

GROUND LEASE AGREEMENT
(Davis-Monthan School)

This **GROUND LEASE AGREEMENT** (the “**Lease**”) is entered into this ___ day of _____, 2017 by and between the **UNITED STATES OF AMERICA by and through the SECRETARY OF THE AIR FORCE** (the “**Government**” or “**Lessor**”) and **TUCSON UNIFIED SCHOOL DISTRICT**, an educational institution created and operating in accordance with the laws of the State of Arizona (the “**Lessee**”). The Lessor and Lessee are sometimes collectively referred to herein as, the “**Parties**” and individually as, the “**Party**”.

WITNESSETH

WHEREAS, the Government owns that certain real property situated on Davis-Monthan Air Force Base, Arizona (the “**Installation**”) consisting of approximately ten and one hundredth contiguous acres (\pm 10.01 ac.) more specifically described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Land**” or “**Leased Premises**”); and

WHEREAS, Lessee desires to operate and maintain an elementary school on the Installation; and

WHEREAS, the Government is entering into this Lease pursuant to and in accordance with 10 U.S.C. § 2667 Leases: Non-Excess Property of Military Departments and Defense Agencies; and

WHEREAS, the undersigned, on behalf of the Government, has determined that this Lease fulfills the requirements of 10 U.S.C. § 2667; and

WHEREAS, the Government desires to lease the Leased Premises to Lessee and Lessee desires to lease the Leased Premises from the Government for the Permitted Use (as hereinafter defined) and pursuant to and in accordance with the terms and conditions more specifically set forth herein.

NOW WHEREFORE, for and in consideration of the terms, covenants, and conditions hereof, and other good and valuable consideration the adequacy, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I.

RECITALS, PREMISES, AND PERMITTED USE

Section 1.01 **Demise of Leased Premises**. Subject to the terms and conditions set forth in this Lease, the Government hereby leases to Lessee, and Lessee leases from the Government, the Leased Premises subject to all existing easements, rights-of-way, and all other rights and interests of the Government or others (whether or not of record) encumbering the Leased Premises (collectively, “**Existing Encumbrances**”). A list of Existing Encumbrances that are known to and/or maintained in the records of the Installation as of the Effective Date (as hereinafter defined) is included in **Exhibit B** attached hereto and incorporated herein by this reference.

Section 1.02 **Condition of Leased Premises.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, LESSEE HEREBY ACKNOWLEDGES AND AGREES THAT THE GOVERNMENT LEASES THE LEASED PREMISES AND LESSEE ACCEPTS THE LEASED PREMISES “**AS/IS, WHERE IS**” WITHOUT ANY REPRESENTATION OR WARRANTY OF THE GOVERNMENT, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER. LESSEE ACKNOWLEDGES THAT THE GOVERNMENT HAS MADE NO REPRESENTATIONS OR WARRANTIES RELATING TO THE SUITABILITY OF THE LEASED PREMISES FOR ANY PARTICULAR USE EXCEPT AND UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, THE GOVERNMENT SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR, MAINTAIN, RENOVATE OR OTHERWISE INCUR ANY COST OR EXPENSE WITH RESPECT TO THE LEASED PREMISES. THE GOVERNMENT SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE LEASED PREMISES. GOVERNMENT SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO LESSEE FOR ANY LOSS, DAMAGE OR EXPENSE INCURRED BY LESSEE OCCASIONED BY THE CONDITION OR CHARACTERISTICS OF THE LEASED PREMISES.

Section 1.03 **Permitted Use.** The Leased Premises shall be used for the purposes of the maintenance, repair, and operation of an elementary school (kindergarten through eighth grade) consisting of _____ (___) buildings and related ancillary facilities and improvements (collectively, sometimes herein referred to as the “**School**”), for purposes reasonably related thereto (e.g., pre- or post-school parent-teacher meetings, club or association meetings) and for no other purpose (all the foregoing collectively hereinafter referred to as, the “**Permitted Use**”).

- a. Lessee shall use and manage the Leased Premises in accordance with all Applicable Laws (as hereinafter defined). Lessee shall not permit any nuisance, waste or injury on the Leased Premises and shall not use the Leased Premises, nor allow any of its officers, employees, agents, contractors, subcontractors, licensees or invitees to use the Leased Premises for any purpose other than the Permitted Use or in any manner that violates any Applicable Laws.
- b. Without limiting the foregoing, Lessee hereby acknowledges and agrees that it shall not use or permit the use of the Leased Premises for any of the following activities: (a) any use that is unlawful or inherently dangerous or that constitutes waste, unreasonable annoyance, or a nuisance; (b) activities involving the storage, treatment, transportation, disposal, or manufacture of Toxic or Hazardous Materials (as hereinafter defined) (excepting normal cleaning supplies, pesticides, glues, and paints kept and used in reasonable and customary quantities, which shall be reported to the Installation by Lessee for approval by the Government, and listed on the “Environmental Management and Impact Mitigation Plan” in Exhibit C-3); (c) activities that the Government determines adversely affect the security of the Installation or the health, safety, morals, welfare, morale, and discipline of the Armed Forces, such as the sale or use of drug abuse paraphernalia, or illicit gambling; (d) partisan political activities; or (e) Activities by persons or entities advocating the overthrow of the United States.

Section 1.04 **Quiet Use and Enjoyment**. The Government agrees that, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises and other rights granted hereunder in accordance with the terms and conditions of this Lease. The Lessee hereby acknowledges and agrees that consequences of military activity in the ordinary course of missions and operations on a military installation (e.g., jet noise) do not constitute interference, nuisance, or hindrance of any kind.

ARTICLE II.

TERM OF LEASEHOLD

Section 2.01 **Term**. The term of this Lease shall commence on the Effective Date (as hereinafter defined) and end on the date that is ten (10) years thereafter unless sooner terminated in accordance with the terms and conditions hereof (the “**Expiration Date**”). The period from the Effective Date through the Expiration Date shall be referred to herein as the “**Term**.”

Section 2.02 **Holdover Tenancy**. Without limiting the foregoing and notwithstanding anything herein to the contrary, in the event that Lessee fails or refuses to vacate and surrender the Leased Premises after the Expiration Date, the Government, in its sole and absolute discretion, may elect to treat that failure or refusal as an automatic month-to-month holdover tenancy, subject to all the terms and conditions of this Lease. The terms and conditions of this Section shall survive expiration of this Lease.

ARTICLE III.

RENT

Section 3.01 **Annual Rent**. As permitted under 10 U.S.C. § 2667 (k), Lessee shall pay to the Government annual rent in the amount of ZERO AND 00/100 DOLLARS (\$0.00) (the “**Annual Rent**”).

Section 3.02 **Annual Rent Increase**. None.

Section 3.03 **Additional Rent**. All sums, liabilities, obligations, and other amounts which Lessee is required to pay or discharge pursuant to this Lease, including taxes (if any) and insurance premiums, in addition to Annual Rent, together with any finance charge, late fees, or other sums which may be added for late payment thereof, shall constitute “**Additional Rent**” hereunder. The Annual Rent, Additional Rent, and any other sums required to be paid by Lessee to Lessor hereunder are collectively referred to as the “**Rent**”. All Rent shall be paid without deduction, offset, prior notice, or demand as directed pursuant to this Lease.

Section 3.04 **Late Charges and Default Interest**. If any installment of Rent is not paid within ten (10) business days after its due date, then such arrearage shall, consistent with the Debt Collection Act of 1982 (31 U.S.C. § 3717), (i) bear 5% interest from the due date for amounts past due to the federal government until paid in full; (ii) include a reasonable administrative charge to cover the costs of processing and handling delinquent debts, but not in excess of \$100.00; and (iii) include an assessment of an additional 5% penalty charge on any portion of a debt that is more than 90 days past due.

ARTICLE IV.

IMPROVEMENTS

Section 4.01 **Lessee Improvements**. Prior to any improvements or alterations and any repairs beyond preservation and maintenance of existing operating conditions to the School, Lessee must submit plans and designs for any proposed improvements, alterations or changes to the Leased Premises for the Government's review and evaluation. After completion of the review and evaluation process and in accordance with all applicable laws, a "**Notice to Proceed**" with all applicable conditions will be issued by the Government to Lessee. The Notice to Proceed will not be unreasonably conditioned, delayed or withheld. Such improvements or alterations to be constructed by Lessee after its receipt of the Notice to Proceed (the "**New Improvements**," together with the improvements existing as of the Effective Date are collectively referred to herein as the "**Improvements**" or the "**School**") must comply with all Applicable Laws (as hereinafter defined) and Government requirements.

Section 4.02 **Government Approval of Certain Construction Related Matters**. All matters of ingress, egress, contractor haul routes, construction activity, and disposition of excavated material, if and to the extent expressly permitted by this Lease, shall be approved in advance and in writing by the Government.

Section 4.03 **Lessee Installation of Machinery, Lessee Equipment and Removable**. During the Term, the Lessee shall have the right at its sole cost and expense, to install such of its own machinery and equipment ("**Lessee Equipment**"), to make improvements, and to attach such removable fixtures including but not limited to Lessee Equipment in, on, below or upon the Leased Premises as may be necessary for its use of the Leased Premises pursuant to this Lease; and to remove such machinery, Lessee Equipment, minor improvements, and removable fixtures at any time prior to the expiration or earlier termination by the Lessee of this Lease. In the event of termination of this Lease by the Government, the Lessee shall have a reasonable period of time following the effective termination date to remove such property, including the Lessee Equipment. The installation of Lessee Equipment shall be done in accordance with Applicable Laws, including the National Electrical Code and other codes that directly relate to the construction, installation, operation and maintenance of communication equipment. If codes differ, the more stringent code shall apply.

Section 4.04 **Compliance with Installation Requirements**. Lessee hereby acknowledges and agrees: (i) no radio or other frequencies which affect or potentially may affect the missions or operations of the Installation shall be emitted from the Improvements; (ii) any artificial lighting on the Leased Premises shall not cause a nuisance, unreasonably interfere with, or otherwise be incompatible with the residential uses on the Installation or near the School; and (iii) Lessee shall manage and operate the Improvements in accordance with the following plans attached hereto and incorporated herein by this reference as **Composite Exhibit C** (collectively the "**Additional Plans**"):

- a. The "**Historic Preservation Plan**" attached hereto and incorporated herein by this reference as **Composite Exhibit C-1** addressing Installation requirements for historic preservation.
- b. The "**Emergency Services Plan**" attached hereto and incorporated herein by this reference as **Composite Exhibit C-2** detailing how law enforcement and other

emergency services (e.g., police, fire protection, hazmat, etc.) will be provided to the Leased Premises and how, for those emergency services the Government may, but is not obligated to, agree to provide, reimbursements to the Government will be calculated. All reimbursements for emergency services provided by the Government to the Leased Premises, if any, shall be paid as Additional Rent.

- c. The “**Environmental Management and Impact Mitigation Plan**” attached hereto and incorporated herein by this reference as **Composite Exhibit C-3** addressing environmental matters of concern to the Government, including environmental mitigation requirements, and which includes a spill plan, asbestos disposal plan, Pesticide Management Plan (as hereinafter defined), and soils management plan all as may be necessary or required by the Government..

Section 4.05 **Access and Transportation Improvements**. Lessee shall, at its sole cost and expense, operate, repair and maintain all pedestrian and vehicular access and transportation improvements (e.g., sidewalks, bus loops, parent drop off loop, etc.) on the Leased Premises. Lessee, its employees, representatives, contractors, agents, licensees and invitees shall have ingress/egress access to the Leased Premises via the Craycroft Main Gate to the Installation located on 2775 S. Craycroft Street, proceed Left on Quijota Blvd, Left on Crusader Rd and Left on Lightning St to subject property as depicted on **Exhibit D** attached hereto and incorporated herein by this reference (the “**Access Areas**”). The Government shall not be responsible nor incur any cost or expense for providing transportation or bussing services for the Lessee or the Leased Premises or for the benefit of the Lessee’s operations thereon. In the event Lessee provides bus or transportation services to its students, Lessee shall do so at its sole cost and expense, and shall ensure that any such bus or transport servicing students outside the Installation access the Leased Premises via the Access Areas.

Section 4.06 **Utilities**. Lessee hereby acknowledges and agrees that the Government shall not have any obligation or liability for the provision of utility services (including, without limitation, electric, gas, communications, potable water, and wastewater) to the Leased Premises or the School. Lessee shall be solely responsible for designing, permitting, and constructing all infrastructure and systems necessary for utility service connections and delivery to the Leased Premises and for obtaining such utility services from available local providers. Lessee shall be responsible for any impact fees, or connection, or tap fees for connection of utilities to the Leased Premises. Without limiting the forgoing, the Government may, via written agreement pursuant to an in accordance with all the terms, conditions, and requirements of applicable laws and AF directives and instructions (including, but not limited to, *Air Force Instruction 32-1061*,), provide Lessee with utility services on a reimbursable basis.

Section 4.07 **No Liens**. Lessee shall keep the Leased Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted for Lessee. If any such mechanic’s, construction, or materialman’s liens shall be recorded against the Leased Premises, Lessee shall, immediately upon receiving notice of the same, cause such lien to be promptly removed, or transferred to a lien transfer bond or other security available and Lessee hereby agrees to indemnify the Government against all liability occasioned by or resulting from any improvements or alterations to the Leased Premises. Notice is hereby given that neither the Government or the Leased Premises shall be liable for any labor, services, or materials furnished to Lessee upon credit and that no construction or other lien for any such

labor, services, or materials shall attach to, encumber, or in any way affect the reversionary or other estate or interest of the Government in and to the Leased Premises.

Section 4.08 **Payment and Performance Bonds**. Prior to commencement of construction on the Leased Premises, which the Government, in its discretion, reasonably considers material or substantial, and as a condition to obtaining a Notice to Proceed, Lessee shall provide to the Government one or more bonds obtained by the general contractor of Lessee or its sublessee (and not from any subcontractor of that general contractor) ensuring payment and performance of that general contractor's obligations under the prime construction contract directly between that general contractor and the Lessee with respect to the construction covered by the Notice to Proceed to be issued pursuant to this Lease. Each of the bonds must: (i) be issued by a Qualified Surety (as hereinafter defined); (ii) be in a form satisfactory to the Government and run in favor of the Government; (iii) be in the amount of the total cost of constructing the portion of the Improvement covered by such Notice to Proceed, as such cost is stipulated in the construction contract between the Lessee and its general contractor; (iv) guarantee the performance of the contract for the construction of such Improvement in accordance with final construction plans and specs that have been approved by the Installation Commander (or his duly authorized representative); and (v) provide that the Government is an obligee on such bonds as its interests may appear. A "Qualified Surety" is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the State of Arizona and possessing a rating of A/VIII or better in A.M. Best's Insurance Reports.

ARTICLE V.

MAINTENANCE AND REPAIR

Section 5.01 **Maintenance and Repair**. During the Term, Lessee shall, at its sole cost and expense, keep and maintain the Leased Premises and the Improvements, including without limitation the foundation of any buildings or systems, electrical, plumbing, security systems, fixtures, trade fixtures, machinery, furnishings, signage, and all other portions of the Improvements, in good repair and working order (reasonable wear and tear excepted), and in a clean, properly maintained safe condition. All maintenance, repairs and replacements shall be of quality at least equal to the original in all materials and workmanship. Lessee shall promptly repair, at its expense and in a manner reasonably acceptable to the Government, any damage to Government's property or to the property of others caused by Lessee or its officers, agents, employees, invitees, licensees, and contractors. Lessee shall keep and maintain all artificial turf, grass and landscaping on the Leased Premises in good working order and repair and in a neat and attractive manner consistent with public school standards and practices. The Government shall have the right to enter the Leased Premises at any time during business hours (9:00 am to 5:00 pm, Monday through Friday) and upon at least twenty four (24) hours advance written notice to Lessee to determine whether or not Lessee is complying with its maintenance obligations hereunder. Notwithstanding the foregoing, however, in the event of an emergency or an issue of national security (as determined by the Government in its sole and absolute discretion) directly affecting the Leased Premises, the Government may enter the Leased Premises at any time and shall not be required to provide any notice to Lessee prior to entering the Leased Premises.

ARTICLE VI.

TAXES

Section 6.01 **Taxes and Assessments.** Lessee, a public school district and political subdivision of the State of Arizona does not pay any taxes and assessments. Lessee covenants and agrees that it shall not, by its action or inaction, cause imposition of a lien on the Leased Premises or Improvements for delinquent taxes. The provisions of this paragraph shall survive the expiration or prior termination of this Lease.

ARTICLE VII.

ENVIRONMENTAL

Section 7.01 **Environmental Requirements.** During the Term of this Lease and in exercising the rights granted herein or carrying out actions contemplated hereby, Lessee shall be responsible for compliance, at its sole cost and expense, with all Environmental Laws applicable to Lessee's use of the Leased Premises. As used herein, "**Environmental Laws**" shall mean all applicable statutes, regulations, requirements, rules, guidelines, codes, policies, orders, decrees, approvals, plans, authorizations, and similar items, and all amendments thereto, and all applicable judicial, administrative and regulatory decrees, judgments, and orders, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, the State in which the Leased Premises is located and its political subdivisions, relating to the protection or regulation of human health, the environment or natural resources, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**") (42 U.S.C. §§ 9601 et seq.); Resource Conservation and Recovery Act ("**RCRA**"); the Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 1101 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Occupational Safety and Health Act (29 U.S.C. §§ 655 et seq.); the Construction Safety Act (40 U.S.C. §§ 333 et seq.); the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.); the Endangered Species Act (16 U.S.C. §§ 1531 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); National Environmental Policy Act, Executive Order 11990 Protection of Wetlands; Executive Order 11988 Floodplain Protection; and all applicable state and local statutes and ordinances applicable to the Leased Premises and the use thereof and operations thereupon as may be amended from time to time during the Term of this Lease. The Environmental Laws shall also include: (a) all requirements pertaining to reporting, warnings, licensing, permitting, investigation, remediation and removal of emissions, discharges, releases, or threatened releases of Toxic or Hazardous Wastes, Substances or Materials (each as defined by federal law), whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, land or any other environmental media, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Toxic or Hazardous Wastes, Substances or Materials, and (b) all requirements pertaining to the health and safety of employees or the public. Lessee shall not store, treat, or dispose of any Hazardous Substances on the Leased Premises. As used herein, "**Hazardous Substances**" are defined as any contaminant, toxic or hazardous waste, or any other substance the removal of which is required or the use of which is restricted, prohibited or penalized under any Environmental Laws, including, without limitation, asbestos or petroleum products. Further, during the Term of this Lease, neither party to this Lease nor any agent or party acting at the direction or with the consent of either party hereto shall use, store, handle or dispose of by any means any Hazardous Substances at the Leased Premises, except that Lessee may be entitled to

use, store, handle or dispose of Hazardous Substances of the type and in the quantities typically used by companies performing similar services in accordance with all applicable Environmental Laws, if consented to and approved in writing by the Government. Except as otherwise expressly provided in this Lease, Lessee shall not be liable, and does not assume any liability or responsibility (including without limitation any liability or responsibility to undertake environmental response, remediation, or cleanup), whether now or in the future, for the violation of any Environmental Law by reason of any state of facts existing on or before the Effective Date of this Lease or for environmental impacts, liability or damage arising out of the presence of Hazardous Substances on the Leased Premises on or before the Effective Date of this Lease or caused by Government's manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances on any portion of the Leased Premises or any other real property owned or controlled by Government.

Section 7.02 **Natural and Cultural Resources**. During the term of this Lease and in exercising the rights granted herein or carrying out actions contemplated hereby, Lessee shall be responsible for compliance, at its sole cost and expense, with the Installation's Integrated Natural Resources Management Plan ("INRMP") and Integrated Cultural Resources Management Plan ("ICRMP"), as may be amended from time to time. Government will provide Lessee a reasonable opportunity to review and comment on any proposed revisions to the INRMP or ICRMP that may affect the Leased Premises. Lessee shall not knowingly remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Leased Premises, Lessee shall immediately notify Government and take reasonable steps in accordance with Applicable Laws to protect the site and the material from further disturbance until Government gives clearance to proceed. Lessee will use all reasonable means available to protect environmental and natural resources, consistent with Applicable Laws and the requirements of this Lease. Where damage nevertheless occurs, arising from exercising the rights granted herein or carrying out actions contemplated hereby, the Lessee shall be fully liable for any such damage.

Section 7.03 **Installation Restoration Activities**. On or before the Effective Date, the Government shall provide Lessee access to the Installation Restoration Program ("IRP") records for the Installation for Lessee's review, if any, and thereafter shall promptly provide to Lessee a copy of any amendments to or restatements of the IRP records affecting the Leased Premises. Lessee hereby acknowledges and understands that response actions to be undertaken with respect to the IRP, including any future amendments or restatements, may impact Lessee's quiet use and enjoyment of the Leased Premises.

Lessee agrees that, notwithstanding any other provision of this Lease, the Government shall have no liability to Lessee should implementation of the IRP or other environmental cleanup requirements, whether imposed by law, regulatory agencies, or the Department of Defense, interfere with Lessee's use of the Leased Premises. Neither Lessee nor its invitees or licensees shall have any claim against the United States, or any agent, employee, contractor, or subcontractor thereof, on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the IRP or under this Lease or otherwise. The Government and agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to Lessee, to enter upon the Leased Premises: (i) to

conduct investigations and surveys, including drilling, soil and water samplings, test-pitting, soil borings, and other activities related to the IRP; (ii) to inspect field activities of the Government and its contractors and subcontractors in implementing the IRP; (iii) to conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted by the Government to the U.S Environmental Protection Agency or the State of Arizona; and (iv) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities. The Government shall, to the extent practicable, coordinate any inspection, survey, investigation, or other response or remedial actions with representatives designated by Lessee. Lessee shall comply with any health or safety plan in effect under the IRP (to the extent Lessee has received notice thereof), and any remediation or response agreement between the Government and environmental regulatory authorities (to the extent Lessee receives notice thereof, if the agreement is not of public record) during the course of any Government response or remedial actions. Lessee shall cooperate and take all reasonable actions to mitigate Government response actions and costs.

Section 7.04 **Required Action and Notices**. Before storing, mixing, or applying any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, Lessee shall prepare, and submit to the Installation Civil Engineer Commander for review and approval, a plan for storage, mixing, and application of pesticides (“**Pesticide Management Plan**”), such approval not to be unreasonably withheld, delayed or conditioned. The Pesticide Management Plan shall comply with Applicable Laws. Lessee shall store, mix, and apply all pesticides within the Leased Premises in strict compliance with the Pesticide Management Plan. Pesticides shall be applied only by a licensed applicator. If at any time during the Term of this Lease, either Party shall become aware, or have reasonable cause to believe, that any toxic or hazardous wastes, substances, or materials have been released or have otherwise come to be located on or beneath the Leased Premises in amounts greater than either the reportable quantities or a level requiring response action(s) under Environmental Laws, such Party shall immediately upon discovering the release or the presence or suspected presence of the toxic or hazardous wastes, substances, or materials, give written notice of that condition to the other Party. In addition, the Party first learning of the release or presence of any toxic or hazardous wastes, substances, or materials on or beneath the Leased Premises, shall immediately notify the other Party in writing of: (a) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Applicable Law; (b) any claim made or threatened by any person against Government, Lessee, or the Leased Premises arising out of, or resulting from, the release or presence of toxic or hazardous wastes, substances, or materials; and (c) any reports made to any local, state, or federal environmental agency arising out of, or in connection with, any toxic or hazardous wastes, substances, or materials. Upon reasonable prior written notice to Lessee, the Government may conduct or cause to be conducted an environmental audit or other investigation of the Leased Premises to determine whether Lessee has breached its obligations under this Lease, provided that the Government has received notice or has a reasonable basis to believe that such a breach or a release of toxic or hazardous wastes, substances, or materials on the Leased Premises has occurred. Lessee shall pay all reasonable costs associated with any such investigation conducted by a third party environmental contractor if such investigation shall disclose any such breach by Lessee.

Section 7.05 **Environmental Reports**. Lessee hereby acknowledges receipt of those environmental reports and documents listed in **Exhibit E** attached hereto and incorporated herein by this reference (the “**Government’s Environmental Documents**”) and hereby agrees that the Government's Environmental Documents shall be prima facie evidence of the environmental condition of the Leased Premises as of the dates they were produced. Lessee understands and agrees that provision of the Environmental Documents are not a representation or warranty by the Government regarding the environmental or physical conditions of the Leased Premises, and the Government shall have no liability in connection with the accuracy or completeness thereof. Lessee shall conduct its own investigations and due diligence to determine the environmental condition of the Leased Premises and not rely on the Government’s Environmental Documents to determine suitability of the Leased Premises for Lessee’s use.

Section 7.06 **Environmental Indemnification**. Lessee assumes all responsibility for and indemnifies and holds Government and its employees and contractors harmless from and against any and all debts, obligations, liabilities, fines, penalties, suits, claims, demands, damages, losses, and/or expenses (including reasonable attorneys’ and experts’ fees and expenses) in any way related to, connected with, or arising out of, Lessee’s failure to comply with any Environmental Laws or Lessee’s release of any hazardous substances or environmental condition including pollution of air, water, land or groundwater, resulting from the negligent, reckless, willful, wanton or unlawful acts or omissions by Lessee, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or their respective invitees, giving rise to Government liability, civil or criminal, or other responsibility under Environmental Laws. However, Lessee does not indemnify the Government for liability for environmental impacts and damage arising out of the existence or release of toxic or Hazardous Substances on the Leased Premises or other property caused by the use or release of Toxic or Hazardous Substances by the Government or its employees or contractors on any portion of the Installation, including the Leased Premises, provided such impacts or damage are not exacerbated or contributed to by Lessee. Further, notwithstanding any contrary provision herein, the foregoing indemnity obligation of Lessee shall not apply or extend to any suits, claims, causes of action, liabilities or damages to the extent that they would be barred or limited by Government’s right or defense of sovereign immunity, whether or not Government actually asserts such right or defense of sovereign immunity, nor shall such indemnity obligation be construed to indemnify the Government against the negligent (comparatively and proportionately), reckless, willful, wanton or unlawful acts or omissions of the Government or its employees, agents, servants, guests, invitees or contractors. The Government acknowledges that, pursuant to section 120 of CERCLA, the Government is subject to liability under section 107 of CERCLA to the extent that it is responsible for the release or disposal of a Hazardous Substance on the Leased Premises. The Government agrees, as between the Parties, that it will not allege, or seek to have others allege, that Lessee is a potentially responsible party solely due to the presence of a Hazardous Substance on the Leased Premises on the Effective Date, provided that Lessee has not by its acts or omissions caused a further release of such Hazardous Substance, released or disposed of new or additional Hazardous Substances, or increased the cost of a required response action. Nothing in this acknowledgment shall be construed to affect the liability of any person or entity, including Lessee, under sections 106 or 107 of CERCLA or relieve Lessee of any obligation or liability Lessee might have or acquire with regard to third parties or regulatory authorities by operation of

law. This provision of indemnification shall survive the expiration or earlier termination of this Lease.

ARTICLE VIII.

GENERAL LIABILITY AND INSURANCE

Section 8.01 **Waiver**. Except as otherwise provided in this Lease or resulting from a breach of this Lease by Government, Lessee and its officers, members, partners, agents, employees, sublessees, licensees, invitees and contractors, and all persons claiming by and through them hereby waive, release and knowingly and voluntarily assume the risk of all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, and other expenses (including attorneys' and experts' fees and expenses) against the Government and its employees, contractors and subcontractors arising from bodily injury or death or damage to the property of any person and damage to the property of any person occurring in or at the Installation or arising from the exercise of the rights granted to Lessee or performance of any obligation required by or for the Lessee under this Lease, including: (i) any interruption or stoppage of any utility services; (ii) business interruption or loss of use of the Leased Premises; (iii) any latent or patent defect in the Lease Premises; (iv) interference with a Lessee's business, loss of occupancy or quiet enjoyment; and (v) any other loss resulting from the proper exercise by the Government of any right or the performance of any obligation under this Lease. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the Government, which immunity is hereby reserved to the Government. This covenant in this Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 8.02. **No Government Liability**. Except as otherwise provided in this Lease, the Government shall not be responsible for damage to property or injuries or death to persons that may arise from, or be attributable or incident to, the condition or state or repair of the Leased Premises, or the use and occupation of the Leased Premises, or for damages to the property of the Lessee, or injuries or death of the Lessee's officers, agents, servants, employees, or others who may be on the Leased Premises at their invitation or the invitation of any one of them. It is the intent of the Parties that the Lessee will, to the extent permitted by law, hold harmless the Government for any loss or damage arising out of the use of the Leased Premises.

Section 8.03. **Lessee Liability**. Except as otherwise provided in this Lease, and the extent permitted by law, Lessee assumes all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the Leased Premises by the Lessee, the Lessee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Leased Premises for the purpose of performing official duties) who may be on the Leased Premises at their invitation or the invitation of any one of them (the "Lessee Parties"), or the activities conducted by or on behalf of the Lessee Parties under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, bodily injury, or death caused by, or occurring as a consequence of, such possession and/or use of the Leased Premises by the Lessee Parties, or the conduct of activities or the performance of responsibilities under this Lease. Upon the request of the Government, Lessee agrees to request the execution of hold harmless agreements from the Lessee's

employees, students, contractors, vendors, officers, agents, servants, or other invitees, known by Lessee to be and remain in attendance on the Leased Premises for the entire period of daily school operations; this does not include persons or entities who may be on the Leased Premises for periods of less than the entire period of daily school operations. Such agreements will be provided by the Government for Lessee's use. If upon request of the Government to obtain such agreements and upon request of Lessee to execute such agreements, any individual refuses to execute such agreement, the Government will not hold Lessee in violation of the terms of this Lease, nor, because of such refusal alone, deny the person or entity access to the Installation or Leased Premises; however, the Lessee will notify the Government of the persons and/or entities refusing to sign the agreements. Nothing herein shall require Lessee to coerce or encourage parties to execute these agreements.

Section 8.04 **Insurance**. Upon the Effective Date and throughout the Term of this Lease, Lessee shall, at a minimum and, at its sole cost and expense, obtain and maintain in force during the Term of this Lease, the types of insurances with such coverage and in such form as specified in Exhibit H attached hereto and incorporated herein by this reference (collectively, the "**Required Insurances**," **Exhibit F**). All Required Insurance to be maintained hereunder shall, unless otherwise expressly stated herein, be primary and not contributory with respect to any other insurance any insured may possess (including any self-insured retention or deductible).

Section 8.05 **Certificates of Insurance/Proof of Self-Insurance**. Prior to entering upon the Leased Premises, and no later than thirty (30) calendar days after the Effective Date, and within thirty (30) calendar days after the expiration of any policy or policies required hereunder, Lessee shall furnish an original certificate of insurance/proof of self-insurance to the Government evidencing such coverage confirming that the policy or policies will not be cancelled or modified nor the limits thereunder decreased without thirty (30) calendar days' prior written notice thereof to the Government. Lessee shall also provide the Government with copies of endorsements and other evidence of coverage set forth in the certificate of insurance.

ARTICLE IX.

DESTRUCTION OF IMPROVEMENTS

Section 9.01 **Obligations of Lessee**. Except as may otherwise expressly provided in this Lease, Lessee shall bear all risk of loss or damage or destruction to the Leased Premises and Improvements, including any buildings, fixtures, or other property thereon, arising from any fire, flood, or other peril or casualty. In the event the Leased Premises or Improvements are damaged or destroyed in whole or in part by fire, flood, or other peril or casualty, Lessee shall give prompt written notice thereof to Government and shall promptly thereafter restore the Leased Premises and Improvements to the condition they existed in immediately prior to such damage or destruction. Damage to the Leased Premises or Improvements shall not cause an abatement of Lessee's obligation to pay Rent to the Government or to make any other payments required to be made by Lessee under this Lease.

Section 9.02 **Extensive Damage or Destruction**. Without limiting the foregoing and, in the event the Parties mutually agree that the magnitude of damage or destruction of the Leased Premises and/or the Improvements is so extensive that they cannot be used by Lessee for the

Permitted Use and that their repair, rebuilding, or replacement cannot be substantially completed within twelve (12) months after the occurrence of the damage or destruction, either Party may terminate this Lease by providing written notice thereof to the other Party. Upon receipt of said notice, this Lease shall no longer be of any force or effect and the Parties shall be relieved of all obligations hereunder, except for those provisions which expressly survive termination.

Section 9.03 **Application of Insurance Proceeds**. All insurance proceeds received by Lessee as a result of any casualty loss, damage or destruction of the Leased Premises and/or the Improvements that occurred during the Term of this Lease shall be applied in the following order of priority: (a) to restoring the damaged areas and removing any related debris to a substantially similar condition as same were prior to such damage or destruction; (b) to repairing, rebuilding, and/or replacing the Leased Premises and the Improvements to a substantially similar condition as same were prior to such damage or destruction; and (c) the excess, if any, shall be paid to Lessee. This provision shall survive expiration or earlier termination of this Lease.

ARTICLE X.

REPRESENTATIONS AND WARRANTIES

Section 10.01 Lessee hereby represents and warrants to the Government as follows:

- a. Lessee has entered into this Lease based on its own full investigation of all facts relating to, and conditions underlying, the Leased Premises and its development and use of the Leased Premises, including environmental conditions, and that it has solely relied on its own investigation.
- b. Lessee's execution, delivery, and performance of this Lease will not violate any provision of law, any court order or other government agency order, or any of the organizational or other governing documents of Lessee, or any agreement or other instrument to which Lessee is now a party or by which it or any of its properties or assets is bound, or be in conflict with or constitute a default (with due notice or the passage of time or both) under any of the foregoing or create of any encumbrance on any of the property or assets of Lessee, except as permitted by this Lease or otherwise approved by the Government.
- c. There are no actions, suits or proceedings pending or, to Lessee's knowledge, threatened against, by or affecting Lessee which could have a material adverse effect on the financial condition of Lessee, or the transactions contemplated by this Lease, or would affect or bring into question the validity or enforceability of this Lease or of any action to be taken or obligation to be performed by Lessee hereunder, in any court or before any governmental entity, domestic or foreign.
- d. The execution and entry into this Lease, the execution and delivery of the documents and instruments to be executed and delivered by Lessee in connection with this Lease, and the performance by Lessee of its obligations and duties hereunder and of all other acts necessary or appropriate for fulfillment of the requirements and actions contemplated herein and provided for in this Lease, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instruments which Lessee is a party, any judicial order or judgment of any nature by which Lessee is

bound; and this Lease, and the covenants and agreements of Lessee herein, are the valid and binding obligations of Lessee, enforceable in accordance with their terms.

- e. There is no completed, pending or, to Lessee's knowledge, threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting Lessee.
- f. Lessee is a public school institution, specifically a unified school district, duly organized and validly existing under the laws of the State of Arizona. The undersigned representative of Lessee has been duly authorized to execute this Lease and the documents and instruments to be executed by Lessee in connection with this Lease and to bind Lessee hereunder. There is no authorization, consent, approval, order, registration, declaration, or filing required for the execution of this Lease that has not been made or obtained.

ARTICLE XI.

DEFAULT AND REMEDIES; SURRENDER

Section 11.01 **Event of Default.** The occurrence of any of the following shall constitute an event of default (an "**Event of Default**") by Lessee under this Lease:

- a. Failure of Lessee to make any cash payment of Rent (inclusive of Additional Rent) required to be made in cash or any other monetary payment required to be made by Lessee hereunder when due, which failure is not remedied within ten (10) days after written notice of such failure is provided to Lessee ("**Notice of Default**");
- b. Failure of Lessee to keep, observe, or perform any term, condition, or provision this Lease, which failure is not remedied within (30) days after receiving Notice of Default, provided, however, if the failure cannot reasonably be cured within thirty (30) days, the Lessee shall not be in default so long as Lessee commences to cure the default within such thirty (30) day period and thereafter diligently and in good faith proceeds to cure the default within a reasonable time thereafter not to exceed ninety (90) days following receipt of the Notice of Default;
- c. Commencement by or against Lessee of an insolvency or bankruptcy proceeding, including without limitation, a proceeding for liquidation, reorganization, or for the readjustment of indebtedness, or the insolvency of the receiver, trustee or custodian; provided, however, that any of the foregoing set forth in this subsection which is commenced by a person other than Lessee shall not constitute and Event of Default if it is discharged within ninety (90) days after it is made;
- d. Making of any offer or giving of any gratuities in the form of entertainment, gifts, or otherwise, by the Lessee, or any agent or representative of the Lessee, to any officer or employee of the Government with a view toward procuring an agreement or procuring favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement; and

- e. The placement of any lien upon the Leased Premises, by Lessee or by Lessee's contractors, sub-contractors, agents, representatives, or employees in connection with Lessee's exercise of the rights granted herein, which is not otherwise expressly permitted by this Lease and the failure to cause such lien to be bonded off or otherwise discharged within sixty (60) days.

Section 11.02 **Remedies and Termination.**

- a. Remedies. Upon an Event of Default and upon the expiration of any applicable cure period provided for in this Lease, the Government may in its sole and absolute discretion pursue any remedies as may be available to the Government at law or in equity.
- b. Termination.
 - a. Upon an Event of Default and upon the expiration of any applicable cure period provided for in this Lease, the Government may terminate the Lease and re-enter and repossess the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises, or any part thereof, without being liable for prosecution or any claim of damage therefor.
 - b. This Lease may be terminated by the Government for national defense or national security purposes, at the sole discretion and determination of the Secretary of the Air Force. If the Secretary makes such a determination, the Government will give the Lessee at least sixty (60) days prior notice, unless the determination involves what the Secretary of the Air Force deems an emergency, in which case the Lessee agrees to vacate and surrender the Leased premises on ten (10) days' prior notice. The Lessee agrees that the determination of the Secretary of the Air Force will be unchallengeable.

The Government shall have the right to recover all unpaid Rent and other payments earned by Government prior to the date of termination of the Lease or date of repossession of the Leased Premises (whichever is earlier), and all of the Government's damages, costs and expenses incurred, including reasonable attorneys' fees (including paralegal fees and expert fees), arising or resulting from the Event of Default, including costs and expenses in connection with repossession of the Leased Premises, the recovery of sums due under this Lease, and re-letting the Leased Premises, which costs and expenses shall be immediately due the Government from Lessee. Unless expressly provided otherwise herein, no action taken by the Government pursuant to this Section 11.02 shall be deemed to terminate this Lease unless written notice of termination, (a "**Notice of Termination**") is given by the Government to Lessee.

The rights and remedies herein conferred upon or reserved to Government shall not be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to other remedies provided in this Lease, Government shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions

of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Government at law or in equity.

Section 11.03 **No Waiver**. No waiver of any covenant or condition or the breach of any covenant or condition of this Lease shall constitute a waiver of any subsequent breach of such covenant or condition or justify or authorize the non-observance on any other occasion of the same or of any other covenant or condition hereof. The acceptance of Rent or other payments from Lessee by the Government at any time when Lessee is in default under this Lease shall not be construed as a waiver of such default or of Government's right to exercise any remedy arising out of such default, nor shall any waiver of indulgence granted by the Government to Lessee be taken as an estoppel against the Government, it being expressly understood that the Government may at any time thereafter, if such default continues, exercise any such remedy in the manner herein provided or as otherwise provided by law or in equity.

Section 11.04 **Surrender of Leased Premises**. Upon expiration or earlier termination of this Lease, Lessee shall vacate and surrender the Leased Premises to the Government pursuant to and in accordance with the terms and conditions of this Section. The terms and conditions of this Section, inclusive of all subsections and sub-subsections, shall survive expiration or earlier termination of this Lease.

- a. **Retention of Improvements**. The Government, in its discretion, may retain all or any part of the Improvements upon the expiration or earlier termination of this Lease. The Government may exercise the aforementioned right by providing written notice of the same to Lessee two (2) years prior to the Expiration Date or in the Government's Notice of Termination. Lessee shall execute any and all documentation necessary to convey all right title and interest in said Improvements to be so retained by the Government.
- b. **Demolition and Removal of Improvements**. In the event the Government does not exercise its right to retain the Improvements, then within one hundred eighty (180) days after the Expiration Date or termination date of this Lease (the "**Removal Period**"), Lessee shall demolish and/or remove, any and all the improvements placed, constructed or installed on the Leased Premises by or for the benefit of Lessee and any and all improvements placed, constructed or installed on the Installation (outside the Leased Premises) by Lessee or for the benefit of Lessee and Lessee shall restore the Leased Premises and the Access Area(s) to a condition substantially similar to the condition they existed in on the Lease Effective Date as evidenced by the "**Initial Physical Condition Report**" attached hereto and incorporated herein as **Exhibit G** and the Environmental Documents, reasonable wear and tear excepted. Notwithstanding the foregoing or anything to the contrary in this Lease, the Government may, in its sole discretion, require Lessee to remove all improvements from the Leased Premises, whether or not existing as of the Effective Date, and restore the Leased Premises to the condition that existed before the construction of improvements on the Leased Premises, whether such construction was performed by Lessee or a predecessor of Lessee in the operation of school(s) on the Leased Premises. If the Lessee shall fail comply with the requirements of this section, then, at the option of the Government, the Improvements shall either become the property of the United States

without compensation or cost to the Government, or the Government may cause it to be removed and the Leased Premises and Access Area(s) to be so restored at the expense of the Lessee, and no claim for damages against the United States or its officers, employees, or agents shall be created by or made on account of such removal and restoration work. Lessee's surrender of the Improvements shall not be deemed to be a payment of rent in lieu of any Rent due under this Lease.

- c. Demolition Reserve Account. To secure performance of the Lessee's requirement to demolish and remove all Improvements and restore the Leased Premises and the Access Area(s), Lessee shall, no later than two (2) years prior to the Expiration Date or no later than thirty (30) days after receipt of a Notice of Termination from the Government or any delivery of notice of termination by Lessee to the Government pursuant to this Lease, establish an escrow account into which Lessee shall deposit all funds necessary and required to comply with the requirements of this Section (the "**Demolition Reserve Account**"). The Demolition Reserve Account shall be established at a national banking institution or commercial escrow holder approved by the Government. The amount of funds deposited into the Demolition Reserve Account shall be established by a written estimate issued by a qualified construction and demolition expert approved by the Government, to be reviewed and approved by the Government, for all costs of demolishing and removing all Improvements on the Leased Premises and the Access Area(s) and restoring the Leased Premises and Access Area(s) to a condition substantially similar to the condition they were in on the Effective Date, reasonable wear and tear excepted (the "**Demolition Cost Estimate**"). The Demolition Reserve Account shall be established by written escrow agreement mutually agreed and entered into by the Lessee and the Government (the "**Demolition Reserve Account Escrow Agreement**"). The Demolition Reserve Account Escrow Agreement shall provide that funds in the Demolition Reserve Account shall be used solely to fulfill Lessee's obligations under this Section and provide that all disbursements from the Demolition Reserve Account shall be made upon Lessee's written direction to the escrow holder with the consent of the Government, provided that upon the occurrence of an Event of Default and the expiration of any applicable cure period provided for in this Lease, all disbursements from the Demolition Reserve Account shall be made solely upon the Government's written direction to the escrow agent without the consent of Lessee, or any other person. The Demolition Reserve Account Escrow Agreement shall provide that Lessee grants to the Government a continuing first lien security interest in and to all of Lessee's right, title, and interest in the Demolition Reserve Account, as well as all funds held, or designated for deposit in the Demolition Reserve Account, whether then owned, existing, or thereafter acquired, and regardless of where located, as security solely for the performance of Lessee's obligations under paragraph (a) of this Section and not as security for any other obligation of Lessee to Government. Lessee shall not grant or allow any other security interests in, liens to, or encumbrances on the Demolition Reserve Account or the funds in it. Lessee shall deliver to the Government for filing one or more financing statements, as necessary, in connection with the Demolition Reserve Account in the form reasonably required by the Government to properly perfect its security interest in the Demolition Reserve Account, and shall keep the lien secured by such statements perfected at all times during the existence of the Demolition Reserve Account in accordance with

the laws of the State in which the Leased Premises is located. Lessee shall deliver to the Government, within ten (10) days after filing, the original and any amendments to, and continuations of, any financing statement. Except as otherwise expressly provided in the Demolition Reserve Account Escrow Agreement, Lessee shall be solely liable to the escrow agent for the fees and expenses related to the Demolition Reserve Account.

- d. Closeout Reports. To demonstrate Lessee's compliance with obligations and requirements of this Lease, Lessee shall, at its sole cost and expense, provide a Final Physical Condition Report and the EBS Reports (each as herein after defined and collectively referred to as, the "**Closeout Reports**"). In the event that the Closeout Reports identify a physical or environmental condition on or at the Leased Premises and/or the Access Area(s) arising or due to the actions or inactions of Lessee, its employees, agents, contractors, licensees, or invitees or otherwise their use and occupancy of the Leased Premises, Lessee shall (at its sole cost and expense) promptly undertake and pursue diligently to completion any remedial measures required by the Government or any governmental authority having jurisdiction.
- i. No later than sixty (60) days prior to the later of: (a) the Expiration Date or earlier termination date of this Lease, or (b) the expiration of the Removal Period, if the Government does not exercise its right to retain any or all the Improvements, Lessee shall prepare a final physical condition report setting for the physical appearance and condition of the Leased Premises as of the Expiration Date of this Lease or the expiration of the Removal Period, whichever is later, to be mutually agreed to and signed by the Parties (the "**Final Physical Condition Report**"). The Government may compare the Final Physical Condition Report to the Initial Condition Report to identify changes regarding the physical condition of the Leased Premises and the Access Area(s) during the Term of this Lease.
 - ii. No later than sixty (60) days prior to the latter of: (a) the Expiration Date or earlier termination date of this Lease, or (b) the expiration of the Removal Period, if the Government does not exercise its right to retain any or all the Improvements, Lessee shall commence a Phase I Environmental Baseline Survey ("**Phase I EBS**") in accordance with the most current Air Force Instruction (AFI) 32-7066 and with the standards recognized or required by the Government at the time. If the Phase I EBS reveals any areas of environmental concern that were not based upon matters disclosed in the Government's Environmental Documents and which, in the Government's reasonable discretion, warrant further investigation, Lessee shall, at its sole cost and expense, commence a Phase II Environmental Baseline Survey ("**Phase II EBS**") in accordance with the reasonable instructions and standards recognized or required by the Government at the time, including sampling and analysis of soil and groundwater, necessary to determine

whether or not contamination has occurred. Copies of the Phase I EBS and the Phase II EBS and any other supplemental EBS reports made pursuant to this Section (collectively, the “**EBS reports**”) shall be certified to be for the benefit of the Government by the duly authorized, licensed, and qualified environmental consultant performing or creating the EBS reports. The Government may compare the EBS Reports to the Environmental Documents to identify any environmental conditions which may have occurred on the Leased Premises and the Access Area(s) during the Term of this Lease.

ARTICLE XII. GOVERNMENT RIGHTS

Section 12.01 **Government Rights Not Impaired.** Nothing contained in this Lease shall be construed to diminish, limit, or restrict the reasonable exercise of any right, prerogative, or authority of the Government over the Leased Premises relating to the security or mission of the Installation, the health, welfare, safety, or security of persons on the Installation, or the maintenance of good order and discipline on the Installation, as established in law, regulation, or military custom.

Section 12.02 **Government Continued Right of Entry.** Subject to the terms and upon the conditions set forth in this Section, any agency of the Government, its officers, agents, employees, and contractors, may enter upon the Leased Premises, at all times for any purposes not inconsistent with Lessee’s quiet use and enjoyment of them under this Lease, including, but not limited to, the purpose of inspection and ensuring that the terms and conditions of this Lease are being met. The Government shall have the right to enter the Leased Premises at any time during business hours (9:00 am to 5:00 pm, Monday through Friday) upon at least twenty four (24) hours advance written notice to Lessee. Notwithstanding the foregoing, however, in the event of an emergency or an issue of the Installation or national security (as determined by the Government in its sole and absolute discretion), the Government may enter the Leased Premises at any time. Further, Government acknowledges and agrees that any entry upon the Leased Premises by Government, its employees, agents, contractors or representatives shall be at their sole risk, and in no event shall Lessee be liable to Government or any such person for any personal injury, loss of life or property damage resulting from or occasioned by their entry onto the Leased Premises, except and to the extent arising from or caused by the negligent or willful acts of Lessee.

Section 12.03 **Installation Security.** The Government reserves the right to exercise its authority to promulgate and enforce security regulations and prohibit, restrict, or regulate access to the Leased Premises for or relating to the security or mission of the Installation, the health, welfare, safety or security of persons on the Installation or the maintenance of good order and discipline on the Installation, as established in law, regulation, or military custom.

Section 12.04 **Installation Access.**

a. Right to Refuse or Limit Access. The Lessee hereby acknowledges and agrees that the Installation is an operating military Installation that could remain closed to the public and accepts that the Lessee's operations may from time to time be restricted temporarily or permanently due to the needs of national security or defense. Access on the Installation may also be restricted due to inclement weather and natural disasters. The Lessee further acknowledges that the Government strictly enforces federal laws and Air Force regulations concerning controlled substances (drugs) and that personnel, vehicles, supplies, and equipment entering the Installation are subject to search and seizure under 18 U.S.C. § 1382. The Government will use reasonable diligence in permitting the Lessee access to the Leased Premises at all times, subject to the terms and conditions of this Lease.

b. No Government Liability. Notwithstanding anything herein to the contrary, the Lessee agrees the Government will not be responsible for lost time or costs incurred due to interference, delays in entry, temporary loss of access, barring of Lessee or its employees, representatives, contractors, agents, invitees, licensees, students, students' relatives or any other person desiring to access the Leased Premises from the base under federal laws authorizing such actions, limitation, or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to, or unavailable at, their work stations, or delay arrival of parts and supplies.

c. Right to Refuse Access. The Government retains the right to refuse access to the Leased Premises. The Lessee hereby agrees and shall cause its assignees, employees, representatives, contractors, agents, invitees, licensees (including, but not limited to, students and students' relatives) to agree, in writing, to abide with all security and access restrictions imposed by the Government in the interest of national security or defense. Lessee understands and agrees that security screening and/or background checks and access badges or passes may be necessary for access to the Leased Premises, and that Lessee and its employees, representatives, contractors, agents, invitees, licensees, students, students' relatives or any other person desiring to access the Leased Premises shall comply with all Air Force and Installation requirements regarding access and security and shall reimburse the Government for all reasonable costs, fees and expenses associated with obtaining access to the Leased Premises. Failure to provide the reimbursement and/or not completing the background check in a timely manner will result in denial of access to the Installation and Leased Premises. Lessee shall furnish all information and documents necessary or required to accomplish said security screenings and/or background checks for Lessee and its employees, representatives, contractors, agents, invitees, licensees, students, students' relatives or any other person desiring to access the Leased Premises.

i. All of Lessee's employees (including, but not limited to, administration and teaching staff) will be subject to an initial, annual, and as otherwise directed by the Installation Commander, a security background check, that includes, but is not limited to, identity proofing, vetting and a fitness determination using the National Crime Information Center (NCIC) database and the Laughlin AFB Suspension, Revocation,

Barment, and Warrant (SRBW) rosters. In the event an individual is on the SRBW or has a warrant out for their arrest, Security Forces will investigate the circumstances of the incident. Lost or stolen access badges or passes must be reported no later than the next duty day to the Installation School Liaison Officer who will immediately notify Security Forces at (520)228-3224.

ii. The Installation Commander may deny access and access credentials based on information obtained during identity vetting that indicates the individual may present a threat to the good order, discipline and morale of the installation. A background check which reveals any disqualifying factors, as identified in the Installation Defense Plan (IDP), will result in the person(s) not being allowed access/entry to the installation.

d. Permanent Removal and Disbarment. Without limiting the foregoing, and notwithstanding anything contained in this Lease to the contrary, the Government has the right at all times to order the permanent removal and disbarment of anyone from the Installation if it determines, in its sole discretion, that the continued presence on the Installation of that person represents a threat to the security or mission of the Installation, poses a threat to the health, welfare, safety, or security of persons occupying the Installation, or compromises good order and/or discipline on the Installation.

e. No Diminishment of Rights. Lessee hereby acknowledges and agrees it shall make no claim to take any legal or judicial action against the Government to claim that anything in this Section of the Lease diminishes, limits, or restricts any right of the Lessee under this Lease or otherwise. In the event that a Lessee employee or contractor (including, but not limited to, administration or teaching staff) is unable to gain access to the Leased Premises pursuant to and in accordance with this Lease, Lessee shall, at its sole cost and expense, obtain a replacement employee or contractor who can gain access to the Leased Premises to ensure effective and continuing operations on the Leased Premises.

ARTICLE XIII. MISCELLANEOUS

Section 13.01 **Recitals.** The recitals made in this Lease are true and correct and are hereby incorporated by this reference.

Section 13.02 **Effective Date.** The “**Effective Date**” of this Lease shall be the last date upon which a Party executes this Lease as shown on the signature pages hereto.

Section 13.03 **Applicable Laws.** At all times during the Term of this Lease, with respect to all actions taken hereunder and in exercising the rights and privileges granted hereby, Lessee shall

comply with and require all of its officers, employees, agents, suppliers, contractors, licensees and invitees to comply with all applicable federal, state, and local laws, rules, regulations, requirements, ordinances, policies, directives and instructions including the Environmental Laws (collectively, the “**Applicable Laws**”), as may be in effect or modified from time to time during the Term of this Lease.

Section 13.04 **Assignment and Subletting.** Lessee shall not transfer, assign, or sublet this Lease, in whole or in part, or any of its rights or obligations hereunder, without the written consent of the Government. Any transfer, assignment or sublease which is not in strict compliance with the terms and conditions of this Section shall be void ab initio, and shall be of no force and effect whatsoever.

Section 13.05 **Leasehold Encumbrances/Financing of Improvements.** Lessee shall not encumber its leasehold estate nor its interest in the Improvements under any circumstances, whether by the execution and delivery of a mortgage, deed of trust or collateral assignment of lease.

Section 13.06 **Bankruptcy.** If any voluntary or involuntary petition is filed under the United States Bankruptcy Code by or against Lessee (other than an involuntary petition filed by or joined in by the Government), Lessee shall not assert, or request any other party to assert, that the automatic stay under the Bankruptcy Code operates to stay or otherwise affect the Government’s ability to enforce any rights it has under any agreement between the Parties, or any other rights that the Government has, whether now or hereafter acquired, against any party responsible for the debts or obligations of Lessee under such agreements. Lessee shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to the Bankruptcy Code, to stay or otherwise affect the Government’s ability to enforce any of its rights under such agreements against any party responsible for the debts or obligations of the Lessee. The covenants in this Section are material in inducing the Government to enter into this Lease and Lessee agrees that no grounds exist for equitable relief that will bar or impede the exercise by the Government of its rights and remedies under such agreements against Lessee or any party responsible for the debts or obligations of Lessee. If any part of Lessee’s interest in the Leased Premises or the Improvements becomes the property of any bankruptcy estate or subject to any state or federal insolvency proceeding, the Government shall immediately become entitled, in addition to all other relief to which the Government may be entitled under law or any agreement between the Parties, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to the Bankruptcy Code to permit the Government to pursue its rights and remedies at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting Lessee’s use of all “cash collateral,” as defined under the Bankruptcy Code. In connection with such Bankruptcy Court orders, Lessee shall not assert in any pleading or petition filed in any court proceeding that the Government lacks sufficient grounds for relief from the automatic stay. Lessee agrees that any bankruptcy petition or other action taken by Lessee to stay, condition, or prevent the Government from exercising its rights or remedies under this Lease or any other agreement between the Parties shall be deemed bad faith. If any voluntary or involuntary petition is filed under the Bankruptcy Code by or against Lessee (other than an involuntary petition filed by or joined in by the Government), Lessee shall notify the Government of such filing within ten (10) business days

after receiving notice. If any part of Lessee's interest in the Leased Premises or Improvements becomes the property of any bankruptcy estate or subject to any state or federal insolvency proceeding, Lessee shall notify the Government of such proceeding within ten (10) business days after receiving notice of the proceeding.

Section 13.07 **Amendment**. This Lease shall not be amended, modified, altered, or changed in any way, nor may any provision contained herein be waived, except by written agreement executed by the Parties hereto.

Section 13.08 **Disputes**. If a dispute regarding this Lease arises, the Parties agree to use their best efforts to resolve the dispute through negotiations and any alternative dispute resolution (ADR) methods they deem to be appropriate and are mutually agreeable in accordance with 5 U.S.C. § 572. The Government's obligation to make any payment arising out of an agreement resolving a dispute under this Lease is contingent upon the availability of funds for such payment. This Lease is subject to Contract Disputes Act of 1978, as amended, 41 U.S.C. §§7101-7109. If the Parties are unable to resolve the dispute following unassisted negotiations and/or the ADR proceeding, the complaining party may submit a written notice of claim to the Government, which must comply with all requirements of 41 U.S.C. §7103. The Deputy Assistant Secretary of the Air Force for Installations (SAF/IEI) shall serve as the "contracting officer" for said claim and shall issue a written, final decision.

Section 13.09 **Headings**. Headings contained in this Lease are for convenience and reference only and in no way define, describe, extend, or limit the scope or content of this Lease nor the intent of any provision hereof.

Section 13.10 **Severability**. In the event any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be enforced to the fullest extent permitted by law.

Section 13.11 **Press Releases**. The Parties share a common desire to present favorable public information regarding the Lease and their association with it. To that end, the Parties shall cooperate with each other in connection with the issuance of such press releases and shall not issue any press release regarding the Lease without the prior consent of the other, which consent shall not be unreasonably withheld or delayed.

Section 13.12 **Binding Effect and Beneficiaries**. The provisions of this Lease shall inure to the benefit and be binding upon the Parties hereto and their respective successors and assigns. Notwithstanding the foregoing, this Lease shall not be assignable except as expressly provided herein. This Lease is entered into for the sole benefit and protection of the Parties hereto and no other person or entity shall have any right of action under this Lease.

Section 13.13 **Exhibits**. All exhibits referred and attached to this Lease are incorporated herein in full by this reference as if each exhibit were set forth in the body of this Lease.

Section 13.14 **No Partnership or Joint Venture**. Nothing set forth in this Lease shall be deemed or construed as creating a legal partnership nor a legal joint venture between the Parties, nor shall it cause any Party to be responsible in any way for the debts and obligations of the other.

Section 13.15 **No Waiver of Federal Supremacy**. Nothing in this Lease shall be construed to constitute a waiver of federal supremacy or federal sovereign immunity by the Government.

Section 13.16 **Anti-Deficiency Act**. Notwithstanding anything in this Lease to the contrary, the cost and expense of performance by the Government of its obligations hereunder, if any, are subject to and dependent upon appropriations being duly made from time to time by Congress for such purposes. Under no circumstances shall failure of the Government to appropriate sufficient funds to meet obligations hereunder constitute a default or require payment or penalty of any kind under this Lease. Without limiting the foregoing, nothing in this Lease shall be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, to the extent the Anti-Deficiency Act applies to such obligations or payments. The Department of the Air Force shall use its best efforts to seek additional appropriations in the event of any deficiency, but nothing contained in this Lease may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. .

Section 13.17 **Anti-Discrimination**. Lessee shall comply with Federal laws, rules and regulations prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status.

Section 13.18 **Minimum Wage Under Executive order 13658 and 29 C.F.R. Part 10**. If the wages of any of Lessee's employees or contractors of any tier will be governed by the Fair Labor Standards Act, the Davis Bacon Act, or the Services Contract Act, Lessee and Government must comply with Executive Order 13658 and 29 C.F.R. Part 10, as may be in effect or modified from time to time during the Term of this Lease.

Section 13.19 **Notices**. Any notices or communications to be given hereunder shall be given in writing and delivered by electronic mail, hand delivery, certified United States mail – return receipt requested, or Federal Express or other similar and nationally recognized overnight express delivery service, in either case with signature required and delivered to the addresses and addressees below, or at such other address or addresses as the Parties may from time to time designate by notice given hereunder. Delivery shall be effective on the date of receipt (or refusal of delivery, if applicable) confirmed by the records of the mailing or delivery service.

If to Government: Davis-Monthan Air Force Base
 Attention: Ms. Elizabeth Fleming
 355 FSS/FSFR
 3515 S. Fifth Street, Bldg 3200
 Davis-Monthan AFB, AZ 85707

With Copies to: Secretary of the Air Force - Office of the Deputy General Counsel
Installations, Energy & Environment Division
Attention: Deputy Chief Counsel
2261 Hughes Avenue, Suite 155
JBSA-Lackland AFB, TX 78236
(or for overnight express delivery)
3515 S. General McMullen, Suite 155
San Antonio, TX 78226-2018

and:

Air Force Civil Engineer Center –Installations Directorate
Attention: AFCEC/CITW, Branch Chief
2261 Hughes Avenue, Suite 155
JBSA-Lackland AFB, TX 78236-9853
(or for overnight express delivery)
3515 S. General McMullen, Suite 155
San Antonio, TX 78226-2018

If to Lessee: Tucson Unified School District
Attention: _____
_____,

With Copies to: _____
Attention: _____
_____,

Section 13.20 **Legislative Jurisdiction**. The United States presently exercises proprietary legislative jurisdiction over the Leased Premises. The Government reserves the right to change the jurisdiction and Lessee shall have no claim against the Government for the exercise of this reserved right to change jurisdiction. So long as the Leased Premises is subject to proprietary jurisdiction, Lessee shall obtain emergency services for the Leased Premises at its sole cost and expense, from the jurisdictional provider.

Section 13.21 **Time is of the Essence**. Time is of the essence with respect to this Lease.

Section 13.22 **Recordation**. This Lease shall not be recorded; however, at Lessee’s request a mutually agreed upon memorandum of this Lease (“**Memorandum of Lease**”), suitable for recordation in the State where the Leased Premises is located, may be executed and acknowledged by the Parties. The Memorandum may be recorded in the applicable Public Records of the County and State in which the Leased Premises is located by the Lessee at its sole cost and expense.

Section 13.23 **10 USC 2662**. This Lease is not subject to the requirements of 10 USC 2662.

Section 13.24 **Anti-Kickback Procedures**. Lessee shall have in place and follow reasonable procedures designed to prevent and detect, in its own business operations, any of the following activities in connection with this Lease or any agreement relating to this Lease: (i) persons providing or attempting to provide or offering to provide any kickback; or (ii) persons soliciting, accepting, or attempting to accept any kickback. When it has reasonable grounds to believe that any of the activities described in this Section may have occurred, Lessee shall promptly report in writing such activities to the Government and also to either the Air Force Inspector General's Office or the Department of Justice. Lessee shall cooperate fully with any federal agency investigating such activities.

Section 13.25 **No Individual Liability of Government Officials**. No covenant or commitment contained in this Lease shall be deemed to be the covenant or commitment of any individual officer, agent, employee, or representative of Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

Section 13.26 **Counterparts**. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. Facsimile copies of this Lease, bearing the parties' respective signatures, shall be enforceable as originals.

Section 13.27 **Interpretation**. This Lease was jointly negotiated and jointly drafted by the Parties with the advice or their respective legal counsel, and it shall not be interpreted or construed in favor or against either Party on the grounds that said Party drafted the Lease. The language of this Lease shall be construed as a whole according to its fair and logical meaning and not strictly for or against any of the Parties.

Section 13.28 **Entire Agreement**. This Lease constitutes the entire agreement of the Parties and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. Any change, amendment, or modification to this Lease shall not be binding upon the Parties unless it is in writing and execute by the Parties hereto.

REMAINDER OF PAGE INTENTIONALLY BLANK

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have caused this Lease to be executed in their names as of the day and year indicated below.

WITNESSES:

“GOVERNMENT”

THE UNITED STATES OF AMERICA, acting
by and through the Secretary of the Air Force

Signature

Print name: _____

By: _____
ROBERT E. MORIARTY
Director, Installations Directorate

___ day of _____, 2017

Signature

Print name: _____

“LESSEE”

TUCSON UNIFIED SCHOOL DISTRICT, a

By: _____

Printed Name: _____

Title: _____

___ day of _____, 2017

ATTEST:

Printed Name: _____

Title: _____

Thence South 54 degrees 47 minutes 00 seconds East, a distance of 830.00 feet; Thence South 37 degrees 53 minutes 55 seconds West a distance of 304.58 feet; Thence South 31 degrees 08 minutes 10 seconds West, a distance of 262.90 feet; Thence North 54 degrees 14 minutes 40 seconds West, a distance of 406.00 feet; Thence North 60 degrees 55 minutes 30 seconds West, a distance of 300.00 feet to the TRUE POINT OF BEGINNING

Containing 10.01 acres, more or less.

EXHIBIT B

“Existing Encumbrances”

[INSTALLATION TO PROVIDE LIST]

COMPOSITE EXHIBIT C

“Additional Plans”

Composite Exhibit C-1

“Historic Preservation Plan”

The Lessee shall take all reasonable measures so as not to disturb or cause or permit to be disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains or objects of antiquity, as such terms are defined under the Archaeological Resources Protection Act, 16 U.S.C. § 470aa-mm; National Historic Preservation Act, 54 U.S.C. §§ 302102 et seq.; American Indian Religious Freedom Act, 42 U.S.C. § 1996; Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013; Archeological and Historic Preservation Act, 54 U.S.C. § 312501 et. seq.; Antiquities Act, 54 U.S.C. §§ 320301-320303, and implementing regulations associated with any of the foregoing laws, and shall not knowingly remove or permit to be removed any such items. In the event such items are discovered by the Lessee on the Leased Premises, the Lessee shall promptly notify the Government through the 355th Civil Engineer Squadron’s Environmental Section, 355 CES/CEIE, 3775 S. Fifth Street, Davis-Monthan AFB, AZ, and protect the site and such items from further disturbance until the Government gives written clearance to proceed. The time taken by the Government to assess and respond (if required) to the discovery of such items may constitute an event of Force Majeure for which Lessee is entitled to a delay in performance in accordance with the provisions of this Lease.

Composite Exhibit C-2
“Emergency Services Plan”

[LESSEE TO PROVIDE]

Composite Exhibit C-3

“Environmental Management and Impact Mitigation Plan”

[LESSEE TO PROVIDE]

EXHIBIT D

“Access Areas”

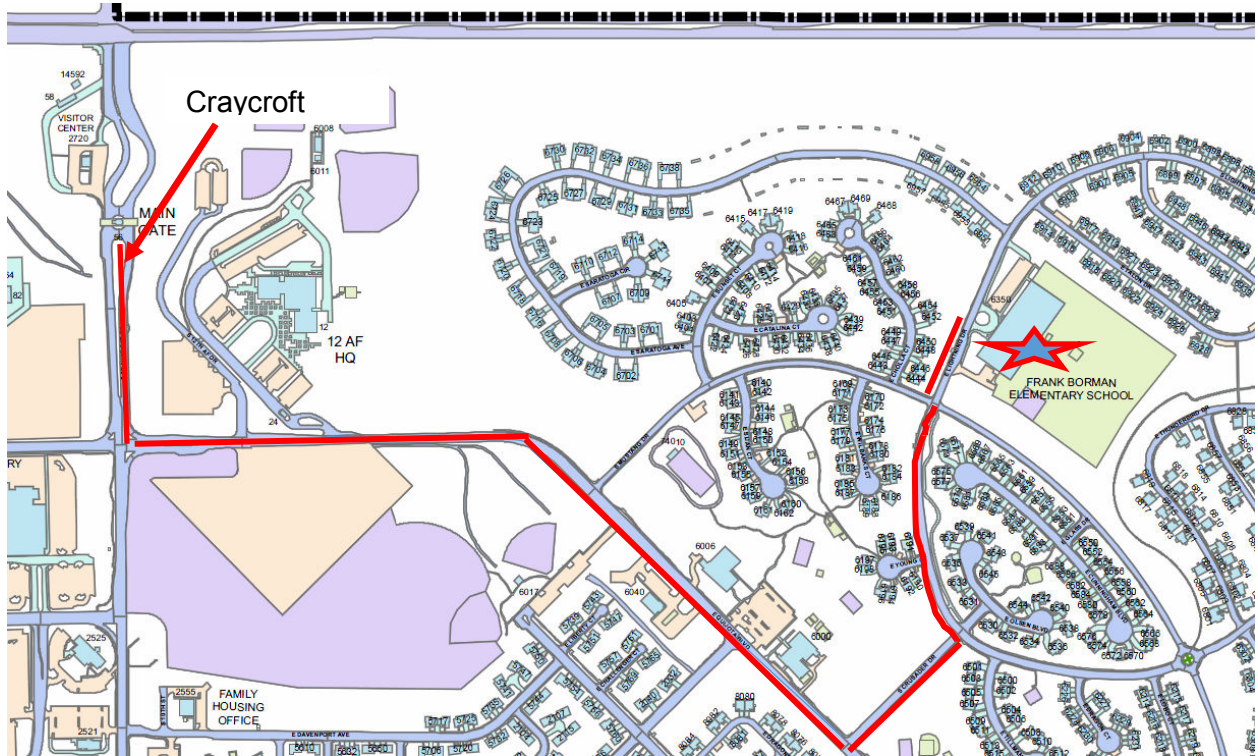


EXHIBIT E

“Government’s Environmental Documents”

Environmental Baseline Survey – 11 March 2015

Visual Site Inspection – 17 February 2017

**[INSTALLATION AND AFCEC CIT TO PROVIDE LIST OF DOCUMENTS
PROVIDED TO LESSEE]**

EXHIBIT F

“Required Insurances”

[AFCEC CIT TO PROVIDE]

EXHIBIT G

“Initial Physical Condition Report”

EXHIBIT D

PHYSICAL CONDITION REPORT

As of 2/5/15

This is to confirm that the undersigned, as the Lessee of the Leased Premises pursuant to that certain Lease of Property dated as of the date first set forth above by and between the Secretary of the Air Force (the “Government”), and the undersigned, which Leased Premises consists of Borman Elementary School and 10.01 acres more or less of land for a public school located at 6630 E. Lightning Drive, Davis-Monthan AFB, Tucson AZ 85708, has inspected the Leased Premises and all environmental reports concerning the Leased Premises provided to the undersigned by the Government, is familiar with the condition and characteristics of the Leased Premises and agrees, except as otherwise expressly provided in the Lease of Property, to accept the Leased Premises in “as-is, where-is” condition, without any representation or warranty by the Government concerning the condition of the Leased Premises and without obligation on the part of the Government to make any alterations, repairs, additions, or improvements to the Leased Premises all in accordance with and subject to the terms of the aforementioned Lease of Property. Except as otherwise defined in this Acknowledgement, the terms used herein shall have the same meanings as set forth in the Leased Property.

Tucson Unified School District

By: 
BRYANT NOBINE
Title: Acting Director of Planning
Services and Student Assignment

Government

By: 
SHERI MCNAMARA
Real Property Officer