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DEL MAR HEIGHTS
LAS VEGAS
PHOENIX
SAN DIEGO
SILICON VALLEY

April 1, 2019

VIA FEDEX

Attorney General of the State of California
Charitable Trusts Section
455 Golden Gate Avenue suite 1100
San Francisco, CA 94102

Re: Merger of Compass Charter Schools, a California nonprofit public benefit corporation (Corporate No. C3425366) ("Surviving Corporation") and Realm Charter Schools, a California nonprofit public benefit corporation (Corporate No. C3306651) ("Disappearing Corporation")

Ladies and Gentlemen:

We hereby give 20 days' written notice of the merger of, and enclose a copy of the proposed Agreement and Plan of Merger between, the foregoing corporations, as required under Section 6010(b) of the California Corporations Code.

The Surviving Corporation and the Disappearing Corporation anticipate that the merger will be consummated, and the fully executed Agreement and Plan of Merger and the respective Certificates of Approval of Agreement and Plan of Merger executed by the appropriate officers of the Surviving Corporation and the Disappearing Corporation will be filed with the Secretary of State, on or about July 1, 2019.

The Surviving Corporation was incorporated on October 28, 2011, and the Disappearing Corporation was incorporated on July 2, 2010. The Restated Articles of Incorporation of the Surviving Corporation file stamped February 8, 2017, and the Articles of Incorporation of the Disappearing Corporation file stamped July 2, 2010, are also enclosed with this letter.

procopio.com



Thank you for your assistance in this matter. If you have any questions, please call me.

Very truly yours,

A handwritten signature in blue ink that reads "A. Aiko Yamakawa".

A. Aiko Yamakawa

AAJ

Enclosures

A0793688

3425366

RESTATED ARTICLES OF INCORPORATION
OF
ACADEMY OF ARTS AND SCIENCES CHARTER SCHOOL

FILED ^{CS} ^{YM}
SECRETARY OF STATE
STATE OF CALIFORNIA

FEB-8 2017

ICC

The undersigned certify that:

1. They are the Chair of the Board and the Secretary of Academy of Arts and Sciences Charter School, a California nonprofit public benefit corporation (the "Corporation").
2. The Articles of Incorporation of the Corporation are amended and restated to read in full as follows:

I.

The name of the Corporation is Compass Charter Schools.

II.

The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The specific purposes for which this Corporation is organized are to create manage, operate, guide, direct and promote one or more public charter schools.

The Corporation is organized and operated exclusively for educational and charitable purposes pursuant to and within the meaning of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States Internal Revenue Law. Notwithstanding any other provision of these articles, the Corporation shall not, except to an insubstantial degree, engage in any other activities or exercise of power that do not further the purposes of the Corporation. The Corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code; or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

III.

All corporate property is irrevocably dedicated to the purposes set forth in the second article above. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to any of its

directors, members, trustees, officers or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth in Article II.

No substantial part of the activities of the Corporation shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Subject to the provisions of the nonprofit public benefit provisions of the Nonprofit Corporation Law of the State of California, and any limitations in the articles or bylaws relating to action to be approved by the members or by a majority of all members, if any, the activities and affairs of this Corporation shall be conducted and all the powers shall be exercised by or under the direction of the board of directors.

The number of directors shall be as provided for in the bylaws. The bylaws shall prescribe the qualifications, mode of election, and term of office of directors.

IV.

The authorized number and qualifications of members of the corporation, if any, the different classes of membership, the property, voting and other rights and privileges of members, and their liability for dues and assessments and the method of collection thereof, shall be set forth in the bylaws.

V.

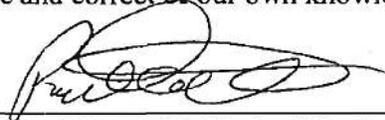
Upon the dissolution or winding up of the Corporation, its assets remaining after payment of all debts and liabilities of the Corporation, shall be distributed to a nonprofit fund, foundation, corporation or association which is organized and operated exclusively for educational, public or charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine which are organized and operated exclusively for such purposes.

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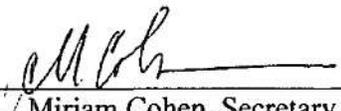
3. The foregoing amendment to and restatement of the Articles of Incorporation have been duly approved by the Board of Directors.
4. The Corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: January 30, 2017



Peter McDonald, Chair of the Board



Miriam Cohen, Secretary

ARTICLES OF INCORPORATION
OF
REALM CHARTER SCHOOLS
(A California Nonprofit Public Benefit Corporation)

FILED
in the office of the Secretary of State
of the State of California
JUL 02 2010 *WMP*

I.

The name of the Corporation shall be REALM Charter Schools.

II.

The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The specific purposes for which this Corporation is organized are to manage, operate, guide, direct and promote the one or more California public charter schools.

The Corporation is organized and operated exclusively for educational and charitable purposes pursuant to and within the meaning of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States Internal Revenue Law. Notwithstanding any other provision of these articles, the Corporation shall not, except to an insubstantial degree, engage in any other activities or exercise of power that do not further the purposes of the Corporation. The Corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code; or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

III.

The name and address in the State of California of this Corporation's initial agent for service of process is:

Victor Diaz
4955 Coronado Avenue
Oakland, CA 94618

IV.

All corporate property is irrevocably dedicated to the purposes set forth in the second article above. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to any of its directors, members, trustees, officers or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth in Article II.

No substantial part of the activities of the Corporation shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not

participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Subject to the provisions of the nonprofit public benefit provisions of the Nonprofit Corporation Law of the State of California, and any limitations in the articles or bylaws relating to action to be approved by the members or by a majority of all members, if any, the activities and affairs of this Corporation shall be conducted and all the powers shall be exercised by or under the direction of the board of directors.

The number of directors shall be as provided for in the bylaws. The bylaws shall prescribe the qualifications, mode of election, and term of office of directors.

V.

The authorized number and qualifications of members of the corporation, if any, the different classes of membership, the property, voting and other rights and privileges of members, and their liability for dues and assessments and the method of collection thereof, shall be set forth in the bylaws.

VI.

Upon the dissolution or winding up of the Corporation, its assets remaining after payment of all debts and liabilities of the Corporation, shall be distributed to a nonprofit fund, foundation, or association which is organized and operated exclusively for educational, public or charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine which are organized and operated exclusively for such purposes.

Dated: July 2, 2010



Andrea C. Sexton, Incorporator

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (“Agreement”) is made and entered into, and dated for convenience as of February 5, 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 April 30, 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 United 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


J.J. Lewis (Feb 5, 2019)

By: J.J. Lewis

Its: Superintendent & CEO

REALM Charter Schools,
a California nonprofit public benefit corporation

Victor Diaz

By: Victor Diaz

Its: Executive Director