

Renewal of Middleburg Community Charter School Lease

RENEWAL LEASE

April THIS LEASE ("Lease") is made and entered into as of this 24th day of April, 2017, by and between the **MIDDLEBURG COMMUNITY CHARTER SCHOOL**, a non-stock, not-for-profit corporation in the Commonwealth of Virginia, having an address of 101 N. Madison Street, Middleburg, Virginia 20118 (hereinafter referred to as "Lessee"), and the **LOUDOUN COUNTY SCHOOL BOARD**, a school board and political subdivision of the Commonwealth of Virginia, having its address of 21000 Education Court, Ashburn, Virginia 20148 (hereinafter referred to as "Lessor").

WITNESSETH:

WHEREAS, The Lessor is the governing body of the Loudoun County School Division and is vested with the constitutional authority to supervise the schools in Loudoun County under Article VIII, Section 7, of the Constitution of the Commonwealth of Virginia; and

WHEREAS, the Virginia General Assembly has enacted Article 1.2 (Establishment of Charter Schools) of Chapter 13 of Title 22.1 of the Code of the Commonwealth of Virginia authorizing local school boards to initiate and establish charter schools; and

WHEREAS, the Loudoun County School Board, March 4, 2014, approved a charter school agreement with Lessee and renewed that charter school under Title 22.1 of Code of Virginia on the 24th day of April, 2017, which involves the conversion of the Middleburg Elementary School to the Middleburg Community Charter School; and

WHEREAS, subject to and in accordance with the terms and provisions hereinafter set forth, Lessor desires to rent, lease, and let unto Lessee the exclusive use of the land, buildings and fixtures and improvements thereon subject to the easements, rights, leases and appurtenances thereunto belonging, formerly housing the Middleburg Elementary School for use as the conversion charter school approved by the Loudoun County School Board as the Middleburg Community Charter School by separate action of the School Board; and

WHEREAS, pursuant to this Lease Agreement (as amended from time to time, the "Lease") between the Lessor and the Middleburg Community Charter School, Lessee intends to also lease the furnishings, equipment, computers and related technology hardware, phones and such other items as are in the said real property on July 1, 2017 (except for routers, circuit boards, switches, and modems in the building which remain the exclusive property of Lessor); and; and

NOW, THEREFORE, for one (\$1) dollar and good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and in and for the covenants, agreements, representations and warranties hereinafter set forth, Lessor and Lessee hereby mutually covenant, agree, represent and warrant as follows:

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1. **Recitals:** The above recitals are incorporated herein as if fully re-written.
2. **The Property:** Lessor for and in consideration of the covenants and conditions herein contained to be kept, performed and observed by Lessee, does lease to Lessee, and Lessee does lease, rent and accept from Lessor the Real Property including the land, buildings and fixtures and improvements thereon, subject to the easements, rights, leases and appurtenances thereunto belonging subject to all applicable School Board policies and regulations, formerly housing the Middleburg Elementary School, and known as 101 N. Madison Street, located in the Town of Middleburg and identified by parcel identification number 538-28-4086-000 and containing 3.72 acres more or less (hereinafter referred to as "the Real Property") and all personal property in the real estate on July 1, 2017, to include the furnishings, equipment, computers, cabling, Promethean Boards and related technology hardware, phones and such other items as are listed in the attached exhibits (hereinafter referred to as "the Personal Property"). The Real Property and Personal Property shall only be used by and for the Middleburg Community Charter School as a school building. The payment of rent by the Lessee for the available space is prohibited by Section 22.1-212.6(D) of the Code of Virginia regarding public charter schools and therefore no rent is charged for the space. No security deposit is required.
3. **Term:** The term of this agreement shall be for an initial term of one year commencing on July 1, 2017, through June 30, 2018. If for any reason, Lessor conveys title to the real and/or personal property to any entity, which it may do without the consent of Lessee, during this term, then this term shall be automatically extended through June 30, 2019. The parties agree that Lessor has no use for the real and personal property and may convey it to another entity during the term of this lease. Notwithstanding the foregoing provision, if the charter school contract, separately entered into by the parties, expires, is non-renewed, is revoked or is otherwise terminated or ends for any reason, then this lease shall also terminate upon 30 days' notice from the Lessor to the Lessee. A Memorandum of Lease shall be recorded and Lessee will execute same.
4. **Real Property:** Notwithstanding any other provision of this lease, and, only to the extent that Lessor is the title owner, the Real Property will be annually considered by the Lessor, in its sole discretion, and taking into account the divisionwide capital needs, for capital repairs or replacements to be included in the Lessor's Capital Asset Preservation Plan (CAPP), but there shall be no obligation on Lessor to take any actions or make any improvements. The Lessor will be responsible for emergency unanticipated capital repairs or replacements to the Real Property which are necessary to keep the Real Property fit for human habitation unless the School Board deems it is not feasible to make such repairs or replacements. If repairs or replacement are not feasible as deemed by the School Board in its sole discretion, then the Lessor will make a reasonable effort to find a suitable alternative location at no cost to the School Board for the remainder of the then-current term of the Charter School agreement. All other repairs or replacements are the responsibility of the Charter School. If for any reason, Lessor is no longer the title owner of the real and/or personal property, the Lessor's obligations shall be null and void and unenforceable against the Lessor, its assigns and transferees forever.
5. **Real and Personal Property:** The Lessor leases the Real and Personal Property in its "As-Is, Where-Is" condition and without any warranties such that all warranties are

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disclaimed including, but not limited to, the warranty of fitness for a particular purpose and the implied warranty of merchantability. Lessee bears, for all furnishings and equipment, the cost of service, repairs or replacements, refreshments, software and hardware updating, whether or not major or minor. Lessee shall not transfer or dispose of Personal Property without the prior consent of the Lessor.

A. The personal property in the premises as of July 1, 2017, owned by the Lessor is the personal property being leased except as noted above.

B. Lessee acknowledges the Lessee has inspected the Real and Personal Property or had professional consultants acting on the Lessee's behalf inspect the Real and Personal Property and that the Real and Personal Property is acceptable to the Lessee.

6. Lessee's Reasonable Care: The Lessee shall use reasonable care to avoid damaging existing buildings, equipment, existing technology and vegetation on or in the Real Property and similarly shall use reasonable care regarding the Personal Property. Lessee shall return all Real Property and Personal Property to the Lessor at the expiration or termination of this Agreement in as a good a condition as when first leased, normal wear and tear excepted. Lessee shall immediately report to Lessor any Real or Personal property defects, damages, losses or thefts valued at \$1,000 or more to repair or replace.

7. Changes and Improvement: It is understood and agreed between the parties that any physical changes, renovations or alterations to the Real Property, such as, but not limited to, paving, excavations, roads or building additions, must have prior written approval from the Lessor, and the work for the same must be periodically inspected by the Lessor or designee. The Lessee will be responsible for such expenses including any costs associated with complying with the Americans With Disability Act of 1990, 42 U.S.C Section 1201, *et seq.*

8. Maintenance, Repair and Upkeep: It is understood and agreed that the exterior and interior maintenance, repair and upkeep of the Real Property and Personal Property are the responsibility of the Lessee including the structure on the above-described Property, during the term of this lease including, but not limited to, the roof, windows, glass, plate glass, doors, special fronts, entries, the interior surfaces of exterior walls, interior walls, floors, heating and air conditioning systems, dock boards, truck doors, dock bumpers, plumbing fixtures and equipment, electrical components and mechanical systems, and replacements thereof and keep all of the foregoing clean and in good order and operating condition, ordinary wear and tear excepted.

A. Lessee shall keep the entire Premises sufficiently heated to avoid the bursting of pipes or other damage to the Real and Personal Property. Lessee shall not damage the Real and Personal Property or disturb the integrity and support provided by any wall.

B. Lessee shall, at Lessee's expense, promptly repair any damage to the Real and Personal Property caused by Lessee or any agent, officer, employee, contractor, licensee or invitee of Lessee. Lessee shall take good care of the Real and Personal Property and keep the Real Property free from dirt, rubbish, waste and debris at all times. Lessee shall not overload the floors in the Real Property or exceed the load-bearing capacity of the floors in the Premises.

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C. Lessee shall perform all regularly scheduled preventative maintenance recommended by the equipment manufacturer for all hot water, heating and air conditioning systems.

D. Lessee shall contract for and pay directly to the appropriate supplier including, but not limited to, all costs for all water, gas, heat, light, power, telephone, sewer, refuse disposal, fire alarm, fire alarm hook up and service and fire alarm inspections, heating and air conditioning, all photocopying machine leases and service agreements, telecommunications (including but not limited to telephony, internet access, all hook up and service fees), all technology (including any desired wireless costs, Schoolwires fees, ConnectED fees, data circuit costs, software licensing fees or any other related costs, fees or services, connection costs, taxes (if any), landscaping, lawn care, snow removal, signage and insurance coverage, including general liability insurance as noted below. Lessee shall take all steps necessary to transfer the billing and accounts of all such services to the Lessee for which the Lessee shall be obligated and responsible on the effective date of this lease. The Lessee shall furnish all electric light bulbs and tubes and restroom and cleaning supplies used in and on the Real Property.

9. **Insurance:** Lessee and Lessor shall each at their own expense maintain throughout the term of the lease Commercial General Liability Insurance policies through insurance carriers licensed to do business in the Commonwealth of Virginia and acceptable to the other party. Each Commercial General Liability policy will provide insurance coverages subject to the terms, conditions, and exclusions of the policy and shall protect the parties from liability, claims and damages arising from occupancy of, use of, construction on, and operation of improvements and betterments on the leased premises. Such insurance is to be in limits of not less than the amount of Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence. Lessee's liability insurance policies shall name Lessor as an additional insured and loss payee.

A. Lessee and Lessor shall each at their own expense maintain replacement value Business Property Insurance for special perils to protect each party's interest in their owned or leased property located on the leased premises. Lessee shall provide replacement cost insurance coverage for any leased Personal Property, construction, improvements, or betterments made to the property. Lessor shall provide replacement cost insurance coverage for all owned buildings and amenities situated on the leased premises.

B. The Lessee shall provide a certificate of insurance annually evincing the continued existence of coverage required by the lease. No provisions in the lease shall constitute a waiver of sovereign immunity.

10. **Improvements:** Improvements, if any, made upon the Property by Lessee shall become a part thereof and shall become the property of the Lessor upon termination of this agreement. This lease contains the entire agreement between both parties hereto and shall not be changed or modified in any manner except by an instrument in writing executed by the parties hereto. Lessor reserves the right to cause or not cause the construction of a public sidewalk upon the Real Property and to grant such temporary and permanent easements as it deems desired to the Town of Middleburg or other federal, state or local agencies or governmental units..

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11. **Destruction of Building:** If the leased Real Property and/or the school structure thereon is damaged or destroyed by fire or other casualty, in whole or in part, so as to render it unusable as a school, unfit for human habitation or occupancy or otherwise uninhabitable, this lease shall terminate with no further obligation upon either party unless the parties agree otherwise in writing.

12. **Use as a School:** The Lessee shall comply with all laws and regulations regarding the use of the Real Property as a public school including, but not limited to, compliance with radon testing and filing requirements of Section 22.1-138 of the Code of Virginia. The obligations of the Division Superintendent under Section 22.1-136 (fitness of occupancy) of the Code of Virginia shall not be impaired or impeded by any provision contained in this lease agreement.

13. **Assignment and Sublease:** The Lessee shall not transfer, assign, sublease or otherwise convey its leasehold interest without the written consent of the Lessor.

14. **Law:** This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to the principles of conflicts of laws. Lessee shall not file any lawsuit or action of any kind without first having presented its claim or grievance in writing to the Lessor which shall have ninety (90) days from the date received to render a decision. Lessee shall exhaust this process prior to the filing of any lawsuit whatsoever. Any and all legal actions, claims or lawsuits shall be filed exclusively in the Circuit Court of Loudoun County, Virginia.

15. **No Waiver of Breach:** No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

16. **Hold-Over:** Holding over past the expiration of the then-current term shall be deemed a day-to-day tenancy at sufferance for which Lessor shall be entitled to possession upon demand with one day's notice.

17. **Default:** Any of the following events constitute default by the Lessee:

A. Non-performance of any term, covenant, or condition of this Lease Agreement by the Lessee; or

B. Any act of insolvency by the Lessee or the filing of any petition under any bankruptcy, reorganization, insolvency, receivership, or moratorium law, or any law for the relief of, or relating to debtors; or

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C. The filing of any involuntary petition under any bankruptcy statute against the Lessee or the appointment of any receiver or trustee or to take possession of the property of the Lessee; or

D. Failure of the Lessee to pay a third party(ies) resulting in any claim(s) against the Lessor or the filing of liens on public funds; or

E. Failure to maintain the required insurance or equipment; or

F. Any material breach, default or the revocation of the charter school contract approved and renewed by the Loudoun County School Board for the Middleburg Community Charter School, or

G. For such other good cause.

18. Mechanic's Liens:

A. Lessee covenants that it shall not (and has no authority to) create or allow any encumbrance against the Real and/or Personal Property or any part of any thereof or of Lessor's interest therein.

B. Lessee covenants that it shall not suffer or permit to be created, or to remain, any lien or claim thereof (arising out of any work done or services, material, equipment or supplies furnished for or at the request of Lessee or by or for any contractor or subcontractor of Lessee, other than such furnished by Lessor) which is or may become a lien upon the Real and/or Personal Property or any part of any thereof or the income therefrom or any fixture, equipment or similar property therein.

19. Signs: Lessee shall be permitted to place such signs and logos on the Real Property as may be permitted by applicable governmental rules, regulating ordinances or other statutes and any matter of public record. The design and location of all signs and the method of attachment to the Building or on the land must be approved by Lessor in writing. Lessee shall be solely responsible for all costs and expenses associated with the erection and removal of any signs and shall be obligated to obtain and provide to Lessor any and all necessary permits and approvals prior to the placement or erection of such signage. Lessee shall continue to fly a U.S. Flag on the Real Property.

20. Locks: No locks shall be changed without the prior written consent of the Lessor.

21. Indemnification: The Lessee shall defend, indemnify, and save harmless the Lessor from and against any and all liability, claims, suits, demands, costs, and expenses to which the Lessor may be subject by reason of any claim for injury to or death of any person or persons or damage to property or otherwise arising from or in connection with the Lessee's acts or omissions relating to the Lessee's use of the Leased Real Property or Personal Property; provided, however, the Lessee's duty to defend, indemnify and save harmless the Lessor shall not apply to any liability, claims, suits, demands, judgments and expenses arising in whole or in

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part as a result of the acts or omissions of the Lessor, its agents, employees, successors and/or assigns. This provision shall survive the expiration or termination of this lease.

22. Waiver of Jury Trial: It is mutually agreed by the parties that they hereby waive trial by jury in any action, proceeding or counter-claim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of the parties as Lessor and Lessee, the Lessee's use or occupancy of the Real and/or Personal Property or any claim of injury or damage.

23. No Recordation: This lease shall not be recorded or any memorandum thereof without the prior written consent of the other party.

24. Merger: This Lease Agreement merges all understandings, representation and agreements between the parties hereto with respect to this Lease Agreement and the leasing of the said Real and Personal Property except as may be stated in the final, signed Charter School contract between the parties and except this agreement shall not be deemed an accord and satisfaction or otherwise waive any debt obligations owed by the Lessee to the Lessor in any manor.

25. Law: This Lease Agreement shall be construed and interpreted under the laws of the Commonwealth of Virginia without regard to conflicts of laws statutes. Any claim, proceeding, lawsuit or action shall be brought exclusively in the state courts of Loudoun County, Virginia.

26. Interpretation: This Agreement shall be construed fairly as to both parties and not in favor of or against either party, regardless of which party prepared the Agreement or any particular provision herein.

27. Lessor Conveyance of Title: Lessee agrees that Lessor may convey title to the real and/or personal property at any time to any other entity. At recordation of such conveyance of title, the Lessor shall have no further obligations whatsoever under this lease or otherwise related to the real and personal property so conveyed. At such said time, this lease shall then and there be unenforceable by Lessee or any other party against Lessor. Lessee shall hold Lessor harmless against any and all such claims, lawsuits or actions by Lessees or any other third party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as the date first set forth above.

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So Agreed:

Approved as to form:

ACCEPTED AND AGREED BY AND FOR THE LOUDOUN COUNTY SCHOOL BOARD

Stephanie A. [Signature]
Division Counsel

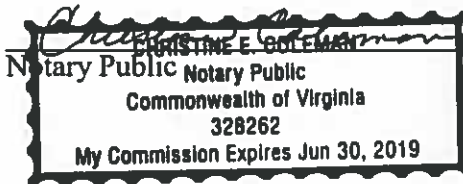
By: [Signature]
Name: Jeff Morse
Title: Chair
Date: 4/24/2017

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that JEFF MORSE, Chairman of the Loudoun County School Board, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this day of April 24, 2017

My commission expires: 6/30/2019
Registration number: 328262



Christine E. Coleman
Notary Public

So Agreed:

ACCEPTED AND AGREED BY AND FOR THE MIDDLEBURG COMMUNITY CHARTER SCHOOL

By: [Signature] (SEAL)
Name: Robert Liscourski
Title: President
Date: 24 April 17

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that ROBERT LISCOURSKI, President of the Middleburg Community Charter School, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this day of April 24, 2017

My commission expires: 2-29-20
Registration number: 152952

[Signature]
Notary Public

