

GROUND LEASE

between

DUARTE UNIFIED SCHOOL DISTRICT

and

SMG PROPERTY LLC

(Northview Intermediate School Site)

July 1, 2020
(Effective Date)

[TO BE UPDATED]

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- Lease Exhibit B – Depiction of Premises/Site Plan
- Lease Exhibit C - Improvement Plans
- Lease Exhibit D –Notice of Non-Responsibility
- Lease Exhibit E – Rules and Regulations

GROUND LEASE

(District/Lessee)
Northview Intermediate School Site (Portion of)

THIS GROUND LEASE ("Ground Lease") is effective as of _____, 2020 ("Effective Date") by and between the DUARTE UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California, as Lessor ("District" or "Lessor"), and SMG Property, LLC, a California limited liability company as Lessee (or "Lessee"). District and Lessee may be referred to in this Ground Lease individually as a "Party" or jointly as the "Parties."

RECITALS

A. District is the owner of certain real property commonly known as Northview Intermediate School, located at 1401 Highland Avenue, Duarte, California 91010 in Duarte, California, generally described on the attached "Exhibit A – Legal Description of Property," and made a part of this Ground Lease by this reference ("Property"), a portion of which is currently used for school and community recreational purposes.

B. California Education Code Section 47614 authorizes the District's governing board ("Board") to provide school property to a charter school operating within the District under alternative arrangements pursuant to Proposition 39, including the lease of property for more than one year as an alternative arrangement.

C. California School of the Arts – San Gabriel Valley ("Charter") was approved by Resolution _____ adopted _____, 2016 to operate a free public charter school for grades 9-12 focusing on the arts and serving Duarte and the surrounding communities.

D. Charter desires to license the majority of the existing school facilities on the Northview Intermediate School campus, and, through Lessee, to ground lease a portion of the Property ("Premises") on a long-term basis in order to plan, develop, finance and construct performing arts facilities for the benefit of its charter school programs and the community.

E. Subject to the terms and conditions set forth in this Ground Lease, District is willing to lease the Premises as depicted in Exhibit B, attached hereto and by this reference made a part hereof ("Exhibit B – Depiction of Premises/Site Plan") to Lessee.

F. Lessee intends to construct a performing arts facility on and sublease the Premises as improved with the performing arts facility to Charter.

G. District and Charter intend to coordinate their respective arts programs on the Premises, District's K-8 program and Charter's 9-12 program, to enrich and improve learning opportunities for students.

H. In order to maximize the efficient use of the performing arts facility for their respective programs, the Parties will enter into a joint use agreement, setting forth the terms and

conditions under which the Parties will jointly use the performing arts facility and which will be attached hereto and by this reference made a part hereof (**Exhibit F – Joint Use Agreement**).

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
LEASE

1.1 Premises District, as Lessor, hereby leases the Premises to Lessee, as Lessee, and Lessee hereby leases the Premises from District on the terms and conditions set forth in this Ground Lease.

1.2 Acceptance

1.2.1 By signing this Ground Lease, Lessee represents and warrants that, prior to the end of the contingencies described below, it will have independently inspected the Premises and made all surface and subsurface tests, investigations, and observations necessary to satisfy itself of the condition of the Premises and accepted the Premises “as is.”

1.2.2 District represents and warrants that, to the best of its knowledge, it has not received any notice from any party, including any governmental agency, that the Premises or Property are in violation of any statute, law, regulation or Hazardous Materials law (as defined in Article 11); or that the Premises or Property are the subject of any claim or controversy; or that the Premises or Property are the subject of any condemnation proceeding.

ARTICLE 2
BASIC PROVISIONS

2.1 Basic Provisions. For the convenience of the Parties, certain basic provisions of the Ground Lease are set forth below, subject to the remaining terms and conditions of this Ground Lease.

2.1.1 Address of the Premises: [No separate address at this time.]

2.1.2 Rent: \$1 per annum.

2.1.3 (a) Initial Term Commencement Date: Effective Date.

(b) Initial Term Expiration Date: earlier of Thirty-Five (35) years after the Effective Date.

(c) First Extended Term Commencement Date: the Initial Term Expiration Date.

(d) First Extended Term Expiration Date: Twenty (20) years after the First Extended Term Commencement Date.

2.1.4 Permitted Use: Installation of temporary relocatable classrooms and subsequent construction of permanent facilities on the Premises for the operation of the Charter and any lawful associated uses mutually agreed upon by the Parties.

2.1.5 Address for Rent Payments and Notices:

District

Duarte Unified School District
1620 Huntington Drive
Duarte, CA 91920
Attention: Allan Mucerino, Superintendent
Email: amucerino@duarteusd.org
Phone: (626) 599-5036
Fax: (626) xxx-xxxx

With a copy to:

SMG Property, LLC

[Address of the Premises]

SMG Property, LLC
1010 N. Main Street
Santa Ana, CA 92701-3602
Attention: Ralph Opacic, Ed.D., President Email:
ralph.opacic@ocsarts.net
Phone: (714) 560-0900
Fax: (714) 568-5321

With a copy to:

Law Offices of Bernard E. Schneider
2101 East Coast Highway, Suite 230
Corona del Mar, CA 92625
Attention: Bernard Schneider
Email: bes@schneideroffice.com
Phone: (949) 760-4430

2.2 Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

Lease Exhibit A – Legal Description of Property
Lease Exhibit B – Depiction of Premises/Site Plan

- Lease Exhibit C – Improvement Plans
- Lease Exhibit D – Notice of Non-Responsibility
- Lease Exhibit E – Rules and Regulations
- Lease Exhibit F – Joint Use Agreement

ARTICLE 3
INITIAL TERM AND EXTENDED TERMS

3.1 Commencement of Initial Term. The initial term (“**Initial Term**”) of this Ground Lease shall commence on the **Effective Date**, which is defined as the date on which the last of the Parties has executed the Ground Lease with approval of its respective governing board (“**Initial Term Commencement Date**”), or **July 1, 2020**, whichever is later.

3.2 Initial Term. The Initial Term shall be that thirty-five (35) year period beginning from the Term Commencement Date and ending the earlier of (a) thirty-five (35) years after the Term Commencement Date (“**Initial Term Expiration Date**”) or (b) the commencement of the first extended term (“**First Extended Term**” and together with the Initial Term and any Subsequent Extended Terms, the “Term”) of this Ground Lease, in either case subject to extension or earlier termination as provided herein.

3.3 First Extended Term. Twenty (20) years commencing on the Initial Term Expiration Date].

3.4 Subsequent Extended Terms. **[For discussion]**.

3.5 Expiration. Upon the expiration of this Ground Lease and without compensation to Charter or Lessee, the Improvements (as defined in Section 7.1), automatically and without any act of Charter or Lessee or any third party, shall become District’s property. Charter and Lessee shall surrender the Improvements to District free and clear of all liens and encumbrances, other than those, if any, consented to by District in its sole and absolute discretion. Charter and Lessee shall execute, acknowledge and deliver to District a quitclaim deed of all of Charter’s and Lessee’s respective right, title and interest in and to the Improvements and the Premises.

3.6 Early Termination. **[For discussion]** District and School of the Arts shall have the right to terminate this Ground Lease _____.

3.6.1 Reasons for Early Termination.

[For discussion: Termination of SGV Charter via revocation, non-renewal, or expiration and exhaustion of all appeals. Voluntary surrender of Charter. Lack of any successor or other charter school use of the property. Default by Lessor on financing without cure and election by District not to step in, triggering lender rights, subject to conditions of loan.]

ARTICLE 4
RENT

4.1 Rent. Lessee shall pay to District the sum of \$1 per annum as rent, payable in advance on or before the first day of each anniversary of the Effective Date during the Term (“**Rent**”), so long as Charter occupies the Premises and operates a free public charter school thereon. The first payment shall be made on or before the Effective Date. Rent shall be payable to District at the address listed in Section 2.1.5 above. Subsequent payments shall be made in advance on or before the first day of each year during the Term.

4.2 Security Deposit. No Security Deposit shall be required.

ARTICLE 5
USE

5.1 Permitted Use. Lessee may use and permit Charter to use the Premises for the temporary installation of relocatables and shall provide for the subsequent construction of permanent facilities and operation of Charter on the Premises and any lawful associated uses and for no other purpose without the prior written consent of the District.

5.2 Compliance with Laws. Lessee and Charter shall conduct its business operations and use the Premises in compliance with all federal, state, and local laws, regulations, ordinances, requirements, permits and approvals applicable to the Premises. Lessee and Charter shall not use or occupy the Premises in violation of any law or regulation or the certificate of occupancy issued for the Improvements, and shall, upon five (5) days’ prior written notice from District, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or any certificate of occupancy. Lessee and Charter shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Charter’s use or occupancy of the Premises, impose any duty upon Charter or District with respect to the Premises or with respect to the use or occupation thereof.

5.3 Compliance with Insurance. Lessee shall not and shall hold Charter responsible to not do or permit to be done anything which will invalidate or increase the cost (unless Lessee or Charter agrees to pay such increased cost) of any fire, extended coverage or any other insurance policy covering the Premises, or which will make such insurance coverage unavailable on commercially reasonable terms and conditions, and shall comply with all rules, orders, regulations and requirements of the insurers of the Premises.

5.4 Americans with Disabilities Act. Lessee shall and shall Charter to comply with the Americans with Disabilities Act of 1990 (“**ADA**”), and the regulations promulgated thereunder, as amended from time to time. All responsibility for compliance with the ADA relating to the Improvements and the activities conducted by Charter within the Premises shall be exclusively that of Lessee and Charter and not of District. Any alterations to the Premises made by Lessee or Charter for the purpose of complying with the ADA or which otherwise require compliance with the ADA shall be done in accordance with Section ____; provided that District’s consent to such alterations shall not constitute either District’s assumption, in whole or in part, of Lessee and Charter’s responsibility for compliance with the ADA, or representation or

confirmation by District that such alterations comply with the provisions of the ADA. However, nothing in this Ground Lease shall be construed to require Lessee or Charter to make structural or capital improvements, alterations, repairs or replacements to comply with ADA unless and until required to do so by order of any government entity or court of law exercising proper jurisdiction with regard thereto, subject to any right to appeal or otherwise contest any such order. Lessee and Charter shall defend and indemnify District from any and all liability arising from Lessee's or Charter's failure to comply with any provision of the ADA relating to Lessee's or Charter's use of the Premises and the Improvements.

5.5 Permits and Approvals. Lessee shall, at its sole cost and expense, obtain and pay for any permits, zoning changes or approvals, including but not limited to those required by the Division of State Architect (DSA), necessitated by Lessee's and Charter's use of the Premises, provided that District's Board may cooperate by exercising its discretion to declare zoning inapplicable to the Premises to facilitate Lessee's and Charter's use of the Premises for free public school purposes.

5.6 No Unlawful Use. Lessee shall not and shall be responsible for Charter not using or knowingly allowing the Premises to be used for any unlawful purpose, nor shall Lessee or Charter cause, maintain or permit any nuisance or waste in, on, or about the Premises. Lessee shall and shall cause Charter to take all reasonable precautions to prevent the Premises from being used for any unlawful purposes and to prevent any nuisance or waste in, on, or about the Premises.

5.7 Supervision of Students. At all times during its use of the Premises, Lessee shall cause Charter to provide adequate and appropriate supervision in satisfaction of District rules and regulations, for all students attending Charter and participating in related activities on the Premises, including the time immediately preceding and following regularly scheduled activities, on or around the parking lots, or other areas of the Property where participants are present.

ARTICLE 6 **UTILITIES AND TAXES**

6.1 Utilities. At all times during the Term, Lessee shall pay or cause Charter to pay for all utilities and services furnished to the Premises including but not limited to, telephone, internet connections, electricity, gas, air conditioning, heating, water and other utilities. If any utilities or services are separately metered, Lessee and Charter shall be responsible for paying installation and monthly costs directly to the supplier of such utility or service. If any utility, such as water, is provided by the District, Lessee shall or shall cause Charter to reimburse the District its prorated portion of those utility costs.

6.2 Utility Easements. For purposes of necessary easements in construction of Improvements, District, as owner of the Premises, will execute, acknowledge and deliver to Lessee for recording, any grant of easement (a) over, upon, across or under the Premises or any portion of it; (b) in favor of any governmental subdivision or any gas, electric or similar company; and/or (c) for the purpose of widening any street or providing to the Premises such services as are customarily understood to be "utilities."

6.3 Taxes. During the Term, Lessee shall pay or shall cause Lessee to pay real or personal property taxes, if any, levied or assessed by any governmental agency or entity on any Improvements or personal property located on the Premises, and the leasehold estate created by this Ground Lease. Lessee acknowledges that this Ground Lease may create a possessory interest subject to property taxation and that Lessee or Charter may be subject to the payment of taxes levied on such interest and that Lessee shall pay or cause Lessee to pay all such possessory interest taxes. If Lessee desires to challenge a tax or assessment, it may do so at its sole cost and expense and District, as property owner, shall cooperate so long as District incurs no cost or is reimbursed by Lessee or Charter for any costs incurred.

ARTICLE 7 **CONSTRUCTION OF IMPROVEMENTS**

7.1 Construction. Subject to the approvals required in Sections 7.2 and 7.5, Lessee shall construct Improvements on the Premises (for both the installation of relocatables, if desired, and subsequent construction of permanent facilities) according to its approved improvement plans, any revisions and additional plans (collectively, "**Improvement Plans**") at Lessee's sole cost and expense, including the expense of design, permitting, and construction, as described in "**Lease Exhibit C**", attached hereto and incorporated herein by this reference. The Improvements shall consist of all structures, buildings and associated structures as depicted on the Improvement Plans ("**Improvements**"). Lessee shall obtain and provide to the District a certificate of occupancy upon completion of the Improvements.

7.2 Improvement Plans. The Improvement Plans are subject to the District's approval, which shall not be unreasonably withheld or delayed. Prior to commencement of construction of any Improvements, Lessee shall deliver to the District plans, specifications and working drawings, and District shall have fifteen (15) business days thereafter, excluding District-recognized holidays, to grant or withhold its consent.

7.3 Timeline for Construction. After obtaining all necessary permits and approvals of the Improvement Plans, Lessee shall commence construction of the Improvements as soon as practically possible and complete the Improvements according to the construction schedule attached as part of the Improvement Plans.

7.4 Compliance with Laws. The Improvements shall be constructed and all work on the Premises shall be performed in accordance with all valid laws, ordinances and regulations of federal, state, county or local governmental agencies having jurisdiction over the Premises, including but not limited to the ADA and DSA and their corresponding regulations and other requirements. All work performed on the Premises under this Agreement shall be completed in a good and workmanlike manner.

7.5 Permits, Licenses and Approvals. Prior to the commencement of any construction on the Premises, Lessee shall have determined all the requirements for, and shall have obtained, at its own expense, all necessary permits, licenses and other approvals required by applicable law, including DSA approval and California Environmental Quality Act (CEQA) compliance, if required. Lessee shall provide written verification to the District that all required permits, licenses and approvals have been obtained prior to commencement of construction.

7.6 Access to School Property for Construction. The District hereby grants Lessee and its employees, agents, and contractors the right to enter upon the Property for the purpose of constructing the Improvements on the Premises, including any ADA-related and other improvements required by DSA. Access to the Premises shall be limited to the areas shown on **Lease Exhibit B.** All access to and construction on the Premises shall comply with applicable requirements of the California Education Code. Lessee shall coordinate with the school district Superintendent or designee before commencement of construction. Lessee shall construct the Improvements in a manner which minimizes adverse effects to the operation of the school or classroom activities. The indemnification and insurance provisions of Article 10 shall apply with respect to Lessee's construction and Lessee's and Charter's use of the Improvements.

7.7 Fingerprinting. Lessee shall require its contractors and subcontractors to comply with the provisions of California Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Lessee's responsibility shall extend to all employees, subcontractors and employees of subcontractors regardless of whether such individuals are paid or unpaid, employed or acting as independent contractors of Lessee.

7.8 Mechanics Liens. At all times during the Term, Lessee shall and shall cause Charter to keep the Premises and Improvements free and clear of all liens and claims of liens for labor, services, materials, supplies or equipment performed on or furnished to the Premises.

7.9 Performance and Payment Bonds. The general contractor engaged by Lessee to perform services for construction of the Improvements, including any site preparation and demolition, shall furnish to Lessee, which shall provide copies to District, at the contractor's own expense prior to commencement of construction:

7.9.1 Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in the State of California, and reasonably acceptable to District, in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the faithful performance of the contractor of its contract with Lessee; and

7.9.2 Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in the State of California, and reasonably acceptable to District, in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.

7.10 Ownership and Surrender. During the Term and any extended term of this Ground Lease, Lessee will be the owner of the Improvements. Upon expiration or earlier termination of this Ground Lease, the Improvements shall, without compensation to Lessee or Charter, automatically and without any act of Lessee or Charter or any third party become District's property.

7.11 Notice of Non-Responsibility. At least thirty (30) days prior to commencement of construction of any Improvement, Lessee shall request from the District a completed Notice of Non-Responsibility pursuant to California Civil Code section 8444 (and any successor statute) in

a form substantially similar to the form "Notice of Non-Responsibility" attached hereto as "**Lease Exhibit D**" and by this reference made a part hereof, and Lessee at its sole expense shall cause said Notice to be recorded and posted as required by law.

7.12 Relocatables and Permanent Facilities. District and Lessee recognize and agree that Lessee may install relocatables for the first three years of operation, but may commence construction of permanent facilities as soon as practicable after the Effective Date. All provisions of Article 7 shall apply to both the installation of relocatables and the construction of the permanent facilities.

ARTICLE 8 **SECURITY MEASURES**

8.1 Security. Lessee acknowledges that District's standard security measures for the Property may not be sufficient for protection of damage or losses caused by criminal acts of third parties. District shall not be liable for such damage or losses. To the extent Lessee or Charter desires protection against such criminal acts, Lessee or Charter, at their own cost, shall obtain insurance coverage for its personal property stored on the Premises.

ARTICLE 9 **MAINTENANCE, REPAIR, DAMAGE AND DESTRUCTION**

9.1 Lessee Maintenance Obligations. Lessee, at its own expense, shall maintain the Premises and Improvements in a safe and clean condition, free of trash and other nuisances. Lessee shall provide and pay for garbage and trash removal, janitors, maintenance personnel and other persons who perform duties connected with the operation and maintenance of the Premises.

9.2 District's Maintenance Obligations. District shall have no responsibility for the regular maintenance of the Property.

9.3 Damage or Destruction Covered by Insurance. In the event of damage to or destruction of all or any portion of the Improvements on the Premises arising from a risk covered by the insurance described in Article 10, Lessee shall or shall cause Charter, at its own cost and expense, and without any cost or expense of District, within a reasonable time commence and proceed diligently to repair, reconstruct and restore (collectively, "**restore**") the Improvements to substantially the same condition as they were in immediately prior to the casualty, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Lessee shall be responsible for all insurance deductibles attributable to the Improvements and for all costs of restoration of the Improvements in excess of insurance proceeds for the Improvements. Except as expressly set forth below, this Ground Lease shall continue in full force and effect, notwithstanding such damage or destruction.

9.4 Damage or Destruction Not Covered by Insurance. In the event of any damage to or destruction of all or any portion of the Improvements arising from a risk which is not covered by the insurance described in Article 10, Lessee shall or shall cause Charter, at its own cost and expense and without any cost or expense of District, within a reasonable time,

commence and proceed diligently to restore the Improvements to substantially the same condition as they were in immediately prior to the casualty. This Ground Lease shall continue in full force and effect notwithstanding such damage or destruction.

ARTICLE 10 INDEMNIFICATION AND INSURANCE

During the Term, the following indemnification and insurance requirements shall be in effect. Either Party, at its sole option, may elect to use a program of self-insurance or commercial insurance to satisfy its insurance requirements.

10.1 Indemnification. Lessee agrees and shall cause Charter to indemnify District, District's Board of Trustees ("**Board**"), District employees, agents and volunteers (severally and collectively, "**District's Agents**"), against, and to protect, defend, and save them harmless from, all demands, claims, causes of action, liabilities, losses and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), for death of or injury to person or damage to property arising out of (a) any occurrence in, upon or about the Premises or the Improvements during the term of this Ground Lease, (b) Lessee's or Charter's use, occupancy, repairs and maintenance of the Premises, the Improvements and all fixtures, equipment and personal property thereon, and (c) any act or omission of Lessee or Charter, Lessee's or Charter's members, directors, officers, agents, employees, servants, contractors and invitees (severally and collectively, "**Lessee Parties**"), except to the extent caused by the negligence or willful misconduct of District or District's Agents. Lessee's obligation under this Section 10.1 shall survive the expiration or earlier termination of this Ground Lease.

10.2 General Insurance. Without limiting Lessee's indemnification of the District and at its own expense, prior to entering the Premises to install any Improvements and continuing at all times during the Term, Lessee shall and shall cause Charter to provide and maintain the following programs of insurance:

10.2.1 Insurance During Construction. During the period of the construction of any improvements on the Property, Lessee shall at its own expense obtain and keep in force builder's all risk insurance, insuring Lessee, District, Lender (as hereinafter defined), and such other parties as Lessee may designate as an additional insured hereunder, against all risks of physical loss and/or damage from any cause to all buildings, structures, materials and real property to be improved, located on or forming a part of the Premises.

10.2.2 General Liability. Commercial general liability insurance, on an occurrence basis, insuring Lessee and Charter and its and their agents, employees, independent contractors and volunteers against all bodily injury, property damage, advertising injury, personal injury and other covered loss arising out of the use, occupancy, improvement and maintenance of the Premises and the program operated by Charter on the Premises, including, but not limited to, coverage for products and completed operations. Such insurance shall have a minimum combined single limit of liability per occurrence of not less than \$1,000,000.00 and a general aggregate limit of \$3,000,000.00. Additionally, Excess Liability coverage shall be procured in the amount of \$10,000,000 per occurrence. Such insurance shall name the District,

the Board and each member of the Board, its officers, employees, agents and volunteers as additional insureds.

10.2.3 Workers' Compensation. Workers Compensation and Employers' Liability insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1,000,000.00 per accident.

10.2.4 Professional Liability. Insurance and/or coverage providing coverage for educators legal liability and error and omissions, including, but not limited to, coverage for sexual abuse/molestation and sexual harassment, in an amount not less than \$1,000,000 per "claim" with an aggregate policy limit of \$3,000,000.

10.2.5 Evidence of Insurance. Prior to Lessee's use of the Premises, Lessee shall deliver to the District copies or certificates of insurance for the insurance policies required to be obtained in compliance with this Article 10, along with written evidence of payment of required premiums. At least thirty (30) days prior to expiration of any such policy, Lessee shall deliver to the District a certificate evidencing renewal or a new policy, together with evidence of payment of the required premiums, which shall be filed and maintained with the District annually during the Term.

10.3 General Insurance – District Requirements. At all times during the Term, District shall maintain, at District's expense, commercial general liability insurance, on an occurrence basis, insuring District and its employees, agents and independent contractors against all bodily injury, property damage, personal injury and other covered loss arising out of its use and maintenance of the Property.

10.4 Notification. Each Party shall immediately notify the other Party of any claim or litigation that may result in liability to the other Party.

10.5 Insurance Policies. All of the policies of insurance referred to in this Article 10 shall be written by companies authorized to do business in California and rated A VIII or better in Best's Insurance Guide. Each insurer referred to in this Article 10 shall agree, by endorsement on the applicable policy or by independent instrument furnished to District, that it will give District at least ten (10) days' prior written notice before the applicable policy is cancelled for non-payment of premium, and thirty (30) days' prior written notice before the applicable policy is cancelled or altered in coverage, scope, amount or other material term for any other reason (although any failure of an insurer to give notice as provided herein shall not be a breach of this Ground Lease by Lessee). No policy shall provide for a deductible amount in excess of \$100,000 unless approved in advance in writing by the District. Lessee shall deliver to District copies of the insurance policies required to be carried by Charter and Lessee, certified by the insurer, or certificates evidencing such insurance policies, issued by the insurer, together with evidence of payment of the required premiums, prior to the required date for commencement of such coverage. At least thirty (30) days prior to expiration of any such policy, Lessee shall deliver to District a certificate evidencing renewal, or a certified copy of a new policy or certificate evidencing the same, together with evidence of payment of the required premiums. If Lessee fails to provide to District any such policy or certificate by the required date for commencement of coverage, or within fifteen (15) days prior to expiration of any policy, or to

pay the premiums when required, District shall have the right, but not the obligation, to procure said insurance and pay the premiums. Any premiums so paid by District shall be repaid by Charter and Lessee to District on or before the first day of the next calendar month following any such payment by District.

ARTICLE 11
ASSIGNMENT AND SUBLEASING

11.1 Assignment and Subleasing. Except as provided in this Article 11, Lessee shall not, either voluntarily or by operation of law, sell, assign, hypothecate or transfer this Ground Lease, or sublease the Premises or any part thereof, or permit or suffer the Premises or any part thereof to be used or occupied as work space, storage space, concession or otherwise by anyone other than Lessee or Charter without the prior written consent of District in each instance, which consent shall be at the sole discretion of the District and which must be consistent with applicable law. The consent by District to an assignment or sublease shall not be deemed effective until approved or ratified by the Board. The consent by District shall not relieve Lessee or any assignee of this Ground Lease or sublessee of the Premises from obtaining the consent of District to any further assignment or sublease or as releasing Lessee or any assignee or sublessee of Lessee from full and primary liability.

11.2 Assignment to Successor. If Lessee desires to assign this Ground Lease to Charter or an entity into which Charter is merged, with which Charter is consolidated, or which acquires all or substantially all of the assets of Lessee or Charter, provided that the successor entity's net worth and liquid assets are equal or greater than Lessee or Charter, as applicable, immediately prior to the assignment, and further provided that the assignee first executes, acknowledges and delivers to District an agreement whereby the assignee agrees to be bound by all of the covenants and agreements in this Ground Lease arising after the effective date of the transfer, then District, upon receipt of proof of the foregoing, will consent to the assignment.

11.3 Sublease Terms. Any and all subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Ground Lease. The term of any sublease shall not extend beyond the term of this Ground Lease and any extensions hereof. Each sublease shall contain a provision stating that in the event of Lessee's default under this Ground Lease, the sublessee shall attorn to District.

11.4 Liability. Notwithstanding any subletting or assignment, Lessee shall remain fully and primarily liable for the payment of all Rent and other sums due and for the full performance of all other terms, conditions, and covenants to be kept and performed by Lessee. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of any other term, covenant, or condition from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Ground Lease or a consent to any subletting or assignment of the Premises.

ARTICLE 12
MORTGAGE OF LEASEHOLD

12.1 Lessee's Right to Encumber. Lessee may, at any time and from time to time during the Term, encumber to any institutional lender regulated by state or federal authority ("**Lender**"), by deed of trust or mortgage or other security instrument, all of Lessee's interest under this Ground Lease and the leasehold estate hereby created in Lessee ("**Leasehold Encumbrance**") for any purpose(s) without the consent of District. However, no Leasehold Encumbrance incurred by Lessee shall constitute a lien or encumbrance on District's fee interest in the Property. Any Leasehold Encumbrance shall be subject to all covenants, conditions and restrictions set forth in this Ground Lease and to all rights and interests of District, except as is otherwise provided in this Ground Lease. Lessee shall give District prior written notice of any Leasehold Encumbrance, together with a copy of the deed of trust, mortgage or other security interest evidencing the Leasehold Encumbrance and that such Leasehold Encumbrance expressly states that it is subject to all covenants, conditions and restrictions set forth in this Ground Lease.

12.2 Notice to and Service on Lender. District shall provide to any Lender a duplicate copy of any and all notices District may from time to time give to Lessee in accordance with or relating to this Ground Lease, including but not limited to any notice of default. Any notices to be given to Lender by District shall be deemed duly given to Lender when deposited in the United States mail, first class postage prepaid, addressed to Lender at the last mailing address for Lender furnished in writing by Lender to District.

12.3 No Modification Without Lender's Consent. For as long as there is any Leasehold Encumbrance in effect, Lessee and District hereby expressly stipulate and agree that they will not modify or cancel this Ground Lease without the written consent of Lender.

12.4 Right of Lender to Realize on Security. A Lender with a Leasehold Encumbrance shall have the right at any time during the Term and the existence of the encumbrance to do any of the following:

12.4.1 Any act required of Lessee under this Ground Lease, and any such act performed by Lender shall be as effective to prevent a forfeiture of Lessee's rights under this Ground Lease as if done by Lessee;

12.4.2 Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Encumbrance ("**Security Instrument**");

12.4.3 Transfer, convey, or assign Lessee's title to the leasehold estate created by this Ground Lease to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Security Instrument, or to an assignee under an assignment in lieu of foreclosure; and

12.4.5 Acquire and succeed to the interest of Lessee under this Ground Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a

power of sale contained in the Security Instrument, or by virtue of an assignment in lieu of foreclosure.

12.5 Right of Lender to Cure Defaults. For as long as there is in effect any Leasehold Encumbrance, before District may terminate this Ground Lease because of any default under or breach of this Ground Lease by Lessee, District must give written notice of the default or breach to Lender and afford Lender the opportunity to do one of the following:

12.5.1 Cure the breach or default within fifteen (15) days after expiration of the time period granted to Lessee under this Ground Lease for curing a default, when the default can be cured by the payment of money to District or some other person;

12.5.2 Cure the breach or default within thirty (30) days after expiration of the time period granted to Lessee under this Ground Lease for curing a default, when the breach or default must be cured by something other than the payment of money and can be cured within that time; or

12.5.3 Cure the breach or default in any reasonable time that may be required when something other than money is required to cure the breach or default and cannot be performed within thirty (30) days after expiration of the time period granted to Lessee under this Ground Lease for curing a default, provided that the cure is commenced within that time period after and is thereafter diligently continued by Lender.

12.6 Foreclosure in Lieu of Curing Default. Notwithstanding any other provision in this Ground Lease, a Lender under a Leasehold Encumbrance may forestall termination of this Ground Lease by District for Lessee's default or breach by commencing proceedings to foreclose the Leasehold Encumbrance. The proceedings may be for foreclosure of the Leasehold Encumbrance by order of court or foreclosure of the Leasehold Encumbrance under a power of sale contained in the Security Instrument. The proceedings shall not, however, forestall termination of this Ground Lease by District unless all of the following conditions are met:

12.6.1 The proceedings are commenced within sixty (60) days after service on Lender of the notice of default or breach of this Ground Lease;

12.6.2 The proceedings are, after having been commenced, diligently pursued in the manner required by law to completion; and

12.6.3 Lender keeps and performs all of the terms, covenants and conditions of this Ground Lease requiring the payment or expenditure of money by Lessee until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Lender.

12.7 New Lease to Lender. Notwithstanding any other provision of this Ground Lease, should this Ground Lease terminate because of Lessee's default or breach, District agrees to enter into a new lease for the Property with Lender as Lessee, provided all of the following conditions are satisfied:

12.7.1 A written request for the new lease is served on District by Lender within thirty (30) days after service on Lender of the notice described in section 10(f) above;

12.7.2 The new lease: (a) is for a term ending on the same date the Term would have ended had it not been terminated; (b) provides for payment of rent at the same rate that would have been payable under this Ground Lease had it not been terminated; and (c) contains the same terms, covenants, conditions and provisions as are contained in this Ground Lease, *including the obligation to use the Premises for charter school purposes in accordance with an alternative arrangement pursuant to Education Code section 47614 (Proposition 39) or as may be authorized under any other provision of law; provided that District may require that any such lease be validated pursuant to CCP § 860 et seq.*;

12.7.3 On execution of the new lease, Lender shall pay any and all sums due under this Ground Lease and shall otherwise fully remedy any other defaults or breaches of this Ground Lease committed by Lessee;

12.7.4 On execution of the new lease, Lender shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred in terminating this Ground Lease, recovering possession of the Property from Lessee and preparing the new lease;

12.7.5 The new lease shall be subject to all existing subleases between Lessee and sublessees, provided that for any sublease, the sublessee agrees in writing to attorn to Lender (or its assignee); and,

12.7.6 The new lease shall be assignable by Lender but not by any assignee of Lender without the prior written consent of District.

12.8 No Merger. For as long as any Leasehold Encumbrance is in existence, there shall be no merger of the leasehold estate and the fee estate of District in the Property merely because both estates have been acquired or become vested in the same person or entity, unless Lender otherwise consents in writing.

12.9 Lender as Assignee of Lease. No Lender under any Leasehold Encumbrance shall be liable to District as an assignee of this Ground Lease unless and until Lender acquires all rights of Lessee under this Ground Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Leasehold Encumbrance.

ARTICLE 13 **HAZARDOUS MATERIALS**

13.1 Compliance. During the Term, Lessee shall and shall cause Charter, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of Hazardous Material (as defined below) in or about the Property or the Improvements. Lessee shall not and shall

Charter to not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises in a manner or for a purpose prohibited by any federal, state, or local agency or authority.

13.2 Notice. Lessee shall and shall cause Charter to immediately provide the District with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, release and disposal of Hazardous Material on the Premises which by law must be reported to any federal, state, or local agency, and any resulting injuries or damages.

13.3 Indemnification. Lessee agrees and shall cause Charter to indemnify the District against, and to protect, defend, and save it harmless from, all demands, claims, causes of action, liabilities, losses and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), which result from Lessee's or Charter's (or from its or their agents) receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Premises. District shall be responsible for and shall indemnify, protect, defend and hold harmless Lessee and Charter on the same basis as above for any claims which result from Hazardous Material existing on the Premises prior to the Term Commencement Date.

13.4 Costs. The indemnification of District and District's Agents by Lessee and Charter pursuant to the preceding Section 13.3 includes, without limiting the generality of Section 13.3, reasonable costs incurred in connection with any investigation of property conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil, subsoil, ground water, or elsewhere on, under or about the Premises, or on, under or about any other property in the vicinity of the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Lessee or Charter results in any contamination of the Premises, or underlying soil or groundwater, Lessee shall or shall Charter to promptly take all actions at its sole expense as are necessary to return the Premises to that condition required by applicable law, provided that the District's approval of such action shall first be obtained, which approval shall not be unreasonably withheld, except that Lessee or Charter shall not be required to obtain District's prior approval of any action of an emergency nature reasonably required or any action mandated by a governmental authority, but Lessee shall and shall Charter to give District prompt notice thereof.

13.5 Inspection. At any time prior to the expiration or earlier termination of the Ground Lease, District shall have the right to enter upon the Premises or the Improvements at all reasonable times and at reasonable intervals in order to conduct appropriate tests regarding the presence, use and storage of Hazardous Material. Lessee will or shall Charter to pay the reasonable costs of any such test which demonstrates that contamination in excess of permissible levels has occurred and such contamination was caused by Lessee's or Charter's use of the Premises during the Term . Lessee shall or shall cause Charter to correct any deficiencies identified in any such tests in accordance with its obligations under this Article 13 to the extent such deficiencies are the result of Lessee's or Charter's use of the Premises during the Term.

13.6 Survive Termination. The Parties' obligations under this Article 13 shall survive the termination of the Ground Lease.

13.7 Definition of Hazardous Material. As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) petroleum, (b) asbestos, (c) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1317), (d) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901, *et seq.* (42 U.S.C. section 6903), or (e) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 *et seq.* (42 U.S.C. section 9601).

ARTICLE 14 **DEFAULT AND REMEDIES**

14.1 Default. All covenants and agreements contained in this Ground Lease are declared to be conditions to this Ground Lease. Should Lessee fail to perform any covenant, condition or agreement contained in this Ground Lease, including but not limited to those listed below, and the breach is not cured within the designated cure period, or if not designated, within thirty (30) days after written notice is served on Lessee by District, then Lessee shall be in default under this Ground Lease.

14.1.1 Failure to Pay Rent or Other Money. The failure of Lessee to pay when due any rent, monies or charges required by this Ground Lease to be paid by Lessee.

14.1.2 Failure to Act. The failure of Lessee to do any act, other than the payment of rent, monies or charges required by this Ground Lease to be done by Lessee.

14.1.3 Prohibited Act. Lessee causing, permitting or suffering to be done any act (a) required by this Ground Lease to have the prior written consent of District, unless such consent is so obtained, or (b) prohibited by this Ground Lease.

14.1.4 Revocation of Charter. The revocation of Charter's charter by the District.

14.1.5 Insolvency. (a) The appointment of a receiver to take possession of the Premises or Improvements, or interest in, to and under this Ground Lease, the leasehold estate or Lessee's operations on the Premises for any reason, including without limitation, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within sixty (60) days; (b) an assignment by Lessee for the benefit of creditors; or the voluntary filing by Lessee or the involuntary filing against Lessee of a petition for the purpose of (i) adjudicating Lessee a bankrupt, (ii) extending time for payment, (iii) satisfaction of Lessee's liabilities, or (iv) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent actions are dismissed, vacated, or otherwise terminated within ninety (90) days after

the filing, then Lessee shall not be in default under this Article 14; and (c) the subjection of any right or interest of Lessee to or under this Ground Lease to attachment, execution, or other levy, or to seizure under legal process when the claim against Lessee is not released within ninety (90) days.

14.2 Cure Period. In the event of a breach by Lessee of one of the material covenants, conditions, or obligations in this Ground Lease, District shall give Lessee written notice of said breach and time to cure. Failure to cure a breach, where such failure continues after written notice to Lessee and after a thirty (30) day opportunity to cure shall constitute a default (“**Default**”); provided, however, that if the nature of the breach is such that more than thirty (30) days are reasonably required to cure the breach, then Lessee shall not be deemed to be in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently and in good faith continues to cure the breach.

14.3 Intention. It is the intention of both Parties to work together to find a remedy to any and all disputes. Therefore, the Parties agree that termination and/or legal action shall be the remedy of last resort. In the event of a dispute both Parties agree to meet and work in good faith to find a remedy that preserves this Ground Lease. In the event that a remedy cannot be found, the following actions may be taken.

14.4 Remedies.

14.4.1 Termination. In the event of a Default by Lessee, and without limiting District in the exercise of any additional right or remedy which District may have, District shall be entitled to terminate Charter and Lessee’s use and possession of the Premises and Improvements by delivering written notice of such termination to Lessee. Within ninety (90) days of receipt of the notice of termination, Lessee shall and shall cause Charter to surrender possession of the Premises and Improvements to District. Lessee and Charter may remove such personal property from the Premises and Improvements as can be removed without damage to the Premises and Improvements and shall surrender possession of the Premises and Improvements in a clean and orderly condition. Any property not removed by Lessee and Charter within ninety (90) days of receipt of the notice of termination shall become the property of District.

14.4.2 Additional Remedies. District may seek any additional remedy available at law or in equity in addition to termination of this Ground Lease, including, but not limited to injunctive relief and damages.

ARTICLE 15 **QUIET ENJOYMENT AND RIGHT OF ENTRY**

15.1 Quiet Enjoyment. District covenants and agrees that it will not take any action to prevent Lessee’s and Charter’s quiet enjoyment of the Premises and Improvements during the Term.

15.2 Right of Entry. District reserves the right for any of its duly authorized representatives to enter the Premises and Improvements at any reasonable time for any reasonable actions, including but not limited to (a) inspecting the Premises and Improvements,

and (b) posting in such places as District may select notices of non-responsibility for works of construction, repair or improvement made by Lessee or Charter. In doing so, District shall not interfere with Lessee's and Charter's enjoyment and use of the Premises and Improvements.

ARTICLE 16
SIGNS AND LIGHTS

16.1 Signs and Lights. Lessee shall not and shall Charter to not place any sign or install any lights on the Premises or Improvements without the District's prior written consent. Lessee shall and shall Charter to comply with all local municipality's requirements regarding signs to the extent applicable.

ARTICLE 17
ATTORNEYS' FEES

17.1 Attorneys' Fees. If either Party brings an action to enforce the terms of this Agreement or declare rights hereunder, the prevailing party in such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.

ARTICLE 18
RULES AND REGULATIONS

18.1 Rules and Regulations. Lessee agrees that it will and shall Charter to abide by, keep, and observe all reasonable rules and regulations which District may make from time to time for the management, safety, care and cleanliness of the Premises, Improvements and the surrounding areas, a copy of which is attached to this Ground Lease as "**Lease Exhibit E - Rules and Regulations.**"

ARTICLE 19
GENERAL PROVISIONS

19.1 Waiver and Modification. No provision of this Ground Lease may be modified, amended or added to except by an agreement in writing signed by both Parties.

19.2 Applicable Law. This Ground Lease and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

19.3 Time. Time is of the essence with respect to the performance of every provision of this Ground Lease in which time of performance is a factor.

19.4 No Agency, Partnership or Joint Venture. Nothing in this Ground Lease or in the relationship between District and Lessee shall be deemed or construed to create or constitute an agency, partnership, joint venture or similar relationship.

19.5 Amendments. This Ground Lease contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Ground Lease may be modified only in a writing signed by the Parties.

19.6 Authority To Execute Lease. District and Lessee each acknowledge that it has all necessary right, title and authority to enter into and perform its obligations under this Ground Lease, that this Ground Lease is a binding obligation of such Party and has been authorized by all requisite action under the Party's governing instruments, that the individuals executing this Ground Lease on behalf of such Party are duly authorized and designated to do so, and that no other signatories are required to bind such Party.

19.7 Consents. Whenever consent or approval of either Party is required, that Party shall not unreasonably withhold or delay such consent or approval, except as may be expressly set forth to the contrary.

19.8 Entire Agreement. The terms of this Ground Lease are intended by the Parties as a final expression of their agreement with respect to the terms as are included herein, and may not be contradicted by evidence of any prior or contemporaneous agreement.

19.9 Severability. Any provision of this Ground Lease which proves to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

19.10 Impartial Construction. The language in all parts of this Ground Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either District or Lessee.

19.11 Successors and Assigns. Each of the covenants, conditions, and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the Parties and their respective administrators, successors, assigns, or any person who may come into possession of the Premises, the Improvements, or any part thereof. Nothing contained in this Section 19.11 shall in any way alter the provisions regarding subleasing provided in this Ground Lease.

19.12 Notices. All notices, demands and communications between District and Lessee shall be in writing and given by personal delivery; facsimile transmission; electronic mail; registered mail, return receipt requested, with postage prepaid; Federal Express or other reliable private express delivery, addressed to District or Lessee at the addresses shown in Section 2.1.5 above. Either Party may, by notice to the other given pursuant to this Section 19.1, specify additional or different addresses for notice purposes.

19.13 Counterparts. This Ground Lease may be executed in one or more counterparts, each of which shall constitute an original.

19.14 Nondiscrimination. District and Lessee and all others who from time to time may use the Premises and Improvements with the permission and on the terms and conditions specified by both Parties shall not discriminate in any manner against any person or persons on account of race, color, sex, creed, or national origin, including but not limited to the provision of goods, services, facilities, privileges, advantages, and the holding and obtaining of employment.

19.15 Effectiveness. This Ground Lease shall not be effective until the governing boards of both Parties have approved it.

[Signatures on following page]

Signature Page
for
Ground Lease between District and SMG Property, LLC

IN WITNESS WHEREOF, the Parties have executed this Ground Lease as of the dates listed below.

DISTRICT

DUARTE UNIFIED SCHOOL DISTRICT

A school district organized and existing under the laws of the State of California.

By: _____
Allan Mucerino
Superintendent

Date: _____

LESSEE

SMG Property, LLC

A California limited liability company

By: _____
Ralph Opacic, Ed.D.
President

Date: _____

APPROVED AS TO FORM:

Procopio, Cory, Hargreaves & Savitch, LLP

By: _____
Gregory V. Moser, Special Counsel

Date: _____

By: _____
Bernard Schneider, Attorney for
Lessee

Date: _____

LEASE EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

DIAGRAM OF BUILDING AREAS

SCHOOL: **NorthView Intermediate School**

DISTRICT: Duarte Unified School District

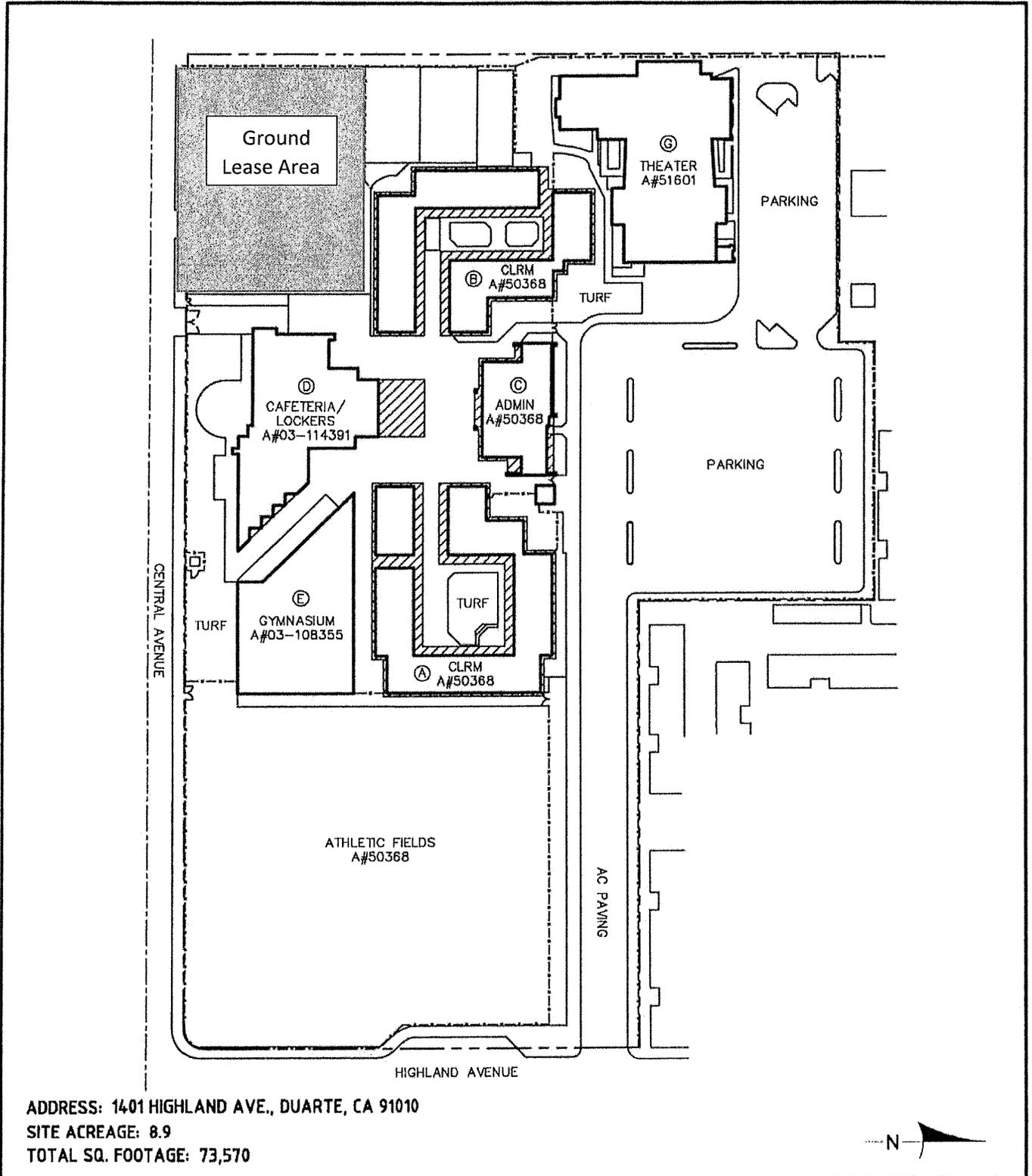
 NEW CONSTRUCTION

 MODERNIZATION/RECONSTRUCTION

 EXISTING 1-A

 PROPOSED 2-A

 FINAL 3-A



Henry Woo Architects, Inc.
 1210 brea canyon road
 diamond bar . california . 91789

SITE PLAN

DATE: 3.31.2015

SCALE: 1"=150'-0"

0

LEASE EXHIBIT C
IMPROVEMENT PLANS

LEASE EXHIBIT D
NOTICE OF NON-RESPONSIBILITY

LEASE EXHIBIT E
RULES AND REGULATIONS

LEASE EXHIBIT F
JOINT USE AGREEMENT

