



KIHEI CHARTER SCHOOL GOVERNING BOARD AGENDA

Location: Kihei Charter School - SMLO Conference Room

Date: Wednesday, 04/16/2025 4:00pm

Board:

- | | | |
|--|---------------------------------------|---|
| <input type="checkbox"/> Richard Kehoe | <input type="checkbox"/> Mike Sweeney | <input type="checkbox"/> Gene Zarro |
| <input type="checkbox"/> Steve Perkins | <input type="checkbox"/> Todd Lawson | <input type="checkbox"/> Brandy Cajudoy |

KCS:

- | | | |
|---|--|---|
| <input type="checkbox"/> John Colson | <input type="checkbox"/> Cheryl Zarro | <input type="checkbox"/> PJ Foehr - SPCSC |
| <input type="checkbox"/> Michael Stubbs | <input type="checkbox"/> Leslie Baldrige | |
| <input type="checkbox"/> Ellen Federoff | <input type="checkbox"/> Pomai Pruett | |

Agenda Item	Purpose	Who	Time	Notes
Call to Order / Roll Call	Info	Board Chair	4:00	
Welcome & Announcements	Info	Board Chair	4:00-4:05 5 min	
Previous Meeting Minutes - Review and Approval	Info/Vote	Board Secretary	4:05-4:10 5 min	
Public Testimony	Info	Public Attendee(s)	4:10-4:25 15 min	
Charter School Commission	Info	SPCSC – PJ Foehr	4:25-4:35 10 min	
Financial Reports	Info	Chief Financial Officer	4:35-4:45 10 min	
Head of School Report: • School Report	Info	Head of School/Directors	4:45-5:10 25 min	
Governing Board Action Items:	Info/Vote	Board Chair	5:10-5:25 15 min	
Adjourn - Next Mtg Date: 07/09/25	Info	Board Chair	5:25	
Short Break			5:25-5:30 5 min	
Executive Session	Discussion	Governing Board	5:30	

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Agreement**”) is made as of July 1, 2025 (the “**Effective Date**”), by and between **SOUTH MAUI LEARNING OHANA, INC.**, a Hawaii nonprofit corporation, whose mailing address is at P.O. Box 1098, Kihei, Hawaii 96753 (“**SMLO**”), and **KIHEI CHARTER SCHOOL**, a Hawaii public charter school, whose mailing address is at P.O. Box 1098, Kihei, Hawaii 96753 (“**KCS**”). SMLO and KCS are each sometimes referred to in this Agreement as a “**Party**”, and together as the “**Parties**”.

RECITALS:

- A. KCS is a public charter school located on the island of Maui.
- B. SMLO is a nonprofit corporation that is qualified as a corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- C. SMLO owns a 2.781-acre parcel located in Waiohuli-Keokea, Kihei, Island and County of Maui, and identified on the tax maps of the State of Hawaii as Tax Map Key No. (2) 2-2-024-003 (the “**Property**”), which Property is more particularly described in **Exhibit A** attached to and made a part of this Agreement for all purposes.
- D. SMLO has constructed on the Property a building with approximately seventy-five thousand (75,000) square feet of interior space (the “**Building**”), which Building is depicted in **Exhibit B** attached to and made a part of this Agreement for all purposes.
- E. KCS requires space for the operation of its public charter school and related educational activities, and SMLO is willing to lease to KCS space in the Building and on the Property for such purpose.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENTS:

Article I Premises and Term

1.1 Premises.

(a) SMLO hereby leases to KCS approximately SIXTY-SIX THOUSAND ONE HUNDRED (66,100) square feet of space in the Building and on the Property (collectively, the “**Premises**”). The Premises are shown on **Exhibit C** attached to and made a part of this Agreement for all purposes.

(b) KCS’ right to use the Premises shall be subject to the terms and conditions set forth in this Agreement, including, without limitation, the use restrictions set forth in **Article III**.

1.2 **Term.** The term of this Agreement shall be one (1) year (the “**Term**”) commencing upon the Commencement Date and terminating at midnight on the date which is one (1) year thereafter (the “**Termination Date**”) unless sooner terminated as provided in this Agreement.

1.3 **Non-Appropriation of Funds.** The effectiveness of this Agreement is conditioned upon the allocation of sufficient Available Funds (defined below) to KCS for the payment of the Monthly Rent (defined below) and any other payments required to be paid under this Agreement. As used in this Section 1.3, “**Available Funds**” means funds allocated to KCS pursuant to Chapter 302D of the Hawaii Revised Statutes, any facilities funding received by KCS from an appropriation made by the State of Hawaii Legislature pursuant to said Chapter 302D, and any other funds (including reserve funds, credits, or the equivalent) otherwise available to KCS to pay amounts due under this Agreement.

1.4 **KCS’ Right to Terminate if KCS’ Public Charter School Contract is Terminated, Revoked, or Not Renewed.** If KCS’ Public Charter School Contract or other authorization to operate as a public charter school, as granted by the Hawaii State Public Charter School Commission (the “**Commission**”), is terminated, revoked, or not renewed for any reason, then KCS shall have the right to terminate this Agreement upon no less than thirty (30) days’ prior written notice to SMLO. In the event of such termination, the Monthly Rent for the month during which such termination becomes effective shall be prorated to include only the number of days in such month during which KCS remains in possession of the Premises before surrendering the Premises to SMLO in accordance with the requirements set forth in Section 5.8.

Article II

Rent; Services to be Provided

2.1 **Monthly Rent.**

(a) During the Term, KCS shall pay to SMLO gross rent of \$2.15 per square foot per month, which is equal to \$142,115.00 per month (the “**Monthly Rent**”).

(b) Monthly Rent payments shall be payable in advance and without the necessity of notice to KCS by SMLO, in United States currency, on the first day of each and every calendar month during the Term of this Agreement at SMLO’s mailing address, or at such other place as SMLO shall from time to time designate, by check drawn on a domestic bank. Monthly Rent payable for any period less than a full calendar month shall be a pro rata share of the amount payable for the full calendar month as calculated by SMLO.

2.2 **Utilities and Services Provided by SMLO.** With respect to the Property, SMLO shall provide the following services and utilities to the extent necessary to facilitate KCS’ use of the Premises to operate a public charter school:

- (a) water (hot water is only available in the kitchen on the first floor of the Building);
- (b) electricity;

- (c) air conditioning and ventilation;
- (d) wastewater disposal;
- (e) janitorial and cleaning services;
- (f) landscaping;
- (g) garbage disposal by a licensed contractor;
- (h) professional exterminators to service the Property at such frequency and to the extent necessary to keep the Property free of insects, rodents, vermin, and other pests; and
- (i) general maintenance of the mechanical systems, equipment, and structural elements of the Building, including such service as is customary or recommended to keep such systems and equipment in good operating condition and repair.

2.3 **Utilities and Services Not Provided by SMLO.** SMLO shall *not* be required to provide the following utilities and services to the Premises:

- (a) telephone, cable television, internet, and other telecommunications services;
- (b) digital security systems; and
- (c) gas or other utilities consumed by KCS with respect to its use of the Premises.

KCS may, at its sole election, make its own arrangements for such utilities and services and shall pay all costs for such utilities as and when due.

2.4 **Conveyance Tax.** KCS shall pay, when due, any State of Hawaii conveyance tax payable in connection with this Agreement and any extensions or amendments of this Agreement.

Article III Use of Premises; Hours of Operation

3.1 **Permitted Use.** KCS shall use the Premises solely for the operation of a public charter school and related educational activities, and for no other purpose.

3.2 **Use During School Hours and Non-School Hours.** Notwithstanding anything to the contrary in this Agreement:

- (a) During the Term, KCS have the exclusive right to use the Premises every weekday (Monday through Friday) from 7:00 a.m. to 5:00 p.m., *excluding* federal and state holidays and breaks during which school is not in session (collectively, the “**School Hours**”). KCS

may only carry out its public charter school operations and related educational activities at the Premises during School Hours. KCS may arrange with SMLO to use the Premises during the Non-School Hours by obtaining SMLO's express prior written consent, which consent shall be in SMLO's sole and absolute discretion.

(b) At all times other than the School Hours (the "**Non-School Hours**"), SMLO shall reserve the right to use the Premises and to allow other parties to use the Premises in SMLO's sole and absolute discretion; provided, however, that SMLO's use of the Premises during the Non-School Hours shall not unreasonably interfere with KCS' use of the Premises during the School Hours. KCS shall not be responsible for any property damage or personal injury caused by SMLO or by any third party using the Premises at SMLO's invitation, and SMLO shall repair (or cause the repair) of any damage to the Premises caused by SMLO or by any third party using the Premises at SMLO's invitation.

(c) If SMLO receives a request to use any portion of the Premises during the Non-School Hours from a person or group other than KCS, then SMLO shall first give KCS notice of such request and the opportunity to use the Premises during such period prior to SMLO agreeing to such request.

(d) SMLO shall adopt reasonable rules and regulations for the use of the Premises by KCS, SMLO, and other parties that provide for security and orderliness of conduct and which shall minimize conflict in the use of the Premises by KCS, SMLO, and other parties. SMLO shall, prior to the beginning of each school year and each school quarter that occurs during the Term, meet and coordinate with KCS regarding the schedule of events to be held in the Premises during Non-School Hours during such school year or school quarter. During the Term, KCS shall comply with, and shall cause all other parties who use the Premises to comply with, such rules and regulations.

Article IV Restrictions on Use of Common Areas

4.1 **Common Areas**. The following areas of the Building and the Property are collectively the "**Common Areas**":

- (a) the kitchen on the first floor of the Building;
- (b) the roof deck on the third floor of the Building;
- (c) the courtyards on the first floor of the Building;
- (d) the parking lot adjacent to the Building;
- (e) the multipurpose room on the first floor of the Building, and
- (f) the facility known as the "SMLO Community Center" located on the first floor of the Building in "Zone One" and having an area of approximately 1,200 square feet.

4.2 **KCS' Use of the Common Areas.**

(a) KCS shall, during the Term of this Agreement, have a non-exclusive license to use the Common Areas during School Hours, on all the same terms and conditions as apply to the Premises (except for the requirement to pay Monthly Rent), and subject to the terms and conditions set forth in this Article IV. KCS shall not use the Common Areas during Non-School Hours, except with the express prior written consent of SMLO.

(b) SMLO reserves the right to revoke KCS' license to use the Common Areas at any time, for any reason or no reason, immediately upon written notice to KCS.

(c) SMLO further reserves the right to adopt reasonable rules and regulations pertaining to the use of the Common Areas, and compliance with such rules and regulations shall be a condition of KCS' right to use the Common Areas.

(d) KCS shall only allow KCS employees and representatives, enrolled KCS students, and families of enrolled KCS students to use the Common Areas and shall ensure that all activities conducted in the Common Areas are safe and appropriate for the space. KCS shall ensure that all minors are accompanied and supervised by qualified KCS staff at all times when using the Common Areas.

Article V KCS' Additional Covenants

5.1 **Use.** KCS shall, during the Term of this Agreement, use the Premises only for the permitted use set forth in Section 3.1 and shall procure and maintain all licenses and permits necessary therefor and for any other use or activity conducted at the Premises, at KCS' sole expense. KCS shall ensure that all KCS students and other minors are accompanied and supervised by qualified KCS staff at all times while on the Property.

5.2 **Liability for Property Damage or Personal Injury.** KCS shall be responsible for property damage or personal injury caused by KCS or its officers, directors, employees in the course of their employment, agents, contractors, students, and invitees (each, a "**KCS Party**," and collectively, the "**KCS Parties**") to the extent that KCS' or any KCS Party's liability for such property damage or personal injury has been determined by a court or otherwise agreed to by KCS, and KCS shall pay for such property damage or personal injury to the extent that funds have been authorized and appropriated by the Hawaii State Legislature for such purpose, and the funds have been allocated by the executive budget process.

5.3 **Rules and Regulations.** KCS shall, during the Term of this Agreement, observe and abide by the rules and regulations pertaining to the Premises, the Common Areas, the Building, or the Property as may be adopted by SMLO from time to time (the "**Rules and Regulations**"), provided that SMLO gives written notice of such Rules and Regulations to KCS. KCS shall further be responsible for compliance with the Rules and Regulations by all KCS Parties and all other third parties using the Premises at KCS' invitation.

5.4 **Assignment and Subletting.** Without the express prior written consent of SMLO, which consent SMLO may grant, deny, or condition in its sole and absolute discretion, KCS shall not assign, mortgage, pledge, hypothecate, encumber or otherwise transfer this Agreement or sublease (which term shall be deemed to include the granting of concessions and licenses and the like) all or any part of the Premises or suffer or permit this Agreement or the leasehold estate hereby created or any other rights arising under this Agreement to be assigned, transferred, mortgaged, pledged, hypothecated, or encumbered, in whole or in part, whether voluntarily, involuntarily, or by operation of law, or permit the use or occupancy of the Premises by anyone other than KCS.

5.5 **Alterations to Premises.** Without the express prior written consent of SMLO, which consent SMLO may grant, deny, or condition in its sole and absolute discretion, KCS shall not make or allow any alterations, modifications, renovations, or other changes to the Premises, the Building, or the Property, including, without limitation, construction or demolition of structures or storage of materials. KCS shall coordinate all permitted alterations with SMLO and shall comply with all conditions that SMLO imposes with respect to permitted alterations.

5.6 **Condition of Premises; Repair and Maintenance of Premises.** KCS accepts the Premises in “**AS IS**” condition as of the Effective Date, and KCS acknowledges that the Premises in such condition are in good and sanitary order, condition, and repair. During the Term, KCS shall, at its sole cost and expense, keep and maintain the Premises and every part thereof, as well as all furniture, fixtures, equipment, and other personal property kept within the Premises, in good and sanitary order, condition, and repair, including all necessary replacements.

5.7 **Hazardous Materials.**

(a) Except as explicitly provided in this Agreement, KCS shall not cause or permit any Hazardous Materials (as such term is defined below) to be used, generated, stored, transported, handled, or disposed of in, on, under, or about the Premises, the Building, or the Property at any time (such activities are hereinafter referred to as “**Environmental Activities**”). KCS shall not install any underground tanks of any type anywhere on the Property, nor will KCS allow any surface or subsurface conditions to exist or commence on the Property that are, or with the passage of time may be, a public or private nuisance. This prohibition shall extend to all KCS Parties, and KCS shall be responsible for assuring compliance by all KCS Parties with the foregoing prohibition. Notwithstanding the foregoing, and subject to KCS’ covenant to strictly comply with all Hazardous Materials Laws (as such term is defined below), KCS may bring upon, keep, and use general office and cleaning supplies typically used in an office or school setting in the ordinary course of business, such as printer or copier toner, liquid paper, glue, ink, and cleaning solvents, for use strictly in the manner for which they were designed. From time to time during the Term, KCS may request SMLO’s approval of KCS’ use of other Hazardous Materials, which approval may be withheld in SMLO’s sole and absolute discretion.

(b) KCS, at its sole cost and expense, shall comply and shall cause all KCS Parties to comply, with all federal, state, and local laws, rules, ordinances, licenses, permits, orders, decrees, and judgments relating to the environment and/or Environmental Activities (collectively referred to as “**Hazardous Materials Laws**”). KCS’ breach of any of its covenants or obligations under this Section 5.7 shall be a material event of default under this Agreement. The obligations

of KCS under this Section 5.7 shall survive the expiration or earlier termination of this Agreement and shall constitute obligations that are independent and severable from KCS' covenants and obligations to pay Monthly Rent.

(c) No more than thirty (30) days before and no later than sixty (60) days after the expiration or earlier termination of the Term, SMLO may have an environmental site assessment performed for the Premises, the Building, and/or the Property. KCS shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the consultant that prepares the environmental site assessment that is necessary to remove, mitigate, or remediate any Hazardous Materials contamination of the Premises, the Building, or the Property in connection with KCS' or any KCS Party's Environmental Activities. Prior to surrendering possession of the Premises, KCS shall also remove any personal property, equipment, fixture (except for any fixture installed by SMLO, unless otherwise directed by SMLO) and/or storage device or vessel on or about the Premises that is contaminated by or that contains Hazardous Materials.

5.8 Surrender of Premises Upon Expiration of Term. Upon the expiration or earlier termination of the Term, KCS shall deliver and surrender to SMLO possession of the Premises, in as good condition and repair as it was on the Effective Date (ordinary wear and tear excepted), shall deliver all keys, fobs, cards, and other access devices for the Premises to SMLO, and shall inform SMLO of all combinations on locks, safes, and vaults, if any, in the Premises. Unless otherwise agreed by the Parties, KCS shall remove all movable furniture, trade fixtures, vaults, safes, machinery, and equipment from the Premises and repair all damage to the Premises. Such repairs shall be performed in a manner satisfactory to SMLO. If KCS fails to remove any property from the Premises, then SMLO may, at its sole option, deem such property as abandoned by KCS, and title thereto shall thereupon vest in SMLO, or SMLO may remove the same and dispose of it in any manner and KCS shall, upon demand, reimburse SMLO for the cost of such removal and disposal plus the cost of repair of any damage to the Premises resulting from such removal. In no event shall KCS remove any of the following materials or equipment from the Premises without SMLO's prior written consent: power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes; blinds or other window coverings; carpets or other floor coverings; air conditioners or any other air conditioning equipment; fencing or security gates; and other similar operating equipment and decorations. KCS' obligation to observe or perform the covenants contained in this Section 5.8 shall survive termination of this Agreement. If the Premises require any repairs that are the responsibility of KCS upon KCS' surrender of the Premises, SMLO shall have the right to make such repairs at KCS' sole cost and to receive reimbursement of such expenses within fifteen (15) days after delivery of an invoice for such expenses to KCS. If KCS or any KCS Party remains in possession of the Premises after the expiration of this Agreement without the express prior written consent of SMLO, then KCS will be a tenant at will, and shall: (i) pay rent equal to one hundred fifty percent (150%) of the Monthly Rent; (ii) be subject to all of the conditions, provisions, and obligations of this Agreement, as adjusted by SMLO as is necessary or appropriate to make the same applicable to a tenancy at will; and (iii) pay to SMLO all damages sustained by SMLO resulting from retention of possession by KCS, including the loss of any proposed subsequent tenant for any portion of the Premises, the Building, or the Property.

Article VI Insurance

6.1 **Insurance.** SMLO recognizes that the State of Hawaii is a sovereignty that is self-insured, and that pursuant to the Commission's current Public Charter School Contract with KCS, KCS is covered under the Statewide Risk Management Program pursuant to Hawaii Revised Statutes Chapter 41D for liability, property, crime, and automobile insurance. Therefore, KCS shall not be required to carry insurance coverage, including but not limited to, coverage for bodily injury, death, and property damage.

Article VII Default

7.1 **Default of KCS.**

(a) KCS will be in default under this Agreement if any of the following events occur, and such event continues for ten (10) days after written notice thereof is given to KCS by SMLO:

- (i) KCS fails to pay Monthly Rent, or any other payments under this Agreement when due;
- (ii) KCS fails to observe and comply with the Rules and Regulations, if any;
- (iii) KCS does or attempts to assign, mortgage, pledge, encumber, transfer, or sublet the Premises or any portion thereof without SMLO's consent;
- (iv) This Agreement or any interest of KCS under this Agreement become subject to any attachment or judgment, or to any lien, charge or encumbrance not consented to by SMLO pursuant to the provisions of this Agreement.

(b) KCS will be in default under this Agreement if any of the following events occur, and such event continues for thirty (30) days after written notice thereof is given to KCS by SMLO, or, if such default cannot reasonably be cured within said 30-day period, such longer time as may be required, provided that KCS shall within said period commence such cure and then diligently continue it to completion:

- (i) KCS vacates or abandons the Premises, or fails to take occupancy of the Premises on the Commencement Date;
- (ii) KCS fails to observe or perform any of the other covenants in this Agreement which are KCS' responsibility; or

- (iii) KCS persistently violates the terms of this Agreement or the Rules and Regulations, if any, regardless of whether KCS cures such violations.

7.2 **Remedies.** In the event of a default by KCS as set forth in Section 7.1, SMLO may, in addition to and not in derogation of any remedies for any preceding breach of covenant, immediately or at any time thereafter give notice to KCS terminating this Agreement and the Term hereof, which notice shall specify the date of termination. Upon the specified date of termination, the Term of this Agreement and all of KCS' rights and privileges under this Agreement shall expire and terminate but KCS shall remain liable as hereinafter provided. In the event of any termination pursuant to Section 7.1, KCS shall pay the Monthly Rent and other charges payable under this Agreement up to the time of such termination. At any time after such termination, in lieu of recovering damages pursuant to the provisions of the immediately preceding paragraph with respect to any period after the date of demand therefor, at SMLO's election, KCS shall pay to SMLO the amount, if any, by which the Monthly Rent and other charges which would be payable under this Agreement from the date of such demand to the end of what would be the then unexpired Term of this Agreement had such termination not occurred, shall exceed the then fair rental value of the Premises for the same period, reduced to amortize over such period all costs or expenses which SMLO would incur to obtain such fair market rent. Nothing contained in this Agreement shall limit or prejudice the right of SMLO to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Agreement, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above.

7.3 **Reletting of Premises.** In the event of any default by KCS as set forth in Section 7.1, SMLO may, without terminating this Agreement, relet for the account of KCS the Premises or any part thereof, for all or any portion of the remainder of the Term, to tenants satisfactory to SMLO, and at such rental or rentals as may, in the exercise of reasonable efforts, be obtained, with the right to SMLO to put the Premises in good order and condition and to make reasonable alterations and repairs to facilitate such reletting at KCS' expense. SMLO shall receive such rentals and apply them to the payment of Monthly Rent, the balance, if any, to be paid over to KCS; provided, however, that KCS shall remain liable for any deficiency, which deficiency KCS agrees to pay monthly as the same may accrue. Notwithstanding any such reletting without termination, SMLO may at any time thereafter elect to terminate this Agreement for such previous breach. To the fullest extent permitted by law, KCS hereby expressly waives any and all rights of redemption granted under any present or future laws if KCS is evicted or dispossessed, or if SMLO obtains possession of the Premises, by reason of the violation by KCS of any of the covenants and conditions of this Agreement.

7.4 **Remedies Cumulative.** Except as expressly provided otherwise in Section 7.2, any and all rights and remedies which SMLO may have under this Agreement, and at law and in equity (including without limitation actions at law for direct, indirect, special and consequential (foreseeable and unforeseeable) damages), for KCS' failure to comply with its obligations under this Agreement shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.

7.5 **SMLO's Right to Cure KCS' Defaults.** In the event of any default by KCS as set forth in Section 7.1, if KCS fails to pay any sum of money, other than monies required to be paid to SMLO under this Agreement, or fails to perform any other act on its part to be performed under this Agreement, SMLO may, without waiving or releasing KCS from any obligations of KCS, make any such payment and perform any other such act. In the event of the exercise of such right by SMLO, KCS agrees to pay to SMLO forthwith upon demand all such sums including reasonable attorneys' fees, together with interest thereon at a rate equal to twelve percent (12%) per annum.

7.6 **Holding Over.** Any holding over by KCS after the expiration or early termination of the Term of this Agreement shall be treated as a daily tenancy at sufferance at the same Monthly Rent in effect immediately prior to the expiration or earlier termination of the Term plus all other charges herein provided (prorated on a daily basis). Otherwise, all of the covenants, agreements, and obligations of KCS applicable during the Term of this Agreement shall apply and be performed by KCS during such period of holding over as if such period were part of the Term of this Agreement.

7.7 **Effect of Waivers of Default.** Any consent or permission by SMLO to any act or omission by KCS shall not be deemed to be consent or permission by SMLO to any other similar or dissimilar act or omission and any such consent or permission in one instance shall not be deemed to be consent or permission in any other instance.

7.8 **No Waiver, Etc.** The failure of SMLO or KCS to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by SMLO of rent with knowledge of the breach of any covenant of this Agreement shall not be deemed to have been a waiver of such breach by SMLO, or by KCS, unless such waiver be in writing signed by the Party to be charged. No consent or waiver, express or implied, by SMLO or KCS to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

7.9 **No Accord and Satisfaction.** No acceptance by SMLO of a lesser sum than the Monthly Rent or any other charge then due shall be deemed to be other than on account of the earliest installment of such rent or charge due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other charge be deemed an accord and satisfaction, and SMLO may accept such check or payment without prejudice to SMLO's right to recover the balance of such installment or pursue any other remedy in this Agreement provided.

Article VIII Casualty or Taking

8.1 **Fire or Casualty.** If the Premises or the Property, or any material part thereof, is destroyed or damaged by fire or casualty, then the Term of this Agreement may be terminated at the election of either KCS or SMLO. Such election, which may be made notwithstanding the fact

that SMLO's entire interest may have been divested, shall be made by the giving of notice by either Party to the other within sixty (60) calendar days after the date of such fire or casualty.

8.2 **Taking.**

(a) **Total Taking.** If the whole of the Premises is taken by any public authority under the power of eminent domain, then this Agreement shall automatically terminate as of the day possession is taken by such public authority, and all amounts due to SMLO under this Agreement shall be paid up to such date of termination.

(b) **Partial Taking.** If only part of the Premises is taken under eminent domain, this Agreement shall terminate as to the portion taken, and unless this Agreement shall be terminated as is hereinafter provided, it shall continue in full force and effect as to the remainder of said Premises and the Monthly Rent shall be reduced proportionately, and SMLO at its own cost and expense shall make all necessary repairs and alterations to the Premises required by such taking. If the remainder of the Premises cannot be made tenantable for the purposes for which KCS has been using the Premises, KCS shall have the option, to be exercised within thirty (30) calendar days after the filing of such eminent domain action, of terminating this Agreement effective as of the date the condemning authority shall take possession, or KCS may elect to remain in possession; provided, however, that if more than fifty percent (50%) of the Premises is taken under power of eminent domain, either Party, by written notice to the other delivered on or before the date of surrendering possession to the public authority, may terminate this Agreement, effective as of such surrender of possession. All compensation and damages of any type whatsoever awarded for any taking, whole or partial, shall belong to and be the property of SMLO, except as otherwise provided in this Agreement. If KCS fails to give SMLO written notice of its election to terminate this Agreement as above provided, KCS shall be deemed to have elected to remain in possession.

(c) **KCS' Damages.** KCS shall have the right to claim and recover from the condemning authority, but not from SMLO, such compensation as may be separately awarded or recoverable by KCS in KCS' own right on account of any cost or loss to which KCS might be put in removing KCS' furniture, fixtures, and equipment.

(d) **Temporary Taking.** In the event of a condemnation of a leasehold interest in the Premises, i.e., a temporary taking, without the condemnation of the fee simple title also, this Agreement shall not terminate, and such condemnation shall not excuse KCS from full performance of all of its covenants under this Agreement; but KCS, in such event, shall be entitled to present or pursue against the condemning authority its claim for and to receive all compensation or damages sustained by it by reason of such condemnation, and SMLO's right to recover compensation or damages shall be limited to compensation for and damages, if any, to its reversionary interest; it being understood, however, that during such time as KCS is out of possession of the Premises by reason of such condemnation, this Agreement shall not be subject to forfeiture for failure to observe and perform those covenants not calling for the payment of money. If the condemning authority fails to keep the Premises in the state of repair required under this Agreement, or to perform any other covenant not calling for the payment of money, KCS shall have ninety (90) days after the termination of such condemning authority's possession with which to carry out KCS' obligations under such covenant or covenants. During such time as KCS is out

of possession of the Premises by reason of such condemnation, KCS shall not be required to make any Monthly Rent payments to SMLO, but shall continue to be obligated to pay all other amounts required under this Agreement. At any time after such condemnation proceedings are commenced, SMLO shall have the right, at its option, to require KCS to assign to SMLO all compensation and damages payable by the condemnor to KCS, to be held by SMLO without liability for interest thereon as security for the full performance of KCS' covenants under this Agreement, such compensation and damages received pursuant to said assignment to be applied first to the payment of rent, taxes, assessments, insurance premiums and all other sums from time to time payable by KCS pursuant to the terms of this Agreement as such sums fall due, and the remainder, if any, to be payable to KCS. It is understood and agreed that such assignment shall not relieve KCS of any of its obligations under this Agreement with respect to such rent, taxes, assessments, insurance premiums and other sums, except to the extent actually received by SMLO.

8.3 **Restoration.** If neither Party elects to terminate this Agreement pursuant to Section 8.1 or Subsection 8.2(b), this Agreement shall continue in full force and effect, and so long as the damage is not caused by the negligence or other wrongful act of KCS or its employees, agents, contractors or invitees, a proportional amount of the amounts due to SMLO under this Agreement shall be suspended or abated until the Premises (excluding any improvements to the Premises made at KCS' expense), or what may remain thereof, is put by SMLO in proper condition for use, which SMLO covenants to do with reasonable diligence to the extent permitted by the net proceeds of insurance recovered or damages awarded for such destruction, taking, or condemnation and subject to zoning and building laws or ordinances then in existence. "Net proceeds of insurance recovered or damages awarded" refers to the gross amount of such insurance or damages actually made available to SMLO (and not retained by any Superior Lessor or Superior Mortgagee) less the reasonable expenses of SMLO incurred in connection with the collection of the same, including without limitation, fees and expenses for legal and appraisal services.

8.4 **Award.** Irrespective of the form in which recovery may be had by law, all rights to seek reimbursement for damages or compensation arising from fire or other casualty or any taking by eminent domain or condemnation shall belong to SMLO in all cases. KCS hereby grants to SMLO all of KCS' rights to such claims for damages and compensation and covenants to deliver such further assignments thereof as SMLO may from time to time request. Nothing contained in this Section 8.4 shall be construed to prevent KCS from prosecuting in any condemnation proceedings a claim for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable by SMLO from the taking authority.

Article IX

Rights of Mortgagees

9.1 **Rights of Mortgagees; Subordination.** This Agreement, and all rights of KCS under this Agreement, are and shall be subject and subordinate to any and all mortgages, which may now or hereafter affect the Building, Property, or this Agreement. This Section 9.1 shall be self-operative, and no further instrument of subordination shall be required. In confirmation of such subordination, KCS shall promptly execute, acknowledge, and deliver any instrument that SMLO, the holder of any such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination. Any mortgage to which this Agreement is subject and subordinate is called a "**Superior Mortgage**" and the holder of a Superior Mortgage

is called a “**Superior Mortgagee**”. Notwithstanding the foregoing to the contrary, any Superior Mortgagee may, at its option, subordinate the Superior Mortgage of which it is the holder to this Agreement by giving KCS ten (10) calendar days prior written notice of such election, whereupon this Agreement shall, irrespective of dates of execution, delivery and recording, be superior to such Superior Mortgage and no other documentation shall be necessary to effect such change.

9.2 **Attornment**. If any Superior Mortgagee or the nominee or designee of any Superior Mortgagee shall succeed to the rights of SMLO under this Agreement, whether through possession or foreclosure action or delivery of a new lease or deed, or otherwise (except pursuant to the last sentence of the preceding paragraph), then at the request of such party so succeeding to SMLO’s rights (“**Successor Landlord**”), and upon such Successor Landlord’s written agreement to accept KCS’ attornment, KCS shall attorn to and recognize such Successor Landlord as KCS’ landlord under this Agreement and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment, this Agreement shall continue in full force and effect as a direct lease between the Successor Landlord and KCS upon all of the terms, conditions and covenants as are set forth in this Agreement, except that the Successor Landlord (unless formerly the landlord under this Agreement) shall not be: (a) liable in any way to KCS for any act or omission, neglect or default on the part of SMLO under this Agreement; (b) responsible for any monies owing by or on deposit with SMLO to the credit of KCS; (c) subject to any counterclaim or setoff which theretofore accrued to KCS against SMLO; (d) bound by any modification of this Agreement subsequent to such superior lease or superior mortgage, or by any previous prepayment of Monthly Rent for more than one (1) month, which was not approved in writing by the Successor Landlord; (e) liable to KCS beyond the Successor Landlord’s interest in the Property; (f) responsible for the performance of any work to be done by SMLO under this Agreement to render the Premises ready for occupancy by KCS; or (g) required to remove any person occupying the Premises or any part thereof, except if such person claims by, through or under the Successor Landlord. KCS agrees at any time and from time to time to execute a suitable instrument in confirmation of KCS’ agreement to attorn, as aforesaid.

Article X Miscellaneous

10.1 **Compliance with Applicable Laws**. The Parties shall at all times comply with any and all applicable federal, state and county laws and regulations including, but not limited to, employment, health, anti-discrimination, and medical privacy laws.

10.2 **Agreement Subject to Approval; Authority to Execute**. This Agreement shall not be effective or binding as against either Party unless and until the Board of Directors or Governance Board of each Party has duly voted to approve and ratify this Agreement or provided written consent for this Agreement in accordance with such Party’s governing documents. The individual signing this Agreement on behalf of SMLO represents and warrants that the Board of Directors of SMLO has duly voted to approve and ratify this Agreement or provided written consent for this Agreement in accordance with SMLO’s governing documents and that such individual is duly authorized to execute this Agreement on behalf of SMLO. The individual signing this Agreement on behalf of KCS represents and warrants that the KCS Governance Board

has duly voted to approve and ratify this Agreement or provided written consent for this Agreement in accordance with KCS' governing documents and that such individual is duly authorized to execute this Agreement on behalf of KCS.

10.3 **Binding Agreement.** This Agreement shall be binding upon, and its benefits shall inure to, the Parties and their respective successors, heirs, executors, administrators, and permitted assigns.

10.4 **Further Cooperation.** The Parties agree to execute any and all other documents which may be required to carry out the purposes of this Agreement.

10.5 **Severability and Partial Invalidity.** The terms and provisions of this Agreement are severable, and the invalidity of any part of this Agreement shall not affect the validity of the other parts hereof.

10.6 **No Waiver.** The failure of either Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

10.7 **Section Headings.** The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

10.8 **Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

10.9 **No Third-Party Beneficiaries.** No third-party beneficiaries are created or intended to be created by the terms and provisions of this Agreement, and any such intention or effect is expressly disclaimed by the Parties.

10.10 **Governing Law; Jurisdiction and Venue.** This Agreement and the transactions contemplated hereunder shall be governed by and construed according to the laws of the State of Hawaii. Jurisdiction and venue for any and all disputes or matters of interpretation arising out of this Agreement shall be exclusively in the state and federal courts in Hawaii, to the exclusion of all other possible forums or venues.

10.11 **Time of the Essence.** Time is of the essence in the transactions contemplated by this Agreement.

10.12 **No Party Deemed Drafter; Independent Legal Counsel.** No Party shall be deemed to be the drafter of this Agreement, and if this Agreement is ever construed by a court of law, such court shall not construe any provision of this Agreement against either Party as the drafter. With respect to the negotiation and execution of this Agreement and in the making of any

waiver or indemnity contained in this Agreement, each Party acknowledges and agrees that it has had the opportunity to consult with independent legal counsel and has either consulted with independent legal counsel or has consciously decided not to consult with independent legal counsel.

10.13 **Entire Agreement.** This Agreement embodies the full understanding of each of the Parties with respect to the subject matter hereof and supersedes any prior agreements, either written or oral, which may previously have existed among any of such Parties with respect to the same. In the event of any conflict between the terms and provisions of any such previous agreement, the terms of this Agreement shall prevail. This Agreement may not be changed orally, and any amendment hereof must be in writing signed by all the Parties or their personal representatives or permitted assigns.

10.14 **Counterparts; Electronic and Electronically Transmitted Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Facsimile documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related to this Agreement, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. Each Party has the right to rely upon a facsimile counterpart or electronic transmission of this instrument signed by the other Party to the same extent as if such Party received an original counterpart. The exchange of copies of this Agreement and of signature pages by facsimile or other transmission or other electronic means (such as a .pdf) shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the Agreement for all purposes. For all purposes, including, without limitation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded, and the remaining pages assembled as one document.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SOUTH MAUI LEARNING OHANA, INC.,
a Hawaii nonprofit corporation

By: _____
Name: Malia Johnson
Title: Chairperson of the Board of Directors

“SMLO”

KIHEI CHARTER SCHOOL,
a Hawaii public charter school

By: _____
Name: Michael Sweeney
Title: Chairman, Kihei Charter School
Governance Board

“KCS”

EXHIBIT A

Description of Property

The land referred to in this Policy is situated in the County of Maui, City of Kihei, State of Hawaii, and is described as follows:

All that certain parcel of land situate at Waiohuli-Keokea, Kihei, Island and County of Maui, State of Hawaii, being:

Lot 3, area 2.781 acres, more or less, as delineated on the map entitled "MAUI RESEARCH AND TECHNOLOGY PARK PHASE I/INCREMENT I", which said map was filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 2008.

TOGETHER, WITH, a Roadway Access Easement over and across all of Lot 4 (Private Roadway Lot) of Haleakala Greens Subdivision, subject to vehicular access restrictions from Piilani Highway, F.A.P. No. RF-031-1(5), and being more particularly described as follows:

Beginning at a point at the Southwest corner of this easement, being also the Southwest corner of Lot 4 of Haleakala Greens Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KALI", being 6,291.97 feet North and 20,216.35 feet West and running by azimuths measured clockwise from True South:

- | | | | |
|----|--------------|--------|---|
| 1. | 170° 36' 30" | 458.05 | feet along the Easterly side of Piilani Highway, F.A.P. No. RF-031-1(5); |
| 2. | 80° 36' 30" | 5.00 | feet along same; |
| 3. | 170° 36' 30" | 156.95 | feet along same; |
| 4. | 305° 36' 30" | 190.92 | feet along Lot 1 of Haleakala Greens Subdivision; |
| 5. | 350° 36' 30" | 100.00 | feet along same; |
| 6. | 260° 36' 30" | 37.58 | feet along same; |
| 7. | | | Thence along same on a curve to the left having a radius of 1,225.00 feet, the chord azimuth and distance being: 247° 30' 45" 555.12 feet; |
| 8. | | | Thence along same on a curve to the right having a radius of 1,071.94 feet, the chord azimuth and distance being: 261° 27' 30" 974.69 feet; |

9.	288° 30'	287.03	feet along same;
10.	18° 30'	150.00	feet along Lot 3 of Haleakala Greens Subdivision;
11.	108° 30'	287.03	feet along Lot 2 of Haleakala Greens Subdivision;
12.			Thence along same on a curve to the left having a radius of 921.94 feet, the chord azimuth and distance being: 81° 27' 30" 838.30 feet;
13.			Thence along same on a curve to the right having a radius of 1,375.00 feet, the chord azimuth and distance being: 67° 30' 45" 623.10 feet;
14.	80° 36' 30"	37.58	feet along same;
15.	350° 36' 30"	100.00	feet along same;
16.	35° 36' 30"	183.85	feet along same to the point of beginning and containing an area of 7.855 acres, more or less.

PROVIDED, HOWEVER, that in the event said Lot 4 (Private Roadway Lot), area 7.855 acres, more or less of Haleakala Greens Subdivision, or any portion or portions thereof, is conveyed or dedicated to the County of Maui, the State of Hawaii, or other governmental authority for use as public roadways, then said easement over and across said Lot, or any portion or portions thereof so conveyed or dedicated, shall automatically terminate.

TOGETHER WITH a nonexclusive easement and right of access for ingress and egress purposes, over, across and through Lot 8 (Lipoa Parkway), area 5.563 acres, more or less, Lot 9 (North Holopono Street), area 0.500 acre, more or less, Lot 10 (South Holopono Street), area 0.456 acre, more or less, Lot 11 (North Ninau Street), area 0.473 acre, more or less, and Lot 12 (South Ninau Street), area 0.449 acre, more or less, as shown on said File Plan No. 2008; PROVIDED, HOWEVER, that in the event said Lot, or any portion or portions thereof, is conveyed or dedicated to the County of Maui, the State of Hawaii, or other governmental authority for use as public roadways, then said easement over and across said Lot, or any portion or portions thereof so conveyed or dedicated, shall automatically terminate.

Being all the property described in the following:

DEED

Recorded : December 14, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-47310772

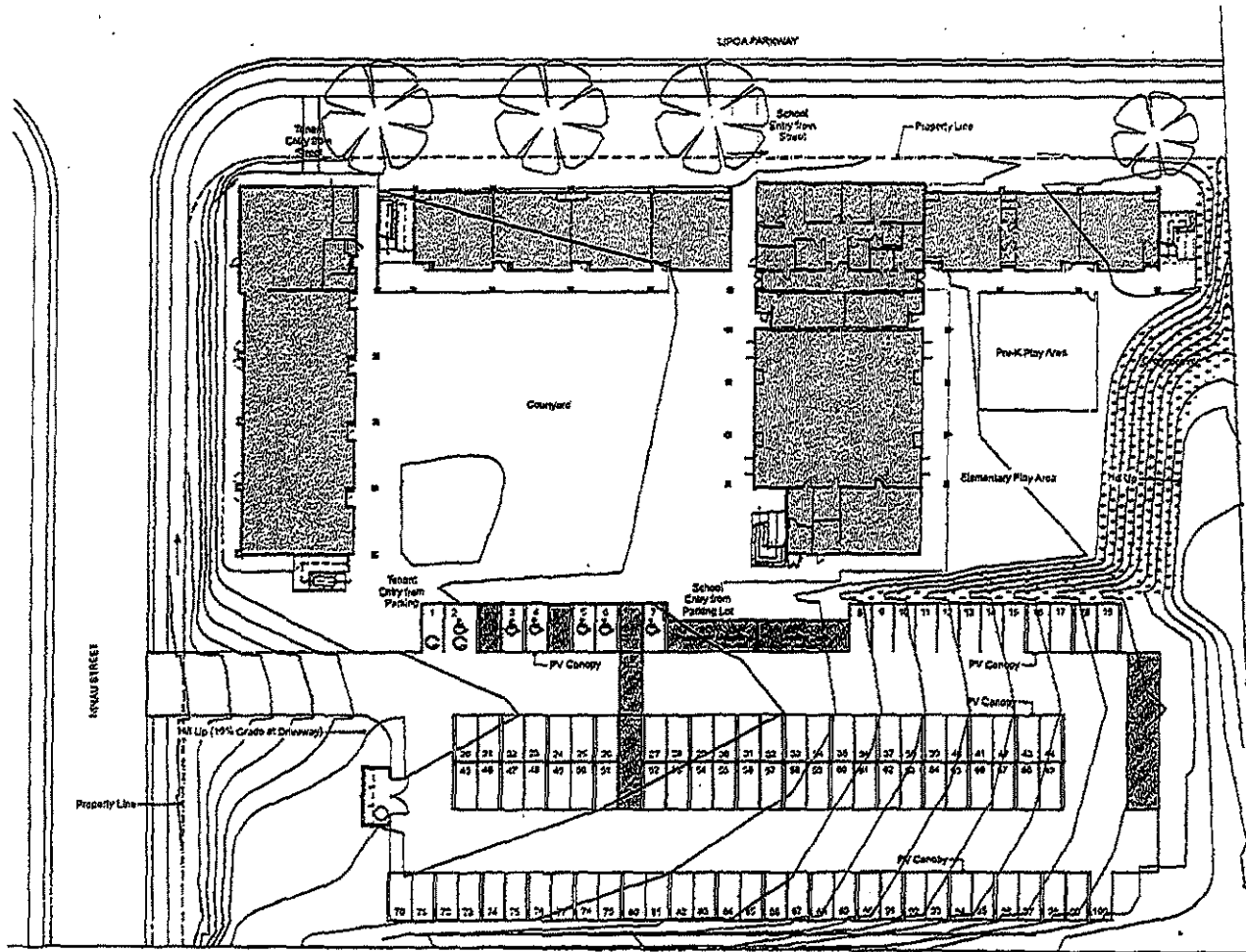
Grantor : MICHAEL HANKAL, Trustee of the Michael Hankal Living Trust Agreement dated July 14, 1995

Grantee : SOUTH MAUI LEARNING OHANA, INC., a Hawaii non-profit corporation

- END OF EXHIBIT A -

Exhibit B

Building



Site Plan
 2/24/16

*Kihei Charter School,
 Maui Research and Technology Park*



Nishikawa Architects, Inc.
 2145 Heleluani Street, Honolulu, Hawaii, HI 96813
 Telephone: 766-2300 • Fax: 766-9301 • Email: nishikawa@earthlink.net

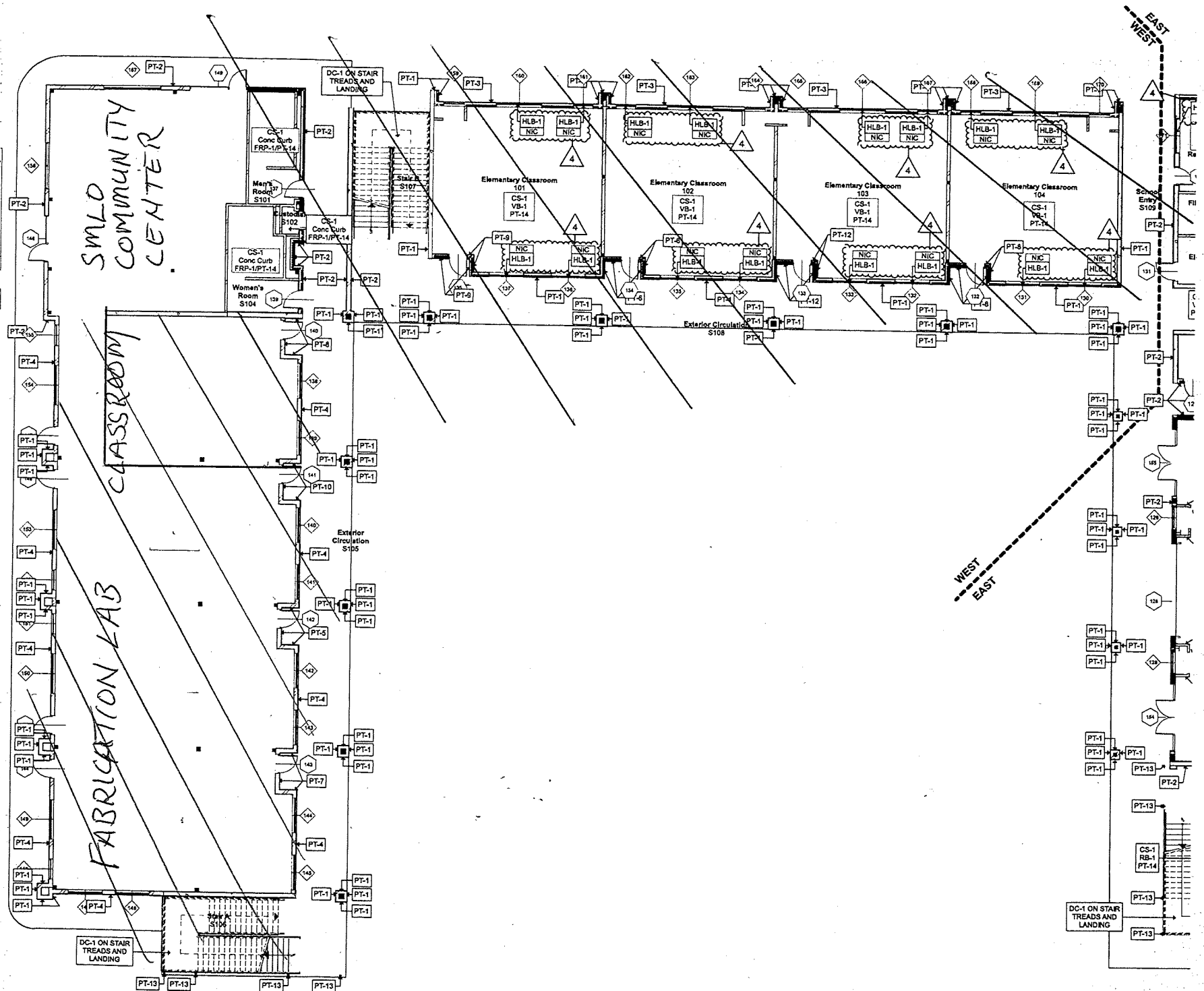
Site Plan
 Scale: 1" = 30'



2/8/16

Exhibit C

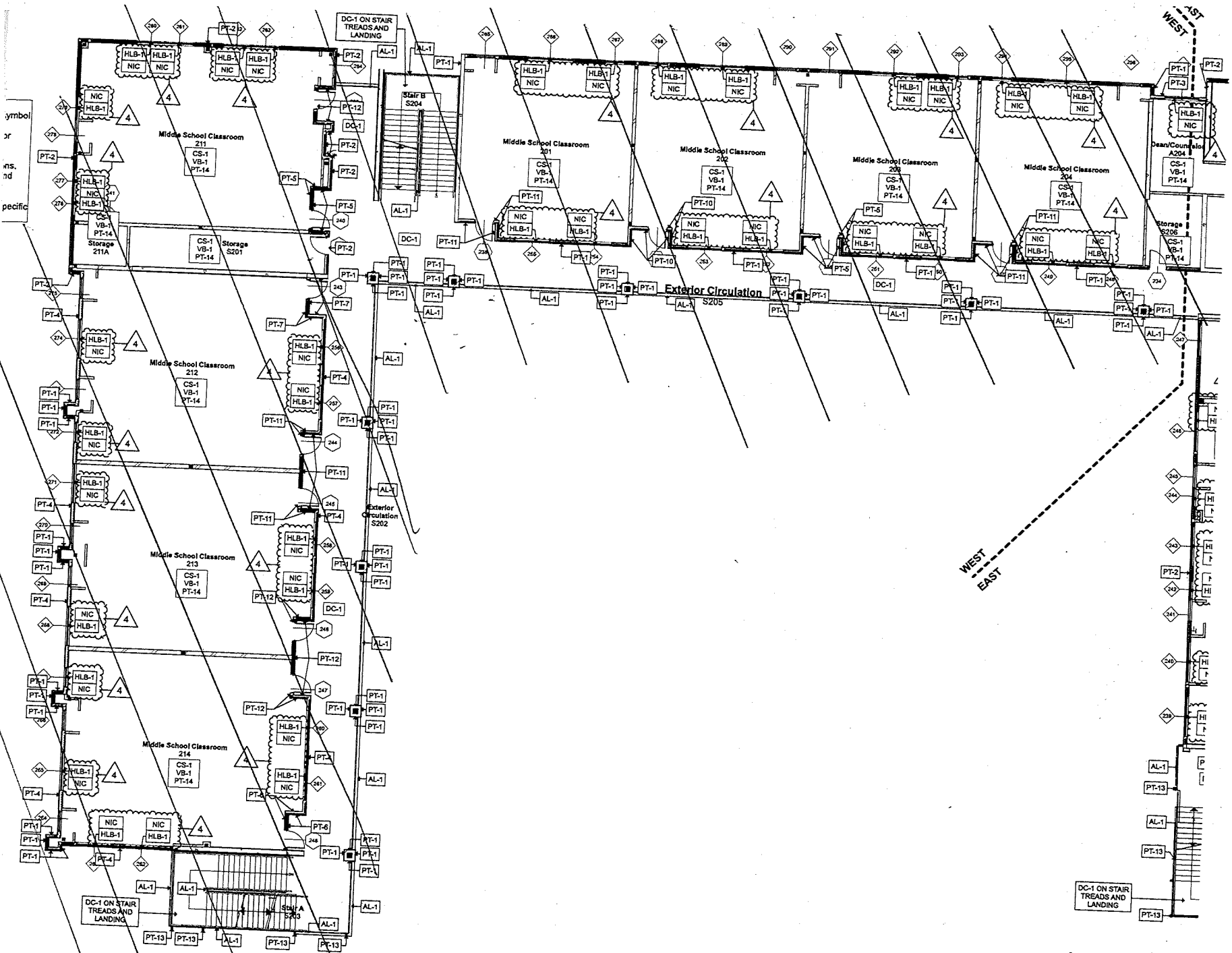
**Location of Premises
(Shown in Hatch Marks)**



1 First Floor Finish Plan
SCALE 1/8" = 1'-0"

As-Built Drawings
 Certified by: Date: 4/02/20
 Dan Blackburn (F&H Construction)

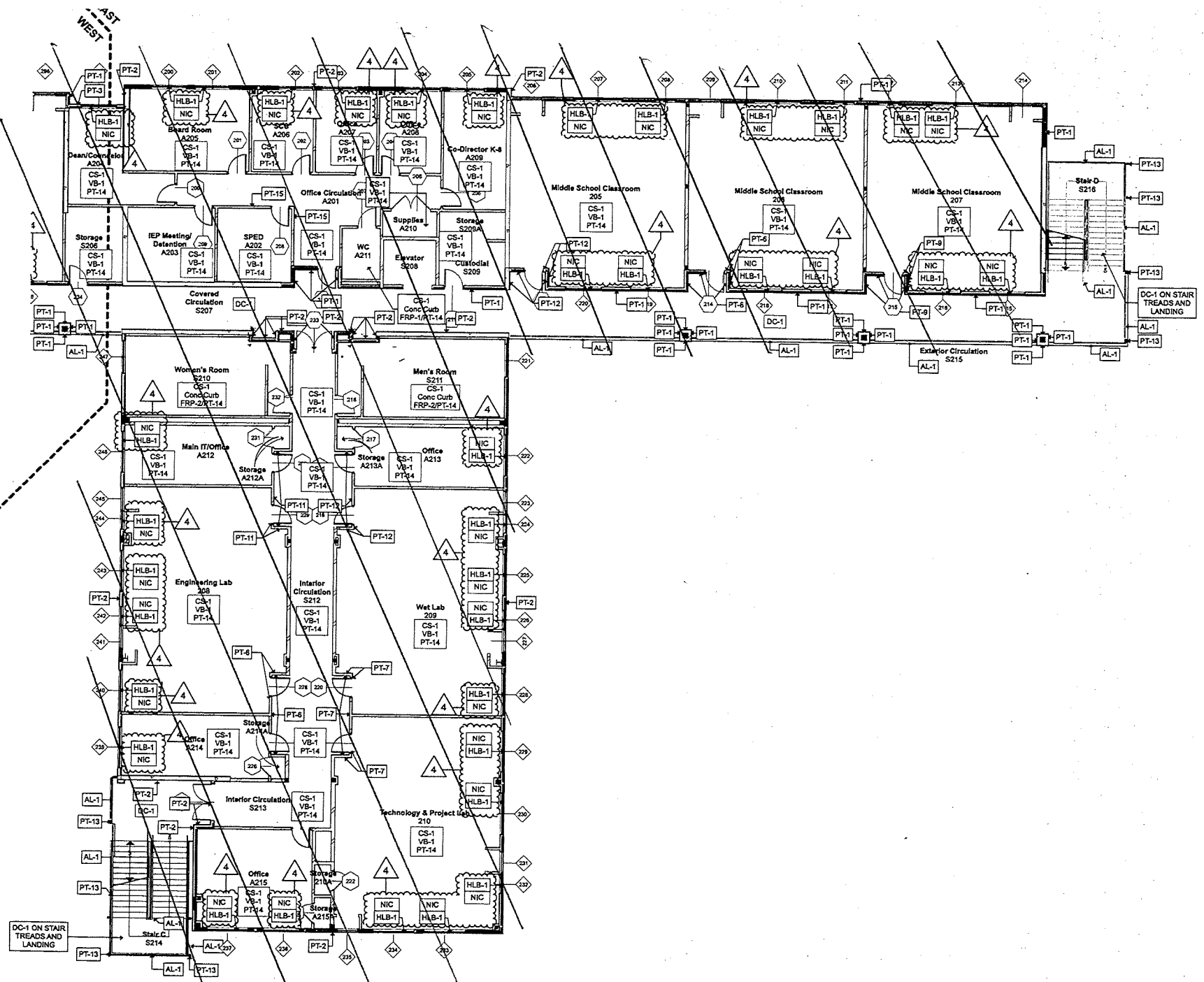
symbol
or
ns.
nd
pecific



1 Second Floor Finish Plan
SCALE: 1/8" = 1'-0"

As-Built Drawings
Certified by: Dan Blackburn Date: 4/02/2019
Dan Blackburn (F&H Construction)

NOTES:
 1. Deviations and symbol
 2. Material Finish/Color
 3. for colors and
 4. exterior elevations.
 5. Finish Plans and
 6. reported to the
 7. location.
 8. Schedule for specific
 9.
 10. red on wall.



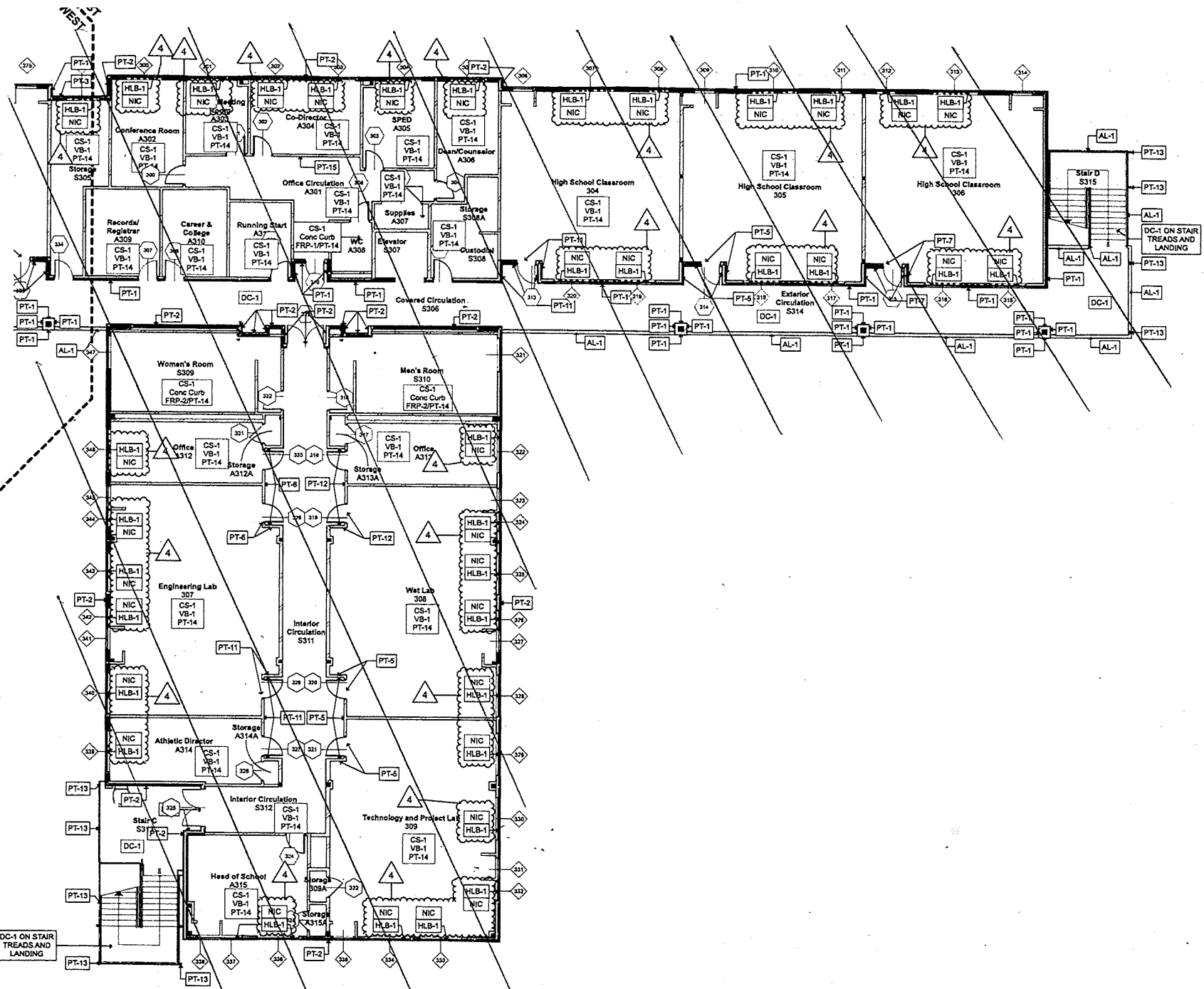
Second Floor Finish Plan

SCALE: 1/8" = 1'-0"

As-Built Drawings
 Certified by: [Signature] Date: 4/0
 Dan Blackburn (F&H Construction)

NOTES:
 1. Deviations and symbols for colors and exterior elevations, as reported to the termination, in Schedule for specific material Finish/Color.

ES:
 1. ES-1 is reported on wall.



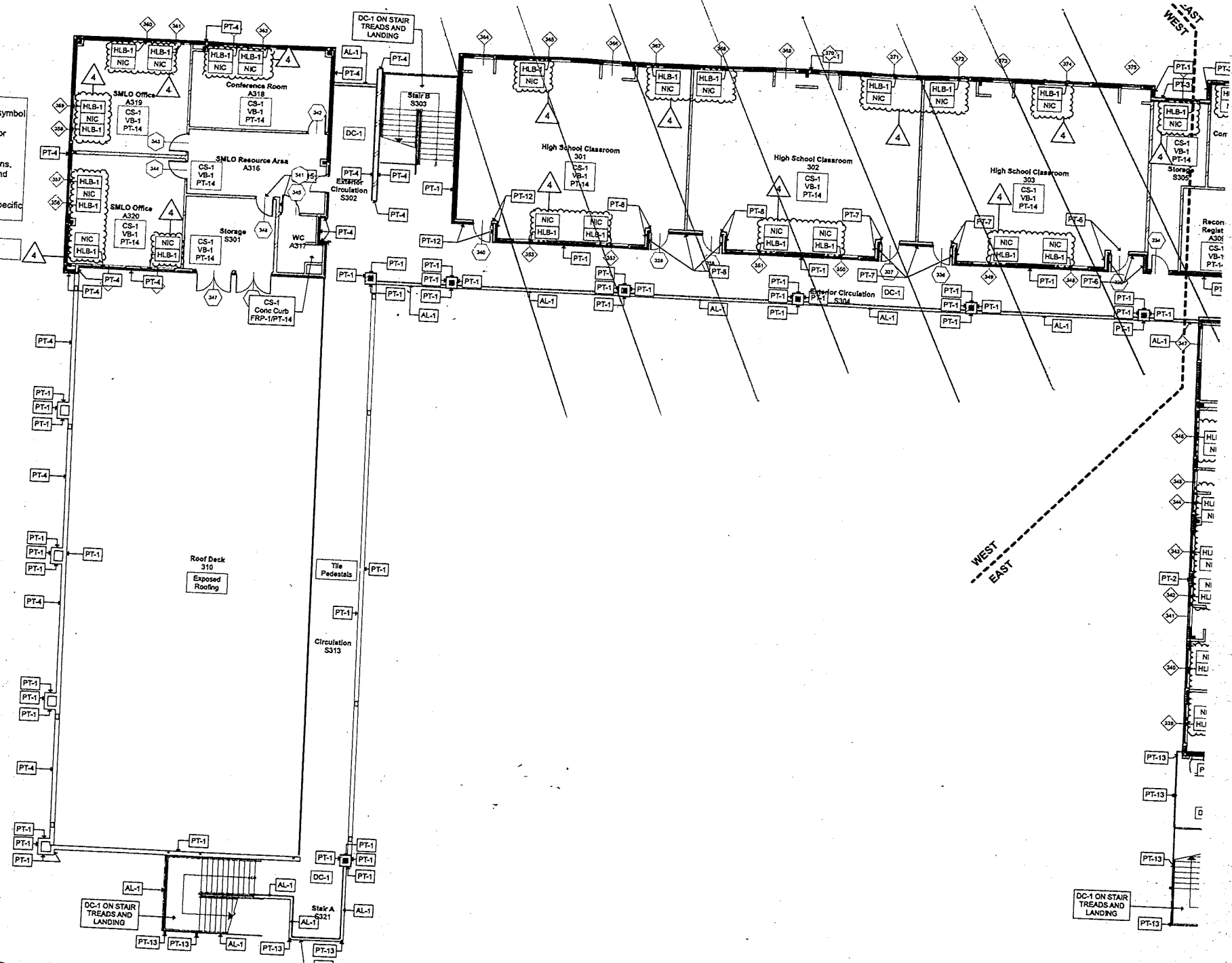
1 Third Floor Finish Plan
 SCALE: 1/8" = 1'-0"

As-Built Drawings
 Certified by: Dan Blackburn Date: 4/02/201
 Dan Blackburn (F&H Construction)

Color Key:

NOTES:
 Revisions and symbol
 Material Finish/Color
 for colors and
 exterior elevations.
 Finish Plans and
 reported to the
 Commission.
 Schedule for specific

ES:
 erred on wall.



1 Third Floor Finish Plan
 SCALE: 1/8" = 1'-0"

As-Built Drawings
 Certified by: Dan Blackburn (F&H Construction) Date: 4/02/2019