

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-000653-GPG-STV

ASCENT CLASSICAL ACADEMIES,

Plaintiff,

v.

ASCENT CLASSICAL ACADEMY CHARTER SCHOOLS, INC., and
LANDS' END, INC. a/k/a LANDS END DIRECT MERCHANTS, INC.,

Defendants.

MOTION TO DISMISS THE THREE FEDERAL CLAIMS

Defendants Ascent Classical Academy Charter Schools ("ACACS") and Lands' End respectfully move to dismiss the three federal claims brought by Plaintiff Ascent Classical Academies ("ACA"). Without federal court jurisdiction, there is no basis for supplemental jurisdiction over the six state law claims, and therefore this Court should dismiss this matter in its entirety.

CONFERRAL

Pursuant to GPG Civ. Practice Standard 7.1B(b), the undersigned certifies that he conferred with Plaintiff's counsel; Plaintiff opposes the relief sought in the Motion.

INTRODUCTION

This case arises out of the recent business divorce between ACA and ACACS. ACA is a charter school management organization that provides business and educational services to charter schools, such as ACACS. Amended Compl. ¶¶ 1, 10. ACACS is a charter school network operating pursuant to the Colorado Charter Schools

Act, C.R.S. § 22-30.5-104.7. See Am. Compl. ¶ 3. ACACS and ACA entered into essentially identical management contracts for the four charter schools at issue in this case. *Id.* at 30, 33, 75, 179-181, 183, 185. Critical here, each of the management contracts stipulates that ACACS possesses the express right to use the name “Ascent Classical Academy of [school location],” e.g., “Ascent Classical Academy of Grand Junction,” in perpetuity – even after the management contracts are terminated. *Id.* at ¶¶ 33, 75, 181, 183. In 2023, the relationship deteriorated. By September 2023, both sides began trading accusations that the other had breached the management contracts, *id.* at ¶¶ 236, 252, 265, and both sides agreed that the contracts were terminated as of December 31, 2023, *id.* at ¶¶ 236, 252-254, 265, 280.

A few months later ACA filed this lawsuit against ACACS and Lands’ End, asserting three federal claims under the Lanham Act – for trademark infringement and cybersquatting against ACACS, *id.* at ¶¶ 363-388 (claims two and three), and for contributory trademark infringement against Lands’ End, *id.* at ¶¶ 425-435 (claim nine). All three of these federal claims are premised on ACA allegedly owning common law trademark rights to the term ASCENT CLASSICAL and its schoolhouse building logo, *id.* at ¶¶ 289-290, and to ACACS allegedly continuing to use ACA’s marks after the management contracts terminated, *id.* at ¶¶ 363-388. Further, ACA alleges Lands’ End contributed to the alleged trademark infringement when it continued to sell school uniforms to families with the allegedly infringing marks on them. *Id.* at ¶¶ 425-435.

These three federal claims fail as a matter of law for three reasons. First, ACACS, not ACA, owns the common law trademark to the term ASCENT CLASSICAL.

This is the practical effect of the key provision in the management contracts. Second, none of ACACS's logos are "identical or similar" to ACA's schoolhouse logo. Third, there is no likelihood of confusion due to the fact that ACA and ACACS serve different consumers in different geographic locations. For the same reasons, Lands' End cannot be liable for contributory trademark infringement. This Court should dismiss these three claims under Federal Rule of Civil Procedure 12(b)(6).

BACKGROUND

This background is drawn from the allegations in the Amended Complaint. [Doc. 11]. For purposes of this Motion only, Defendants presume their truth. In fact, however, Defendants dispute the factual accuracy of most of ACA's allegations.

A. The Founding and Growth of ACACS and ACA

ACA and ACACS were formed within three months of each other. ACA was founded on December 16, 2016. Am. Compl. ¶ 7. Less than three months later, on March 9, 2017, Ascent Classical Academy of Douglas County, ACACS's predecessor, was formed. *Id.* at ¶ 17.

ACACS is a charter school network established pursuant to the Colorado Charter Schools Act to operate public charter schools. C.R.S. § 22-30.5-104.7. Charter schools are public schools that are authorized to receive and spend public tax dollars by entering into a charter contract with either a school district or the Colorado Charter School Institute ("CSI"). C.R.S. § 22-30.5-104(1) & (2)(b), -507(1)(a) & (2).

The first of the four schools in ACACS's network became authorized when Douglas County School District executed a charter contract with ACACS's predecessor:

Ascent Classical Academy of Douglas County. Am. Compl. ¶ 28. This occurred on June 20, 2017. *Id.* The second of the schools was Ascent Classical Academy of Northern Colorado. *Id.* at ¶¶ 64-73. Technically, it was its own entity, but it had the same board members as Ascent Classical Academy of Douglas County. *Id.* at ¶¶ 65-66. It received its charter contract from the Charter School Institute (“CSI”) to open in Windsor, Colorado. *Id.* at ¶ 71. On June 9, 2020, these two initial charter schools merged to become ACACS. *Id.* at ¶¶ 72-73. ACACS executed charter contracts with CSI to permit the next two schools to open: Ascent Classical Academy of Grand Junction and Ascent Classical Academy of 27J, located in Brighton 27J School District, just northeast of Denver. *Id.* at ¶¶ 128, 133.

ACA is a charter school management organization, *id.* at ¶¶ 1, 10, 298, 303-306, also commonly known as “charter management organizations” or “CMOs,” *id.* at ¶¶ 98, 145, 244, 246. The Charter Schools Act calls them “education management providers” and defines them as entities that contract “with a charter school to provide, manage, or oversee all or substantially all of the educational services provided by a charter school.” C.R.S. § 22-30.5-103(3.5). As charter schools have grown and proliferated, CMOs have as well. The Amended Complaint names two other CMOs involved in this set of facts: American Classical Education, a CMO created by Hillsdale College to support charter schools across the country, *id.* at ¶ 98, and Minga Education Group, the CMO that ACACS hired to replace ACA, *id.* at ¶ 268.

For each school, ACACS and ACA entered into a management contract with substantially identical terms. *Id.* at ¶¶ 30, 33, 75, 179-181, 183, 185. Each of the

management contracts acknowledges that ACACS, not ACA, owns the trade name to “Ascent Classical Academy of [school location],” and that “the School shall have the right to use the same after termination of this Agreement without additional compensation to [ACA].” *Id.* at ¶¶ 33, 75, 181, 183, 319. A copy of the Management Agreement for the Douglas County school is attached as **Exhibit 1**.¹

B. The Relationship Deteriorates and Ends in the Mutual Termination of the Management Contracts

Starting in about June 2023, the relationship between ACACS and ACA began to deteriorate. Am. Compl. ¶¶ 170-218. There were many reasons but the primary point of division stemmed from working with Hillsdale College. *Id.* at ¶¶ 155-206. Early on, both parties wanted to closely affiliate with Hillsdale. *Id.* at ¶¶ 12-14, 18-25. However, by February 2023, ACA and its founder, Derec Shuler, came to believe that Hillsdale and its CMO, American Classical Education, were competitors in the charter school management market. *Id.* at ¶¶ 98-102, 143-169. Mr. Shuler resented the competition because he wanted to expand ACA into other states. *Id.* at ¶¶ 9, 310. ACACS, on the other hand, desired to have its four schools remain in close partnership with Hillsdale. *Id.* at ¶¶ 143-200. By fall 2023, ACA and ACACS were accusing each other of breaching the management contracts. *Id.* at ¶¶ 236, 242, 252, 265. By December 31, 2023, both sides agreed that the contracts were terminated. *Id.* at ¶¶ 236, 265, 280.

¹ This Court may review the Management Agreement without converting this Motion into one for summary judgment because it is mentioned in the Amended Complaint, it is central to ACA’s claims, and its authenticity is not disputed. *Toone v. Wells Fargo Bank*, 716 F.3d 516, 521 (10th Cir. 2013). Moreover, this Court may examine the Agreement itself, rather than either party’s description of it. *Id.*

C. Trademark Registration

When the management contracts terminated at the end of December 2023, neither ACA nor ACACS had previously registered any trademarks, either on the state or federal level. On January 22, 2024, ACA filed applications to register four trademarks with the USPTO. *Id.* at ¶ 290; Doc. 8 & 9 (Report on the Filing ... of an Action Regarding a ... Trademark). Those four applications indicate that ACA is seeking to protect, first, the word mark, ASCENT CLASSICAL, and the following three logos:



See Am. Compl. ¶¶ 290 & Exhibit 1.² According to the USPTO website, ACA's applications have been accepted only; they have not yet been assigned to an examining attorney.³ Further, they have been filed on an "intent to use" basis but not as "currently in use."

On February 26 and March 7, 2024, ACACS filed statements of trademark registration with the Colorado Secretary of State for these five logos:

² Subparagraphs 289(b) and 290(b) of the Amended Complaint are misleading in that they suggest that ACA's second trademark application is for the word mark ASCENT CLASSICAL ACADEMIES. But that is incorrect as Exhibit 1, page 1 and a search on the USPTO website reveal.

³ This Court may review both parties' trademark filing information without converting this Motion into one for summary judgment because they are public records and thus "matters of which a court may take judicial notice." *Warnick v. Cooley*, 895 F.3d 746, 754 n.6 (10th Cir. 2018).



Am. Compl. ¶¶ 328-330. On March 7, 2024, ACACS also registered with the Colorado Secretary of State the word mark ASCENT CLASSICAL ACADEMY, noting its first use on March 9, 2017. *Id.* at ¶ 330. On April 9, 2024, it further registered this as its trade name. *Id.* at ¶ 331. Four months earlier, on November 29, 2023, ACACS registered with the Colorado Secretary of State the trade name ASCENT CLASSICAL. *Id.* at ¶ 275.

D. Domain Names and Social Media

On September 9, 2023, ACACS registered the domain www.ascentcolorado.org. *Id.* at ¶ 218. ACA's domain name is www.ascentclassical.org. *Id.* at ¶ 298.

ACACS has also established social media accounts on Facebook, Instagram, and LinkedIn using the same domain name root: ascentcolorado. *Id.* at ¶ 327. Likewise, ACA has its own social media accounts that use a variation on "ascentclassical" to promote its educational management services. *Id.* at ¶¶ 301, 303.

E. Lands' End

Lands' End is a clothing retailer that sells school uniforms to families. *Id.* at ¶ 338. On March 7, 2024, ACA sent a letter to Lands' End stating that "ACACS was infringing on [ACA's] trademarks and that if Lands' End fulfilled any ... orders [to ACACS parents]

after the date of the letter,” then it would hold them “contributorily responsible.” *Id.* at ¶ 339. ACA’s letter outlined the same allegations contained in the Amended Complaint. *Id.* at ¶ 340. Lands’ End has continued to fulfill orders despite ACA’s letter. *Id.* at ¶ 342.

PROCEDURAL HISTORY

On March 10, 2024, ACA filed the original Complaint, naming just ACACS as defendant. [Doc. 1]. However, it did not serve ACACS. On April 30, ACA filed the Amended Complaint, naming both ACACS and Lands’ End as defendants. [Doc. 11]. On May 10, it served them both. [Docs. 15 & 17]. On May 17, this Court granted ACACS’s unopposed motion for extension of time to respond to the Amended Complaint by June 28. [Doc. 21]. Through informal correspondence, ACA similarly granted Lands’ End request for an identical extension of time to respond.

ARGUMENT

A. Standard of Review

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks and citation omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* To survive, the allegations must show “more than the mere possibility of misconduct.” *Id.* at 679. Rather, “[a] plaintiff must nudge [his] claims across the line from conceivable to plausible” *Khalik v. United Air Lines*, 671 F.3d 1188, 1190 (10th Cir. 2012). Legal conclusions in a complaint are not entitled to the

presumption of truth and, if legally incorrect, may be disregarded by the court. *Id.*

B. The Lanham Act

ACA alleges three claims under the Lanham Act: (1) trademark infringement against ACACS under 15 U.S.C. § 1125(a) (claim three); (2) cybersquatting against ACACS under 15 U.S.C. § 1125(d) (claim two); and (3) contributory trademark infringement against Lands' End under 15 U.S.C. § 1114 (claim nine). None of these claims has merit as a matter of law.

“The Lanham Act was intended to make ‘actionable the deceptive and misleading use of marks’ and ‘to protect persons engaged in ... commerce against unfair competition.’” *Two Pesos v. Taco Cabana*, 505 U.S. 763, 767-68 (1992) (citations omitted). The Act “imposes liability on anyone who uses a mark in commerce that is ‘likely to cause confusion’” for prospective buyers within the relevant market. *Elevate Fed. Credit Union v. Elevations Credit Union*, 67 F.4th 1058, 1070 (10th Cir. 2023).

1. Trademark Infringement (Claim Three)

“The elements of an infringement claim under § 43(a) [aka § 1125(a)] are (1) that the plaintiff has a protectable interest in the mark; (2) that the defendant has used ‘an identical or similar mark’ in commerce; and (3) that the defendant’s use is likely to confuse consumers.” *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1238 (10th Cir. 2013) (citations omitted). ACA’s allegations fail on all three elements.

a. ACACS, not ACA, has the legally protected interest in the word mark ASCENT CLASSICAL

ACA’s central claim is that it owns a protectable legal interest in the word mark ASCENT CLASSICAL. Am. Compl. ¶¶ 289(a), 290(a). ACA admits that this mark is not

registered; it only recently filed an application for registration with the USPTO. *Id.* at ¶ 290(a). However, unregistered marks are still entitled to protection under § 1125(a). *Matal v. Tam*, 582 U.S. 218, 225 (2017); *1-800 Contacts*, 722 F.3d at 1237.

The two essential elements to determine if a plaintiff has a protectable interest in a mark are (1) whether the mark is distinctive (either inherently or through secondary meaning) and (2) whether the consuming public associates the mark *with the plaintiff*. *Two Pesos*, 505 U.S. at 768-69; *Jack Daniel's Properties v. VIP Prod. LLC*, 599 U.S. 140, 146 (2023) (“a trademark is not a trademark unless it identifies a product's source (this is a Nike) and distinguishes that source from others (not any other sneaker brand)”). For purposes of this Motion, the Court does not need to determine if ASCENT CLASSICAL is distinctive. ACA alleges it is. Am. Compl. ¶¶ 220, 297, 366, 379.

The dispositive point is that ACACS owns the mark, not ACA. There are two reasons for this. First, since their foundings just over seven years ago, ACA and ACACS have both used the term ASCENT CLASSICAL in their respective markets: ACA when promoting its services as a CMO, and ACACS when promoting its services to families. Indeed, the term is imbedded in each party's name: Plaintiff Ascent Classical Academies and Defendant Ascent Classical Academy Charter Schools (and its predecessors Ascent Classical Academy of Douglas County and Ascent Classical Academy of Northern Colorado). Second, and most important, the parties expressly decided in their management contracts that “the name ‘Ascent Classical Academy of [school location]’ shall be a trade name of the School, and the School shall have the right to use the same after termination of this Agreement without additional

compensation to [ACA].” **Exhibit 1** at 7 (Management Agreement); *see also* Am. Compl. ¶¶ 33, 75, 181, 183, 319. In this section of the management contracts, titled “Intellectual Property Rights,” the parties specifically define “School Materials” and “Educational Materials” and carefully parse what belongs to ACA (the “ASCENT Materials”) and what belongs to ACACS. **Exhibit 1** at 5-7. However, the name is not part of any of those “Materials.” In addition, the critical fourth paragraph begins, “[ACA] hereby grants [ACACS] the non-exclusive, non-transferable license to use [ACA’s] trade name and any trademark(s), as they now exist or in the future, to promote and advertise [ACACS]. No other use of [ACA] trademarks is permitted without [ACA’s] prior written permission.” *Id.* at 6. But nowhere in this paragraph, the Intellectual Property Rights section, or anywhere else in the Management Agreement are there definitions of “ACA’s trade name” or “ACA’s trademarks.” These terms are wholly undefined. There is no indication they exist at all. Plus, the last sentence is set off in contradistinction of the foregoing, stating: “However, the name ‘Ascent Classical Academy of [school location]’ shall be a trade name of the School, and the School shall have the right to use the same after termination of this Agreement without additional compensation to [ACA].” This doesn’t merely grant ACACS a license in the name “Ascent Classical Academy,” as ACA wrongly asserts in the Amended Complaint (at ¶ 319). It means the parties agreed that “Ascent Classical Academy” is the “trade name of the School, and the School shall have the right to use the same after termination of this Agreement.” Under common law trademark principles, this trade name might mature through use into a protectable trademark. *See Weber Luke Alliance v. Studio 1C*, 233 F.Supp.3d 1245, 1252 (D. Utah

2017) (recognizing that a mark might acquire secondary meaning through a lengthy period of “exclusive use” by one party); *Educ. Dev. Corp. v. Economy Co.*, 562 F.2d 26, 29 (10th Cir. 1977) (“Even though a trademark may not be validly registered ..., common law will afford protection ... if the mark through usage has become, to the purchasing public, *associated with a particular manufacturer or producer.*”) (emphasis added). As between ACA and ACACS, the parties agreed through the management contracts that the trade name “Ascent Classical Academy” belongs to ACACS, and it has the legal “right” to use that name in perpetuity even though the contracts are now terminated. Thus, as a matter of law, ACA does not have a protectable interest in ASCENT CLASSICAL; if anyone does, it is ACACS.

This resolves most of the other claims in the Amended Complaint. For instance, ACA alleges that ACACS’s use of a Domain Name and Social Media Names that employs the term “ascentcolorado” violates its trademark. Am. Compl. ¶¶ 218, 298, 301-03, 327, 377-88. While this claim fails on the second and third elements as well (see below), it cannot be questioned that if ACA does not have a protectable interest in ASCENT CLASSICAL, then ACACS’s Domain and Social Media Names are lawful. The same reasoning applies to ACA’s allegations that ACACS’s four individual school logos as well as its network-wide logo for “Ascent Colorado Classical Schools” somehow violates its putative word mark for ASCENT CLASSICAL. *Id.* at ¶¶ 328-33 (denominated as the “Infringing Marks”). Likewise, ACACS’s registration with the Colorado Secretary of State of ASCENT CLASSICAL and ASCENT CLASSICAL ACADEMY as trade names. *Id.* at ¶ 275, 331. See *Educ. Dev. Corp.*, 562 F.2d at 29

(because the plaintiff did not have a protectable interest in the term “continuous progress,” the defendant could legally use the term “continuous progress in spelling”); *Weber Luke Alliance*, 233 F.Supp.3d at 1253 (same where both parties used the term “rollerball”).

b. ACACS has not used “an identical or similar mark”

ACA’s trademark infringement claim also fails on the second element because ACACS has not used “an identical or similar mark.” *1-800 Contacts*, 722 F.3d at 1238. The only thing “identical or similar” in this case are the words “Ascent Classical” and “Ascent Classical Academy,” discussed above. Without question, ACACS’s five logos are wholly distinct from ACA’s three logos. *See supra* at pages 6-7. Similarly, “ascentclassical.org” and “ascentcolorado.org” are distinct as a matter of law when it is clear that, if either party owns ASCENT CLASSICAL, it is ACACS, not ACA. *Cf. RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112, 124 (2d Cir. 2022) (finding the district court committed clear error when it found that the mark and trade dress on defendant’s canned energy drink MTN DEW RISE ENERGY was “confusingly similar” to that on plaintiff’s nitro-brewed canned coffee called RISE, and showing photos of each).

c. There is no likelihood of confusion

While “likelihood of confusion” is typically a question of fact, “courts retain an important authority to monitor the outer limits of substantial similarity....” *Universal Money Ctrs., Inc. v. American Tel. & Tel. Co.*, 22 F.3d 1527, 1530 n.2 (10th Cir. 1994). As the United State Supreme Court noted, “[I]f, in a given case, a plaintiff fails to plausibly allege a likelihood of confusion, the district court should dismiss the complaint

under Federal Rule of Civil Procedure 12(b)(6).” *Jack Daniel's Properties*, 599 U.S. at 157 n.2.

Here, of the six *King of the Mountain* factors, three of them are dispositive. *King of the Mountain Sports, Inc. v. Chrysler Corp.*, 185 F.3d 1084, 1089 (10th Cir. 1999). First, they operate in different geographic markets: ACACS operates four charter schools in Colorado, while ACA has contracts with schools in South Carolina only. Am. Compl. ¶¶ 139, 308-09. Second, they provide services to different customers: ACACS provides free public education services to Colorado parents, while ACA sells its CMO services to charter schools. Third, both sets of customers exercise maximal care. Few issues matter more to parents than choosing which school will educate their children. *Cf. Elevate Fed. Credit Union*, 67 F.4th at 1073 (“Consumers ordinarily use great care when selecting their banking services.”). Similarly, because charter schools receive and spend public tax dollars, they operate in a highly regulated market and exercise great care when choosing a CMO. See C.R.S. § 22-30.5-101 *et seq.* (Charter Schools Act).

The trademark infringement claim should be dismissed as a matter of law.

2. Cybersquatting (Claim Two)

The elements of a cybersquatting claim are: (1) the plaintiff had a protected interest in its trademark, (2) the defendant’s domain name is identical or confusingly similar to plaintiff’s mark, and (3) defendant used or registered its domain name with a bad faith intent to profit. *Utah Lighthouse Ministry v. Found. for Apologetic Info. & Research*, 527 F.3d 1045, 1057 (10th Cir. 2008). ACA’s claim for cybersquatting is premised on its mistaken belief that it has a protectable interest in ASCENT

CLASSICAL, and, therefore, that ACACS’s use of “ascentcolorado.org” is “identical or confusingly similar” to that mark. Am. Compl. ¶¶ 218-220, 226, 289, 364-375. As demonstrated above, that is legal error. In addition, ACA does not plausibly allege that ACACS used or registered “ascentcolorado.org” with a bad faith intent to profit. Its three allegations on this point are all conclusory. *Id.* at ¶¶ 225, 367, 369. Clearly, ACACS created its website *not* to profit – it is a nonprofit charter school network – but to be able to continue to serve its families after the business divorce. For these reasons, this claim must be dismissed.

3. Contributory Trademark Infringement (Claim Nine)

“The elements of a contributory liability claim are ... (1) supply of a product and (2) knowledge of direct infringement.” *Procter & Gamble Co. v. Haugen*, 317 F.3d 1121, 1128 (10th Cir. 2003). Dismissal of this claim against Lands’ End follows from what has already been discussed. Clearly, after ACA sent its letter to Lands’ End on March 7, 2024, which “detailed Ascent’s rights in the Ascent Marks [and] explained that the Infringing Marks infringed upon the Ascent Marks,” Am. Compl. ¶ 340, Lands’ End likewise concluded that ACA’s claims were meritless. The Court should do the same.

CONCLUSION

At the end of the day, ACA is trying to use the Lanham Act to punish its former business partner. Such a tactic is commonplace in business divorces, but it is rarely successful. Black letter law forecloses ACA’s federal claims, and, thus, this case lacks federal court jurisdiction and should be dismissed in its entirety.

Dated: June 28, 2024

Respectfully submitted,

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s/Eric V. Hall

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 2024, a true and correct copy of the foregoing was served upon the following:

Via CM/ECF:

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s/ Tiffany R. Rodriguez

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EXHIBIT 1

MANAGEMENT AGREEMENT

This Management Agreement (the "**Agreement**") is made and entered into as of the 17th day of October, 2017, by and between **Ascent Classical Academies** a non-profit Colorado corporation ("**Ascent**"), and **Ascent Classical Academy of Douglas County**, a non-profit Colorado corporation (the "**School**").

RECITALS

The School is a charter school, organized as a public school pursuant to C.R.S. § 22-30.5-101 et seq., which authorizes the formation of charter schools (the "**Charter School Law**"). Except to the extent expressly waived in accordance with the terms of the Charter School Law, the School is subject to the Colorado laws applicable to Colorado public schools (the "**Colorado School Laws**"), including without limitation Article 22 of the Colorado Revised Statutes. The School submitted an application (the "**Application**") for, and was issued, a contract (the "**Charter Contract**") by the Douglas County School District (the "**Authorizer**") to organize and operate a public school charter school, with Authorizer as the authorizing body.

The School and ASCENT desire to create an enduring educational alliance, whereby the School and ASCENT will work together to replicate the Barney Charter School Initiative model.

In order to facilitate the organization and opening of the School, and to implement an exceptional educational program at the School, the parties desire to establish this arrangement for the management and operation of the School.

Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

CONTRACTING RELATIONSHIP

A. Authority. The School represents that it is authorized by law to contract with a private entity for educational, business administration and management services. The School is vested with all powers necessary to operate the School and to implement the educational program contemplated in the Charter Contract.

B. Management Agreement. The School hereby contracts with ASCENT, to the extent permitted by law, for the provision of all labor, materials, equipment, facilities (subject to separate negotiations and mutual accord) and supervision necessary for the provision of educational services to students, and the management, operation and maintenance of the School in accordance with the educational goals, curriculum, methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age and grade range of pupils to be enrolled, educational goals, and methods used to monitor compliance with performance of targeted

educational outcomes, all as adopted by the School's Board of Directors (the "**Board**") and/or included in the School's Charter Contract.

C. Designation of Agents. The Board designates the employees of ASCENT as agents of the School having a legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. §1232g, the Family Educational Rights and Privacy Act ("**FERPA**").

D. Status of the Parties. ASCENT is a non-profit Colorado corporation qualified to do business in Colorado, and is not a division or a part of the School. The School is a body corporate and governmental entity authorized by the Charter School Law, and is not a division or part of ASCENT. The parties to this Agreement intend that the relationship created by this Agreement is that of an independent contractor and not employer - employee. Except as expressly provided in this Agreement, no agent or employee of ASCENT shall be deemed to be the agent or employee of the School. ASCENT shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. The relationship between ASCENT and the School is based solely on the terms of this Agreement, and the terms of any other written agreements between ASCENT and the School.

ARTICLE II

TERM

A. Term. This Agreement shall be effective as of July 1, 2017 and shall continue until termination or expiration of the Charter Contract. The first fiscal year of this agreement shall be from July 1, 2018 to June 30, 2019 and each fiscal year thereafter shall commence on July 1 and end on June 30 of the following year.

B. Renewal. This Agreement shall be subject to annual renewal. If either party wishes to modify the terms of this Agreement for a future term or non-renew this Agreement for a subsequent term it must notify the other party at least 90 days prior to the expiration of the then current term. If neither party notifies the other at least 90 days prior to the expiration of the then current term then this Agreement will automatically renew for an additional one-year term, coinciding with the fiscal year of the School.

ARTICLE III

FUNCTIONS OF ASCENT

A. Responsibility. ASCENT shall be responsible and accountable to the Board for the administration, operation and performance of the School in accordance with the Charter Contract. ASCENT's responsibility is expressly limited by: (i) the School's budget as approved and amended from time to time by the Board (the "**Budget**"), and (ii) the availability of state

funding to pay for said services. Neither ASCENT nor the School shall be required to expend School funds on services in excess of the amount set forth in the Budget.

B. Educational Program. ASCENT agrees to implement the educational goals and programs as set forth in the Charter Contract (the “**Educational Program**”). In the event ASCENT determines that it is necessary to materially modify the Educational Program, ASCENT shall inform the Board of the proposed changes and obtain Board approval, and if required under the Charter Contract, approval of the Authorizer. The parties hereto acknowledge that an essential principle of the Educational Program is its flexibility, adaptability and capacity to change in the interest of continuous improvement and efficiency. The Board and ASCENT each agree that they are interested in results and not in inflexible prescriptions. Not less than annually, and otherwise as requested, ASCENT will provide the Board with updated reports on progress towards implementing each of the educational goals set forth in the Educational Program.

C. Specific Functions. Subject to the oversight and authority of the Board as provided herein, ASCENT shall be responsible for the Educational Program and the management, operation, accounting and business administration of the School. Such functions include, but are not limited to:

1. Implementation and administration of the Educational Program, inclusive of the acquisition of instructional materials, equipment and supplies.
2. Employment of all personnel working at the School and management of all personnel functions as set forth in Article VII of this Agreement.
3. If so directed by the Board, securing a facility to be leased or otherwise provided to the Board for purposes of operating the School therein, operation of the facility, and the installation in the facility of technology integral to the operation of the School. The facility shall comply with, or otherwise be approved with regard to, all state regulations governing the use of the facility as an elementary/middle school, as applicable. Any lease or financial terms related to such a facility will be negotiated and documented separately.
4. All aspects of the business administration.
5. All aspects of the accounting operation, including general ledger management and financial reporting.
6. Food service.
7. Marketing and development costs.
8. Any other function necessary or expedient for the administration of the School.

D. Purchases. Purchases made by ASCENT for the School with the School’s funds, such as non-proprietary instructional and/or curriculum materials, books, supplies and equipment will be the property of the School (exclusive of capital items leased or purchased by ASCENT).

ASCENT agrees not to add any fees or charges to the cost of equipment, materials or supplies purchased by ASCENT at the request of the Board.

E. Subcontracts. ASCENT reserves the right to subcontract any and all aspects of all services it agrees to provide to the School, including, but not limited to transportation and/or food service. However, ASCENT shall not subcontract the management or oversight of the teaching and instructional program, except as specifically permitted in this Agreement or with prior approval of the Board.

F. Place of Performance. To the extent not prohibited by the Charter Contract or applicable law, and except for educational instruction services, ASCENT reserves the right to perform the services it is providing pursuant to this Agreement off-site, such as purchasing, professional development and administrative functions.

G. Student Recruitment. ASCENT and the Board shall be jointly responsible for the recruitment of students. Students shall be selected in accordance with the procedures set forth in the Charter Contract and in compliance with the Charter School Law and other applicable law.

H. Due Process Hearings. ASCENT shall provide student due process hearings in conformity with the requirements of the Charter Contract and state and federal law regarding discipline, special education, confidentiality and access to records. The Board shall retain the right to provide due process as required by law.

I. Legal Requirements. ASCENT shall provide educational programs that meet federal, state, and local requirements, and the requirements imposed by the Charter Contract, unless such requirements are waived. The Board shall interpret federal, state and local requirements liberally to give ASCENT flexibility and freedom to implement its educational and management programs.

J. Rules and Procedures. ASCENT shall recommend to the Board reasonable rules, regulations and procedures applicable to the School, and ASCENT is authorized and directed by the Board to enforce the rules, regulations and procedures adopted by the Board.

K. School Year and School Day. The school year and the school day schedule shall be approved by the Board.

L. Pupil Performance Standards and Evaluation. ASCENT shall implement pupil performance evaluations that permit evaluation of the academic progress of each School student. ASCENT shall be responsible and accountable to the Board for the academic performance of students enrolled at the School. ASCENT will utilize assessment strategies required by the terms of the Charter Contract. The Board and ASCENT will cooperate in good faith to identify academic goals and methods to assess the students' academic performance. The performance goals outlined in this section are aspirational and, while they may be considered during the School's evaluation of Ascent, failure to meet the performance goals shall not constitute any default or breach of this Agreement. It is the expectation that the school will achieve the following academic, social, and financial standards within three years of school opening.

- Academic Growth (meet or exceed district average on state standardized tests, or a similar assessment)
- Academic Proficiency (meet or exceed that of the district on state standardized tests, or a similar assessment)
- SAT scores for Junior and Senior classes (exceed that of the district)
- Student Re-Enrollment rates of students remaining in district (80% or higher)
- Parent Satisfaction Surveys (80% satisfaction or higher)
- Staff Satisfaction Surveys (80% satisfaction or higher)
- Balanced Budget (submitted in accordance with Article VI(B))
- Fiscal Strength (TABOR reserve met per Colorado Law)

M. Services to Disabled Students and Special Education. Subject to District supervision and/or provision of services, ASCENT shall provide special education services to students who attend the School in conformity with the requirements of state and federal law. ASCENT may subcontract as necessary and appropriate for the provision of services to students with special needs. Such services shall be provided in a manner that complies with local, state and federal laws and applicable regulations and policies.

N. Charter Contract between the School and Authorizer. ASCENT will not act in a manner that would cause the School to be in breach of its Charter Contract.

O. Unusual Events. ASCENT agrees to timely notify the Board and/or School administrator of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect the School in complying with its responsibilities under the Charter Contract or applicable law.

P. Student and Financial Records. All student and financial information related to the School shall be available for inspection at the School upon reasonable request consistent with applicable federal and state laws.

Q. School Records/Proprietary. The financial, educational and student records pertaining to the School are School property, and such records are subject to the provisions of all applicable federal and state laws concerning the maintenance and disclosure of student records, including, without limitation, the Colorado Open Records Law, C.R.S. §§ 24-72-204 et seq., and the Family Education Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, to the extent required by applicable law. All School records shall be physically or electronically available to ASCENT upon request at the School.

R. Intellectual Property Rights. Except as otherwise required by Hillsdale College pursuant to its arrangements contained in any Agreement between it and the School, the School will own all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the School; or (ii) were developed by ASCENT at the direction of the Board with School funds dedicated for the specific purpose of developing such curriculum or materials (the “**School Materials**”). ASCENT shall own all proprietary rights to, and the School’s proprietary interest shall not include, curriculum or educational materials that are or were

developed or copyrighted or similarly protected by ASCENT, or curriculum or educational materials that are developed by ASCENT with funds from the School that are not otherwise dedicated for the specific purpose of developing School curriculum or educational materials. ASCENT shall also own all intellectual property rights, including, without limitation, any copyright rights in and to the Educational Materials (as that term is defined at the end of this Section R) relating thereto, as well as any non-curriculum materials created or provided by ASCENT in connection with, or related to, the implementation of the Educational Program, including all corrections, modifications and derivatives thereof (collectively all of the foregoing shall be referred to as the “**ASCENT Materials**”).

The parties acknowledge that to the extent the School's Materials are derivative of ASCENT Materials, the School's intellectual property ownership rights extend only to the new, original aspects of such works and not to any underlying or pre-existing material. Relevant Educational Materials and teaching techniques used by or at the School shall be subject to disclosure to the extent required under the Charter School Law and Colorado Open Records Act.

ASCENT hereby grants to the School the non-exclusive, non-transferable license to use the ASCENT Materials in furtherance of the Educational Program during the term of this Agreement or any renewal thereof, including without limitation, the right to reproduce, publicly display, distribute, and create derivatives of same, in hard copy format, or electronically via the School's intranet, (whether or not the latter is hosted by the ASCENT, School Data Company, LLC or a third party). Additionally, the School may use the ASCENT Materials and Educational Materials in furtherance of the Educational Program for one full school year (July 1st to June 30th) proceeding termination of this Agreement at the same rate the School pays to Ascent for the ASCENT Materials and Educational Materials at the time the Agreement is terminated or at a rate that is commensurate with market rates if the price paid for the ASCENT Materials and Educational Materials is not determinable from other amounts paid by the School under this Agreement. To the extent any part of the School Materials may be derivative of ASCENT Materials, the School shall have the non-exclusive, non-transferable right to use such ASCENT Materials, as same may have been previously embodied or incorporated in the School Materials, beyond the termination or expiration of this Agreement solely in connection with the operation of the School and in the ordinary course of such operations. The School represents and warrants that during the term of this Agreement, or following the expiration or termination of this Agreement, the School will not exploit, or assist any third party in exploiting, the School Materials or any ASCENT Materials for commercial purposes. The School hereby grants ASCENT the non-exclusive, irrevocable, worldwide, assignable right to use, distribute, modify and display the School Materials solely for education purposes in any and all media now known or hereafter developed.

ASCENT hereby grants the School the non-exclusive, non-transferable license to use ASCENT's trade name and any trademark(s), as they now exist or in the future, to promote and advertise the School. No other use of ASCENT trademarks is permitted without ASCENT's prior written permission. The School shall acquire no rights in the ASCENT trademarks, and all goodwill of the ASCENT trademarks shall inure to the benefit of and remain with ASCENT.

ASCENT shall have pre-approval rights for each form and manner of public display of the ASCENT Trademarks. However, the name "Ascent Classical Academy of Douglas County" shall be a trade name of the School, and the School shall have the right to use the same after termination of this Agreement without additional compensation to ASCENT.

"Educational Materials" shall include (without limitation) print and electronic textbooks, instructional materials, lesson plans, teacher guides, exercise, workbooks, tests and other curriculum-related materials.

ARTICLE IV

OBLIGATIONS OF THE BOARD

A. Good Faith Obligation. The Board shall be responsible for its fiscal and academic policy. The Board shall exercise good faith in considering the recommendations of ASCENT, including but not limited to, ASCENT's recommendations concerning policies, rules, regulations and budgets.

B. Assistance to ASCENT. The Board shall cooperate with ASCENT and shall furnish ASCENT with all documents, records and information necessary for ASCENT to properly perform its responsibilities under this Agreement, including but not limited to, timely notice of all Board meetings. The Board shall, with ASCENT's assistance, apply for and support the waiver of state laws, regulations and rules that ASCENT reasonably determines to interfere with the effective and efficient operation of the School to the extent consistent with the Charter Contract.

C. Unusual Events. The parties agree to timely notify each other of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect the other party's ability to comply with their responsibilities hereunder.

D. ASCENT Office Space. The Board upon request shall provide ASCENT with suitable space at the School for ASCENT personnel and subcontractors. The space shall be provided without cost to ASCENT and shall be used by ASCENT only for ASCENT activities related to the School.

E. Retained Authority. The Board shall retain the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and operation of the School including, without limitation, regulations relative to the conduct of pupils while in attendance at the School or en route to and from the School. The Board shall further retain the responsibility, as provided in C.R.S. 22-32-109(1)(b) of the Colorado School Laws, to adopt written policies governing the procurement of supplies, materials and equipment.

F. Compliance with the Hillsdale College Memorandum of Understanding. In order to maintain the consistency and integrity of the School's mission and vision, the School will at all times during the term of this Agreement remain in compliance with the obligations of the Hillsdale College Memorandum of Understanding.

ARTICLE V

NON-GOVERNMENTAL SOLICITATION OF FUNDS

ASCENT shall seek Board approval prior to receipt of non-governmental funds or contributions on behalf of the School. Any such funds so received may only be used in accordance with the purpose for which they were solicited, applicable donor restrictions, or as otherwise approved by the Board.

ARTICLE VI

FINANCIAL ARRANGEMENTS

A. Revenues. Except as hereinafter provided, all monies received by the Board shall be deposited in the School's depository account within three (3) business days with a financial institution acceptable to the Board. Interest income earned on School depository accounts shall accrue to the School. Except as specifically excluded by the terms of this Agreement, the term "**Revenues**" shall include all funds received by or on behalf of the School, including but not limited to:

1. Funding for public school students enrolled at the School.
2. Special education funding provided by federal and state government which is directly allocable to special education students enrolled at the School.
3. Gifted and talented funding provided by federal and state governments that is directly allocable to gifted and talented students enrolled at the School.
4. At-Risk funding provided by federal and state governments that is directly allocable to at-risk students enrolled at the School.
5. Funding provided by federal and state governments that is directly allocable to students enrolled at the School with limited English proficiency.
6. All other federal and state funding sources, including but not limited to Title I and any start-up funding, allocable to the School.

7. All other funding, contributions and donations, public and private, received by the School (except to the extent ASCENT is not required or involved in soliciting, administering, or managing the contribution and/or donation).

8. Fees charged to students for extra services and to the extent permitted by law.

(All of the above are hereinafter collectively referred to as the “**Revenues**”).

Except as otherwise provided herein, such Revenues which are budgeted to compensate Ascent for operating costs or for the Fee may immediately be transferred to Ascent upon receipt of detailed and comprehensive invoices on a monthly basis (or more frequently as the parties may mutually agree). Thence the revenues shall be expended by ASCENT in accordance with the Budget and as otherwise authorized by the Board. The expenditure of Revenues received from governmental entities shall be consistent with all applicable regulations and policies, and in the case of private donations, the directives of the donor where applicable.

B. Budget

1. Projected Budget. ASCENT shall cooperate with the Board to devise an annual projected Budget that is in compliance with the School District Budget Law of 1964, C.R.S. § 22-44-101 et seq., For the School’s first fiscal year, the Budget shall be submitted prior to the beginning of the fiscal year. Thereafter, the Budget shall be submitted to the Board at least fifteen (15) days prior to the Board’s meeting where it will vote to approve the Budget (for the next fiscal year) as required by the School’s Charter Contract.

2. Budget Detail. The Budget shall contain reasonable detail as requested by the Board. The Budget shall include all projected expenses and costs associated with operating the School including, but not limited to, the projected cost of all services provided by ASCENT pursuant to the terms of this Agreement, the Educational Program, leasehold and other lease or purchase costs incurred for the facility, maintenance, reasonable building and landscape renovations and upgrades as requested by the Board, and repairs to School facilities, capital improvements except as otherwise agreed upon, supplies and furnishings necessary to operate the School, all taxes of any kind that are assessed or imposed, insurance premiums, utilities, professional fees, and all other projected costs and expenses reasonably necessary to operate the School in accordance with the terms of this Agreement.

3. Approval. The Budget shall be prepared in cooperation with ASCENT and submitted to the Board for approval at a public meeting. The Budget shall be amended from time to time as deemed necessary by ASCENT and the Board to comply with the Colorado School Laws and the Charter Contract. Additionally, the Board shall be entitled to request that the Budget include facility and landscape renovations and interior upgrades as necessary. Such requests shall not be unreasonably denied.

4. Expenditures. ASCENT shall not expend any Revenues in such a way as to deviate materially from the provisions of the Budget without Board approval.

5. Board Reserve. Notwithstanding any other provision of this Agreement, during the term of this Agreement there shall be reserved in the School's account an amount not less than 3% of fiscal year spending in compliance with Article X, Section 20 of the Colorado constitution (the Taxpayers Bill of Rights or TABOR). These funds may not be expended except under special circumstances allowed by law. Under any circumstance, the 3% reserve must be restored by June 30th of the applicable fiscal year. Additionally, the Budget shall include \$20,000 as a board operations/training/legal services fund. Legal fees accrued by the Board in advance of the opening of the School shall be paid by ASCENT no later than October 1 of the first year of operation.

6. Financial Transparency. ASCENT shall publish detailed accounting of all financial transactions related to the School on the School's website as required by Colorado's Financial Transparency Act.

C. Fee. When the SCHOOL receives revenues, ASCENT shall document all operating costs to date in accordance with the Colorado Financial Transparency Act and shall invoice the School in order to receive such Revenues (Minus reserves noted herein) necessary to pay all operating costs of the School along with its Management Fee (the "Fee"). ASCENT and the Board acknowledge that operating costs include Central Administrative Overhead Costs payable to the Authorizer by ASCENT. It is anticipated that upon delivery of an approved invoice, ASCENT will be paid its Fee on the same frequency that the School receives its Revenues. The Fee shall be negotiated annually and adopted by the Board as part of the annual budgeting process. The Fee shall be eight percent (8%) of the Revenues.

D. Availability of Funds. ASCENT shall only be required to perform its responsibilities under this Agreement to the extent that there are sufficient Revenues to make payments in accordance with the terms of the Budget.

E. Other Schools. The School acknowledges that ASCENT has entered or may enter into similar management agreements with other public schools. ASCENT shall maintain separate accounts for expenses incurred by and on behalf of the School and other schools, and shall reflect in the School's financial records only expenses incurred by or on behalf of the School. If ASCENT incurs authorized expenses on behalf of the School and other schools which are incapable of precise allocation, then to the extent permitted by law, ASCENT shall allocate such expenses among all applicable schools, including the School, on a prorated basis based upon the number of students enrolled at the applicable schools, or upon such other equitable basis as is acceptable to the parties.

F. Financial Reporting. In addition to publication of financial transactions as statutorily required, ASCENT shall provide the Board with:

1. The projected annual Budget as required by the terms of this Agreement.
2. Statements of Revenues, Expenditures and Changes in Fund Balance detailing all revenues received, and all direct expenditures for services rendered or expenses incurred on behalf of the School, whether incurred on-site or off-site, on a frequency determined by the Board, but not less frequently than four times per year.
3. Reports on School operations, finances and student performance, shall be provided upon request, but not less frequently than four times per year.
4. Such other information as the Board may reasonably request to enable the Board to: (i) evaluate the quality of the services provided by ASCENT to the School, and (ii) timely provide all reports and information that the Board is required to provide pursuant to its Charter Contract and/or the Charter School Law.

G. Access to Records. ASCENT shall keep accurate financial records pertaining to its operation of the School, together with all School financial records prepared by or in possession of ASCENT, and shall retain all of the afore referenced records according to applicable state and federal requirements to which such books, accounts, and records relate. ASCENT and the Board shall maintain the proper confidentiality of personnel, students, and other records as required by law.

H. Review of Operational Budget. The Board shall be responsible for reviewing, revising and approving the annual Budget in accordance with the Charter Contract and applicable law.

I. Annual Audit. The Board shall select and retain an independent auditor to conduct an annual audit of the School in accordance with the School's Charter Contract and the Colorado School Laws. Subject to applicable law, all records in the possession or control of ASCENT that relate to the School, including but not limited to financial records, shall be made available to the School's independent auditor.

J. Start-up Financing. ASCENT will provide pre-operational funds for: (i) the development of curriculum, a technology system and a school operations plan, (ii) recruiting, selecting and training of staff members; and (iii) cleaning, renovating (to the extent necessary) and equipping of the School facility. In addition, ASCENT may, but need not, make contributions to the School in the event School expenses exceed revenues. ASCENT contributions, if any, shall be in amounts acceptable to ASCENT and the Board, shall be included in the Budget, and shall be repaid from Revenues as and when funds are available; however, the School shall not be legally obligated to repay ASCENT contributions made to or on behalf of the School.

K. Other Financing. The Board may apply to ASCENT for financing from time to time. Financing extended by ASCENT to the School shall be separately documented. The School shall repay financing extended by ASCENT from its Revenues.

ARTICLE VII

PERSONNEL & TRAINING

A. Personnel Responsibility. ASCENT shall select and hire qualified personnel to perform services at the School. ASCENT shall have the responsibility and authority to select, hire, evaluate, assign, discipline, transfer and terminate personnel consistent with the Budget and state and federal law. Personnel shall be employees of ASCENT, unless otherwise agreed by ASCENT and the Board. Each party shall be responsible for compensating their respective employees. However, the compensation of all employees shall be included in the Budget. To the extent required by applicable law, all personnel hired by ASCENT to work in the School shall undergo a background check as required by law.

B. School Administrator. The accountability of ASCENT to the School is an essential foundation of this Agreement. Since the School administrator (the “**Administrator**”) is critical to the School’s success, ASCENT shall have the authority, consistent with subparagraph A above, to select and supervise the Administrator and to hold the Administrator accountable for the performance of the School in accordance with academic, cultural and other metrics established by the School’s Board as described in Article III(L) herein. ASCENT shall consult with the Board with respect to the hiring of the Administrator, and such hiring is subject to Board approval. ASCENT shall remove the Administrator if the Board determines, in consultation with ASCENT, that the performance measures listed in Article III(L) are not met and that adequate notice, of at least sixty (60) days, and an opportunity to correct such defects has been afforded. The duties of the Administrator, and the terms of the Administrator’s employment, including termination provisions in the Administrator’s employment agreement, shall be determined by ASCENT and be subject to Board approval. If a School Administrator’s employment is terminated or the Administrator is removed, then ASCENT shall hire a new Administrator, in consultation with the School’s Board and with Board approval of the selection.

C. Teachers. ASCENT shall, consistent with subparagraph A above, provide the School with teachers qualified to teach their assigned subjects and grade level. The curriculum taught by the teachers shall be consistent with the Educational Program. The teachers may, at the discretion of ASCENT, work at the School on a full or part time basis. If assigned to the School on a part time basis, the teacher(s) may also work at other schools managed or operated by ASCENT. Each teacher assigned to the School shall hold a valid teaching certificate issued by the Colorado Department of Education to the extent required by the Colorado School Laws or meet “highly qualified” status (taking into consideration any applicable waivers). In all instances, the School’s Board shall retain any and all statutory and constitutional authority regarding staff assigned to this school. The School’s Board shall retain the authority to reject, on a case by case basis, teacher assignments to the School, at anytime, and in its sole discretion, but does not have the authority to terminate the employment of ASCENT employees.

D. Support Staff. ASCENT shall, consistent with subparagraph A above, provide the School with qualified support staff as needed to operate the School in an efficient manner. The support staff may, at the discretion of ASCENT, work at the School on a full or part time basis. If assigned to the School on a part time basis, the support staff may also work at other schools managed or operated by ASCENT. The School's Board shall retain the authority to reject, on a case by case basis, support staff assignments to the School, at anytime, and in its sole discretion, but does not have the authority to terminate the employment of ASCENT employees.

E. Training. ASCENT shall provide training in its methods, curriculum, program and technology to all teaching personnel on a regular basis. Instructional personnel shall receive at least the minimum hours of professional development as required by the Charter School Law. Non-instructional personnel shall receive training as ASCENT determines reasonable and necessary under the circumstances.

F. Terms of Employment. No member of the staff at the School shall be subject to any covenant not to compete or other employment restriction as part of the terms of his or her employment with ASCENT for services at the School.

G. Limitations on Discretion. All decisions made by ASCENT, and any discretion exercised by ASCENT, in its selection, evaluation, assignment, discipline, and transfer of personnel shall be consistent with the Budget, the parameters adopted and included within the Educational Program, and state and federal law.

ARTICLE VIII

TERMINATION OF AGREEMENT

A. Termination.

1. By ASCENT. ASCENT may, at its option, terminate this Agreement prior to the end of the terms specified in Article II in the event the Board fails to remedy a material breach within 30 days after notice from ASCENT. A material breach includes, but is not limited to, ASCENT's failure to receive for any reason compensation or reimbursement as required by the terms of this Agreement or the School's loss or suspension of its Charter Contract.

2. By School. The School may terminate this Agreement prior to the end of the terms specified in Article II in the event that ASCENT shall fail to remedy a material breach within 30 days after notice from the Board. A material breach includes, but is not limited to: (i) failure to account for its expenditures or to pay School operating costs in accordance with the terms of the Budget (provided funds are available to do so), (ii) failure to follow policies, procedures, rules, regulations or curriculum duly adopted by the Board that are not in violation of the Charter Contract, this Agreement or law, or (iii) receipt by the Board of unsatisfactory reports from ASCENT or from an educational consultant retained by the Board about matters concerning ASCENT's performance or the performance of the School that are not adequately corrected or explained. Notwithstanding any provisions of this Agreement to the contrary, to the extent that

the obligation of the School as a Colorado public entity is contingent upon annual appropriation to support the Agreement (as provided in Article X, Section 20 of the Colorado Constitution), if the School, in its sole discretion, has passed a resolution in a Fiscal Year not to appropriate funds to support this Agreement and has provided Ascent written notice thereof, then this Agreement shall terminate as of the end of such Fiscal Year, without such nonappropriation being considered a breach of this Agreement, or resulting in any damages, costs, or fees, other than amounts properly due for the period prior to the effective date of the termination.

3. By Either Party. Either party may terminate this Agreement for any reason upon giving not less than 90 days notice to the other party.

B. Termination/Expiration.

1. Effective Date of Termination. In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, absent a material breach or unusual and compelling circumstances, the termination will not become effective until the end of the then current fiscal year in which the notice of termination is issued.

2. Removal of personal property. Upon termination or expiration of this Agreement, ASCENT shall have the right to remove equipment and other assets owned or leased by ASCENT. Equipment and other assets owned by the School or leased by the School from third parties shall remain the property of the School.

3. Advances/Out-of-Pocket Expenses. Except as otherwise provided in this Agreement, upon termination or expiration of this Agreement for any reason except material breach by ASCENT, all advances or out-of-pocket expenses paid by ASCENT in accordance with the Budget shall be immediately repaid by the School unless otherwise agreed in writing by ASCENT.

C. Transition. In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, ASCENT may, for a fee reasonably acceptable to ASCENT, provide the School reasonable assistance for up to 90 days to assist in the transition to another administrative or structural arrangement (although ASCENT need not provide any assistance to another management company or service provider).

ARTICLE IX

INDEMNIFICATION

A. Indemnification. To the extent permitted by applicable law, each party to this Agreement (the "**Indemnifying Party**") does hereby agree to indemnify and hold the other party and the Authorizer (collectively the "**Indemnified Party**"), harmless from and against any and all claims, actions, damages, expenses, losses or awards which arise out of (i) the negligence of the Indemnifying Party, (ii) any action taken or not taken by the Indemnifying Party, or (iii) any noncompliance or breach by the Indemnifying Party of any of the terms, conditions, warranties, representations, or undertakings contained in or made pursuant to this Agreement. As used in this

subsection, "Indemnified Party" shall include the party's trustees, directors, officers, employees, agents, representatives and attorneys. Such indemnification may be achieved by the joint purchase of general liability and property insurance policies, or by such other means as the parties may mutually agree.

ASCENT acknowledges that School is a Colorado government entity and is subject to the limits of liabilities and immunities provided under the Colorado Governmental Immunity Act, Article 10, Title 24, Colorado Revised Statutes, as amended, as well as other provisions of Colorado law that limit School's liabilities. Notwithstanding any other term in this Agreement, School may only indemnify ASCENT and any other party to the extent allowed by law and no provision of this Agreement shall limit School's ability to claim governmental immunity or any other limitation of liability afforded it under law.

ARTICLE X

INSURANCE

A. Insurance Coverage. Each party shall maintain general liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence (or such greater amount if required by the terms of the Charter Contract or applicable law), with the other party listed as an additional insured. In addition, the School shall maintain an umbrella liability policy of two million dollars (\$2,000,000.00) (or such greater amount if required by the terms of the Charter Contract or applicable law), with ASCENT listed as an additional insured. The School shall maintain insurance on the facility and related capital items as required by the terms of its Real Estate Lease. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this paragraph. Each party shall comply with any information or reporting requirements required by the other party's insurer(s), to the extent reasonably practicable.

B. Workers' Compensation Insurance. Each party shall maintain workers' compensation insurance as required by law, covering their respective employees.

ARTICLE XI

WARRANTIES AND REPRESENTATIONS

A. School Warranties and Representations. The Board represents that, on behalf of and in the name of the School, it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement. The Board warrants that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.

B. ASCENT Warranties and Representations. ASCENT warrants and represents that it is a corporation in good standing and is authorized to conduct business in the State of

Colorado. ASCENT will comply with all registration and licensing requirements relating to conducting business under this Agreement. The Board agrees to assist ASCENT in applying for such licenses and permits and in obtaining such approvals and consents.

C. Mutual Warranties. The School and ASCENT mutually warrant to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

ARTICLE XII

MISCELLANEOUS

A. Sole Agreement. This Agreement supersedes and replaces any and all prior agreements and understandings between the School and ASCENT.

B. Force Majeure. Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike, or other acts beyond its reasonable control; provided either party may terminate this Agreement in accordance with the termination provisions contained in this Agreement if sufficient grounds exist as provided in the Article governing termination.

C. State Governing Law/Waiver of Jury Trial. The rights of all parties hereto shall be subject to the jurisdiction of and be construed according to the laws of the State of Colorado. ASCENT and the School hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either ASCENT or the School against the other.

D. Agreement in Entirety. This Agreement (including attachments) constitutes the entire agreement of the parties.

E. Official Notices. All notices and other communications required by the terms of this Agreement shall be in writing and sent to the parties hereto at the facsimile number or address set forth below. Notice may be given by (i) by facsimile with written evidence of confirmed receipt by the receiving party of the entire notice, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) personal delivery. Notice shall be deemed to have been given on the date of transmittal if given by facsimile, date of delivery if given by personal delivery, or upon the date of postmark if sent by certified or registered mail. Notices to the School shall be sent to the current address of the then current Board President, with a copy to the then current Board attorney. The address of the parties hereto for the purposes aforesaid, inclusive of the address of the initial Board President and Board, are as follows:

The School:

Rob Williams
601 Corporate Circle, Suite A
Golden, CO 80401
Telephone: (303) 384-1329

with a copy to:
Dustin Sparks
P.O. Box 2661
Monument, CO 80132
Telephone: 303.727.0240

ASCENT: Ascent Classical Academies
Attn: Derec Shuler
601 Corporate Circle
Golden, Colorado 80401
Telephone: (303) 900-2297

F. Assignment. ASCENT may assign this Agreement with the prior consent of the Board.

G. Amendment. This Agreement shall not be altered, amended, modified or supplemented except by memorandum approved by the Board and signed by an authorized officer of ASCENT and the Board.

H. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

I. Cost and Expenses. If any party commences an action against another party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

J. Delegation of Authority. Nothing in this Agreement shall be construed as delegating to ASCENT powers or authority of the Board which are not subject to delegation by the Board under Colorado law.

K. Compliance with Law. The parties to this Agreement agree to comply with all applicable laws and regulations.

L. Compliance with Charter Contract. The parties to this Agreement agree to comply with the terms and conditions set forth in the Charter Contract.

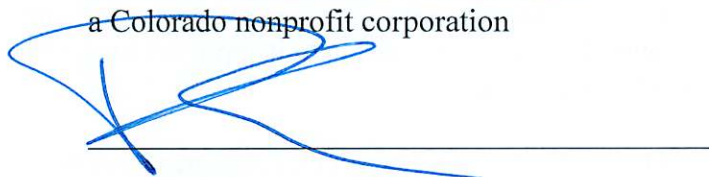
M. Multi-Year Fiscal Obligations. School-Year Fiscal Obligations agree to comply with the terms and conditions set forth in the Charter Ccal year appropriations by and at the sole option of the School's Board and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the School or an obligation of the School payable in any fiscal year beyond the fiscal year for which it appropriated funds for the payment thereof. The obligation of the School to make any payments pursuant to this Agreement shall terminate in the event School, for any reason, does not appropriate funds to make such payments during its next ensuing fiscal year. The parties acknowledge and agree that any payments by the School described in this Agreement shall constitute current expenditures of the School payable in the fiscal years for which

the School appropriates funds for the payment thereof. A failure by the School to appropriate funds to pay amounts due under the Agreement in future fiscal years is a legislative act of its Governing Board and, as such, is solely within the discretion of the School.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

Date: October 17, 2017

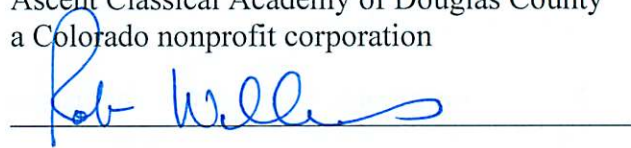
ASCENT CLASSICAL ACADEMIES
a Colorado nonprofit corporation



By: Derec C. Shuler
Its: Chairman

Date: October 17, 2017

Ascent Classical Academy of Douglas County
a Colorado nonprofit corporation



By: Rob Williams
Its: Chairman