

## DRAFT

### FIRST AMENDMENT TO LEASE AGREEMENT

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** (“Amendment”) is made February [\_\_\_], 2018 (“Amendment Effective Date”) between **COLORADO MILITARY ACADEMY, INC.**, a Colorado public charter school and nonprofit corporation (“Tenant”), and **COLORADO MILITARY ACADEMY BUILDING CORPORATION**, a Colorado nonprofit corporation (“Landlord”). Capitalized terms used herein shall have the same meaning as set forth in the Lease (as defined below).

#### RECITALS

A. Pursuant to that certain Lease Agreement, dated April 28, 2017, between Landlord and Tenant (the “Existing Lease”; as amended by the Amendment on the date hereof, together with all amendments, modifications, and supplements thereto or therefor being collectively referred to as the “Lease”), Landlord leased to Tenant and Tenant leased from Landlord that certain Leased Property (as defined in the Lease) located at 360 Command View, in the City of Colorado Springs, County of El Paso, State of Colorado. Capitalized terms used but not otherwise defined herein shall have the meaning given in the Lease.

B. Tenant and Landlord have elected to proceed with the Construction Work for Phase II of the Project. Accordingly, the Preliminary Total Development Cost has been increased from \$13,193,830.00 for Phase I to \$[15,361,511.00] to cover the estimated cost of the Construction Work for Phase II.

C. Simultaneously with the execution and delivery of this Amendment, Landlord and Developer have entered into a Development Agreement for Phase II of the Construction Work.

D. Tenant and Landlord desire to amend the Existing Lease to increase the Preliminary Total Development Cost and to address such increase in the Preliminary Development Cost by amending the Lease to adjust the Annual Fixed Rent Payment, increase the amount of the Loan, and to modify the required minimum enrollment of students.

#### AGREEMENT

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Increase of Preliminary Total Development Cost. Landlord and Tenant acknowledge and agree that the Preliminary Total Development Cost has increased and that as of the Amendment Effective Date, the updated Preliminary Total Development Cost is \$15,361,511.00, subject to adjustment in accordance with the terms of the Lease.

2. Amendments the Lease. As of the Amendment Effective Date, the Existing Lease is hereby amended to read as follows:

(a) The term “Total Development Cost” set forth in the Fundamental Provisions of the Lease is hereby deleted in its entirety and replaced with the following:

**Total Development Cost:** \$15,361,511.00 with \$13,193,830.00 allocated for Phase I (the “**Phase I Total Development Cost**”) and \$2,167,681.00 Phase II (the “**Phase II Total Development Cost**”)

(b) The term “Annual Fixed Rent” set forth Section 2 of the Existing Lease is hereby deleted in its entirety and replaced with the following:

“**Annual Fixed Rent**” shall mean the annual fixed rent payable hereunder for the Leased Property, which shall be the greater of: (A) the annual Loan payments payable by Landlord to Lender under the Loan documents or (B) the sum of the Phase I Annual Fixed Rent, plus, the Phase II Annual Fixed Rent.

(c) The term “**Construction Term Rent**” set forth Section 2 of the Existing Lease is hereby deleted in its entirety and replaced with the following:

“**Construction Term Rent**” shall mean the rent payable hereunder for the Leased Property during each Construction Term, in the amount set forth and calculated as follows: (i) with respect to Phase I, from the Effective Date until and not including the Initial Fixed Term Commencement Date, an amount equal to an annualized return on the Phase I Total Development Cost advanced, paid or incurred by ECS or by Developer on or before the 30th day of the preceding month at a rate of interest equal to eight and eight tenths percent (8.80%) per annum; and (ii) with respect to Phase II, from Amendment Effective Date until and not including the Phase II Completion Date, an amount equal to an annualized return on the Phase II Total Development Cost advanced, paid or incurred by ECS or by Developer on or before the 30th day of the preceding month at a rate of interest equal to eight and eight tenths percent (8.80%) per annum. Construction Term Rent shall not be payable during either Construction Term but shall accrue during the Construction Term as set forth herein and which amount shall be added to the Project Cost at the end of each calendar month during such Construction Term.

(d) The term “**Development Agreement**” set forth Section 2 of the Existing Lease is hereby deleted in its entirety and replaced with the following

“**Development Agreement**” means: (i) for Phase I, that certain School Development Agreement dated April 28, 2017 between Developer and Borrower regarding Construction Work; and (ii) for Phase II, that certain School Development Agreement dated February [\_\_\_], 2018 between Developer and Borrower regarding Construction Work.

(e) The term “**Loan**” set forth Section 2 of the Existing Lease is hereby deleted in its entirety and replaced with the following

“**Loan**” means that certain acquisition and construction loan in the original principal amount of FIFTEEN MILLION THREE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED ELEVEN AND NO/100 DOLLARS (\$15,361,511.00) from ECS and Developer, as lender, to Landlord, as borrower.

(f) Section of 2 of the Existing Lease is hereby amended by adding the following defined term after the defined term “Affiliate”:

“**Amendment Effective Date**” means February [ ], 2018.

(g) Section of 2 of the Existing Lease is hereby amended by adding the following defined term after the defined term “Notices”:

“**Phase I Annual Fixed Rent**” means the following:

(i) From the Initial Fixed Term Commencement Date to the last day of the first (1<sup>st</sup>) Lease Year, the Annual Fixed Rent will be an annual amount equal to eight and eight tenths percent (8.80%) (“**Lease Rate**”) multiplied by the total amount of the Phase I Total Development Cost.

(ii) Starting on the first day of the second (2<sup>nd</sup>) Lease Year, and on each Adjustment Date, Annual Fixed Rent shall be increased by 2.50% per Lease Year.

(h) Section of 2 of the Existing Lease is hereby amended by adding the following defined term after the defined term “Phase I Annual Fixed Rent”:

“**Phase II Annual Fixed Rent**” means the following:

(i) From the Phase II Completion Date to the last day of the first (1<sup>st</sup>) Lease Year, the Annual Fixed Rent will be an annual amount equal to eight and eight tenths percent (8.80%) (“**Lease Rate**”) multiplied by the total amount of the Phase II Total Development Cost.

(ii) Starting on the first day of the second (2<sup>nd</sup>) Lease Year, and on each Adjustment Date, Annual Fixed Rent shall be increased by 2.50% per Lease Year.

(iii) For the avoidance of doubt, the Lease Year shall begin on the Initial Fixed Term Commencement Date for purposes of determining each of the Phase I Annual Fixed Rent and the Phase II Annual Fixed Rent.

(i) Section of 2 of the Existing Lease is hereby amended by adding the following defined term after the defined term “Phase II Annual Fixed Rent”:

“**Phase II Completion Date**” means the earlier to occur of (i) the date of issuance of a temporary certificate of occupancy for the completion of the Construction Work for Phase II or (ii) August [1], 2018.

(j) Section 3 of the Existing Lease is hereby deleted in its entirety and replaced with the following:

**3. Premises.**

(A) **Leased Property.** Landlord hereby demises and leases unto Tenant, and Tenant hereby leases from Landlord, for the consideration and upon the terms and conditions herein set forth, the Leased Property during the Term.

(B) **Construction Work.** Landlord and Tenant acknowledge that Developer will develop the School Facility pursuant to each Development Agreement (“**Construction Work**”). The Construction Work will be developed in two phases, Phase I and Phase II (each as defined in the respective Development Agreement). As of the Amendment Effective Date, the preliminary good faith estimate of Total Development Cost (the “**Preliminary Total Development Cost**”) is \$[15,361,511.00] with \$13,193,830.00 allocated for Phase I and \$[2,167,681.00] Phase II. The Preliminary Total Development Cost is subject to change as provided in the respective Development Agreement. Tenant acknowledges that the Construction Work for Phase II will take place after the Delivery Date (defined later) and that construction issues, interruptions and inconveniences may occur during the Construction Work for Phase II which may interfere with Tenant’s tenancy established under this Lease. Such issues, interruptions and inconveniences are accordingly contemplated and expected in connection with Tenant’s tenancy established under this Lease. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant’s business, any loss of occupancy or quiet enjoyment of the Leased Property, and any other loss occasioned thereby. Tenant further waives any and all rent offsets or claims of constructive eviction which may arise in connection with the Construction Work. Landlord and Tenant acknowledge and agree that Developer and the design-builder engaged by Developer shall have the absolute right to enter and access the Leased Property, without notice to Tenant at any time during the Construction Work and shall have the right to conduct or cause to be conducted, major or minor renovations, repairs, rebuilds, improvements, or demolitions as are necessary to complete the Construction Work, without any right of offset or deduction of rent by Tenant. Developer shall be an express third-party beneficiary of this Section.

(C) **Delivery of Leased Property.**

(i) Acceptance of Delivery. Landlord and Tenant agree that the Delivery Date with respect to Phase I occurred on \_\_\_\_\_ 2017. Landlord shall deliver the Leased Property with Phase II completed to Tenant, and Tenant shall accept delivery of the Leased Property with Phase II completed from Landlord, on the Phase II Completion Date (“**Phase II Delivery Date**”). By occupying the Leased Property upon completion of Phase I and Phase II, Tenant accepts the same and acknowledges that Developer has complied with all the requirements imposed upon it under the terms of each Development Agreement, and, Tenant accepts the Leased Property, “**AS IS, WHERE IS**”, WITH NO REPRESENTATION OR WARRANTY BY LANDLORD AS TO THE FITNESS, SUITABILITY, OR USABILITY OF THE LEASED PROPERTY, OR AS TO THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS ON, ABOUT OR ADJACENT TO THE LEASED PROPERTY. In addition, Tenant hereby accepts the Leased Property subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Leased Property, Restrictive Agreements, and all matters of record, and accepts the Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Developer nor Developer’s agent has made any representation or warranty as to the suitability of the Leased Property for the conduct of Tenant’s business or use.

(ii) Early Entry. Upon Landlord’s and First Mortgagee’s prior written consent, which shall not be unreasonably withheld, Tenant shall have access to the School Facility prior to the Initial Fixed Term Commencement Date and the Phase II Completion Date, as applicable, in order to begin installing Tenant’s trade fixtures and personal property, and for any other legal purpose necessary for preparation of the Leased Property for operation by Tenant, provided that such early entry shall not unreasonably interfere with the Construction Work for Phase I or Phase II, as applicable. Prior to such entry Tenant shall provide Landlord and First Mortgagee with evidence that Tenant has obtained insurance required under the terms of this Lease and shall provide Landlord with a certificate of insurance evidencing such insurance. Such early entry will be at Tenant’s sole risk and subject to all the terms and provisions of this Lease as though the Initial Fixed Term Commencement Date or the Phase II Completion Date had occurred, except for the payment of Rent, which will commence on the Initial Fixed Term Commencement Date and the Phase II Completion Date, respectively, and except that Tenant shall be responsible for all utility services required in connection with Tenant’s early entry rights. All rights of Tenant under this section will be subject to the requirements of all applicable Laws.

(D) **Provision of School Furnishings and Equipment.**

Landlord and Tenant acknowledge that Developer will provide or cause to be provided the School Furnishings and Equipment described in the approved final plans and the cost of which is included in the Total Development Cost.

(k) Section 4 of the Existing Lease is hereby deleted in its entirety and replaced with the following:

(A) **Construction Term.** The construction term of this Lease shall commence as follows: (a) for Phase I, the construction term shall commence on the Effective Date and shall expire on the earlier to occur of (i) the day prior to the Delivery Date or (ii) the date that is twelve (12) months from the date of commencement of construction of the School Facility; and (b) for Phase II, the construction term shall commence on Amendment Effective Date and shall expire on the earlier to occur of (i) the day prior to the Phase II Delivery Date or (ii) August [\_\_\_], 2018 (each a “**Construction Term**”).

(B) **Initial Fixed Term.** Landlord and Tenant agree that the Initial Fixed Term Commencement Date occurred on August 18, 2017.

(C) **Addendum.** Within thirty (30) days after the final disbursement of the Total Development Cost by ECS (“**Final Disbursement Date**”), Tenant and Landlord shall execute the Addendum in the form attached hereto as **Exhibit B**, which shall memorialize, among other things, the Initial Fixed Term Commencement Date, the Expiration Date and the Annual Fixed Rent. Tenant’s failure to execute and deliver such Addendum within ten (10) days after delivery thereof by Landlord shall, at the option of Landlord, constitute a material default under this Lease and, in any event, shall be conclusive upon Tenant that the Addendum as delivered by Landlord is correct in all respects. In addition, Landlord is hereby irrevocably appointed and authorized as agent and attorney-in-fact of Tenant to execute and deliver such Addendum in the event that Tenant fails to execute and deliver such Addendum within ten (10) days after notice from Landlord requesting execution and delivery thereof.

(l) Section 55 of the Existing Lease is hereby deleted in its entirety and replaced with the following:

**55. Enrollment Covenant.** Tenant covenants and agrees that it will ensure that each official, publicly reported enrollment count for the School as published by the State Agency every school year during the Term shall be equal to, or shall exceed, ninety percent (90%) of the School’s projected enrollment count on which the Total Development Cost is based for such year. For the purposes of the foregoing, Tenant’s projected

enrollment count on which the Total Development Cost is based is as follows: (i) 529 students during the 2017-2018 school year; (ii) 750 students during the 2018-2019 school year; (iii) 825 students the 2019-2020 school year; and (iv) thereafter, 850 students through the remainder of the Lease Term. Developer shall be an express third-party beneficiary of this Section and shall have the right to enforce the provisions of this Section.

(m) **Exhibit B** of the Existing Lease is hereby deleted in its entirety and replaced with the APPENDIX 1 attached hereto and made part hereof.

3. **Amendment Controls**. Except as is specifically amended herein, the terms and conditions of the Lease are ratified and confirmed and shall remain in full force and effect. If any provision of the Lease is in conflict with any provision of this Amendment, the terms of this Amendment shall control.

4. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document. Signatures on counterparts of this Amendment that are delivered via facsimile or by other electronic means are authorized, and this Amendment shall be deemed executed when an executed counterpart hereof is transmitted by a party to the other party physically or via any electronic means.

*[signature page to follow]*

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be duly executed as of the day and year first above written.

**COLORADO MILITARY ACADEMY  
BUILDING CORPORATION**, a Colorado  
nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“Landlord”**

**COLORADO MILITARY ACADEMY**, a  
Colorado non-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“Tenant”**

**APPENDIX 1**

**NEW EXHIBIT B TO LEASE AGREEMENT**

(see attached Addendum)

**ADDENDUM TO LEASE**

THIS ADDENDUM TO LEASE (this “**Addendum**”) is made as of \_\_\_\_\_, by and between COLORADO MILITARY ACADEMY BUILDING CORPORATION, a Colorado non-profit corporation (“**Landlord**”) and COLORADO MILITARY ACADEMY, a Colorado non-profit corporation (“**Tenant**”).

RECITALS

A. Landlord and Tenant entered into that certain Lease Agreement dated April 28, 2017 (the “**Lease**”), for the lease of the property described on **Exhibit A** attached hereto and incorporated by reference herein (the “**Land**”).

B. Landlord and Tenant desire to execute this Addendum in order to fix the Initial Fixed Term Commencement Date (as defined in the Lease) and to memorialize the Annual Fixed Rent under the Lease, as follows:

<b>School Name</b>	Colorado Military Academy
<b>Address</b>	360 Common View, Colorado Springs, Colorado (the “ <b>Property</b> ”)
<b>Legal Description</b>	As set forth in <b>Exhibit A</b> to the Lease
<b>Initial Fixed Term Commencement Date</b>	[_____, 20__]
<b>Total Development Cost</b>	[\$_____]
<b>Initial Annual Fixed Rent</b>	With respect to the Phase I Annual Fixed Rent, from the Initial Fixed Term Commencement Date to the last day of the first (1 <sup>st</sup> ) Lease Year an amount equal to \$[_____], such amount being 8.80% multiplied by the Phase I Total Development Cost, <u>plus</u>  With respect to the Phase II Annual Fixed Rent, from the Phase II Completion Date to the last day of the first (1 <sup>st</sup> ) Lease Year an amount equal to \$[_____], such amount being 8.80% multiplied by the Phase II Total Development Cost.
<b>Escalator (Annual Fixed Rent)</b>	2.50% per annum
<b>Escalator Date</b>	First day of the second (2nd) Lease Year and thereafter as provided in the Lease

Except as specifically set forth herein, the terms and conditions of this Addendum shall not modify the terms and conditions of the Lease. The terms of this Addendum are made a part of the Lease.

*[signature page to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the date first above written.

COLORADO MILITARY ACADEMY  
BUILDING CORPORATION, a Colorado  
nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“Landlord”**

COLORADO MILITARY ACADEMY, a Colorado  
non-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“Tenant”**

**EXHIBIT A TO ADDENDUM TO LEASE**  
**Legal Description of Land**

Real property in the City of Colorado Springs, County of El Paso, State of Colorado, described as follows:

Lot 1,  
Cowperwood SAIC,  
County of El Paso,  
State of Colorado,

Excepting therefrom those improvements reserved in Special Warranty Deed by and between K Ventures, LLLP, a Colorado limited liability limited partnership and Campus Point Realty Corporation, a California corporation recorded August 11, 2005 at Reception No. 205123883 of the Records of El Paso County, Colorado (the "Records"), as more specifically described in the Affidavit of Facts, recorded in the Records at Reception No. [REDACTED].