



Compass Charter Schools Special Meeting

Date and Time

Thursday January 31, 2019 at 7:00 PM PST

CCS Central Office: 850 Hampshire Road, Suite P, Thousand Oaks, CA 91361
2657 Victoria Circle, Alpine CA, 91901
702 East Blue Ridge Road, Fresno, CA 93720
13 Sunrise, Irvine, CA 92603
3580 Wilshire Blvd., Suite 1130, Los Angeles, CA 90010
2653 Taft Lane, Palmdale, CA 93551

Please join the meeting from your computer, tablet or smartphone:

<https://compasscharters.adobeconnect.com/bod/>

For questions or requests regarding accessibility, please call Miguel Aguilar at (805) 807-8199.

Agenda

	Purpose	Presenter	Time
I. Opening Items			7:00 PM
A. Call the Meeting to Order		John Vargas	1 m
B. Record Attendance and Guests		Miguel Aguilar	1 m

II. Consent Items			7:02 PM
A. Consent Items	Vote	J.J. Lewis	5 m

Consent Items – Items under Consent Items will be voted on in one motion unless a member of the Board requests that an item be removed and voted on separately, in which case, the Board Chair will determine when it will be called and considered for action. Due to the set-up of BoardOnTrack, approval of any meeting minutes will be done through consent, unless removed and voted on separately as noted above, using the same vote count.

- Approval of the January 31, 2019 Special Meeting Agenda

III. Public Comment

7:07 PM

A. Public Comment FYI John Vargas 5 m

Addressing the Board – Board meetings are meetings of the Board of Directors and will be held in a civil, orderly and respectful manner. All public comments or questions should be addressed to the Board through the Chair of the Board. To ensure an orderly meeting and an equal opportunity for each speaker, persons wishing to address the Board must complete a Speaker Request Card and submit it to Miguel Aguilar, Executive Assistant to the Superintendent. The Speaker Request Card must contain speaker name, contact number or email, and subject matter and submitted to the Executive Assistant to the Superintendent prior to the start of the meeting. Members of the public may address the Board on any matter within the Board’s jurisdiction and have **three (3) minutes each** to do so. The total time of each subject will be fifteen (15) minutes, unless additional time is requested by a Board Member and approved by the Board.

The Board may not deliberate or take action on items that are not on the agenda. However, the Board may give direction to staff following a presentation. The Chair is in charge of the meeting and will maintain order, set the time limits for the speakers and the subject matter, and will have the prerogative to remove any person who is disruptive of the Board meeting. The Board of Directors may place limitations on the total time to be devoted to each topic if it finds that the numbers of speakers would impede the Board’s ability to conduct its business in a timely manner. The Board of Directors may also allow for additional public comment and questions after reports and presentations if it deems necessary.

IV. New Business 7:12 PM

A. Review and Approval of the Merger Agreement with REALM Charter Schools Vote J.J. Lewis 30 m

V. Closing Items 7:42 PM

A. Upcoming Meetings FYI J.J. Lewis 1 m
Board of Directors

Monday, March 25 at 5 pm (if Closed Session is needed); 6 pm for Open Session

- 2019-20 Staff Handbook
- Second Interim Reports
- Counseling Services Department Presentation
- Exceptional Scholar Services Department Presentation

B. Adjourn Meeting FYI John Vargas 1 m

Cover Sheet

Consent Items

Section: II. Consent Items
Item: A. Consent Items
Purpose: Vote
Submitted by: J.J. LEWIS

RECOMMENDATION:
A motion to approve the consent items.

Cover Sheet

Review and Approval of the Merger Agreement with REALM Charter Schools

Section: IV. New Business
Item: A. Review and Approval of the Merger Agreement with REALM Charter Schools
Purpose: Vote
Submitted by: J.J. LEWIS
Related Material:

A Agreement and Plan of Merger.pdf

B Merger Resolution 2018-06.pdf

C DOCS-#3547044-v1-Loan_Agreement_Compas_-_Realm_January_2019.pdf

RECOMMENDATION:

A motion to approve the Merger Agreement with REALM Charter Schools.

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (“Agreement”) is made and entered into, and dated for convenience as of February 1, 2019, by and between Compass Charter Schools, a California nonprofit public benefit corporation (“Compass”), and REALM Charter Schools, a California nonprofit corporation (“REALM”). Compass and REALM are sometimes referred to herein each as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Compass is a California nonprofit public benefit corporation organized to create, manage, operate, guide, direct and promote one or more public charter schools and currently operates three public charter schools;

WHEREAS, REALM is a California nonprofit public benefit corporation organized to manage, operate, guide, direct and promote one or more California public charter schools and currently operates a public charter school known as REALM Charter School (“School”) pursuant to a charter (“Charter”) authorized by Berkeley Unified School District (“District”);

WHEREAS, Compass and REALM have entered into an Affiliation Agreement dated December 10, 2018 (“Affiliation Agreement”) for the primary and specific purposes of supporting, benefitting and furthering the charitable and educational purposes of both Parties;

WHEREAS, Compass and REALM have no members, as such term is defined in Section 5056 of the California Corporations Code.

WHEREAS, the Board of Directors of each Party believes it is in the best interests of such Party to combine the Parties through the statutory merger of REALM with and into Compass and, in furtherance of, approve such merger by resolution; and

WHEREAS, the Parties desire to make certain representations, warranties, covenants and other agreements in connection with such merger.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I THE MERGER

1.1 **Merger.** Subject to the terms and conditions set forth in this Agreement and the applicable provisions of the California Corporations Code, at the Effective Time, REALM shall be merged with and into Compass (the “Merger”), the separate corporate existence of REALM shall cease and Compass shall continue as the surviving corporation.

1.2 **Effective Time.** At least twenty (20) days prior to the Closing Date, the Parties shall cause a copy of this Agreement to be provided to the California Attorney General in accordance with Section 6010(b) of the California Corporations Code. On the Closing Date, the Parties shall cause the Merger to be consummated by filing officers’ certificates in the forms prescribed by Section 6014 of the California Corporations Code with the California Secretary of State. When used in this Agreement, the term “Effective Time” shall mean the date and time that the Merger is effective pursuant to Section 6014 of the California Corporations Code.

1.3 **Effect of the Merger.** At the Effective Time, the effect of the Merger shall be as provided in Section 6020 through 6022 of the California Corporations Code. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time:

- (a) Subject to Section 1.3(f), all the assets, property, rights, privileges and powers of REALM shall vest in the surviving corporation, and all debts, liabilities and duties of REALM shall become the debts, liabilities and duties of the surviving corporation;
- (b) The Compass Articles of Incorporation shall be the Articles of Incorporation of the surviving corporation until and unless thereafter amended;
- (c) The Compass Bylaws shall be the Bylaws of the surviving corporation until and unless thereafter amended;
- (d) The directors of Compass immediately prior to the Effective Time, shall each continue to be the directors of the surviving corporation immediately after the Effective Time, each to hold the office of director of the surviving corporation in accordance with the provisions of the California Corporations Code and the Articles of Incorporation and Bylaws of the surviving corporation until their successors are duly qualified and elected; and
- (e) The officers of Compass immediately prior to the Effective Time, shall each continue to hold such office immediately after the Effective Time in accordance with the provisions of the Bylaws of the surviving corporation.
- (f) Nothing in this Agreement shall be construed to bind or impose upon Compass any duties or obligations arising from or pursuant to the Collective Bargaining Agreement between REALM and The Berkeley Federation of Teachers in effect at that time. No duties or obligations arising from or pursuant to the Collective Bargaining Agreement between REALM and The Berkeley Federation of Teachers shall be deemed to survive or vest in the surviving corporation by virtue of this Agreement.

1.4 **Closing; Closing Deliveries.**

1.4.1 **Compass Deliveries.** Subject to fulfillment or waiver of the conditions set forth in Article V, at the Closing, Compass shall deliver to REALM all of the following:

- (a) A copy of the Compass articles of incorporation, certified by the California Secretary of State within 30 days of the Closing Date;
- (b) A certificate of good standing of Compass issued as of a date no less than 20 days prior to the Closing Date by the California Secretary of State;
- (c) A certificate of good standing of Compass issued as of a date no less than 2 days prior to the Closing Date by the California Franchise Tax Board;
- (d) A certificate of the Secretary of Compass, dated the Closing Date (defined in 1.6 below), in form and substance reasonably satisfactory to REALM, as to (i) no amendments to the Bylaws of Compass; (ii) no amendments to the articles of incorporation of Compass; and (iii) the resolutions of the Board of Directors of

Compass authorizing the execution and performance of this Agreement and consummation of the transactions contemplated hereby;

- (e) All consents, waivers, or approvals obtained by Compass with respect to the consummation of the transactions contemplated by this Agreement; and
- (f) All other certificates, agreements and other documents contemplated by Article V.

1.4.2 **REALM Deliveries.** Subject to fulfillment or waiver of the conditions set forth in Article V, at the Closing, REALM shall deliver to Compass all of the following:

- (a) A copy of the Articles of Incorporation of REALM, certified by the California Secretary of State within 30 days of the Closing Date;
- (b) A certificate of good standing of REALM, issued as of a date no less than 20 days prior to the Closing Date by the California Secretary of State;
- (c) A certificate of good standing of REALM, issued as of a date no less than 2 days prior to the Closing Date by the California Franchise Tax Board;
- (d) An affirmation letter from the United States Internal Revenue Service confirming REALM's 501(c)(3) determination, issued as of a date within 30 days of the Closing Date;
- (e) A certificate of the Secretary of REALM, dated the Closing Date, in form and substance reasonably satisfactory to Compass, as to (i) no amendments to the Bylaws of REALM; (ii) no amendments to the Articles of Incorporation of REALM; and (iii) the resolutions of the Board of Directors of REALM authorizing the execution and performance of this Agreement and consummation of the transactions contemplated hereby;
- (f) All consents, waivers, or approvals obtained by REALM with respect to the consummation of the transactions contemplated by this Agreement; and
- (g) All other certificates, agreements and other documents contemplated by Article V.

1.5 **Closing.** Unless this Agreement is earlier terminated pursuant to Section 6.1 hereof, and subject to the satisfaction or valid waiver of the conditions set forth in Article V hereof, the closing of the transaction contemplated by this Agreement (the "Closing") will take place on July 1, 2019 or as promptly as practicable thereafter, at the offices of Procopio Cory Hargreaves & Savitch LLP, 1117 S. California Ave, Suite 200, Palo Alto, CA 94304, unless another place or time is agreed to in writing by the parties. The date upon which the Closing actually occurs is referred to herein as the "Closing Date."

1.6 **Further Assurances.** If, at any time after the Effective Time, any further action is necessary, desirable or proper to consummate the Merger to carry out the purposes of this Agreement or to vest Compass, as the surviving corporation, with full right, title, and interest in, to or under any of the assets, property, rights, privileges, powers and franchises of REALM, Compass and its proper officers and directors or their designees are fully authorized to execute and deliver, in the name and

on behalf of REALM, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm Compass' right, title or interest in, to or under any of the assets, property, rights, privileges, powers or franchises of REALM and otherwise to carry out the purposes of this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF COMPASS

Compass hereby represents and warrants to REALM that the statements contained in this Article II are true and correct, subject to any exceptions that have been disclosed by Compass in connection with this Agreement or the Affiliation Agreement.

- 2.1 **Organization.** Compass is duly incorporated, validly existing and in good standing as a nonprofit public benefit corporation under the laws of the State of California and has the requisite corporate power and authority to conduct its operations. Compass is not a member of or partner in, and does not own any stock or other equity interests of, any other person or entity. Compass has no members (as such term is defined in Section 5056 of the California Corporations Code).
- 2.2 **Corporate Authorization.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Compass. This Agreement has been duly executed and delivered by Compass. Assuming the due authorization, execution and delivery of this Agreement by Compass, this Agreement constitutes the valid and binding obligation of Compass, enforceable against Compass in accordance with its terms.
- 2.3 **No Conflict; Consents.** The execution and delivery of this Agreement by Compass does not, the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not, conflict with or result in any violation of or default under, or give rise to a right of termination, modification or acceleration of any obligation, or result in the creation of any lien upon any of the properties or assets of Compass under (i) any provision of the articles of incorporation or the bylaws of Compass, (ii) any mortgage, indenture, loan agreement, lease, contract or other agreement or instrument, permit, or license to which Compass is a party or by which Compass or any of its properties or assets is bound, or (iii) any laws applicable to Compass or any of its properties or assets.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF REALM

REALM hereby represents and warrants to Compass that the statements contained in this Article III are true and correct, subject to any exceptions that have been disclosed by REALM to Compass in connection with this Agreement or the Affiliation Agreement.

- 3.1 **Organization.** REALM is duly incorporated, validly existing and in good standing as a nonprofit public benefit corporation under the laws of the State of California and has the requisite corporate power and authority to conduct its operations. REALM is not a member of or partner in, and does not own any stock or other equity interests of, any other person or entity.
- 3.2 **Corporate Authorization.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of REALM. This Agreement has been duly executed and delivered by REALM. Assuming the due authorization, execution and delivery of this Agreement by Compass, this Agreement

constitutes the valid and binding obligation of REALM, enforceable against REALM in accordance with its terms.

- 3.3 **No Conflict; Consents.** The execution and delivery of this Agreement by REALM does not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not, conflict with or result in any violation of or default under, or give rise to a right of termination, modification or acceleration of any obligation, or result in the creation of any lien upon any of the properties or assets of REALM under (i) any provision of the articles of incorporation or the bylaws of REALM, (ii) any mortgage, indenture, loan agreement, lease, contract or other agreement or instrument, permit, concession, franchise or license to which REALM is a party or by which REALM or any of its properties or assets is bound, or (iii) any laws applicable to REALM or any of its properties or assets.

ARTICLE IV ADDITIONAL AGREEMENTS

- 4.1 **Conduct Prior to Closing.** From the date hereof through the Closing, Compass and REALM shall operate in the ordinary course and substantially in accordance with past practice. Without limiting the generality of the foregoing, from the date hereof through the Closing, REALM shall not, without obtaining prior written consent of Compass (a) acquire any material properties or assets, (b) sell, lease, encumber or otherwise dispose of any material properties or assets, (c) propose or adopt any amendments to their articles of incorporation or bylaws, (d) incur, assume or guarantee any indebtedness, (e) make any loans or advances to, or investments in, any other person or entity other than cash management activities and employee expense advances in the ordinary course consistent with past practice, (f) enter into, amend or terminate any material agreement, (g) make any expenditure in excess of amounts specified in REALM's current budget (as made available to Compass), (h) enter into, adopt or amend any Benefits Plan or (i) enter into any contract, agreement or commitment to do any of the foregoing.
- 4.2 **No Solicitations.** From the date of this Agreement through the Closing, REALM shall not, and REALM shall not knowingly permit its officers, directors, employees representatives and agents to, directly or indirectly, encourage, solicit, participate in initiate discussions or negotiations with, or provide any information to, any person, entity or group of persons or entities (other than Compass) concerning any merger, sale of assets or similar transaction involving REALM.
- 4.3 **Approvals.** REALM shall use reasonable efforts to obtain, and will promptly prepare as required all requests and notices, contract amendments, applications or other documents required in order to obtain all consents, waivers or approvals required by Article V, and Compass agrees to cooperate in good faith with REALM in order to obtain all such consents, waivers and approvals.
- 4.4 **Information.** REALM shall afford Compass and its accountants, counsel, financial advisors and other representatives reasonable access to, and permit them to make such inspections as they may reasonably require of, during normal business hours, all of its books, contracts, commitments and records. REALM shall provide Compass prompt notice of any fact, event or circumstance known to it that is reasonably likely, individually or taken together with all other facts, events and circumstances known to it, to result in any material adverse effect on REALM or on REALM's ability to perform its obligations under this Agreement, or would cause or constitute a material breach of any of REALM's representations, warranties, covenants or agreements contained herein.
- 4.5 **Expenses.** All fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, all legal, accounting, investment banking,

broker, financial advisory, consulting and other fees and expenses of third parties incurred by a Party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fees and expenses.

4.6 **Governance Prior to Closing.**

4.6.1 Prior to Closing, Compass and REALM will each maintain their respective separate corporate existences, and REALM will continue to operate the School under its existing Charter and school name. The Parties also confirm and clarify that it was the Parties' intent, mutual understanding, and performance under Section 1.1 of the Affiliation Agreement that REALM would continue to operate the School under its existing Charter and school name following the execution of the Affiliation Agreement and while the Compass Board of Directors considered whether it would be beneficial for Compass to merge with REALM, or otherwise pursue a closer tie between the organizations.

4.6.2 Prior to Closing, neither of the Parties, nor their respective officers, directors, or employees shall be construed to be the agent, employer, or representative of the other except as specifically provided herein. Neither Party is authorized to speak on behalf of the other for any purpose whatsoever without the prior consent in writing of the other. None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between the Parties other than for the purpose of effecting the provisions of this Agreement. This Agreement is not intended to establish any contractual relationships between the Parties and their employees. This Agreement is only for the benefit of the Parties and there are no third-party beneficiaries.

4.7 **Integration.**

4.7.1 To achieve ever-improving student performance and success prior to Closing, REALM shall make commercially reasonable efforts to collaborate with Compass to provide an opportunity for students enrolled in REALM's School to participate in independent study. Compass has experience and expertise in creating a collaborative virtual learning community, inspiring scholars to appreciate the ways in which arts and sciences nurture a curiosity for life-long learning, and prepare scholars to take responsibility for their future success. Providing this opportunity for students enrolled in the School would be consistent with Compass' mission to cultivate resiliency, develop critical thinking skills, advance knowledge through rigorous studies, and equip students to serve their communities and the world in the 21st century.

4.7.2 The Parties shall make commercially reasonable efforts to collaborate with each other to plan for post-merger operations, including but not limited to the use of cross-functional teams to aid in such planning.

4.7.3 In connection with the Parties' affiliation and integration prior to Closing described above, the Parties will at all times comply with the requirements of California law including, without limitation, the California Charter Schools Act (Education Code Sections 47600 *et seq.*) and the California Nonprofit Public Benefit Corporation Law (Corporations Code Sections 5110 *et seq.*)

4.8 **Agreement for Administrative Services.**

4.8.1 Compass' leadership team will act as advisors to REALM's leadership team. At the option of Compass, and within seven (7) calendar days following written notice from Compass to REALM, the Parties shall enter into an employee leasing agreement for the provision of senior

leadership services (“Administrative Services Agreement”) under which Compass will provide senior administrative leadership services for the efficient operation of REALM.

4.8.2 REALM’s administration will approve and promptly implement a debt-reduction plan for REALM, which debt-reduction plan shall be subject to a periodic formal assessment of the progress in meeting the goals thereof. Such assessment shall be submitted to the REALM Board and Compass Board not less often than monthly.

4.9 **Financial Assistance.**

4.9.1 Compass has previously loaned to REALM an aggregate principal amount of One-Hundred Thousand Dollars (\$100,000) and subject to terms and conditions as stated in the related loan agreement and promissory note (“Initial Loan”). The Initial Loan shall remain in effect in accordance with its terms.

4.9.2 The Parties may enter into additional loan amounts in consideration and furtherance of this Merger Agreement. Any additional loans to REALM from Compass shall be approved by the respective governing boards of REALM and Compass and shall be subject to terms and conditions stated in a separate loan agreement and related documents. Any additional loan agreements may include conditions and obligations different from the Initial Loan.

**ARTICLE V
CONDITIONS TO THE CLOSING**

5.1 **Conditions to the Obligations of the Parties.** The obligations of the Parties to consummate and effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by the non-bound Party to the condition:

5.1.1 **Representations and Warranties.** Each Party shall certify, as of the Closing Date, that the representations and warranties stated in this Agreement shall continue be true and correct in all material respects at and as of the Closing, and that each Party has satisfied all applicable conditions to closing.

5.1.2. **Covenants.** The Parties shall have performed and complied in all material respects with all covenants contained in this Agreement required to be performed and complied with by it as of the Closing, including without limitation Section 4.1.

5.1.3. **No Injunction or Restraints; Illegality.** No order issued by any court of competent jurisdiction or other governmental authority having jurisdiction over Compass and REALM, and no other legal restraint or prohibition, preventing the consummation of the transactions contemplated hereby shall be in effect; nor shall any proceeding brought by a governmental authority seeking any of the foregoing have been commenced or be pending; nor shall there be any action taken by any governmental authority, or any law, enacted, entered, enforced or deemed applicable to the transactions contemplated hereby, that makes the consummation of the transactions contemplated hereby illegal.

5.1.4. **Governmental Approvals.** All material authorizations, orders, declarations, approvals, notices or consents and filings with governmental authorities required in connection with the consummation of the transactions contemplated hereby shall have been obtained or made, except the Attorney General’s written consent is not required to satisfy this Condition of Closing so long as the Parties timely provided the 20-day notice required in Section 1.2 of this Agreement.

5.1.5. **Delivery of Documents.** Each Party shall have delivered or made available to the other Parties those documents described in Sections 1.5.1 and 1.5.2 hereof, respectively.

5.1.6. **Consents.** REALM shall have delivered or made available to Compass all consents, waivers, or approvals required with respect to the consummation of the transactions contemplated by this Agreement.

5.2 **Additional Conditions to Closing to be Satisfied by REALM.** The obligations of the Parties to consummate and effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by the non-bound Party to the condition:

5.2.1 REALM must maintain its Charter for the School in good standing, and provide District confirmation of such good standing. The District's confirmation of good standing shall be dated no earlier than 15 (fifteen) days prior to the Closing Date. Good standing for purposes of this agreement shall include no pending notice of concern, notice of violation, or notice of intent to revoke the Charter for the School.

5.2.2 REALM must provide to Compass a copy of any notice of concern, notice to cure, notice of violation, or notice of intent to revoke the School's Charter within one (1) business day of REALM's receipt of such notice.

5.2.3 REALM must obtain any necessary material revision of its Charter for the School from the District that may be necessary to effectuate this Agreement, and the operation of the School by Compass as the surviving corporation.

5.2.4 REALM must use commercially reasonable efforts to reduce its debts and liabilities, which shall include negotiations with its other creditors. REALM shall reduce its debts and liabilities by a minimum of thirty-percent (30%) of the amount of REALM debt and liabilities existing as of the date of this Agreement.

5.2.5 REALM must maintain, and have maintained, commercially reasonable insurance coverage for all aspects of its operations, including any claims arising from such operations, at all times from the date of its initial commencement of its operations.

5.2.6 Closing certificates of REALM in forms reasonably acceptable to Compass.

5.2.7 Any other documents or items reasonably required by Compass.

ARTICLE VI TERMINATION

6.1 **Termination Rights.** This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

6.1.1. by Compass, prior to March 31, 2019, in its sole discretion;

6.1.2. by mutual written consent of the Parties;

6.1.3. by either Party if the Closing has not occurred on or prior to September 1, 2019; provided, however, that the right to terminate this Agreement under this Section 6.1.3 shall not be

available to a Party whose action or failure to act has been the cause of, or resulted in, the failure of the Closing to have occurred on or before such date;

- 6.1.4. by Compass if there has been a material breach of any representation, warranty or covenant contained in this Agreement on the part of REALM, or if any representation or warranty on the part of REALM has become, untrue, and such inaccuracy in such representation or warranty or breach shall not have been cured within ten (10) days after written notice by Compass to REALM, as applicable;
 - 6.1.5. by REALM if there has been a material breach of any representation, warranty or covenant contained in this Agreement on the part of Compass, or if any representation or warranty on the part of Compass has become untrue, and such inaccuracy in such representation or warranty or breach shall not have been cured within ten (10) days after written notice by REALM to Compass;
 - 6.1.7. by Compass if any of the conditions required of REALM as set forth in Article V hereof shall have become incapable of fulfillment and shall not have been waived in writing by Compass;
 - 6.1.8. by REALM if any of the conditions required of Compass as set forth in Article V hereof shall have become incapable of fulfillment and shall not have been waived in writing by REALM.
 - 6.1.9 upon the commencement by either Party of a voluntary case under bankruptcy, insolvency, or similar law, or upon the filing against either Party of any involuntary case under any bankruptcy, insolvency, or similar law.
 - 6.1.10 by Compass if REALM fails to enter into a successor Collective Bargaining Agreement with The Berkeley Federation of Teachers, subject to written approval by Compass pursuant to Section 4.1, no later than June 1, 2019.
- 6.2 **Manner and Effect of Termination.** Termination under this Article shall be effected by the giving of written notice to that effect by any Party to the other Party. In the event of termination of this Agreement as provided in Section 6.1 hereof, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Compass or REALM or their respective directors, officers or constituents except as expressly stated in this Agreement and provided, that the provisions of Sections 4.5 (expenses), 6.1 (termination rights), 6.2 (manner and effect of termination), 7.1 (notices), 7.6 (severability), 7.7 (governing law), 7.8 (interpretation), 7.9 (rules of construction) and 7.10 (counterparts; facsimile or electronic mail signatures) shall remain in full force and effect and survive any termination of this Agreement; provided, further, that nothing contained in this Section 6.2 shall relieve either Party from any liability for any breach of any representation or warranty or covenant contained in this Agreement that occurs prior to the termination of this Agreement or to any actual or purported termination of this Agreement in violation of the terms of this Agreement.
- 6.3 Any loan agreement, promissory note or related documents, and/or Administrative Services Agreement entered into by the Parties, including all rights and obligations thereunder, shall remain in full force and effect notwithstanding the termination of this Agreement.

ARTICLE VII GENERAL PROVISIONS

- 7.1 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally, when sent by overnight courier service such as Federal Express, or by Unities States mail, first class postage prepaid, certified return-receipt requested and addressed as follows:

If to Compass: Compass Charter Schools
850 Hampshire Road, Suite P
Thousand Oaks, CA 91361
Attention: Superintendent and CEO

If to REALM: REALM Charter Schools
2023 8th Street
Berkeley, CA 94710
Attention: Executive Director

Notice shall be deemed received upon the earlier of actual delivery or three (3) days after deposit in the United States mail in the manner provided for above. Either Party may change a notice address by giving notice in the manner specified above.

- 7.2 **Amendment.** This Agreement may only be amended by the Parties hereto by execution of an instrument in writing signed by Compass and REALM.
- 7.3 **Extension; Waiver.** At any time prior to the Closing, either Party may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other Party hereto, (ii) waive any inaccuracies in the representations and warranties made to such Party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such Party contained herein. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. No failure on the part of any Party hereto to exercise or to delay in exercising any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise preclude any further or other exercise of such or any other right.
- 7.4 **Entire Agreement.** This Agreement, and the other documents and instruments and other agreements between the Parties hereto referenced herein constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, between the Parties with respect to the subject matter hereof and, except as specifically provided herein, are not intended to confer upon any person or entity other than the Parties any rights or remedies hereunder. All loan agreements between the Parties shall remain in effect in accordance with their existing terms and conditions and are not amended or otherwise modified by this Agreement.
- 7.5 **No Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.
- 7.6 **Severability.** In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect so long as the economic and legal substance

of the transactions contemplated hereby are not affected in any manner materially adverse to any Party. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

- 7.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the Parties agrees that any suit, action or proceeding instituted against such Party under or in connection with this Agreement shall be brought in any state or federal court located in the County of Ventura, California. By its execution hereof, each Party irrevocably waives any objection to, and any right of immunity on the grounds of, improper venue, the convenience of the forum, the personal jurisdiction of such court or the execution of judgments resulting therefrom. Each Party hereby irrevocably accepts and submits to the exclusive jurisdiction of such court in any such action, suit or proceeding.
- 7.8 **Interpretation.** The words (i) "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation" and (ii) "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Throughout this Agreement, as the context may require, the singular tense and number includes the plural, and the plural tense and number includes the singular. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The table of contents, table of defined terms and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 7.9 **Rules of Construction.** The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement, or have had the opportunity to engage such counsel and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.
- 7.10 **Counterparts; Facsimile or Electronic Mail Signatures.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the others (including via facsimile or electronic mail), it being understood that all Parties need not sign the same counterpart.
- 7.11 **Force Majeure.** Neither Party shall be deemed to be in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including but not limited to strikes, regulation or rule of the federal or any state or local government or any agency thereof, or decision rendered by any court, including decisions rendered against or affecting either Compass or REALM.

[Continued on Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed, all as of the date first written above.

Compass Charter Schools,
a California nonprofit public benefit corporation

REALM Charter Schools,
a California nonprofit public benefit corporation

By: J.J. Lewis

By: Victor Diaz

Its: Superintendent & CEO

Its: Executive Director



**RESOLUTION OF THE BOARD OF DIRECTORS OF
COMPASS CHARTER SCHOOLS**

Board Resolution 2018-06

Approving Agreement and Plan of Merger with REALM Charter Schools,
Including Financial Assistance

The Board of Directors (“Board”) of Compass Charter Schools (“Compass”) does hereby adopt the following resolution:

WHEREAS, Compass is a California nonprofit public benefit corporation that has been determined to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, whose charitable purposes include to create, manage, operate, guide, direct and promote one or more public charter schools and currently operates three public charter schools;

WHEREAS, REALM Charter Schools (“REALM”) is a California nonprofit public benefit corporation that has been determined to be exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code, whose charitable purposes include to manage, operate, guide, direct and promote one or more California public charter schools and currently operates a public charter school known as REALM Charter School (“School”) authorized by Berkeley Unified School District (“District”);

WHEREAS, Compass and REALM have entered into an affiliation agreement dated December 10, 2018 (“Affiliation Agreement”) for the primary and specific purposes of supporting, benefitting and furthering the charitable and educational purposes of both parties;

WHEREAS, Compass and Realm have no members, as such term is defined in Section 5056 of the California Corporations Code;

WHEREAS, Compass and Reals share similar public and charitable purposes and activities;

WHEREAS, the Board of Compass believes it is in the best interests of Compass to combine Compass with REALM through statutory merger of REALM into Compass because it will create a stronger, more effective and efficient organization and expand independent study opportunities;

WHEREAS, in connection therewith, there has been presented to this Board a form of Agreement and Plan of Merger (“Merger Agreement”) attached hereto as Exhibit A and incorporated by reference, which this Board has reviewed;

WHEREAS, pursuant to the California Corporations Code upon the effective date in the Merger Agreement, the separate corporate existence of REALM shall cease and Compass shall continue as the surviving corporation;

WHEREAS, this Board now desires to approve and authorize the Merger Agreement;

WHEREAS, REALM is in need of financing to continue its School operations;

WHEREAS, in consideration and furtherance of the Merger Agreement, Compass desires and has adequate surplus, unrestricted funds to provide REALM with a one-year loan in the aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,000), and which shall bear interest at a rate equal to Three and a Half Percent (3.5%) per annum, or the maximum rate allowable by law, whichever is lower, to use towards operation of the School (“Loan”);

WHEREAS, the Loan serves and furthers Compass’s charitable purposes to create, manage, operate, guide, direct and promote one or more public charter schools;

WHEREAS, in order to document Compass’ and REALM’s respective rights and obligations with regard to the Loan, the Board of Directors of Compass, as lender, has reviewed and desires to enter into the Loan Agreement and unsecured Promissory Note (collectively, the “Loan Documents”) attached hereto as Exhibit B and incorporated by reference; and

WHEREAS, this Board of Directors hereby finds that the Loan as set forth in the Loan Documents will not adversely impact Compass’ continued and successful operations and is just and reasonable as to Compass in furtherance of Compass’s charitable purposes at the time it is reviewed and authorized pursuant to this resolution.

NOW, THEREFORE, this Board does hereby find, resolve and order as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The Merger Agreement and the Loan are hereby approved and this Board of Directors has reviewed and approved the Merger Agreement and Loan Documents; and

Section 3. The Superintendent & Chief Executive Officer (“CEO”) and Secretary of Compass, or the duly delegated representatives of any of the foregoing (each an “Authorized Officer”), acting alone or together, are hereby authorized and directed to execute and deliver the Merger Agreement and Loan Documents, certify the foregoing resolutions and take or cause to be taken all such other actions as may be required to fulfill the purposes of the foregoing resolutions, including but not limited to executing all documents, certificates and instruments necessary in connection with the Merger Agreement and/or Loan Agreement, or other documents or certificates as necessary in connection with the transactions contemplated hereby. All such actions and doings of said persons which are in conformity with the purposes and intent of this resolution are hereby in all respects ratified, approved and confirmed. This Board of Directors

hereby delegates to the Authorized Officers, each acting alone or collectively on behalf of Compass, the authority to make the final determinations regarding or in connection with the Merger Agreement and/or Loan Agreement on behalf of Compass subject to the parameters set forth above.

Section 4. If any section, paragraph, clause or provision of this resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this resolution.

Section 5. This resolution shall be in full force and effect immediately upon its adoption.

* * *

IN WITNESS WHEREOF, the Board of Directors of Compass has adopted the above resolution at a special Board meeting this 31st day of January, 2019.

By: _____
J.J. Lewis, Superintendent & CEO

LOAN AGREEMENT

This Loan Agreement (“Agreement”) is executed as of February 1, 2019 (“Effective Date”), by and between Compass Charter Schools, a California nonprofit public benefit corporation (“Lender”), and REALM Charter Schools, a California nonprofit public benefit corporation that operates a public charter school (“Borrower”), with respect to the following facts:

- A. Borrower is a California nonprofit public benefit corporation that has been determined to be exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code, whose charitable purposes include to manage, operate, guide, direct and promote one or more California public charter schools.
- B. Borrower operates a REALM Charter School (“School”) under a charter authorized by Berkeley Unified School District (“District”).
- C. Lender is a California nonprofit public benefit corporation that has been determined to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, whose charitable purposes include to create, manage, operate, guide, direct and promote one or more public Charter Schools and currently operates three public charter schools.
- D. Borrower and Lender have entered into an affiliation agreement dated December 10, 2018 (“Affiliation Agreement”), for the primary and specific purposes of supporting, benefitting and furthering the charitable and educational purposes of both Parties, as well as a prior Loan Agreement in the aggregate principal amount of One Hundred Thousand Dollars (\$100,000) to use towards construction of the School’s middle school site (“Initial Loan”) which Initial Loan remains outstanding.
- E. Borrower and Lender have also entered into an agreement and plan of merger dated January 30, 2019 (“the Merger Agreement”). This Agreement is made in consideration and further of the Merger Agreement.
- F. Borrower is in need of financing for operations of its School, and Lender desires and has adequate funds to provide Borrower with a one-year loan in the aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,000) to use towards such operations of the School (“Second Loan”). The Second Loan shall be in addition to the existing Initial Loan.
- G. The parties understand and acknowledge the Second Loan is in furtherance of the Merger Agreement, and as such, the Second Loan serves and furthers Lender’s charitable purposes to manage, operate, guide, direct and promote charter schools like the School.
- H. The parties understand and acknowledge that Borrower’s acceptance of this Second Loan furthers Borrower’s charitable purposes to manage, operate, guide, direct and promote one or more California public charter schools.
- I. In order to document their respective rights and obligations with regard to the Second Loan, the parties desire to enter into this Agreement upon the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Loan. Subject to all terms and conditions of this Agreement, Lender will provide the Second Loan in the aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,000), and which shall bear interest at a rate equal to Three and a Half Percent (3.5%) per annum or the maximum rate allowable by law, whichever is lower, within ten (10) business days following REALM's approval, execution and delivery of the Merger Agreement. The Loan is evidenced by an unsecured promissory note ("Note") in the form and substance of Exhibit A attached hereto.

2. Repayment. Borrower shall repay Lender the aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,000) plus any accrued interest, which amount shall be due and payable on January 31, 2020 ("Maturity Date"); provided, however, (i) Borrower may prepay in whole or in part as set forth in Section 3 herein, and (ii) the Maturity Date and/or payment schedule due dates may be extended at the option of the Lender.

3. No Penalty for Prepayment. Borrower may prepay in whole or in part the Loan at any time prior to the Maturity Date without penalty.

4. Defaults. The occurrence of any one of the following events shall constitute an event of default hereunder:

a. Borrower defaults in the payment of any amount owing under the Note when it becomes due and payable pursuant to the Maturity Date set forth in Section 2 herein.

b. Borrower commits any default or fails to fulfill any obligation under the Note or this Agreement.

c. Borrower fails to cure any breach of the Merger Agreement within five (5) business days of notice from Lender.

d. Borrower uses Loan funds for reasons other than for operations of the School.

e. Borrower fails to provide Lender with any notice of concern, notice to cure, notice of violation, or notice of intent to revoke the School's Charter, within one (1) business day of Borrower's receipt of such notice.

f. Borrower's Charter for the School is revoked for any reason.

g. Borrower fails to use commercially reasonable efforts to reduce its debt and liabilities, which shall include negotiations with its other creditors.

h. Borrower has failed to obtain any necessary approvals, consents, authorizations, licenses, certificates and waivers required by law or reasonably necessary to properly effectuate the Merger Agreement and/or the Loan.

i. Borrower has failed to disclose to Lender in writing all material actions, suits, proceedings, inquiries or investigations, before any court or federal, state, municipal or other governing

authority, or defaults of any agreement or obligation, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting Borrower.

j. Borrower enters into any loan agreement, indenture, bond, note, sale of receivables or any indebtedness without prior a minimum of three (3) business days prior written notice to Lender, unless a shorter time period is agreed to by Lender in writing.

If an event of default occurs and is not cured within ten (10) days, Lender shall have the right to take such action as may be available to Lender hereunder or under applicable law. This includes Lender's right, at its sole and exclusive option, to declare the remaining amount due under this Agreement to be due and payable immediately after Borrower fails to cure the default within the ten (10) day cure period.

5. Expenses. In the event any payment under this Agreement is not paid when due, upon Lender's request, the Borrower agrees to pay, in addition to the principal hereunder, reasonable attorneys' fees plus all other reasonable costs and expenses incurred by the Lender in exercising any of its rights and remedies upon default.

6. Notice. All notices, requests, offers or demands or other communications (collectively "Notice") given to or by the parties under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if personally served on the party to whom Notice is to be given, or seventy-two (72) hours after mailing by United States mail first class, registered or certified mail, return-receipt-requested, postage prepaid, addressed to the party to whom Notice is to be given, at such party's address set forth on the signature page of this Agreement or such other address provided by Notice, or upon delivery by FedEx, addressed to the party to whom Notice is to be given, at such party's address set forth on the signature page of this Agreement or such other address provided by Notice.

7. Miscellaneous.

a. Except as otherwise permitted hereunder, Borrower shall not assign this Agreement, any interest in this Agreement or its rights or obligations under this Agreement without the express prior written consent of Lender. Subject to the foregoing, this Agreement shall be binding on, and shall inure to the benefit of, the parties and their respective permitted successors and assigns.

b. This Agreement, any Exhibit referenced herein, the Note and the Merger Agreement constitute the entire agreement between the parties with respect to the subject matter contained herein and supersede all agreements, representations and understandings of the parties with respect to such subject matter made or entered into prior to the date of this Agreement. In the event of any conflict between the terms of this Agreement and the Merger Agreement, the terms of this Agreement shall prevail.

c. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall constitute, or be deemed to constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

d. This Agreement is entered into solely for the benefit of the parties hereto and no term, provision or covenant hereunder shall confer or be deemed to confer any benefit on any third party.

e. This Agreement shall be governed by and interpreted under California law, without regard to the choice of law principles thereof.

f. If any provision of this Agreement is invalid or contravenes applicable law, such provision shall be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of its remaining provisions.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

BORROWER: REALM Charter Schools,
a California nonprofit public benefit corporation

By: Victor Diaz
Its: Executive Director

Address: 2023 8th Street
Berkeley, CA 94710

LENDER: Compass Charter Schools,
a California nonprofit public benefit corporation

By: J.J. Lewis
Its: Superintendent & CEO

Address: 850 Hampshire Road, Suite P
Thousand Oaks, CA 91361

EXHIBIT A
Form of Promissory Note

PROMISSORY NOTE

\$250,000.00

Berkeley, California

February 1, 2019

For value received, REALM Charter Schools, a California nonprofit public benefit corporation (“Borrower”) promises to pay to Compass Charter Schools, a California nonprofit public benefit corporation (“Holder”), at 850 Hampshire Road, Suite P, Thousand Oaks, CA 91361, or such other place as Holder may from time to time direct Borrower in writing, the sum of \$250,000.00 (“Principal Amount”) plus interest at a rate of 3.5% per annum, or the maximum rate allowable by law, whichever is lower.

This Note is executed under the terms of that certain loan agreement of even date herewith between Holder and Borrower (“Loan Agreement”). The entire Principal Amount will be payable by Borrower to Holder pursuant to the payment schedule set forth in Section 2 of the Loan Agreement with the entire remaining indebtedness due and payable on January 31, 2020 (“Maturity Date”), provided that that Maturity Date may be extended at the option of the Holder.

The occurrence of any one of the following events shall constitute an event of default under this Note:

- a. Borrower defaults in the payment of any amount owing under the Note when it becomes due and payable pursuant to the Maturity Date set forth in Section 2 herein.
- b. Borrower commits any default or fails to fulfill any obligation under the Note or this Agreement.
- c. Borrower fails to cure any breach of the Merger Agreement within five (5) business days of notice from Lender.
- d. Borrower uses Loan funds for reasons other than for operation of the School.
- e. Borrower fails to provide Lender with any notice of concern, notice to cure, notice of violation, or notice of intent to revoke the School’s Charter, within one (1) business day of Borrower’s receipt of such notice.
- f. Borrower’s Charter for the School is revoked for any reason.
- g. Borrower fails to use commercially reasonable efforts to reduce its debt and liabilities, which shall include negotiations with its other creditors.
- h. Borrower has failed to obtain any necessary approvals, consents, authorizations, licenses, certificates and waivers required by law or reasonably necessary to properly effectuate the Merger Agreement and/or the Loan.
- i. Borrower has failed to disclose to Lender in writing all material actions, suits, proceedings, inquiries or investigations, before any court or federal, state, municipal or other governing authority, or defaults of any agreement or obligation, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting Borrower.
- j. Borrower enters into any loan agreement, indenture, bond, note, sale of receivables or any indebtedness without prior a minimum of three (3) business days prior written notice to Lender, unless a shorter time period is agreed to by Lender in writing.

If an event of default occurs and is not cured within ten (10) days, Holder shall have the right to take such action as may be available to Holder hereunder, under the Loan Agreement, or under applicable law. This includes Holder's right, at its sole and exclusive option, to declare the remaining amount due under the Loan Agreement to be due and payable immediately after Borrower fails to cure the default within the ten (10) day cure period. In the event any payment under the Loan Agreement is not paid when due, upon Holder's request, the Borrower agrees to pay, in addition to the Principal Amount, reasonable attorneys' fees plus all other reasonable costs and expenses incurred by the Holder in exercising any of its rights and remedies upon default.

The Principal Amount shall be due and payable in lawful money of the United States of America. Borrower waives diligence, presentment, protest and demand, notice of protest, notice of dishonor and notice of nonpayment of this Note. Time is of the essence hereof.

The validity, interpretation and enforceability of and the rights and obligations of the undersigned and Holder under this Note shall be governed by, interpreted and construed in accordance only with the laws of the State of California, the state in which this Note was executed and delivered.

Dated: February 1, 2019

REALM Charter Schools,
a California nonprofit public benefit corporation

By: Victor Diaz
Its: Executive Director