessee represents and warrants to Lessor that the following statements are true statements of fact and law:

a. Lessee is a New Mexico State Charter School under the chartering authority of the Public Education Commission of the State of New Mexico and is in good standing and validly existing in New Mexico;

b. Lessee has received all required approvals, including approval of the Public Education Commission of the State of New Mexico, to enter into and perform the terms of this Lease. Lessor shall have no obligation to comply with any requirement of the Public Education Department or the Albuquerque Public Schools except as are specifically set out in this Lease.

c. *Condition of Premises.* Lessee has had the opportunity to inspect the Premises, is aware of the condition of the Premises, is relying upon its own inspection in leasing said Premises and is leasing said Premises in AS IS condition without warranty or representation of Lessor.

12. Miscellaneous Provisions.

a. Wherever appropriate, each term used in the singular shall include the plural and vice versa. Words in any gender shall include all other genders, as appropriate.

b. Amendments to this Lease must be in writing and signed by the parties hereto. Amendments to this Lease may be attached as riders to this Lease and the riders shall be deemed incorporated herein and made a part hereof.

c. The covenants and conditions contained in this Lease shall apply to and be binding upon the heirs, executors, personal representatives, administrators, trustees, receivers, successors and assigns to the parties hereto.

d. This Lease shall be governed and construed in accordance with the laws of the State of New Mexico. In the event of litigation arising in connection with this Lease, Lessor consents to the exclusive jurisdiction of the Second Judicial District Court for the state of New Mexico or the United States District Court for the District of New Mexico.

e. No waiver or failure to enforce any breach of any provision of this Lease shall be considered to be a waiver of any subsequent breach, regardless of the nature, time or form of the subsequent breach.

f. All notices, demands, requests or other communications under this Lease shall be in writing and shall be deemed to be received when personally delivered or when delivered, postage prepared, by registered or certified mail, in the U.S. Mail, to the following addressees:

If to Lessee: 21st Century Public Academy

If to Lessor: DePonte Investments, Inc.
Attn: Brent DePonte, President
7411 Jefferson Street NE
Albuquerque, New Mexico 87109

g. Any party to this Lease may change the party designated to receive notice or the address to which notice is to be sent by providing notice to the other party in the manner established by this Paragraph 12.

h. If any provision of this Lease is found by a court to be unenforceable, invalid or contrary to law, such finding shall not invalidate the remaining provisions of this Lease.

i. Lessee shall be liable to the non-breaching party for all costs and expenses, including but not limited to attorneys' fees, incurred by Lessor in enforcement of its rights under this Lease.

j. The parties to this Lease agree to execute such other documents and to take such other actions as are necessary to carry out the intent of this Lease.

k. Neither this Lease or any memorandum thereof shall be recorded in the real property records of Bernalillo County, New Mexico.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first written above.

LESSOR:

DePonte Investments, Inc.,
a New Mexico corporation

Brent DePonte, President

LESSEE:

21st Century Public Academy, a State
Charter School under the chartering
authority of the Public Education Authority
Commission of the State of New Mexico

By: _____
Its: _____

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