

SETTLEMENT AGREEMENT AND RELEASE AND COVENANT NOT TO SUE

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into as of the 28th day of January, 2016, by and between the California Charter Schools Association ("CCSA"), the West Contra Costa Unified School District, and Bruce Harter (collectively referred to herein as the "District"). CCSA and the District may be referred to herein collectively as "Party" or "Parties."

RECITALS

WHEREAS, voters in the West Contra Costa Unified School District have passed parcel taxes for the benefit of District, including Measure G which is operative at the time this agreement is executed; and,

WHEREAS, a dispute arose between CCSA and District concerning whether charter schools operating within District's boundaries are entitled to shares of parcel tax proceeds received by District; and,

WHEREAS, CCSA filed a Complaint for Violation of Equal Protection and Unlawful Discrimination; Declaratory and Injunctive Relief in Superior Court, County of Contra Costa, Case No. C-14-00901, and a First Amended Complaint on October 31, 2014 ("Action"); and,

WHEREAS, the Parties have negotiated a resolution of this dispute and codified the settlement terms in a Tentative Agreement ("Tentative Agreement") (attached as Exhibit 1 to this Settlement Agreement); and,

WHEREAS, at the time of this Settlement Agreement there are eleven charter schools operating within the District's boundaries that qualify (as defined in the Tentative Agreement each so qualified charter school is referred to as a "Parcel Tax Qualifying Charter School") and as per the terms of this Settlement Agreement (and the attached Tentative Agreement) future charter schools may be approved for operation within the District's boundaries and become eligible for the distribution of parcel tax proceeds; and,

WHEREAS, the Parties have agreed to settle their disputes between them and now enter into this Settlement Agreement.

TERMS OF SETTLEMENT

NOW, THEREFORE, in consideration of the premises and covenants described in Exhibit [1] hereto, which is incorporated herein by reference as though fully set forth herein, the Parties agree as follows:

1. The Parties agree that this Settlement Agreement is contingent upon approval by the District's Board of Education ("Board"). In the event that the Board rejects this Settlement Agreement, none of the Parties shall be deemed to have waived any rights with respect to the matters in dispute.
2. This Settlement Agreement shall become final and binding upon the Parties upon fulfillment of the following conditions following Board approval of this Settlement Agreement:

(a) CCSA executes this Settlement Agreement; and

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- (b) Each of the eleven Parcel Tax Qualifying Charter Schools (listed in Exhibit [A] to the Tentative Agreement) approve and execute the Parcel Tax Qualifying Charter School Release and Covenant Not to Sue in the form attached as Exhibit [2].
- (c) This Settlement Agreement shall become effective upon the final approval and execution as outlined in this section [2].
3. In the event that any one of the Parcel Tax Qualifying Charter Schools listed in Exhibit [A] to the Tentative Agreement fails to execute the Parcel Tax Qualifying Charter School Release and Covenant Not to Sue in the form attached as Exhibit [2] the Parties shall not be deemed to have waived any rights with respect to the matters in dispute.
 4. The Parties further agree that CCSA will dismiss the Action with prejudice within five (5) calendar days after all of the conditions of Section [2] herein have been met.
 5. The terms of this Settlement Agreement are only contingent upon execution of this Settlement Agreement between the Parties and the approval of the Parcel Tax Qualifying Charter School Release and Covenant Not to Sue (attached in Exhibit [2]) by the Parcel Tax Qualifying Charter Schools listed in Exhibit [A] to the Tentative Agreement; this Settlement Agreement shall be fully enforceable between the Parties notwithstanding the refusal to execute the Parcel Tax Qualifying Charter School Release and Covenant Not to Sue by any Parcel Tax Qualifying Charter School approved by the District, County Board of Education or the State Board of Education subsequent to the effective date of this Agreement. Any new charter school that refuses to sign the Parcel Tax Qualifying Charter School Release and Covenant Not to Sue shall not be entitled to a distribution of parcel taxes per the terms of this Settlement Agreement and the incorporated Tentative Agreement.
 6. CCSA does hereby fully and finally settle, release, relieve, acquit and forever discharge the District and the directors, employees, administrators, assigns, agents, representatives, attorneys, insurers, experts and consultants of the District, from any and all claims, claims for indemnification or contribution, complaints; causes of action, demands, liabilities, losses, or damages, including attorneys' fees and costs, experts' and consultants' fees and costs, known or unknown, which CCSA may now or hereafter have against the District and the directors, employees, administrators, assigns, agents, representatives, trustees, attorneys, insurers, experts and consultants, arising out of the Action. CCSA acknowledges that they are familiar with Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

Except as provided for specifically in this Settlement Agreement, CCSA waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Section 1542 of

the California Civil Code, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the subject matter of this Settlement Agreement. In connection with such waiver and relinquishment, CCSA hereby acknowledges that it is aware that it or its attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Settlement Agreement, but that it is the intention of the Parties to this Settlement Agreement to hereby fully, finally and forever waive said claims, whether known or unknown, suspected or unsuspected, which concern or arise out of the Action.

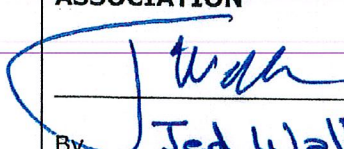
7. Except for proceedings to dismiss the Action with prejudice, enforce the terms of this Settlement Agreement and proceedings related to matters not released by this Settlement Agreement, the Parties covenant and agree that at no time subsequent to the date of their respective executions of this Settlement Agreement will they file or maintain or cause or knowingly permit the filing or maintenance of, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, any charge, claim, or action of any kind, nature or character whatsoever, known or unknown, which they may now have, or have ever had, or which they may later discover, against each other, which is based in whole or in part on any act, omission or event relating to the Action. The Parties agree that this Settlement Agreement shall constitute a full and complete defense to, and may be used as a basis for a permanent injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted by any of them in breach of this Settlement Agreement.
8. Any damages suffered by any of the Parties by reason of any breach of the provisions of this Settlement Agreement by any of the other Parties shall include attorneys' fees and costs reasonably incurred in instituting, prosecuting or defending any action, grievance, or proceeding resulting from said breach of this Settlement Agreement.
9. CCSA shall not be responsible nor liable for any current or future Parcel Tax Qualifying Charter School's participation in the parcel tax distribution as outlined in this Settlement Agreement and the Tentative Agreement. In addition, the District recognizes that no Parcel Tax Qualifying Charter School is a necessary party to any action in which CCSA claims breach of this Settlement Agreement.
10. This Settlement Agreement embodies a compromise of disputed issues and is made in good faith. The Parties understand that no Party hereto admits any violation of constitutional or other rights, discrimination or any wrongdoing in connection with the matters herein referred to, and that the compromise embodied in this Settlement Agreement is not an admission of any fault, liability, or culpability by any Party.
11. Each Party bears its own attorneys' fees and costs including, but not limited to costs associated with the services of experts, consultants or other vendors.
12. Each Party represents and warrants that it has full power and authority to enter into and perform this Agreement and that the person executing this Settlement Agreement on behalf of that Party has been properly authorized

and empowered to enter into this Settlement Agreement and bind that Party hereto.

13. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, provided that no provision of this Settlement Agreement shall be interpreted for or against a Party because that Party or Parties' legal representative drafted such provision, and that this Settlement Agreement shall be construed as if jointly prepared by the Parties.
14. Each of the Parties to this Settlement Agreement warrants that it has, through its representatives, carefully read and understood the terms and conditions of this Settlement Agreement, and that it has not relied upon the representations or advice of any other Party or any attorney not its own.
15. No modification, waiver, or amendment to this Settlement Agreement shall be valid unless the same is in writing and executed by the Party against which the enforcement of such modification, waiver or amendment is or may be sought.
16. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Settlement Agreement binding all the Parties hereto.
17. Each of the Parties represents that either (1) they are the sole and lawful owners of all right, title and interest in and to every claim and other matter which they purport to release in this Settlement Agreement, including but not limited to all claims currently arising from or related to the Agreements, and represent and warrant that they have not assigned or transferred, or purported to assign or transfer, any such claim or other matter to any person or entity, or (2) that they have obtained the written consent of the assignee to enter into this Settlement Agreement, and such written consent is attached hereto. No Party hereto shall in the future transfer or assign in any manner to any entity or person any claim, cause of action or demand based upon or arising out of or in connection with this Settlement Agreement.
18. The Parties agree that should any provision of this Settlement Agreement, or any portion of any provision, be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of the provision and the Settlement Agreement shall nonetheless remain binding and in effect, unless this would result in a substantial failure of consideration.
19. Except as may be provided expressly in writing by each Party to be charged, no action or want of action on the part of any Party hereto at any time to exercise any rights or remedies conferred upon it under this Settlement Agreement shall be, or shall be asserted to be, a waiver on the part of any such Party of any of its rights or remedies hereunder.
20. The Parties agree to perform any further acts and execute and deliver any further documents that may reasonably be necessary to carry out the provisions of this Settlement Agreement.

21. There are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the Parties hereto relating to the subject matter of this Settlement Agreement that are not fully expressed herein. This Settlement Agreement and Tentative Agreement shall be interpreted according to its own terms, as defined in this Settlement Agreement or otherwise according to their ordinary meaning without any parol evidence. This is an integrated Settlement Agreement.

IN WITNESS HEREOF the Parties have caused this Settlement Agreement to be executed in the day and year first written above.

Date: <u>1-28</u> , 2016	CALIFORNIA CHARTER SCHOOLS ASSOCIATION  By <u>Ted Wallace</u> Its <u>President and CEO</u>
Date: _____, 2016	WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT _____ By _____ Its _____
Date: _____, 2016	BRUCE HARTER _____

21. There are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the Parties hereto relating to the subject matter of this Settlement Agreement that are not fully expressed herein. This Settlement Agreement and Tentative Agreement shall be interpreted according to its own terms, as defined in this Settlement Agreement or otherwise according to their ordinary meaning without any parol evidence. This is an integrated Settlement Agreement.

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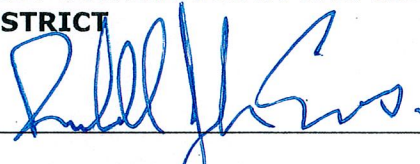

Date: _____, 2016	CALIFORNIA CHARTER SCHOOLS ASSOCIATION
	By _____ Its _____
Date: <u>1-27-16</u> , 2016	WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT  By <u>Randy Enos</u> Its <u>Board President</u>
Date: <u>1-27-</u> , 2016	BRUCE HARTER 

EXHIBIT [1]

TENTATIVE AGREEMENT CALIFORNIA CHARTER SCHOOLS ASSOCIATION v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, Superior Court Case No: C14-00901, ADR Case No: 15-3977-RSF

The following is a tentative agreement subject to approval by the California Charter Schools Association (hereafter CCSA), the West Contra Costa Unified School District (hereafter District or WCCUSD), and Bruce Harter:

1. Upon approval and execution of a settlement agreement, that includes the terms noted herein between CCSA, WCCUSD, and Bruce Harter Case No C14-00901 in the Contra Costa Superior Court will be dismissed with prejudice by CCSA and all parties will bear their own attorney's fees and costs;
 - a. CCSA and the charter schools listed in Exhibit A (upon execution of a Parcel Tax Qualifying Charter School Release and Covenant Not to Sue) will give up any claim they may have had for parcel tax monies for the years prior to and including the fiscal year 2014-2015;
 - b. Notwithstanding any existing provision in any Memorandum of Understanding or any other written agreement entered into between the District and a charter school, the District shall begin sharing Measure G parcel taxes with the charter schools listed in Exhibit A, as outlined herein, beginning with the 2015/2016 school year as follows:
 - i. 25% of the charter school proportionate share for the 2015/2016 school year;
 - ii. 50% of the charter school proportionate share for the 2016/2017 school year;
 - iii. 50% of the charter school proportionate share for the 2017/2018 school year;
 - iv. 75% of the charter school proportionate share for the 2018/2019 school year;
 - v. The proportionate share for each charter school shall be determined as follows: the applicable enrollment shall be District resident students enrolled in district-operated schools and students who are District residents enrolled in one of the charter schools listed in Exhibit A (or enrolled in a charter school claiming parcel tax proceeds in accordance with section [1][b][ix] below)(referred to as "Parcel Tax Qualifying Charter School") determined by using the CalPADS report for October in each school year. Acknowledging that CalPADS figures do not distinguish between in-district and out-of-district residents, each charter school anticipating receipt of funds pursuant to the terms of this agreement will provide the District with the first and last name and SSID for each enrolled student at least one calendar month prior to each payment due date as established in Paragraph 1(b)(vii) below. The District may use this student information only for purposes of verifying residency of the students. The District shall not use the documents provided pursuant to this paragraph to contact the students or his/her parents without the express written approval of the charter school. The District shall combine the Parcel Tax Qualifying Charter School and District enrollment (of in-district residents, only), and divide this combined enrollment by the total parcel taxes to be received by the District for the applicable school year to derive a per student amount of parcel taxes; the charter school proportionate share shall be the

per student amount of parcel taxes (as determined above) multiplied by the Parcel Tax Qualifying Charter School's in-district students for the applicable school year ("proportionate share")(e.g., for the 2014/2015 school year the calculation would be as follows [This calculation is an example only and assumes that all Parcel Tax Qualifying Charter School and District students are District residents – it is only an example]: District enrollment was 28,717 and Parcel Tax Qualifying Charter School's enrollment was 2,630. The combined enrollment is 31,347. The District's parcel tax proceeds were \$9,699,098 for 2014/2015 school year. The per student amount of funding would equal \$309 per student. The Parcel Tax Qualifying Charter School proportionate share would be $\$309 \times 2,630$);

- vi. The District shall pay each Parcel Tax Qualifying Charter School the proportionate share per in-district students as noted in the CalPADS report for the applicable charter school as noted above;
- vii. The amounts owed, as calculated herein, shall be made directly to each Parcel Tax Qualifying Charter School as follows: 75% of the payment paid to each Parcel Tax Qualifying Charter School no later than Jan. 15 each school year, except in 2016 when, owing to the timing of negotiations, the payment shall be made within thirty (30) days after the effective date of the Settlement Agreement related to the litigation described hereinabove and all student demographic documentation required by section 1(b)(v) hereinabove; and the remaining 25% paid to each Parcel Tax Qualifying Charter School no later than May 15 each school year;
- viii. Each Parcel Tax Qualifying Charter School receiving parcel taxes shall be solely and individually responsible for ensuring that the parcel taxes are spent consistent with the purpose of the Measure G parcel tax. In addition, each Parcel Tax Qualifying Charter School receiving parcel taxes shall be solely responsible for having their auditor include in the annual audit provided to the District a separate balance sheet reflecting the revenues and expenses related to the expenditure of parcel tax monies. Additionally, each Parcel Tax Qualifying Charter School shall be solely responsible for providing an annual summary of their expenditures of parcel tax proceeds with titles aligned to applicable parcel tax ballot language so the District may comply with Measure G's obligation to perform an annual independent financial audit; and
- ix. All charter schools listed in Exhibit [A] hereto shall be referred to as a "Parcel Tax Qualifying Charter School" as well as any new charter schools that operate within the District, and are chartered by the District, or the Contra Costa County Board of Education on appeal from a charter petition denied by the District or a county-wide charter school, or the State Board of Education on appeal from a charter petition denied by the District or a statewide charter school. Each Parcel Tax Qualifying Charter School shall participate in the parcel tax distribution noted herein upon the non-profit organization operating the respective charter school, if any, executing the Parcel Tax Qualifying Charter School Release and Covenant Not to Sue (attached to the Settlement Agreement) which shall include the obligation to provide enrollment data as required by Paragraph 1(b)(v) hereinabove. Any memorandum of understanding negotiated between the District and a charter school shall include information about this Tentative Agreement and a charter school's right to share in parcel taxes.

- c. The District may place a Parcel Tax Measure on the June 7, 2016 or November 8, 2016 ballots. If the District passes a new parcel tax measure during the current parcel tax measure (i.e., Measure G) the District shall provide the Parcel Tax Qualifying Charter Schools identified in Section [b] above with 100% of the proportionate share of the new parcel tax measure funding. If the new parcel tax measure takes effect upon the expiration of the current parcel tax measure (i.e., Measure G) then the District shall continue to share Measure G funding with the Parcel Tax Qualifying Charter Schools per the terms of this agreement and shall share the new parcel tax at 100 % proportionate share. If a new parcel tax measure supersedes the current parcel tax measure then the District shall share the new parcel tax funding at 100% proportionate share and the distribution of current parcel tax measure (Measure G) shall cease upon the effective date of the new parcel tax measure;
 - d. CCSA shall be allowed to participate in the District planning of any new parcel tax measure that may be put on a ballot during the current parcel tax measure. The District shall provide CCSA advance notice of any meeting in which District staff are gathering as part of District business to discuss any new parcel tax that the District is contemplating submitting to the electorate during the term of the current parcel tax measure;
 - e. If the parcel tax measure is not placed on the ballot in 2016, CCSA and the District agree to meet and confer about any future parcel tax measures. It is expressly agreed that there shall be no renegotiation of the figures set forth in Paragraph 1(b) hereinabove in the event a 2016 parcel tax measure fails or if no parcel tax measure is placed on a 2016 ballot; and
 - f. The District agrees to initiate the process, consistent with its bylaws, to adopt a District Board policy providing that charter school in-district students are entitled to an equal share of the distribution of any future parcel tax measures approved by the electorate. The District agrees to provide a draft copy of any proposed Board policy pursuant to this section to CCSA to allow its review and comment before taking action to approve said policy. CCSA acknowledges that future District Boards of Education may choose to amend or withdraw the Board policy approved as described herein.
2. This proposal requires the non-profit organizations operating each of the Parcel Tax Qualifying Charter Schools to agree in writing to the terms of this proposal and their understanding that they are giving up various litigation rights they may individually have regarding the current and all prior parcel taxes in the District.

EXHIBIT A

Charter School Name	Charter School Address
Aspire Richmond Ca. College Preparatory Academy	3040 Hilltop Mall Rd. Richmond, CA 94806
Aspire Richmond Technology Academy	3040 Hilltop Mall Rd. Richmond, CA 94806
Caliber Beta Academy	5100 Potrero Ave. Richmond, CA 94804-4445
John Henry High	251 South 12th St. Richmond, CA 94804-2411
Leadership Public Schools: Richmond	880 Bissell Ave Richmond, CA 94801-2411
Making Waves Academy	4123 Lakeside Dr. Richmond, CA 94806-1942
Manzanita Middle	2925 Technology Ct. Richmond, CA 94806-1952
Richmond Charter Academy	3200 Barrett Ave. Richmond, CA 94804-1718
Richmond College Preparatory	214 South 11th St. Richmond, CA 94804-2474
Richmond Charter Elementary – Benito Juarez	777 Sonoma St. Richmond, CA 94805-1534
Summit Public School K2	1800 Elm St. El Cerrito, CA 94530-1925

**PARCEL TAX QUALIFYING CHARTER SCHOOL
RELEASE AND COVENANT NOT TO SUE**

This Release and Covenant Not To Sue ("Release and Covenant") is made as of the _____ day of _____, 2016, by **[name of non-profit]**, the non-profit entity operating **[name of school]**, for purposes of effectuating the terms of the Settlement Agreement and Release and Covenant Not To Sue ("Settlement Agreement") entered into by the California Charter Schools Association ("CCSA") on the one hand, and the West Contra Costa Unified School District and Bruce Harter (collectively referred to herein as the "District"), on the other. CCSA and the District may be referred to herein individually and/or collectively as "Party" or "Parties."

RECITALS

WHEREAS, **[name of school]**, operated by **[name of non-profit]**, is one of eleven charter schools operating within the boundaries of the District that qualify as a Parcel Tax Qualifying Charter School under the terms of the Parties' Settlement agreement; and,

WHEREAS, in its capacity as representative plaintiff for each Parcel Tax Qualifying Charter School, CCSA sued the District in Contra Costa County Superior Court (Case No. C-14-00901) to assert each Parcel Tax Qualifying Charter Schools' rights to certain parcel tax proceeds collected by the District ("Action"); and,

WHEREAS, the Parties have since negotiated a settlement of the lawsuit and memorialized its terms into their Settlement Agreement; and,

WHEREAS, the Parties made the execution of this Release and Covenant Not To Sue by the operators of each of the Parcel Tax Qualifying Charter Schools a necessary condition for securing each Parcel Tax Qualifying Charter School's rights under the Settlement Agreement; and,

WHEREAS, under the terms of the Settlement Agreement, the District has obliged itself to initiate a policy of sharing certain parcel tax proceeds with each Parcel Tax Qualifying Charter School, including **[name of school]**; and,

WHEREAS, **[name of non-profit]** regards the District's promises to initiate a policy of sharing certain parcel tax proceeds with **[name of school]**, as memorialized in the Settlement, to be sufficient consideration for this Release and Covenant;

NOW, THEREFORE, **[name of non-profit]**, agrees as follows:

TERMS

1. **[Name of non-profit]** does hereby fully and finally settle, release, relieve, acquit, and forever discharge the District and the directors, employees, administrators, assigns, agents, representatives, attorneys, insurers, experts, and consultants of the District, from any and all claims, claims for indemnification or contribution, complaints, causes of action, demands, liabilities, losses, or damages, including attorneys' fees and costs, experts' and consultants' fees and costs, known or unknown, which **[name of non-profit]** may now or hereafter have against the District and the directors,

employees, administrators, assigns, agents, representatives, trustees, attorneys, insurers, experts and consultants, that relate to the Action.

2. **[Name of non-profit]** acknowledges that it is familiar with Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

Except as provided herein and in the Parties' Settlement Agreement, **[name of non-profit]** waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred upon it by the provisions of Section 1542 of the California Civil Code, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the subject matter of the Action. In connection with such waiver and relinquishment, **[name of non-profit]** hereby acknowledges that it is aware that it or its attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of the Action, but that it is the intention of **[name of non-profit]** to hereby fully, finally and forever waive said claims, whether known or unknown, suspected or unsuspected.

3. **[Name of non-profit]** covenants and agrees that at no time subsequent to the date of the execution of the Parties' Settlement Agreement will it file or maintain or cause or knowingly permit the filing or maintenance of, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, any charge, claim, or action of any kind, nature or character whatsoever, known or unknown, which they may now have, or have ever had, or which they may later discover, against the District, which is based on any act, omission, or event directly relating to the subjects of the Action. **[Name of non-profit]** agrees that this Release and Covenant shall constitute a full and complete defense to, and may be used as a basis for a permanent injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted by **[name of non-profit]** against the District that relates to the subjects of the Action.
4. **[Name of non-profit]**'s covenant not to sue shall be conditioned on the satisfactory performance, by the District, of its obligations under the Parties' Settlement Agreement that relate to the rights of **[name of school]**.

[Name of non-profit]'s covenant not to sue does not pertain to any matters other than those expressly specified herein. **[Name of non-profit]** reserves and this Release and Covenant is without prejudice to, all rights it has against the District with respect to all matters outside the scope of the Action, the Parties' Settlement Agreement, and this Release and Covenant.