



Contract Number

20-563

SAP Number

Real Estate Services Department

Department Contract Representative
Telephone Number

Terry W Thompson, Director
(909) 387-5252

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

230 South Waterman Avenue, LLC
Lisa Lamb
4/30/2020-10/31/2021
\$0
\$0
\$0

Briefly describe the general nature of the contract:

Form of Consent, Recognition and Attornment Agreement, signed by the Chief Executive Officer on May 29, 2020, between the County of San Bernardino and the City of San Bernardino, jointly as landlord, 230 South Waterman Avenue, LLC, as tenant, the High Desert Partnership in Academic Excellence Foundation, Inc., as subtenant, and Wilmington Trust, NA, as lender, in connection with Ground Lease Agreement No. 20-185.

FOR COUNTY USE ONLY

Approved as to Legal Form

► PLEASE SEE SIGNATURE PAGE

Robert F. Messinger, Principal Assistant
County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►

Date _____

FORM OF CONSENT, RECOGNITION AND ATTORNMENT AGREEMENT

This CONSENT, RECOGNITION AND ATTORNMENT AGREEMENT ("Agreement") is entered into by and among the COUNTY OF SAN BERNARDINO and the CITY OF SAN BERNARDINO, hereinafter collectively referred to as "LANDLORD", 230 SOUTH WATERMAN AVENUE, LLC, hereinafter referred to as "TENANT", HIGH DESERT PARTNERSHIP IN ACADEMIC EXCELLENCE FOUNDATION, INC., hereinafter referred to as "SUBTENANT", and WILMINGTON TRUST, NATIONAL ASSOCIATION, hereinafter referred to as "LENDER."

Recitals

A. LANDLORD and TENANT entered into that certain Ground Lease Agreement, Agreement No. _____ dated June _____, 2020, hereinafter referred to as "Ground Lease", whereby LANDLORD agreed to lease to TENANT and TENANT agreed to lease from LANDLORD certain real property legally described on Exhibit "A" attached hereto and known as 230 S. Waterman Avenue, San Bernardino, California, comprising approximately 15.6 acres ("Property") for use as a public charter school.

B. TENANT and SUBTENANT have entered into that Sublease dated June 1, 2020, hereinafter referred to as "Sublease" whereby TENANT agreed to sublease to SUBTENANT and SUBTENANT agreed to sublease from TENANT the Property for SUBTENANT to construct certain charter school improvements and to operate the public charter school facility known as the Norton Science and Language Academy under a charter granted by the San Bernardino County Board of Education.

C. TENANT has made, executed and delivered, or is about to make, execute and deliver to LENDER a leasehold deed of trust dated substantially contemporaneously herewith ("Leasehold Deed of Trust"), encumbering TENANT's leasehold interest and SUBTENANT's subleasehold interest in the Property created by the Lease and the Sublease, respectively, to secure financing or refinancing for the construction of certain charter school improvements at the Property and certain preschool improvements for the County of San Bernardino on a separate parcel of LANDLORD-owned real property known as 205 Allen Street, San Bernardino, California, comprising approximately 2.23 acres (the "Head Start Parcel").

D. TENANT represents that it is a condition precedent of the loan that the Leasehold Deed of Trust shall be and remain at all times until said loan is repaid a lien upon SUBTENANT's subleasehold interest and TENANT's leasehold interest in the Property created by the Sublease and the Lease, respectively.

Covenants

In consideration of the recitals set forth above, which are incorporated herein, and the covenants and agreements contained herein, the parties agree as follows:

1. Subject to the terms of this Agreement, LANDLORD hereby consents to TENANT entering into the Leasehold Deed of Trust to encumber TENANT's leasehold interest and SUBTENANT's subleasehold interest in the Property created by the Lease and the Sublease, respectively, provided that the Leasehold Deed of Trust shall be subordinate to LANDLORD's fee interest in the Property. For avoidance of doubt, the parties hereby acknowledge and agree that, notwithstanding anything to the contrary in this Agreement, the Lease, the Sublease, or any financing documents, the Leasehold Deed of Trust does not encumber LANDLORD's fee interest in the Property nor does it in any manner encumber the Head Start Parcel or any improvements thereon even if a portion of the loan proceeds is intended to or shall be used for the construction of certain preschool improvements on the Head Start Parcel.

2. Upon repayment of the loan described in the Leasehold Deed of Trust, LENDER agrees to fully re-convey all of LENDER's interest in the Property created by the Leasehold Deed of Trust (and any rights exerted thereunder), and LENDER shall, at its sole cost and expense, execute such documents as reasonably requested by LANDLORD to release said Leasehold Deed of Trust.

3. Except as otherwise expressly set forth in this Agreement, in the event of any conflict between the provisions of the Lease and the provisions of this Agreement, the Sublease, the Leasehold Deed of Trust, or any other financing agreements, the terms of such provisions shall be construed to be as consistent as possible, but if such reading is not possible, the provisions of the Lease shall control; provided, however, that as between or among TENANT, SUBTENANT and LENDER only, the provisions of the Leasehold Deed of Trust and any financing or other documents executed by them in connection therewith shall control.

4. Any material additions or modifications to the Leasehold Deed of Trust shall first be approved in writing by the LANDLORD. The approvals described in this Paragraph shall not be unreasonably withheld, delayed or conditioned.

5. No amendment to the Lease that modifies any of its material economic terms, LENDER's rights or the Term (as defined in the Lease) shall be valid without LENDER's prior written consent. TENANT shall be required to obtain LENDER's prior written consent prior to the execution of such amendment. LANDLORD acknowledges that, during the term of the loan described in the Leasehold Deed of Trust, as it may be extended, TENANT has committed not to surrender, cancel, or voluntarily terminate the Lease without the prior written consent of LENDER. The previous sentence shall not limit LANDLORD's termination rights pursuant to the Lease, subject to LENDER's notice and cure rights set forth in the Lease and this Agreement.

6. The proceeds of the loan to TENANT shall be used solely for payment of expenses incident to construction of certain charter school improvements for the operation of the Norton Science and Language Academy at the Property and certain preschool improvements for the County of San Bernardino on the separate Head Start Parcel and to

pay the costs of the financing. Notwithstanding the first sentence of Section 5.B.1 of the Lease, TENANT, or LENDER or a permitted assignee, or any successor or assign thereof, shall have the right to seek approval from LANDLORD of an Approved Encumbrance under the provisions of Section 5 of the Lease for future financings and refinancing to be secured by the Property, and not just for financing (and refinancing thereof) for the initial construction of the Property, provided that in all events none of TENANT, SUBTENANT, LENDER or a permitted assignee, or any successor or assign thereof, shall have the right to encumber its subleasehold interest or leasehold interest in the Property created by the Sublease and Lease to finance any other charter schools, programs, or foundations operated by any such party or any of its affiliates.

7. Until the loan described in the Leasehold Deed of Trust is repaid in full, LANDLORD shall provide LENDER with notice at the same time that it provides notice to TENANT of any Default (as defined in the Lease), and thereafter shall provide a copy of any notice provided to TENANT to LENDER, including, without limitation, those that would result in any surrender of the Property or termination of the Lease. LENDER shall have the same rights as the TENANT has under the Lease, at any time during the Term, to enter the Property to (A) do any act or thing required of TENANT under the Lease, within the time TENANT is required to perform such act or thing thereunder, whenever failure to do such act or thing would constitute a default thereunder, provided that prior to any Default, LENDER shall provide written notice to LANDLORD if LENDER acts on behalf of TENANT; and/or (B) cure any Default; and LANDLORD shall accept such performance or cure by a LENDER as if TENANT had performed. No LENDER shall be required to cure any default of TENANT unless such LENDER has elected to acquire the leasehold interest in writing or via power of sale, foreclosure or deed in lieu thereof. Any notice to TENANT given pursuant to the Lease, including notice of a default or a termination of the Lease, shall be delivered simultaneously to any such LENDER if LENDER has provided its notice address to LANDLORD (which LENDER has provided pursuant to Paragraph 10 below). LANDLORD agrees that if TENANT fails to cure any default under the Lease within the time provided for in the Lease, except for defaults due to TENANT's failure to pay monetary Monthly Rent, TENANT's failure to comply with Section 4.A of the Lease, or SUBTENANT'S failure to construct and complete the Preschool Improvements on the Head Start Parcel in accordance with the Improvement Agreement for which no additional time shall be granted to LENDER unless expressly set forth in the Improvement Agreement, LENDER shall have an additional ten (10) business days after LENDER's receipt of written notice of Default within which to cure such default, provided if such Default is of a nature that it cannot reasonably be cured within ten (10) business days then so long as LENDER commences cure within said ten (10) business days and thereafter diligently prosecutes such cure to completion, (A) if possession of the Property is not required to prosecute and complete a cure of the Default, LENDER shall have a reasonable period to cure such Default, not to exceed 30 days from LENDER's receipt of the written notice of Default, (B) if possession of the Property is required to prosecute and complete a cure of a Default (other than a Default described in Section 18.A.2 of the Ground Lease), LENDER shall have a reasonable period to cure such Default, not to exceed such time as reasonably necessary to obtain possession of the Property plus 60 days or (C) LENDER shall have a reasonable period to cure any Default described in Section 18.A.2 of the Lease by entering

into a new sublease agreement with a duly authorized replacement charter school operator or other lawful educational user, provided that, immediately upon obtaining possession, and until commencement of the new sublease, LENDER covenants and agrees to diligently perform (or cause to be performed) building maintenance and groundskeeping services as necessary to immediately remedy any condition of blight or unsightly appearance in the Charter School Improvements.

8. Upon default by TENANT under any of the terms of the Leasehold Deed of Trust, LENDER may exercise any rights provided in the Leasehold Deed of Trust, provided that before any sale of TENANT's leasehold interest in the Property, whether under power of sale or foreclosure, LENDER shall give to LANDLORD written notice of the same character and duration as is required to be given to TENANT by the terms of the Leasehold Deed of Trust or the laws of the State of California. Notwithstanding anything to the contrary in the Lease, LANDLORD shall not have the right to cure any default under the Leasehold Deed of Trust and no default by TENANT under any Approved Encumbrance shall be a Default under the Lease pursuant to Section 18.A.6 of the Lease, provided that LANDLORD shall be entitled to exercise LANDLORD's remedies under the Lease to the extent any such default otherwise breaches provisions of the Lease, subject to LENDER's rights to cure any Defaults under the Lease as set forth in the Lease and this Agreement.

9. If a sale or foreclosure under the Leasehold Deed of Trust occurs or if the LENDER or its permitted assignee (as defined below) acquires the TENANT's leasehold interest by assignment in lieu of foreclosure, this Lease shall continue in full force on the same terms and conditions and LENDER or said permitted assignee, as successor in interest to TENANT will be bound by all the terms of this Lease and will assume all the rights and obligations of TENANT under the Lease and LANDLORD shall recognize LENDER or said permitted assignee as TENANT under the Lease with all rights of TENANT thereunder and LANDLORD shall, after such event and upon such condition, have the same rights and remedies against LENDER or its permitted assignee for the default or breach of the Lease that LANDLORD has under the Lease against TENANT if LENDER or its permitted assignee had not succeeded to the interest of TENANT; provided, however, that any Default or Breach (as defined in the Lease) of TENANT under Sections 18.A.6., 18.A.7., 18.A.8, and/or 18.A.9, which such Defaults and Breaches by their nature are necessarily personal to TENANT and/or Guarantor (as defined in the Lease) and not otherwise susceptible of cure or remedy by LENDER, shall be deemed cured upon such assignment and recognition. Neither LENDER nor its permitted assignee shall assign the Lease, the Sublease or any portion of the Property or appoint an agent to operate any portion of the Property without obtaining the prior written approval of CITY and COUNTY, and if approved, a "permitted assignee". Such approval shall not be unreasonably withheld, conditioned or delayed so long as the proposed assignee, subtenant or agent has demonstrated substantial experience in the operation of facilities similar to the Charter School Improvements. Notwithstanding the foregoing, LENDER, or such permitted assignee, shall upon assignment of the Lease in accordance with the terms thereof, be released of any all obligations under the Lease accruing thereafter. Nothing in this Agreement shall be deemed to be a recognition of the Sublease as a direct agreement between LANDLORD and SUBTENANT.

10. Any notice, demand, request, consent, approval or communication that a party desires or is required to give to another party or any other person, shall be in writing and either served personally, sent by United States mail, postage prepaid, first-class mail, certified or registered, return receipt requested, or by overnight courier to another party at the address set forth below. A party may change its address by notifying the other parties of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt if personally delivered on a business day; otherwise on the next business day, or (ii) the date of delivery or refusal of the addressee to accept delivery if delivered on a business day, otherwise on the next business day, if such notice is sent by or United States mail, postage prepaid, certified or registered, return receipt requested, or overnight courier.

COUNTY's Notice Address: County of San Bernardino
385 N. Arrowhead Avenue
San Bernardino, California 92415-0831

CITY's Notice Address: City of San Bernardino
290 N. D Street
San Bernardino, California 92410

TENANT's Notice Address: 230 South Waterman Avenue, LLC
17500 Mana Road
Apple Valley, California 92307

SUBTENANT's Notice Address: High Desert Partnership in Academic
Excellence Foundation, Inc.
17500 Mana Road
Apple Valley, California 92307

LENDER Notice Address: Wilmington Trust, National Association
650 Town Center Drive, Suite 800
Costa Mesa, California 92626
Attention: Corporate Trust Department

11. LANDLORD certifies to LENDER with respect to the Lease as follows:

A. The Lease is in full force and effect, and there are no amendments, supplements, modifications or changes to the Lease. The Lease together with this Agreement collectively constitute the entire agreement between the LANDLORD and TENANT with respect to the Property and are enforceable against LANDLORD in accordance with their terms.

B. LANDLORD is the fee owner of the Property and the Head Start Parcel, and the landlord under the Lease with respect to the Property. LANDLORD has not transferred its interest under the Lease.

C. No Default, or any event or condition which, with the passing of time or the giving of notice, or both, would constitute a Default on the part of LANDLORD or TENANT, exists under the Lease in the performance of the terms, covenants and conditions of the Lease required to be performed on the part of LANDLORD or TENANT.

D. The Property, the proposed Charter School Improvements (as defined in the Lease), and the current and proposed uses thereof comply with the Lease and all applicable zoning, land use and occupancy laws and regulations affecting the Property.

E. Notwithstanding anything in Section 5.B.8.a of the Lease to the contrary, subject to the other terms of the Lease, TENANT may make minor and non-physical changes to the management, operation or nature of the Use of the Property (including any improvements thereto) in the ordinary course of business without providing LANDLORD or LENDER 120 days' prior written notice.

F. Notwithstanding anything in Section 5.B.8.b of the Lease to the contrary, fee title to all buildings, structures, any other improvements now or hereafter located on the Property, if constructed or installed by TENANT or its contractors, shall be vested in TENANT for the term of the Lease and any extensions thereto. Notwithstanding the foregoing, TENANT and LENDER agree and acknowledge that the construction of the permitted improvements at the Property is a form of additional consideration to LANDLORD under the Lease. Accordingly, neither TENANT nor LENDER may destroy, sell, or otherwise dispose of such improvements without the prior written consent of LANDLORD.

12. Notwithstanding any contrary provision in the Lease, TENANT shall have no obligation to restore or repair the Property following the occurrence of any casualty or condemnation if TENANT or LENDER has elected to cause available insurance or condemnation proceeds from such event to be applied to the loan under the Leasehold Deed of Trust and other financing documents; provided, however, if the Property is not restored, in each case TENANT shall (or shall cause), and at TENANT's sole expense, the remaining Charter School Improvements to be demolished and cleared from the Property, and the Property to be secured and safeguarded with temporary fencing, signage and otherwise to LANDLORD's reasonable satisfaction, and the Lease shall terminate.

13. Lender and any permitted assignee of Lender shall not be liable to perform TENANT's obligations under the Lease, unless and until such party acquires the Lease, by power of sale, foreclosure, assignment in lieu of foreclosure, or under the new Lease provisions of this Agreement. LENDER and any permitted assignee's liability shall be limited to LENDER or such permitted assignee's interest in the Lease.

14. In no event shall LANDLORD encumber its fee interest in the Property pursuant to any future mortgages, deeds of trust or similar encumbrances placed by

LANDLORD on the Property, and any such future encumbrance, and any extensions, renewals or replacements thereof, shall in all events be subordinate to the Lease.

15. LANDLORD agrees not to assert or otherwise take the benefit of, Section 365(d) or any other applicable provisions of the United States Bankruptcy Code (11 U.S.C. §101 et seq.), which may cause the termination of the Lease. If the Lease is terminated prior to its stated expiration as a result of any actual or deemed rejection of the Lease under any provisions of the Bankruptcy Code or by operation of law or otherwise, including pursuant to any merger of the leasehold with the fee interest, then LENDER shall have the option to obtain a new lease from LANDLORD upon the same terms and conditions as the Lease; provided, however, that any Defaults or terms that were personal to the TENANT or Guarantor (as identified in Paragraph 9 above) and which are not otherwise susceptible of cure or remedy by, or applicable to, LENDER, respectively, shall be deemed cured or waived upon the commencement of such New Lease.

16. This Agreement is binding upon and inures to the benefit of the parties and their respective successors, assigns, heirs, executors, and administrators. LENDER may assign this Agreement and all or any interest in the loan secured by the Leasehold Deed of Trust and in the Leasehold Deed of Trust and other documents entered into connection therewith without the consent of LANDLORD, TENANT, or SUBTENANT.

17. If any legal action is instituted to enforce or declare a party's rights hereunder, each party, including the prevailing party, must bear its own attorneys' fees and costs.

18. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in the County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

COUNTY: County of San Bernardino

By: [Signature]
Gary McBride
Chief Executive Officer

Dated: 5/29/20

CITY: City of San Bernardino

By: [Signature]
Teri Ledoux, City Manager

Dated: 6-10/2020

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE,
County Counsel,
San Bernardino County Counsel

By: [Signature]
for Robert F. Messinger
Principal Assistant County Counsel

Dated: 5/28/2020

**TENANT: 230 SOUTH WATERMAN
AVENUE, LLC**

By: [Signature]
Lisa Lamb
Title: President/CEO

Dated: 6/4/2020

[Signatures Continue on Following Page]

LENDER: WILMINGTON TRUST,
NATIONAL ASSOCIATION


By: _____

Name: _____

Title: _____

Dated: _____

SUBTENANT: HIGH DESERT
PARTNERSHIP IN ACADEMIC
EXCELLENCE FOUNDATION,
INC.

By:  _____

Name: D. KEVIN PORTER

Title: CHAIRMAN

Dated: 6/4/20