

# LEASE PURCHASE AGREEMENT

**THIS LEASE PURCHASE AGREEMENT** (“Agreement”) is made between the County of Socorro, New Mexico, a New Mexico County Government, organized and existing under and by virtue of the laws of the State of New Mexico, (“County”) and the Cottonwood Valley Charter School, a public charter school organized and existing under and by virtue of the laws of the State of New Mexico (“CVCS”).

## **RECITALS:**

A.

B. On February 25, 2005, the County donated to CVCS a certain parcel of real estate located at 201 Neel Avenue, Socorro, New Mexico 87801 and which is more particularly described as follows:

A tract of land in Section 21 of the Socorro Grant, Socorro, County, New Mexico, and more particularly described as follows, to-wit:

Beginning at corner 1 whence the  $\frac{1}{4}$  section corner, common to Section 16 and 21 of the Socorro Grant bears N.  $82^{\circ} 18'$  W 647.5'.

thence continuing along the Southeasterly line of Western Avenue S.  $39^{\circ} 53'$  W 219.3' to Corner 2,

thence bearing right along the arc of a circle the central angle of which is  $69^{\circ} 48'$ , the radius of which is 932', the length of which is 103.8' to corner 3,

thence No.  $75^{\circ} 30'$  W 25.7' to corner 4,  
thence Due South 110.0' to corner 5  
thence Due East 150.0' to corner 6,  
thence Due South 35.4' to corner 7,  
thence S.  $50^{\circ} 00'$  E 244.6' to corner 8  
thence N.  $40^{\circ} 00'$  156.2' to corner 9,  
thence N.  $49^{\circ} 37'$  E. 177.3' to corner 10,

thence N.  $50^{\circ} 10'$  W, along the Westerly line of Neel Avenue, 408.0' to corner 1 the place of beginning.

(the “Real Property”)The Real Property is to be used for a school, and in the event that the real property is left vacant or ceases to be used as a school the real property will revert to the County of Socorro. This donation was approved by the New Mexico Board

of Finance on February 8, 2005 as required pursuant to NMSA 1978, Section 13-6-2.1 (2003).

B. CVCS split the Real Property into two parcels to convey one of the parcels containing \_\_\_ acres (the "Lot Split Parcel") back to the County, in order that the County shall construct certain improvements, as described in Exhibit "A" hereto, upon the Lot Split Parcel and lease the Lot Split Parcel and Improvements back to CVCS pursuant to this Lease Purchase Agreement. The Lot Split Parcel is described as follows:

**NEED TO DESCRIBE THE NEWLY SPLIT PARCEL**

C. Upon approval and execution of this Lease Purchase Agreement, and subject to the approval of the transfer of the Lot Split Parcel and the Lease Purchase Agreement by the New Mexico State Board of Finance pursuant to NMSA 1978, Section 13-6-2.1 (2003), CVCS shall convey a \_\_\_- acre portion of the Real Property to the County of Socorro in order to effectuate the purpose of this Agreement.

D. NMSA 1978, Section 4-38-13 (1953) provides that a board of county commissioners shall have power at any session to make such orders concerning the property belonging to the County as they may deem expedient.

E. On \_\_\_\_\_, 2012 the New Mexico Finance Authority ("NMFA"), approved Loan № \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ to the County of Socorro for the purpose of purchasing and erecting on the Lot Split Parcel the buildings and improvements that are the subject of this Agreement (together, "Improvements"), for use by CVCS.

F. If this Lease Purchase Agreement is approved by the parties, and all necessary approvals are obtained by the requisite entities of the transfer of the Lot Split Parcel and the Lease Purchase Agreement, the Board of County Commissioners will execute NMFA Loan № \_\_\_\_\_ to purchase and fund the Improvements, and will cause the Improvements to be erected on the Lot Split Parcel, and the Lot Split Parcel to be developed as a site for the Improvements.

G. The County and CVCS wish to enter into an agreement for the placement of the Improvements on the Lot Split Parcel and development of the Lot Split Parcel as a site for the Improvements, and for lease-purchase of the Lot Split Parcel with Improvements by CVCS (together, the "Subject Property"), with CVCS having an option to purchase the Subject Property upon the terms and conditions set forth below.

H. Article IX Section 11 of the New Mexico Constitution authorizes a New Mexico Charter School to enter into an agreement "for the leasing of a building or other real

property with an option to purchase for a price that is reduced according to the payments made by the [] charter school pursuant to the financing agreement [] if:(1) there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and (2) the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments.”

I. On September 12<sup>th</sup>, 2013, at a regular meeting called for the purpose of considering the acquisition of the Subject Property through the lease purchase arrangement described in this Agreement, the CVCS Governing Council, the governing body of CVCS, determined pursuant to Section 22-26A-6(B) NMSA 1978 that a lease-purchase arrangement is in the best interest of CVCS.

J. On \_\_\_\_\_ the New Mexico State Board of Finance approved the lease of the Subject Property to CVCS subject to this Agreement, on behalf of the County of Socorro, pursuant NMSA 1978, Section 13-6-2.1 (2011).

K. On \_\_\_\_\_ the Secretary of the New Mexico Public Education Department approved this Agreement on behalf of CVCS pursuant to NMSA 1978, Section 22-26A-4(B) (2009). A copy of said approval is attached hereto as **Exhibit \_\_\_\_**.

K. This Agreement represents a Lease Purchase arrangement pursuant to the Public School Lease Purchase Act, NMSA 1978 Section 22-26A-1 et seq., and is not a debt. Pursuant to that Act, there is and shall be no legal obligation for the School to continue the lease from year to year or to purchase the Subject Property, and this Agreement shall be terminated if sufficient money is not available to meet the current lease payments.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **Demise of the Subject Property.** Upon satisfaction of all contingencies described in this Agreement, County shall lease the Subject Property, Improvements, fixtures, equipment, and other personal property thereon to CVCS, and CVCS shall lease the Subject Property, Improvements, fixtures, equipment, and other personal property thereon from County, for the term and upon the terms and conditions set forth in this instrument:

- A. The Lot Split Parcel; and
- B. Buildings and Improvements (to be constructed on the Lot Split Parcel by County):

County shall construct the Improvements in accordance with plans and specifications developed and approved by the County and the School jointly (“the Plans”). Construction of the Improvements shall be at County’s expense by contractor(s) procured by the County, and shall occur no later than the dates stated on Exhibit “B”, subject to events beyond the reasonable control of the County, and in accordance with all

applicable codes, laws and regulations relating to School's use of the Subject Property, including educational occupancy and applicable state adequacy standards. After approval of the Plans and specifications by School and County, no change shall be made except upon the written consent of both School and County, and any additional expenses resulting from any changes that are requested by School and made with the consent of both parties shall be paid to County as part of Base Rent through an amendment to paragraph 3 herein. County acknowledges that CVCS is a public school and that as such it is required to locate in facilities that meet the Educational Occupancy standards of the applicable building codes, as well as applicable State Adequacy Standards as determined by the New Mexico Public School Facilities Authority ("PSFA"). Further, County acknowledges that CVCS' facilities must meet or exceed the average condition index for public school established by the PSFA. County agrees that the Buildings/Equipment provided by County shall meet or exceed E-Occupancy and applicable State Adequacy standards, and shall meet or exceed the PSFA's average condition index, as of the Commencement Date. CVCS agrees to cooperate with County in obtaining variances that are appropriate under the circumstances. County agrees to obtain and assign to CVCS standard contractor/manufacturer warranties on the improvements/equipment/property constructed/placed on the Lot Split Parcel by the County and/or its contractors and subcontractors.

C. **Equipment and other Personal Property.** DESCRIBE EQUIPMENT AND PERSONAL PROPERTY HERE or attach as Exhibit C.

The Subject Property, Improvements and the Equipment are hereinafter referred to collectively in this agreement as the "Property".

2. **Term.** The term of this Lease Purchase Agreement shall be 10 years, beginning upon receipt of the final approval of this agreement ("Commencement Date"), and ending ten years thereafter, unless terminated earlier pursuant to the termination provisions in this Lease Purchase Agreement.

3. **Rent.**

A. CVCS shall pay County rent for the Subject Property consisting of principal and interest in the amounts set forth in **Exhibit "C"** attached hereto and incorporated by reference ("Agreement Payments"), payable monthly on the first day of October following the Commencement Date and every six months thereafter throughout the term of the Agreement.. The Agreement Payments represent the amounts charged by the County for construction and placement of the Buildings and Improvements on the Lot Split Parcel, and do not represent any charge for the Lot Split Parcel donated to the County by the School.

B. County and CVCS agree that the Agreement Payments, as used in this Section 3 hereof, do not include payments for repair, maintenance, operating expenses

and the like which are otherwise obligations of CVCS as Facility Costs under the terms of Section \_\_\_\_\_ of this Agreement.

4. **Termination**

Termination of Term. The Term will terminate upon the occurrence of the first of the following events:

A. the purchase of the Subject Property by CVCS pursuant to Section \_\_\_\_\_ of this Agreement;

B. an uncured default by CVCS and County's election to terminate this Agreement pursuant to Section \_\_\_\_\_;

C. an uncured default by County and CVCS's election to terminate this Agreement pursuant to Section \_\_ below;

D. Sufficient funds are not allocated to CVCS to make the Agreement Payment(s), or

E CVCS's charter is revoked by its authorizer and said revocation is not reversed on appeal.

F. The effective date of any termination pursuant to Section 4(D) and (E) supra, shall be the end of the then-current fiscal year, or the effective date of revocation, whichever is earlier. CVCS shall make reasonable effort to give the County at least six (6) months notice of termination pursuant to Section 4(D).

5. **Effect of Termination.** Upon the early termination of this Agreement, CVCS shall surrender possession of the Property pursuant to Section 4 and Section 17 herein.

6. **Utilities.** CVCS shall pay all utility charges for the Property, including, but not limited to, electricity, telephone, natural gas or propane, garbage disposal and sewer charges.

7. **Use of the Property.**

A. CVCS shall use the Property only for the general operation of a charter school, to include administrative offices, maintenance, equipment storage, and related school and community uses. CVCS shall not cause or permit anything to be done in or about the Property which may in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

B. County hereby covenants with respect to the Property, to provide CVCS

during the Term with quiet use and enjoyment of the Property, and CVCS shall during the Term peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from County, except as expressly set forth in this Agreement.

**8. Alteration of the Property.**

A. CVCS shall not make or allow to be made any structural alterations, additions, or improvements to the Property or any part thereof without the prior written consent of County. Any alteration, addition, or improvement to the Property shall at once become a part of the Property and shall be surrendered to County by CVCS upon expiration or termination of this Agreement. Any alteration, addition or improvement to the Property by CVCS shall be at CVCS' sole cost and expense. CVCS shall keep the Property free from any mechanic's and materialmen's liens or any liens arising out of obligations incurred by CVCS.

B. CVCS may at any time and from time to time in its sole discretion and at its own expense, install items of movable machinery, standard office partitions, railings, doors, gates, counters, cabinets, lighting fixtures, signs and such other furnishings and equipment as may in CVCS's judgment be necessary for its purposes in or upon the Property. All such items shall remain the sole property of CVCS, in which County shall have no interest, and may be modified or removed by CVCS at any time provided that CVCS shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items upon termination of this Agreement for any reason other than purchase of the Property by CVCS. Nothing in this Agreement shall prevent CVCS from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

**9. Repairs.** By entering into this Agreement, CVCS shall be deemed to have accepted the Property as being in good, sanitary order, condition and repair as of the Commencement Date. CVCS shall, at CVCSs' sole cost and expense, keep the Property in good condition and repair during the term of the Agreement. Upon expiration or termination of this Agreement, CVCS shall surrender the Property to County broom clean and in at least as good a condition as the Property was in at the beginning of this Agreement, ordinary wear and tear excepted.

**10. Assignment and Subletting.** CVCS shall not mortgage, pledge, hypothecate, or encumber this Agreement or any interest therein, and shall not sublet the Property or assign this Agreement or any part thereof, without the prior written consent of County. The consent by County to an assignment of the Agreement or a sublease on one occasion shall not be deemed to be consent to any subsequent assignment of the Agreement or sublease. Any assignment of this Agreement or sublease by CVCS without first obtaining County's written consent shall, at the option of County, constitute a default by CVCS according to the terms of this Agreement.

11. **Insurance.**

A. Liability Insurance. Beginning upon the Commencement Date, CVCS shall procure and maintain or cause to be carried and maintained in full force and effect during the term of this Agreement and any extension thereof at CVCS's sole cost and expense, such public liability insurance covering bodily injury, disease, illness or death and property damage liability, as is available from and provided by the New Mexico Public Schools Insurance Authority ("NMPSIA") or its successor with limits of coverage not less than \$300,000 for each person for all past and future medical and medically-related expenses arising out of a single occurrence and \$400,000 in the aggregate for all claims other than medical or medically-related expenses arising out of a single occurrence, and \$100,000 for each accident for property damage liability for the benefit of both County and CVCS as protection against all liability claims arising from activities in or on theProperty, causing County to be named as an additional-named insured on such policy of insurance, and delivering a copy thereof to County upon the commencement of the term of this Agreement. CVCS shall adjust such minimum coverage limits annually or as necessary to conform to the minimum coverage limits required for local public bodies pursuant to Sections 41-4-19 and 41-4-20 NMSA 1978, and Sections 22-29-1 through 22-29-11 NMSA 1978, as amended.

B. Property Insurance. Subject to the availability of such coverage from NMPSIA, CVCS shall also carry and maintain or cause to be carried and maintained in full force and effect during the term of this Agreement and any renewal thereof, at CVCS's sole cost and expense, fire and extended coverage insurance upon theProperty, in an amount equal to their replacement values. In the event that the Property should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, CVCS shall have the option to either continue this Agreement and use the proceeds to replace or repair the Property and on County's behalf, or terminate this Agreement and tender to the County all such insurance proceeds attributable to the loss or damage to the Property.

C. Worker's Compensation Insurance. If required by state law as of the Commencement Date, CVCS shall carry worker's compensation insurance covering all of their respective employees on, in, near or about theProperty, and upon request, shall furnish certificates to the other party evidencing such coverage.

12. **Repair and Restoration of Damage.** If the Property is damaged or destroyed by fire or other hazard against which CVCS is required to carry insurance:

A. CVCS shall immediately notify County of that fact; and

B. CVCS shall promptly repair, replace, or rebuild the portion of the Property so damaged or destroyed, at least to the extent of its condition prior to the damage or destruction, using insurance proceeds. CVCS may, with County's prior consent, delay commencement of the work until the proceeds of insurance policies covering the casualty or hazard are made available to CVCS for such purpose. CVCS shall continue the commenced work with reasonable diligence until its completion. If the work is not commenced by CVCS and completed within a reasonable time, CVCS shall

be in breach of this Agreement and this Agreement shall be subject to termination as provided below. In the event of termination of this Agreement by County, the insurance proceeds received or receivable shall belong to County without claim thereon by CVCS.

13. **Entry by County.** County shall have the right at all reasonable times to enter the Property, upon compliance with any school visitor/security requirements imposed by CVCS, and upon reasonable notice .

14. **Liability.**

A. CVCS agrees that the County shall not be liable for any loss or damage to persons or property arising from any cause whatsoever, which occurs in any manner in or about the Property, or in connection with CVCS's use of the Property.

B. By entering into this Agreement, each party agrees that it shall be responsible for liability arising from personal injury or damage to property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (NMSA 1978, Section 41-4-1, *et seq.*) and any amendments thereto. This section is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The parties and their "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, and do not waive any defense or limitations of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

15. **Default.**

A. The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, with respect to the Property, any one or more of the following events:

B. Failure by County or CVCS to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given by the nondefaulting party, unless the nondefaulting party shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the nondefaulting party will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by defaulting within the applicable period and diligently pursued until the default is corrected.

C. The final revocation of CVCS's charter to operate by CVCS's authorizer, or nonrenewal thereof.

D. The failure of CVCS to pay any rent or other charges within five (5) days of the date it is due.

E. Abandoning the Property or failure to utilize the Property as a public school.

16. **Remedies on Default.** Whenever any event of default referred to in Section 15 hereof shall have occurred and be continuing, the nondefaulting party shall give the party in default written notice by hand delivery or by certified or registered mail specifying such event of default. Unless the event of default is remedied by defaulting party within thirty (30) days after its receipt of such notice, or unless within such thirty day period the party in default shall have commenced and shall continue to take action for the purpose of remedying or obviating such event or default other than failure to pay Agreement Payments, and shall thereafter in good faith prosecute such action to completion, the nondefaulting party may declare the forfeiture of the interest of the party in default in this Agreement by giving written notice thereof by certified or registered mail, and this Agreement shall terminate forthwith. Neither party shall be liable for special or consequential damages arising from a breach of this Agreement.

17. **Force Majeure.** The provisions of Section 15 is subject to the following limitations: if by reason of force majeure County or CVCS is unable in whole or in part to carry out its obligations under this Agreement, County or CVCS shall not be deemed in default during the continuance of such inability or during any other delays which are a direct consequence of the force majeure inability, and the time for cure shall be extended to cover such delays. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military authority other than CVCS; insurrections; riots; earthquakes; fires; storms; drought; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of County and CVCS and not resulting from its negligence. County and CVCS agree, however, to remedy with all reasonable dispatch the cause or causes preventing them from carrying out their obligations under this Agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall not be required if in the judgment of the party raising the defense of force majeure, acceding to the demands of the person or persons creating the strike, lock out or industrial disturbance, would be injurious to such party.

18. **Remedies Cumulative.** The above-provided rights and remedies to which either party is entitled hereunder are cumulative, and not exclusive, of all other rights and remedies to which a party may be entitled in the event of breach or threatened breach by a party in default of any of the terms, conditions and provisions contained herein.

19. **No Additional Waiver Implied by One Waiver.** The failure, neglect or omission of a nondefaulting party to terminate this Agreement for any breach or default shall not be deemed a consent by the nondefaulting party of such breach or default and

shall not stop, bar or prevent the nondefaulting party from thereafter terminating this Agreement, either for such violation of for prior or subsequent violation of any covenant hereof. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

20. **Dispute Resolution.** In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

21. **No Attorney's Fees.** In the event this Agreement results in dispute, mediation, litigation, or settlement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

22. **Surrender of Possession.** Subject to Section 4, upon the expiration of the term of this Agreement, upon termination of the Agreement or upon a termination of this Agreement based upon the default of CVCS, CVCS shall immediately restore possession of the Property to the County, in as good a condition as the Property was in at the inception of this lease, ordinary wear and tear excepted.

23. **Holding Over.** If CVCS remains in possession of the Property after the expiration of this Agreement, without the express written consent of County, such occupancy shall be a tenancy from month-to-month at twice the monthly rental which was payable during the month immediately prior to the expiration, and such tenancy shall be subject to all of the terms, conditions, and covenants of this Agreement.

24. **Option to Purchase.**

A. **Grant of Option.** County, for and in consideration of CVCSs' execution and faithful performance of the Agreement, grants CVCS the exclusive right and option to elect to purchase the Property (for purposes of this Section, the "Option Property"), together with the permanent improvements and fixtures situated upon the aforementioned Lot Split Parcel, upon the terms and conditions set forth in this Section 24.

B. **Term of Option.** The term of the option to purchase the Option Property shall be from the \_\_\_\_\_ (Effective Date of Agreement) through and including \_\_\_\_\_ (thirty days after the last day of the lease) \_\_\_\_\_, 20\_\_, unless terminated earlier ("Option Term"). If this option is not exercised and the sale and

transfer of the Option Property is not completed on or prior to the expiration of the Option Term, this option shall expire and thereafter be of no further force or effect.

C. **Exercise of Option.** CVCS may exercise the option to purchase the Option Property by giving County written notice, prior to the expiration or termination of the Option Term, of CVCS' election to exercise the option. CVCS shall not be permitted to exercise this option if CVCS is in default pursuant to the terms of the Agreement, if the option to purchase has expired, or if the option to purchase has been terminated because of a termination of the Agreement.

D. **Purchase Price.** The total purchase price to be paid by CVCS to County for the Option Property is the greater of \$1.00 or the balance of \$1,129, 638.00 (the amount of NMFA Loan № \_\_\_\_\_), minus the total amount of rent then paid to the County for the Option Property ("Purchase Price"). See amortization schedule attached hereto as Exhibit "D" and incorporated into this Agreement. The Purchase Price to be paid to County, as provided above, shall be a net amount to County. The Purchase Price shall be paid by CVCS in cash to County concurrently with the conveyance of the Option Property by County to CVCS.

E. **Closing.**

i. **Date and Time of Closing; Transfer of Title.** The closing of the sale of the Option Property shall occur as soon as is reasonably possible after the exercise by CVCS of its option to purchase the Option Property. The exact time and place of closing shall be determined by the mutual agreement of County and CVCS, but in no event will be prior to CVCS' acquisition of the funds required by closing. At closing, CVCS shall pay the Purchase Price as provided in this Agreement. At closing, County shall convey the Option Property to CVCS free and clear of any mortgage or other encumbrance. Any such transfer shall be effected by a quitclaim deed.

ii. **Closing Costs.** Any and all closing fees shall be paid by CVCS.

F. **County's Representations.** County represents to CVCS that:

i. County owns marketable title to the Option Property, subject to reservations, restrictions, and easements of record.

ii. At the time of closing, there shall be no agreements affecting the ownership, use or possession of the Option Property other than those agreements which have been disclosed in writing to CVCSs and accepted by CVCSs in writing; and

iii. There are no unpaid bills or sums due laborers, contractors, materialmen, mechanics or others with respect to any improvements or repairs constructed or performed on the Option Property.

G. **"As - Is" Condition.** Upon the closing of the sale of the Option Property from County to CVCS, County shall deliver possession of the Option Property to CVCSs in an "as - is" condition without warranty, either express or implied, including warranty of habitability, merchantability, or fitness for a particular purpose. CVCSs acknowledge and represents that CVCS is purchasing the Option Property solely upon CVCS' own inspection and examination of the Option Property, and not upon any representations of County. County shall not be responsible for any latent defects, whether or not the defects could have been discovered by CVCS.

H. **Priority.** This option shall be a covenant running with the land described above, and no conveyance, transfer, easement, or encumbrance of such land shall defeat or adversely affect this option.

I. **Prepayment penalty.** CVCS may exercise the option at any time without assessment of costs, expenses or penalties except as otherwise provided in this Agreement.

J. **Contractor Warranties.** Upon acceptance and purchase of the Option Property by CVCS pursuant to this Section, County will assign to CVCS all of its interest, if any, in all warranties and guarantees or other contract rights against architects, builders, contractors, subcontractors, suppliers, materialmen or manufacturers for the Option Property, express or implied, issued on or applicable to the Option Property, and County hereby authorizes CVCS to obtain the customary services furnished in connection with such warranties and guarantees at CVCS's expense. CVCS's sole remedy for the breach of such warranties and guarantees shall be against the provider of such work, service, equipment or materials made to or on the Option Property and not against County, nor shall such matter have any effect whatsoever on the rights of the County with respect to this Agreement, including the right to receive full and timely payments hereunder.

K. **Capital Improvements.** After exercise of the School's option pursuant to this paragraph, if School makes capital improvements to the Option Property, there shall be no change to lease payments or final payments without written amendment hereto approved by the NMPED. If state or school funds above those required for lease payments are used to construct or acquire additional improvements on the Option Property, the cost of the improvements shall constitute a lien on the Option Property in favor of the School. If this Lease Purchase Agreement is terminated prior to final payment hereunder and the release of the security interest or transfer of title, at the option of the School the School may: (i) foreclose on the real estate lien; or (ii) the current market value of the buildings or other real property at the time of terminating (as determined by an independent appraisal certified by the NM Taxation & Revenue Department) in excess of the outstanding principal due under this Lease Purchase Agreement, shall be paid to the School or its successor in interest.

25. **Nature and Survival of Warranties and Representations.** All statements contained in this agreement and in any document delivered by or on behalf of County to CVCS in connection with this Agreement shall be deemed representations and warranties by County to CVCS. All such representations and warranties shall survive closing and the conveyance of title.

26. **Entire Agreement.** This instrument constitutes the entire agreement between County and CVCS and there are no agreements, understandings, warranties or representations between County and CVCS except as set forth or provided for in this instrument. All prior agreements, understandings and writings related to the Property are merged into this Agreement. This Agreement may not be amended except by a written instrument signed by the party to be charged or bound by the amendment, and approved by the NMPED.

27. **Time is of the Essence.** Time is of the essence hereof.

28. **Further Assurances and Corrective Instruments.** County and CVCS agree that they will, if necessary, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

29. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

30. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

31. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

32. **Business Days.** If the day upon which any action required by the Agreement shall fall on a Saturday, Sunday or banking holiday, then such actions shall be deemed timely if made or taken on the next succeeding business day.

33. **Non-Waiver.** Forbearance of enforcement of any of a party's rights or remedies under this instrument shall not constitute a waiver or release of any such rights or remedies. A waiver of a right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

34. **Binding Effect.** Upon the execution of this Agreement, it shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

35. **Severability.** Each provision, sentence, or portion of this Lease Purchase Agreement shall be separate and distinct from any other provision, sentence, or portion of this instrument. In the event of the invalidity of any portion of this instrument, the portions of this instrument set forth herein shall be deemed independent and divisible and shall remain in full force and effect.

36. **Conditions Precedent.** Implementation of this Agreement is conditioned and contingent upon:

- A. The New Mexico Finance Authority's issuance of Loan No \_\_\_\_\_ to the County of Socorro.
- B. Final approval hereof by the New Mexico Secretary of Education or authorized NMPED representative.
- C. Approval of the Socorro Consolidated School District.
- D. Approval of NM Board of Finance for the County's lease-purchase of the Property to CVCS.

37. **Title to Improvements/Equipment.** During the Term, legal title to the Property shall be in the County, unless otherwise agreed to by the parties in writing. Pursuant to NMSA 1978 Section 22-26A-5.1, the Property subject to this Agreement shall be considered to be public property.

38. **Hazardous Materials.**

A. Compliance with all Hazardous Materials Laws. Prior to the Commencement Date, County, and as of the Commencement Date, CVCS, shall at all times keep and maintain the Property in compliance with and shall not cause or permit the Property or any activities conducted therein to be in violation of any federal, state or local law, ordinance or regulation relating to commercial or industrial hygiene, environmental safety or the environmental conditions on, under or about the Property, including, but not limited to, air, soil, subsurface and ground water conditions. Neither party shall permit any subtenant or other occupant of the Property, except in accordance with applicable Hazardous Materials laws as hereinafter defined, to use, generate, manufacture, store, produce, release, discharge, dispose of or otherwise permit the presence of, on, under or about the premises or transport to or from the Property any explosives (flammable or otherwise), radioactive materials, pollutants, contaminants, hazardous wastes, hazardous air pollutants, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous pollutants" or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials"). Hazardous materials shall include petroleum products. Upon request of either party, the other party will prepare and provide such reasonable reports as

will evidence compliance by the party with Hazardous Materials laws, and which will evidence that the School Site and the uses thereon are in compliance with Hazardous Materials Laws. Either party shall immediately advise the other party in writing of its discovery of or receipt of notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws, ordinances, regulations, orders or publications relating to any Hazardous Materials affecting the School Site (“Hazardous Materials Laws”); (ii) any use, generation, manufacture, production, release, discharge, storage or disposal of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the Property; (iii) all claims made or threatened by any third party against a party or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (iii) above are hereinafter referred to as “Hazardous Materials Claims”); and (iv) any occurrence or condition on any property adjoining or in the vicinity of the Property that could cause the Property to be subject to any restrictions on the ownership, Completion, transferability or use of the premises under any Hazardous Materials Law.

B. CVCS's Responsibility. Upon and after issuance of the Certificate of Occupancy and acceptance of the Property by CVCS, CVCS shall be solely responsible to pay or otherwise satisfy any claim, written notice or demand, penalty, fine, settlement, loss, damage, cost, expense or liability made against County or CVCS directly or indirectly arising out of or attributable to the violation by CVCS of any Hazardous Materials Law, orders, written notice or demand of governmental authorities, or the use, generation, manufacture, storage, release, threatened release, discharge, disposal, production, abatement or presence of Hazardous Materials on, under or about the premises including, without limitation: the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property, and the preparation and implementation of any closure, abatement, containment, remedial or other required plan and shall to the extent allowable by law applicable to public schools, indemnify County and hold County harmless from any such claim, demand, penalty, fine, settlement, loss, damage, cost, expense or liability subject to the limitations and waivers contained in the New Mexico Tort Claims Act and any insurance coverage issued pursuant thereto.

C. Remedial Action Required. Without the other party's prior written consent, which shall not be unreasonably withheld, a party shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in response to any Hazardous Materials claim, which remedial action, settlement, consent or compromise might, in the other party's reasonable judgment, impair the value of party's fee interest in the Property; provided, however, that prior consent shall not be necessary in the event that: (i)(a) the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat or is of such a nature that an immediate remedial response is necessary; or (a) any delay in taking such remedial action would result in the imposition of periodic or daily fines; and (C) such action is required by government order; and (ii) it is not possible to obtain the other party's consent before taking such action; provided that in such event notice shall be

given as soon as practicable of any action so taken. Each party agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) the party establishes to the reasonable satisfaction of the other party that there is no reasonable alternative to such remedial action that would result in less impairment to the value of the party's interest in the Property.

D Survival of CVCS's Obligations and Liabilities. CVCS's obligations and liabilities hereunder with respect to Hazardous Materials Claims arising from CVCS's actions shall survive the expiration or other termination of this Agreement.

39. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered or mailed to County or CVCS, as the case may be, postage pre-paid and by certified mail, return receipt requested, at their respective addresses show below (or at such other address as County or CVCS may specify to the other party in writing from time to time):

CVCS : Administrator  
P.O. Box 1829  
Socorro, NM 87801

COUNTY: The County of Socorro  
P. O. Box I  
Socorro, New Mexico 87801

**THIS Agreement** is effective upon the approval of both parties.

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SOCORRO**

**APPROVED, ADOPTED, AND PASSED** on this \_\_\_ day of \_\_\_\_\_, 2012.



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Notary Public

(SEAL)

My Commission Expires:

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DRAFT