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FNC CDE 17, LP, a Delaware limited partnership,

and

IFE CAPITAL III LLC,  
an Illinois limited liability company

and

VAF SUB-CDE XXII, LLC  
an Illinois limited liability company

and

M&I NEW MARKETS FUND, LLC  
a Wisconsin limited liability company

collectively, as Lender

and

L.E.A.R.N. CHARTER THC, LLC,  
an Illinois limited liability company,  
as Borrower

**INTERCREDITOR AGREEMENT**

**made and dated as of February 6, 2013  
to be effective as of February 14, 2013**

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## INTERCREDITOR AGREEMENT

**THIS INTERCREDITOR AGREEMENT** (this "Agreement"), dated as of February 6, 2013, and effective as of February 14, 2013 is by and among **PNC CDE 17, LP**, a Delaware limited partnership ("PNC"), **IFF CAPITAL III LLC**, an Illinois limited liability company ("IFF"), **VAF SUB-CDE XXII, LLC**, an Illinois limited liability company ("VAF") and together with PNC and IFF, "CDEs"), **M&I NEW MARKETS FUND, LLC**, a Wisconsin limited liability company ("M&I") (each of M&I, PNC, IFF and VAF a "Lender" and collectively "Lenders"), and **L.E.A.R.N. CHARTER THC, LLC**, an Illinois limited liability company ("Borrower").

### RECITALS

**WHEREAS**, Borrower intends to construct, develop, maintain and lease a charter school on certain real property in Chicago, Illinois, which property is legally described on Exhibit A attached hereto (such property and the improvements located thereon are collectively referred to as the "Property");

**WHEREAS**, CDEs have entered into that certain Loan Agreement dated as of the date hereof (as the same may be amended, modified, restated, supplemented or extended, the "CDE Loan Agreement"), with Borrower, pursuant to which PNC will make certain loans to Borrower in the aggregate principal amount of \$4,000,000 (collectively, the "PNC Loan"), IFF will make certain loans to Borrower in the aggregate principal amount of \$3,920,000 (collectively, the "IFF Loan") and VAF will make loan certain to Borrower in the aggregate principal \$7,920,000 (collectively, the "VAF Loan" and together with the PNC Loan and the IFF Loan, the "CDE Loans");

**WHEREAS**, to evidence the CDE Loans, Borrower has executed and delivered the following promissory notes each delivered pursuant to the CDE Loan Agreement, as the same may be amended from time to time: that certain Promissory Note A in the amount of \$2,752,000, executed on the date hereof by Borrower, in favor of PNC (the "PNC A Note"); that certain Promissory Note B in the amount of \$1,248,000, executed on the date hereof by Borrower, in favor of PNC (the "PNC B Note"); that certain Promissory Note A in the amount of \$2,832,000, executed on the date hereof by Borrower, in favor of IFF (the "IFF A Note"); that certain Promissory Note B in the amount of \$1,088,000, executed on the date hereof by Borrower, in favor of IFF (the "IFF B Note"); that certain Promissory Note A in the amount of \$5,784,000, executed on the date hereof by Borrower, in favor of VAF (the "VAF A Note") and that certain Promissory Note B in the amount of \$2,136,000, executed on the date hereof by Borrower, in favor of VAF (the "VAF B Note"). The PNC A Note, the PNC B Note, the IFF A Note, the IFF B Note, the VAF A Note and the VAF B Note, and together with all modifications, amendments, renewals, extensions, restatements and replacements thereof shall be collectively referred to herein as the "CDE Promissory Notes";

**WHEREAS**, M&I has entered into that certain Loan Agreement dated as of the date hereof (as the same may be amended, modified, restated, supplemented or extended, the "M&I Loan Agreement"), with Borrower, pursuant to which M&I will make certain loans to Borrower in the aggregate principal amount of \$5,820,000 (collectively, the "M&I Loans" and together with the CDE Loans, the "Loans");

LEARN Charter School  
Intercreditor Agreement (CDEs and M&I)

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**WHEREAS**, to evidence the M&I Loans, Borrower has executed and delivered the following promissory notes each delivered pursuant to the M&I Loan Agreement, as the same may be amended from time to time: that certain Promissory Note A in the amount of \$4,128,000, executed on the date hereof by Borrower, in favor of M&I (the "M&I A Note") and that certain Promissory Note B in the amount of \$1,692,000 executed on the date hereof by Borrower, in favor of M&I (the "M&I B Note") and together with the M&I A Note, the "M&I Promissory Notes" and together with the CDE Notes, the "Notes";

**WHEREAS**, the CDE Loans are secured by a security interest in the assets of Borrower and a lien on the Property, as evidenced by that certain Mortgage and Security Agreement, Assignment of Leases and Rents, and Fixture Filing (the "CDE Mortgage") with respect to the Property, executed by Borrower, as grantor, in favor of CDEs, as beneficiary;

**WHEREAS**, the M&I Loans are secured by a security interest in the assets of Borrower and a lien on the Property, as evidenced by that certain Mortgage and Security Agreement, Assignment of Leases and Rents, and Fixture Filing (the "M&I Mortgage") with respect to the Property, executed by Borrower, as grantor, in favor of M&I, as beneficiary;

**WHEREAS**, Borrower has established a deposit bank account (the "Pledged Construction Disbursement Account") at BMO Harris Bank, N.A., which Borrower has pledged to CDEs as additional collateral for the CDE Loans pursuant to that certain Account Pledge Agreement entered on or about the date hereof by Borrower in favor of CDEs and which Borrower has pledged to M&I as additional collateral for the Loans pursuant to that certain Account Pledge Agreement entered into on or about the date hereof; and

**WHEREAS**, Lenders desire to enter into this Agreement for the purpose of establishing the priorities of their respective liens and security interests, and for the purpose of setting forth certain other agreements between them with respect to the transactions contemplated by the CDE Loan Agreement and the M&I Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the parties hereby agree as follows:

1. **Definitions.**

(a) "CDE Loan Documents" shall mean all documents, instruments and agreements evidencing the CDE Loans, including, without limitation, the CDE Loan Agreement, the CDE Promissory Notes and the CDE Loan Mortgage and any pledge or security agreement, mortgage or other collateral document executed by Borrower in connection with the CDE Loans.

(b) "CDE Loans Indebtedness" shall mean any and all advances, debts, obligations and liabilities of Borrower to CDE with respect to the CDE Loans heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower may be liable individually or jointly with others, including without limitation, obligations and liabilities arising from notes, repurchase agreements and trust receipts, and any and all interest and other amounts thereon which may accrue subsequent to Borrower becoming subject to any state or federal debtor-relief statute.

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(c) “Indebtedness” means, collectively, the M&I Loans Indebtedness and the CDE Loans Indebtedness.

(d) “Joint Collateral” means the Property, the Pledged Account Construction Disbursement Account and certain other collateral described in the M&I Loan Documents and the CDE Loan Documents.

(e) “Loan Documents” shall mean collectively, all of the CDE Loan Documents and the M&I Loan Documents.

(f) “M&I Loan Documents” shall mean all documents, instruments and agreements evidencing the M&I Loans, including, without limitation, the M&I Loan Agreement, the M&I Promissory Notes and the M&I Loan Mortgage and any pledge or security agreement, mortgage or other collateral document executed by Borrower in connection with the M&I Loans.

(g) “M&I Loans Indebtedness” shall mean any and all advances, debts, obligations and liabilities of Borrower to M&I with respect to the M&I Loans heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower may be liable individually or jointly with others, including without limitation, obligations and liabilities arising from notes, repurchase agreements and trust receipts, and any and all interest and other amounts thereon which may accrue subsequent to Borrower becoming subject to any state or federal debtor-relief statute.

(h) “UCC” shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of Illinois.

2. **Lien Priorities.** M&I and CDEs agree at all times, whether before, during or after the pendency of any bankruptcy, reorganization or insolvency proceeding, and notwithstanding the priorities that ordinarily would result under the UCC and other applicable law from the order of granting or perfecting of the security interests (including, without limitation, purchase money security interests) or the recording of any mortgage or other security instruments, that the parties shall have the following priorities:

(a) M&I and CDEs’ lien on the Pledged Construction Disbursement Account shall each constitute a pari passu shared first priority security interest on the Pledged Construction Disbursement Account.

(b) M&I and CDEs’ lien on the Joint Collateral shall each constitute a pari passu shared first priority security interest in the Joint Collateral.

The parties each shall cooperate to effect the agreement expressed in this paragraph and from time to time shall execute such other and further documents, including subordination agreements, assignments of claim and otherwise as may be necessary or appropriate to implement the provisions of this Agreement.

3. **General.** Notwithstanding any provision of the M&I Loan Documents or the CDE Loan Documents to the contrary, M&I and CDEs hereby agree that certain remedies, payments, priorities and

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other rights available to them with respect to the Indebtedness shall only be exercised or made subject to and pursuant to the terms and conditions hereof.

4. **Priorities of Payments Prior to and After a Default Under Loan Documents.** At any time prior to, during or after any default or event of default under either the M&I Loan Documents or the CDE Loan Documents, unless otherwise provided herein, all amounts paid by or on behalf of Borrower in respect to the shall be applied toward the Indebtedness as follows:

(a) First, to M&I and CDEs in satisfaction of accrued but unpaid interest on the M&I Loans and the CDE Loans, to the extent then due and payable, and any other amounts owing by Borrower in connection with the M&I Loans and the CDE Loans, including prepayment fees and other penalties and expenses, with such payments to be made pari passu based upon the relative amounts of accrued interest then due and payable to M&I and CDEs with respect to such obligations; and

(b) Second, to M&I and CDEs in satisfaction of any principal payments due and payable under the M&I Loans and the CDE Loans, with such payments to be made pari passu based upon the relative amounts of principal payments then due and payable to M&I and CDEs with respect to such obligations.

5. **Priority of Payments Among the CDEs.** The CDEs each hereby acknowledge that the application of payment for all amounts paid to the CDEs hereunder are subject to the terms of that certain Intercreditor Agreement dated on or about the date hereof entered into by and between PNC, IFF and VAF ("CDE Intercreditor").

6. **Payments.** If payments, proceeds and/or Joint Collateral are received by any party, other than in accordance with the rights and priorities established hereunder, including any payments made by setoff of amounts owed to any party: (a) the other party's portion of such payments, proceeds and/or Joint Collateral shall be delivered forthwith by the receiving party to the other party for application to the indebtedness by such other party and (b) receiving party shall promptly notify Borrower of such transfer of payment, and Borrower shall make appropriate adjustment to their books and records necessary to reflect such transfer of payment and to reflect all payments to each party hereto consistent with the requirements of this Agreement. Until so delivered, any such payments, proceeds and/or Joint Collateral shall be held by the receiving party in trust for the other party and shall not be commingled with any other funds or property of the receiving party. If for any reason, including but not limited to by reason of a payment being made by setoff, either party receives a payment other than in accordance with the rights and priorities established hereunder and such payment is not applied as provided in clauses (a) and (b) above, then the receiving party shall pay the amount thereof in cash to the party entitled to such payment hereunder, and in such event, the party making such payment in cash pursuant to this sentence shall be subrogated to the rights of the party receiving such payment in cash pursuant to this sentence, but shall not exercise such right of subrogation until the party receiving such payment is paid in full.

7. **Exercise of Remedies.**

(a) Subject to the terms and conditions of Section 8 below, during all periods in which the M&I Loans Indebtedness remains outstanding, CDEs shall not take any action to foreclose, realize upon or enforce any of its rights with respect to the Joint Collateral without the prior written consent of M&I.

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(b) Subject to the terms and conditions of Section 8 below, during all periods in which the CDE Loans Indebtedness remains outstanding, M&I shall not take any action to foreclose, realize upon or enforce any of its rights with respect to the Joint Collateral without the prior written consent of CDEs.

8. **Lead Lender and Collateral Agency.** Notwithstanding anything to the contrary contained in the CDE Loan Documents, the M&I Loan Documents, or the CDE Intercreditor, the Lenders hereby agree as follows:

(a) **Lead CDE.** The Lenders hereby appoint M&I as the lead lender (M&I, in such capacity shall be referred to as the "Lead CDE" herein) in accordance with the terms of this Section 8. The Lead CDE shall have the rights and obligations set forth herein with respect to the exercise of remedies by the Lenders. The Lead CDE shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Lead CDE have or be deemed to have any fiduciary relationship with the Borrower, any other Lender, any guarantor/indemnitor, or any other person, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any of the other Loan Documents or otherwise exist against the Lead CDE. Each Lender shall have the right to terminate with or without cause, M&I (solely in its capacity as the Lead CDE), pursuant to this Agreement after providing thirty (30) days advance written notice to the Lead CDE of such termination and Lead CDE shall take such further actions or enter into such further instruments and agreement as are reasonably necessary to effect such removal. Notwithstanding the foregoing, to the extent that M&I is terminated at any time "without cause" and Lenders have not, at such time, unanimously selected another Lender to act as Lead CDE, the Lenders agree that M&I shall retain its position as Lead CDE until such time as an unanimous decision is made by Lenders for a replacement. If, however, M&I is removed or terminated as "Lead CDE" as a result of a "for cause" termination, Lenders shall in good faith promptly act to unanimously designate a successor "Lead CDE" and if Lenders are unable unanimously agree on a successor within thirty (30) business days, PNC shall automatically become "Lead CDE" in accordance with this Agreement.

(b) **Duties of Lead CDE.**

(i) **Notice of Default.** Each Lender shall use commercially reasonable efforts to advise the Lead CDE (and other Lenders) promptly of any Event of Default for which any Lender has actual knowledge under the Loan Documents, and shall provide back-up documentation reasonably requested by the Lead CDE (and other Lenders) with respect to any Event of Default. Upon receipt of such notice, the Lead CDE will analyze and review the Event of Default and prepare a written response proposal (a "Default Proposal") to the other Lenders within seven (7) business days of Lead CDE's actual knowledge of an Event of Default (which may be distributed to the Lenders electronically). The Default Proposal shall set forth whether or not the Lead CDE has determined to issue a notice of an Event of Default ("Default Notice") to Borrower (and/or guarantor, as applicable) and the reasons for such decision. Each Lender shall have fifteen (15) business days to review, comment or otherwise respond to any Default Proposal. The Lead CDE shall reasonably review, consider and respond to any Lender feedback in good faith. With respect to non-payment defaults, the Lead CDE will issue the Default Notice, subject to the prior written consent not to be unreasonably withheld,

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conditioned or delayed of Lenders. With respect to material payment defaults (for purposes of this agreement, a "material" payment default shall automatically exist after one (1) quarterly interest (and/or principal and interest, as applicable) payment has not been fully paid by Borrower) or a default by Borrower for which Lenders have unanimously agreed has resulted in a recapture of new markets tax credits associated with the Loans, and if the Lead CDE has determined in the Default Proposal to issue a Default Notice, the Lead CDE shall issue the Default Notice to Borrower in a timely manner and provide Lenders with copies of the same.

(ii) **Remedies.** Except as otherwise set forth herein, upon the occurrence of an Event of Default for which the Lead CDE has issued a Default Proposal to Lenders and a subsequent Default Notice (excluding routine collection matters relating to Lender fees or reporting) to Borrower, the Lead CDE shall then propose a remedial action plan and make reasonable efforts to provide a plan in writing to the other Lenders (which may be provided by email) within fifteen (15) business days of the provision of the Default Notice to the Borrower (a "Remedial Action Plan"). Each of the Lenders may provide to the Lead CDE (and to the other Lenders) written comments to the Remedial Action Plan within forty-five (45) business days of their receipt. The Lead CDE shall consolidate such comments and propose a revised Remedial Action Plan (if needed) to Lenders for approval. Each Lender agrees to use commercially reasonable efforts to timely reach a unanimous approval with respect to a Remedial Action Plan (or any revised Remedial Action Plan). Any consent or approval requested of a Lender with respect to a Remedial Action Plan shall be deemed given upon the earlier of (a) actual written consent by such Lender (which may be provided electronically) or (b) the passage of forty-five (45) business days following such Lender's receipt of the Remedial Action Plan or any subsequently revised Remedial Action Plan. With respect to non-payment defaults, the Lead CDE will enforce the terms of the Remedial Action Plan, subject to the prior written consent (which consent shall not to be unreasonably withheld, conditioned or delayed) of Lenders. With respect to payment defaults or a default by Borrower for which Lenders have unanimously agreed has resulted in a recapture of new markets tax credits associated with the Loans, and notwithstanding anything to the contrary set forth herein, if the Remedial Action Plan is not unanimously approved by the Lenders, then the Lead CDE shall have the option to strictly enforce the terms of the M&I Loan Documents and CDE Loan Documents and exercise any available remedies against Borrower including without limitation, the initiation of a foreclosure on the Joint Collateral (provided, the Lead CDE shall provide each Lender with written notice of such action not less than three (3) business days prior to taking such action). The Lead CDE is expressly authorized to pursue the Remedial Action Plan approved in accordance with this Agreement or if no such plan is unanimously approved, to enforce remedies against the Borrower as described immediately above (the "Approved Remedial Action Plan") on behalf of the other Lenders.

(iii) **Power of Attorney.** The Lead CDE is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the other Lenders as shall be reasonably necessary and sufficient solely to effect all of the foregoing provisions of this Agreement (including but not limited to a release of liens with respect to Joint Collateral as may be reasonably required in order to effect a sale or

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deed in lieu of foreclosure pursuant to an Approved Remedial Action Plan). The power of attorney granted herein shall terminate automatically upon delivery of written notice of the termination of Lead CDE delivered in accordance with this Agreement.

(iv) **Limitation of Liability.** Notwithstanding anything to the contrary contained herein, neither Lead CDE, nor any of its members, partners, directors, officers, employees, attorneys, agents, affiliates, successors and assigns shall be liable or responsible in any manner whatsoever to any other Lender, Borrower, guarantor/indemnitor or any third party in connection with the Lead CDE's role as the Lead CDE hereunder except for Lead CDE's own gross negligence, willful misconduct or fraud in performing its duties as Lead CDE hereunder. Notwithstanding anything to the contrary set forth herein, the Lead CDE shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any of the Loan documents in accordance with the unanimous consent of Lenders, including without limitation the issuance of the Default Notice and implementation of the Approved Remedial Action Plan. In no event shall the Lead CDE be liable to any person for any exemplary, special or punitive damages in connection with performing its duties as the Lead CDE hereunder. This Section 8(b)(iv) shall survive the termination of this Agreement only to the extent such obligations arise from actions taken or omissions made by the Lead CDE prior to the termination of this Agreement.

(v) **Reliance on Communications.** The Lead CDE shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, instruction, direction, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in its reasonable discretion to be genuine and correct and to have been signed, sent or made by the proper responsible officers or other authorized parties of any Lender, Borrower, guarantor/indemnitor or any affiliate thereof, and upon advice and statements of legal counsel (including counsel to any Lender), independent accountants and other experts selected by the Lead CDE.

(c) **Lead CDE as "Collateral Agent".** Lenders hereby appoint, designate and authorize M&I, in addition to its duties, responsibilities and obligations as Lead CDE, as Lenders' agent ("Collateral Agent") solely for the purposes of assisting Lenders in monitoring Borrower's compliance with, and satisfaction of, the Borrower's payment obligations under the CDE Promissory Notes and M&I Promissory Notes. M&I hereby accepts and agrees to such agency and agrees to exercise the powers and duties as are expressly delegated to it by the terms of this Section 8(c) in accordance with the terms of this Agreement and with the care, skill, prudence and diligence of a third party financial institution regularly engaged in such activity (and in all events in accordance with applicable laws). Notwithstanding anything to the contrary contained herein, M&I, as Collateral Agent, shall not have any duties or obligations except as specifically set forth herein and shall not have any express or implied obligations or duties arising under applicable laws of agency except as set forth herein.

(i) **Enforcement Actions.** In conjunction with its obligations as Lead CDE in Section 8(b) above, M&I as Collateral Agent shall promptly notify Lenders of any incidence of default or any Event of Default (which shall be deemed received upon the



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issuance and delivery of the Default Proposal noted above to each Lender). In addition, and in accordance with all notice and approval requirements set forth above, upon the authorization of Lenders of the Approved Remedial Action Plan, M&I shall on behalf of Lenders be authorized in accordance with the terms of the Approved Remedial Action Plan to: (i) assess monetary or other damages and penalties on Borrower to cover costs and administrative expenses incurred in connection with this Agreement, (ii) commence foreclosure, a lien enforcement action or other administrative action against Borrower and/or the Property, (iii) exercise any other rights and remedies Lenders have under any of the Loan Documents and (iv) join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower.

(ii) **Power of Attorney.** M&I, as Collateral Agent, is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the other Lenders as shall be reasonably necessary and sufficient solely to effect all of the foregoing provisions of Section 8(c)(i) of this Agreement (including but not limited to a release of liens with respect to Joint Collateral as may be reasonably required in order to effect a sale or deed in lieu of foreclosure pursuant to an Approved Remedial Action Plan). The power of attorney granted herein shall terminate automatically upon delivery of written notice of the termination of "collateral agency" delivered in accordance with this Agreement.

(iii) **Limitation of Liability.** Notwithstanding anything to the contrary contained herein, neither M&I (as "Collateral Agent"), nor any of its members, partners, directors, officers, employees, attorneys, agents, affiliates, successors and assigns shall be liable or responsible in any manner whatsoever to any other Lender, Borrower, guarantor/indemnitor or any third party in connection with its role as the "Collateral Agent" hereunder except for M&I's own gross negligence, willful misconduct or fraud in performing its duties as "Collateral Agent" hereunder. Notwithstanding anything to the contrary set forth herein, the M&I shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any of the Loan Documents in accordance with the unanimous consent of Lenders. In no event shall M&I be liable to any person for any exemplary, special or punitive damages in connection with performing its duties as the "Collateral Agent" hereunder. This Section 8(c)(iii) shall survive the termination of this Agreement only to the extent such obligations arise from actions taken or omissions made by the "Collateral Agent" prior to the termination of this Agreement.

(iv) **Reliance on Communications.** The "Collateral Agent" shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, instruction, direction, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in its reasonable discretion to be genuine and correct and to have been signed, sent or made by the proper responsible officers or other authorized parties of any Lender, Borrower, guarantor/indemnitor or any affiliate thereof, and upon advice and statements of legal counsel (including counsel to

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any Lender), independent accountants and other experts selected by the "Collateral Agent".

(v) **Termination of "Collateral Agency"**. Each Lender shall have the right to terminate with or without cause, M&I (solely in its capacity as the "Collateral Agent"), pursuant to this Agreement after providing thirty (30) days advance written notice to the M&I of such termination and M&I shall take such further actions or enter into such further instruments and agreement as are reasonably necessary to effect such removal. Notwithstanding the foregoing, to the extent that M&I is terminated at any time "without cause" and Lenders have not, at such time, unanimously selected another Lender to act as "Collateral Agent", Lenders agree that M&I shall retain its position as "Collateral Agent" until such time as an unanimous decision is made by the Lenders for a replacement. If M&I is removed or terminated as "Collateral Agent" as a result of a "for cause" termination, Lenders shall in good faith promptly act to unanimously designate a successor "Collateral Agent" and if Lenders are unable to unanimously agree on a successor within thirty (30) business days, PNC shall automatically become "Collateral Agent" in accordance with this Agreement.

(d) **Consents Generally**. Each Lender shall use commercially reasonable efforts to provide written notice to the other Lenders in the event that such Lender has actual knowledge of a matter that requires action by the Lead CDE or the approval or consent of Lenders pursuant to this Agreement (unless it appears that the other Lender has received notice of such matters). Any matters which require the approval or consent of Lenders pursuant to this Agreement shall be subject to the consent of each of Lenders in accordance with the consent procedures set forth in this Section 8 following receipt of a request for such consent or approval from any Lender.

(e) **Reporting**. Each Lender may specifically enforce Borrower's reporting obligations pursuant to the Loan Documents, and collect any penalties with respect thereto without the Consent of any other Lender (excluding any action against the Joint Collateral).

(f) **Expenses**. Pursuant to the terms and conditions of the Loan Documents, Borrower is obligated to reimburse Lenders for any third party out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in enforcing Lenders' rights under the Loan Documents (including this Agreement), including, but not limited to the development, review and implementation of a Remedial Action Plan, a revised Remedial Action Plan or Approved Remedial Action Plan (collectively, "Expenses"). Notwithstanding the foregoing or anything to the contrary contained herein or in the Loan Documents, each Lender may, in their sole and absolute discretion, pursue the Borrower for (I) any outstanding costs, fees, or expenses due to such Lender in connection with such Lender's loan under the Loan Documents or otherwise (excluding any action against the Joint Collateral), (II) any outstanding amounts under such Lender's fee agreement with Borrower, if any, and to any reserve and/or escrow account with respect thereto in its sole and absolute discretion without any consent of any other Lender or the Lead CDE (excluding any action against the Joint Collateral) and (III) routine collection activities, such as sending out late payment notices (with copies to the other Lenders) and making telephonic collection calls to Borrower or guarantor in the ordinary course of servicing their respective Loans, without the Consent of the other Lenders.

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9. **Waiver of Marshalling.** M&I and CDEs waive any and all rights to:
- (a) Require the other party to marshal any property or assets of Borrower, as applicable, or any guarantor of the M&I Loan or the CDE Loans or to resort to any of the property or assets of Borrower, in any particular order or manner; and
  - (b) Require the other party to enforce any guaranty or security interest or lien given by any person or entity other than Borrower to secure payment of any or all of the M&I Loan or the CDE Loans, as the case may be, as a condition precedent or concurrent to taking any action against or with respect to the Joint Collateral.
10. **Continuing Agreement.** The subordinations, agreements and priorities set forth hereinabove shall remain in full force and effect regardless of whether either party hereto in the future seeks to rescind, amend, terminate or reform, by litigation or otherwise, its agreements with Borrower.
11. **Subordination Not Conditioned On Perfection.** The subordinations and relative priority agreements set forth above are not conditioned upon the perfection of the security interests described herein.
12. **Amendment of the CDE Loan Documents.** CDEs agree that they will not, without the prior written consent of M&I, amend any CDE Loan Document, as applicable, if the effect of such amendment would be to: (a) increase or decrease the aggregate principal amount of any of the CDE Loans or the M&I Loan, (b) shorten the maturity or term of any CDE Loan, (c) restrict, limit or reduce the availability of any CDE Loan or the amount of the reserve established thereunder, if any, or (d) increase the interest rate on any CDE Loan.
13. **Amendment of the M&I Loan Documents.** M&I agrees that it will not, without the prior written consent of CDEs, amend any M&I Loan Document or any other document, instrument or agreement executed in connection therewith if the effect of such amendment would be to: (a) increase or decrease the aggregate principal amount of the M&I Loan, (b) shorten the maturity or term of the M&I Loan, (c) restrict, limit or reduce the availability of the M&I Loan or the amount of the reserve established thereunder, if any, or (d) increase the interest rate on the M&I Loan.
14. **Relationship of Parties.** This Agreement is entered into solely for the purposes set forth herein, and except as expressly provided herein, neither party assumes any other duties or responsibilities to the other regarding the financial condition of Borrower or regarding the Joint Collateral or regarding any other circumstance bearing upon the risk of nonpayment of the obligations of Borrower under any of the agreements hereinabove referred to. Each party shall be responsible for managing its credit relationships with its respective borrower and neither party shall be deemed to be the agent of the other for any purpose. Subject to the provisions of Sections 12 and 13 of this Agreement, M&I and CDEs may alter, amend, supplement, release, discharge or otherwise modify any terms of their respective agreements with Borrower without notice to or consent of the other.
15. **Obligations Absolute.** The provisions of this Agreement are solely for the purpose of (i) defining the relative rights of Lenders with respect to the priority of payment of the various obligations of Borrower to each of them, (ii) the priority of each Lender's liens in the Joint Collateral, and (iii) the right of each Lender to exercise rights and remedies as creditors of Borrower. Nothing herein shall impair, as between Borrower and the holders of any Lender's Note, the obligations of Borrower, which

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are unconditional and absolute, to pay to the holders thereof the principal and interest thereon and any other liabilities pursuant to the Loan Documents, all in accordance with their respective terms but subject in all instances to the terms of this Agreement.

16. **Negative Covenant.** Until all of the indebtedness evidenced by the Notes has been paid in full, no Lender shall demand or accept from Borrower any consideration which would result in a prepayment of a Lender's loan other than in accordance with the terms of the Loan Documents and this Agreement.

17. **No Guaranty.** No Lender as a result of the provisions of this Agreement shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of any Borrower, any guarantor or any of their affiliates.

18. **No Partnership Created.** Neither the execution of this Agreement, nor any action taken by any parties hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between any of the parties, in their respective capacities as such.

19. **Benefit of Agreement.** This Agreement is entered into solely for the benefit of Lenders, and their respective successors and assigns, and none of Borrower or any other persons or entities whatsoever shall have any right, benefit, priority or interest under or because of the existence of this Agreement.

20. **Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by facsimile on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

If to Borrower:

L.E.A.R.N. Charter THC, LLC  
212 South Francisco Avenue  
Chicago, Illinois 60632  
Attention: Greg White  
Email: [gwhite@learncharter.org](mailto:gwhite@learncharter.org)

with a copy to:

Ginsberg Jacobs LLC  
300 South Wacker Drive  
Suite 2750  
Chicago, Illinois 60606  
Attention: Darryl Jacobs  
Email: [djacobs@ginsbergjacobs.com](mailto:djacobs@ginsbergjacobs.com)  
Facsimile: 312-660-9612

If to PNC:

PNC CDE 17, LP  
% PNC M&I, N.A.

LEARN Charter School  
Intercreditor Agreement (CDEs and M&I)

4816-2508-5458.2

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20 Stanwix Street, Third Floor  
Mailstop P4-P509-03-1  
Pittsburgh, PA 15222  
Attention: David Serafini  
Facsimile: (412) 644-7664  
E-mail: david.serafini@pnc.com

with a copy to:

Kutak Rock LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Scott C. Neill, Esq.  
Facsimile: (402) 346-1148  
E-mail: scott.neill@kutakrock.com

If to IFF:

IFF Capital III LLC  
c/o IFF  
1 N. LaSalle Street, Suite 700  
Chicago, IL 60602  
Fax: 312-629-0061  
Attention: Dana Lieberman

with a copy to:

Applegate & Thorne-Thomsen, P.C.  
626 W. Jackson Boulevard, Suite 400  
Chicago, IL 60661  
Attention: Debra A. Kleban  
Facsimile: (312) 491-4411

If to VAF:

VAF Sub-CDE XXII, LLC  
c/o The Illinois Valued Advisor Fund, LLC  
205 N. Michigan Avenue, 28<sup>th</sup> Floor  
Chicago, Illinois 60601  
Attention: Michael Ross  
Telephone: (608) 240-2354  
Facsimile: (608) 249-0590

with a copy to:

Applegate & Thorne-Thomsen, P.C.  
626 W. Jackson, Suite 400  
Chicago, Illinois 60622  
Attention: Debra A. Kleban, Esq.  
Telephone: (312) 491-3323  
Facsimile: (312) 491-4411

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In the case of notice to any CDE, a copy shall also be provided to:

LEARN Investment Fund, LLC  
% PNC M&I, N.A.  
Third Floor  
20 Stanwix Street  
Mailstop P4-P509-03-1  
Pittsburgh, PA 15222  
Attention: David Serafini  
Facsimile: (412) 644-7664  
E-mail: david.serafini@pnc.com

and

Kutak Rock LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Scott C. Neill  
Facsimile: (402) 346-1148  
E-mail: [scott.neill@kutakrock.com](mailto:scott.neill@kutakrock.com)

Property of Cook County Clerk's Office

If to M&I

M&I New Markets Fund, LLC  
c/o BMO Harris Bank N.A.  
111 West Monroe St.  
Chicago, Illinois 60603  
Attention: Steve E. Quasny  
Email: [steve.quasny@harrisbank.com](mailto:steve.quasny@harrisbank.com)  
Facsimile: 312-765-8348

with a copy to:

Holland & Knight LLP  
131 S. Dearborn, FL 30  
Chicago, Illinois 60603  
Attention: Sameer Patel  
Telephone: (312) 578-6587  
Facsimile: (312) 578-6666

21. **MISCELLANEOUS.**

(g) Capitalized terms used and not defined herein have the same meaning as set forth in the CDE Loan Agreement.

(h) This Agreement may be amended, modified or terminated only by a written instrument signed by the parties hereto. No waiver of any term or provision of this Agreement

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shall be effective unless it is in writing and signed by the party against whom such waiver is sought to be enforced.

(i) To the extent any part of this Agreement shall conflict with any of the terms of the Loan Documents, whether existing as of the date hereof, or hereafter arising or amended, the terms of this Agreement shall control.

(j) Each Lender has cooperated in the drafting and preparation of this Agreement and therefore, in any construction hereof, this Agreement shall not be construed against any Lender as the draftsman thereof.

(k) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

(l) This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement may not be assigned without the prior written consent of the parties hereto.

(m) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

(n) If any obligation or portion of this Agreement is determined to be invalid or unenforceable under law, it shall not affect the validity or enforceability of any remaining obligations or portions hereof.

(o) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of laws of such state.

(p) **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

**[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGES FOLLOW]**

# UNOFFICIAL COPY

IN WITNESS WHEREOF, each party has executed this Intercreditor Agreement on the date first hereinabove written.

**PNC:**

PNC CDE 17, LP, a Delaware limited partnership

By PNC Community Partners, Inc., its General Partner

By Michael J. Kwiatkowski  
Michael J. Kwiatkowski  
Vice President

STATE OF WI  
COUNTY OF Milwaukee

On February 1, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael J. Kwiatkowski, known to me to be Vice President of PNC Community Partners, Inc., the general partner of PNC CDE 17, LP, a Delaware limited partnership, and acknowledged to me that such individual executed the within instrument on behalf of said limited partnership.

WITNESS my hand and official seal.

Melanie J. Delaney  
Notary Public in and for said County and State

ETP 9.7.14

[SEAL]



# UNOFFICIAL COPY

IN WITNESS WHEREOF, each party has executed this Intercreditor Agreement on the date first hereinabove written.

**IFF:**

**IFF CAPITAL III LLC**, an Illinois limited liability company

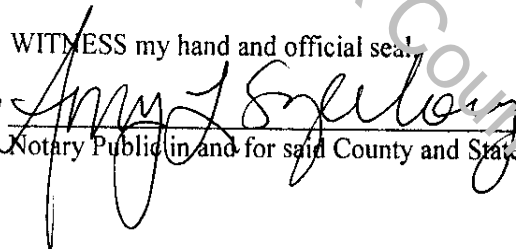
By: IFF, an Illinois not-for-profit corporation, its managing member

By:   
Name: Joe Neri  
Title: Chief Executive Officer

STATE OF

COUNTY OF

On February 1<sup>st</sup>, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Joe Neri, known to me to be Chief Executive Officer of IFF, the managing member of IFF Capital III, LLC, an Illinois limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal,  
  
Notary Public in and for said County and State

[SEAL]



# UNOFFICIAL COPY

IN WITNESS WHEREOF, each party has executed this Intercreditor Agreement on the date first hereinabove written.

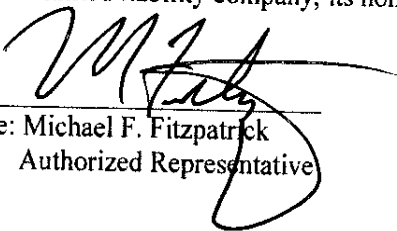
VAF:

VAF SUB-CDE XXII, LLC, an Illinois limited liability company

By: The Illinois Valued Advisor Fund, LLC, an Illinois limited liability company its managing member

By: The Valued Advisor Fund, LLC, an Illinois limited liability company, its non-member manager

By: Baker Tilly Capital, LLC, a Wisconsin limited liability company, its non-member manager

By: 

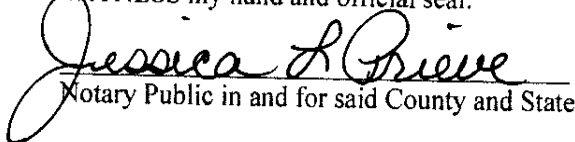
Name: Michael F. Fitzpatrick  
Its: Authorized Representative

Property of Cook County Clerk's Office

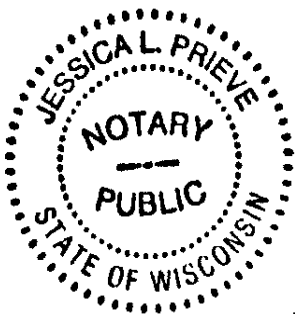
STATE OF Wisconsin )  
COUNTY OF Dane )

On February 6, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael F. Fitzpatrick, known to me to be authorized representative of Baker Tilly Capital, LLC, the non-member manager of The Valued Advisor Fund, LLC, the non-member manager of The Illinois Valued Advisor Fund, LLC, the managing member of VAF Sub-CDE XXII, LLC, an Illinois limited liability company and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

  
Notary Public in and for said County and State

[SEAL]




Signature Page to  
LEARN Charter School  
Intercreditor Agreement (CDE's and M&I)

# UNOFFICIAL COPY

IN WITNESS WHEREOF, each party has executed this Intercreditor Agreement on the date first hereinabove written.

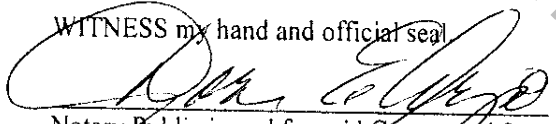
M&I

**M&I NEW MARKETS FUND, LLC**, a Wisconsin limited liability company

By:   
Name: Steven Quasny  
Title: Manager

STATE OF Illinois  
COUNTY OF Cook )SS

On February 14, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven Quasny known to me to be manager of M&I New Markets Fund, LLC, a Wisconsin limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal  
  
Notary Public in and for said County and State

[SEAL]



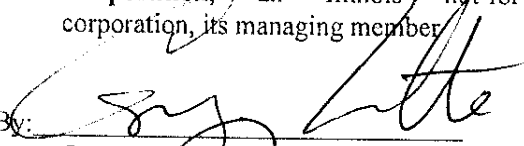
# UNOFFICIAL COPY

## BORROWER'S ACKNOWLEDGEMENT

The undersigned hereby acknowledges receipt of a copy of this Intercreditor Agreement. The undersigned agrees that it will cooperate in all respects to effectuate the provisions of this Intercreditor Agreement and will take no actions contrary to its provisions.

**L.E.A.R.N. CHARTER THC, LLC**, an Illinois limited liability company

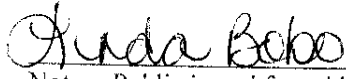
By: **L.E.A.R.N. Charter Title Holding Corporation**, an Illinois not-for-profit corporation, its managing member

By:   
Gregory A. White  
President

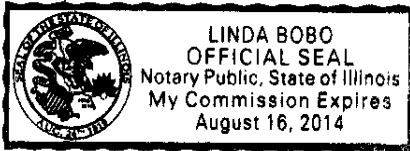
STATE OF ILLINOIS    )  
  )SS  
COUNTY OF COOK    )

On February 11, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory White known to me to be President of L.E.A.R.N Charter Title Holding Corporation, managing member of L.E.A.R.N. Charter THC, LLC, an Illinois limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

  
Notary Public in and for said County and State

[SEAL]



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**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE LAND**

**PARCEL 1:**

**LOTS 36, 37 AND 38 IN FLINT'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF BLOCKS 4, 5, 10, 11, 18, 19, 25 AND 26 IN DAVID S. LEE AND OTHERS' SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS**

**PARCEL 2:**

**LOTS 1, 2, 3, 4, 5 AND 6 IN MCINTOSH'S RESUBDIVISION IN BLOCK 2 IN NICHOLS ADDITION TO CHICAGO, BEING A RESUBDIVISION OF BLOCK 6 IN LEE AND OTHERS' SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS**

Commonly known as:

3021 West Carroll Street, Chicago, Illinois 60612-1721

3000-3006 West Fulton Street, Chicago, Illinois 60612