

COMMITMENT LETTER
CALIFORNIA SCHOOL FINANCE AUTHORITY
CHARTER SCHOOL FINANCE PROGRAM

THIS COMMITMENT LETTER (“**Commitment Letter**”) is made as of the Execution Date shown below by Guarantor for the benefit of Applicant and the State of California (“**State**”), with reference to the following Basic Information and Background:

BASIC INFORMATION

Execution Date: _____

Applicant:

Legal Name: _____

Type of Entity: _____

Address: _____

Phone: _____

Fax: _____

E-Mail: _____

Requested Preliminary Apportionment Amount: _____ (\$ _____ .00)

Estimated Lease Payment Amount: _____ (\$ _____ .00)
(defined in Section 3(a) below.)

Guarantor:

Legal Name: _____

Type of Entity: _____

Address: _____

Phone: _____

Fax: _____

E-Mail: _____

Commitment Expiration Date : _____

BACKGROUND

A. Applicant has applied to the California School Financing Authority (“**CSFA**”) for financing of its charter school project under the Charter School Facilities Program (“**CSFP**”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., by submitting a completed Form CSFA 03-01 to CSFA and a completed Form SAB 50-09 to the State

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Allocation Board (“**SAB**”) for the Requested Preliminary Apportionment Amount shown above (collectively “**Application**”).

B. According to applicable law relating to the CSFP, if the Application is approved by SAB, the State will provide funding for fifty percent (50 %) of the approved charter school project costs, and Applicant will be responsible for the remaining balance of the charter school project costs (“**Local Matching Share**”). CSFA is required, as part of the Application review process, to determine that Applicant is “**financially sound**,” as defined pursuant to the program guidelines, and in connection therewith to evaluate Applicant’s ability to meet its Local Matching Share requirement.

C. Applicant desires, as permitted under the CSFP, to receive initial funding from the State for the balance of its Local Matching Share obligation that remains unsatisfied after any lump sum payments are made by, or on behalf of, Applicant. Applicant proposes to make re-payment to SAB of this remaining balance of its Local Matching Share obligation, defined in Section 3(a) below as the Lease Payment Amount, via payments under a long-term lease (“**Lease**”). An initial estimate of the Lease Payment Amount (“**Estimated Lease Payment Amount**”) is provided in the Basic Information. Applicant further proposes, as permitted under the CSFP, to support its Application and the determination of whether it is financially sound by providing a commitment from Guarantor in the form of this Commitment Letter to provide a guaranty of the Applicant’s lease payment obligations under the Lease (“**Lease Guaranty**”) and other supportive documentation at the times and in the forms required under the CSFP and this Commitment Letter.

D. In connection with the determination of whether Applicant is financially sound and as a condition precedent to the State making any apportionment (preliminary, advance, or final) of funds based in part on a Lease Guaranty, CSFA is required to determine whether Guarantor is financially sound in connection with Guarantor’s commitment to make the Lease payments on behalf of Applicant; to verify Guarantor’s legal authority to make the Lease Guaranty; to confirm the legal structure of Guarantor’s organization; and to review and monitor on an on-going basis whether Guarantor remains financially sound.

E. In order to support CSFA’s determination that Applicant is financially sound and to induce the State to allocate to Applicant such CSFP funds as requested under the Application, Guarantor desires to provide this Commitment Letter as evidence of its commitment to provide the Lease Guaranty and the documentation of its financial capability and legal authority to provide the Lease Guaranty as required by CSFA in order to evaluate whether Guarantor is financially sound as described above.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to assist CSFA in determining that Applicant and Guarantor are financially sound in order to induce an apportionment of CSFP funds to Applicant, Guarantor agrees and covenants as follows:

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AGREEMENT

1. **Recitals.** The matters and facts set forth above shall be conclusive proof of the truthfulness thereof, and the terms and conditions set forth in the above shall be deemed part of this Commitment Letter.

2. **Forms.** Guarantor acknowledges receipt of copies of the Application and all required attachments thereto and is familiar with the requirements and basic terms for the Lease Agreement and Lease Guaranty as described in applicable law relating to the CSFP.

3. **Commitment.** Guarantor hereby irrevocably and unconditionally commits, covenants, and agrees as follows:

(a) Guarantor shall provide a guaranty of the payments due under the Lease in the form of the Lease Guaranty required under the CSFP to be drafted in conjunction with CSFA staff. Guarantor will submit a fully executed Lease Guaranty to CSFA within four (4) weeks following approval by SAB of the release of any funds, whether for an advance apportionment or for the final apportionment. The Lease payments to be guaranteed will be determined as follows:

The "**Lease Payment Amount**" shall be equal to the Local Matching Share (*i.e.*, one-half (1/2) of the total approved charter school project costs) minus any lump sum payments made by, or on account of Applicant. CSFA will determine the Lease payment schedule by amortizing the Lease Payment Amount over the term of the payment period under the Lease. The Lease payments shall be calculated in a manner designed to result in full payment of the Lease Payment Amount, together with interest thereon, at the rate paid on moneys in the Pooled Money Investment Account as of the date of fund disbursement, within a reasonable time period under an amortization schedule not to exceed thirty (30) years.

The Estimated Lease Payment Amount provided in the Basic Information is an initial estimate only based upon the projected charter school project costs that have been submitted for funding approval by Applicant, and shall not, in any way, limit or restrict Guarantor's commitment to guarantee the payments under the Lease as provided above. The actual Lease Payment Amount and the schedule of Lease payments to be guaranteed under the Lease Guaranty will only be determined by CSFA after the actual apportionment amount (final or advance) has been determined and approved by SAB, and may be subject to subsequent revision upon receipt by Applicant of further or additional apportionments.

(b) Guarantor shall provide the following information to CSFA in connection with Applicant's application for a preliminary apportionment in order to demonstrate Guarantor's financial capability, legal status and legal authority to make the commitment for the Lease Guaranty provided in

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Section 3(a) above, which information Guarantor shall submit to CSFA prior to any preliminary apportionment:

(i) A “Legal Status Questionnaire” completed by Guarantor and submitted in the form set forth by the authority and found at www.treasurer.ca.gov/csfa/charter/application.pdf;

(ii) If Guarantor is a corporation, a copy of the by-laws and articles of incorporation. If Guarantor is not a corporation, other documents which describe the legal structure of Guarantor;

(iii) Where applicable, a list of Guarantor’s board of directors, including their occupations, cities of residence, and terms of office;

(iv) Where applicable, a copy of Guarantor’s authorization or approval by its governing board to undertake the Lease Guaranty;

(v) A minimum of three letters of reference from financial institutions with which Guarantor does business;

(vi) Financial statements, audited if applicable, for the three years prior to the date of Application. Financial statements should include budgets, cash flow statements, and balance sheets, and any written assumptions; and

(vii) Financial projections which include, but are not limited to, liquidity, balance of funds, and net assets for at least the next three years, or through the first full academic year of operation of the applicant school, whichever is longer.

(c) Provide regular updates to CSFA on key aspects of Guarantor’s financial condition as may be required by CSFA in connection with the approval of a preliminary apportionment in order to ensure the continuing financial stability of Guarantor during the period following Applicant’s receipt of such preliminary apportionment. Such updates may include, but not be limited to, the following:

(i) Semi-annual, unaudited financial statements.

(ii) Audited financial statements.

(iii) Legal Status Questionnaire

(d) Provide such additional updated information as may be required by CSFA to determine if the Applicant and Guarantor remain financially sound in connection with an application by Applicant for any advance apportionment or final apportionment.

4. Further Assurances. Guarantor agrees that from time to time, Guarantor will promptly execute and deliver to Applicant and/or CSFA, as applicable, all further instruments and documents, and take all further actions that Applicant and/or CSFA may reasonably request as being necessary or

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desirable, in order to confirm Guarantor's commitment to provide the Lease Guaranty or to assist CSFA in its determination of whether Guarantor or Applicant is financially sound.

5. Representations and Warranties. Guarantor promises that each representation and warranty set forth below is true, accurate and correct as of the date of this Commitment Letter and each and every representation and warranty made by Guarantor in this Commitment Letter shall be deemed to be reaffirmed upon each apportionment. Guarantor represents, warrants and covenants to Applicant CSFA as follows:

(a) Formation; Authority. If Guarantor is anything other than a natural person, it has complied with all laws and regulations concerning its organization, existence and the transaction of its business, and is in good standing in each state in which it conducts its business. Guarantor is authorized to execute, deliver and perform its obligations under this Commitment Letter. Guarantor will, within ten (10) days after receipt of written request from CSFA, deliver to CSFA satisfactory evidence of such authority including, but not limited to, appropriate resolutions which authorize the execution of this Commitment Letter by the individual signing this Commitment Letter.

(b) Compliance with Law. Guarantor is not in violation of, and the terms of this Commitment Letter and the Lease Guaranty do not conflict with, any regulation or ordinance, any order of any court or governmental entity, or any covenant or agreement affecting Guarantor. There are no claims, actions, proceedings or investigations pending or threatened against Guarantor except for those previously disclosed by Guarantor to CSFA in writing.

(c) No Violation. The execution and delivery of this Commitment Letter and the Lease Guaranty and the performance by Guarantor of its obligations hereunder and thereunder will not result in a default under any other material agreement to which Guarantor is a party, or violate any laws, regulations, orders, building restrictions or government requirements to which Guarantor is subject.

(d) Financial and Other Information. All financial information which has been and will be delivered to CSFA, including all information relating to the financial condition of Guarantor, any of its partners, shareholders, members, or other principals, does and will fairly and accurately represent the financial condition (including all material contingent liabilities) being reported on. All such information was prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted. Since the dates of the most recent financial information delivered to CSFA, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects, of Guarantor or any other subject thereof. All reports, documents, instruments, information and forms of evidence which have been delivered to CSFA concerning this Commitment Letter and the Lease Guaranty are accurate, correct and sufficiently complete to give CSFA true and accurate knowledge of their subject matter.

(e) Lawsuits. There is no lawsuit, tax claim or other dispute pending or threatened against Guarantor which, if lost, would impair Guarantor's financial condition or ability to guaranty the Lease payments, except as have been disclosed in writing to CSFA.

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(f) Other Obligations. Guarantor is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as have been disclosed in writing to CSFA.

(g) Disclosure to Guarantor. Before Guarantor became obligated in connection with this Commitment Letter, Applicant made full disclosure to Guarantor regarding Applicant's financial condition and business operations and all other circumstances bearing upon Applicant's ability to pay and perform its obligations under the proposed Lease.

6. Default and Remedies. Guarantor acknowledges and agrees that this Commitment Letter is a binding contractual obligation of Guarantor to provide the Lease Guaranty and the financial and other information as described in Section 3 above in support the Applicant's Application, and is not a letter of intent or other non-binding type of commitment. Guarantor further acknowledges and agrees that Applicant and CSFA are relying on this Commitment Letter in incurring the cost and expenses involved in the CSFP application process.

(a) Events of Default. Guarantor will be in default under this Agreement upon the occurrence of any one or more of the following events ("**Event of Default**"):

(i) Guarantor fails to provide the Lease Guaranty to CSFA within four (4) weeks following approval by SAB of any release of funds in connection to an advance or final apportionment, and Guarantor's receipt of written notice thereof; or

(ii) Guarantor fails to comply with any covenant contained in this Commitment Letter other than those referred to in subsection (i), and does not either cure that failure within ten (10) days after Guarantor's receipt of written notice thereof from CSFA, or, if the default cannot, because of its nature, be cured in ten (10) days, within a reasonable time, but not to exceed thirty (30) days after Guarantor's written notice thereof; or

(iii) An assignment for the benefit of creditors is made by, or any bankruptcy, reorganization, receivership, moratorium or other debtor-relief proceedings are commenced by or against Guarantor, Guarantor's managing general partner; or

(iv) Guarantor becomes insolvent, dissolves or liquidates, or any of these events happens to Guarantor's managing general partner; or

(v) Any representation or warranty made or given in any of this Commitment Letter proves to be false or misleading in any material respect.

(b) Remedies. If an Event of Default occurs under this Commitment Letter, Applicant and/or CSFA may exercise any and all rights or remedies available at law or in equity or by statute to enforce the commitments provided in this Commitment Letter and/or for the recovery of damages including, but not limited to, CSFA's right to pursue Guarantor for the costs incurred by CSFA in processing the Application and in evaluating whether Guarantor and Applicant are financially sound. All of Applicant's and CSFA's rights and remedies under this Commitment Letter shall be non-exclusive and cumulative and in addition to any other remedy provided in this Commitment Letter or otherwise available at law, or in equity or by statute, and no failure by Applicant or CSFA to

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exercise, and no delay in exercising any right or remedy shall operate as a waiver of that right or remedy, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of a right or remedy granted by this Commitment Letter or otherwise. No apportionment or disbursement of funds to Applicant after the occurrence of an Event of Default shall cure or waive such default by Guarantor.

7. Expiration/Termination. This Commitment Letter will continue in effect until the Expiration Date as described above, unless extended by mutual written agreement of Guarantor, Applicant and CSFA, or earlier terminated upon the withdrawal by Applicant of its Application or the denial or rejection by CSFA or SAB of the Application, as provided under the CSFP.

8. Indemnity. Guarantor agrees to indemnify, defend (with counsel satisfactory to Applicant and/or CSFA, as applicable), and hold Applicant and/or CSFA, and their officers, directors, shareholders, members, employees, representatives and agents harmless from and against all liabilities, losses, damages, penalties, fines, actions, causes of action, claims, costs and expenses (including, without limitation, attorneys' fees and costs) arising from or relating to Guarantor's failure to perform its obligations under the Commitment Letter. This indemnity shall survive the expiration or earlier termination of this Commitment letter.

9. Duty to Keep Informed. Guarantor assumes the responsibility for being and keeping itself informed of the financial condition of Applicant and of all other circumstances bearing upon the risk of Applicant's nonperformance under the Application or the Lease which diligent inquiry would reveal, and agrees that CSFA has no duty to advise the Guarantor of information known to CSFA regarding such condition or any such circumstance.

10. Assignment. This Commitment Letter and each of its provisions shall be binding upon Guarantor and upon the heirs, legal representatives, successors and assigns of the Guarantor, and each of them respectfully, and shall inure to the benefit of Applicant, its successors and assigns, and CSFA. Guarantor will not assign its rights or delegate its obligations, or any part thereof, under this Commitment Letter, voluntarily or by operation of law, without first obtaining Applicant's and CSFA's prior written consent, and any purported assignment or delegation without such consent shall be null and void. Consent by Applicant and CSFA to any such assignment or delegation shall not relieve Guarantor of any of the obligations or liabilities under this Commitment Letter, unless such consent so states.

11. Attorneys' Fees. Guarantor agrees to pay reasonable attorneys' fees and all of the costs and expenses which may be incurred by Applicant and/or CSFA in the enforcement of this Commitment Letter, whether or not action is instituted. Notwithstanding the foregoing sentence, if there is any legal action, arbitration or proceeding between the parties hereto arising from or based on this Commitment Letter or the interpretation or enforcement of any provisions hereof, then the unsuccessful party to such action, arbitration or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and costs, incurred by such prevailing party in such action, arbitration or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, arbitration, proceeding or appeal, then such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

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12. Notices. Any notices or other communications shall be in writing and shall be deemed to have been duly given or made (a) upon receipt when delivered by hand; (b) one business day after being sent by facsimile with transmission receipt verified by the sender; (c) one business day after being sent by Federal Express or other nationally recognized overnight courier for next day delivery, fee prepaid; or (d) three (3) business days after being mailed by first class certified or registered mail, return receipt requested, postage prepaid, in all cases addressed to Guarantor and Applicant at the address set forth above, and to CSFA at the address set forth below, or to such other address as may be designated by a party by written notice given in the manner provided in this Section 12:

To CSFA: Katrina Johantgen, Acting Executive Director
California School Finance Authority
915 Capitol Mall, Room 576
Sacramento, CA 95814
Telephone: (916) 651-7710
Fax: (916) 651-7709

13. Miscellaneous. This Commitment Letter integrates all of the terms and conditions of the parties' agreement regarding the matters mentioned in, or incidental to, this Commitment Letter, and this Commitment Letter supersedes all oral negotiations or prior writings concerning the subject matter of this Commitment Letter. This Commitment Letter may not be modified or amended except by a written agreement signed by Guarantor, Applicant and CSFA. If any provision of this Commitment Letter is held to be invalid or unenforceable, the validity or enforceability of the other provisions hereof shall not be affected, provided that the severance of such invalid or unenforceable provision(s) does not result in a material failure of consideration under this Commitment Letter to any party hereto. This Commitment Letter shall be governed by California law irrespective of its choice of law principals. Time is of the essence in the performance of the obligations of Guarantor under this Commitment Letter. The headings hereof are for convenience only and are not intended to affect the meaning or interpretation of this Commitment Letter. All capitalized terms used in this Commitment Letter, and not defined in this Commitment Letter, shall have the meanings given to them in the Application or under the CSFP. If Guarantor consists of more than one person or entity, each shall be jointly and severally liable to Applicant and CSFA for the faithful performance of each and every of Guarantor's obligations under this Commitment Letter.

The Guarantor has executed this Commitment Letter as of the Execution Date provided above.

Guarantor:

By: _____

Name: _____

Its: _____

By: _____

Name: _____

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Its: _____