

BOARD OF EDUCATION

Special Board Meeting – October 30, 2025

CALL MEETING TO ORDER

The meeting was called to order by Board President Mick Bates at 6:00 p.m. with the following members present: Keegan Barkley, Cassie Kimbrell, Suzanne Patterson (via phone), David Rusterholtz (via phone), and Mr. Bates.

APPROVAL OF AGENDA

MOTION Rusterholtz, second Kimbrell, to approve the agenda.

MOTION CARRIED; Voting Aye – Barkley, Bates, Kimbrell, Patterson, Rusterholtz.

President Bates addressed recent rumors concerning the residences of Board Members Patterson, Rusterholtz, and Kimbrell. He clarified that Patterson and Kimbrell continue to reside at their current addresses, and that Director Rusterholtz, although he has sold his previous home, continues to reside in a property he owns across the street from that location.

LEASE AGREEMENT WITH MERIT ACADEMY FOR 500 E. KELLEY'S RD. WOODLAND PARK, CO 80863

President Bates shared that there have been challenges related to the lease (Addendum A) and that legal counsel is needed to review and discuss the document; however, counsel was unable to attend the meeting. He noted the need to revise the lease language to reference assessed value verses appraised or fair market value. Additionally, Woodland Park should be listed as a co-insurer on the sublease liability policy, which is not currently reflected in the agreement. President Bates emphasized that the Board must maintain ongoing oversight to ensure the charter school's financial health remains aligned with the charter contract and state standards.

Chief Financial Officer David Kuritar shared that he has a fiduciary responsibility to the community, which includes avoid wasting public resources, protecting district assets, and acting in the best interest of all students and taxpayers. He shared a portion of C.R.S. 22-30.5-104(6)(a) "A charter school shall be provided with facilities by its authorizer at no cost to the charter school if the authorizer has space available in school district facilities that is not being used for other educational purposes." He noted that Merit Academy holds a 30-year charter and stated that, in his view, there is no risk of the school lacking space for its operations. He emphasized that capital improvements are needed throughout the entire district. Mr. Kuritar explained that he was not involved in the development of the 30-year charter agreement and, upon review, identified several elements he would have revised. He stated that he would not typically allow the other party to draft the lease agreement and found several provisions of the current draft concerning. He indicated that he has extensively redlined the document and remains dissatisfied with its current form. He also expressed a preference for engaging an attorney with real estate expertise to assist with the review. Kuritar raised concerns about the district potentially losing control of a key asset for 30 years, with two possible 10-year renewals, and questioned provisions that could allow Merit to sublease the property to another party without district approval in the event of a default. Mr. Kuritar suggested including a district reverter clause that would allow for lender payoff and reclamation of the property and questioned why such a clause was not incorporated into the current lease draft.

Mr. Kuritar noted that the exhibit outlining the property description included in the lease does not align with prior discussions, specifically that the softball fields were not intended to be included. He expressed concern with the financial structure of the lease, noting that the district is required to

provide the facility at no rental fee, while Merit Academy would have the ability to sublease the property to a third party and retain all rental income without any financial return to the district. He characterized this arrangement as inequitable. Mr. Kuritar further stated that Merit's five-year financial forecast does not account for the debt service associated with the proposed financing, which he described as significant. He reviewed the proposed use of the \$3 million in projected funding and noted that the forecast assumes the district will continue subsidizing Merit Academy. Additionally, more than \$200,000 in transportation expenses that would be transferred to Merit are not reflected in the financial projections. He explained that, prior to recent years, Merit, consistent with other charter schools in the state, remitted 3–5% of its PPR funding (capped by state at 5%) to the district for oversight and administrative support. That amount, estimated at just over \$200,000, has not been remitted to the district. Mr. Kuritar also expressed concern that several miscalculations appear to exist within Merit's five-year financial forecast.

President Bates noted that there are several challenges to address and wished to provide Mrs. Pekron an opportunity to speak regarding the matter. He further stated that the Board has decided to hold off on finalizing the lease until a more comprehensive agreement can be reached by both parties.

Merit Academy Headmaster Gwynne Pekron stated that Merit Academy is in significant need of facility improvements and emphasized the importance of collaboration with the district to address those needs. She explained that Merit has engaged in discussions with multiple lenders, all of whom indicated that a leaseholder mortgage would be necessary to secure funding. Given the extensive repairs and capital improvements required across other district facilities, Merit pursued alternative options to assist with renovations and upgrades to the building it occupies. Mrs. Pekron noted that, based on lender feedback, specific language was required in the lease agreement to qualify for financing. She reviewed the history of discussions between Merit and district administration and shared that four attorneys, including those with real estate expertise, had participated in drafting the agreement. She expressed confidence that the proposed lease contains the language needed to obtain loan funding.

Mrs. Pekron reviewed the Merit Academy five-year fiscal forecast, noting reductions in teacher raises and staffing levels, including some teachers and teacher assistants. The forecast incorporates transportation and student fees, and enrollment projections remain strong, with Merit continuing as the district's second-largest school. She acknowledged that Merit anticipated liability for transportation costs following the end of the Colorado five-year average, which affects district centralized services funding. The academy is budgeting conservatively due to uncertainties in state PPR (Per Pupil Revenue) funding. A recent independent facility assessment identified approximately \$14 million in required repairs. The assessor expressed concern about the condition of the roof—citing multiple holes and recommending review of the roof warranty—and also noted security issues with doors that at one point required chains for safety. Despite these challenges, Merit's goal is to assist the district in addressing facility repair burdens. Although the budget remains tight, auditors have reported that the school's finances are sound and that Merit remains financially stable.

Secretary Rusterholtz inquired whether an additional meeting would be scheduled for Monday to vote on the lease agreement. President Bates confirmed that no meeting would be held Monday, explaining that further adjustments to the lease are needed before both parties can reach an agreement and have further discussion before it can be voted on. Director Barkley stated that she continues to have concerns about the lease agreement and felt that scheduling an emergency meeting on Monday would be a rushed decision. She emphasized that if the lease is sound, there should be no need to advance it hastily out of fear. President Bates reiterated that revisions to the lease are still necessary.

Kimbrell asked Mr. Kuritar whether he knew the operational costs for the building currently occupied by Merit. Mr. Kuritar responded that he did not have a specific total, as it would include costs from both Merit and the district. Mrs. Pekron estimated the operational costs covering gas, water, and electricity, but excluding custodial and maintenance expenses at approximately \$280,000.

Director Barkley clarified that, according to language in the proposed lease agreement, if Merit were to default on the loan, the loan holder would assume control of the lease, leaving the district without authority over the building. She asked Mr. Kuritar if he had additional information to share. Mr. Kuritar stated that he stands by his financial data and expressed concern regarding student safety in light of earlier comments about doors being chained. He asked Mrs. Pekron whether all state capital construction funds had been spent during fiscal year 2025. Mrs. Pekron responded that not all funds were expended, noting that some were used to repair failing doors. Mr. Kuritar shared that a meeting with Glen Gustafson from the Colorado Department of Education finance office, along with Merit and district administration, is scheduled for November 10. He indicated that the "true-up" financial figures would be provided to Merit the following day. He recommended that both the Facility Use Agreement and the district's facility use plan be updated. Mr. Kuritar expressed hope that confidence could be restored to potentially reinstate a sales tax or similar funding mechanism, which could remove the need for Merit to pursue a loan. He cautioned that executing the lease and taking on a loan could place Merit in a difficult financial position, which he hopes to avoid.

Director of Maintenance and Facilities Jason Farris expressed his commitment to improving all district buildings and stated that he has been very impressed with Mr. Kuritar's efforts, believing he can help get the district back on track. Farris reported that district-wide facilities have approximately \$25 million in relatively immediate needs over the next five years. Specifically, he estimated that the building occupied by Merit requires about \$1.4 million in improvements. He voiced concern about the district not having control over such a valuable asset to solve a \$1.4 million-dollar problem. Drawing from his experience owning and leasing commercial properties, Farris stated that, as a landlord, he would not sign the lease agreement in its current form.

Interim Superintendent Ginger Slocum thanked Mr. Kuritar and his team for their continued efforts to maintain fiscal responsibility. She emphasized that while everyone wants Merit Academy to be successful, the district must also remain fiscally responsible as a whole. Slocum stated that slowing the process down, rebuilding trust with the community, and completing the audits represent important first steps in the right direction. She added that the ultimate goal is to find a collaborative path forward for the benefit of students, noting that it will always be about the students. She expressed her support for the success of all district schools. Director Kimbrell agreed with the approach to slow the process and observed that it appears the lease agreement will be entirely reworked. Director Barkley requested to be included in future meetings regarding the lease agreement. Secretary Rusterholtz and Director Patterson provided formal confirmation of their residency.

PUBLIC COMMENT

The following list of people (name and topic they listed when signing up to speak) made public comment to the Board of Education in order of speaking: *Patty Glatfelte*, community member, lease; *Kelly Hunsaker*, community member, lease; *Shannon Vollaro*, parent, lease; *Steven Roshek*, community member, own; *Mary Ward*, parent, lease; *Megan Jauregi*, parent, lease; *Rev. Nathan Williams*, taxpayer, lease; *Teri Miller*, community member, lease; *Sharon Roshek*, grandparent, lease; *Susan O'Conner*, community member, lease; *Anita Ames*, community member, lease; *Pat Byrne*, taxpayer, lease; *Michael O'Connor*, community member, lease; *Gail Gerig*, stakeholder, lease; *Pat Miller*, community member, lease; *Kelly Strong*, community member, lease; *Khurshid Rogers*, community

member, lease; *Carissa Hiteshew*, parent, lease; *Holly Sample*, community member, lease; *Sara Lee*, community member, lease; *Jessi Pool*, parent, lease; *Rachel Priest*, staff, lease.


Rusterholtz left meeting (via phone connection) at 7:27 p.m. and rejoined at 7:48 p.m.

ADJOURN SPECIAL MEETING

MOTION Kimbrell, second Barkley, to adjourn the meeting at 8:23 p.m.

MOTION CARRIED; Voting Aye – Barkley, Bates, Kimbrell, Patterson, Rusterholtz.

Attest:

A handwritten signature in black ink that reads "DAVID RUSTERHOLTZ". The signature is written in a cursive style with a large initial "D".

Board of Education Secretary

A handwritten signature in black ink, appearing to be "Patty Bates". The signature is written in a cursive style.

Board of Education President

WOODLAND PARK SCHOOL DISTRICT RE-2**LEASE AGREEMENT**

THIS LEASE AGREEMENT (herein, "Lease," "Agreement" or "Lease Agreement") is made effective as of _____, 2025 (the "Effective Date") between Woodland Park School District RE-2, a political subdivision of the State of Colorado ("Lessor"), having its administrative offices located at 155 Panther Way, Woodland Park, CO, 80863, and Merit Academy Building Corporation, a Colorado non-profit corporation ("Lessee"), with its principal office located at 500 E. Kelley's Rd., Woodland Park, CO 80863. Lessor and Lessee may also be collectively referred to as the "Parties" in this Agreement.

RECITALS

A. Lessor, in its capacity as authorizer of Merit Academy, and Merit Academy, are parties to a charter school contract as authorized pursuant to the Colorado Charter Schools Act, C.R.S. 22-30.5-101, et. seq. ("Merit Academy Charter Contract") dated as of _____, 2025, for a term currently expiring _____, 2055, which governs Merit Academy's operation as a charter school in the Woodland Park School District.

B. Lessor is the owner of certain real property, including all land and all improvements thereon, situated in Woodland Park, Colorado, located at 500 E Kelley's Rd., Woodland Park, CO 80863 (formerly 600 E. Kelley's Rd., Woodland Park, CO 80863). Located at the address there exists a school building, parking lots and service drives, grounds, football field, track and surrounding property (herein, "Property"), and further described in Exhibit A. Lessor desires to enter into this Lease with Merit Academy Building Corporation on the understanding that the Merit Academy Building Corporation will make available the Property for use to Merit Academy (Sublessee) for its operations and educational programs pursuant to an assignment or sublease as provided herein.

SECTION ONE: LEASE OF PROPERTY

NOW THEREFORE, in consideration of the foregoing Recitals and in consideration of the covenants, and agreements contained in this Lease, which are incorporated herein as though set forth in full and for other good and valuable consideration, the receipt and sufficiency is hereby acknowledged by Lessor and Lessee, the Lessor agrees to lease the Property to Lessee for the consideration amount (herein, "Consideration"), and upon the terms and conditions set forth in this Lease.

SECTION TWO: TERM

The Lessor agrees to lease the Property to Lessee for a minimum Term of thirty (30) fiscal years, which such Term shall commence on the date of the signing of this Lease Agreement. -The Parties may also mutually agree in writing to extend the Term for any length of time to which both Parties mutually agree.

SECTION THREE: CONSIDERATION

Lessee shall pay Consideration for the Lease, which such Consideration is defined as the actual costs to operate and maintain the Property in a legally sufficient condition to support its operations and educational programs, which such costs shall include, without limitation, all utility costs, custodial and trash services, technology systems, and maintenance and repair of the Property (except as otherwise provided in Section Four with respect to shared maintenance of athletic fields). In order to reduce overhead and administrative costs, such costs shall be billed directly to the Lessee and/or its Sublessee(s) without need for flow-through billing from the Lessor to the maximum extent possible.

SECTION FOUR: OBLIGATIONS OF LESSOR AND LESSEE

A. **As Is Occupancy.** Lessee accepts the Property in its present condition. Occupancy of the Property by the Lessee shall be conclusive evidence as against the Lessee that the Property was in good and satisfactory condition when Lessee took occupancy. Lessee represents and warrants that it had adequate opportunity to inspect the Property and accepts the condition of the Property "as is." Except as provided in this Agreement, Lessor has not promised to improve the Property and has made no representation as to the condition of the Property.

B. **Capital Improvements.** Lessee may only make Capital Improvements to the Property with the permission of the Lessor, which shall not unreasonably be withheld. "Capital Improvement" is defined as any structural alterations, additions, improvements, repairs, renovations and appurtenances made to the Property. "Capital Improvement" does not include any temporary or portable structure, such as a modular classroom, nor any routine or minor maintenance or repair, including but not limited to, for example: replacement of a window or door, or repair of a leaking faucet. Lessor hereby grants permission for Lessee to make the Capital Improvements contained in Exhibit C, provided that construction has commenced within five years from the effective date of this Lease. Lessee will ensure Capital Improvements are accomplished in a good and workmanlike manner with licensed trades and properly permitted, and materials of comparable kind and quality, or greater, to those materials already used at the Property. If any Capital Improvement results in damage to the Property, Lessee is responsible for the accomplishment and cost of repairs. Any Capital Improvements made during the lease term that are permanently affixed to the Property shall become the property of Lessor, but any removable Capital Improvements shall remain property of the Lessee.

Lessee will comply with all applicable laws in making Capital Improvements to the Property. Lessee agrees that no Capital Improvements will diminish the value or integrity of the Property.

C. **Security Requirements.** Lessee shall comply with security procedures for the Property as required by law.

D. **Lessee's Use of Property.** Lessee shall have access to the Property for its operations and those of its sublessees, subject to all applicable laws, ordinances, rules, regulations, and requirements of federal, state, municipal, and local government entities.. Lessee may manage and contract for third parties' use of specific facilities on the Property, such as the gymnasiums, fields, or other facilities for community or recreational purposes in its sole discretion, including the prioritization of events and/or users, and the setting and collection of fees for the use, provided that each user presents proof of the purchase of organizational liability insurance to the limit prescribed by such rules. Any sublease or third-party use exceeding ninety (90) days in duration shall be subject to the requirements of Subsection V below.

E. **Duty to Vacate.** Upon the expiration of the Term or termination of this Lease Agreement, Lessee shall deliver the Property in as good a state or condition as when occupancy first commenced, excepting reasonable use and normal wear and tear of the Property.

F. **No Liens.** Lessee covenants and agrees that nothing contained in this Lease Agreement shall be construed as consent by Lessor to subject Lessor to liability for a lien of any type. Lessee covenants not to suffer any mechanics', laborers' or materialmens' liens to be filed against the Property or any portion thereof or any interest therein by reason of any work, labor, services performed at, or materials furnished to, or claimed to have been performed at, or furnished to, the Property by, or at the direction or sufferance of Lessee. Lessee's compliance requires promptly contesting any filed mechanics' or similar lien upon receipt of any notice for the same. Thereafter, Lessee will immediately post a bond in an amount sufficient for the removal of the lien while contesting the matter.

G. **Lessor Access to Property.** The Lessor shall be permitted, at reasonable times, and with at least 24 hours' notice (unless in case of emergency, in which case access shall be immediately permitted) to enter the Property for any one or more of the following purposes: (i) inspection of the Property; (ii) performing maintenance, repairs, replacement, or other work that has been requested or permitted by Merit Academy; and (iii) delivery and preparation of meal service, (iv) any other legitimate purpose that may in the future be agreed to by the Parties.

H. **Use of the Property.** Lessee covenants at all times during the Term and any further time as it may cause the Property to be occupied to use the Property in compliance with the following:

(1) Neither Lessee, nor any of its Sublessee(s), agents, contractors, employees, or invitees shall at any time handle, use, manufacture, store, or dispose of in or about the Property, in violation of the law, any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives, or any substances (collectively "Hazardous Materials") subject to regulation by or under any federal, states, or local laws and ordinances relating to the protection of the environment or the keeping, use, or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws").

(2) To promptly comply with the following that are not the responsibility of the Lessor: (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal, and local governmental departments, commissions, boards and officers with respect to the Property; (ii) all orders, rules, and regulations of the National Board of Fire Underwriters, Colorado Inspections, all city and county inspections, appropriate Rating Bureau(s), the local Board of Fire Underwriters, or any other body or bodies exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Property; and (iii) all insurance policies and the recommendations of all insurance inspections and insurance carriers with respect thereto at any time in force with respect to the Property or any part thereof.

I. **Lessor/Lessee Insurance Requirements.** Refer to Exhibit B attached for additional insurance requirements. The Lessor will maintain, at the cost of Lessee,- property insurance for all buildings and real property improvements and fixtures on the Property (the "Facility"), in accordance with the Lessor's policies and procedures, for the full replacement value of the Facility. The Lessor shall have the right to provide such property insurance under a statewide school district self-insurance pool program, a School District self-insurance program, or at any time during the Term of this Agreement, to provide such insurance through an insurance company at Lessor's option.

J. **Damage Not Covered.** In the event that damage to the Property is attributable to any negligent or intentional acts of Lessee, its Sublessee(s), employees, agents, students, or invitees, Lessee shall be responsible for all costs and expenses relating to such damage.

K. **Insurance.** Unless otherwise expressly agreed by Lessor, Lessee shall cause to be maintained reasonably available insurance to cover damage to Lessor's personal property and Lessor-owned fixtures, betterments, and improvements not covered by existing coverage. Lessee and Lessor hereby agree that, in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look first to its own applicable insurance for recovery.

L. **No Waiver of CGIA.** No term or condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, § 24-10-101 et seq, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the respective parties, their departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq, C.R.S., as now or hereafter amended. Any provisions of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Lessor, the Lessee, and/or any Sublessee(s), in accordance with such governmental immunity.

M. **Lessor's Right to Self-Perform.** If Lessee fails to perform any of its obligations under this Agreement, Lessor may (but shall have no obligation to) perform the work at the expense of Lessee after giving written notice fifteen (15) business days in advance to Lessee and/or any Sublessee(s). Lessee shall pay to Lessor any actual and reasonable costs, fees, and expenses incurred that were required to remedy the issue.

N. **Notices.** Lessee will promptly report to Lessor giving written notice fifteen (15) business days any and all filed, pending or threatened claims or charges, reasonably cooperate with the Lessor in the defense of any claims asserted against Lessor, its board members, agents or employees arising from or related to the operation of the Property, and comply with the defense and reimbursement provisions of the Colorado Governmental Immunity Act and applicable insurance policies.

O. **Subordination.** During the Term of this lease, Lessor understands, acknowledges, and agrees that Lessor has no right to subordinate this leasehold interest to any other interest of Lessor or any third party.

P. **Non-Disturbance.** So long as Lessee is not in default, beyond any period given to Lessee to cure a default or in the performance of any of the terms, covenants, or conditions of the Agreement, Lessee's possession of the Property and Lessee's rights and privileges under the Lease, including any extensions or renewals, shall not be diminished or interfered with by Lessor, or any successor in interest to Lessor, during the term of the Agreement or any extensions or renewals.

Q. **Hold Harmless.** To the extent permitted by law, Lessee agrees to absolutely defend, indemnify, and hold the Lessor harmless from and against any and all claims, actions, lawsuits, damages, liabilities, and expenses arising from: (a) an act, neglect, fault, or omission causing the loss by Lessee, its Sublessee(s), its agents, officers, employees, volunteers, contractors, students, visitors, or invitees; (b) the conduct or management of any work or thing whatsoever done by Lessee or its Sublessee(s) in or about the Property; (c) Lessee or its Sublessee(s) failure to comply with any and all governmental laws, ordinances, and regulations applicable to the use of the Property and its occupancy; (d) any breach or default on the part of Lessee or its Sublessee(s) in the performance of any covenant or agreement to be performed pursuant to this Agreement; or (e) any lawsuits or other legal actions related to the Property, regardless of cause or fault. To the extent permitted by applicable law, the provisions of this Article shall survive the termination of this Agreement.

R. **Default.**

(1). **Default by Lessee.** The occurrence of any one or more of the following shall constitute an "Event of Default" by Lessee under this Agreement: (a) Lessee's failure to pay Consideration hereunder within ninety (90) days after written demand; (b) Lessee's failure to perform or observe any other material term, covenant, or condition of this Agreement, and such failure continues for a period of more than ninety (90) days after the date Lessee receives written notice from Lessor notifying Lessee of the material default sufficiently described to Lessee; provided, however, Lessee shall have such extended period as may be required beyond the ninety (90) days if the nature of the cure is such that it reasonably requires more than ninety (90) days and Lessee commences the cure within the cure period and thereafter continuously and diligently pursues the cure to completion in a reasonable period of time; (c) Lessee's interests hereunder being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding of Merit Academy; (d) if Merit Academy is no longer a charter school authorized by the Lessor; or (e) Lessee's vacation or abandonment of the Property, which abandonment is defined to include, but is not limited to, failure to conduct business at the Property during any sixty (60) business day period, other than abandonment due to casualty damage, repairs or alterations (holiday or summer breaks or any period where the school is closed due to public health or environmental concerns, natural disasters, repairs, or similar shall be excluded from such abandonment).

(2). **Default by Lessor.** An Event of Default by Lessor under this Agreement shall be deemed to have occurred if Lessor fails to perform or observe any material term, covenant, or condition of this Agreement and such failure continues for a period of more than ninety (90) days after the date Lessor receives written notice from Lessee or Merit Academy notifying Lessor of the specified failure; provided, however, Lessor shall

have such extended period as may be required beyond the ninety (90) days if the nature of the cure is such that it reasonably requires more than ninety (90) days and Lessor commences the cure within the ninety (90) day period and thereafter continuously and diligently pursues the same to completion. In the Event of Default by Lessor, the Lessee shall have the right to file any action necessary or appropriate to seek performance of Lessor's obligations under the terms of this Agreement. Additionally, the Lessee shall also have the right, in the Event of Default by the Lessor, to terminate this Agreement. The Lessee and/or Merit Academy or other sublessee shall be entitled to recover from the Lessor all damages incurred by reason of the Lessor's default (including expenses, costs, and attorney's fees) and termination of this Agreement shall not extinguish the right to pursue any such claims or damages.

(3). **Remedies For Lessee Default.** In the case of an Event of Default by Lessee, Lessor understands, acknowledges and agrees that Lessee has the right to secure either an alternate lessee or a sublessee for the Property, and Lessor shall allow this remedy prior to seeking its own remedies for Default. After Lessee is given the opportunity to exercise its right to seek an alternate lessee or sublessee for the Property and fails to do so within a ninety (90) day period, Lessor shall have such remedies for the Default, including without limitation termination of this Agreement and taking immediate possession of the Property and revoking Lessee and Merit Academy access to the Property after providing a reasonable time for Lessee and Merit Academy to vacate the Property. If a Lessee Event of Default occurs, then Lessor, with or without terminating this Agreement, may elect to enter the Property and take possession pursuant to legal proceedings or pursuant to any notice provided for by law. If Lessor terminates this Agreement pursuant to Lessee Default, then Lessee and Merit Academy's right to possess the Property will cease and the Lessee and Merit Academy shall immediately vacate the Property within sixty (60) days after notice of termination, in accordance with the terms and conditions of this Agreement. The Lessor and/or other assignees shall be entitled to recover from the Lessee all damages incurred by reason of the Lessee's default (including expenses, costs, and attorney's fees) and termination of this Agreement shall not extinguish the right to pursue any such claims or damages.

S. **Facility Damage/Destruction.** If damage or destruction to the Property due to fire or other casualty renders the Property or the Facility unusable to Lessee, then Lessor, Lessee and Merit Academy or its successor may elect to coordinate reasonable efforts to locate another facility for Merit Academy or its successor to continue operations, if available. The Property will be deemed unusable when damage, at a minimum, substantially impairs the ability of Merit Academy, or any sublessee, to operate as a charter school in a fiscally responsible manner, or if continued operation would place any student or staff at risk of physical harm or danger. For so long as any Leasehold Mortgage encumbers this Lease and the Property as provided below, Lessor

shall apply insurance proceeds to repair or rebuild the damaged portion of the Property or the Facility as required by the Leasehold Mortgage, provided that Lessor's obligation to fund such repairs or rebuilding shall be limited to the lesser of the actual cost of the repairs or rebuilding or the insurance proceeds received by Lessor for such damage. The Parties agree to diligently pursue the completion of said restoration to its condition prior to said casualty, subject to the availability of such insurance proceeds.

T. **Dispute Resolution.** The method of resolving any dispute between the Parties that arises under this Agreement shall be the same as that provided within the Charter Contract.

U. **Eminent Domain.** In the event of an eminent domain proceeding against the Property that renders the Property unsuitable for Lessee's purposes, either the Lessor or the Lessee may elect to terminate this Agreement as of the date of the actual taking by eminent domain, by notice to the other party delivered as soon as reasonably practicable after a party receives notice or otherwise becomes aware of such proceedings. If there is any award or payment by the condemning governmental entity to the Lessor, Merit Academy shall be entitled to that amount commensurate with any increase in property value reasonable traceable to its operations, maintenance, or improvements. Additionally, Merit Academy may seek a separate award from the condemning authority for costs associated with the termination of its operations. The provisions of this paragraph shall be subject to the rights of any Leasehold Mortgagee under a Leasehold Mortgage as provided below, if any.

V. **Assignment and Subletting.** The Lessee may, without further approval or consent of the Lessor, assign or sublease the Property to Merit Academy to use in accordance with its Charter Contract. In addition, Lessee may sublease to any third party-in the Event of Default by Lessee or if Merit Academy ceases use of the Property and the Term of the Agreement is ongoing, Lessee shall ensure any sublessee shall execute a sublease that contains Lessee's same duties, obligations, and rights under the terms of this Agreement, including, without limitation, the obligation to use the Property and the Facility for educational purposes.-If this Agreement were terminated as allowed by the terms of this Agreement, then the sublease or assignment between the Lessee and Merit Academy or its successor shall convert to a direct lease between Merit Academy or its successor and the Lessor on the same terms and conditions as provided in this Agreement as allowed by law.

W. **Right of First Refusal.** Right of First Refusal. In the event Lessor desires to sell the Property, or any portion thereof, during the Term of this Agreement, or at any time that Merit Academy lawfully is in possession of the Property, Lessor shall provide written notice to Lessee and/or Merit Academy of its intent to place the Property on the market for sale. Lessee and/or Merit Academy shall have thirty (30) days from receipt of such notice to respond in writing indicating their intent to exercise their right of first refusal to purchase the Property. Lessee and/or Merit Academy shall have the right of

first refusal to purchase the Property from Lessor at a price no less than 95% of the appraised fair market value, or on any terms which are mutually agreeable to the Parties.

X. **Renewal.** In the event the Term, or any hereafter term of this Agreement that is in effect concludes and (1) Merit Academy continues to be in material compliance with its Charter Contract; (2) Merit Academy continues to conduct its operations as a public school in the Woodland Park School District, and (3) Lessee and its Sublessee(s), or any successor in interest/assign(s), are in material compliance with the terms of this Agreement, then this Lease shall renew for a period of ten (10) years. This automatic renewal process shall continue, with successive ten-year terms on the same terms and conditions as this Agreement, so long as the conditions of this section 4(X) are satisfied.

Z. **Division of Responsibilities Regarding Fields, Tracks, or Other Facilities.** Notwithstanding any other provision in this Agreement regarding maintenance, the Parties agree that use, maintenance, and repair of the athletic field, commonly referred to as the softball field, including any associated costs, on the Property shall be the sole responsibility of the Lessor. Scheduling of the softball field shall be the responsibility and decision of the Lessor. The use, maintenance, and repair of all other fields, tracks, or facilities shall solely be the responsibility of the Lessee. Scheduling of any field, track, or facility, other than the softball field, shall be the responsibility and decision of the Lessee.

SECTION FIVE: LEASEHOLD MORTGAGES

A. **Leasehold Mortgage.** Lessee shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor's consent, to mortgage or grant a security interest in Lessee's interest in this Lease and the Property and any subleases, under one or more mortgages, deeds of trust, financing statements, security agreements, sale-leaseback instrumentation, and other documentation that a lender may require (each a "Leasehold Mortgage"), and to assign this Lease and any subleases as collateral security for such Leasehold Mortgages, on the condition that all rights acquired under such Leasehold Mortgages shall be subordinate and subject to each and all of the covenants, conditions, and restrictions set forth in this Lease. Notwithstanding anything contained herein to the contrary, the leasehold mortgage shall be an encumbrance or lien only on Lessee's interest in the Lease and the leasehold estate created hereunder and in no event Lessor's fee interest in the Property.

B. **Leasehold Mortgagee Provisions.** If Lessor is provided written notice specifying the name and address of the holder of or secured party under a Leasehold Mortgage (a "Leasehold Mortgagee"), then as long as such Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply (in respect of such Leasehold Mortgage and of any other Leasehold Mortgages):

(i) No Modification or Amendment of this Lease. Except as expressly provided otherwise below, there shall be no amendment or modification of this Lease without the prior written consent of the Leasehold Mortgagee. Nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and the leasehold estates in the Property.

(ii) Leasehold Mortgagee Notice. Lessor shall, upon serving Lessee with any material notice, whether of an Event of Default or any other material matter, simultaneously serve a copy of such notice on the Leasehold Mortgagee, and no such notice to Lessee shall be deemed given or effective unless and until a copy is so served on the Leasehold Mortgagee in the manner provided in this Lease for giving notices.

(iii) Right to Cure. In the event of any default by Lessee under this Lease, each Leasehold Mortgagee has the same period as Lessee has, plus thirty (30) additional days, after receipt of notice of such default, in which it may remedy or cause to be remedied or commence and complete the remedy of the default, and Lessor shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. Each notice of default given by Lessor will state the amounts of whatever Consideration or other obligations are then claimed to be in default.

(iv) Postponement of Termination. If Lessor elects to terminate this Lease by reason of any Lessee default, the Leasehold Mortgagee shall, in addition to the rights granted under the preceding Section, also have the right to postpone and extend the specified termination date of this Lease as fixed by Lessor in its termination notice, for a period of ninety (90) days, provided that the Leasehold Mortgagee shall cure or cause to be cured any then-existing non-monetary default and any existing monetary default, and provided further that the Leasehold Mortgagee shall forthwith take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgagee or otherwise and shall prosecute the same to completion with due diligence. If, at the end of the ninety (90) day period, the Leasehold Mortgagee is actively engaged in steps to acquire or sell Lessee's interest, then the time period within which the Leasehold Mortgagee must comply with the provisions of this Section 5 shall be extended for such period as is reasonably necessary to complete such steps with reasonable diligence; provided, however, that the Leasehold Mortgagee shall continue to perform all of the monetary and non-monetary obligations of Lessee under this Lease. In the event the Leasehold Mortgagee fails to comply with all monetary and non-monetary obligations of Lessee under this Lease, then Lessor shall have the right to enforce all of its rights and remedies hereunder, without further notice to Leasehold Mortgagee and without further delay, including, without limitation, the right to terminate this Lease.

(v) Additional Insured. Lessee agrees that the Leasehold Mortgagee will be named as an Additional Insured to any and all insurance policies required to be carried by Lessee.

(vi) New Lease. Lessor agrees that in the event of termination of this Lease by reason of Lessee's default, and provided that the Leasehold Mortgagee has timely cured and complied with all of Lessee's monetary and non-monetary obligations within sixty (60) days of the termination notice, Lessor will enter into a new lease of the Property with the Leasehold Mortgagee or its nominee: (i) for the remainder of the Term, effective on the date of such termination; (ii) at the Consideration and on the terms, provisions, covenants, and agreements contained in this Lease; (iii) subject only to the same conditions of title as this Lease is subject to on the date this Lease is executed; and (iv) subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(1) Written Request. The Leasehold Mortgagee or its nominee shall make written request on Lessor for such new lease within fifteen (15) days after the date of termination indicated in the notice of termination given to Leasehold Mortgagee and such written request shall be accompanied by payment to Lessor of Consideration then due to Lessor under this Lease and performance of all non-monetary obligations of Lessee under this Lease.

(2) Payment of Consideration; Expenses. The Leasehold Mortgagee or its nominee shall pay to Lessor, at the time the new lease is executed and delivered, any and all Consideration that would be due at the time of the execution and delivery of the new lease pursuant to this Lease but for the termination of this Lease, and in addition any expenses, including reasonable attorneys' fees, court costs and the cost of expert witnesses to which Lessor shall have been subjected by reason of (i) such default; and (ii) the preparation, execution and delivery of the new lease.

(3) Covenants. The Leasehold Mortgagee or its nominee shall perform and observe all covenants contained in this Lease on Lessee's part to be performed; and on execution and delivery of such new lease, any subleases that may have been assigned and transferred previously by Lessee to Lessor, as security under this Lease, shall then be held by Lessor as security for the performance of all the obligations of Lessee under the new lease.

(4) Subject to the Rights of Lessee. Such new lease shall be expressly made subject to the rights, if any, of Lessee under the then terminated Lease.

(5) Building, Improvements and Equipment. The Leasehold Mortgagee or its nominee as Lessee under such new lease shall have the same right, title,

and interest and obligations in and to and with respect to the building, the improvements or the equipment on the Property as Lessee has under this Lease.

(6) No Obligation to Cure. Notwithstanding anything to the contrary set forth in this Lease, except as otherwise expressly described above, the Leasehold Mortgagee or its nominee shall have no obligation to cure any default of Lessee.

(vii) Amendment of Lease. Lessor agrees to cooperate in good faith with Lessee and to enter into minor amendments to this Lease from time to time to the extent reasonably requested by a lender proposing to make a loan to Lessee secured by a Leasehold Mortgage, provided that such proposed amendments do not materially and adversely affect any right of Lessor or Lessor's interest in the Property.

(viii) Notice of Proceeding. The Leasehold Mortgagee shall be given notice of any proceeding or dispute by or between the parties and shall have the right to be kept advised of any such proceeding. In any event, each Leasehold Mortgagee shall receive notice of, and a copy of, any award or decision made in the proceeding.

(ix) Leasehold Mortgagee not Liable for Lessee's Obligations. Except as otherwise expressly set forth herein, no liability for the payment of Consideration or the performance of any of Lessee's covenants and agreements shall attach to or be imposed on the Leasehold Mortgagee (other than any obligations assumed by the Leasehold Mortgagee), all such liability (other than any obligations assumed by the Leasehold Mortgagee) being expressly waived by Lessor. Nothing contained in this Section 5 shall be construed to excuse the Leasehold Mortgagee from paying Consideration and performing the obligations of Lessee as required by this Section 5 in order to be entitled to the rights granted to the Leasehold Mortgagee pursuant to this Section 5.

(x) Agreement. Lessor, on request, shall execute, acknowledge, and deliver to each Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Leasehold Mortgagee and Lessor, among Lessor, Lessee, and the Leasehold Mortgagee, agreeing to all the provisions of this Section 5.

SECTION SIX: MISCELLANEOUS

A. **Waiver.** The waiver by either party of any term, covenant, or condition herein contained will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

B. **Captions.** Captions or headings contained in this Agreement will not be construed to be a part of the Agreement but are included for the purposes of convenient reference only.

C. **Prior Agreements.** This Agreement contains all of the agreements of the Parties hereto with respect to the matters covered by this Agreement, and no prior agreements or understandings, whether written or oral, pertaining to any such matter will be effective for any purpose.

D. **Amendment.** No provisions of this Agreement may be amended or added to except by an agreement in writing signed by the Parties or their respective successors in interest. This Agreement will not be effective or binding on any party until fully executed by both Parties or their respective successors in interest.

E. **Severability.** Any provision of this Agreement which proves to be invalid, void or illegal will in no way affect, impair or invalidate any other provision or provisions hereof, and such other provisions will remain in full force and effect.

F. **Cumulative Remedies.** No remedy or election of either Party hereunder will be deemed exclusive but will, whenever possible, be cumulative with all other remedies at law or in equity.

G. **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of Colorado and exclusive venue of any action arising hereunder shall be in Teller County, Colorado.

H. **Counterparts.** This Agreement may be executed electronically and in counterparts, and each executed counterpart will have the force and effect of the original Agreement.

I. **Relationship of Parties.** Nothing herein contained will be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties, it being understood and agreed that neither the method of computation of Consideration, nor any other provision contained herein, nor any acts of the parties, will be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.

J. **Immunities.** Nothing in this lease, including, without limitation, any indemnification provisions, shall be construed to forfeit the ability of either party to assert any legally valid immunities, including, without limitation, governmental immunity.

K. **Authority.** The individual officers, agents and employees of the Parties hereto who execute this Agreement do hereby individually represent and warrant that they have full power and lawful authority to execute this Agreement and perform the

transactions contemplated hereunder, on behalf of and in the name of their respective principals and/or employers.

L. **Days and Computation of Time.** As used in this agreement, "days" shall mean calendar days, unless otherwise specifically provided. However, any deadline, duty, or obligation that falls on a Saturday, Sunday, or legal holiday, shall be extended until the next day which is not a Saturday, Sunday, or legal holiday.

M. **Exhibits.** The following Exhibits attached to this Agreement are incorporated herein and made a part hereof by this reference:

Exhibit A: Map of the Property

Exhibit B: Insurance Requirements

Exhibit C: List of Approved Capital Improvements

N. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served and effective:

(1) as of the day of delivery if delivered in person, by messenger, overnight delivery service or a party's attorney or agent, or

(2) on the day after delivery of registered or certified mail, return receipt requested, postage prepaid, or

(3) on the next business day if sent prepaid overnight courier service for next business day delivery

O. **Annual Reporting:** Lessee shall annually submit to Lessor a written report, due within thirty (30) days of the fiscal year-end, detailing all active Leasehold Mortgages and assignments or subleases, including the identity of lenders, assignees, or sublessees, and confirmation of compliance with the terms of this Agreement."

All notices shall be addressed as follows

Charter School:

Merit Academy Attn: Headmaster

500 E Kelleys Rd., Woodland Park, CO 80863

Lessee:

Merit Academy Building Corporation
Attn: Executive Director
500 E Kelleys Rd., Woodland Park, CO 80863

Woodland Park School District Superintendent
155 Panther Way Woodland Park, CO 80863

Either party may from time to time change the names or addresses furnished for notice hereunder by giving written notice of said change to the other party in accordance with the notice provisions set forth above.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date written below.

WOODLAND PARK SCHOOL DISTRICT RE-2

_____ Date: _____

Mick Bates

Board of Education President

MERIT ACADEMY BUILDING CORPORATION

_____ Date: _____

Gwynne N. Dawdy Pekron

Executive Director

EXHIBIT A: Map of the Property

EXHIBIT B: Insurance Requirements

General Conditions:

Lessee agrees to cause to be secured, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement, which such insurance shall be in force at all times during the Term of the Agreement, or any extension thereof.

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VI11 or better. Each policy shall contain a valid provision or endorsement requiring notification to Lessor in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.

If such written notice is unavailable from the insurer, the Lessee shall cause to be provided written notice of cancellation, non-renewal and any reduction in limits to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Lessee or its Sublessee(s). The Lessee shall cause to be maintained, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement

Proof of Insurance:

The Lessee shall cause to be provided a copy of this Agreement to its insurance agent or broker. The Lessee shall cause to be provided to Lessor all required certificates of insurance and additional insured endorsements. The Lessee or its sublessees may not commence services or work relating to the Agreement prior to placement of coverage. The Lessee certifies that the certificate of insurance complies with all insurance requirements of this Agreement. The Lessor's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement, shall not act as a waiver of the Lessee's breach of this Agreement or of any of the Lessor's rights or remedies under this Agreement. The Lessor's Business Services Department may require additional proof of insurance including but not limited to policies and endorsements.

Additional Insureds:

For commercial General Liability and Auto Liability, the insurer(s) shall name Woodland Park School District RE-2, and its elected officials, employees, representatives, and agents, as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Lessee or its Sublessee(s).

Contents (FFE):

The Lessee is responsible for causing to be insured any third party contents, furniture, fixtures, equipment, betterments and improvements and shall maintain All-Risk Form Property Insurance on a replacement cost basis in an amount not less than the current value of its contents, furniture, fixtures and equipment.

Builder's Risk or Installation Floater:

For any construction, remodel or renovation projects managed through the Lessee or its-Sublessee(s), the Lessee shall cause to be maintained limits equal to the completed value of the project. The policy shall not include a co-insurance clause, and any deductible amounts under such insurance policy shall be the responsibility of Lessee. Coverage shall be written on an all risk replacement cost basis including coverage for soft costs flood and earth movement, and, if applicable, equipment breakdown coverage including testing. Woodland Park School District RE-2 contractor and subcontractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by Lessee or its-Sublessee(s).

Subcontractors and Subconsultant:

All Subcontractors and Subconsultants including Independent Contractors, Suppliers or other entities providing goods or services required by this Agreement, shall be subject to all of the insurance requirements. The Lessee shall cause to be included all such Subcontractors as Additional Insured under such policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors and Subconsultants maintain the required coverages. If Subcontractors and Subconsultants cannot meet any of the insurance coverage requirements, the Lessee shall confer with the District's Business Services Department to determine whether the insurance coverages herein may be modified or waived.

EXHIBIT C: Capital Improvements