

**LEASE AGREEMENT
FLOWERS AND BULLETS COLLECTIVE - TUSD
AT THE FORMER JULIA KEEN ELEMENTARY SCHOOL**

1. **PARTIES.** This Lease, dated for reference only this ____ day of _____, 2016, is made by and between **Tucson Unified School District (TUSD)** as the “**Landlord**” or “**Lessor**” and **Flowers and Bullets Collective (FBC)** as the “**Tenant**” or “**Lessee**”.

2. **LEASE OF PREMISES.**

(a) Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, the buildings and grounds, located at 3538 East Ellington Place, Tucson, AZ as reflected on **Exhibit A** and further described in Paragraph 3(d).

(b) This Lease is subject to the terms, covenants and conditions herein set forth and each party covenants as a material part of the consideration for this Lease to keep and perform each and all of its terms, covenants and conditions.

3. **LEASE PARTICULARS.**

(a) **Lease Term:** The Lease Term shall commence as of the Lease Term Commencement Date and shall continue thereafter for a period of **five (5) years**. The lease will run in two phases: Phase 1 for the first year of the Lease Term and Phase 2 for the remaining years of the Lease Term. This agreement shall be automatically renewed for one (1) additional term of five (5) years (“**Renewal Term**”) unless either Landlord or Tenant gives notice of intention not to renew not less than ninety (90) days prior to the expiration of the initial term.

(b) **Lease Term Commencement Date: January 1, 2017**

(c) **Minimum Annual Rent:** Minimum rent shall be as follows:

Minimum Annual Rent Table

Calendar		Acres	Sqft	Rent/Month	Rent/Year
Year	Year				
1	2017			\$ 0.00	\$ 0.00
2	2018			\$ 3,100.00	\$ 37,200.00
3	2019			\$ 3,100.00	\$ 37,200.00
4	2020			\$ 3,100.00	\$ 37,200.00
5	2021			\$ 3,100.00	\$ 37,200.00

In the event the lease is renewed, the rent will increase to \$3,500.00 monthly, \$42,000.00 annually, for the duration of the Renewal Term.

Tenant is responsible for the Minimum Annual Rent, NNN expenses and all other expenses related to the Premises.

(d) **Premises:** As reflected on **Exhibit A**, there are two phases to the lease:

(1) For the first phase of the lease, the premises are that portion of the property at **3538 East Ellington Place, Tucson, AZ**, containing approximately 7.6 acres, exclusive of the areas leased to Child and Family Centers and exclusive of the former school buildings and interior courtyard.

(2) For the second and any subsequent phases of the lease, unless Landlord elects to terminate the lease in accordance with Section 28, the premises are all of the property at **3538 East Ellington Place, Tucson, AZ**, containing approximately 9.2 acres, exclusive of the areas leased to Child and Family Centers, and 37,430 square feet of building.

(e) **Use:** Tenant shall use the Premises to provide an urban farm and arts and culture site, with food production, education, health and healing, and arts and culture programs to support the community.

(f) **Landlord's Mailing Address:** Planning Services Department, 606 S. Plumer Ave., Tucson, Arizona 85719

(g) **Tenant's Mailing Address:** Flowers and Bullets Collective, 2043 S. March Pl., Tucson, Arizona 85713

4. **ADJUSTMENTS TO MINIMUM RENT.**

(a) Tenant agrees to pay to Landlord 1/12 of the Minimum Annual Rent MONTHLY, without notice or demand, in advance, on or before the first day of each and every successive calendar month during the Lease Term, commencing on the Lease Term Commencement Date.

(b) Rent for any period which is for less than one (1) month shall be a prorated portion of the monthly installment herein based upon a thirty (30) day month. All rent shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America and at the Landlord mailing address or at such place as designated by the landlord in writing.

(c) Tenant shall pay, as additional rent all sums required to be paid pursuant to the terms of this Lease. All amounts required to be paid by Tenant hereunder are sometimes collectively referred to as "rent" or "rental."

5. **SECURITY DEPOSIT.** At the start of Phase 2 of the Lease Term, Tenant shall pay the equivalent of two (2) months' rent (**\$6,200**) as a deposit for the term of the lease. Such deposit will be refunded on termination of the lease unless utilized to repair damages or restore the Premises to their original condition.

6. **ADDITIONAL CHARGES — ADJUSTMENTS.**

In addition to the Minimum Rent hereinabove, and commencing at the same time as any rental commences under this Lease, Tenant shall also be responsible for the full cost of:

- (a) All real estate taxes and insurance premiums relating to the Premises IF ANY, including land, building, and improvements thereon. Said real estate taxes shall include all real estate taxes and assessments that are levied OR MAY BE LEVIED upon and/or assessed against the Premises, including any taxes which may be levied on rents. Insurance shall include all insurance premiums for fire, extended coverage, liability, and any other insurance that Landlord reasonably deems necessary on the Premises.
- (b) All costs to supervise and administer the Property.
- (c) Any utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the Premises.
- (d) Tenant is responsible for all utility costs and surcharges at the premises. All utility accounts, meters and services shall be registered in the Tenant's name as the responsible user and payee to the utility company.

7. **USES PROHIBITED.** Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the permitted use of the Premises which will in any way increase the existing rate of or affect any fire or other insurance upon the Property or any of its contents or cause a cancellation of any insurance policy covering the Property or any part thereof of any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of any existing leases or use agreement or injure or annoy it or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises.

8. **COMPLIANCE WITH LAW.** Tenant shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

9. **ALTERATIONS AND ADDITIONS.** Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof without first obtaining a bond to restore the Premises to their original condition and receiving the written consent of Landlord, which shall not be unreasonably withheld. Any alterations, additions or improvements to or of said Premises, excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to Landlord and shall be surrendered with the Premises. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense, in a good and workmanlike manner in accordance with TUSD standards and all applicable laws (including laws relating to the use of hazardous materials such as asbestos-containing materials, all applicable building codes and the Americans with Disabilities Act) and shall be diligently completed. Upon the expiration or sooner termination of the Lease Term, Tenant shall, upon written demand by Landlord at Landlord's sole discretion, given at least thirty (30) days prior to the end of the Lease Term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

10. **REPAIRS AND MAINTENANCE.**

(a) Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair by executing an "acceptance of the premises" letter, which shall be executed prior to possession, as attached hereto as **Exhibit B1** and **Exhibit B2**. Tenant shall, at Tenant's sole cost and expense, keep the Premises in good condition and repair (except as hereinafter provided with respect to Landlord's obligations), including without limitation, the maintenance, replacement and repair of any HVAC systems, doors, window casements, glazing, heating and air conditioning systems, plumbing, pipes, electrical wiring and conduits, lighting fixtures and security and fire alarm systems to current local governing body building codes and TUSD standards. Tenant shall, upon the expiration or sooner termination of this Lease, surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Any damage to the premises or adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

(b) Tenant will provide for maintenance as specified in **Exhibit C**.

(c) Notwithstanding any other provisions hereof, Landlord shall, at its expense, maintain and repair the Phase 2 Premises until such are accepted by Tenant.

(d) Notwithstanding the stated provisions above in paragraphs a and b, should Tenant replace certain items, which are capital improvements in nature, as part of their maintenance of the facility, the costs of these replacements shall inure to the benefit of Landlord.

11. **LIENS.** Tenant shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Where the aggregate dollar value of the work to be

performed will not exceed \$25,000.00, Contractor shall sign a “Contractors Hold Harmless Agreement” in the form attached hereto as **Exhibit D** to be provided to Lessor prior to commencement of such work. Contractor(s)/sub-Contractor(s) who do not currently have a certificate of insurance on file with Lessor shall provide Lessor with a certificate of insurance in which the commercial general liability coverage shall not be less than \$1,000,000, combined single limit, naming Lessor and its member(s), manager(s), and partner(s) as additional insured’s.

In projects exceeding an aggregate value of more than \$25,000.00, Landlord may require, at Landlord’s sole option, to have Tenant provide to Landlord, at Tenant’s sole cost and expense a payment and performance bond in an amount equal to one and one-half (1 ½) times the estimated cost of any improvements, additions, repairs or alterations in the Premises which the Tenant desires to make, to insure Landlord against any liability for mechanics’ and material men’s liens and to insure completion of the work.

12. ASSIGNMENT AND SUBLETTING. Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof. Any such assignment or subletting shall be void, and shall, at the option of Landlord, constitute a default under the terms of this Lease.

13. HOLD HARMLESS.

(a) Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant’s use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant’s part to be performed under the terms of this Lease or arising from any act or negligence of Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all costs, attorneys’ fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding be brought against Landlord by reason of such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord’s negligence; and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises.

(b) Landlord or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence

of Landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light, air, or for any latent defect in the Premises.

14. **SUBROGATION.** As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.
15. **INSURANCE.** Tenant shall, at Tenant's expense, obtain and keep in force during the Lease Term a policy of commercial general liability insurance (sometimes known as comprehensive public liability insurance) insuring Landlord and Tenant against any liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in the amount of not less than \$2,000,000 per occurrence. The limit of any such insurance shall not, however, limit the liability of Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain same, but at the expense of Tenant. Insurance required hereunder shall be in companies rated A: XII or better as set forth in the most current "Best's Key Rating Guide". Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancellable or subject to reduction of coverage. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry.
16. **PERSONAL PROPERTY TAXES.** Tenant shall pay, or cause to be paid, before delinquency any and all taxes if any, that are or may be levied or assessed and which become payable during the Lease Term upon all of Tenant's leasehold improvements, equipment, furniture, fixtures and any other personal property located in the Premises. In the event any or all of Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.
17. **HOLDING OVER.** If Tenant remains in possession of the Premises or any part thereof after the expiration of the Lease Term with the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of 125% of the last monthly Minimum Rent, plus all other charges payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.
18. **ENTRY BY LANDLORD.** Landlord reserves, and shall at any and all times during business hours have, the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, to post notices of non-responsibility, to repair the Premises and any portion of the Property of which the Premises are a part that Landlord may deem necessary or desirable, without abatement of rent, and may for that purpose erect scaffolding

and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord at any and all times shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care for Tenant's property and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

19. **TENANT'S DEFAULT.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant.

- (a) The vacating or abandonment of the Premises by Tenant.
- (b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof by Landlord to Tenant.
- (c) The failure by Tenant to observe or perform any of the covenants, conditions or provision of this Lease to be observed or performed by Tenant, other than described in (b), above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- (d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this lease, where such seizure is not discharged within thirty (30) days.

20. **REMEDIES UPON TENANT'S DEFAULT.** In the event of any such default or breach by Tenant, Landlord may, at any time thereafter, in its sole discretion, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy, which Landlord may have by reason of such default or breach:

- (a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the

Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of re-letting, including necessary renovation and alteration of the Premises; reasonable attorneys' fees; the worth at the time of award, by the court having jurisdiction thereof, of the amount by which the unpaid rent and other charges and Adjustments called for herein for the balance of the Lease Term after the time of such award exceeds the amount of such loss for the same period that Tenant proves could be reasonably avoided; and that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease. Unpaid installments of rent or other sums shall bear interest from the date due at the maximum legal rate; or

- (b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent and any other charges and Adjustments as may become due hereunder; or
- (c) Pursue any other remedy or combination of remedies now or hereafter available to Landlord under the laws or judicial decisions of the State of Arizona.

21. **DEFAULT BY LANDLORD.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord. If the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction.

22. **RECONSTRUCTION.**

- (a) In the event the Premises are damaged by fire or other perils covered by extended coverage insurance, Tenant agrees to forthwith repair same, and this Lease shall remain in full force and effect. Tenant shall look to their Insurance carrier for costs to repair the premises and for business interruption.
- (b) In the event the Premises are damaged to any extent as a result of any cause other than the perils covered extended coverage insurance, Landlord shall have the option: (1) to repair, reconstruct or restore the Premises, in which event this Lease shall continue in full force and effect but the Minimum Rent shall be proportionately reduced, as hereinafter provided, during the period of such repair, reconstruction or restoration; or (2) to give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Minimum Rent shall be proportionately reduced. Such proportionate reduction will be based upon the extent, if any, to which such damage interfered with the

business carried on by Tenant in the Premises. In the event that more than 25% of the premises are damaged and the Landlord elects to not repair the premises, then the Tenant shall have the right to terminate this lease.

(c) Anything to the contrary contained in this Section notwithstanding, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Section occurs during the last twelve months of the Lease Term or any extension thereof.

(d) Landlord shall not be required to repair any injury or damage by fire or other causes, or to make any repairs or replacement of any leasehold improvements, fixtures, or other personal property of Tenant.

23. **EMINENT DOMAIN.** If more than twenty-five percent (25%) of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either party hereto shall have the right, at its option, within sixty (60) days after said taking, to terminate this lease upon thirty (30) days written notice. If either less than or more than 25% of the Premises are taken (and neither party elects to terminate as herein provided), the Minimum Rent thereafter to be paid shall be equitably reduced. If any part of the Property other than the Premises may be so taken or appropriated, Landlord shall within sixty (60) days of said taking have the right at its option to terminate this lease upon written notice to Tenant. In the event of any taking or appropriation whatsoever, Landlord shall be entitled to any and all awards and/or settlements which may be given on account of the reduction in the value of the leasehold, the taking of the fee or otherwise and Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term.

24. **BROKERS.** Tenant warrants that it has had no dealings with any real estate brokers or agents in connection with the negotiation of this Lease, and it knows of no other real estate broker or agent who is entitled to a commission in connection with this Lease.

25. **COMPLIANCE.** The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans with Disabilities Act.

26. **SALE OF PROPERTY:** Landlord will not offer the Premises for sale or lease to any party other than Tenant for the Lease Term.

27. **PURCHASE OF PROPERTY BY TENANT:** If at any time during the Lease Term, Tenant elects to purchase the Premises and has demonstrated, at the sole discretion of Landlord, that they have financial resources to complete the purchase, Tenant and Landlord shall execute the Purchase and Sale Agreement attached as **Exhibit E**. At such time, Landlord will place fifty percent (50%) of rents received, from that point forward, into an escrow account for Tenant's purchase of the Premises. If Tenant does not purchase the Premises within the time frame specified by the Purchase and Sales Agreement, such deposits will be paid to Landlord from the escrow account.

28. TERMINATION OF THE LEASE.

- (a) Tenant shall have the right upon the 180 days advance written notice, to terminate this Lease for any reason or no reason.
- (b) Landlord shall have the right upon the 180 days advance written notice to terminate this lease after the first year of the Lease Term if, at the sole discretion of Landlord, Tenant does not have the financial resources to sustain Phase 2 of the lease.
- (c) Should Tenant elect to purchase the Premises, the lease will automatically terminate at closing.

28. **SIGNS.** Tenant shall have the right to install permanent, prominent signage and directional signage on the Premises subject to Landlord's approval. Such approval will not be unreasonably withheld. Signs shall be compatible with the building design, will take neighborhood concerns into account and shall conform to all applicable local government codes.

29. **COVENANT TO NOT FORM A CHARTER SCHOOL.** Tenant agrees that they are prohibited from forming operating or permitting the operation of a Charter School on Premises during the term of this lease.

30. GENERAL PROVISIONS.

- (a) **Plats and Riders.** Clauses, exhibits, schedules, plats, riders and addenda, if any, affixed to this Lease are a part hereof.
- (b) **Waiver.** The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such rent.
- (c) **Joint Obligation.** If there be more than one Tenant the obligations hereunder imposed shall be joint and several.
- (d) **Marginal Headings.** The marginal headings and section titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
- (e) **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

- (f) **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.
- (g) **Recordation.** Neither Landlord nor Tenant shall record this Lease, but a short form memorandum hereof may be recorded at the request of either party.
- (h) **Quiet Possession.** Upon Tenant's paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Lease Term, subject to all the provisions of this lease.
- (i) **Late Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord's designee within ten (10) days after written notice that said amount is past due, then Tenant shall pay to Landlord a late charge equal to the maximum amount permitted by law (and in the absence of any governing law, ten percent (10%) of such overdue amount), plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.
- (j) **Prior Agreements.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.
- (k) **Inability to Perform.** This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor trouble, acts of God, or any other cause beyond the reasonable control of Landlord.
- (l) **Partial Invalidity.** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.
- (m) **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

- (n) **Choice of Law.** This Lease shall be governed by the laws of Arizona.
- (o) **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Lease the prevailing party shall be entitled to recover its expenses and costs, including its attorneys' fees and expert witness fees in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.
- (p) **Subordination; Attornment.** Upon request of Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust, to any bank, insurance company or other lending institution, now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security thereof. In the event any proceedings are brought for foreclosure or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease. The provisions of this Section to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.
- (q) **Notices.** Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, addressed to the parties at the addresses specified in Sections 3(f) and 3(g) hereof. Either party may change such address by written notice to the other as herein provided.
- (r) **Tenant's Statement (Estoppel Certificate).** Tenant shall at any time and from time to time, upon not less than seven days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (c) setting forth the date of commencement of rents and expiration of the Lease Term. Any such statement may be relied upon by the prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part.
- (s) **Authority of Tenant.** If Tenant is a corporation, each individual executing this Lease on behalf of Tenant represents and warrants that he or she has full authority to do so and that this Lease binds the corporation. If Tenant is a partnership, each individual executing this Lease for Tenant represents and warrants that he, she or it is a general partner of the partnership, that he, she or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership.

Signatures on the following page.

LANDLORD: **Tucson Unified School District**

TENANT: **Flowers and Bullets Collective**

By: _____
Bryant Nodine
Director of Planning Services

Date: _____

By: _____
Dora Martinez, Member

Date: _____

By: _____
Jesus Romero, Member

Date: _____

EXHIBIT A
to the
FBC-TUSD LEASE OF THE FORMER JULIA KEEN ELEMENTARY SCHOOL
PREMISES OF LEASE



EXHIBIT B1
to the
FBC-TUSD LEASE OF THE FORMER JULIA KEEN ELEMENTARY SCHOOL
TENANT’S ACCEPTANCE OF THE PHASE 1 PREMISES

Landlord and Tenant hereby agree that Phase 1 Premises is found to be in compliance with the conditions outlined in the Lease dated _____ between Landlord (TUSD) and Tenant (FBC). Upon mutual execution hereto, Tenant accepts Phase 1 Premises according to the terms of Section 10, REPAIRS AND MAINTENANCE.

Tenant to provide separate utility meters for any utilities (electrical, water, waste removal, etc.) required during Phase 1 prior to the use of any utilities on the Premises by Tenant.
Tenant to provide proof of insurance on January 1, 2017.

LANDLORD: Tucson Unified School District

TENANT: Flowers and Bullets Collective

By: _____
Bryant Nodine
Director of Planning Services

By: _____
Dora Martinez, Member
Date: _____

Date: _____

By: _____
Jesus Romero, Member
Date: _____

EXHIBIT B2
to the
FBC-TUSD LEASE OF THE FORMER JULIA KEEN ELEMENTARY SCHOOL
TENANT'S ACCEPTANCE OF THE PHASE 2 PREMISES

Landlord and Tenant hereby agree that Phase 2 Premises is found to be in compliance with the conditions outlined in the Lease dated _____ between Landlord (TUSD) and Tenant (FBC). Upon mutual execution hereto, Tenant accepts Premises according to the terms of Section 10, REPAIRS AND MAINTENANCE.

Tenant to provide security and fire response contract for the entirety of the Premises by _____ with notification of Landlord if such contract changes.

Tenant to provide phone line to monitor fire and security by _____.

Tenant to replace all keys in spaces they occupy by _____.

Tenant to check Ansul system for update

Tenant to provide security deposit on January 1 2018.

Tenant to provide proof of insurance on _____.

Tenant to obtain of Certificate of Occupancy from City prior to occupancy.

LANDLORD: Tucson Unified School District

TENANT: Flowers and Bullets Collective

By: _____
Bryant Nodine
Director of Planning Services

Date: _____

By: _____
Dora Martinez, Member
Date: _____

By: _____
Jesus Romero, Member
Date: _____

EXHIBIT C
to the
FBC-TUSD LEASE OF THE FORMER JULIA KEEN ELEMENTARY SCHOOL

SPECIFICS OF TENANT-LANDLORD MAINTENANCE OBLIGATIONS

Tenant will be responsible for any costs to inspect, repair, maintain or replace the heating, air conditioning and fire protection systems and equipment (including fire sprinklers) serving the Premises, including the cost of a preventive maintenance contract providing for the regular inspection and maintenance of same. To meet these obligations, Tenant shall be responsible for obtaining an annual service contract to be approved by Landlord.

The Service Contract shall, specifically, provide that the maintenance and testing of life safety equipment to comply with all City, State and Federal Codes, and that all Preventative Maintenance expectations of the Arizona School Facilities Board, for all portions of the Property, are met. Tenant shall provide an annual report to Landlord of the same and will correct any deficiencies attributable to the occupancy of Tenant or resulting from inadequate routine maintenance during the occupancy.

Tenant shall also be responsible for maintenance of the Premises to ensure they are reasonably weed and pest free, that the landscape is trimmed and otherwise maintained, and that interiors are regularly cleaned, waxed, and otherwise maintained.

EXHIBIT D
to the
FBC-TUSD LEASE OF THE FORMER JULIA KEEN ELEMENTARY SCHOOL
CONTRACTORS HOLD HARMLESS AGREEMENT

The undersigned _____ (the "Contractor"), hereby agrees to protect, defend, indemnify and hold harmless _____, a(n) _____ (the "Owner") and its successors in interest and assigns (collectively, the "Indemnitees"), the Indemnitees' members, managers, partners and affiliates, and each of their respective officers, agents, servants, employees and independent contractors from and against any and all loss, cost, expense, liability, damage, claim and demand incurred in connection with, or arising from, any cause relating to the performance of ANY WORK DONE IN THE _____ BUILDING by the Contractor, or its agents, servants, or employees (collectively, the "Contractor's Agents"), including, without limiting the generality of the foregoing, any default in the observance or performance of any of the terms, covenants or conditions of the Contract (as hereinafter defined), any injury to persons, including death, or damage to property in connection with the performance of the Contract, or any acts, omissions or negligence of Contractor or Contractor's Agents or any person claiming by, through or under Contractor or Contractor's Agents. Contractor hereby agrees that Contractor shall, at Contractor's sole cost and expense, defend any and all actions brought against Indemnitees based upon any of the foregoing with attorneys reasonably acceptable to Owner and shall pay any and all costs and expenses incurred in such actions, including, without limitation, court costs and professional fees such as appraisers', accountants', and attorneys' fees, and promptly discharge any judgments arising therefrom. This covenant by Contractor shall survive the expiration or sooner termination of the Contract and the lease in connection with which Contractor performed the Contract. Indemnitees, their members, managers, partners and affiliates and each of their respective officers, agents, servants, employees and independent contractors shall not be liable for any damage either to person, including death, or property, which is sustained by Contractor or Contractor's Agents or by any other person or entity claiming through Contractor or Contractor's Agents in connection with Contractor's or Contractor's Agents' performance of the Contract or any subcontracted operations. Contractor hereby agrees to insert the provisions of the preceding sentence in any subcontract relating to the Owner's property.

Contractor hereby further agrees that Contractor will perform the work and services in connection with the Contract as an independent contractor and not as an employee or agent of Indemnitees.

As used herein, the term "Contract" shall include any agreement, whether oral or written, relating to any work performed and/or required to be performed by Contractor or Contractor's Agents with respect to the leased premises.

IN WITNESS WHEREOF, the undersigned has executed this Contractors Hold Harmless Agreement on the _____ day of _____, 200__.

Contractor:

By: _____
Its: _____

EXHIBIT E
to the
FBC-TUSD LEASE OF THE FORMER JULIA KEEN ELEMENTARY SCHOOL
PURCHASE AND SALE AGREEMENT

between
TUCSON UNIFIED SCHOOL DISTRICT
and
FLOWERS AND BULLETS COLLECTIVE
for the
Real Property Known as the Former Julia Keen Elementary School

This Purchase and Sale Agreement (the “**Agreement**”) is entered into as of May ____, 2015 (the “**Effective Date**” to be inserted by Escrow Agent), by and between **Tucson Unified School District Number One**, an Arizona public school district (“**Seller**”), and **Flowers and Bullets Collective**, a _____, or its permitted assignee (“**Purchaser**”).

Recitals

A. Seller is the owner of approximately 9.7 acres of real property located at 3538 East Ellington Place, Pima County, Tucson, Arizona, as more particularly described and depicted in **Exhibit A** attached hereto, together with such improvements, fixtures, equipment and other personal property located thereon.

B. Pursuant to the terms and conditions hereafter set forth, Seller desires to sell and Purchaser desires to purchase the Property (as defined in Section 1.2).

C. Purchaser intends to operate an urban farm and arts and culture site and seek approvals from the City of Tucson.

Now therefore, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

ARTICLE 1: PROPERTY/PURCHASE PRICE

1.1 **Basic Terms.**

(a) **Purchaser’s Address:** Flowers and Bullets Collective
Attention: Dora Martinez
2043 South March Place
Tucson, Arizona 85713
Telephone: (520) _____
Email: _____

(b) **Seller’s Address:** TUCSON SCHOOL DISTRICT NUMBER ONE

Attention: Bryant Nodine
Planning Services
606 South Plumer Street
Tucson, Arizona 85719
Telephone: (520) 225-4949
E-mail: bryant.nodine@tusd1.org

With copies to: Todd Jaeger
TUSD Legal Department
1010 East Tenth Street
Tucson, Arizona 85719
Telephone: 520-225-6040
E-mail: todd.jaeger@tusd1.org

(c) Purchase Price & Terms: The total purchase price for the Property (as defined in Section 1.2 below) is Three Hundred Seventy Three Thousand Dollars (\$373,000.00) (the “**Purchase Price**”), subject to credits and adjustments as provided below, and payable to Seller in cash or currently available funds as follows:

(i) Within two (2) business days of the Effective Date, Purchaser shall deposit with Escrow Agent the sum of Seven Thousand Dollars (\$7,000.00) in currently available funds as and for an initial earnest money deposit (the “**Escrow Deposit**” or “**Earnest Money Deposit**”) which shall be refundable for 90 days and credited against the Purchase Price at Closing. Unless this Agreement is terminated as provided in Paragraph 2.3(b) below, upon expiration of the Due Diligence Period (as hereinafter defined), the Earnest Money shall be released to Seller.

(ii) In the event Purchaser accepts the Property following the Due Diligence Period, then Purchaser shall deposit with Escrow Agent the sum of Ten Thousand Dollars (\$10,000.00) in currently available funds as and for an earnest money deposit (the “**Additional Escrow Deposit**” or “**Additional Earnest Money Deposit**”) which shall be refundable during the Governmental Approval Period or any extensions thereof (as hereinafter defined) except as provided in Paragraph 2.4(b). The Additional Escrow Deposit, less any Extension Fees, shall be credited against the Purchase Price at Closing.

(iii) The balance of the Purchase Price, adjusted based on the terms, prorations and adjustments as described herein, shall be paid by Purchaser in currently available funds at Closing.

(d) Effective Date. The Effective Date is that date a fully-executed Agreement is delivered to Escrow Agent. The Escrow Agent shall insert the Effective Date in the introductory paragraph.

(e) Due Diligence Period. “**Due Diligence Period**” means the period commencing upon the the Effective Date of this Agreement and terminating ninety (90) business days thereafter.

(f) Governmental Approval Period. “**Governmental Approval Period**” means the period commencing upon the termination of the Due Diligence period and continuing for one hundred eighty (180) calendar days, unless extended as provided for in Section 2.4.

(g) Closing Date. The closing of the transaction (the “**Close**,” “**Closing**” or “**Close of Escrow**”) described herein shall occur sixty (60) calendar days following Purchaser’s acceptance of the Property following the end of the Governmental Approval Period, or any extensions thereof, unless earlier terminated in accordance with the provisions of this Agreement.

(h) Title Company: The term “**Title Company**” shall mean:

Attn: _____

Tucson, Arizona 857__
Telephone: (520)_____
Facsimile: (520)_____
Email: _____

(i) Escrow Agent: The term “**Escrow Agent**” shall mean:

(Same contact information as Title Company)

(j) Brokers: None

(k) Expiration Date: This Agreement shall expire and be of no force or effect if not executed by both Purchaser and Seller and delivered to Escrow Agent on or before 5:00 p.m., Arizona Time on _____.

(l) Assignment. Purchaser shall be allowed to assign this Agreement, in full or in part, to (i) an entity or entities which control, are controlled by, or are under common control with, directly or indirectly, Purchaser or its principals, or (ii) an affiliate of Purchaser; provided, however, that upon such assignment, the original Purchaser shall remain jointly and severally liable with the assignee for the performance of Purchaser’s obligations hereunder until the Closing of the transaction described herein, at which time the original Purchaser shall be released from further liability hereunder.

(m) Deed Restriction. Prior to Closing, Seller will record a deed restriction to prohibit the use of the property for a charter school. Purchaser agrees to abide by this restriction.

1.2 Property. Subject to the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, each of the following (collectively, the “**Property**”):

(a) all of Seller’s right, title and interest in and to the real property consisting of 9.7 acres, more or less, described and depicted on Exhibit A, attached hereto (the “**Real Property**”), together with all buildings, fixtures and improvements now or hereafter located thereon (collectively, the “**Improvements**”), and all appurtenances of the Real Property, including easements or rights-of-way relating thereto, and, without warranty (except as provided in Section 7.1), all right, title, and interest, if any, of Seller in and to the land lying within any

street or roadway adjoining the Real Property described above or any vacated or hereafter vacated street or alley adjoining said Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances, all development rights, air rights, water, water rights and water stock relating to the Real Property, and all strips and gores, streets, alleys, easements, rights-of-way, public ways, or other rights of Seller appurtenant, adjacent or connected to the Real Property; and

(b) all of Seller's right, title and interest, if any, in and to any personal and intangible property owned by Seller and pertaining to or used by Seller in connection with all or any portion of the Real Property, including but not limited to all of Seller's right, title and interest, if any and to the extent applicable, in and to: (i) all plats, improvement plans, drawings and specifications and development rights and credits relating to the Property, (ii) all books, records, reports, test results, environmental assessments, if any, as-built plans, specifications and other similar documents and materials relating to the use, operation, maintenance, repair, construction or fabrication of all or any portion of the Real Property; (iii) all transferable business licenses, architectural, site, landscaping or other permits, applications, approvals, authorizations and other entitlements affecting any portion of the Real Property; (iv) all transferable guarantees, warranties and utility contracts relating to all or any portion of the Real Property.

1.3 Earnest Money. The Escrow Agent shall place the Escrow Deposit and the Additional Escrow Deposit, if applicable, in an interest bearing account. All interest earned thereon shall accrue to the benefit of the party entitled to the Escrow Deposit and Additional Escrow Deposit. The Escrow Deposit and Additional Escrow Deposit shall be credited against the Purchase Price.

ARTICLE 2: INSPECTIONS AND CONTINGENCIES.

2.1 Property Information. Within five (5) days of the Effective Date of this Agreement, Seller shall deliver or make available to Purchaser each of the following documents and information in the Seller's possession, or under the control of Seller, regarding the Property (the "**Property Information**"):

(a) A list of Seller's files and records, and will make available to Purchaser such files and records for inspection and copying;

(b) Any existing surveys and environmental assessments or related studies or reports for the Property including any and all asbestos studies, reports, and evaluations;

(c) Copies of all geotechnical (soils) reports, archeological or similar reports, biological and endangered species reports, engineering reports, appraisals and termite reports for the Property (or similar studies or assessments for the Property), construction drawings, plan check applications and comments, easement and right of way applications;

(d) Copies of all permits, consents, authorizations, variances or waivers, zoning letters and other entitlements and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or private persons;

(e) Copies of all notices of violations from governmental authorities related to the Property, and all copies of all lawsuits, insurance claims and notices or threats of condemnation;

(f) Copies of any notice of violation or incident report;

(g) Copies of insurance policies and copies of any insurance loss runs;

(h) Any other third-party reports, contracts and agreements of any kind;

(i) All other information and documents requested by Purchaser from Seller. This information does not include attorney / client privileged documents; provided, however, that Seller shall notify Purchaser of any documents or information it is withholding pursuant to the attorney-client privilege; and

(j) A list of all personal property to be included in the sale of the property.

2.2 Limitation of Liability for Property Information. Except as otherwise provided in Section 7.1, Seller makes no representations or warranties regarding the Property Information.

2.3 Inspections in General and Review Contingency. Seller grants to Purchaser and its agents and authorized representatives a license during the Due Diligence Period, the Governmental Approval Period and thereafter until Closing to enter upon the Property and at Purchaser's sole expense perform any inspections, investigations, studies and tests of the Property (including, without limitation, physical, engineering, soils, geotechnical and environmental tests) that Purchaser deems reasonable, and to investigate such other matters pertaining to the Property as Purchaser may desire. Purchaser agrees to repair any damage to the Property caused by Purchaser's inspections and to indemnify, defend, and hold harmless Seller, for, from, and against any loss, damage, liability, or claim (including reasonable attorneys' fees and court costs) for bodily injury, material or mechanics liens, or property damage caused by Purchaser's inspections and testing; provided that Purchaser shall not be liable to Seller solely as a result of the discovery by Purchaser of a pre-existing condition on the Property. This indemnity shall survive Closing and the termination of this Agreement for a period of three (3) months. In the event Purchaser terminates this Agreement as permitted herein, then Purchaser shall provide to Seller copies of all such third party tests, reports, and studies, except appraisals.

(a) Environmental Inspections. The inspections under this Section 2.3 may include a Phase I environmental assessment of the Property, and if recommended by the Phase I environmental assessment, a Phase II environmental assessment. Purchaser shall give Seller a copy of all Environmental Assessments prepared on behalf of Purchaser for the Property.

(b) Due Diligence Contingency. In the event Purchaser in its sole discretion disapproves of the condition of the Property or the Property Information for any reason, then Purchaser may terminate this Agreement at any time prior to expiration of the Due Diligence Period by giving written notice to Seller, in which event this Agreement shall terminate and the Escrow Deposit and any accrued interest shall be immediately returned by Escrow Agent to Purchaser, without any further instructions or direction from any party hereto. If Purchaser does

not give notice approving the Property prior to expiration of the Due Diligence Period, then Purchaser shall be deemed to have disapproved the condition of the Property and Property Information. Upon Purchaser's approval of the Property and Property Information, the Escrow Deposit shall become non-refundable to Purchaser, except in the event that the transaction set forth herein does not timely Close as a result of a breach of any term or condition of this Agreement by Seller, or Seller's failure to timely perform any condition or obligation set forth herein. At Closing, the Escrow Deposit shall be credited against the Purchase Price.

2.4 Governmental Approval Period Contingency.

(a) During the Governmental Approval Period, Purchaser will use reasonable efforts to obtain all necessary and required approvals from the City of Tucson and other necessary governmental authorities (collectively referred to as "**Approvals**"), if necessary, in a form acceptable to Purchaser, in its sole discretion, for the an urban farm and arts and culture site and ancillary uses. Seller shall reasonably cooperate with Purchaser in Purchaser's efforts to obtain the Approvals, including but not limited to signing any authorizations reasonably necessary or required in order to assist Purchaser in obtaining the Approvals, and signing all documents and instruments relating to the Property reasonably necessary to enable Purchaser to obtain the Approvals. Notwithstanding the foregoing, Seller shall not be responsible for any costs or expenses related to obtaining the Approvals. If at any time prior to expiration of the Governmental Approval Period, Purchaser in its sole discretion (i) determines that the Approvals are not obtainable in substance and with stipulations and development requirements and at a cost satisfactory to Purchaser, or (ii) determines that the Approvals are not timely obtainable, or (iii) Purchaser is otherwise dissatisfied with the status or prospects of obtaining the Approvals, then Purchaser may, prior to expiration of the Governmental Approval Period, elect to cancel this Agreement by delivering written notice to Seller, whereupon this Agreement shall be terminated and any Additional Escrow Deposits and accrued interest shall be immediately paid by Escrow Agent to Purchaser without any further instructions or directions from any party hereto.. If Purchaser does not give notice accepting the Approvals prior to expiration of the Governmental Approval Period, or any extensions thereof, then Purchaser shall be deemed to have disapproved the condition of the Property and Escrow Agent shall immediately return the Additional Escrow Deposit to Purchaser without any further instructions or directions from any party hereto. Purchaser shall be entitled to waive the Approvals set forth in this Section 2.4 in its sole and exclusive right at any time prior to expiration of the Governmental Approval Period by delivering written notice of same to Seller.

(b) Purchaser, in its sole discretion, may extend the Governmental Approval Period for a thirty (30) days ("First Extension Period") by giving Seller written notice five (5) days prior to the end of the Governmental Approval Period, in which case Two Thousand Dollars (\$2,000.00) of the Additional Escrow Deposit shall become non-refundable ("First Extension Fee") and shall be released to Seller. Purchaser, in its sole discretion, may extend the Governmental Approval Period for an additional thirty (30) days ("Second Extension Period") by giving Seller written notice five (5) days prior to the end of the First Extension Period and an additional Two Thousand Dollars (\$2,000.00) of the Additional Escrow Deposit shall become non-refundable ("Second Extension Fee") and shall be released to Seller. The Extension Fees shall not be credited against the Purchase Price at Closing and shall be non-refundable to Purchaser except in the event that the transaction set forth herein does not timely Close as a result of a breach of any term or condition of this Agreement by Seller, or Seller's failure to

timely perform any condition or obligation set forth herein.

(c) In the event Purchaser accepts the Property at the end of the Governmental Approval Period, the Escrow Deposit and the Additional Escrow Deposit shall be non-refundable to Purchaser, except in the event that the transaction set forth herein does not timely Close as a result of a breach of any term or condition of this Agreement by Seller, or Seller's failure to timely perform any condition or obligation set forth herein.

ARTICLE 3: TITLE AND SURVEY REVIEW

3.1 Title Commitment and Survey. Within ten (10) days of the Effective Date of this Agreement, Seller shall cause the Title Company to deliver to Purchaser and Seller a current preliminary title commitment for the Property issued by the Title Company ("Title Commitment"), binding the Title Company to issue an owner's policy of title insurance ("Title Policy"), together with copies of all documents relating to the title exceptions referred to in such Title Commitment. During the Due Diligence Period, Purchaser may obtain an ALTA survey in CADD and hard copy formats for the Property, certified by a registered civil engineer or a registered land surveyor licensed in Arizona, and provide same to Seller, the Title Company and Purchaser's lender, and prepared in accordance with any requirements of Title Company or Purchaser's lender (the "**Survey**"). Purchaser shall be responsible for the cost of the Survey, but if the transaction described herein Closes, then Purchaser shall receive a credit at Closing against the Purchase Price equal to one-half (1/2) of the cost of the Survey. The legal description of the Property contained in the Survey will be the legal description used for the Title Policy and all Closing Documents. If the transaction set forth herein does not timely Close as a result of a breach of any term or condition of this Agreement by Seller, or Seller's failure to timely perform any condition or obligation set forth herein, Seller shall reimburse Purchaser for the cost of the Survey and Title Commitment.

3.2 Purchaser Permitted Exceptions. During the Due Diligence Period, Purchaser shall review title to the Property as disclosed in the Title Commitment and Survey, and Purchaser may deliver to Seller any objections Purchaser has to the Title Commitment and Seller shall, within ten (10) days following such notice, advise Purchaser of Seller's intent to remedy any such objections. In the event Seller advises Purchaser that Seller is not willing to remedy any of the objections, then Purchaser may (i) terminate this Agreement by giving written notice to Seller and Escrow Agent prior to expiration of the Due Diligence Period; or (ii) proceed to Closing and in such case, said objections shall become part of the Permitted Exceptions (as hereinafter defined). If Purchaser is dissatisfied with the status of the Property's title for any reason prior to the end of the Due Diligence Period, Purchaser may terminate this Agreement and Escrow Agent shall immediately, without further instructions or directions from any party hereto, return the Escrow Deposit to Purchaser. Seller shall convey the Property to Purchaser subject only to the Permitted Exceptions and free and clear of any monetary liens and encumbrances, which monetary liens Seller shall cause to be released at Closing. Notwithstanding any language herein to the contrary, if any monetary lien (including, but not limited to, mechanic's liens or liens for delinquent unpaid taxes and assessments) is not released by Seller prior to Closing, then a portion of the Purchase Price shall be applied by Escrow Agent as necessary to release the monetary lien to Purchaser's reasonable satisfaction, and the Purchase Price proceeds payable to Seller shall be reduced accordingly. The term "**Permitted Exceptions**" means: (i) standard

exceptions contained in the title insurance policy form, (ii) the specific title exceptions (exceptions that are shown on Schedule "B," Part 2 of the Title Commitment) that the Title Company has not agreed to insure over or remove from the Title Commitment and that Seller is unwilling to remove as provided above; (iii) items which would be disclosed by an accurate ALTA survey of the Property; and (iv) real estate taxes not yet due and payable. In the event the Title Company amends or updates the Title Commitment after expiration of the Due Diligence Period but before the Closing Date, (each, a "**Title Report Update**") and such Title Report Update discloses a new title exception not previously known to Purchaser and which was not created or permitted by Purchaser, then Purchaser may either (i) terminate this Agreement by giving written notice to Seller within ten (10) business days after its receipt of such Title Report Update (the "**Title Update Due Diligence Period**"), or (ii) require Seller to remove the exception prior to Closing if such removal can be accomplished at a cost of less than Fifty Thousand Dollars (\$50,000.00), or (iii) waive the exception and proceed to Closing. From the Effective Date until the earlier of termination of this Agreement or Close of Escrow, Seller shall not encumber the Property with any additional monetary liens. Additionally, Seller shall not take any affirmative action from the Effective Date until Close of Escrow which results in the imposition of any additional exceptions to title to the Property, without first obtaining Purchaser's consent. If Purchaser terminates this Agreement as allowed in this Section 3.2, the Escrow Deposit and any accrued interest shall be immediately returned by Escrow Agent to Purchaser without any further instructions or directions from any party hereto. Should Purchaser fail to notify Seller in writing of its intention to terminate this Agreement because of any matter first disclosed in a Title Report Update prior to the expiration of the Title Update Due Diligence Period, then Purchaser shall be deemed to have approved such matter, which shall be considered to be a Permitted Exceptions.

3.3 Delivery of Title Policy at Closing. As a condition to Purchaser's obligation to close, the Title Company shall commit to issue to Purchaser at or following Closing a 2006 ALTA Extended Coverage Owner's Policy of Title Insurance in the amount of the Purchase Price, and an ALTA Extended Coverage Lender's Title Policy as required by Purchaser's construction or acquisition lender dated as of the date and time of recording of the Deed (collectively, the "**Title Policies**"), naming Purchaser as the insured fee simple title owner of the Property, and subject only to the Permitted Exceptions. The Title Policies may be delivered after Closing if customary in the locality. Seller shall pay that portion of the title insurance premium equal to the cost of a standard owner's title insurance policy, and Purchaser shall pay such additional premium amount necessary to obtain extended coverage or endorsement coverage and any lender's coverage, as required by Purchaser.

ARTICLE 4: OPERATIONS, RISK OF LOSS, AND CLOSING CONDITIONS

4.1 New Contracts and Property Tax Protest. During the term of this Agreement, without Purchaser's prior written consent, Seller shall not enter into any new contract that will be an obligation affecting the Property or any business operations conducted on the Property subsequent to the Closing. In the event Seller does not file a property tax protest for the Property, Purchaser may during the term of this Agreement, at Purchaser's sole expense, protest the Property's assessment and tax valuation in an effort to lower property taxes, and Seller shall reasonably cooperate with Purchaser in connection with any such property tax protest.

4.2 Damage or Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened before the Closing, and risk of loss to the Property due to fire, flood or any other cause before the Closing, shall remain with Seller. If before Closing the Property or any portion thereof shall be damaged, or if the Property or any portion thereof shall be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, then Seller shall give written notice of such damage or taking to Purchaser (the “**Seller Notice**”). Upon receipt of Seller’s notice, Purchaser may elect in Purchaser’s sole discretion, to terminate this Agreement by giving written notice of its election to Seller within ten (10) business days after Purchaser’s receipt of the Seller Notice, in which event the Escrow Deposit and Additional Escrow Deposit and any accrued interest shall be returned to Purchaser without any further instructions or direction from any party hereto. If no such election is made, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustment, and upon the Closing of the transaction described herein, Seller shall assign, transfer and set over to Purchaser all of the right, title and interest of Seller in and to any awards that have been or that may thereafter be made for such taking, and Seller shall assign, transfer and set over to Purchaser any insurance proceeds that may thereafter be made for such damage or destruction giving Purchaser a credit at Closing for any deductible under such policies.

4.3 Purchaser’s Conditions to Closing. The obligation of Purchaser to complete the transaction contemplated by this Agreement is subject to the following conditions precedent (the “**Purchaser’s Closing Conditions**”), which conditions may be waived, or the time for satisfaction thereof extended, by Purchaser only in a writing executed by Purchaser:

(a) Seller’s Due Performance. All of the representations and warranties of Seller set forth in this Agreement shall be true, correct and complete in all material respects as of the Closing Date, and Seller, on or prior to the Closing Date, shall have complied with and/or performed all of the material obligations, covenants and agreements required on the part of Seller to be complied with or performed pursuant to the terms of this Agreement, including the execution and delivery by Seller of all closing documents described in Section 5.3.

(b) Satisfaction or Waiver of Contingencies. The Due Diligence Period and Governmental Approval Period shall have expired or shall otherwise each have been satisfied or waived by Purchaser as provided herein.

(c) Bankruptcy. No action or proceeding shall have been commenced by or against Seller under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors, and no attachment, execution, lien or levy shall have attached to or been issued with respect to Seller’s interest in the Property or any portion thereof.

(d) Possession. All lessees, tenants and occupants of the Property (if any) must have vacated the Property so that sole and exclusive possession of the Property can be provided to Purchaser at the Close of Escrow.

(e) Availability of Title Insurance. The Title Company shall be prepared and willing to issue to Purchaser and its lender the Title Policies described in Section 3.3.

4.4 Failure of Purchaser's Closing Conditions. If any of Purchaser's Closing Conditions described in Section 4.3 have not been fulfilled within the applicable time periods, Purchaser may:

(a) Waive the unfulfilled Purchaser Closing Condition and Close in accordance with this Agreement, without adjustment or abatement of the Purchase Price;

(b) Terminate this Agreement by written notice to Seller if the Closing does not occur because the Due Diligence Period and Governmental Approval Period are not satisfied, in which event Escrow Agent shall return the Escrow Deposit plus any accrued interest to Purchaser, and Seller shall pay for all of the cancellation charges of Title Company and Escrow Agent.

To the extent the failure of any applicable Purchaser's Closing Condition is caused by a breach of any term or condition of this Agreement by Seller, or Seller's failure to timely perform any condition or obligation set forth herein, Purchaser shall be entitled to pursue its rights and remedies pursuant to the terms of Article 8 hereof.

4.5 Seller's Closing Conditions. The obligation of Seller to complete the transaction contemplated by this Agreement is subject to the following conditions precedent (the "**Seller's Closing Conditions**"), which conditions may be waived, or the time for satisfaction thereof extended, by Seller only in a writing executed by Seller:

(a) Purchaser's Due Performance. All of the representations and warranties of Purchaser set forth in this Agreement shall be true, correct and complete in all material respects as of the Closing Date, and Purchaser, on or prior to the Closing Date, shall have complied with and/or performed all of the material obligations, covenants and agreements required on the part of Purchaser to be complied with or performed pursuant to the terms of this Agreement.

(b) Bankruptcy. No action or proceeding shall have been commenced by or against Purchaser or any affiliate of Purchaser under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors.

4.6 Failure of Seller's Closing Conditions. If any of Seller's Closing Conditions described in Section 4.5 above have not been fulfilled within the applicable time periods, Seller may:

(a) Waive the unfulfilled Seller's Closing Condition and Close in accordance with this Agreement, without adjustment or abatement of the Purchase Price; or

(b) Terminate this Agreement by written notice to Purchaser, in which event Purchaser shall pay for all of the cancellation charges of Title Company and Escrow Agent, if any, and to the extent that the failure of any applicable Seller Closing Condition is caused by a breach of any term or condition of this Agreement by Purchaser, or Purchaser's failure to timely perform any condition or obligation set forth herein, Seller shall be entitled to pursue its rights and remedies pursuant to the terms of Article 8.

ARTICLE 5: CLOSING

5.1 Closing. The consummation of the transaction contemplated herein shall occur on or before the Closing Date at the offices of the Escrow Agent or such other location mutually agreed to by the parties hereto.

5.2 Seller's Deliveries in Escrow. On or before the Closing Date, Seller shall execute and deliver to Escrow Agent the following:

(a) Deed. A Special Warranty Deed (the "**Deed**") in the form attached hereto as **Exhibit B**, executed and acknowledged by Seller and assigning and conveying to Purchaser title to the Property subject to the Permitted Exceptions;

(b) State Law Disclosures. An Affidavit of Property Value, to be prepared by the Escrow Agent as required by Arizona law and executed by Seller and Purchaser or their agents, and the Affidavit of Disclosure, as required by Arizona law;

(c) FIRPTA. A Foreign Investment in Real Property Tax Act Affidavit prepared by the Escrow Agent and executed by Seller;

(d) Proof of Authority. Such proof of Seller's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by Title Company; and

(e) Other. Such other documents and instruments, signed and properly acknowledged by Seller, if appropriate, as may be reasonably required by Title Company, Escrow Agent or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transaction contemplated herein.

5.3 Purchaser's Deliveries in Escrow. On or before the Closing Date, Purchaser shall deliver to the Escrow Agent the following:

(a) Purchase Price. The Purchase Price, less the Escrow Deposit and any other costs, adjusted by prorations, reflected on Purchaser's Settlement Statement prepared by Escrow Agent in accord with this Agreement, shall be deposited by Purchaser with the Escrow Agent in immediate, same-day federal funds on the day of Closing and wired for credit into the Escrow Agent's escrow account at a bank satisfactory to Seller;

(b) State Law Disclosures. The Affidavit of Value for the Property; and

(c) Additional Documents. Any additional documents reasonably necessary or required by the Escrow Agent or the Title Company for the proper consummation of the transaction contemplated by this Agreement.

5.4 Closing Statements. At the Closing, Escrow Agent shall prepare and Seller and Purchaser shall approve in writing final settlement statements consistent with this Agreement.

5.5 Title Policy. The Title Policies shall be available at Closing and delivered as soon thereafter as possible as provided in Section 3.3.

5.6 Possession. Seller shall deliver possession of the Property to Purchaser at Closing.

5.7 Costs. Each party shall pay its portion of the following costs as indicated below:

(a) The cost of the Survey shall be paid by Purchaser, with Purchaser to receive a credit for one-half of the Survey cost if the transaction described herein Closes, but not otherwise.

(b) Title Policy:

(i) Basic premium - Seller

(ii) Extended coverage -Purchaser

(iii) Lender's policy - Purchaser

(iv) Endorsements - Purchaser (to the extent requested by Purchaser or Purchaser's lender).

(c) Recording charges:

(i) Documents, fees and expenses related to any new loan - Purchaser

(ii) Deed - Seller

(d) Brokerage Sale Commission: None.

(e) Other: The Escrow Agent's escrow fee shall be evenly divided and paid between the parties. Each party shall pay its own attorneys' fees. All other fees and costs relating to Closing shall be paid by the parties as is customary in similar real estate transactions in Pima County, Arizona.

5.8 Title Agent. The Escrow Agent, as agent for the Title Company, agrees with Seller and Purchaser that: (i) recordation of the Deed constitutes the Escrow Agent's representation that it is holding the closing documents, closing funds and closing statement and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements; and (ii) the release of funds to the Seller shall irrevocably commit Title Company to issue the Title Policy in accordance with this Agreement.

ARTICLE 6: PRORATIONS

The Escrow Agent shall deliver a draft closing statement showing all prorations and expenses of the transaction to Seller and Purchaser at least three (3) days prior to the Close of Escrow. Taxes and assessments affecting the Property and any expenses of the Property shall be prorated between Purchaser and Seller as of the Closing Date. All non-delinquent real estate taxes and assessments on the Property shall be prorated based on the actual current tax bill, but if such tax bill has not yet been received by Seller by the Closing Date or if supplemental taxes are assessed after the Closing for the period prior to the Closing, the parties shall make any necessary adjustment after the Closing by cash payment to the party entitled thereto so that Seller

shall have borne all real property taxes, including all supplemental taxes, allocable to the period prior to the Closing and Purchaser shall bear all real property taxes, including all supplemental taxes, allocable to the period from and after the Closing. If any expenses attributable to the Property and allocable to the period prior to the Closing are discovered or billed after the Closing, the parties shall make any necessary adjustment after the Closing by cash payment to the party entitled thereto so that Seller shall have borne all expenses allocable to the period prior to the Closing and Purchaser shall bear all expenses allocable to the period from and after the Closing (provided, however, that Purchaser shall be responsible for all pre-closing expenses related to the Approvals). The provisions of this Article 6 shall survive the Closing, for a period of one (1) year. All improvement and special liens and assessments shall be prorated, with Seller paying all amounts due for the period prior to Closing and Purchaser paying all amounts due for the period from and after Closing.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties. As of the Effective Date and as of Closing, Seller represents and warrants to Purchaser as follows that based on the actual knowledge of the Seller:

(a) Organization and Authority. Seller validly exists in the state of Arizona and has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized by Seller's directors and properly executed, and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. Other than as expressly disclosed in the Property Information, Seller has not received written notice, and otherwise has no knowledge, of (i) any litigation or condemnation, environmental, zoning or other land-use regulation proceedings or any other legal, administrative or governmental proceeding or investigation, either instituted or planned to be instituted, which would materially and adversely affect the ownership, use, operation or value of the Property, or (ii) any special assessment proceedings affecting the Property. Seller shall notify Purchaser promptly of any such litigation or proceedings of which Seller becomes aware.

(c) Sole Owner. Seller is the sole owner of fee simple interest to the Property. Seller shall not take any action to affect title to the Property while this Agreement is in effect, and the sole and exclusive possession of the Property shall be delivered to Purchaser on or before the date of Closing and there shall be no leases or other rights to occupancy in effect at Closing.

(d) No Third-Party Rights. Except as disclosed in the Title Commitment, there are no leases, occupancy agreements, easements, licenses or other agreements which grant third-parties any possessory or usage rights to all or any part of the Property.

(e) Violations of Laws and Agreements. The execution, delivery and performance by Seller of this Agreement and such other instruments and documents to be

executed and delivered in connection herewith by Seller does not, and shall not, result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of Seller or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument, covenant, obligation, or agreement to which Seller or the Property is subject, or any judgment, law, writ, decree, order, injunction, rule, ordinance or governmental regulation or requirement affecting Seller or the Property.

(f) Bankruptcy. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's knowledge, pending in any current judicial or administrative proceeding against Seller.

(g) Compliance with Laws. Other than as expressly disclosed in the Property Information, Seller has not received written notice, and otherwise has no knowledge, of any violation of any applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Property, including, without limitation, any subdivision, building, use or environmental law, ordinance, rule, requirement or regulation. Seller shall promptly disclose to Purchaser if following the Effective Date Seller receives from a governmental official a written notice, or otherwise becomes aware, of any of the foregoing.

(h) Condemnation. To Seller's knowledge, there are no pending or threatened eminent domain or condemnation proceedings affecting the Property.

(i) Litigation. There are no actions, investigations, suits or proceedings pending or to Seller's knowledge threatened that affect the Property, or the ownership or operation thereof, and there are no judgments, orders, awards or decrees currently in effect against Seller with respect to the ownership or operation of the Property which have not been fully discharged prior to the Closing Date.

(j) No Other Agreements. To Seller's knowledge and except as disclosed in the Title Commitment or the Property Information, there are no shared expense agreements, repayment agreements, reimbursement agreements or development payback agreements that will affect all or any portion of the Property after Closing.

(k) Hazardous Substance. Neither Seller, nor, to Seller's knowledge, any other person or entity, has ever caused hazardous substances, hazardous waste, pollutants or contaminants to be used, deposited, stored, disposed of, placed or otherwise located in or on the Property except as may be disclosed in any environmental assessment or report delivered to Purchaser with the Property Information or prepared for or reviewed by Purchaser prior to Closing (the "**Environmental Assessments**"). Except as may be disclosed in the Environmental Assessments, Seller has received no notice of, nor to Seller's knowledge is there, any current violation or claimed violation of the Property with any law, ordinance, rule or regulation relating to Hazardous Substances, Hazardous Waste, Pollutants or Contaminants. Seller's business conducted on the Property included the use, operation and maintenance of certain motorized equipment. Other than the ordinary substances associated with such operations, to the best of Seller's knowledge there is no Hazardous Substance located on or under the Property that would prevent Purchaser from developing the Property as described herein. For purposes of this Agreement, the terms "**Hazardous Substances**", "**Hazardous Waste**", "**Pollutants**" and

“**Contaminants**” mean any substances, waste, pollutants, or contaminants now or hereafter included within those respective terms under any federal, state or local statute, ordinance, code or regulation.

(l) To the best of Seller’s knowledge, the Property has curb cuts on and direct access to at least one of the adjoining streets.

(m) Seller has not submitted and, to the best of Seller’s knowledge, no other person has submitted, an application for the creation of any special taxing district affecting the Property, or annexation thereby, or inclusion therein. Seller has not received notice that any governmental or quasi-governmental agency or authority has commenced or intends to commence construction of any special or off-site improvements or has imposed or increased or intends to impose or increase any special or other assessment against the Property or any part thereof, including assessments attributable to revaluations of the Property. To Seller’s knowledge, the Property is assessed for real estate tax purposes as one or more wholly independent tax lots, separate from any adjoining land or improvements not constituting a part of the Property, and no other land or improvements are assessed and taxed together with the Property.

(n) Seller has not misrepresented or failed to disclose any fact that might adversely affect the use, operation or value of the Property.

(o) Seller’s representations and warranties shall not be reduced or restricted because of Purchaser’s inspections or waivers of conditions to Closing, shall be deemed material and shall survive the Close of Escrow, recordation of any deed and any transfer of title.

“**Seller’s knowledge**” as used in this Agreement means the actual current knowledge of **Director of Planning Services**.

7.2 Purchaser’s Representations and Warranties. As of the Effective Date and as of Closing, Purchaser represents and warrants to Seller as follows:

(a) Organization and Authority. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. There is no action or proceeding pending or, to Purchaser’s knowledge, threatened against Purchaser which challenges or impairs Purchaser’s ability to execute or perform its obligations under this Agreement.

(c) Purchaser has full power and authority to enter into and perform this Agreement in accordance with its terms.

(d) Purchaser acknowledges and agrees that except as otherwise expressly provided herein, the Property shall be purchased in an “As-Is” condition and that Purchaser is

purchasing the Property solely upon the basis of its investigation and not on the basis of any representation, express or implied, written or oral, made by Seller or its agents, representatives, co-ventures, or employees, except those representations and warranties expressly set forth herein. Without limiting the generality of the foregoing, except as expressly set forth herein, Seller makes no warranty as to the sufficiency of the Property for Purchaser's purposes, the square footage or acreage contained within the Property, the sufficiency or completeness of any plans for the Property, the approval by the City of Tucson or Pima County of any plans, plats, rezoning, or similar development items relating to the Property.

(e) Purchaser acknowledges that no person acting on behalf of Seller is authorized to make, and by execution of this Agreement, Purchaser acknowledges that no person acting or purporting to act on behalf of Seller has made, any representation, warranty, guaranty, or promise, whether oral or written, except as set forth in this Agreement; and any agreement, statement, representation, or promise made by any person which is not contained in this Agreement shall not be valid or binding upon Seller.

“**Purchaser's knowledge**” as used in this Agreement means the actual current knowledge of

_____.

ARTICLE 8: DEFAULT AND DAMAGES

8.1 Default by Purchaser. In the event that the transaction set forth herein does not timely Close as a result of a breach of any term or condition of this Agreement by Purchaser, or Purchaser's failure to timely perform any condition or obligation set forth herein, then Purchaser agrees that Seller shall have the right to retain the Earnest Money Deposit (and any Extension Fee) as liquidated damages to compensate Seller for time spent, labor and services performed, and the loss of its bargain. Purchaser and Seller agree that it would be impractical or extremely difficult to establish damages if Purchaser so defaults, and that the Earnest Money Deposit (and, if applicable, the Extension Fees) represents a reasonable estimate of Seller's damages. Seller agrees to accept the Earnest Money Deposit (and, if applicable, the Extension Fees) as Seller's sole and total damages and relief hereunder if Purchaser defaults in its obligation to close hereunder, Seller waiving all other rights and remedies (except as otherwise expressly provided herein).

8.2 Default by Seller. In the event that the transaction set forth herein does not timely Close as a result of a breach of any term or condition of this Agreement by Seller, or Seller's failure to timely perform any condition or obligation set forth herein, Purchaser's sole and exclusive remedy shall be to elect one of the following: (i) to terminate this Agreement, in which event Purchaser shall be entitled to the return of the Earnest Money Deposit, Additional Escrow Deposits and any Extension Fees and all accrued interest thereon, or (ii) to bring a suit for specific performance and recovery of Purchaser's reasonable attorneys fees; provided, however, if specific performance is not available due to any act of Seller, then Purchaser shall be entitled to recover its actual damages.. Any suit for specific performance must be brought within ninety (90) days of the discovery of Seller's default. Any suit for damage must be brought within one (1) year from Closing.

ARTICLE 9: MISCELLANEOUS

9.1 Parties Bound. Except for an assignment pursuant to Section 1.1(l), neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.

9.2 Headings. The article and section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

9.3 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

9.4 Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with Arizona law, and any action to enforce or interpret this Agreement shall be brought only in Pima County, Arizona.

9.5 Survival. Unless otherwise expressly stated in this Agreement, each of the covenants, obligations, representations, and agreements contained in this Agreement shall survive the Closing and shall not be merged, until the applicable statute of limitations with respect to any claim, cause of action, suit or other action relating thereto shall have fully and finally expired.

9.6 No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

9.7 Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

9.8 Time. Time is of the essence in the performance of this Agreement.

9.9 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith, including but not limited to fees incurred in connection with any bankruptcy or appeal.

9.10 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the address set forth in Section 1.1. Any such notices shall be either () sent by overnight delivery using a nationally recognized overnight courier, in which case notice

shall be deemed delivered one (1) business day after deposit with such courier, (ii) sent by facsimile, in which case notice shall be deemed delivered upon receipt of confirmation transmission of such facsimile notice, or (iii) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or personal delivery and delivered after 5:00 p.m. local time where the Property is located shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notwithstanding the inclusion of the parties' e-mail addresses in Section 1.1, sending a notice by e-mail is not a permitted method of giving notice pursuant to the terms hereof.

9.11 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction – to the effect that any ambiguities are to be resolved against the drafting party – shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

9.12 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. local time where the Property is located.

9.13 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature.

9.14 Section 1031 Exchange. Either Seller or Purchaser or both may consummate the purchase of the Property as part of a so-called like kind exchange (the “**Exchange**”) pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the “**Code**”), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect the Exchange through an assignment of its rights under this Agreement to a qualified intermediary; and (c) the non-exchanging party shall not be required to take an assignment of the purchase agreement for the replacement property or be required to acquire or hold title to any real property for purposes of consummating the Exchange. The non-exchanging party shall not by this Agreement or acquiescence to the Exchange: (a) have its rights under this Agreement affected or diminished in any manner; or (b) be responsible for compliance with or be deemed to have warranted to the exchanging party that the Exchange in fact complies with Section 1031 of the Code.

ARTICLE 10: EARNEST MONEY DEPOSIT PROVISIONS AND DISCLOSURES

10.1 Investment and Use of Funds. The Escrow Agent shall invest any portion of the Earnest Money Deposit held in escrow in government insured interest-bearing accounts satisfactory to Purchaser, shall not commingle the Earnest Money Deposit with any funds of the Escrow Agent or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. All interest earned on the Earnest Money Deposit held in Escrow shall accrue to the benefit of the party entitled to the Earnest Money Deposit.

10.2 Disclosures. None.

10.3 Exhibits

Exhibit A

Legal Description

Exhibit B

Special Warranty Deed

(Signatures on the following page.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

Seller:

TUCSON UNIFIED SCHOOL DISTRICT NUMBER ONE
an Arizona public school district

By: _____
Name: Bryant Nodine
Title: Director of Planning and Student Assignment

Purchaser:

FLOWERS AND BULLETS COLLECTIVE
a _____

By: _____
Name: _____
Title: _____

Approved and Accepted:

Date Fully Executed Agreement delivered to escrow is _____
_____, 2015, the “**Effective Date**” [to be inserted by Escrow Agent], and in agreement
to Section 5.9.

Title Company _____

By: _____
Name: _____
Title: _____

EXHIBIT A
(Legal Description)

(to be attached by Escrow Agent)

EXHIBIT B

When recorded, mail to:

SPECIAL WARRANTY DEED

For the sum of Ten Dollars (\$10.00) and other valuable considerations received, **Tucson Unified School District Number One** (“Grantor”), does hereby sell, grant, convey, assign and transfer to **Flowers and Bullets Collective** (“Grantee”) that certain real property located in Pima County Arizona and legally described in **Schedule 1** hereto (the “Property”).

This conveyance is made subject to all current taxes and assessments, reservations in patents, and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, liabilities and other exceptions as may appear of record.

GRANTOR hereby binds itself to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of _____, 20__.

TUCSON SCHOOL DISTRICT NUMBER ONE,
an Arizona public school district

By: _____

Name: Bryant Nodine

Title: Director of Planning and Student Assignment

STATE OF ARIZONA)
) ss
County of Pima)

The foregoing instrument was sworn and acknowledged before me as of _____, 20__, by Bryant Nodine as Director of Planning and Student Assignment of TUCSON SCHOOL DISTRICT NUMBER ONE, an Arizona public school district, for and on behalf of such entity.

Notary Public

My commission expires

Schedule 1
(Legal Description of Property)

(to be attached by Escrow Agent)