

**AGREEMENT BETWEEN THE ATLANTA INDEPENDENT SCHOOL SYSTEM AND
PURPOSE BUILT SCHOOLS ATLANTA, INC.**

This **AGREEMENT** ("Agreement") entered into effective as June ___, 2016 between the **ATLANTA INDEPENDENT SCHOOL SYSTEM** ("APS"), a body corporate and politic, having its principal place of business at 130 Trinity Avenue S.W., Atlanta, Georgia 30303, and **PURPOSE BUILT SCHOOLS ATLANTA, INC.** ("PBS"), a Georgia nonprofit corporation, having a principal place of business at 3445 Peachtree Road, N.E., Suite 175, Atlanta, Georgia 30326.

RECITALS

WHEREAS, the Board of Education for APS ("Board") is charged with the duty to provide adequate public schools and is authorized to supervise all matters pertaining to the public schools;

WHEREAS, the Board has identified a number of schools, characterized by low performance on state-mandated assessments and on the CCRPI ratings, that are in need of turnaround support and intervention;

WHEREAS, the Georgia State Board of Education ("State Board") has granted APS a system-wide charter ("System Charter"), having an initial effective term of July 1, 2016 to June 30, 2021, which provides APS with the maximum flexibility allowed by law in the operation of APS schools;

WHEREAS, PBS, with its affiliates, has experience operating successful schools in inner-city neighborhoods with low-income populations, and PBS has a proven educational and operating model that the Parties believe will work well in schools needing turnaround support and intervention; and

WHEREAS, through this Agreement, APS seeks to contract with PBS to operate the schools listed herein (the "Turnaround Schools").

NOW, THEREFORE, for the consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, mutually agree as follows:

ARTICLE I – TURNAROUND SCHOOLS

1.1 Turnaround Schools. For purposes of this Agreement, the following APS schools shall each be designated as a "Turnaround School," each as of the Commencement Date set forth in Section 2.2:

- a. Thomasville Heights Elementary School;
- b. Slater Elementary School;
- c. Price Middle School; and
- d. Carver High School.

1.2 Appointment; Flexibility Waiver. Pursuant to the flexibility waiver provided to APS via the System Charter and subject to the terms and conditions set forth herein, APS hereby appoints PBS as the operator of the Turnaround Schools to implement the educational, basic

academic and additional programs described in Article III (collectively, the “Education Program”). Notwithstanding the foregoing, the Turnaround Schools shall continue to be APS community schools and, to the extent not otherwise modified by this Agreement, shall be subject to APS policies and procedures regarding compliance with federal or state regulations, as well as enrollment, attendance zones, transportation of students, and student discipline.

ARTICLE II – TERM

2.1 Term. It is the intention of the parties that this Agreement remain in place for the school years commencing July 1, 2016 and ending on June 30, 2030. However, as required by O.C.G.A. § 20-2-506, this Agreement shall have an initial term commencing on the date hereof and, unless earlier terminated as provided elsewhere in this Agreement, terminating absolutely and without further obligation on the part of APS on December 31, 2016, and at the close of each succeeding calendar year for which it may be renewed. Following the initial term (if not previously terminated in accordance with Article VIII), this Agreement shall automatically renew for successive calendar year periods unless a notice of non-renewal has been provided as contemplated by Section 8.2.A below. As used herein “Term” shall mean the initial term, together with all renewal terms.

2.2 Timeline. PBS shall begin providing the services described herein to Thomasville Heights Elementary School on July 1, 2016 and thereafter through the Term. PBS shall begin providing the services described herein to Slater Elementary School and Price Middle School on July 1, 2017 and thereafter through the Term. PBS shall begin providing the services described herein to Carver High School on July 1, 2018 and thereafter through the Term. As used in this Agreement, “Commencement Date” means, with respect to each Turnaround School, the date on which PBS is to begin providing the services hereunder as set forth in the immediately preceding sentence.

ARTICLE III – OBLIGATIONS AND COVENANTS OF THE PARTIES

3.1 Provision of Services. Upon the terms and subject to the conditions set forth in this Agreement, PBS agrees to provide services to APS as set forth herein.

3.2 Specific Duties and Obligations of PBS. PBS shall provide the following services with regard to students located within the attendance zones of the Turnaround Schools:

A. Enrollment Procedures.

1. PBS, using APS enrollment procedures, shall be responsible for enrolling students in the Turnaround Schools, provided, however, APS shall also be permitted to enroll students in accordance with such procedures.
2. The Turnaround Schools shall maintain their existing attendance zones. Any changes to the current attendance zones must be mutually agreed upon by APS and PBS. The Turnaround Schools shall operate as neighborhood schools, serving first the children living within the attendance zones, regardless of when they enroll. APS enrollment policies shall govern at all times during the life of the agreement. The schools shall follow APS's administrative transfer process that applies to all APS students; however, a former student of any Turnaround School who moves out of that school's attendance zone, shall have the option to remain at that school (subject to

school capacity) and will have first priority to transfer back to that school (and to the schools in the same feeder pattern) under APS's administrative transfer process.

3. Unless otherwise agreed to by APS and PBS, at all times during this Agreement Slater and Thomasville Heights shall be the sole schools feeding into Price Middle School; and Price Middle School shall feed into Carver High School. No Turnaround School may be closed or merged without the consent of PBS, unless this Agreement is terminated.

B. Educational Program

1. PBS shall implement at each Turnaround School a college preparatory educational program substantially similar in all material respects to the Drew Model Educational Program. Elements of the educational program shall include (but are not limited to):
 - an extended school day and school year (185 school days and a standard 8 a.m. to 4 p.m. school day)
 - a STEAM focus
 - Project-Based Learning approach
 - two enrichment classes per day
 - a Literacy Center and Math Lab for individualized instruction
 - intensive teacher professional development
2. PBS intends to partner with Sheltering Arms and YMCA to develop two new early learning centers in the attendance zones of the Turnaround Schools. These centers would provide high quality early learning opportunities for children aged 0-4. Subject to the enrollment procedures set forth above, the children attending these centers would enter Slater and Thomasville Heights for pre-K or Kindergarten.
3. PBS shall provide certain supplemental and supportive programming at the Turnaround Schools, to include the following:
 - A five (5) day per week, two (2) hour per day (from 4-6 p.m.) after-school program open to all students.
 - A dedicated team within the school focused on parent outreach and engagement.
 - Additional social workers and outreach workers focused on housing, family services, adult education, adult job training and family economic issues.
 - Additional resources for psychological and social/emotional support for students.
4. PBS shall follow federal and state law by providing school-level special education services and working in a cooperative relationship with APS. Any regional placement units currently housed at the schools which PBS will

manage will remain under the management of APS and may remain in their current location subject to APS's sole discretion. If APS desires to place any additional regional unit (or to re-place any current unit that has been relocated) at a Turnaround School, it shall give PBS at least 6 months' prior written notice and obtain the approval of PBS, which shall not be unreasonably withheld.

C. Basic Academic Programs

1. PBS will offer courses in English language arts/reading, mathematics, science and social studies/history, and any other courses as may be required for grade promotion or graduation and consistent with applicable law and the Georgia High School Graduation Guidelines.
2. Subject to Section 5.1 below and the lease agreements referenced therein, PBS will be responsible for providing all specific textbooks and related teacher's editions, resource kits, library and media materials and new adoptions or textbook replacements (collectively, "Educational Resources"), designated for each PBS course, with the quantity provided being determined by the anticipated enrollment size and grade levels for each course or subject provided by PBS during the Term.
3. PBS shall review all student records, transcripts and Individualized Education Programs or Section 504 Plans to reasonably ensure that the required services will be timely provided to students enrolled in the Turnaround Schools. The parties agree that the Turnaround Schools will offer a full inclusion model program and that APS may monitor special education students, as defined by the IDEA, and students receiving rehabilitation services under Section 504 of the Rehabilitation Act, as appropriate under the students' IEPs or Section 504 plans. PBS shall employ and retain throughout the Term of this Agreement appropriately certified, highly qualified teachers to fully implement the students' IEPs and Section 504 plans under Georgia Department of Education and other applicable regulations.

D. Additional Programs

1. PBS shall use APS's Code of Student Conduct in the Turnaround Schools. PBS further agrees to follow all applicable federal and state laws and statutes and APS' policies and regulations in relation to classroom management and discipline.
2. PBS agrees to follow APS policy regarding the expulsion of students. Students may be expelled only when the infraction(s) meet APS district guidelines.
3. PBS will administer state and local tests in compliance with applicable state and local laws, rules and regulations.

E. Staffing

1. All staff at the Turnaround Schools, except staff associated with special education regional placement units, shall be employees of PBS or its partner organizations. Professional staff shall be enrolled in the Georgia Teacher Retirement System, to the extent permitted by such system and applicable law.
2. PBS shall interview all current APS employees at the Turnaround Schools who are interested in working for PBS. PBS shall set up staff open houses at Drew Charter School solely for affected APS personnel. Any interested APS personnel shall be interviewed by PBS pursuant to PBS's established interview protocol. PBS shall have full discretion, subject to Section E.4 below, with respect to all hiring decisions.
3. PBS will at all times provide sufficient professional and other staff trained in compliance with all applicable state and federal law requirements to provide for and maintain supervision of students enrolled in the Turnaround Schools.
4. PBS will require its prospective employees to submit the necessary documentation and corresponding payment to APS to perform FBI and GBI criminal background checks in a manner consistent with APS policy and Georgia law. APS shall provide the resulting information to PBS upon receipt. PBS shall not permit any person, whether employed directly by PBS or by a contractor, to serve in any position in the Turnaround Schools if such person's background check reveals a conviction of any crime of moral turpitude, nor shall PBS permit any person whose background check reveals any other criminal conviction to serve in any position in the Turnaround Schools, whether employed directly by PBS or by a contractor, without the prior written consent and approval of APS. A copy of any such written consent and approval shall be placed in the person's personnel file maintained by PBS.
5. PBS will maintain the personnel files of its employees. Access to all pertinent information contained in such employee personnel files shall be provided to APS upon the written request of APS, subject to applicable law.
6. PBS is solely responsible for all matters concerning the recruitment, performance and retention of its personnel. PBS must fully comply with all federal, state, and local laws/regulations regarding employment and immigration, including, but not limited to, nondiscrimination, compensation, taxation, and benefits.

F. Administrative Services

1. PBS shall maintain records on student enrollment, attendance, courses offered, number of students served, courses completed, transcripts and student report cards, and any other records required by APS to comply with

federal or state reporting obligations in respect of the Turnaround Schools, utilizing APS's electronic record-keeping systems.

2. PBS shall establish the instructional hours of the school day and record absences in order to determine attendance for all grades using accepted attendance accounting procedures (i.e. daily absences for grades K through 5, and period absences for grades 6 through 12).
3. APS shall provide PBS with access to APS's intranet for purposes of sharing and transferring student records and administrative data, including e-mail. Each party shall bear the costs incurred by it in connection with any integration of data transfer and management systems.
4. APS and PBS shall cooperate as reasonably requested to ensure that the operation of the Turnaround Schools satisfies APS's applicable technology, data privacy and security policies.

G. Records

1. PBS shall keep proper and complete books, records and accounts with respect to the operation of the Turnaround Schools and all subcontracts relating to the operation thereof and shall permit APS and its designees, upon written notice to PBS, to inspect the same at all reasonable hours and to make and take away hard (paper) or electronic copies thereof, subject to applicable privacy and similar laws.
2. As soon as practical following the date of this Agreement (and in any event in advance of the applicable Commencement Date), APS will provide PBS access to any existing electronic or other student records in its possession that pertain to any students enrolled in the Turnaround Schools, including attendance records, academic records, disciplinary records, IEPs, Section 504 plans and previous or current standardized or other test scores.
3. PBS and its employees and subcontractors agree to comply with and shall assist APS in compliance, in all material respects, with applicable laws and regulations, including with Family Educational Rights and Privacy Act (FERPA), 20 U.S.C 1232g and the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h, and all applicable privacy laws and APS policies regarding student privacy.
4. PBS agrees to cooperate fully with APS in responding to records requested by others pursuant to the Georgia Open Records Act with respect to records in the possession of PBS.

H. GO Teams

1. PBS agrees to fully adopt the GO Team model at each of the Turnaround Schools, as described in APS's Local School Governance Teams Handbook, as amended from time to time. APS will delay establishing

GO Teams until the start of the 2016-2017 school year for all of the Turnaround Schools, at which point PBS will begin to work with the team at Thomasville Heights on the school plan and other essential areas of GO Team responsibility. For all other GO Teams at Turnaround Schools, PBS will use reasonable efforts to attend all meetings prior to the applicable Commencement Date to gain an understanding of the decisions made and plans adopted.

3.3 General Duties and Covenants.

- A. PBS shall provide the services described in this Agreement and shall operate, maintain and manage the Turnaround Schools in compliance with all applicable federal and state constitutional requirements and applicable federal, state and local laws, statutes, ordinances, rules and regulations, and, to the extent not otherwise modified by this Agreement, APS policies and procedures regarding compliance with federal or state regulations, as well as enrollment, attendance zones, transportation of students, and student discipline.
- B. Except as otherwise provided in the leases described in Section 5.1, PBS will provide the instructional and administrative employees necessary to administer at the Turnaround Schools the Education Program, all instructional materials, technology and software specifically required for delivery of the Education Program, general maintenance (including janitorial services, repairs due to general wear and tear, and repairs required due to vandalism), general liability insurance (as set forth in Section 9.2), and utilities, inclusive of trash removal.
- C. PBS shall provide APS with all necessary information and documentation needed by APS for all federal and state reporting purposes.
- D. PBS will operate in a fiscally sound manner as measured by an external audit conducted by an independent certified public accountant licensed in the State of Georgia that will be submitted annually to APS. PBS will meet all Generally Accepted Government Accounting Standards (GAGAS) as demonstrated by the annual external audit reports.

ARTICLE IV – BUYBACK SERVICES

4.1 Buyback Services. PBS may elect to execute a separate Buyback Services Agreement with APS. PBS currently intends to utilize the Buyback Services Agreement for the provision by APS of transportation, nutrition, and security services at the Turnaround Schools, but nothing herein or in such agreement will prevent PBS from changing the scope of buyback services during the Term.

ARTICLE V – FACILITIES

5.1 Lease of Facilities and Use of Materials. APS shall lease to PBS the improved real property comprising the Turnaround Schools, in each case as of the applicable Commencement Date. Such leases shall be substantially in the form attached hereto as Exhibit A, which is hereby incorporated by this reference. The leases shall provide, among other things, for PBS's use, from the

applicable Commencement Date and throughout the Term thereafter, of all tangible property located at the Turnaround School as of the end of the academic year prior to the applicable Commencement Date, including all existing inventory of Educational Resources, and all furniture, fixtures and equipment currently in place or obtained between the date hereof and the Commencement Date. At all times, the facilities and such leased property shall remain APS property subject only to the leasehold interest of PBS.

5.2 Transportation. PBS will follow APS's policies regarding transportation for enrolled elementary students living 1 mile or more from the school building and 1.5 miles or more for middle and high school students.

ARTICLE VI – COMPENSATION; METHOD OF PAYMENT

6.1 Funding Formula and Procedures. APS shall provide per-pupil funding according to the formula and procedures set forth on Exhibit B attached hereto and incorporated by this reference, but in any event, APS shall treat the Turnaround Schools no less favorably than other similarly situated schools within the Atlanta Independent School System with respect to the allocation and provision of funds.

6.2 Additional Funds. In the event PBS hires a principal for a Turnaround School in advance of its Commencement Date, APS shall pay the costs of a principal-in-training during the year prior to the applicable Commencement Date. APS shall also support PBS in raising grant and philanthropic funds for additional start-up needs.

6.3 Use of Funds. PBS shall have sole discretion on the expenditure of funds received from APS or otherwise, subject to the terms of this Agreement, the System Charter and applicable law. Without limiting the foregoing, the funding provided pursuant to the formula and procedures referred to in Section 6.1 shall be based on the combined enrollment of all Turnaround Schools being operated by PBS, and PBS, at its sole discretion (but subject to applicable law and the System Charter), shall have authority to allocate those funds among the Turnaround Schools in the manner best suited to implement the Education Program and achieve the performance goals set forth in this Agreement.

ARTICLE VII – PERFORMANCE STANDARDS

7.1 Intent. It is the intent of APS and PBS that their partnership results in outstanding schools with a rich educational program where students achieve at high levels. APS and PBS also recognize that long-lasting transformation takes time.

7.2 Target Performance. Target performance standards for the elementary and middle grades are based upon the APS Challenge Index. The Challenge Index is published by the Atlanta Public Schools' Research & Evaluation Department annually on the department's public blog. The public will be able to view partner progress over time. The goals are as follows:

- A. The agreed upon goal for Thomasville Heights Elementary, Slater Elementary and Price Middle Schools is that at the end of 5 years of PBS operation of each such school, and at the end of each subsequent 5-year period of PBS operation of such school thereafter, the school will achieve at or above the challenge index

trend line or move at least 5 normal curve equivalent points closer to the trend line.

- B. Target performance standards for the high school grades are based upon the Graduation Rate, using the Georgia Department of Education's published graduation rates. The agreed upon goals for Carver High School are: (i) by the end of 5 years of PBS's operation of Carver High School, the school will have achieved a graduation rate of 75%; (ii) by the end of 10 years of PBS's operation of Carver High School, the school will have achieved a graduation rate of 82%; and (iii) at the end of the 14-year contract, Carver High School will achieve a 90% graduation rate as determined by the State of Georgia graduation calculation.

ARTICLE VIII -- TERMINATION

8.1 With Cause.

- A. Subject to clause 8.1(B) below, if either party refuses or fails to perform any of its material obligations hereunder in a material manner, the other party may give written notice of such default. If the defaulting party fails or refuses to cure any material default within thirty (30) days after such notice is given, or if such default is not reasonably susceptible to cure within such time, if the defaulting party does not commence to cure the default within thirty (30) days after notice is given and is not proceeding to diligently work towards curing it thereafter, then the other party may terminate this Agreement by written notice with immediate effect.
- B. APS may terminate this Agreement without penalty for PBS's failure to substantially implement the Education Program, as follows. Prior to exercising such termination right, APS shall give PBS a notice describing such failure in reasonable detail. Within ten (10) business days of receiving such notice, APS and PBS shall meet to discuss the alleged failure and options for resolution. The parties shall work together in good faith to prepare a written plan of resolution, including specific goals with reasonable time frames. If, following the date that is sixty (60) days from the date a plan or resolution is agreed to by the parties, PBS has failed to achieve the goals set out in the plan of resolution, APS shall be entitled to terminate this Agreement by written notice with immediate effect.
- C. APS may terminate this Agreement without penalty for PBS's failure to achieve the Performance Standards as outlined herein

8.2 Without Cause

- A. As required by O.C.G.A. § 20-2-506, this Agreement shall terminate absolutely and without further obligation on the part of APS at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, unless earlier terminated as provided in this Agreement. At the end of each calendar year, this Agreement will be automatically renewed for an additional 12 month period unless, no later than

January 31 of the then-current term, APS provides PBS with an affirmative notice of non-renewal. APS agrees that any such non-renewal shall require approval by the APS Superintendent and the Board. In the event any such notice of non-renewal is given, PBS shall cease its operation of the Turnaround Schools as of June 30 of the year in which such notice is given, even though this Agreement shall terminate on December 31 of such year (or such earlier date as the parties may agree).

B. This Agreement shall no longer apply to any Turnaround School that is taken over by the State of Georgia as part of its Opportunity School District, provided, however, that APS shall use good faith efforts to oppose any such action by the State of Georgia, and PBS shall cooperate in such efforts as reasonably requested.

8.3 Mutual Agreement. This Agreement may be terminated prior to expiration of the Term by mutual written agreement of the parties hereto, which agreement shall state the effective termination date and any other conditions of said termination.

8.4 Effect of Termination. Upon the effective date of termination of this Agreement, PBS shall:

- A. immediately cease all work under this Agreement;
- B. within ten (10) days, deliver to APS copies of all educational records of all students then or previously enrolled in the Turnaround Schools (to the extent such records are not already available in APS electronic record keeping systems);
- C. place no further orders to subcontractors without the prior written consent of APS;
- D. terminate all orders and subcontracts to the extent that they relate to the performance of work relating to the Turnaround Schools; and
- E. as soon as practicable, transfer possession to APS of any furniture and equipment purchased with public funds for the Turnaround Schools, as well as any remaining public funds held by PBS, in each case, subject to PBS's obligations in accordance with Section 9.5.

ARTICLE IX – OTHER GENERAL TERMS

9.1 Notices. Except as otherwise expressly provided, any notice, instruction or other written communication required or permitted to be given under this Agreement shall be deemed to have been delivered or received:

- (a) Upon personal delivery to the other party or its authorized representative, which delivery may be accomplished by in person hand delivery, or via bona fide overnight express services; or
- (b) Five (5) days after depositing in the United States mail a letter, which is either certified or registered, addressed to the other party at its official address, for use

under this Agreement, as the case may be. For purposes of this Agreement, notices, instructions or other written communications shall be sent or delivered to the applicable party at the following address, or at such other address as a party hereto may provide notice of in accordance with this Section 9.1:

To PBS: Purpose Built Schools Atlanta, Inc.
3445 Peachtree Road NE, Suite 175
Atlanta, GA 30326
Attention: Office of the President

With Copies To: Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE; Suite 2300
Atlanta, GA 30309
Attn: Michael Gurion

And to APS: Superintendent
Atlanta Independent School System
130 Trinity Avenue, SW
Atlanta, Georgia 30303

With Copies To: General Counsel
Atlanta Independent School System
130 Trinity Avenue, SW
Atlanta, Georgia 30303

9.2 Insurance. PBS represents and agrees that it shall provide and maintain insurance as required by APS and as agreed to by the parties hereto, as follows:

A. **Worker's Compensation and Employer's Liability Insurance.** PBS shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits. Such insurance is to cover each and every employee who is or may be engaged in work under this Contract.

<u>Workers' Compensation</u>	Statutory
<u>Employer's Liability</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

B. **Comprehensive General Liability Insurance.** PBS shall procure and maintain Comprehensive Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following specific extensions of coverage shall be provided and indicated on the certificate of insurance:

- (a) Comprehensive Form
- (b) Contractual Insurance
- (c) Personal Injury

- (d) Broad Form Property Damage
- (e) Premises-Operations
- (f) Completed Operations

This coverage shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under this Agreement. Policy coverage must be on an occurrence basis.

C. **Automobile Liability Insurance.** PBS shall procure and maintain Automobile Liability Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided and indicated on the certificate of insurance:

- (a) Comprehensive Form
- (b) Owned, Hired, Leased and non-owned vehicles to be covered

D. **Crime Insurance.** PBS shall procure and maintain Crime Insurance to include coverage of theft of APS' property by PBS's personnel. Coverage shall be in an amount not less than \$100,000 per occurrence.

9.3 Surplus Funds. Any surplus funds remaining at the close of each fiscal year will be used to enhance the Turnaround Schools' academic program. Under no circumstances shall any surplus be distributed to PBS employees, board members, or educational service providers. Nothing in this section shall be construed to prevent PBS from setting aside surplus funds in a reserve account or budgeting and awarding performance bonuses as part of its annual operating expenses.

9.4 Responsibility for Debts. PBS shall be responsible for all debts incurred by it in connection with its performance of this Agreement. Except as agreed hereto, APS shall not be contractually bound to any third party with whom PBS has a contract or from whom PBS has purchased goods or services.

9.5 Distribution of Funds and Assets Upon Dissolution. In the event PBS is dissolved, it shall comply with the applicable requirements set forth in the Georgia Nonprofit Corporation Code and will cooperate with APS to the extent necessary to wind down its operation of the Turnaround Schools. Without limiting the foregoing, PBS shall return to APS any public surplus remaining at the time of dissolution, after all liabilities and obligations of PBS have been paid and discharged, or adequate provisions have been made therefor. APS shall not be responsible for PBS's unpaid debts in the event PBS does not have sufficient funds to pay all of its debts at the time it ceases operation.

9.6 Non-Agency. The parties expressly acknowledge and agree that PBS is not acting as agent of APS except as required by law or this Agreement. PBS acknowledges that it is without authority to, and will not, extend the full faith and credit of APS to any third party.

- 9.7 Delegation.** The parties acknowledge and agree that the functions and powers of each party may be exercised only by each party and may not be delegated to a third party without written agreement by the parties.
- 9.8 Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party.
- 9.9 Severability.** If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 9.10 Force Majeure.** Neither party shall be liable to the other for any loss, damage, delay or default resulting from a failure to perform any obligation hereunder if performance by such party is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, act of Government, sabotage, accident or any other casualty or cause beyond said party's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- 9.11 No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision hereof. No delay in acting with regard to any breach of any provision hereof shall be construed to be a waiver of any such breach.
- 9.12 Authorization of Agreement.** Each party represents and warrants to the other that its execution and delivery of this Agreement has been duly authorized and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms and in accordance with the laws of the State of Georgia.
- 9.13 Further Assurances.** Each party agrees to execute and deliver such further instruments and documents and take such other actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.
- 9.14 Relationship of the Parties.** Except as otherwise explicitly provided herein, neither party shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party and nothing in this Agreement shall be deemed to constitute any party a partner, agent, employee or legal representative of the other party or to create any fiduciary relationship between or among the parties. PBS shall be an independent contractor and, subject to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control and direct the performance of the services under this Agreement. Unless agreed otherwise, PBS shall be solely responsible for, and APS shall have no obligation with respect to, payment of all federal, state and other taxes owed or claimed to be owed by PBS arising out of PBS's association with APS pursuant to this Agreement.

9.15 PBS Board of Directors. APS acknowledges that it has reviewed the current membership of PBS's board of directors and has approved of such membership as of the date hereof.

9.16 Indemnification.

- A. APS shall not be liable for any injuries incurred by PBS or any of its employees, representatives or agents during the performance of PBS's duties as outlined in this Agreement, except, to the extent allowed by Georgia law, in the case of APS's gross negligence or willful misconduct.
- B. PBS agrees to indemnify, hold harmless and defend the Board, APS, and their respective current, future or past officers, agents and employees from any and against all claims, liabilities, damages, losses, judgments, charges, expenses (including attorneys' fees) and/or causes of action arising out of third party claims due to PBS's gross negligence, willful misconduct, or breach of its obligations under this Agreement, but only to the extent such Losses are not the result of APS's negligence or willful misconduct. PBS further agrees that its agreement to indemnify and hold harmless APS, its current, future or past officers, agents and employees shall not be limited to the limits of any insurance that may be required under this Agreement.
- C. APS shall cooperate fully with PBS in the defense of any claim for which indemnification may be sought hereunder. APS shall not settle or compromise any threatened or pending claim for which it will seek indemnification hereunder, nor permit a default or consent to a judgment in respect thereof, in each case, without the prior written consent of PBS. In addition, with respect to any claim for which APS has sought indemnification hereunder, if PBS notifies APS that it supports entering into an Acceptable Settlement Agreement (as defined below) and APS does not consent thereto, PBS's liability to APS under this Agreement shall thereafter be limited to the settlement amount proposed in the Acceptable Settlement Agreement. As used herein, "Acceptable Settlement Agreement" means a proposed agreement that (a) is agreed to by the third party plaintiff, (b) includes as a sole remedy the payment of a sum that PBS (or its insurer) is ready, willing and able to pay, and (c) does not contain any admission of wrongdoing or finding of liability on the part of APS.
- D. The amount of any claim for indemnification under this Agreement shall be reduced by the amount of any insurance proceeds or third party indemnity or contribution available to APS, and APS shall use commercially reasonable efforts to obtain all such amounts. If any such amounts are received by APS after it has received an indemnification payment from PBS hereunder, it shall pay such amount over to PBS, up to the amount of the indemnification payment received.

9.17 Third Party Beneficiary. This Agreement is intended to be solely for the benefit of PBS and APS and their respective successors and permitted assigns and is not intended to and shall not infer any rights or benefits upon any third party not a signatory hereto.

- 9.18 Number and Gender.** The parties hereby represent and warrant that the individuals executing this Agreement have the authority to legally bind APS and PBS respectively.
- 9.19 Section Headings.** The headings of sections contained in this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend or construe the terms or provisions of the sections of this Agreement.
- 9.20 Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Georgia. Jurisdiction and venue for any action brought under this Agreement shall lie exclusively in the federal and state courts located in Fulton County, Georgia.
- 9.21 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed, and have the full force and effect of, an original, but all of which shall constitute but one and the same instrument, effective when one or more counterparts has/have been signed by each of the parties and delivered to the other party.
- 9.22 Amendments.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration or modification is sought.
- 9.23 Integration.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all previous communications, representations or agreements with respect to such subjects, either written or oral, between them, and not incorporated herein.
- 9.24 Authority.** The Parties hereby represent and warrant that the individuals executing the Agreement have the authority to legally bind APS and PBS respectively.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized representative of the day, month and year last written below.

Atlanta Independent School System

By: [Signature]

Name: Meria J. Carsdaphen

Title: Superintendent

Date: 6/17/16

Purpose Built Schools Atlanta, Inc.

By: [Signature]

Name: Gregory J. Graneli

Title: President

Date: June 17, 2016

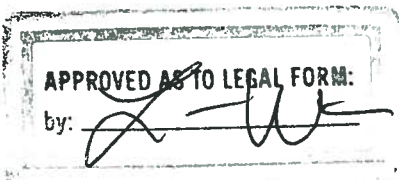


EXHIBIT A – Form of Lease Agreement

(see attached)

EXHIBIT A – Form of Lease Agreement

STATE OF GEORGIA
COUNTY OF FULTON

LEASE AGREEMENT

This Lease Agreement (this “**Lease**”, or this “**Agreement**”) is made as of _____, 20__ by and between **THE ATLANTA INDEPENDENT SCHOOL SYSTEM**, an independent school system chartered by an Act of the General Assembly of the State of Georgia (hereinafter referred to as “**Lessor**”), and **PURPOSE BUILT SCHOOLS ATLANTA, INC.**, a Georgia nonprofit corporation (hereinafter referred to as “**Lessee**”).

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the improved real property known as the _____ School, located at _____, Atlanta, Georgia _____ and being more particularly described on **Exhibit A** attached hereto and made a part hereof by this reference (said real property, together with any and all buildings, appurtenances, other improvements, and fixtures situated thereon, all plants, shrubbery, trees, timber, whether severed or not, and all rights, title and interest of Lessor in any and all public and private roads serving or abutting said real property, being collectively referred to in this Agreement as the “**Property**”) ¹. Lessor agrees to deliver vacant possession of the Property to Lessee on July 1, 20__ (the “**Commencement Date**”).

1. **TERM:** Lessee shall lease the Property for a term of [fourteen (14)] ² years (the “**Lease Term**”), beginning on the Commencement Date and, unless terminated sooner in accordance with the terms herein, terminating on June 30, 2030. If Lessee shall remain in possession of the Property after the expiration or termination of this Agreement without written authorization of Lessor, Lessee shall be deemed a tenant at sufferance and not a tenant at will.

2. **RENT:** Provided Lessee’s use of the Property is limited to the use as specified in Section 5 below, Lessee shall not be responsible for the payment of any rent for the Property during the Lease Term and any extension of the Lease Term. Subject to Lessor’s obligations under Section 6 of this Lease, the Lessee shall, however, be responsible for certain maintenance and repair, operating expenses, utilities, insurance, and any and all other costs associated with Lessee’s use and occupancy of the Property during the Lease Term, as further provided herein. The parties acknowledge that Lessee’s use and occupancy of the Property during the Lease Term and its performance of the foregoing obligations shall constitute adequate consideration for Lessor’s lease of the Property to Lessee pursuant to the terms of this Lease.

3. **EXISTING FF&E:** Lessee’s lease of the Property shall include the right to use all equipment, fixtures, furniture, educational resources and other personal property currently located at the Property or obtained by Lessor for the Property prior to the Commencement Date (collectively, the “**Existing FF&E**”). Lessee agrees that the Existing FF&E is made available for

¹ NOTE: Prior to entering into the lease for Carver High School, appropriate adjustments will be made to this form to define “Property” with respect to only that portion of the campus to be used by PBS, and a corresponding pro-rata adjustment to PBS’s obligations such as insurance, maintenance, taxes (if any), etc.

² NOTE: Lease term will be shortened for middle and high school based on applicable commencement dates.

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Lessee's use in its "as is, where is" condition with all faults and without any representation or warranty by Lessor, whether express or implied, and Lessee acknowledges that Lessor shall have no obligation to repair or replace the Existing FF&E. Upon the expiration of the Lease Term, Lessee shall return the Existing FF&E to Lessor in the substantially same condition as existed on the Commencement Date, normal wear and tear and damage by casualty excluded. Lessee acknowledges that its use of the Existing FF&E is at its sole risk. A list of material items comprising the Existing FF&E is set forth on **Exhibit B** attached hereto and made a part hereof by this reference.

4. **LESSEE IMPROVEMENTS:** Lessee may make minor interior alterations to the property, such as painting, adjusting/installing temporary shelving or partitions, and any other non-structural, non-mechanical alterations that do not negatively impact the value or condition of the property without obtaining prior written consent from Lessor. For all other alterations, changes, and other capital improvements to the Property that individually exceed \$5,000 in cost (collectively, "**Material Improvements**"), Lessee shall first obtain the prior written consent of Lessor, which consent may not be unreasonably withheld, conditioned or delayed. All such Material Improvements shall be: (i) funded entirely by Lessee, (ii) performed in a good and workmanlike manner, and in accordance with all applicable laws, governmental rules and regulations, (iii) completed without the creation or imposition of liens or other charges against the Property, and (iv) with the exception of trade fixtures, equipment, temporary partitions, furniture and furnishings that can be added and removed without damage to the Property, considered, and shall become, the property of Lessor upon the expiration or earlier termination of the Lease. Notwithstanding anything herein to the contrary, Lessor hereby pre-approves the Material Improvements listed on **Exhibit C** attached hereto and made part hereof by this reference, which improvements Lessee intends to complete within a reasonable amount of time following the Commencement Date.

5. **LESSEE'S USE OF PROPERTY:** During the Lease Term, the use of the Property shall be limited to operation of a school. Lessee shall use the Property in such a manner as to comply with all applicable local, county, state and federal laws, ordinances, rules and regulations. The Property shall not be used in a manner that creates any nuisance or trespass, or in any manner that vitiates the public character of the Property, or for private school purposes.

6. **MAINTENANCE AND REPAIR:**

6.1 Upon the Commencement Date, Lessee shall accept the Property in its "AS IS, WHERE IS" condition with all faults and without any inducement, representation or warranty whatsoever, whether express or implied. Lessor shall, at Lessor's sole cost and expense (without reimbursement from Lessee), and subject to Section 11, be responsible for Capital Improvements with respect to the Property during the Lease Term. As used herein, "Capital Improvements" means any repair, replacement, renovation or alteration, in each case where the cost exceeds \$50,000, with respect to only (i) the roof, foundation, or load bearing or exterior walls of the building(s) located on the Property, (ii) the major building systems of such buildings, including the HVAC, plumbing, electrical and life safety systems, and (iii) the paved parking surfaces located on the Property. Any such Capital Improvements required to be performed by Lessor hereunder shall be scheduled, prioritized and completed in accordance with Lessor's

EXHIBIT A – Form of Lease Agreement

customary schedule and procedures, and Lessor shall treat Lessee and the Property no less favorably than other similarly situated schools within the Atlanta Independent School System. In addition, if Lessor fails to complete any such Capital Improvement within a reasonable time after receiving written notice from Lessee, or in the event of an emergency, Lessee may, but is not required to, complete such Capital Improvement, and Lessee will be entitled to reimbursement from Lessor for Lessee's reasonable expense actually incurred, and to setoff any unreimbursed amounts against amounts that may otherwise become due from Lessee hereunder.

6.2 Subject to Lessor's obligations under this Section 6, and subject to Section 11, Lessee shall at all times during the Lease Term keep the Property in good order, condition, and repair and in a clean, sanitary and safe condition. It shall be the duty and responsibility of Lessee to maintain all grounds and yards on the Property in neat and clean condition.

6.3 Lessee agrees to and shall comply with the facilities inspection requirements set forth on **Exhibit D** attached hereto and incorporated herein by reference. Lessee shall ensure the facilities and systems listed on **Exhibit D** are inspected on the intervals listed therein by qualified inspectors, and shall promptly provide evidence of such inspections to Lessor upon request of Lessor.

6.4 Throughout the term of this Lease, Lessee shall, on the 1st day of each July, provide Lessor with a report of all material maintenance activities performed by Lessee on the Property during the twelve (12) month period preceding the report, and shall provide such other maintenance information and documentation as Lessor may reasonably request from time to time. In addition, at any time during the term of the Lease, Lessor may, upon reasonable prior notice to Lessee, request to enter the Property to view (a) the condition of the Property, (b) the maintenance, inspection, and repair logs maintained by Lessee, and/or (c) other documents evidencing the maintenance, inspection and/or repair work performed on the Property; and Lessee shall provide Lessor with the requested access, logs and documentation.

6.5 The parties acknowledge and agree that, for so long as Lessee contracts with the Atlanta Independent School Systems for the provision of facility management services for the Property under a separate written agreement, it is their intent that Lessor fully performs all obligations of Lessee described in this Section 6, as further described in such agreement.

6.6 Subject to Lessor's obligations under this Section 6, at any time when Lessee is not contracting with the Atlanta Independent School System for facility management services with respect to the Property, should Lessee fail to repair and maintain the Property, the grounds and yards, or any part thereof at Lessee's expense as otherwise required pursuant to this Section 6, and such failure is not cured within twenty-five (25) days after receipt of written notice from Lessor, then Lessor shall have the right, but not the obligation, to undertake such repairs or maintenance, in which event Lessee shall reimburse Lessor for all actual costs so incurred by Lessor within thirty (30) days of Lessor's delivery of an invoice therefor to Lessee.

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7. **REAL PROPERTY TAXES:** Throughout the Lease Term, Lessor shall pay any and all city and county ad valorem real estate property taxes and sanitation charges for the Property, to the extent any such charges are assessed and become due, on or by their respective due dates. Lessor shall forward any tax bills to Lessee promptly after Lessor's receipt thereof. Lessee shall have the right to pursue any and all abatements that may be available due to the use of the Property as a school.

8. **PERSONAL PROPERTY TAXES:** Lessee shall pay any and all taxes assessed against and levied upon Lessee-owned alterations and/or utility installations, trade fixtures, furnishings, equipment and all personal property of Lessee contained in and/or located upon the Property or elsewhere or used in connection with Lessee's operation of the Property.

9. **UTILITIES:** Lessee shall pay all utility bills, including, but not limited to, water, sewer, gas, electricity, cable, internet, telephone, garbage collection, pest control, air conditioning and heating bills for service to the Property during the Lease Term. Lessee shall be responsible for any other utility services rendered to the Property or used by Lessee in connection therewith. If Lessee fails to pay any of said bills or charges or for any other services, Lessor may, but shall not be obligated to, pay the aforesaid bills and charges and Lessee shall immediately reimburse Lessor for all bills and charges so paid by Lessor upon demand.

10. **INSURANCE:**

a. Lessee's Comprehensive Insurance. Lessee shall procure at its expense and maintain at all times throughout the term of this Lease, with such coverage and endorsements as Lessor may reasonably require, comprehensive general liability insurance, including fire, legal liability coverage of no less than \$1,000,000, insuring Lessor and Lessee against (i) any and all liability for injury to or death of a person or persons, (ii) for damage to property occasioned by or arising out of any construction work being done by or on behalf of Lessee on the Building, (iii) arising out of the condition, use, or occupancy of the Building by Lessee and Lessee's officers, employees, agents, sublessees, assignees, licensees or invitees (collectively, "**Lessee's Agents**"), or (iv) in any way occasioned by or arising out of the activities of Lessee or Lessee's Agents on the Property or in the improvements situated on the Property (collectively, the "**Building**"), the limits of such policy or policies to be in combined single limits (per policy year) for both property damage and personal and bodily injury of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with excess umbrella insurance coverage for excess liability of no less than \$5,000,000. Such insurance shall extend to any liability of Lessee arising out of the indemnities provided in Section 15; provided, however, that with respect to the indemnity provided in Subsection 15(b), such insurance shall extend to such liability if and only to the extent provided by the insurance carrier. Notwithstanding anything herein to the contrary, however, Lessee's indemnification obligations set forth in Section 15 shall in no way and for no purpose be limited to the amount of insurance provided by Lessee hereunder.

b. Lessee's All Risk Property Insurance. Lessee shall procure at its expense and maintain at all times throughout the term of this Lease, a policy or policies of special form "all risk" property insurance, insuring against the direct and indirect loss or damage by fire and all other casualties and risks, (i) the Building and appurtenant structures; and (ii) Lessee's

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personal property including without limitation, all fixtures, furnishings, equipment, supplies and other Lessee personal property contained in the Building; notwithstanding the fact that all alterations, additions and improvements made in or to the Building during the term of this Lease may remain in the Building and/or on the Property subsequent to the termination or expiration of the term of this Lease. Such “all risk” fire and extended coverage insurance shall provide protection to the extent of not less than one hundred percent (100%) of the full replacement value (i.e. replacement value without regard to depreciation) of all said items. The Atlanta Independent School System shall be listed as a Loss Payee on any and all losses under this policy of insurance for property belonging to Lessor.

c. Workmen’s Compensation and Employer Liability Coverage. Lessee shall procure at its expense and maintain at all times through the term of this Lease, statutory workers’ compensation insurance as required by law and employer’s liability insurance of at least \$1,000,000. Lessee, and not Lessor, will be liable for any costs or damages in excess of the statutory limit for which Lessee would, in the absence of workers’ compensation insurance, be liable.

d. Additional Insurance. Lessor shall also have the right to require Lessee to procure and maintain from time to time, at Lessee’s sole cost and expense, and with such minimum coverage limits and endorsements as Lessor may reasonably require, such additional insurance as is customary and/or prudent in light of Lessee’s intended use of the Property as a school facility, including without limitation, teacher’s professional liability and automobile liability coverage.

e. Waiver of Subrogation. All insurance policies obtained by Lessee concerning the Property shall be endorsed to provide that any release from liability of, or waiver of claim for recovery from, another person entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of such policy or the right of the insured to recover thereunder. Such policies shall also provide that the insurer waives all rights of subrogation that such insurer might have against Lessor. Lessee and Lessor each hereby waive all claims for recovery from or against the other for any loss or damage to any property or damages as a result of business interruption or rent loss insured under a valid insurance policy to the extent of any recovery collectible under such policies.

f. Other Insurance Policy Requirements. Unless otherwise provided, all insurance required to be maintained by Lessee by this Section 10 shall provide that:

(i) Lessor shall receive renewal certificates for all required policies of insurance set forth herein at least thirty (30) days prior to expiration of said policies;

(ii) No insurance policy be terminated or amended except after thirty (30) days’ prior notice to Lessor;

(iii) Lessor shall be named as additional insured, except with respect to worker’s compensation and employer liability coverage, and as additional insured and loss payee with respect to Lessee’s all risk property insurance (for losses of property belonging to Lessor);

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(iv) Such policies will be written as primary policies, not contributing with and not supplemental to any coverage that Lessor may carry;

(v) Any insurance that Lessee is required to obtain pursuant to this Lease may be carried under a “blanket” policy or policies covering other properties or liabilities of Lessee, provided that such “blanket” policy or policies otherwise comply with the provisions of this Section 10;

(vi) Lessee shall deliver certificates of the insurance policies described in this Section 10 on or before the Commencement Date, and which policy(ies) shall provide that the indemnity provisions in Section 15 of this Lease have been reviewed and, to the extent required hereunder, are recognized under such policy(ies); and

(vii) Lessee shall have its insurer endorse said insurance policies with a “Lessor’s additional interest” endorsement, such that no negligent acts or inaction on the part of Lessee shall cause coverage to be invalidated with respect to the interest of Lessor.

11. DAMAGE OR DESTRUCTION; PROPERTY LOSS:

11.1 If the Property, or any material part thereof, should be destroyed or damaged by fire or other casualty, Lessee shall immediately deliver written notice thereof to Lessor.

11.2 If (a) the Property is totally destroyed by fire or other casualty, or the Property is so damaged that it cannot reasonably be used by Lessee for operation of a school facility, and (b) rebuilding or repairs cannot be completed within one hundred and twenty (120) days after the date of such damage, or the cost of reconstruction exceeds the collectible insurance proceeds, or if such casualty occurs during the last year of the Lease Term, or if the Property is damaged or destroyed by any uninsured casualty, then either party, by written notice to the other within sixty (60) days after the occurrence of such casualty, may terminate this Lease effective as of the date of such damage.

11.3 If the Property is damaged by fire or other casualty but not to such an extent that (a) rebuilding or repairs cannot be completed within one hundred and twenty (120) days after the date of such damage, or (b) the parties do not elect to terminate this Lease pursuant to Subsection 11.2 hereof, this Lease shall not terminate, but Lessee shall proceed with all reasonable diligence to rebuild and repair the Property and the Building to substantially the condition in which it existed prior to such damage, and Lessor shall make the insurance proceeds available therefor to the extent such proceeds are received by Lessor. Notwithstanding the foregoing, Lessee shall not be obligated to rebuild and repair the Property to such condition if, in Lessee’s reasonable opinion, the insurance proceeds are not sufficient to so rebuild and repair the Property or if Lessor fails to make available to Lessee all of such insurance proceeds.

11.4 All insurance proceeds payable under insurance policies maintained by Lessee by reason of the occurrence of such fire or other casualty for property of Lessor shall be paid to Lessor to be applied to the cost of repair, unless this Lease is terminated

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pursuant hereto, in which case all such insurance proceeds shall be paid to Lessor, and except for any portion received by reason of the loss of Lessee's equipment, trade and business fixtures that do not become property of Lessor pursuant to Section 4 above, signs, and other personal property, which portion shall be paid to Lessee.

11.5 Lessee's personal property is not insured by Lessor and Lessor shall not be responsible or liable for any damage to Lessee's property of any type for any reason or cause whatsoever. Lessee is required to maintain, at its sole cost and expense, insurance on all of its fixtures, furnishings, equipment, supplies and other personal property which may be from time to time located on the Property.

12. **SUBLET OR ASSIGNMENT:** Lessee may not sublet the Property or grant any concession or license to use all or a portion of the Property without Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. Lessee may not assign this Agreement or any of its rights or obligations hereunder without Lessor's express written consent, which consent may not be unreasonably withheld, conditioned or delayed.

13. **QUIET ENJOYMENT/RIGHT OF ACCESS:** Absent default of Lessee under this Agreement beyond the expiration of applicable notice and cure periods, Lessee will have the right to occupy the Property peacefully and without interference by, through or under Lessor. Lessor shall have the right of access to the Property for inspection and maintenance upon notice to Lessee provided with a reasonable period of time in advance (except in the event of an emergency, when no advance notice shall be required). Lessee shall cooperate with Lessor in the conduct of such inspection and shall have the right to accompany Lessor, or its agents or employees, during the duration of such inspection.

14. **CONDEMNATION:** In the event the whole or any part of the Property shall be taken by any competent authority pursuant to a condemnation action (or transfer in lieu of condemnation), Lessee, at Lessee's election prior to the date the possession is taken by the condemnor, may:

- a. Terminate this Agreement by written notice to Lessor whereupon this Agreement shall be of no further effect as of the date of such written notice, except for these provisions which are expressly stated to survive the termination or early expiration of this Lease. All condemnation proceeds paid or payable for such taking shall belong to Lessor. Any and all costs, charges and reimbursements payable by Lessee hereunder shall be paid to Lessor (or other appropriate parties) through the date of such termination.
- b. In the event of a partial condemnation not rendering the Property uninhabitable, waive the right to terminate this Agreement and proceed as otherwise provided in this Agreement.

15. **INDEMNITY:**

15.1 Lessee agrees to indemnify, defend and hold Lessor harmless against any and all claims, demands, liabilities, damages, costs and expenses, including reasonable actual attorney's fees, whether for damages to persons or property (collectively, an

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"**Indemnified Claim**"), arising from (a) Lessee's use and/or occupation of the Property and/or the Building, (b) Lessee's use of the Existing FF&E, (c) a breach of or default on the part of Lessee in the performance of any covenant or agreement to be performed pursuant to the terms of this Agreement, or (d) any act, omission, negligence or willful misconduct of Lessee, its agents, contractors, servants, employees, sublessees, concessionaires or licensees, on or about the Property; provided that no such indemnification obligation will apply to the extent the Indemnified Claim results from the negligence or willful misconduct of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, upon notice from Lessor, Lessee covenants to defend such action or proceeding utilizing counsel reasonably satisfactory to Lessor. The indemnity required of Lessee provided by this Section 15 shall in no way and for no purpose be limited to the extent of available and collectible insurance set forth in Section 10 of this Agreement.

15.2 Lessor shall cooperate fully with Lessee in the defense of any claim for which indemnification may be sought hereunder. Lessor shall not settle or compromise any threatened or pending claim for which it will seek indemnification hereunder, nor permit a default or consent to a judgment in respect thereof, in each case, without the prior written consent of Lessee. In addition, with respect to any claim for which Lessor has sought indemnification hereunder, if Lessee notifies Lessor that it supports entering into an Acceptable Settlement Agreement (as defined below) and Lessor does not consent thereto, Lessee's liability to Lessor under this Agreement shall thereafter be limited to the settlement amount proposed in the Acceptable Settlement Agreement. As used herein, "Acceptable Settlement Agreement" means a proposed agreement that (a) is agreed to by the third party plaintiff, (b) includes as a sole remedy the payment of a sum that Lessee (or its insurer) is ready, willing and able to pay, (c) does not contain any admission of wrongdoing or finding of liability on the part of Lessor, and (d) includes an unconditional release of Lessor with respect to the applicable claim.

15.3 The amount of any claim for indemnification under this agreement shall be reduced by the amount of any insurance proceeds or third party indemnity or contribution available to Lessor, and Lessor shall use commercially reasonable efforts to obtain all such amounts. If any such amounts are received by Lessor after it has received an indemnification payment from Lessee hereunder, it shall pay such amount over to Lessee, up to the amount of the indemnification payment received.

16. **DEFAULT.** The following events shall be events of default by Lessee under this Lease:

- a. Lessee shall fail to pay on or before the due date thereof any charge or assessment due and payable by Lessee pursuant to the terms hereof and such failure shall continue after the later of (i) ten (10) days after written notice to Lessee by Lessor of such failure of payment, or (ii) thirty (30) days after the initial rendering to Lessee of a statement or invoice for such payment;
- b. Lessee shall fail to comply with any material term, provision, covenant or warranty made under this Lease by Lessee, and shall not cure such failure within thirty (30) days after written notice thereof to Lessee by Lessor; provided, however, if any such

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default is of a nature that it cannot be cured within such cure period, so long as Lessee has commenced and is diligently pursuing such cure, no event of default shall be deemed to have occurred at the end of the cure period, provided that Lessee completes such cure as promptly as reasonably possible under all the circumstances, and, in any event, within ninety (90) days from the date of Lessor's written notice;

- c. Lessee shall file a petition under any Chapter of the United States, Bankruptcy Code, as amended, or under any similar law or statute; or there shall be filed against Lessee a petition in bankruptcy or insolvency not dismissed within ninety (90) days after the filing thereof; or, Lessee shall be adjudged bankrupt or insolvent in proceedings;
- d. Lessee's interest in the Property is taken on execution or by other process of law;
- e. An assignment is made of all or substantially all of the property of Lessee for the benefit of Lessee's creditors; or
- f. A receiver, guardian, conservator trustee in involuntary bankruptcy or other similar officer is appointed to take charge of all or any substantial part of Lessee's property by a court of competent jurisdiction.

17. **REMEDIES.** Should any Event of Default occur then, notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance, Lessor lawfully may, in addition to any remedies available to Lessor at law, in equity, or otherwise, (a) immediately or at any time thereafter, and without demand or notice to the maximum extent permitted by law (and to such extent Lessee hereby expressly waives any notice to quit possession of the Property), enter into and upon the Property or any part thereof in the name of the whole and repossess the same, and expel Lessee and those claiming through or under it and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of payments or preceding breach of covenant; (b) Lessor shall have the option to send written notice to Lessee terminating the Lease Term and upon the thirtieth (30th) day following the sending of such notice of termination, the Lease Term shall terminate; and/or (c) Lessor shall have the right to perform any obligation of Lessee on Lessee's behalf and at Lessee's sole cost and expense.

18. **UNIFORM COVENANTS:** This Agreement shall be governed by the laws of the State of Georgia. Should any portion of this Agreement be deemed void or unenforceable by any court of competent jurisdiction, then said void or unenforceable section shall be severed and the remainder of this Lease shall remain in full force and effect. Any failure of Lessor to insist upon strict compliance with the terms of this Agreement shall not constitute a waiver of any violation hereof. All remedies available under this Agreement or by law or equity shall be cumulative.

19. ENVIRONMENTAL LAWS.

19.1 Definitions. As used herein:

19.1.1 **"Hazardous Substances"** shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated

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biphenyls, chemicals known to cause cancer, reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law.

19.1.2 “**Environmental Law**” shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental (other than Lessor), quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about the Property, or arising from Lessee’s use or occupancy of the Property, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the Property.

19.1.3 “**Hazardous Substances Discharge**” shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during the Lease Term, at or from the Property due to the act or omission of Lessee or its representatives, agents and employees.

19.2 During the Lease Term, Lessee shall not cause or knowingly permit to occur: (a) any violation of any Environmental Law in the Property or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under, or about the Property, or the transportation to or from the Property of any Hazardous Substance, except to the extent that such use (i) is reasonably necessary for the conduct of Lessee’s operations in accordance with industry standards for the industry in which Lessee operates and (ii) complies with all applicable Environmental Laws.

19.3 Lessee shall, at Lessee’s sole cost and expense, comply with all applicable Environmental Laws with respect to the Property. Lessee shall, at Lessee’s own expense, make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to the Property. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge with respect to the Property, then Lessee shall, at Lessee’s own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. Lessee shall promptly provide Lessor with all information reasonably requested by Lessor regarding Lessee’s use, generation, storage, transportation or disposal of Hazardous Substances in, at, or about the Property. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Lessee be obligated (i) to cure any deposit, spill, discharge, or other release of Hazardous Substance, other than a Hazardous Substance Discharge, (ii) to take any action or spend any money to cause the Property to comply with Environmental Laws if the failure to comply results from any deposit, spill, discharge, or other release of Hazardous Substance, other than a Hazardous Substance Discharge, or (iii) to take any action or spend any money to address any environmental condition existing prior to the Lease Term.

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19.4 Lessee shall indemnify Lessor against any Hazardous Substances Discharge, as that term is defined herein. The obligations and liability of Lessee under this Section 19.4 shall survive the expiration or termination of this Lease.

20. **ABANDONMENT:** Lessee shall not abandon or vacate the Property at any time during the Lease Term, except after notifying Lessor of its intent to do so pursuant to Section 25 below. Lessee shall use said Property for the purposes herein described throughout the Lease Term.

21. **LEASE TERMINATION:** In addition to any express right of termination contained elsewhere in this Lease, this Lease may be terminated (a) by mutual agreement of the parties, (b) by Lessee upon sixty (60) days' prior written notice, or (c) by Lessor, in the event that the Agreement Between the Atlanta Independent School System and Purpose Built Schools Atlanta, Inc., dated on or about June 17, 2016, is terminated by Lessor for "cause" pursuant to Section 8.1 thereof.

23. **ENTIRE AGREEMENT:** This Agreement and all attachments hereto constitute the entire agreement between the parties relating to the subject matter hereof and supersedes any prior oral or written agreements concerning such subject. This Agreement may be modified only by written agreement of the parties. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement shall be binding upon the parties, their respective heirs, successors and assigns.

24. **HEADING AND CAPTIONS:** The headings and captions of this Lease are for convenience only and are not a part of this Lease, and do not in any way define, limit, describe or amplify the terms or provisions of this Lease or the scope of intent hereof.

25. **NOTICES:** All notices and communications concerning this Agreement shall be sent either by: (a) personal delivery service with charges paid for by sender or (b) United States Mail, postage prepaid or (c) national overnight delivery service. Notice shall be deemed given upon actual receipt. Any notice or communication hereunder shall be addressed to the parties at the following addresses:

If to Lessor: The Atlanta Independent School System
 Attn: Property Management Office
 1631 LaFrance Street, NE
 Atlanta, Georgia 30307

with a copy to: The Atlanta Independent School System
 Attn: Office of the General Counsel
 130 Trinity Avenue
 Atlanta, Georgia 30303

and to: The Atlanta Independent School System
 Attn: Executive Director of Facilities Services
 1631 La France Street, NE
 Atlanta, Georgia 30307

EXHIBIT A – Form of Lease Agreement

If to Lessee: Purpose Built Schools Atlanta, Inc.
Attn: Office of the President
3445 Peachtree Road, N.E., Suite 175
Atlanta, Georgia 30326

or at such other addresses as may be set forth in writing by the parties from time to time.

26. **SOVEREIGN IMMUNITY.** Notwithstanding anything in this Lease to the contrary, it is expressly understood, acknowledged and agreed by the parties that nothing contained in this Lease shall be intended to be a waiver in any respect whatsoever of Lessor's right to assert (under any circumstances whatsoever), its claim of sovereign immunity from any liability or damages asserted against it by any third party whether natural person or entity created by law.

27. MISCELLANEOUS.

27.1 Lessee shall pay the reasonable attorneys' fees actually incurred by Lessor in the event Lessor is required to use the services of an attorney to collect any amounts due to Lessor or for the enforcement against Lessee of any of the terms, covenants or provisions hereof.

27.2 Time is of the essence with respect to the performance of every provision of this Lease.

27.3 Any provision of this Lease which shall prove 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.

27.4 No waiver by Lessor or Lessee of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Lessee or Lessor of the same or any other provision. Lessor's consent to or approval of any act by Lessee shall not eliminate the necessity of obtaining of Lessor's consent to or approval of any subsequent act. No agreement to accept Lessee's surrender of the Property shall be valid unless in writing and signed by Lessor.

27.5 This Lease shall create the relationship of Lessor and Lessee between the parties hereto; no estate shall pass out of Lessor. Lessee has only a usufruct, not subject to levy and sale, and not assignable by Lessee except by the written consent of Lessor in accordance with Section 12.

27.6 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement.

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EXHIBIT A – Form of Lease Agreement

IN WITNESS WHEREOF, the parties have set their hands and their seals on the dates indicated below, effective as of the day and year first above written.

LESSOR:

THE ATLANTA INDEPENDENT SCHOOL SYSTEM, a/k/a THE BOARD OF EDUCATION OF THE CITY OF ATLANTA, GEORGIA, an independent school system chartered by an Act of the General Assembly of the State of Georgia

Date: _____, 20__

By: _____ (SEAL)
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Attorney for Lessor

LESSEE:

PURPOSE BUILT SCHOOLS ATLANTA, INC., a Georgia nonprofit corporation

Date: _____, 20__

By: _____ (SEAL)
Name: _____
Title: _____

EXHIBIT A – Form of Lease Agreement

EXHIBIT B – Funding Formula and Procedures

A. Per Pupil Funding Amount. APS shall provide per-pupil funding as follows:

1. The Initial Per Pupil Funding Amount shall be calculated according to the following formula (all items as contained in the Official Budget approved by the Board of Education for the upcoming school year):
 - a. Total APS General Fund Budget; less
 - b. Any Unfunded Pension Liability Expense; less
 - c. The Direct Turnaround Services Funding allocated to APS schools identified as requiring Intensive Support or Targeted Support (as outlined in more detail in Section E of this Exhibit B below). Such costs currently include the following direct service expenses: Wraparound Services, Tutoring, Professional Learning Communities, Specialists Training in Reading and Math, Social and Emotional Learning, Targeted Professional Learning, and the Vacation Academy.

The result of a, b and c above shall be divided by the Weighted Average APS Enrollment using enrollment counts provided to the State Department of Education (detailed in Section B of this Exhibit B below), resulting in an **“Initial Per Pupil Funding Amount”**.

2. The following shall be added to the Initial Per Pupil Funding Amount:
 - a. The portion of the Direct Turnaround Services Funding, stated on a per pupil basis, that is allocable to the Turnaround Schools (which shall be calculated as shown under Section E of this Exhibit B below); and
 - b. The Title I funding earned by each Turnaround School, stated on a per pupil basis (using the same number of students as used for Direct Turnaround Services Funding); and
 - c. Without duplication of any other amount included in the APS General Fund Budget, any other federal or state funding allocated by APS to similarly situated schools - that is not currently both received and allocated by APS to similarly situated schools as of July 1, 2016 - stated on a per pupil basis (using the same number of students as used for Direct Turnaround Services Funding). This shall not apply to any new federal or state grants to other similarly situated schools for which the Turnaround Schools are not eligible pursuant to the terms of the grant.

The total of a, b and c above, added to the Initial Per Pupil Funding Amount, shall be the **“Supplemented Per Pupil Funding Amount”**.

3. APS shall subtract from the Supplemented Per Pupil Funding Amount an administrative fee equal to 0.75% of the Supplemented Per Pupil Funding Amount. The resulting figure shall be the **“Per Pupil Funding Amount”**.

An example of the calculation of the Per Pupil Funding Amount for the 2016-17 school year is shown on Attachment 1 to this Exhibit B. The Parties shall use the example as an illustration of their intent of how this formula is to be applied each year of this Agreement.

B. Calculation of Weighted Average APS Enrollment. The Weighted Average APS Enrollment specified in Section A.1 above shall be the average of the total APS October enrollment count and the total APS March enrollment count of the preceding school year. For example, in determining the Per Pupil Funding Amount for the 2016-17 school year, the Parties would use the average of the APS enrollment counts from October 2015 and March 2016.

C. Calculation of Initial Turnaround Schools Enrollment and Mid-Year Turnaround Schools Enrollment.

1. Recognizing that an individual school's student enrollment can fluctuate from school year to school year, as well as within a given school year, for purposes of determining the Funding Amount (see Section D of this Exhibit B below) the Parties shall calculate, for each school year, both an Initial Turnaround Schools Enrollment and a Mid-Year Turnaround Schools Enrollment.
2. The "**Initial Turnaround Schools Enrollment**" shall be calculated by taking the average of the October and March enrollment counts in the preceding school year. For example, in determining the Initial Turnaround Schools Enrollment for the 2016-17 school year, the Parties shall use the average of the October 2015 count and the March 2016 count.
3. The "**Mid-Year Turnaround Schools Enrollment**" shall be calculated by taking the average of the March enrollment count of the preceding school year and the October enrollment count of the current school year. For example, in determining the Mid-Year Enrollment Count for the 2016-17 school year, the Parties shall use the average of the March 2016 count and the October 2016 count.

D. Payments of the Funding Amount. In each year of this Agreement, APS shall pay an aggregate amount (the "**Funding Amount**") to PBS consisting of (i) an amount calculated pursuant to Section D.1 below for all Turnaround Schools that are not in their Commencement Year (such schools, "**Established Turnaround Schools**"), plus (ii) an amount calculated pursuant to Section D.2 below for any Turnaround School in its Commencement Year (such school, a "**New Turnaround School**");

1. Established Turnaround Schools. In each year of this Agreement, with respect to each Established Turnaround School, APS shall pay to PBS an amount calculated as below:
 - a. Beginning on August 1 of each year, APS shall make four monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the total Initial Turnaround School Enrollment applicable to the Established Turnaround Schools and then divided by ten (10); and
 - b. Beginning on December 1 of each year, APS shall make six monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the total Mid-Year Turnaround Schools Enrollment applicable to the Established Turnaround

Schools, less the sum of payments already made pursuant to Section 1.a above, and then divided by ten (10).

2. New Turnaround Schools. With respect to each Turnaround School during its Commencement Year, APS shall pay to PBS a Funding Amount as calculated below:
 - a. Beginning on July 1 of the applicable Commencement Year, APS shall make five monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the Initial Turnaround School Enrollment for the New Turnaround School(s), and then divided by eleven (11); and.
 - b. Beginning on December 1 of the applicable Commencement Year, APS shall make six monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the Mid-Year Turnaround Schools Enrollment for the New Turnaround School(s), less the sum of payments already made pursuant to Section 2.a above, and then divided by eleven (11).
3. All monthly payments of the Funding Amount shall be paid by the fifth (5th) day of each month in which they are due.

E. Calculation of Direct Turnaround Services Funding.

1. APS currently allocates a portion of its General Fund Budget for specific additional services provided to schools it classifies as needing additional instructional and other support due to low academic performance. Currently APS refers to these schools as those needing Intensive Support or Targeted Support. For purposes of this Agreement, each Turnaround School shall be deemed to be classified as needing additional instructional or other support for at least the 5 year period beginning in such Turnaround School's Commencement Year, regardless of such Turnaround School's actual academic performance.
2. In its 2016-17 General Fund Budget, APS outlines the following specific programs provided to these schools: Wraparound Services, Tutoring, Professional Learning Communities, Specialists Training in Reading and Math, Social and Emotional Learning, Targeted Professional Learning, and the Vacation Academy.
3. In any given year of this Agreement, the "**Direct Turnaround Services Funding**" (as referenced in Section A.1.c above) shall be the total funding of these additional programs provided to schools designated by APS as eligible for Intensive Support or Targeted Support.
4. The Parties acknowledge that the terminology APS uses for these "additional support programs" may change from year to year, as may the actual programs themselves. It is the intent of the Parties that throughout the life of this Agreement any additional funding that APS uses for targeted interventions or support in schools with low academic performance shall be considered "**Direct Turnaround Services Funding**" for purposes of the Per Pupil Funding Amount. However, notwithstanding anything to the contrary herein, PBS acknowledges that any Turnaround Services Funding or

similar initiative shall be subject to the determination of the Board as to whether or not to continue such initiative.

5. APS also identifies the specific schools classified as requiring Intensive Support or Targeted Support. A list of those schools as of the date hereof is included as Attachment 2 to this Exhibit B. For purposes of stating the Direct Turnaround Services Funding on a per pupil basis as required in Item 2(a) of Section A above, the Direct Turnaround Services Funding shall be divided by the March enrollment count of all such schools identified as receiving Intensive Support or Targeted Support.
6. An example of the calculation of the Direct Services Turnaround Funding, on a per pupil basis, is included as part of Attachment 1 to this Exhibit B. In Attachment 1, the number of students in “Targeted and Intensive Schools” comes directly from Attachment 2.

EXHIBIT B – Funding Formula and Procedures

Attachment 1

Sample Calculation of Per Pupil Funding Amount 2016-17 School Year

General Fund Budget for upcoming year	\$743,435,686
Less: allocation for Direct Turnaround Services Funding for upcoming year	(3,284,107)
Less: Unfunded Pension Balance	<u>(52,000,000)</u>
Total General Fund Available	688,151,579
Divided by: Weighted Average APS Enrollment	50,154
Initial Per Pupil Funding Amount	13,721
Plus: Direct Turnaround Services Funding Per Pupil (see below)	326
Subtotal	<u>14,047</u>
Plus Title I funding (estimate)	606
Plus Additional State/Federal Funds Provided to Turnaround Schools in the future, if applicable	--
Subtotal	<u>14,653</u>
Less Admin Support (0.75%)	110
Total Per Pupil Funding Amount	<u>\$14,543</u>

Direct Turnaround Services

Wraparound	\$650,000
Tutoring	1,258,144
PLCs	765,220
Specialists Training: Reading/Math	60,621
SEL	415,622
Targeted PL	25,000
Vacation Academy	<u>109,500</u>
<i>Total Turnaround Services</i>	<u>\$3,284,107</u>
Turnaround students in Targeted & Intensive Schools (as determined on Attachment 2)	10,088
<i>Per student Allocation</i>	<u>\$326</u>

EXHIBIT B – Funding Formula and Procedures

Attachment 2

**2016-17 School Year
Enrollment Count**

APS designated schools receiving Intensive Support and Targeted Support

Cluster	School	March 2016 TFE
Mays	1. Young Middle School	855
	2. Miles Elementary School	385
	3. Peyton Forest Elementary School	457
Jackson	4. Dunbar Elementary School	403
Douglass	5. Douglass High School	841
Therrell	Continental Colony Elementary School	<u>450</u>
Subtotal		3,391

Targeted Schools

Cluster	School	March 2016 TFE
Washington	1. Michael R. Hollis Academy	487
	2. Connally/Venetian Merged School	676
Carver	3. Kimberly Elementary School	444
	4. Gideons Elementary School	329
	5. Perkerson Elementary	520
	6. Slater Elementary School	545
	7. Finch Elementary School	521
Jackson	8. D.H. Stanton School	235
Douglass	9. Usher/Collier Elementary School	413
	10. Scott Elementary School	344
	11. Fain Elementary School	495
	12. Boyd Elementary School	446
	13. Towns Elementary School	322
	14. Woodson Park Academy	637
	15. F. L. Stanton Elementary School	<u>283</u>
Subtotal		6,697
TOTAL		<u>10,088</u>