

LOAN AGREEMENT

THIS IS A LOAN AGREEMENT (“Agreement”) dated as of _____, 20____, between [____], a California nonprofit corporation (“Client”), and _____, a _____ nonprofit corporation (“School”).

BACKGROUND

[_____]

D. School wishes to borrow funds from Client on the terms set out in this Agreement. Certain terms used in this Agreement and not otherwise defined have the meanings given to them in Section 1.7 of this Agreement.

CLIENT AND SCHOOL AGREE AS FOLLOWS:

1. LOANS, FEES AND EXPENSES

1.1 Loan. Client shall loan School \$_____ in a single lump sum (the “Loan”) on the Closing Date.

1.2 Interest Rate; Payment. The Loan shall bear simple interest on the outstanding principal balance at [five percent (5%)] per year. School shall pay the principal sum and all accrued interest in a single payment on _____, 20__ (the “Maturity Date”). School may, at any time, pay all or a portion of the outstanding principal of the Loan.

1.3 Computations and Records. Client shall record the date and amount of the Loan made, the amount of principal and interest due and payable, and the date and amount of payments by School. School acknowledges and agrees that Client’s books and records relating to the transactions contemplated by this Agreement, including, without limitation, interest computations, shall be deemed correct, accurate, and binding on School and admissible in any action or proceeding that may arise.

1.4 Fees. School shall pay to Client on the Closing Date a one-time fee in the amount of \$_____, which shall be nonrefundable.

1.5 Expenses. School shall within 10 days of request by Client reimburse Client for reasonable expenses incurred by Client in connection with the establishment and administration of this Agreement.

1.6 Payments by School. School shall make all payments to Client by wire transfer of immediately available funds to the account specified on **Exhibit A** no later than 12:00 p.m. Pacific time on the due date. Client may change such account information by providing written notice to School. Whenever any payment is due on a day other than a Business Day, the payment shall be due on the following Business Day. The extension of time in such case shall be included in the computation of interest or fees.

1.7 Certain Definitions. “Closing Date” means the [third] Business Day following execution of this Agreement or such other day determined by Client and School. “Loan Documents” are defined in Section 2.1(a). “Business Day” means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close. “Authorized Individual” means any individual approved by School’s Board of Directors to request Loans and to certify and provide all notices, approvals, and forms required by this Agreement.

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2. CONDITIONS OF LOANS

The obligation of Client to make the Loan is subject to the conditions precedent that (i) School's representation and warranties contained in Section 3 are true and correct as of the Closing Date and (ii) Client shall have received from School, on or before the Closing Date, in form and substance satisfactory to Client, the following:

(a) this Agreement, a promissory note in substantially the form of **Exhibit B** ("Promissory Note"), and any other documents, agreements, and instruments relating to this Loan required by Client (collectively, with the Agreement and Promissory Note, the "Loan Documents"), each duly executed and delivered by School;

(b) a certificate of School in substantially the form of **Exhibit C** ("Certificate of Authorization") signed by an Authorized Individual, together with a copy of the resolution, in substantially the form of **Exhibit D** ("Proposed Board Resolution"), passed by School's Board of Directors authorizing the execution, delivery, and performance by School of this Agreement and the other Loan Documents;

(c) payment of the fees required under Section 1.4;

(d) projected budgets, operating plans, enrollment projections, and such other financial and operating information as Client may reasonably request (collectively, "Projections");

(e) Certificate of Good Standing for School from its state of incorporation;

(f) a copy of the School's charter and other founding documents;

(g) such other documents or certificates as Client may reasonably request.

3. REPRESENTATIONS AND WARRANTIES

School represents and warrants to Client the following:

3.1 Due Organization and Qualification. School is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of its state of incorporation.

3.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within School's corporate powers, have been duly authorized by School's Board of Directors, will not conflict with or breach any provision of School's Articles of Incorporation or Bylaws, and will not create or result in a breach or default under School's charter, any other loan agreement, any other material agreement, or any law, regulation, or order by which School is bound. School has obtained all consents, approvals and authorizations of, made all filings with, and given all notices to, all governmental authorities (including, without limitation, its chartering authority) that are necessary in connection with the execution, delivery and performance by School of its obligations under this Agreement.

3.3 Enforceable Agreement. This Agreement has been duly executed and delivered by School and is the legal, valid, and binding obligation of School, enforceable against it in accordance with its terms.

3.4 Government Consents. School has obtained all consents, approvals, and authorizations of, made all filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of School as currently conducted, except where the failure to do so would not reasonably be expected to have a materially adverse effect on School's

financial condition, ability to operate, or ability to perform its obligations under this Agreement. School is not a “blocked” person or listed as a Specially Designated Terrorist under and as defined in the USA Patriot Act or any regulations or orders related to the Patriot Act.

3.5 Charter Compliance and Good Standing. School is a duly qualified charter school under the laws of its state of operation, is in good standing with its chartering authority and is in compliance in all material respects with its charter. School is not party to and is not aware of any legal action, proceeding or investigation, or of any issue that could rise to a legal action, proceeding or investigation, by its chartering authority or other oversight authority, or that could result in probation, suspension, revocation, or non-renewal of School’s charter.

3.6 Tax Exempt Status. School is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (the “Code”).

3.7 Projections. The Projections were prepared on the basis of the assumptions set forth in such Projections, which School believed at the time were fair and reasonable in light of current and reasonably foreseeable conditions at the time submitted to Client.

3.8 Compliance with Law and Contracts. School is not in violation of any law, regulation or order, or of any note, contract, mortgage or other agreement, which violation could reasonably be expected to have a materially adverse effect on School’s financial condition, ability to operate, or ability to perform its obligations under this Agreement.

3.9 [_____]

3.10 Litigation. Except as School has disclosed to Client, there are no actions or proceedings pending by or against School before any court or administrative agency which could reasonably be expected to have a materially adverse effect on School’s financial condition, ability to operate, or ability to perform its obligations under this Agreement.

3.11 No Undisclosed Debt. School does not have any debt that has not been disclosed to the Client in writing.

3.12 No Event of Default or Termination. There is no event which is, or with notice or lapse of time or both would be, an Event of Default.

3.13 Full Disclosure. No representation, warranty, or other statement made by School in any certificate, financial statement, or written statement given to Client, taken together with all such documents given to Client, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in such certificates or statements not misleading.

4. AFFIRMATIVE COVENANTS

School shall do all of the following:

4.1 Nonprofit and Tax-Exempt Status. School shall remain in good standing as a nonprofit corporation in the jurisdiction of its incorporation, maintain its tax-exempt status under Section 501(c)(3) of the Code, and comply with Code requirements applicable to School as a tax-exempt organization.

4.2 Charter Good Standing. School shall maintain good standing as a charter school and continue to meet the federal definition of charter school as defined in Section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended.

4.3 Probation. If School is placed on probation or threatened with suspension or revocation of its charter, School shall work diligently with all relevant authorities to resolve the matter. School shall provide to Client, at Client's request, copies of relevant correspondence and other documents, and shall respond in a timely manner to Client's requests for information.

4.4 Compliance with Law. School shall comply with all laws, regulations, and orders applicable to it. School shall withhold proper and accurate amounts from all of its employees for all periods in full and complete compliance with applicable federal and state tax, social security, and unemployment withholding laws.

4.5 Insurance. School shall maintain and keep in force insurance of the types and amounts customarily carried in its line of business, including, without limitation, fire, public liability, property damage and workers' compensation. School shall carry insurance in amounts satisfactory to Client in its reasonable discretion. School shall upon request promptly provide to Client information regarding insurance then in effect and copies of the policies.

5. REPORTING COVENANTS

5.1 Notice to Client. School shall:

(a) Notify Client, within 30 days, of any material changes to School's enrollment, charter status, tax-exempt status, or financial condition;

(b) Notify Client, within 10 days of receipt of notification of such action, if School's charter is revoked or not renewed or if School is placed on probation including providing Client with a copy of the document provided by the chartering entity notifying School of such action;

(c) Notify Client of its charter renewal date at least six months before the date such charter lapses;

(d) Notify Client, within 30 days of such event, if School experiences a loss of any key personnel including, but not limited to, the Executive Director, Chief Operating Officer, Chief Academic Officer, Chief Financial Officer, or Principal, not otherwise provided for in Section 6.4;

(e) Notify Client, within three days, of any Event of Default, or any event which is continuing and with notice or lapse of time, or both, would constitute an Event of Default;

(f) Notify Client of any dispute with any governmental entity that might reasonably be expected to have a materially adverse effect on School's financial condition, ability to operate, or ability to perform its obligations under this Agreement;

(g) Notify Client of any legal action, proceeding or investigation threatened or instituted against School that might reasonably be expected to have a materially adverse effect on School's financial condition, ability to operate, or ability to perform its obligations under this Agreement, and at Client's request furnish to Client a written description of all such actions, proceedings or investigations;

(h) [_____].

5.2 [_____]

5.3 Financial Statements; Reports. School shall deliver to Client:

(a) as soon as available, but in any event within [30] days after the end of each three month period, a statement of financial position, statement of activities, and statement of cash flows covering School's operations during such period, in a form reasonably acceptable to Client and certified by an Authorized Individual;

(b) as soon as available, but in any event within [30] days after the end of each three month period, a report setting out School's ratio of public funding to total operating expenses, current ratio, and liquidity ratio for such period, and a projection of the ratio of available cash to average operating expenses for the next 12 months;

(c) as soon as available, but in any event within [180] days after the end of School's fiscal year, audited financial statements of School prepared in accordance with GAAP, consistently applied, together with an opinion which is unqualified or otherwise consented to in writing by Client on such financial statements of an independent public accounting firm reasonably acceptable to Client;

(d) as soon as available, School's Form 990 tax return as filed with the Internal Revenue Service; and

(e) such budgets, operating plans or other financial information generally prepared by School in the ordinary course of business as Client may reasonably request from time to time.

5.4 Books and Records. School shall keep correct and complete books, records, and accounts in which complete, correct, and timely entries of its transactions are made in accordance with GAAP applied consistently with the audited financial statements required to be delivered under Section 5.3 of this Agreement. School shall keep records relating to its performance of its obligations under this Agreement in a manner such that Client can evaluate compliance with this Agreement. School shall reasonably cooperate with Client in providing information relating to its activities under this Agreement in connection with any financial or tax audit, or similar matter, in which Client may be engaged.

5.5 Compliance Certificate. School shall send to Client, as soon as available, but in any event within [45] days after the end of each three month period, a Compliance Certificate, in substantially the form of **Exhibit E** ("Compliance Certificate").

6. NEGATIVE COVENANTS

School shall not do any of the following:

6.1 Additional Debt. School shall not borrow money from other parties without first disclosing such proposed borrowing to Client.

6.2 Liens. School shall not create, assume, or allow any security interest or lien (including judicial liens) on property that School now or later owns except: (i) liens and security interests in favor of Client; (ii) liens for taxes not yet due; (iii) liens outstanding on the date of this Agreement disclosed in writing to Client; and (iv) liens arising by operation of law; and (v) liens arising in the ordinary course of School's business securing amounts School owes in the operation of the school.

6.3 Mergers; Sale of Assets. School shall not, without Client's prior written consent: (i) sell, lease, transfer or dispose of substantially all of its assets to another entity; or (ii) consolidate with or merge into another entity, permit any other entity to merge into it or consolidate with it.

6.4 Change in Leadership. School shall not, without first giving written notification to Client, make any change in School's senior management team or other key personnel.

7. EVENTS OF DEFAULT

Any one or more of the following events shall constitute an Event of Default:

7.1 Payment Default. School fails to pay the loan in full on the Maturity Date.

7.2 Misrepresentations. School makes a material misrepresentation or material misstatement in any representation, certificate, financial statement or report, or other document School delivers to Client under this Agreement.

7.3 [_____]

7.4 Grant Agreements. School breaches any grant agreements with Client to which it may be a party and has failed to cure such breach within [10] days after School receives notice of the breach from Client or otherwise becomes aware of the breach.

7.5 Failure to Report. School fails to timely report to Client any of the following: (i) revocation or suspension of School's charter; (ii) placement of School on probation; or (iii) loss of tax-exempt status.

7.6 Any Other Default. School fails or neglects to perform or observe any other material term of this Agreement or any of the other Loan Documents, and as to any default under such other term that can be cured, has failed to cure such default within 20 days after School receives notice or otherwise becomes aware; provided, however, that if the default cannot by its nature be cured within the 20 day period or cannot after diligent attempts by School be cured within such 20 day period, and such default is likely to be cured within a reasonable time, then School shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default.

7.7 Material Adverse Change. There occurs a materially adverse change in School's financial condition, ability to operate, or ability to perform its obligations under this Agreement.

7.8 Insolvency. School becomes insolvent, or an Insolvency Proceeding is commenced by School or commenced against School and is not dismissed or stayed within 30 days (provided that no Loans will be made prior to the dismissal of such Insolvency Proceeding). "Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

7.9 Other Agreements. There is a default or other failure to perform by School under any agreement to which School is a party with a third party resulting in a right by such third party, whether or not exercised, to accelerate the maturity of any indebtedness in an amount in excess of \$[50,000] or that would reasonably be expected to have a materially adverse effect on School's financial condition, ability to operate, or ability to perform its obligations under this Agreement.

7.10 Judgments. A judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least \$[50,000] shall be rendered against School and shall remain unsatisfied and unstayed for a period of 10 days.

8. RIGHTS AND REMEDIES

8.1 Late Payments. If any payment required under this Agreement is not made within [10] days after the date such payment is due ("Payment Default"), Client may, in its discretion, require that School pay Client a late fee equal to the lesser of (i) [five percent (5%)] of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All such unpaid amounts shall bear interest, from and after the occurrence and during the continuance of the Payment Default, at a rate equal to [five percent (5%)] above the interest rate applicable immediately prior to the Payment Default.

8.2 Events of Default Generally. If an Event of Default exists, Client may, in its discretion, terminate this Agreement and declare the Loan immediately due and payable. Client's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. No exercise of Client of one right or remedy shall be deemed an election of, or waiver of, any other right or remedy.

9. RELATIONSHIP

9.1 Independent Organizations. Client and School are separate corporate entities and independent contracting parties. School agrees that the conduct of School and its employees and agents, and any other legal obligations of School, are the sole responsibility of School. This Agreement and its performance will not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose.

9.2 No Authority to Act for Other. Neither Client nor School shall hold itself out as an agent or representative of, or purport to speak or act on behalf of, the other. Neither shall have the power or authority to act for the other, or to bind or obligate the other to a third party or commitment, in any manner.

9.3 Future Funding or Relationship. School understands and agrees that Client shall not be, as a result of entry into or performance by either party under this Agreement, obligated to provide future loans, grants, or other financial or technical support to School, or to extend the relationship with School in any respect, or to engage in any other transaction with School. School acknowledges and confirms that Client has not made to School any representations, promises, or assurances about future loans, grants, or other support.

9.4 Confidentiality. Client and School shall each keep confidential and shall not disclose or use for its benefit or the benefit of any third party, other than in connection with its activities under this Agreement, any Confidential Information obtained from the other, without obtaining the other's prior written consent, except to the extent that such Confidential Information is required to be disclosed by law. All Confidential Information furnished by Client shall remain the property of Client, and all Confidential Information furnished by School shall be and shall remain the property of School. "Confidential Information" means any and all non-public information exchanged between Client and School that is expressly marked or is otherwise identified as "Confidential." This information may include, without limitation, information about students, parents of students, faculty, staff, curriculum, donors, financial performance, fundraising, growth plans, technology and software design. Confidential Information includes information previously disclosed, information disclosed going forward, and information disclosed orally, in writing, or electronically. Confidential Information does not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by the receiving party; (ii) was known by one party before being furnished by the other; (iii) is independently developed by one party without use, directly or indirectly, of any Confidential Information furnished by the party

or (iv) is or becomes available to one party on a non-confidential basis from a source other than the other party.

9.5 Indemnification. School shall defend, indemnify, and hold Client, and its directors, officers, employees, agents, and affiliates, harmless from and against any and all claims, liabilities, losses, damages, and expenses, including, without limitation, reasonable attorneys' fees and expenses, that may arise out of: (i) this Agreement or any document referred to in this Agreement; (ii) any transaction contemplated by this Agreement; (iii) any action taken or omitted by Client under or otherwise in connection with any Loan Document; (iv) any breach by School of its obligations under this Agreement; or (v) any other act or omission by School in connection with the Agreement. School shall have no obligation to indemnify Client to the extent the liability is solely caused by Client's gross negligence or willful misconduct.

9.6 Inspection. School shall permit Client, or any persons designated by Client, at any reasonable time, to inspect, audit and examine School's books, records, and accounts and to make copies or extracts, at School's expense.

9.7 Press Release. Except as expressly contemplated by this Agreement or as may be required by law, neither Client nor School shall issue any press release or comparable communication concerning this Agreement without the other's prior written consent.

10. GENERAL PROVISIONS

10.1 Entire Agreement. This Agreement, together with the other Loan Documents, is the entire agreement between Client and School and supersedes all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the lending relationship contemplated by the subject matter of this Agreement. This Agreement does not modify or affect [_____] and any such [_____] remain in full force and effect. Client rejects any term or condition in any certificate, notice, letter, e-mail, or other communication from School, or in any course of dealing, which conflicts with or adds to this Agreement.

10.2 Choice of Law and Venue; Jury Trial Waiver. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to principles of conflicts of law. Client and School consent to the exclusive jurisdiction of any state or federal court located within the city of [_____] , California and irrevocably agree that all actions or proceedings relating to this Agreement or any related matter will be litigated in those courts. School acknowledges that the right to trial by jury is a constitutional one, but that it may be waived under certain circumstances. To the extent permitted by law, each of Client and School, after consulting (or having had the opportunity to consult) with counsel of its, his or her choice, knowingly and voluntarily, and for the mutual benefit of both parties, waives any right to trial by jury in the event of litigation arising out of or related to this Agreement or any other document, instrument, or agreement between Client and School.

10.3 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that School may not, directly or indirectly or by merger or otherwise by operation of law, assign School's rights or delegate School's duties under this Agreement, to anyone else without the prior written consent of Client, which consent Client may grant or withhold in its sole discretion. Client may, without the consent of or notice to School, sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, its rights under this Agreement.

10.4 Waiver. Any waiver of the provisions of this Agreement or of Client's or School's rights or remedies under this Agreement must be in writing and signed by an officer of the waiving party to be effective. Failure, neglect, or delay by Client or School at any time to enforce the provisions of this Agreement or their rights or remedies will not be construed as a waiver of their rights, powers, or remedies under this Agreement. Waiver of any breach or provision of this

Agreement, including, without limitation, any Event of Default, will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

10.5 Limit on Liability. Client shall not be liable to School or any person claiming through School for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement, unless such loss results entirely from Client's gross negligence, willful misconduct, or bad faith.

10.6 Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law.

10.7 Amendments in Writing. This Agreement may be amended only as stated in a written document signed by both Client and School which states that it is an amendment to this Agreement.

10.8 Further Assurances. Client and School shall sign such other documents, and take such other actions as the other may request, in order to effect the relationships contemplated by this Agreement.

10.9 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any obligations remain outstanding or Client has any obligation to make Loans. The obligations of School to indemnify Client with respect to the expenses, damages, losses, and costs described in Section 9.5 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Client have run. The obligation of confidentiality under Section 9.4 will survive termination of this Agreement regardless of the reason for termination.

10.10 No Presumption Against Drafter. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.

10.11 Notices. Any notices, approvals, consents or other communications required to be given by either party pursuant to this Agreement shall be in writing and personally delivered or sent by certified or registered mail, or by commercial overnight courier service with tracking capabilities, costs prepaid, to the following addresses:

To Client:

[_____]

To School:

[School address]

These addresses may be changed by written notice to the other party.

10.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts will constitute effective delivery.

* * * * *

Client and School signed this Agreement as of the date set out in its first paragraph.

[Client]:

[School]:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBITS

- Exhibit A: Client Account Information
- Exhibit B: Promissory Note
- Exhibit C: Certificate of Authorization
- Exhibit D: Proposed Board Resolution
- Exhibit E: Compliance Certificate