

**LEASE AGREEMENT**

**Between the U.S. Department of Veterans Affairs  
and  
the Brentwood School**

**of Certain Real Property and Facilities  
at the West Los Angeles Campus,  
in Los Angeles, California**

**Pursuant to the West Los Angeles Leasing Act of 2016**

**DATED: November 4, 2016**

**Lease Agreement**  
**of Certain Real Property and Facilities**  
**at the**  
**West Los Angeles VA Campus,**  
**in Los Angeles, California**

**PREAMBLE**

This **Lease** (“Lease”) is made and effective as of November 4, 2016, by and between the U.S. Department of Veterans Affairs (hereinafter “Department” or “VA”), and the Brentwood School (hereinafter “Lessee”, “BWS” or “Brentwood School”), a non-profit corporation organized under the laws of the State of California, for the land described and depicted in Exhibits “A” and “B”, respectively, which is more particularly defined as the “Property”.

**RECITALS**

**A. WHEREAS**, the Department has jurisdiction and control of certain real property and facilities known as the West Los Angeles Campus, in Los Angeles, California (hereinafter the “WLA Campus” or WLA CAMPUS”), which provides services and benefits to the nation’s Veterans. The portion of the larger WLA CAMPUS property that is subject to this Lease consists of the athletic fields and complex located on approximately 22.06 acres of real property at the WLA CAMPUS (the “22.06 Acre Site” and also referred to herein as the Property), as further described and depicted in Exhibits “A” and “B,” respectively; and

**B. WHEREAS**, the West Los Angeles Leasing Act of 2016 (H.R. 5936) (a copy of which is attached hereto as Exhibit “F”), hereinafter referred to as “the West LA Leasing Act,” authorizes the Department to grant this lease to the Lessee, and the Lessee in return will provide consideration as described herein, to principally benefit Veterans and their families; and

**C. WHEREAS**, this Lease recognizes VA’s goal to revitalize the WLA Campus into a welcoming and vibrant community for Veterans of the greater Los Angeles area, and help end Veterans homelessness in Los Angeles, California, and the Lessee has been working and continues to work collaboratively with VA and the Veteran community to accomplish such goals and fortify the parties’ existing partnership, with the purpose of ensuring that it more appropriately benefits Veterans and their families, including Veterans who are severely disabled, chronically homeless, aging, or female; and

**D. WHEREAS**, in the spirit of good faith and recognition for the achievements and sacrifices that countless men and women of our nation’s Armed Forces and their families have sacrificed for this country, this Lease sets forth support and services that BWS will provide to VA on the WLA Campus for the benefit of Veterans and their families including, without limitation, services and programs that principally benefit Veterans and their families for the following purposes: the promotion of health and wellness; education; vocational training, skills building or other training related to employment; and peer activities, socialization or physical recreation. Access to the facilities shall be prioritized based on the order of chronically homeless, aging, and

female Veterans. Then additional priority will be given to Veterans residing on the WLA Campus, Veterans in a VA homeless program, or Veterans receiving care in a VA program; and

**E. WHEREAS,** VA has determined that this Lease and the consideration to be provided from the Lessee is consistent with VA's mission and operations, and will help revitalize the WLA Campus for the benefit of Veterans and their families ; and

**F. WHEREAS,** the Department and Lessee agree that during the Lease term, the 22.06 Acre Site shall be subject to applicable Federal, State, and local laws, codes, ordinances, regulations, and permitting requirements; and

**NOW, THEREFORE,** IN CONSIDERATION OF THE FOREGOING AND OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND ACCEPTED, IT IS HEREBY AGREED THAT subject to the terms and conditions herein, the Department grants to Lessee and Lessee accepts a ten (10) year initial term, with a right of the parties to exercise up to one (1) 10-year extension subject to and as described in Article 3 below.

#### **ARTICLE 1 – EXHIBITS AND DEFINITIONS**

**Exhibits:** The following constitute the Exhibits to this Lease. Each of the Exhibits is attached to this Lease and is incorporated by this reference:

- A. Exhibit "A": Legal Description of Property
- B. Exhibit "B": Site Plan
- C. Exhibit "C": Memorandum of Lease
- D. Exhibit "D": Value of In-Kind Consideration To Be Provided From BWS to VA
- E. Exhibit "E": Hours For Use Regarding the VA/BWS Recreational Facilities

**Definitions:** The following constitute the definitions to this Lease:

"Certificate of Substantial Completion": means the certificate defined in Article 6.B.13 of this Lease.

"Congress": means the Congress of the United States of America.

"Department": means the United States Department of Veterans Affairs.

"Designated VA Representative" or "DVR": means the individual of the Department who will act on matters of Lease administration but is not designated to execute Leases or modifications to the Lease or its exhibits unless the individual has or acquires such authority through a written "Delegation of Authority" from the Secretary.

“Effective Date”: means the date this Lease is executed by both parties, as set forth on the signature page of this Lease; provided that, if the parties execute this Lease on different days, the Effective Date shall mean the later day that this Lease is executed.

“Enhanced Sharing Agreement”: means that certain Enhanced Sharing Agreement (V691S-171) dated August 4, 1999 between VA and BWS, as subsequently amended.

“Facilities”: means (a) the facilities on the Property described in the Recitals section above, which Lessee will finance, design, develop, construct, operate, and maintain in accordance with this Lease; and (b) all associated structures, improvements, utilities, fixtures, infrastructure, and any other Improvements located on the Property.

“Force Majeure”: means any of the following that directly cause any of Lessee’s obligations hereunder not to be performed in a timely manner: (a) an earthquake, hurricane, tornado, flood, or other similar act of God; (b) fire; (c) strikes or similar labor disputes provided such strike or similar dispute is beyond Lessee’s control and provided Lessee uses commercially reasonable efforts to remediate such strike or similar dispute; (d) acts of the public enemy; (e) inability to obtain labor or materials or clear access to the Property by reason of acts or omissions of any governmental body not caused by Lessee’s actions or omissions; (f) acts of war or terrorism, rebellions, riots, insurrections or civil unrest; (g) unusually severe weather conditions that actually cause similar construction or development activities on the Property to be suspended; (h) discovery, remediation, and abatement of any unknown environmental hazard or unknown hazardous substance (i.e., a hazardous substance, covered by any environmental law or regulation, whose existence on the Property is unknown to Lessee by the Effective Date) which is affecting the Property; (i) discovery of any ancient, historical, archeological, architectural, or cultural artifacts, relics, or remains on the Property; and (j) any act or omission of a governmental body other than VA not caused by Lessor’s or Lessee’s actions or omissions.

“Hazardous Substances”: means those substances as defined in Article 34 of this Lease.

“Improvements”: means any existing improvements on the Property, and any development, construction, operation, and maintenance activities made on or to the Property or Facilities by Lessee, which the Lessee will accomplish in accordance with this Lease, particularly Article 10.

“Lease”: means this Lease between the Department and Lessee.

“Leaschold Mortgage”: means each mortgage as defined in Article 20.B.2 of this Lease.

“Leasehold Mortgagee”: means each leasehold mortgagee as defined in Article 20.B.2 of this Lease.

“Lessee”: means the Brentwood School.

“Property”: means that certain real property consisting of approximately 22.06 acres, as described and depicted in Exhibits “A” and “B,” respectively, and all of the structures, improvements, utilities, fixtures, infrastructure, and any other Improvements that are located, constructed, erected or placed thereon.

“Qualified Party”: means any Person whereby (i) neither such Person nor any of its partners, members, or principal stockholders is debarred or suspended from doing business with the Department or any other Federal government agency, (ii) neither such Person nor any of its partners, members, or principal stockholders is listed on the most current “System for Award Management” published by the United States General Services Administration at [www.sam.gov](http://www.sam.gov), as updated from time to time, or any replacement thereof, (iii) neither such Person nor any of its partners, members, or principal stockholders is a person who poses a security or safety risk as determined by the Secretary of State, including but not limited to any person who either represents a country, or is a member of or provides political, financial or military support to a group, that is listed in the most current “Patterns of Global Terrorism” report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at [http://www.state.gov/global/terrorism/annual\\_reports.html](http://www.state.gov/global/terrorism/annual_reports.html), and (iv) neither such Person nor any of its partners, members or principal stockholders is subject to a criminal indictment or information for a felony in any court in the United States. For purposes of this Lease, the term “principal stockholder” shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 of the Securities and Exchange Act of 1934, as amended and promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Lessee.

“Secretary”: means the Secretary of Veterans Affairs or the individual delegated to act for and on behalf of the Secretary.

“Successor”: means any such entity as defined in Article 20.B.3 of this Lease.

“Term Sheet”: means that certain Term Sheet dated August 17, 2016 between VA and BWS.

“Veteran(s)”: means a Veteran(s) who served in the active military, naval or air service, and who was discharged or released therefrom).

“West LA Leasing Act”: means the West Los Angeles Leasing Act of 2016, which is contained in HR 5936 and was enacted after being signed by the President of the United States on September 29, 2016.

“WLA Campus” or “WLA CAMPUS”: means that approximately 388 acre VA campus located at 11301 Wilshire Boulevard, Los Angeles, California 90073 of which the Property is a part.

## **ARTICLE 2 – CONSIDERATION FOR LEASE, UTILITY INFRASTRUCTURE, AND PAYMENT OF ANCILLARY SERVICES**

A. **Consideration**: In return for VA granting this Lease on the Property, the Lessee hereby agrees to provide the following consideration for the primary benefit of Veterans and their families:

## Section I – Monetary Consideration From BWS to VA

1. (a) In exchange for BWS' continued use of the athletic fields, complex, and facilities located on the 22.06 Acre Site of the WLA Campus, BWS shall pay annual rent ("Annual Rent") to VA in the amount of \$850,000.00 (such amount, as the same may be increased, is referred to herein as the "Annual Rent"). Subject to the terms of this Lease, effective as of September 1, 2016 and continuing throughout the term of this Lease, such Annual Rent shall be payable in equal monthly cash installments (currently, \$70,833.33), payable on each first day of the month during the term of this Lease. VA and BWS acknowledge that BWS has been using the Property prior to the Effective Date pursuant to the terms of the Enhanced Sharing Agreement and has paid rent to VA thereunder for the period from September 1, 2016 through and including November 30, 2016 (the "Pre-Term Period") in the amount of \$113,902.50 (the "Pre-Paid Rent"), and such Pre-Paid Rent shall be applied to BWS' obligation to pay its monthly installments of Annual Rent effective as of September 1, 2016. VA and BWS hereby agree that for the Pre-Term Period, BWS shall be obligated to pay VA the Annual Rent Differential (defined below). The "Annual Rent Differential" shall mean the difference between the Pre-Paid Rent subtracted from the monthly cash installment of Annual Rent described above (prorated for any partial months) due for the Pre-Term Period, which VA and BWS agree is \$98,597.49. The Annual Rent Differential shall be paid by BWS to VA within five (5) business days following the Effective Date.

(b) The Annual Rent shall increase by 2.5% on each third anniversary of the Effective Date during the Lease Term, and such increase may be satisfied by increasing the Annual Rent or the Annual In-Kind Consideration Amount (as defined in Article 2, Paragraph 2 below) by such amount. Determination of increasing Annual Rent versus Annual In-Kind Consideration Amount will be determined by VA in consultation with BWS.

## Section II – In-Kind Consideration From BWS to VA

2. (a) BWS shall also provide VA with annual in-kind consideration valued at \$918,000.00/year, which amount shall be subject to increase as provided in accordance with Paragraph 1 above (such aggregate annual in-kind consideration amount, as the same may be increased, is referred to herein as the "Annual In-Kind Consideration Amount"). The Annual In-Kind Consideration Amount shall be comprised of four (4) primary components, as identified and discussed below:

Category A – Operation, maintenance, and upkeep of the 22.06 Acre Site;

Category B – Special programs and events benefitting Veterans and their families (the "Category B Consideration");

Category C – Capital costs and improvements relating to activities on the 22.06 Acre Site to benefit Veterans and their families; and

Category D – Athletic, recreational, and educational programs and activities to benefit Veterans and their families (the "Category D Consideration").

(b) The types and amounts of each component of the Annual In-Kind Consideration Amount is further described below in Sections III, IV, V and VI; shall be provided annually by

BWS to VA; and shall be valued based on the underlying dollar amounts and standards contained in Exhibit D. VA and BWS acknowledge that the value of the in-kind consideration set forth in Exhibit D exceeds the Annual In-Kind Consideration Amount (which Annual In-Kind Consideration Amount, together with the initial Annual Rent, totaling \$1,768,000 in the aggregate, was identified in the underlying land appraisal process). Therefore, VA and BWS shall, on no less than annually, mutually agree upon the level of in-kind consideration to be provided based on the dollar amounts set forth in Exhibit D (the parties acknowledging that certain amounts are fixed costs) in order to achieve the Annual In-Kind Consideration Amount. In the event that VA elects, at its option, to have in-kind consideration provided that exceeds the Annual In-Kind Consideration Amount, the Annual Rent shall be reduced by the amount of such excess. Conversely, if VA elects at its discretion after consultation with BWS (and only to the extent consistent with the West LA Leasing Act), to have in-kind consideration provided that is below the Annual In-Kind Consideration Amount, the Annual Rent shall be adjusted and increased by the amount of such underage; provided, however, that in no event shall such reduction in in-kind consideration result in an increase in the Annual Rent by more than \$50,000.00 in any 12 month period, nor shall any such increase in Annual Rent become effective prior to the date that is 6 months following written notice from VA to BWS of such increase.

(c) The utilization of the services described in Sections IV and VI below (i.e., Category B Consideration and Category D Consideration) shall be credited to BWS in such amounts whether or not VA fully utilizes such services.

(d) The priorities listed in this Lease are in alignment with the priorities set forth in the VA Master Planning process for the WLA Campus. Services listed herein are designed to meet the needs of chronically homeless, aging or female Veterans, who are currently or formerly enrolled in VA healthcare, rehabilitation, and/or homeless programs. As the relationship matures, VA and BWS plan to expand access of these services to other Veterans and Veteran family members.

### **Section III – Category A Consideration (Operation, Maintenance, and Upkeep of the 22.06 Acre Site)**

3. BWS shall continue to operate and maintain (including insurance and utility costs) the Veterans Center for Education & Recreation facilities on the 22.06 Acre Site, to provide access to the recreational facilities (e.g., tennis, volleyball, basketball, track, soccer, baseball, and football), classes and clinics in activities such as swimming, conditioning, and health and wellness for Veterans referred from the WLA Campus to and cleared through BWS.<sup>1</sup>

4. BWS shall provide for the repair and replacement costs for the upkeep of the 22.06 Acre Site, including but not limited to, the property, physical structures, equipment, and grounds (roads, lawns, shrubbery, and trees). This cost will be valued in Exhibit D of this Lease.<sup>2</sup>

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<sup>1</sup> In order to determine the in-kind cost associated with operating and maintaining the facilities for daily operations, Brentwood School totaled the landscaping costs (\$210,529) and the cost of utilities and routine maintenance (\$123,995). This total was then multiplied by 51%, which corresponds to the agreed upon VA/Veteran access to the facilities, resulting in a total in-kind value of landscaping and utilities of \$170,587.

<sup>2</sup> In order to determine the annual in-kind value associated with repairing and replacing the Athletic Complex facilities

**Section IV – Category B Consideration  
(Special programs and events benefitting Veterans and their families)**

5. During BWS' continued use of the athletic fields, complex, and facilities located on the 22.06 Acre Site, and subject to BWS' obligations set forth in its conditional use permit regarding traffic and other considerations, BWS shall allow VA (including qualified Veterans Service Organizations (VSOs) in coordination with VA), free of any license, use or rental fee and subject to mutually agreeable scheduling, to use the athletic fields, complex, and facilities, for events such as Veteran-focused concerts, movie nights, and softball / baseball leagues, provided that VA shall be responsible for the cost of such events (including, without limitation, security, set-up, breakdown and cleanup costs, movie projection equipment costs, etc.).

6. BWS shall host activities, opportunities and other special events on the 22.06 Acre Site, and on the athletic fields and complex at the 22.06 Acre Site, for Veterans and their families, not less than three (3) times per year, to allow for social interaction, to help connect Veterans and their families with the local community, and to further educate and inform the Veterans in attendance about the Veteran access program noted in Paragraph 3 above.

**Section V – Category C Consideration  
(Capital costs and improvements relating to activities on the 22.06 Acre Site  
to benefit Veterans and their families)**

7. VA and BWS may (but shall not be obligated to) jointly agree to BWS' construction of joint-use long-term capital improvements and capital upgrades to the athletic fields and complex discussed in Paragraph 1 above (including, without limitation a new joint-use weight room facility, which shall be accessible to Veterans during times mutually agreed upon by the parties), to provide additional benefits to Veterans and their families. Any such capital improvements shall be evaluated for required compliance activities with applicable laws and regulations, including but not limited to those regarding the National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NHPA). BWS shall commence the necessary compliance activities and coordinate with VA early in the planning process. In that regard, the parties agree and recognize that as a Federal agency, VA must be notified of activities that have the potential to impact the environment and historic properties under its jurisdiction and control. Furthermore, any such proposed capital improvements shall be subject to review and approval of VA's Designated VA Representative. Such review and approval shall be based on BWS providing final designs of such facilities and demonstrating completion of the required NEPA, NHPA, and/or other compliance activities required under applicable law. If VA and BWS jointly agree to such joint-use long-term capital improvements, the costs thereof shall be amortized, applying an annual interest rate of 5%, over the then-remaining term of the Lease, and VA's share of such amortized costs shall be deducted from BWS' Annual Rent due, as set forth in Paragraph 1 above.

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shared by Brentwood School and VA, Brentwood School used a conservative capital maintenance reserve of 4% annually, equivalent to a 25-year average life, and applied this against the aggregate investment in property, physical structures and equipment of \$14.9 Million. From this total capital maintenance reserve, Brentwood School attributed 51% to the agreed upon VA/Veteran access to the facilities, resulting in an in-kind value of \$298,000, plus \$50,000 for reporting and auditing, for a total of \$348,000. Note that all expenses and the aggregate investment in property, physical structures and equipment come directly out of Brentwood School's audited financial statements.



**Section VI – Category D Consideration  
(Athletic and educational program and activities  
to benefit Veterans and their families)**

8. BWS shall, at no cost to VA, conduct “Veteran Donation Drives” centered around Veterans Day and Memorial Day, special occasions, holidays, or based on the timing of relevant BWS curriculum, to solicit, receive, and provide to Veterans in-kind donations, for the benefit of Veterans, primarily those that are severely disabled, chronically homeless, aging, and female, where the items may, for example, include donations of clothes, coats, food, furniture, bicycles, and wheelchairs. BWS agrees to conduct these activities solely for the benefit of Veterans, and will not seek or accept any direct financial or in-kind gain or benefit in relation thereto. Additionally, the “Veterans Donation Drives” must take place within the confines of the 22.06 Acre Site and no advertising or solicitation is to occur on any other part of the WLA Campus.

9. BWS shall continue working with VA to further implement and expand the existing program of facilitating year-round access for Veterans and their families to the athletic fields, complex, and facilities (including the track, tennis courts, pavilion, swimming pool, future weight room, and football, softball, baseball and soccer fields) on the 22.06 Acre Site, which BWS was previously using under the Enhanced Sharing Agreement with VA, for the recreational, therapeutic, rehabilitative, and social well-being of Veterans and their families, subject to BWS’ rules and regulations pertaining to the use of such fields, complex and facilities, including, without limitation, accessing the same via the main security gate on the 22.06 Acre Site (commonly known as the VCRE (Veterans Center for Recreation and Education) Welcome Center) and parking in areas designated by the BWS security officers at such gate. The facilities available to Veterans and associated hours of operation will be mutually agreed upon by VA and BWS within thirty (30) days of the Effective Date, provided that such agreed-upon hours shall be no less (in the aggregate) than the hours set forth in Exhibit E.

10. BWS shall provide access to eligible Veterans and their families as determined by VA and BWS to check out and use athletic equipment and gear provided by BWS when at the athletic fields and complex on the WLA Campus during established hours of use.

11. BWS shall provide regular and ongoing free educational services to Veterans and their families, consisting of courses, seminars, workshops, and clinics in mutually agreed upon areas of general adult education, such as nutrition, health, fitness, wellbeing and computer literacy training. BWS shall coordinate with VA prior to each semester of the school year to determine the optimal courses, slots, and frequency of the educational services to be provided. BWS will also provide access to music rooms for Veterans and their families interested in rehearsal space, subject to a mutually agreed-upon schedule.

12. BWS shall provide daily transportation services between identified stops at the WLA Campus and the 22.06 Acre Site, for the activities, events, and services described in this Lease. BWS shall, in coordination with VA, advertise such daily transportation schedule via their web-based services described in Paragraph 14 below, and through local postings and communications to the local Veteran community. Alternatively, for those Veterans driving to the 22.06 Acre Site for activities, events, and services described in this Lease, reasonable amounts of parking will be

available on a non-exclusive basis, subject to availability, in those parking areas designated by BWS security officers, as provided in Paragraph 9 above.

13. Based on the VA-established criteria and application process that will define priority use among VA children and grandchildren candidates for consideration by BWS, BWS shall, during each summer, provide not less than twenty (20) summer camp scholarship slots per week of the summer camp at BWS, for children and grandchildren of Veterans. BWS may also provide up to the equivalent of three (3) full scholarships for BWS school tuition and fees, in any given year during the Lease term to admitted children of Veterans, pursuant to program and eligibility criteria that the parties will seek to memorialize in writing and publicize within sixty (60) days after the Effective Date of this Lease. The annual amount available for such scholarships is set forth in Exhibit D. BWS will, on a priority basis, facilitate the application process for qualified candidates from these programs, by providing information about the school and its programs, assistance with all forms, and counseling about deadlines and other application requirements. While admission cannot be guaranteed, special attention will be given to qualified applicants.

14. BWS will provide web-based support to conduct master scheduling for all Veteran-related activities, events, and services on the 22.06 Acre Site. BWS will coordinate the development of the website with VA, to ensure it adequately and accurately describes and addresses the scheduling issues, and so VA may, at its discretion, publicize a link to the VCRE Website.

15. BWS will appoint a communications coordinator who will be in charge of publicizing the activities and services for Veterans and their families that BWS will provide pursuant to this Lease. In partnership with VA, BWS will publicize all of the activities and services that it provides for Veterans and their families to ensure meaningful access.

**B. Utility Infrastructure, Metering, VA Approval of Distribution Systems, Professional Engineer's Report:**

Notwithstanding anything to the contrary contained in this Article 2.B below, VA and BWS acknowledge and agree that, as of the Effective Date, (i) BWS is receiving utility services directly from applicable utility providers and VA is not providing any utilities or other services to BWS, (ii) BWS has not installed and does not contemplate installing any connections to VA's distribution systems or utility lines, and (iii) BWS has not performed and does not contemplate performing any Utility Connection Work (as that term is defined below). However, this Article 2.B. shall apply if BWS does, at a later date during the Lease term, seek to obtain utility services from or through VA.

Subject to the terms and conditions of Article 2 above, the Department and Lessee hereby agree as follows:

1. Lessee shall be solely responsible for any and all costs (i.e., direct costs, insurance, taxes, assessments, etc.) associated with establishing/constructing the infrastructures, distribution lines and systems, connections (including any Lessee reconnections to local utility provider services due to events relating to or stemming from Articles 2.B.5 and/or 2.B.6 below), meters, taps, etc., required for providing gas, electricity, water, sewer, oil, fiber optics, telephone, fire alarm service or any other form of utility, communications, power, or fuel to the Property.

2. Lessee shall be solely responsible for installing meters and paying the Department (within thirty (30) days of receipt of any bill from the Department detailing) the “at-cost” amounts (including any fees or charges to or assessments against VA that are attributable to VA’s provision of utilities to Lessee) for any and all electricity, water, gas, oil, fiber optics, telephone, or any other form of utility, communications, power, or fuel required during construction and/or operation of any new improvements on the Property. Nothing in this Section B requires Lessee to acquire utility services from the Department.

3. Commencing on the Effective Date of the Lease, and notwithstanding Article 2.B.6 below, Lessee shall be solely responsible for ensuring at its sole cost and expense and subject to Article 2.B.2 above, that the utilities necessary for the operation and maintenance of the Property are available and operable in accordance with Federal, State, and local codes from VA or a third party utility provider.

4. In conjunction with Articles 2.B.1 and 2 above, the Department shall have the right to review and approve any and all connections to VA’s distribution systems prior to: (a) final design of such connections and (b) final installation of such connections, and the Department shall issue both such approvals to Lessee in writing. In addition, prior to the Department’s approval of any and all connections to VA’s distributions systems per this Paragraph 4, Lessee shall provide the Department with a “Professional Engineer’s Survey Report” that evaluates the impact of the installation of such utilities on VA’s distribution systems; confirms that no adverse impact will result upon VA’s distribution systems; and provides for a corrective plan of action to mitigate any potential, foreseeable adverse impacts.

5. If Lessee performs or causes the performance of any utility connection work (“Utility Work”) on VA property through an easement, permit, or otherwise, then Lessee hereby agrees that: (a) it shall be solely and fully responsible and liable to VA for any and all costs associated with repairing and/or restoring any VA real or personal property damaged or destroyed by, as a result of, or in connection with such Utility Work, and (b) notwithstanding anything in Article 13 to the contrary, Lessee shall indemnify and hold VA harmless for any and all liabilities, fees, costs, and expenses regarding any injuries, deaths, and/or damage to any person’s personal property resulting from or in connection with such Utility Work by Lessee, its contractors, builders, sublessees, agents, employees, licensees, affiliates, and/or invitees.

6. Subject to and in accordance with this Article 2.B.6 and Article 10.A, during the Lease term and so long as the Department has jurisdiction and control of the WLA Campus, the Department will at its discretion upon Lessee’s request and subject to applicable Federal, State, and local law, provide the Property with uninterrupted flow of utilities (if VA unilaterally determines that it has the ability and excess capacity to do so), but Lessee hereby acknowledges and agrees that VA will not be liable for any damages due to or caused by any interruption, cessation, inadequacy, or defect in the character, quantity, quality, or supply of utilities services to Lessee, except for damages or injuries resulting or arising from the acts of Department personnel properly cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680). Lessee further agrees that no such interruption or cessation of utility services shall constitute an event of default by VA under this Lease.

7. Subject to and in accordance with Article 2.B.6 above, in the event a State (or any of its agencies, departments, or commissions) or local public utility challenges, protests, or undertakes legal action against any of Lessee's utility connections and/or servicing from VA utility lines, Lessee shall have the right (subject to the Department's prior written approval, which shall not be unreasonably withheld), to legally contest or defend against such adverse actions. If Lessee elects to do so, however, it shall be solely responsible for all of its fees, costs, and expenses stemming therefrom.

8. During the Lease term, for any direct connections that Lessee makes to VA utility distribution systems, VA may if it deems necessary, contact Lessee and establish a time and place whereby VA can conduct or obtain at its sole cost and expense, an independent "utility consumption assessment" upon any sub-metering installed on the Property, to confirm or ensure proper functionality. Lessee agrees at its sole cost and expense to undertake corrective action as needed regarding any such sub-metering found to be malfunctioning.

C. **Payment to VA for Ancillary Services:** Each month during the Lease term, Lessee shall be responsible for, and shall pay to the Department, the "at-cost" amount(s) for (i.e., the actual cost to the Department for providing) any "ancillary service(s)," (e.g., grounds maintenance, trash pickup, laundry services, housekeeping services, lawn mowing, snow removal, security) that Lessee requests in writing and receives from the Department during and throughout the preceding month ("Ancillary Services"). Lessee's payments to the Department for such Ancillary Services shall be paid no later than thirty (30) days after receipt of any bill from the Department for providing such services.

Notwithstanding anything to the contrary contained in this Article 2.C above, VA and BWS acknowledge and agree that, as of the Effective Date, BWS has not requested and currently does not contemplate requesting that any Ancillary Services be provided to BWS, and VA is not presently providing any Ancillary Services to BWS.

### ARTICLE 3 – LEASE TERM

A. **Initial Term.** Unless earlier terminated by the Department as provided for in Article 23, the initial term of this Lease shall be for ten (10) years, commencing on the Effective Date ("Initial Term").

B. **Extension Term(s).** Subject to the provisions of this Section B, the parties shall have one (1) option to extend the Lease term, each for an additional ten (10) year period (such time period is hereafter referred to as an "Extension Term").

1. Should Lessee determine that it would like to extend the term of the Lease beyond the Initial Term, Lessee shall, no earlier than twenty-four (24) months, and no later than twelve (12) months, prior to the expiration of the Initial Term, provide written notice to VA requesting an Extension Term ("Extension Term Request"). If the Initial Term expires without a timely Extension Term Request sent from the Lessee to the DVR, then the remaining Extension Term right shall automatically expire.

2. Upon issuance of the Extension Term Request from Lessee to the DVR, VA shall have the right to reject the Lessee's Extension Term Request in writing, if the Lessee is then in default

(beyond any applicable notice and cure periods) under the Lease. Provided that the Initial Term has been extended for the Extension Term, as provided above, during the last thirty-six (36) months of the Extension Term, VA and BWS agree to negotiate in good faith to as applicable, enter into a new lease, or further extend the term of the existing Lease.

3. Lastly, notwithstanding anything in this Lease to the contrary, all of the terms, conditions, covenants, obligations, representations, warranties, and provisions of this Lease shall apply to the Extension Term.

#### **ARTICLE 4 – PROPERTY TO BE LEASED TO LESSEE**

A. The Property subject to this Lease shall constitute all structures, improvements, utilities, fixtures, infrastructure, and any other Improvements located on the Property described and depicted in Exhibits “A and “B,” respectively.

#### **ARTICLE 5 - SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHT OF WAY**

A. This Lease is subject to all existing easements and rights of way, whether or not recorded, for location of any type of Facilities over, across, in, or upon the Property or any portion thereof; and the right of the Department, upon consultation with Lessee, to grant such additional easements or rights of way over, across, in, or upon the Property; and such approval shall not be unreasonably or arbitrarily withheld or delayed, provided that any such additional easements or rights of way shall not be inconsistent with Lessee’s quiet use and enjoyment of the Property under this Lease, and shall be conditioned on the assumption by the grantee thereof of liability to the Department and to Lessee for such damages as the Department and/or Lessee shall suffer for property damaged or destroyed or property rendered uninsurable as a result of grantee’s exercise of its rights thereunder. VA represents and Lessee acknowledges that, as of the Effective Date, there are no easements located on the Property of which VA is aware.

B. There is hereby reserved to the holders of such easements and rights of way as presently in existence, whether or not recorded, outstanding or which may hereafter be granted, to any Federal, State, or local officials engaged in the inspection, construction, installation, maintenance, operation, repair, or replacement of facilities located on the Property, such reasonable rights of ingress and egress over the Property as shall be necessary for the performance of their official duties with regard to such facilities.

C. The Department shall have the right to relocate any existing easements (at its sole cost and expense) and grant additional easements and rights of way over, across, in and upon the Property, provided that: (1) any additional easement or right of way shall not be inconsistent with or adversely affect Lessee’s actual or intended use of the Property, and the right to non-exclusive use of the Access Roads pursuant to Article 5.E below; (2) the grantee of any such easement or right-of-way agrees in writing to indemnify, hold harmless and defend the Department and Lessee from and against any and all claims, actions, losses, damages or costs and expenses as the Department or Lessee shall suffer or incur for injury to persons, or property destroyed as a result of grantee’s exercise of its rights thereunder; (3) the granting of such easement or right-of-way shall not affect the insurability of the Property (i.e., either for title insurance purposes or for purposes of liability

and casualty insurance); and (4) Lessee consents in writing to VA's granting of the easement or right-of-way, such consent not to be unreasonably withheld, conditioned, or delayed.

D. **Future Easements and Rights of Way.** Upon Lessee's written request, the Department agrees to consent to and join in the execution of all applications, petitions, and non-exclusive easements and rights-of-way as may be necessary to complete or operate the Facilities (to the extent such execution by the Department as fee owner of the Property is required); provided that: (1) the underlying application, petition or easement is not inconsistent with the terms of this Lease and would not materially or adversely affect VA's mission or operations; (2) the grantee of any such application, petition, easement or right-of-way provides VA with prior written assurances to indemnify, hold harmless and defend the Department and Lessee from and against any and all claims, actions, demands, losses, damages, liabilities, judgments, costs, and attorneys' fees, which the Department or Lessee may suffer or incur for injury to persons, or VA property destroyed as a result of grantee's exercise of its rights thereunder; and (3) VA provides its prior written consent to Lessee after reviewing the written assurances referenced in Paragraph (2) above and the final version of each underlying application, petition, easement or right-of-way, which shall not be unreasonably withheld, conditioned, or delayed.

E. Subject to Article 10.A, VA and Lessee agree that during the Lease term, Lessee shall have a non-exclusive right of (1) access to and use of the access roads across the WLA Campus for general vehicular ingress and egress to and from the Property, and (2) access to and use of the sidewalks across the WLA Campus for pedestrian ingress and egress to and from the Property (collectively, the "Access Roads"). However, applicable Federal law shall govern all such uses, and Lessee shall be subject to VA security requirements and other operating procedures and restrictions, including without limitation, designated access road and parking space restrictions. Additionally, Lessee's ingress and egress activities shall be subject to adjustment if the Department determines that it is necessary to prevent adverse impacts or effects to VA's mission and operations.

## **ARTICLE 6 – REPRESENTATIONS AND COMMITMENTS**

A. Lessee and the Department hereby represent, warrant, and covenant that:

1. Each party has complied with all applicable laws and requirements in connection with the execution, delivery, and performance of this Lease.
2. Each party is duly authorized to execute and deliver this Lease.
3. This Lease constitutes a legal, valid, and binding obligation of each party, enforceable in accordance with its terms, subject to equitable principles that could affect specific performance.
4. Upon expiration or termination of this Lease, title to the buildings, structures, and other Improvements constructed or placed on the Property and the fixtures annexed thereto shall immediately vest in and become the property of the Department, as part of the real estate and Property, without any additional compensation therefor and without any instrument of conveyance. Lessee covenants and agrees, upon demand by the Department, on or after termination of the Lease, to execute any instruments requested by the Department to effectuate the conveyance of

such buildings, structures, Improvements, utilities, fixtures, and infrastructure constructed or placed on the Property and the fixtures annexed thereto.

5. Each party undertakes to act with reasonable promptness, so that the other party can complete its Lease obligations within agreed timelines.

6. The parties hereby agree that this Lease supersedes the prior Enhanced Sharing Agreement and the Term Sheet, such that, effective as of the Effective Date, the Enhanced Sharing Agreement and Term Sheet are terminated and are of no further force or effect.

B. Lessee represents, warrants and covenants to the Department that:

1. Lessee is (a) a non-profit corporation duly organized, validly existing and in full force effect under the laws of the State of California; (b) will validly and legally remain as such throughout the Lease term; (c) has and will continue to have throughout the Lease term, full power as a non-profit corporation to enter into and perform its obligations under this Lease, and (d) has, or will have prior to the time the same are required by law, and will thereafter maintain throughout the remaining Lease term, all licenses or other governmental approvals necessary to perform its obligations hereunder.

2. The Lessee's signing, delivery, and performance of this Lease and its consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary action on the part of the Lessee. To the Lessee's knowledge, neither its signing and delivery of this Lease, nor its consummation of the transactions herein contemplated, nor its compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (a) any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on the Lessee or its properties, (b) the constituent documents of the Lessee, or (c) any of the provisions of any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it or any of its properties is bound, or result in the creation or imposition of any lien, charge or encumbrance upon any of its properties pursuant to the terms of any such indenture, mortgage, contract or other instrument.

3. All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, and licenses required under applicable law that are necessary in connection with the Lessee's signing and delivery of this Lease or the Lessee's consummation of the transactions contemplated hereby or the Lessee's performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise), and either the time within which any appeal therefrom may be taken or review thereof may be obtained has expired, or no review thereof may be obtained or appeal therefrom taken.

4. This Lease has been duly signed and delivered by the Lessee and, assuming due authorization, signing and delivery by the Department, constitutes a valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).

5. The Lessee is not in default with respect to any order or decree of any court or any order, rule, regulation or demand of any Federal, State, municipal, or governmental agency, which default would reasonably be likely to materially and adversely affect the Lessee's ability to perform its obligations under this Lease or the transactions contemplated hereby.

6. All negotiations relative to this Lease and the transactions contemplated hereby have been carried on by the Lessee directly with the Department, and without the intervention of any Person who may or will have a valid claim against the Department for a finder's fee, brokerage commission or other like payment with respect to this Lease or such transactions.

7. The Lessee is, and at all times during the Term will be, a Qualified Party. If at any time the Lessee fails or is reasonably likely or expected to fail to continue to be a Qualified Party, the Lessee will immediately so advise the Department in writing.

8. Lessee has inspected the Property, is familiar with the physical condition of the Property, and based on the foregoing, accepts such Property "as is" and with all faults, subject to all applicable law, and assumes all risks associated with the physical condition of the Property in accordance with this Lease and all applicable law, except as otherwise provided in Article 16 below.

9. As of the Effective Date, Lessee shall in accordance with, subject to and except as provided in Articles 16 and 34 of this Lease, be responsible for all costs associated with or pertaining to the removal from the Property of any and all Hazardous Substances (including, but not limited to, asbestos, mold and lead-based paint) and other materials (including, but not limited to, renovation, demolition and construction debris) on the Property due to any acts by or on behalf of BWS. All such removal activities shall be performed in accordance with applicable Federal, State and local laws, codes, and ordinances.

10. The Department has made no representations or warranties concerning the condition of the Property, the fitness or suitability for any particular use or access to the Property and, except as provided in Article 16 below, the Department shall not be liable to Lessee for any latent or patent defects in such Property, nor has it agreed with Lessee to alter, improve or maintain such Property.

11. During the Lease term, Lessee will finance, design, develop, construct, operate, and maintain the Property in accordance with the terms and conditions of this Lease.

12. During the Lease term, Lessee will: (a) obtain at its own expense all pertinent Federal, State, and local permits, licenses, and approvals (including those approvals of VA) necessary for construction, renovation and operation of the Facilities; (b) assure that all applicable Federal, State, and local requirements are met during construction and operation of the Facilities (including but not limited to, the latest version of the National Fire Protection Association (NFPA) 101 Life Safety Code; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.); the National Historic Preservation Act of 1966 (16 U.S.C. § 470, et seq.); and the Archaeological Resources Protection Act (16 U.S.C. § 470, et seq.), all as such laws may be amended from time to time); (c) assure that the operation of the Facilities in accordance with the preceding Clause "(b)" do not negatively affect VA's activities and operations; and (d) assure that the Facilities are



operated as a drug and alcohol free environment and take action promptly when this requirement is not met by occupants.

13. Prior to occupancy of any new Facilities by Lessee on the Property, and any other Improvements placed on the Property after the Effective Date which are made available for occupancy, Lessee shall at its sole cost and expense, cause a City inspector or an independent inspector licensed by the State of California to conduct an inspection of the Facilities and certify in writing that it has been completed in compliance with the applicable State and local building codes and standards, including the NFPA 101 Life Safety Code (the "Certificate of Substantial Completion"). The Department must receive the Certificate of Substantial Completion before Lessee may occupy or receive occupants into such new Facilities, and will promptly notify Lessee of its receipt of the Certificate of Substantial Completion from Lessee.

14. Lessee will at all times, during the Lease term and its development, construction, renovation, operation, and maintenance of the Facilities, use commercially reasonable efforts to act so as to avoid the occurrence of any action(s) contained in Article 22 which constitute events of default.

15. Lessee will be responsible for maintaining and securing all necessary access to the Property for development, construction, operation, and maintenance of the Facilities and the Property, subject to Article 5.E above. Except as otherwise provided in Article 5.E above, access that requires utilization of VA property other than the Property that is the subject of this Lease shall require advance coordination with and approval of the DVR.

16. Lessee will be solely responsible for any and all costs associated with the repair and maintenance of the Facilities, the grounds, as well as any other structures on the Property in accordance with Articles 10 and 11 of this Lease.

17. Lessee will use commercially reasonable efforts to assure that its development, construction, operation and maintenance activities on the Property do not negatively affect VA's activities or operations, and use commercially reasonable efforts to conduct any of its construction activities on the Property involving noise, dirt, or other emissions that could negatively affect the WLA Campus' activities or operations to times falling within normal VA business hours.

18. At its sole cost and expense and in accordance with Article 10.A of the Lease, solely with respect to the Property and the Improvements thereon, Lessee will take all necessary measures to: (a) control soil erosion during the design, development, construction, operation, and maintenance of the Facilities through a detailed sediment control plan, with specifications to include necessary preventive measures to protect all water sheds, watercourses, and surface-water drainage from sedimentation, siltation, and pollution; (b) mitigate the long-term impacts relating to changes in surface water drainage patterns through the use of filtration and sediment ponds in accordance with State and local requirements; (c) expeditiously establish the necessary landscaping to minimize erosion; and (d) ensure that all established sediment ponds continue to empty surface water in the same respective directions and locations off of the Property following any development, construction, and maintenance activities of the Facilities.

19. With respect to its use of the Property under this Lease, Lessee shall at all times comply with the provisions of the National Historic Preservation Act and the Archaeological Resources Protection Act, 16 U.S.C. § 470, et seq., and any Programmatic Agreements executed with the State Historic Preservation Office ("SHPO"), and shall coordinate and work with the Department and the SHPO as needed.

20. Lessee shall not knowingly remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains or objects of antiquity on or from the Property. In the event such items are discovered on the Property, Lessee shall immediately notify the DVR and protect the site and items from further disturbance until the DVR gives clearance to proceed.

21. Lessee (not VA) shall be responsible for ensuring that the Property is serviced during the Lease term by the applicable municipal or other local governmental authorities responsible for providing police, fire protection and inspection, and emergency services.

22. (a) In coordination with the Department, Lessee will, within sixty (60) days after the completion of the yearly audit for each of its annual fiscal years on which Lessee operates, provide the Department with a copy of its audited financial statements for the entire school (which shall include the Facilities on the Property) for such fiscal year (collectively, the "Lessee Financials"). Additionally, Lessee will promptly notify the Department in writing of any change to its financial condition or circumstance that will materially impair its ability to perform its obligations under this Lease. The Department shall keep the Lessee Financials strictly confidential and shall not disclose the Lessee Financials to any third parties, except to the extent required by applicable law or pursuant to a court order or by mutual agreement of the parties (provided that if the Department is required by law or court order to disclose the Lessee Financials, it shall promptly notify Lessee thereof and to the extent not prohibited under applicable law, reasonably cooperate with Lessee's efforts to obtain a protective order). The Department acknowledges that in the event of any breach or threatened breach of this confidentiality provision, in addition to any other rights and remedies available to Lessee at law or in equity, Lessee may seek injunctive or other equitable relief in favor of Lessee.

(b) Upon receiving the Lessee Financials referenced in the preceding Subparagraph (a) of this Paragraph 22, VA shall be entitled to review them to ensure that Lessee is not undergoing, or about to undergo, an adverse financial condition or circumstance that would negatively impact Lessee's ability to timely and adequately meet its Lease obligations.

(c) With respect to Lessee's obligations under this Paragraph 22, the parties agree that if and to the extent that the highest court or other adjudicative body of competent jurisdiction to which the matter may be presented determines that any Lessee Financials submitted to VA (which were not duly corrected or supplemented within a reasonable time period) are materially misleading, VA to extent of any damages directly sustained thereby, shall be entitled to pursue any and all remedies available to it under this Lease, Federal, State, and local law, and at equity.

23. Lessee shall at all times cooperate in good faith with respect to the actions of the Department necessary to comply with the audit and reporting requirements of the West LA Leasing Act with respect to the Property and this Lease.

## ARTICLE 7 – USE

A. **Property Use In General.** Except as provided for in Section B of this Article, Lessee may use the Property during the Lease term only for the financing, design, development, construction, operation, maintenance and use of the Facilities (including, without limitation, for BWS school-related activities), which shall not include any political (as opposed to educational), gambling, obscene, or pornographic uses, or the implementation of any illegal research activities or other programs illegal under or conflicting with or applicable Federal, State, and local law.

B. **Prior Consent Required For Any Other Uses.** Consistent with Section A above and except as VA and Lessee may otherwise agree in writing, no other uses of the Property shall be permitted on the Property during the Lease term.

C. **Quiet Enjoyment.** Consistent with Sections A and B of this Article, and subject to the terms and conditions of this Lease, Lessee shall and may peacefully and quietly have, hold, and enjoy the Property for the Lease term, without disturbance from VA, and free from any encumbrance created or suffered by VA, except to which this Lease is made subject in accordance with Articles 5 and 20.

## ARTICLE 8 – PROHIBITION AGAINST DISPOSAL OF PROPERTY TO LESSEE

The parties agree that consistent with the West LA Leasing Act, VA has no desire or intent and is expressly prohibited from selling or otherwise permanently conveying the Property to Lessee or other third party entity.

## ARTICLE 9 – COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REGULATIONS

A. Lessee agrees that it will be responsible for and will obtain at its sole cost and expense, all applicable Federal, State, and local planning approvals, and other licenses and permits which are necessary to design, develop, construct, operate, and maintain the Property as contemplated in this Lease, including Article 7. Additionally, during the Lease term, Lessee shall comply with all applicable Federal, State, and local laws, codes, and ordinances regarding the operation and maintenance of the Property.

B. Lessee recognizes that VA as a Federal agency must be notified of activities that have the potential to impact the environment and historic properties under VA's jurisdiction and control. Lessee agrees that any upgrades, installations, improvements, rehabilitation, construction, or other similar actions that BWS may desire to undertake must first be evaluated for required compliance activities with applicable laws and regulations, including but not limited to those regarding the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). BWS shall commence the necessary compliance activities and coordinate with VA early in the planning process.

C. Lessee agrees that at or prior to submission of any plats, plans, specifications, or applications pertaining to any new Improvements for any approval, license, or permit with respect to compliance with applicable Federal, State, and local laws, codes, and ordinances, Lessee shall provide VA with a copy of each such proposed submission for review and approval (which shall

not be unreasonably withheld, conditioned, or delayed). VA's comments on any submittal from Lessee will be provided to Lessee within thirty (30) days of its receiving the submitted material. VA's review and approval shall be limited to ensuring that the proposed development and/or activities as reflected in the documents submitted to VA for review: (a) are architecturally compatible with the WLA Campus and ongoing master planning process; (b) are consistent with the Property uses identified in Article 7; and (c) would not materially and adversely affect VA's use of and other activities on the WLA Campus. In the event that VA disapproves of any proposed submission and design from Lessee (based upon the foregoing Clauses (a) through (c)), VA shall, along with a written objection, provide Lessee with a written explanation of the reasons for rejection of the proposed submittal and design. Unless the Department objects to the submitted material within thirty (30) days, its approval shall be presumed. Lastly, Lessee shall provide VA with a complete copy of all such approved plats, plans, specifications, and applications.

#### **ARTICLE 10 – IMPROVEMENTS OR CONSTRUCTION ON THE PROPERTY**

A. **Improvements**: All development, construction, and renovation activities, including but not limited to, those relating to the use of roadways or pedestrian walkways, or connections with electricity, water, steam, sewer services, or other utilities, on the Property shall be coordinated in advance with the DVR. The repair of any damage to existing structures, systems, or facilities on the Property resulting from development, construction, or renovation activities relating to any Improvements, shall be the sole responsibility of Lessee, and any such affected structures, systems, and other facilities shall be immediately repaired or replaced by (or on behalf of) Lessee in a manner reasonably acceptable to VA.

In connection with the Facilities, Lessee shall not enter into any contract or agreement with any city, county, or governmental agency or body or public utility with reference to sewer lines or connections, water lines, or connections, street improvements, including but not limited to curbs, gutters, parkways, and street lighting, utility connections, lines or easements, without the prior written consent of the Department, which consent shall not be unreasonably withheld. The Department shall consent to or disapprove any such proposed contract or agreement within sixty (60) days after the date of submission thereof by Lessee. Unless the parties otherwise agree, the Department's failure to respond within such sixty (60) days shall be a deemed approval.

The parties agree that any such activities that BWS desires or proposes to undertake under this Article 10 must first be evaluated for required compliance activities with applicable laws and regulations, including but not limited to those regarding the National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NIIPA). BWS shall commence the necessary compliance activities and coordinate with VA early in the planning process. In that regard, the parties agree and recognize that as a Federal agency, VA must be notified of activities that have the potential to impact the environment and historic properties under its jurisdiction and control.

B. **Lessee's Contracts For Construction**: Lessee agrees that any and all general construction contracts for the development, construction, and renovation of the Facilities, as well as any subsequent activities of this nature on the Property, shall contain clauses indemnifying and holding the Department harmless for any causes of action or damages arising as a result of any acts or omissions of the contractor(s).

C. **Construction Documents**: Lessee agrees that prior to undertaking development, construction, or renovation of the Facilities, it will provide the DVR with a complete copy of all development, construction, and renovation documents at least sixty (60) days prior to undertaking any such activities.

D. **Design Review and Approval**: The Department's comments on any submittal, to include development, construction, and renovation documents; and any supplements thereto, will be returned to Lessee within thirty (30) days of receiving the submittal. The Department shall have the right to reasonably reject such submittals. In any such instance, the Department shall, along with its objection, provide a detailed, written explanation of the reasons for rejecting the submittal. Unless the Department objects to the submitted material within such time period, approval shall be presumed. Upon receipt of any VA rejection, Lessee shall respond to the Department within ten (10) business days and identify specifically how it proposes to address each of the Department's objections. The Department shall then respond to the Lessee within ten (10) business days, and if the Department shall continue to have objections, the Department shall again specify those objections, and the parties shall work together to expeditiously reach an agreed set of plans and specifications.

E. **Access to Property**: Upon reasonable advance notice, Lessee agrees to permit the Department's representatives, agents and employees with access to and right of entry onto the Property before, during, and after any development, construction, or renovation undertaken pursuant to this Article for the purpose of monitoring, observing, and making inquiries in order for the Department to determine compliance with the Lease. It is understood by the parties that such activity does not relieve the Lessee of its responsibility for managing any and all on-site development, construction, and renovation activities.

F. **As-Built Drawings**: Upon completion of any new Improvements or Facilities-related development, construction, or renovation activities on the Property, Lessee shall provide the DVR with one complete set of reproducible drawings (all disciplines) illustrating each and all stages of changes made to the Facilities. The as-built drawings will incorporate all significant changes made over the life of the Facilities. The title block shall be dated and entitled "As-Built Drawings." One electronic copy of the As-Built Drawings on CD, "AUTOCAD 2016" (read only format) or later edition if the DVR agrees in writing shall also be transmitted to the VA Facilities Manager at the time of the reproducible drawings. The Department shall have the right to review the As-Built Drawings for accuracy and completeness, and request that Lessee make any and all necessary revisions, additions, and/or modifications to them if the Department reasonably finds and accurately deems them to be incomplete or inaccurate.

G. **Mechanics and Labor Liens**: Lessee agrees that it will not permit any claim or lien made by a mechanic, material man, laborer, or other similar liens to stand against the Property for work or materials furnished to Lessee in connection with any development, construction, renovations, improvements, maintenance, or repairs made upon the Property by Lessee or any contractors, subcontractors, builders, agents, employees, licensees, or invitees. Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date Lessee is notified of such lien in writing by payment, posting a lien release bond or otherwise in accordance with applicable law. However, in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, provided that Lessee shall, at its sole cost and expense, timely post a lien release bond in

accordance with California Civil Code Section 8424 (or any applicable successor statute), Lessee shall not be deemed to be in breach of this Section G.

#### **ARTICLE 11 – OCCUPANCY AND MAINTENANCE PROVISIONS**

A. Subject to the terms and conditions of this Lease, including Article 2.C, Lessee at its own expense, shall at all times protect, preserve, maintain, and repair the Property and Facilities, and shall keep same in good order and condition. All grounds, sidewalks, lawns, shrubbery, and structures, both interior and exterior, shall be maintained to a standard that is comparable to and consistent with the maintenance provided for the surrounding VA facilities and property. Lessee shall at all times exercise due diligence in the protection of the Property against damage or destruction by fire or other causes. The Property shall at all times be maintained in a tenantable, safe, and sanitary condition.

B. In accordance with Article 11.A above, Lessee shall: (1) maintain all equipment and systems on the Property to provide reliable services without unusual interruption, disturbing noises, exposure to fire and safety hazards, and without emissions of dirt; (2) ensure that all maintenance work on the Property is performed in accordance with applicable codes, and display inspection certificates as appropriate; (3) provide labor, materials, and supervision to adequately maintain the Facilities' structure, roof, interior and exterior walls, windows, doors, and any other necessary building appurtenances to provide watertight integrity, structural soundness, acceptable appearance, and continuing usability; (4) make all capital repairs, alterations, and replacements as necessary to maintain the usable condition of Property and Facilities throughout the Lease term; and (5) notify and obtain written approval from the DVR at least forty-five (45) days prior to commencing any "significant non-emergency repair" on the Property (e.g., any repair that individually or in the aggregate would exceed \$250,000.00; and notify the DVR at least thirty (30) days prior to commencing any "significant non-emergency repair" on the Property that would exceed \$150,000.00. Any and all contemplated "significant non-emergency repair" exceeding \$250,000.00 shall be considered construction as covered by Article 10 of this Lease, and thus will be subject to the requirements of such Article 10.

#### **ARTICLE 12 – APPLICABILITY OF THE FEDERAL TORT CLAIMS ACT**

Except for damages or injuries resulting or arising from the acts of its officers, agents or its employees properly cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680), as it may be amended, neither the United States nor the Department shall be responsible for damages to the Property or for injuries to persons that may arise on the Property exclusive of those areas under the exclusive and direct control of the Department.

#### **ARTICLE 13 - INDEMNIFICATION BY LESSEE**

A. The Department shall promptly notify Lessee of the existence of any claim, action, demand, or other matter to which Lessee's indemnification obligations to VA would apply, and shall give Lessee a reasonable opportunity to defend the same at its own expense and with counsel of its selection; provided that, the Department (including the United States) shall at all times also have the right to fully participate in the defense at its own expense. The Department shall cooperate with Lessee to the extent reasonably necessary in any such defense. If Lessee shall,

within a reasonable time after notice to Lessee, fail to defend, the Department shall have the right, but not the obligation, to undertake the defense of, and (while exercising reasonable business judgment in its discretion) to compromise or settle the claim or other matter on behalf, for the account, and at the risk, of Lessee. If the claim is one that cannot by its nature be defended solely by Lessee, then the Department shall make available all information and assistance that Lessee may reasonably request (in VA's discretion).

**B. NOTHING IN THIS LEASE SHALL BE DEEMED TO WAIVE OR IMPAIR THE IMMUNITIES OR LIMITATIONS OF LIABILITY OF LESSEE OR THE DEPARTMENT AS TO THIRD PARTIES, DIRECTLY OR INDIRECTLY, AND NOTHING IN THIS LEASE SHALL BE DEEMED TO PROVIDE A RIGHT OF ACTION IN FAVOR OF A THIRD PARTY AGAINST THE DEPARTMENT OR AGAINST LESSEE WHICH WOULD NOT OTHERWISE EXIST.**

#### **ARTICLE 14 – RISK OF LOSS AND INSURANCE**

A. **Property Insurance:** Lessee shall, in any event and without prejudice to any other rights of the Department, bear all risk of loss or damage to the Property arising from any causes whatsoever with or without fault, including but not limited to, fire; lightning; storm; tempest; explosion; impact; aircraft; vehicles; smoke; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes; loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; earthquake; malicious damage; or any other casualty or act of God to the fullest extent permitted by law. Lessee, and to the extent that this Lease is conveyed, transferred, assigned or sub-leased, shall maintain, at its own expense, a "Special Form" property insurance policy with an insurance company with a minimum rating of A-, VI by A.M. Best. Such insurance shall be maintained at all times in an amount as specified in this Article. Provided always, however, that Lessee shall bear all risk of loss of or damage to such property for the entire Lease term for any work or other responsibilities required to be performed under the provisions of this Lease, except as otherwise provided for by the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680).

In addition, Lessee shall maintain at its sole expense, all that insurance further required in accordance with this Article. Maintenance of liability insurance required in accordance with this Article must include claims resulting from the negligence of Lessee or any of its officers, agents, servants, employees, subtenants or licensees. Maintenance of insurance required in accordance with this Article shall effect no limitation on Lessee's liability to the Department with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants or licensees or by any failure on the part of Lessee to fully perform its obligations under the Lease.

B. **Insurance:**

1. **The Lessee's Insurance:** Lessee, at its expense, shall carry and maintain with regard to the Property, the following insurance during the Lease term:

- a. "Special Form" property insurance against the risks enumerated in Section "A" of this Article in an amount at all times equal to at least 100% of the full replacement

value of the Improvements to the Property, to include the Facilities ("Lessee's Property Insurance");

- b. Commercial General Liability insurance, including but not limited to, contractual liability as defined in the ISO CG 00 01 04 13 form, with respect to the Property as specified above, to afford protection with limits of liability in amounts approved from time to time by the Department, but not less than \$1,000,000.00 in the event of bodily injury and death to any number of persons in any one accident, and not less than \$1,000,000.00 for property damage;
- c. Workers' compensation or similar insurance in form and amounts required by law;
- d. All other types of insurance imposed by applicable legal requirements;
- e. All amounts of insurance required by this Article shall be adjusted annually, to reflect increases in 100% of the full replacement value of the Property. Lessee agrees that it will not subrogate to its insurance carrier any right or action that it has or may have against the Department for any loss covered by insurance, nor will Lessee, if it is suffering (or about to suffer) such loss, prosecute any suit against the Department by reason of such loss for which it is covered by insurance. Lessee agrees to notify its insurance carrier(s) of the provisions of this Article.

2. **The Lessee's Contractor's Insurance:** During the Lease term, Lessee shall require any contractor performing work on the Property to carry and maintain at no expense to the Department the following insurance:

- a. Commercial General Liability insurance, including but not limited to, contractor's liability coverage and contractual liability coverage of at least one million dollars (\$1,000,000.00) with respect to personal injury or death, and one million dollars (\$1,000,000.00) with respect to property damage;
- b. Workers' compensation or similar insurance in form and amounts required by law; and
- c. Any other insurance imposed by applicable legal requirements.

Lessee and/or Lessee's contractors shall be obligated to correct any damage caused by or attributable to such contractor or subcontractors for the work or materials performed by or on behalf of Lessee.

3. **Policy Provisions:** All insurance, which this Lease requires Lessee to carry and maintain or cause to be carried or maintained pursuant to this Section B shall be in such forms, for such amounts, for such periods of time, and with such insurers as the Secretary shall reasonably approve. All policies or certificates issued by the respective insurers for Commercial General Liability and "Special Form" property insurance will name the Department and Lessee as insured or joint loss payees as their respective interests appear, shall provide that any losses shall be payable notwithstanding the negligence of Lessee or any other person or entity besides VA, and provide



that no cancellation in coverage thereof shall be effective until Lessee or its insurance carrier shall have provided at least thirty (30) days prior written notice of the same (or at least ten (10) days prior written notice with respect to non-payment of premium) to the Department. Lessee shall notify VA in writing of any anticipated reduction or material change in its insurance coverage required hereunder within ten (10) business days after becoming aware (including due to any communication from the insurer) of an impending reduction or material change in insurance coverage; provided, however, that in no event shall Lessee be relieved of its obligation to carry the insurance required hereunder. In no circumstance will Lessee be entitled to assign to any third party rights of action that Lessee may have against the Department.

4. **Delivery of Policies:** Lessee shall deliver promptly to the Department a certificate of insurance or a certified copy of each policy of insurance required by this Lease and shall also deliver no later than ten (10) days after the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks, together with appropriate evidence of payment of the premiums.

C. **Loss or Damage:**

1. In the event that the Property, or any part thereof, is damaged by fire or by other casualty, whether or not such casualty is the fault of, or results from negligence of Lessee, other than the result of negligence of Department personnel cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680), except as otherwise expressly provided in this Article 14.C.1 below, Lessee shall: (a) within thirty (30) days of such damage file an insurance claim seeking sufficient proceeds to cover such damage to the extent such damage is covered by Lessee's Property Insurance; (b) within one hundred eighty (180) days (or such period of time set forth in the Repair Estimate, as defined below, if longer) after the later of Lessee's receipt of such proceeds and Lessee's receipt of the Department's approval (or deemed approval) of the plans and specifications for the repair, restoration or reconstruction of the Property in accordance with Articles 10 and 11 above, repair, restore or reconstruct the Property to its condition existing immediately prior to the damage (or such other condition or configuration as may be approved (or deemed approved) by the Department in accordance with Articles 10 and 11 above) by applying all such monies towards that result; and (c) within ninety (90) days after the date of such casualty, cause its contractor to provide Lessee and the Department with a scope of work describing the contemplated repairs, restoration or reconstruction work, an estimated cost of such repairs, restoration or reconstruction work and an estimated time period within which such repairs, restoration or reconstruction work will be completed (the "Repair Estimate"). VA and BWS hereby agree that the drafts of the Repair Estimate documents, including the proposed scope of work, estimated cost and repair schedule estimates, shall be subject to good faith review, discussion, and input from VA and BWS and their respective qualified constructing, engineering, and costing experts. Any repairs, restoration or reconstruction shall be performed in accordance with plans and specifications approved (or deemed approved) by the Department in accordance with Articles 10 and 11 above, provided that if the repairs, restoration or reconstruction diligently pursued cannot be reasonably completed within such one hundred eighty (180) days, Lessee shall have such time as is reasonably required and agreed to by the parties to complete, as applicable, the repair, restoration or reconstruction. Notwithstanding anything in this Article 14.C.1 to the contrary, if the casualty occurs within the last year of the term of this Lease, Lessee shall have the right, exercised by written notice given to the Department within thirty (30) days after the casualty, to either (i) repair, restore or reconstruct the Property as provided above or (ii) terminate this Lease effective as of the date of such

termination notice, in which event Lessee shall assign all insurance proceeds under Lessee's Property Insurance pertaining to the repairs, restoration or reconstruction that Lessee would otherwise have been obligated to perform under this Article 14.C.1 above (excluding such proceeds applicable to Lessee's Personal Property (as defined in Article 15.B below), provided that such proceeds are awarded separately from the proceeds applicable to the Improvements and Facilities on the Property and such proceeds applicable to the Improvements and Facilities on the Property are not reduced by the proceeds applicable to Lessee's Personal Property) to the Department, and Lessee shall have no further obligations to Department in connection with such casualty.

In addition, notwithstanding anything in this Article 14.C.1 to the contrary, (a) if the casualty occurs within the last thirty-six (36) months of the term of this Lease, (b) the Estimated Repair Cost (defined below) exceeds the Threshold Cost (defined below) and (c) this Lease is not terminated by Lessee in connection with the immediately preceding sentence, then the term of this Lease shall be automatically extended for the Casualty Extended Term (defined below) at the same Annual Rent and Annual In-Kind Consideration Amount in effect immediately prior to the Casualty Extended Term, subject to escalation and adjustment as provided in Article 2.A above.

For purposes of this Article 14.C.1, the term "Casualty Extended Term" shall mean the number of months equal to (and derived from) the following formula: (i) the Estimated Repair Cost, less (ii) the Threshold Cost, then divided by (iii) the Monthly Cost Factor. In addition, for purposes of this Article 14.C.1, the term "Estimated Repair Cost" shall mean the estimated cost of such repairs, restoration and reconstruction as set forth in the Repair Estimate; the term "Monthly Cost Factor" shall mean \$16,666.67; the term "Remaining Term" shall mean the number of months remaining in the term of this Lease following the date of the casualty; and the term "Threshold Cost" shall mean the product of (x) the Monthly Cost Factor and (y) the Remaining Term.

As an example, if the casualty occurs with a 36-month Remaining Term, an Estimated Repair Cost of \$1,000,000.12, and a Threshold Cost of \$600,000.12 (or \$16,666.67 x 36 months), the Casualty Extended Term will equal 24 months (or  $\$1,000,000.12 - \$600,000.12 = \$400,000.00 / \$16,666.67$ ).

2. If Lessee refuses, or fails to timely repair, restore or reconstruct the Property or any part thereof so damaged or destroyed, to the reasonable satisfaction of the Department in violation of Lessee's obligations under Article 14.C.1 above, after the expiration of the applicable notice and cure period set forth in Article 22 above, the Department may terminate this Lease by providing written notification to Lessee. In such event, title to the Facilities and any other improvements placed on the Property shall vest in the Department without notice or further action being required on the Department's part, and the Department may undertake the repair, restoration or reconstruction of the Facilities and any other Improvements placed on the property or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the work site necessary for completing the work. Lessee shall be liable for the at-cost amounts for any damages or costs (including the cost to complete any work in progress) actually incurred by the Department to repair, restore, or reconstruct the Facilities on the Property and any other Improvements placed on the Property, or the damaged or destroyed portion thereof, to the extent that such repair, restoration or reconstruction work is consistent with the scope of work in the Repair Estimate.

D. **Effect of Condemnation.** If all or a substantial portion of the Lessee's right, title, and interest hereunder shall be condemned, appropriated, or taken under the power of eminent domain by a taking authority (other than the Federal Government), or conveyed in lieu of condemnation (each such event shall hereinafter be referred to as a "Taking"), and if, in Lessee's reasonable judgment, the remainder of the Property is not sufficient to permit Lessee to operate the Property under this Lease in a manner that is economically viable and Lessee so notifies the Department in writing, then the Lease term shall terminate at the time title to the Property vests in the applicable taking authority (hereafter referred to individually or collectively if applicable as the "Taking Authority") via the Taking; provided, however, that Lessee's rights under this Section shall be subject to the rights of the holder of any Leasehold Mortgage. Any award monies paid or payable by the taking authority in connection with the Taking shall be payable to Lessee and/or to the Leasehold Mortgagee, as their interests appear, but such monies shall be subject to any appropriate offset(s) if applicable law so allows and the Lessee is determined to owe outstanding monies to the Taking Authority in connection with this Lease, any other Government contract(s), or any other contracts or legal obligations with such Taking Authority. If a Taking occurs and this Lease is not terminated by Lessee as provided above, then, effective as of the date of the Taking, the Annual Rent and the Annual In-Kind Consideration Amount shall be reduced on a pro rata basis based on the proportion that the acreage of the land subject to the Taking bears to the total acreage of the Property.

#### **ARTICLE 15 – DELIVERY, RESTORATION, AND SURRENDER**

A. **Delivery of the Property to Lessee.** Upon the Effective Date, the Department shall deliver physical possession of the Property to Lessee, free and clear of any tenancy or occupancy by third parties, except as permitted in Article 5 above.

B. **Reversion of Leasehold Title and Vesting of Improvements.** Upon the expiration or termination of this Lease, all right, title and interest of Lessee (and anyone claiming by, under, or through Lessee) in and to the Property and all permanent Improvements thereon shall immediately revert to and/or vest in the Department without compensation therefor, and without any further action by the parties. However, should any further action be necessary to accomplish such reversion and vesting, Lessee agrees to cooperate with VA and take all actions reasonably necessary to accomplish the same. No claim for damages against VA or its officers or agents shall be created or made on account of such expiration or termination of this Lease. All of Lessee's equipment, fixtures and other personal property shall remain the property of Lessee ("Lessee's Personal Property") and Lessee shall have the right to remove the same from the Property.

C. **Surrender of the Property by Lessee.** Subject to the provisions of Articles 14.C.2, 22 and 23 of this Lease, Lessee shall at its sole cost and expense and on or before the expiration or earlier termination of this Lease, vacate and deliver physical possession of the Property, together with the permanent Improvements located thereon, to the Department. At that time, the Property shall be in good order, condition and repair, reasonable wear and tear excepted, and less any damage caused by casualty during the last year of the Lease term that, subject to Article 14.C.1 above, is not Lessee's obligation to repair, and free and clear of any tenancy or occupancy by third persons. If Lessee shall fail, refuse, or neglect to vacate the Property and remove Lessee's Personal Property or the personal property of any of its subtenants, then upon expiration or termination of this Lease, such personal property shall be considered abandoned and, at the option of the

Department, either become the property of VA without compensation therefor, or the Department may cause it to be removed and/or destroyed at the reasonable expense of Lessee, and no claim for damages against the Department, its officers, or agents shall be created or made by or on account of such removal and/or destruction.

#### ARTICLE 16 – ENVIRONMENTAL PROVISIONS

A. To the extent the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 (“CERCLA”), the Resource Conservation Recovery Act, as amended, 42 USC 6901, et seq. (“RCRA”), or other applicable environmental law properly imposes liability, loss, expense, damage, or cost upon VA for any matter relating to any hazardous material or otherwise of an environmental nature on or affecting the Property due to (1) the United States’ status as Federal owner of the Property, (2) acts of VA and/or former owners on or affecting the Property, or (3) acts or omissions of government contractors on or affecting Property that occurred while VA had jurisdiction and control of the Property, VA shall indemnify Lessee, its directors, partners, officers, trustees, members, employees, agents, successors, and assigns (“Indemnitees”) for any liability, loss, expense, damage, or cost incurred or suffered by the Indemnitees and arising from any of the foregoing acts set forth in Clauses (1), (2), and/or (3) and properly assessable against VA under CERCLA, RCRA, or other applicable environmental law. Lessee shall immediately notify VA upon receipt of any notices, claims, or other information that identifies any environmental problems on or related to the Property which may require Lessee and/or VA action and/or expenditure of funds.

Consistent with the Anti-Deficiency Act (31 U.S.C. §§ 1341, 1342, 1351, and 1517, as amended), the payments of VA with respect to this indemnification shall not exceed appropriations available to VA which can be lawfully expended for such purposes at the time of the claim; and nothing in this Lease may be construed as implying that Congress will at a later date appropriate funds to meet any deficiencies.

B. Notwithstanding Article 16.A above, to the extent Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), the Resource Conservation Recovery Act, as amended (“RCRA”), or other applicable environmental law properly imposes liability, loss, expense, or damage, or cost upon VA for any matter relating to any hazardous material or otherwise of an environmental nature on or affecting the Property due to acts of Lessee, its contractors, builders, agents, employees, and/or licensees relating to the Improvements, including any environmental remediation, which occur after the Effective Date, Lessee shall indemnify VA for any liability, loss, expense, damage, or cost incurred or suffered by VA and properly assessable against Lessee under CERCLA, RCRA, or other applicable environmental law. Lessee shall immediately notify VA upon receipt of any notices, claims, or other information that identifies any environmental problems on or related to the Property which may require Lessee and/or VA action and/or expenditure of funds.

C. In accordance with Article 16.B above, if and to the extent that VA during the Lease term is held, by a final decision of the highest court or other adjudicative body of competent jurisdiction to which the matter has been presented, liable for costs and/or damages associated with the improper treatment, disposal, and/or release of one or more “Hazardous Substances” (as defined in Article 34 below) on or affecting the Property, VA at its sole and absolute discretion, may seek

to initiate good-faith discussions and negotiations with Lessee, for Lessee on VA's behalf and upon the parties' consummation of a separate written agreement, to undertake and complete any and all required environmental remediation and abatement activities in accordance with all applicable Federal, State, and local law.

D. Should additional environmental studies under the National Environmental Policy Act, 42 U.S.C §§ 4321-4370d, as amended ("NEPA"), CERCLA, or other applicable environmental law become necessary during the Lease term due to proposed development activities, then unless the parties otherwise agree in writing, the fees, costs, and expenses necessary to perform such studies shall be the sole responsibility of Lessee.

#### **ARTICLE 17 – BONDS OF SECURITY**

Not less than thirty (30) days prior to undertaking any renovation or construction (as opposed to general repairs and maintenance) on the Property in accordance with Article 10 above, Lessee shall furnish evidence of a "Payment and Performance Bond" between Lessee and the construction contractor, with a sum equal to one hundred percent (100%) of Lessee's total costs of construction, development, and renovation. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety of Federal bonds will be accepted. The United States of America, acting through the Secretary, shall be named as co-beneficiary on each "Payment and Performance Bond" (including subcontract bonds) obtained by Lessee. The Department shall have the right to approve or reject any and all terms and conditions of any and all bonds obtained by Lessee pursuant to this Lease. In addition, the terms and conditions of each "Payment and Performance Bond" shall be subject to the prior approval of the Department. Notwithstanding anything in this Article 17 to the contrary, with respect to any Payment and Performance Bond required in connection with capital improvements pursued under Article 2.A.7 above, the cost of any such Payment and Performance Bond shall be shared 51% by the Department and 49% by Lessee.

#### **ARTICLE 18 – NOTICES**

A. All notices, or other correspondence required under or arising from the terms of this Lease from the Department to Lessee shall be served on or mailed to Lessee's designated representatives as set forth in Article 18.B below, provided that Lessee shall notify the DVR in writing of any change in Lessee's designated representatives, and/or the addresses or offices to be notified (and the same shall thereafter be utilized by the Department for purposes of delivering notices or other correspondence to Lessee). All notices or other correspondence required or arising from the terms of this Lease from Lessee to the Department shall be served on or mailed to the DVR who shall notify Lessee's designated representatives in writing of any change in the DVR, and/or the address or office to be notified (and the same shall thereafter be utilized by Lessee for purposes of delivering notices or other correspondence to the DVR).

B. All notices, reviews, approvals and other communications required or permitted under this Lease shall be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one (1) business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) five (5) business days after

deposit in the United States mails, certified or registered mail with return receipt requested and postage prepaid; it being understood and agreed that the period for any approval to be given hereunder shall run from the party's receipt of the documentation required for such approval as described herein with a formal written request for such approval shown thereon. The designated representatives shall be:

**Department:** U.S. Department of Veterans Affairs  
Office of Asset Enterprise Management (044)  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
Phone: [REDACTED]  
FAX: [REDACTED]  
Attn: DVR

**With copies to:** U.S. Department of Veterans Affairs  
VA West Los Angeles Medical Center  
11301 Wilshire Boulevard  
Los Angeles, CA 90073  
Attn: Medical Center Director

U.S. Department of Veterans Affairs  
Deputy Director of Contracting  
U.S. Dept. of Veterans Affairs - Service Area Office West  
Network Contracting Office - 22  
4811 Airport Plaza Dr., Suite 600 Long Beach, CA 90815

U.S. Department of Veterans Affairs  
Office of Asset Enterprise Management (044)  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
Phone: [REDACTED]  
Fax: [REDACTED]  
Attn: Post Transaction Team Leader

U.S. Department of Veterans Affairs  
Office of General Counsel (025A)  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
Phone: [REDACTED]  
Fax: [REDACTED]  
Attn: Chief Counsel (Real Property Law Group)

**Lessee:** Brentwood School  
100 S. Barrington Place  
Los Angeles, CA 90049  
Attn: Head of School

**With Copies To:** Brentwood School  
100 S. Barrington Place  
Los Angeles, CA 90049  
Attn: Chief Financial Officer

and

Brentwood School  
100 S. Barrington Place  
Los Angeles, CA 90049  
Attn: Designated VA Liaison

and

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1901 Avenue of the Stars, Suite 1800  
Los Angeles, CA 90067  
Attn: John M. Tipton, Esq.

C. The initial primary contact points for the parties under this Lease shall be as follows: For VA, Alan Trinh (VA Contracting Officer); and Heidi Marston (Special Assistant to the Secretary). For BWS, Gennifer Yoshimaru (Assistant Head of School For Advancement). During the Lease term, the parties agree to communicate any changes in those primary contact points in writing and email to the other party.

#### **ARTICLE 19 – ASSIGNMENT OF THE LEASE**

A. **The Lease Is Binding Upon Lessee's Successors and Assigns.** Subject to and in accordance with Article 19.F below, Lessee hereby agrees that all of the covenants, conditions, obligations and liabilities contained in this Lease shall be binding upon and inure to the benefit of any successors and assigns of Lessee (including, without limitation, a Leasehold Mortgagee or a purchaser/assignee in foreclosure, but only during or arising from the period of their respective possession or ownership of the Property) to the same extent as if the successors and assigns were in each case named as a party to this Lease.

B. Subject to the provisions of Article 20 and except as set forth in Section D of this Article 19, Lessee may not sell, convey, transfer or assign this Lease or any interest therein, or in the Property, or grant an interest, privilege or license in connection with this Lease, without the prior written consent of the Department, which consent shall not be unreasonably or arbitrarily withheld or delayed, so long as the Department reasonably determines that the assignment or sale is not inconsistent with the terms and conditions of this Lease and that such assignee or purchaser is a responsible party ("Responsibility Determination"). Factors to be considered by the Department in making a Responsibility Determination include, but are not limited to, a determination that the proposed successor or assignee: (1) expressly agrees to at all times use the Property in accordance with the terms and conditions of the Lease; (2) has provided the Department with the certification described in Article 19.F; (3) expressly agrees and understands that the proposed assignment or sale is subject to the rights, title and interests of the United States and VA under the Lease; (4) is a Qualified Party, as defined in Article 1 above; (5) has an adequate

record of successfully operating and maintaining prior projects similar to that of the Facilities; and (6) has an adequate financial history and profile (net worth, cash flow, and credit support) to successfully meet the financial commitments of the Lessee under the Lease's terms and conditions.

C. When making any Responsibility Determination, the Department shall have fifteen (15) business days following written notice from Lessee to object to the proposed assignee or transferee. In the event that the Department based on the criteria in Section B above "rejects" the proposed assignee or transferee, the Department shall disclose the nature and scope of the conflict to Lessee and shall provide Lessee fifteen (15) days thereafter within which to provide additional information and request in writing that the Department reconsider its determination. The Department, under reconsideration, may grant or deny approval of the proposed assignee or transferee in accordance with the "factors" identified in items (1) through (6) of Section B above, and shall so notify Lessee of its determination in writing within fifteen (15) days of the reconsideration request. Alternatively, if the Department fails to object within said fifteen (15) day period, it shall be deemed to have waived any objection. However, if upon reconsideration, the Department continues to object based upon the aforementioned "factors," and timely advises Lessee of the same, the parties will continue working together in good faith to resolve the issue(s), subject to the parties' rights in Article 25 below.

D. Notwithstanding Articles 19.B and C, but subject to Article 7, the subleasing of any part of the Facilities, and any other Improvements located on the Property and made available for use and occupancy, shall not be permitted without the prior written consent of the Department (which shall not be unreasonably withheld, conditioned or delayed), provided that in the case of a sublease (or other agreement) to an entity other than a natural person residing in any of the aforementioned improvements (a "Space Tenant"), Lessee shall notify the Department in writing of the name, and address of such Space Tenant and the nature of its business; identify the property and premises being subleased; and notify VA in writing that to the best of Lessee's knowledge and belief: (1) the proposed sublease to the Space Tenant does not violate any terms, covenants or conditions of this Lease; (2) based upon Lessee's internet website search of <https://www.sam.gov/portal/public/SAM/> (as said website and/or its underlying list may change or be updated from time to time) within the immediately preceding thirty (30) days, the prospective Space Tenant does not appear listed on the most current "System for Award Management"; and (3) based upon Lessee's internet website search of <http://www.state.gov/j/ct/rls/crt/> (as said website and/or its underlying list may change or be updated from time to time) within the past thirty (30) days, the prospective Space Tenant does not appear in the latest edition of the publication entitled "Country Reports on Terrorism." VA shall have the right to approve or reject any proposed subletting request at its sole and absolute discretion.

E. The Department agrees that during the Lease term and subject to the terms and conditions of this Lease, any approved assignee or transferee shall have the right to attorn to the Department, and the Department will accept such attornment and not disturb the occupancy or rights of such assignee or transferee pursuant to its transfer, assignment, grant, purchase, or sublease agreement with Lessee. The Department agrees to execute any non-disturbance agreement as may be reasonably requested by subtenant, and which the Department reasonably finds to be reasonable, to memorialize and effectuate the provisions of this Article.



F. Any succession or assignment permitted and carried out pursuant to this Article is contingent upon the execution of a written certification by the proposed assignee or transferee stating that such entity agrees to comply with all terms, covenants, obligations and liabilities contained in this Lease. The assignee or transferee shall be deemed to have assumed all of the obligations of Lessee under this Lease, but such shall not relieve Lessee of any of its obligations under this Lease as provided in Section A above, except upon the express release therefrom, if any, by VA in its sole and absolute discretion.

## **ARTICLE 20 – ENCUMBRANCE OF THE PROPERTY**

### **A. Prohibition Against Encumbrance of the Property:**

1. Nothing contained in this Lease authorizes Lessee to encumber in any manner, during the Lease term, the United States' (i.e., the Department's) fee interest in the Property. Such fee interest in the Property may not be subordinated or otherwise made subject to any deed of trust, mortgage, or other lien, or other encumbrance granted, suffered, or permitted by Lessee.

2. Lessee covenants that it shall not create or cause to be created a mortgage, lien, or other encumbrance to be placed upon the Property, other than such mortgage, lien, or encumbrance to be placed on Lessee's leasehold interest therein pursuant to Section B of this Article. Subject to Lessee's rights in Article 20.A.3 below, the creation of any mortgage, lien, or encumbrance, other than permitted by Section B of this Article, shall be deemed a Lessee event of default on the date of its execution or filing of record in accordance with the provisions of Articles 22 and 23 of this Lease.

3. Lessee may in good faith and at Lessee's own expense contest the validity of any asserted lien, claim, or demand not permitted under this Article; provided Lessee has furnished a bond or cash deposit freeing the Property from the effect of such a lien claim, and provided the Department with written evidence thereof. If such lien is not promptly discharged by Lessee: (1) within thirty (30) days after a judgment is rendered following any unsuccessful challenge of Lessee as to the validity of the asserted lien or (2) if no such challenge is made, within such thirty (30) days after Lessee receives a written request from VA to discharge or free the Property from the effect of such a lien, the Department may, but shall not be obligated to, discharge such lien. Any amount so paid by the Department for any such purpose, with interest thereon at the prevailing rate of interest for "90-day U.S. Treasury Bills" or its successor from the date of any such payment, shall be repaid by Lessee to the Department not later than thirty (30) days following Lessee's receipt of written notice from the Department.

### **B. Encumbering Lessee's Leasehold Interest:**

1. Lessee may encumber its leasehold interest to the extent necessary to provide financing for the costs of development, construction, renovation, operation, and maintenance of the Property as specified in this Lease. However, any loan involving a security interest in the leasehold may not be closed until the Department has consented to the financing.

2. Promptly after assigning this Lease or encumbering the Property as provided herein (i.e., Article 20.A.1 and 20.A.2 above), Lessee shall furnish the Department a true and verified copy of any leasehold mortgage ("Leasehold Mortgage") and other documents creating or securing

the indebtedness thereby secured, and written notice setting forth the name and business address of the Leasehold Mortgagee ("Leasehold Mortgagee"). During the Lease term, Lessee also shall provide the Department with a copy of any Leases or modifications to the Leasehold Mortgage (and any other documents creating or securing the indebtedness), and written notice of any changes to the name and/or business address of the Leasehold Mortgagee.

3. During the Lease term, the making of any Leasehold Mortgage shall not be deemed to constitute an assignment, nor shall any Leasehold Mortgagee not in possession of Lessee's leasehold estate be deemed an assignee of the leasehold estate so as to require such Leasehold Mortgagee to assume the obligations of Lessee hereunder; however, as further provided in this Article 20.B.3, any Leasehold Mortgagee in possession, purchaser at a foreclosure sale of the leasehold estate, or assignee pursuant to an assignment in lieu of foreclosure shall be deemed to be an assignee of Lessee and shall be deemed the successor to (but only for the period of its leasehold ownership) the obligations of Lessee hereunder from and after the date of such purchase or assignment ("Successor"). Such Successor shall be fully bound by the provisions of this Lease, except to the extent that any unperformed obligations of Lessee at the time of, as applicable, such possession, foreclosure, or assignment in lieu of foreclosure, are personal in nature and incapable of being performed by the Successor.

4. Lessee agrees to make all payments and perform all obligations required or secured by any Leasehold Mortgage as and when the same are required to be made or performed thereunder.

5. In no event shall Lessee commence any development, construction, or renovation activities regarding the Facilities, or any other Improvements on the Property after the Effective Date that are made available for occupancy, until Lessee provides VA with documentary evidence that Lessee has adequate financial resources to undertake and complete that respective aspect of the development, construction or renovation.

**C. Notices to Leasehold Mortgagees:**

1. If a true and verified copy of a Leasehold Mortgage shall have been delivered to the Department together with a written notice of the name and address of the Leasehold Mortgagee then, notwithstanding anything to the contrary set forth in this Lease:

2. The Department shall mail to each such Leasehold Mortgagee a duplicate copy of any and all notices that the Department may be required from time to time to serve upon Lessee pursuant to the provisions of this Lease; and no notice by the Department to Lessee hereunder shall be deemed to have been given unless and until a copy thereof has been mailed to the Leasehold Mortgagee.

3. The Department shall provide each Leasehold Mortgagee that is properly identified to VA pursuant to 20.B above with a duplicate copy of any notice sent to the Lessee (or any of its successors or assigns) advising of any change in the proper representative and/or office to be notified when sending notices or correspondence to the Department.

**D. Lease Termination Protection:**

1. Subject to Lessee's covenant to advise VA of each and every Leasehold Mortgagee pursuant to Article 20.B, the Department shall not agree to any mutual termination nor accept any surrender of this Lease (except upon the expiration of the Term) nor shall the Department consent to any material Lease or modification of this Lease which affects the Lease terms and/or the Leasehold Mortgagee's rights, without the prior review and written consent of the Leasehold Mortgagee.

2. Notwithstanding any default by Lessee in the performance or observance of any covenant, condition or agreement of this Lease on the part of Lessee to be performed or observed, all rights of the Department to terminate this Lease for such Lessee default shall be subject to and conditioned upon (a) the Department having first given the Leasehold Mortgagee written notice of, and an opportunity to cure such default per Section E below, and (b) the Lessee's and Leasehold Mortgagee's having failed to remedy such default as set forth in, and within the applicable time period specified by Section E of this Article.

3. Each Leasehold Mortgagee who is properly identified to VA pursuant to Article 20.B above shall have the right, but not the obligation (except as otherwise may be provided herein as to a Leasehold Mortgagee in possession of the Property), at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to provide any insurance, to pay any taxes and make any other payments, to make any repairs and improvements and do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper in the performance and observance of the covenants, conditions and agreements hereof to prevent the termination of this Lease. All payments so made and all things so done and performed by the Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by the Leasehold Mortgagee.

**E. Leasehold Mortgagee Cure Rights:**

1. A Leasehold Mortgagee who undertakes to remedy an uncured event of default by Lessee shall, except as provided in Paragraph 2 below, have sixty (60) days after receipt of notice from the Department setting forth the nature of such default within which to remedy the default.

2. If the Lessee default is such that possession of the Property is reasonably necessary to remedy the default, Leasehold Mortgagee shall have a reasonable time, not to exceed one-hundred twenty (120) days (unless VA, by prior written consent in its sole discretion, approves a longer period), after the expiration of such initial sixty (60) day cure period within which to remedy such default; provided that: (a) the Leasehold Mortgagee shall have acquired Lessee's leasehold estate created hereby or commenced foreclosure proceedings, an action for the appointment of a receiver, or other appropriate proceedings in the nature thereof within such sixty (60) day period or prior thereto, and shall be diligently and continuously prosecuting any such proceedings to completion; (b) notwithstanding anything in this Lease to the contrary, the Leasehold Mortgagee shall have fully cured any uncured default in the payment of any monetary obligations of Lessee under this Lease within such sixty (60) day period and thereafter shall continue to faithfully perform all such monetary obligations that do not require possession of the Property; and (c) after gaining possession of the Property, the Leasehold Mortgagee or the receiver, as the case may be, shall perform all of the covenants of Lessee reasonably capable of performance by the Leasehold

Mortgagee or the receiver during the period of foreclosure or receivership, as the case may be, as and when the same are due, and shall immediately proceed with all due diligence either to assign the Property or enter into a Replacement Lease with VA for the Property, as described in Article 20.F.2 below.

3. If the Leasehold Mortgagee establishes to VA's satisfaction that a Lessee default is personal in nature or otherwise is not susceptible of cure by the Leasehold Mortgagee, then, provided the Leasehold Mortgagee fully complies with and meets all requirements of clauses (a) through (c) of Section E.2 above, the default shall be deemed remedied as between VA and the Leasehold Mortgagee.

4. Notwithstanding anything in this Lease to the contrary except for the provisions of Article 20.F.2 below and Lessee's obligation to inform VA of each Leasehold Mortgagee pursuant to Article 20.B.2 above, should the Leasehold Mortgagee(s) fail to remedy an uncured Lessee default pursuant to and within the applicable time period specified in this Section E, the Department shall immediately thereafter be permitted to terminate the Lease by issuing written notice thereof to the Lessee and each Leasehold Mortgagee identified per Article 20.B.2 of this Lease.

**F. Foreclosure of Leasehold Mortgage:**

1. Subject to Article 20.B.2, and pursuant to and in conjunction with an assignment or foreclosure under this Article, the Leasehold Mortgagee and its successors and assigns may assign or sell the leasehold estate subject to and consistent with Subparagraphs (i) through (iv) below, provided that the Leasehold Mortgagee or assignee provides the Department with not less than thirty (30) days advance notice or the maximum period of advance notice allowed under applicable law of any such assignment or sale, and based upon its review determines that the Successor to the Property is a "responsible" party. Factors to be considered by the Leasehold Mortgagee or assignee in making this responsibility determination shall include, but are not limited to:

(i) the Leasehold Mortgagee's receipt of a written certification ("Certification") from the Successor (which the Leasehold Mortgagee shall copy and forward to the Department not less than five (5) days before such assignment or sale) confirming that the Successor: (1) expressly agrees to at all times use the Property in accordance with the terms and conditions of the Lease; (2) expressly agrees to observe and perform all of the Lessee covenants and comply with the terms and conditions contained in the Lease, (3) expressly agrees and understands that the proposed assignment or sale is subject to the rights, title and interests of the United States and VA under the Lease; (4) is not, and to the best of its knowledge any of its principals are not, presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency and have not, within a three (3) year period preceding the date of certification, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with commission of any of these offenses; and (5) does not pose a safety or security risk as

determined by the Secretary of State, including but not limited to any person who either represents a country that, or is a member of or provides political, financial, or military support to a group that is listed in the most current "Patterns of Global Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at <http://www.state.gov/j/ct/rls/crt/>;

(ii) the Leasehold Mortgagee's determination that the Successor has at least three (3) years of prior relevant experience successfully operating and maintaining projects similar to that of the Project;

(iii) the Leasehold Mortgagee's determination that the Successor has an adequate financial history and profile (net worth, cash flow, and credit support) to successfully meet the financial commitments of the Project and the Lease's terms and conditions; and

(iv) the Leasehold Mortgagee's providing of a written certification to VA within five (5) days before such assignment or sale confirming that the Successor is not on any of the procurement, non-procurement, or reciprocal lists provided at the "System for Award Management" website located at <https://www.sam.gov/portal/public/SAM/>.

2. Within thirty (30) days after any foreclosure of this Lease by reason of any uncured event of default by the Lessee hereunder (including, if permissible given applicable Federal, State, and local laws, regulations, and proceedings, any termination of this Lease in connection with any bankruptcy or similar proceeding), VA agrees to amend this Lease or execute a Replacement Lease upon the same terms and conditions hereof ("Replacement Lease") with a Successor who requests such Replacement Lease and complies with the provisions of this Paragraph 2, including subparagraphs "a" through "b" immediately below. Should two or more Leasehold Mortgagees request to enter into a Replacement Lease pursuant to this Paragraph, the most senior Leasehold Mortgagee in possession will have the first right to enter into the Replacement Lease with the Department.

a. The Replacement Lease shall be for the remaining Lease term effective as of the effective date of the termination of this Lease, but with the same right of extension as provided in the Lease, and at the same rent, and additional rent or consideration, if any, and upon the same terms, covenants and conditions (including all options to renew but excluding such terms, covenants and conditions that shall have already been fulfilled) of this Lease.

b. In the event that the Successor enters into the Replacement Lease, the Successor shall pay or cause to be paid to the Department any and all sums which at the time of execution and delivery thereof are due it under this Lease and in addition, all reasonable expenses, including reasonable attorneys' fees which the Department shall have incurred by reason of the actual or deemed termination of this Lease and the preparation, execution and delivery of the Replacement Lease.

G. Any loan document and security instrument used to establish a security interest in the leasehold that does not include (or incorporate without modification) the foregoing provisions recited in this Article shall constitute an event of default by Lessee.

## ARTICLE 21 – TAXES

A. The Department's interest in this Lease, and the United States' fee interest in the Property shall not be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessment, or special assessments.

B. In addition, Lessee shall pay and discharge, at least ten (10) days prior to delinquency, all taxes, general and special assessments, charges, and fees of every description that during the Lease term may be levied or assessed against the Property and all interests therein, whether belonging to the Department or Lessee, or to which either of them may become liable in relation thereto prior to the delinquency date thereof. Lessee agrees to protect and hold harmless the Department and the Property and all Improvements in, on, or about the same from all liability for any and all such taxes, assessments, charges, and fees, together with any interest, penalties, or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof. During the Lease term and at its sole cost and if the Department so requests, Lessee shall cause all taxes, assessments, charges, and fees levied or imposed upon any personal property situated in, on, or about the Property to be taxed or assessed separately from the Property and not as a lien thereon.

C. It is understood that it is the intent of the parties that this be an absolute net Lease, and that the Department shall not be obligated to pay any charges, impositions, or assessments directly or indirectly made against the Property during the term hereof.

D. In the event that Lessee is not required to make deposits on account of real estate taxes with the holder of any mortgage permitted by Article 20 of the Lease, and in the event that Lessee fails at any time during the Lease term to pay real estate taxes when due, then the Department shall have the right upon written notice to the Lessee, to require that Lessee deposit negotiable securities or other collateral to guarantee the payment of such taxes, so that there shall be sufficient sums available to pay same at least thirty (30) days prior to the due date of such taxes.

## ARTICLE 22 – EVENTS OF DEFAULT BY LESSEE

A. Each of the following actions or omissions by Lessee shall be considered an event of default by Lessee:

1. Lessee fails to use its leasehold interest obtained pursuant to this Lease and the Property in a manner consistent with Article 7, and such failure remains uncured following ninety (90) days written notice from the Department.

2. Lessee fails to pay any monetary obligation due under the provisions of this Lease and such failure continues for a period of forty-five (45) days after the Department gives written notice to Lessee that the same is due and payable.

3. Lessee fails to provide the in-kind consideration as required under this Lease and such failure continues for a period of forty-five (45) days after the Department gives written notice to Lessee that the same is due and outstanding.

4. Except for all other Lessee Events of Default expressly covered in the other Paragraphs of this Article 22, Lessee (or any permitted assignee or transferee in accordance with

Articles 19 and 20) fails to perform any non-monetary obligation, representation, consideration, covenant or condition, to be performed under this Lease, and such failure is not cured within a period of ninety (90) days after Lessee's receipt of written notice from the Department describing the default, or if such default cannot reasonably be cured within ninety (90) days (as determined by VA in its reasonable discretion), Lessee has not commenced the remedying thereof within such ninety (90) day period or Lessee is not thereafter proceeding with due diligence to remedy such failure (it being understood that for any event of a default that is not susceptible of being cured by Lessee within ninety (90) days then the time within which Lessee may remedy such default shall be extended by VA for such period of time, not to exceed one hundred twenty (120) days, as is reasonably necessary to complete a cure with continual due diligence.

5. The failure or refusal of Lessee to discharge any lien, claim, demand, or encumbrance, or to initiate appropriate action, to quiet any such claim within the time specified in Article 20.A, whether or not the Department exercises its right of discharge, or the failure or refusal of Lessee to make timely repayment to the Department of those sums expended to effectuate such discharge.

6. Lessee files a voluntary petition under any Federal or State Bankruptcy Code, or an involuntary case is filed hereunder against Lessee, and either event, the case is not dismissed within one hundred eighty (180) days.

#### **ARTICLE 23 – REMEDIES FOR DEFAULT BY LESSEE**

Subject to Articles 20 and 25, upon the occurrence of an event of default by Lessee, the Department may exercise any right, remedy or privilege, which may be available to it under this Lease or under applicable local, State or Federal law. All remedies shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. Failure to exercise a remedy shall not constitute a waiver thereof. Lessee shall remain liable to the extent permitted by law with respect to all covenants and indemnities of this Lease. Additionally, upon default by Lessee of this Lease, and Lessee's failure to cure or to commence to cure, within any applicable cure period, the Department may, subject to and in accordance with Articles 15, 20, and 25, immediately seek to terminate this Lease and recover its damages. Upon the Department's successful termination of the Lease, Lessee shall be immediately required pursuant to Article 15, to surrender possession of the Property, together with all Improvements located thereon, to the Department, and cooperate fully and in good faith to effect an orderly and efficient transition of the Property.

#### **ARTICLE 24 – EVENTS OF AND REMEDIES FOR DEFAULT BY THE DEPARTMENT**

A. An event of default by the Department shall occur upon its failure to perform or observe any covenant or condition required by this Lease to be performed or observed, and such failure is not cured within ninety (90) days after the Department's receipt of written notice thereof, provided that such cure period shall be extended by Lessee for an additional thirty (30) days if such default cannot be reasonably cured within ninety (90) days and the Department is diligently attempting to cure the default.

B. Upon default by the Department, and the Department's failure to cure or to commence to cure, within the applicable cure period, Lessee may immediately seek to terminate this Lease and recover its damages in accordance with Article 25 hereto, and/or may exercise any other right, remedy, or privilege that may be available to it under this Lease or applicable Federal, State, or local law.

#### **ARTICLE 25 – DISPUTES**

A. Lessee and the Department acknowledge and agree that disputes under this Lease shall be resolved under the Contract Disputes Act of 1978 (41 U.S.C. Sec. 7101-7109) (the "Disputes Act"), and that both Lessee and the Department will utilize Alternative Dispute Resolution procedures on all matters appealed by Lessee to the VA Board of Contract Appeals (including its successor, the Civilian Board of Contract Appeals, effective January 6, 2007, and any successor authority thereto), to the extent permitted under the Disputes Act, unless the parties then should otherwise agree.

B. In the event that the Disputes Act is not available or permissible under applicable law to resolve a dispute under this Lease, Lessee and the Department shall, to the extent permitted by applicable law and regulation, resolve the dispute by arbitration. In that regard, the arbitration shall take place in Washington, D.C. unless the Department and Lessee otherwise agree in writing.

C. Interest Payable. Regardless of whether the dispute is resolved under the Disputes Act or otherwise, if the claim is resolved in favor of Lessee the Department shall pay interest in accordance with the Prompt Payment Act, 31 U.S.C. Section 3901, et seq.

D. Unless and until the Department otherwise agrees in writing, Lessee shall proceed diligently with performance of this Lease pending final resolution of any request for relief, claim, appeal or action arising under or relating to the Lease.

#### **ARTICLE 26 – LEASE SUBJECT TO GENERAL PROVISIONS**

This Lease and Lessee's occupancy of this Property shall be subject to the terms and conditions of the General Provisions attached hereto and by the reference made part of this Lease.

**[Signatures follow on next page]**



IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date set forth below.

**BRENTWOOD SCHOOL**

Lessee  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Head of School  
Date: 11/4/16

**THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS**

Lessor  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Contracting Officer  
Date: 11/17/2014

[General Provisions to follow]

## GENERAL PROVISIONS

### ARTICLE 27 – ASSIGNMENT OF CLAIMS

A. Lessee, under the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 15, 48 C.F.R. § 32.800, and all applicable regulations promulgated thereunder (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this Lease in accordance with the Act.

B. Any assignment or reassignment authorized under the Act and this Article shall cover all unpaid amounts payable under this Lease and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Lease.

### ARTICLE 28 – EQUAL OPPORTUNITY CLAUSE

A. If, during any twelve (12) month period (including the twelve (12) months preceding the award of this Lease), Lessee has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, Lessee shall comply with subparagraphs B(1) through (8) below. Upon request, Lessee shall provide information necessary to determine the applicability of this clause.

B. During performance of this Lease, Lessee agrees as follows:

1. Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

2. Lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. This shall include but not be limited to: (a) employment; (b) upgrading; (c) demotion; (d) transfer; (e) recruitment or recruitment advertising; (f) layoff or termination; (g) rates of pay or other forms of compensation; and (h) selection for training, including apprenticeship.

3. Lessee shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Secretary that explain this clause.

4. Lessee shall, in all solicitations or advertisement for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

5. Lessee shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, notice to be provided by the Secretary advising the labor union or workers’ representative of Lessee’s commitments under this clause and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. Lessee shall comply with Executive Order 11246, as amended, and the rules, regulations and orders of the Secretary of Labor.

7. Lessee shall furnish to the Department all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within thirty (30) days following the award, unless filed within twelve (12) months preceding the date of award.

8. Lessee shall permit access to its books, records and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain Lessee's compliance with the applicable rules, regulations and orders.

C. If the OFCCP determines that Lessee is not in compliance with this clause or any rule, regulation or order of the Secretary of Labor, this Lease may be canceled, terminated or suspended in whole or in part, and Lessee may be declared ineligible for further Department contracts, under the procedures authorized in Executive Order 11246, as amended, the rules regulations and orders of the Secretary of Labor, or as otherwise provided by law.

D. Lessee shall include the terms and conditions of Section 28.B.1-8 in every subcontract or purchase order that is not exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

E. Lessee shall take such actions with respect to any subcontract or purchase order as the Department may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Lessee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, Lessee may request the Department to enter into the litigation to protect the interests of the United States.

F. Notwithstanding any other clause in this Lease, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.

## **ARTICLE 29 – FACILITIES NONDISCRIMINATION**

A. **Facilities Defined.** As used in this Article only, the term "Facilities" means stores, shops, restaurants, cafeterias, restrooms and any other Facilities of a public nature in the building in which the space covered by this Lease is located.

B. **Non-Discrimination by Lessee.** Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Facilities, including any and all services, privileges, accommodations and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any Facilities customarily furnished by Lessee solely to occupants, their employees, customers, patients, clients, guests and invitees.

C. **Remedies for Non-Compliance.** It is agreed that upon Lessee's noncompliance, the Department may take appropriate action to enforce compliance, may terminate this Lease or may pursue such other remedies as may be provided by law.

D. **Inclusion of Article In Other Contracts.** It is further agreed that from and after the date hereof Lessee will, at such time as any agreement is to be entered into or a concessions is to be permitted to operate, include or require the inclusion of the foregoing provisions of this Article in every such agreement or concession pursuant to which any person other than Lessee operates or has the right to operate any Facilities. Nothing herein contained, however, shall be deemed to require Lessee to include or require the inclusion of the foregoing provisions of this Article in any existing agreement or concession arrangement or one in which the leasing party other than Lessee has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and unilateral right to renew or extend. Lessee also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the Department may direct, as a means of enforcing the intent of this Article, including but not limited to termination of the agreement or concession and institution of court action.

### ARTICLE 30 – GRATUITIES

A. The rights of Lessee under this Lease may be terminated by written notice if, after notice and a hearing, the Secretary determines that Lessee, its agent or another representative:

1. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the Department; and
2. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

B. If this Lease is terminated under Article 30.A above, the Department is entitled to pursue the same remedies as in a breach of this Lease. The rights and remedies of the Department provided in this Section 30.B shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

### ARTICLE 31 – COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding, for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide agency as defined in 48 C.F.R. § 3.401. For breach or violation of this warranty, the Department shall have the right to cancel this Lease without liability or, in its discretion, to deduct from the rental or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

1. "Contingent fee," as used in this clause, means any commission, percentage, brokerage or other fee that is contingent upon the success that a person or concern has in securing a Department contract.

## ARTICLE 32 – EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

### A. Rights of the Comptroller General and Its Authorized Representatives.

1. The Comptroller General of the United States or a duly authorized representative from the Government Accountability Office shall, until three (3) years after final payment under this Lease, have access to and the right to examine any of Lessee's directly pertinent books, documents, papers or other records involving transactions related to this Lease, provided that such records are then in existence. This paragraph may not be construed to require Lessee or its subcontractors to create or maintain any record that the Lessee or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

2. Lessee agrees to include in its first-tier subcontracts regarding any new Improvements a clause to the effect that the Comptroller General or a duly authorized representative from the Government Accountability Office shall, until three (3) years after final payment under the subcontract, have access to and the right to examine any of the subcontractor's existing directly pertinent books, documents, papers or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes: (i) purchase orders not exceeding \$100,000; and (ii) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

3. The periods of access and examination in Paragraphs 1 and 2 above for records relating to: (i) appeals under the Disputes clause in Article 25 above, (ii) litigation or settlement of claims arising from the performance of this Lease, or (iii) costs and expenses of this Lease to which the Comptroller General or a duly authorized representative from the Government Accountability Office has taken exception, shall continue until such appeals, litigation, claims or exceptions are disposed of.

### B. Rights of the Department of Veterans Affairs.

1. Upon receipt of a written request from the Department, Lessee shall grant to the Department access to Lessee's pertinent books, documents, papers or other records involving transactions directly related to this Lease (collectively "Business Documents") for purposes of examination and audit. Such access by the Department for purposes of examination and audit shall be limited to Business Documents dated within three (3) years prior to the date of Lessee's receipt of the Department's written request. The Department shall control and safeguard all information obtained during such examination and audit in accordance with the Freedom of Information Act, 5 U.S.C. Section 552 and the Privacy Act, 5 U.S.C. Section 552a. Lessee shall grant all other access for examination and audit to pertinent Lessee or sublessee Business Documents in accordance with applicable law.

(2) Lessee agrees to include in any subleases under this Lease a clause to the effect that the Department shall have access to and the right to examine any of the sublessee's Business Documents to the same extent as provided in Paragraph 1 of this Article with respect to Lessee.

(3) The right of the Department to examine Lessee's Business Documents shall be limited to the following matters in which VA is a party or has an interest hereunder: (i) payment, performance, and/or provision of the monetary and/or in-kind consideration, as applicable, which

is to be provided to, on behalf of, or for the benefit of, the Department, and/or claims or disputes under the "Disputes" clause in Article 25 of this Lease; (ii) litigation or settlement of claims or disputes arising from the performance of this Lease in which VA is a party, or (iii) costs and expenses of this Lease to which the Comptroller General or a duly authorized representative of the General Accounting Office has taken exception, and shall continue until such appeals, litigation, claims or exceptions are disposed of.

(4) The parties understand and agree that nothing in this Section B is intended or may be construed as a qualification, waiver, bar, limitation or restriction of any nature, kind, or effect on the legal authority otherwise granted the United States or any agency thereof to access, examine, review, copy, or seize such books, documents, papers or other records.

### **ARTICLE 33 – LABOR PROVISIONS**

Unless the Lessee can demonstrate to the satisfaction of the Department that the Lease or the Facilities are exempt therefrom, Lessee shall comply with the requirements of the Davis-Bacon Act, as amended, 40 U.S.C. Section 3141, et seq. and the relevant rules, regulations and orders of the Secretary of Labor applicable thereto.

### **ARTICLE 34 – HAZARDOUS SUBSTANCES**

A. **Presence and Use of Hazardous Substances.** Lessee shall not, without the Department's prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage, or sale, any substance designated as, or containing components designated as, hazardous, dangerous, toxic, or harmful under Federal, state or local law (hereafter collectively referred to as "Hazardous Substances"), and/or that is subject to regulation, by Federal, state or local law, regulation statute or ordinance, except as may be customary in projects similar to the Property and in compliance with all applicable laws (any such permitted customary Hazardous Substances, the "Permitted Hazardous Substances"). With respect to any such Hazardous Substance (other than Permitted Hazardous Substances), Lessee shall:

1. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers with respect to any Hazardous Substances first brought upon the Property from and after the date hereof;

2. Submit to the Department true and correct copies of all reports, manifests, and identification numbers with respect to any Hazardous Substances first brought upon the Property from and after the date hereof at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

3. Within sixty (60) days of the Department's request, submit written reports to the Department regarding Lessee's use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances first brought upon the Property from and after the date hereof and provide evidence satisfactory to the Department of Lessee's compliance with the applicable governmental regulations with respect to any Hazardous Substances first brought upon the Property from and after the date hereof;

4. Allow the Department or the Department's agent or representative to come on the Property at all reasonable times with reasonable prior notice to check Lessee's compliance with all applicable governmental regulations regarding Hazardous Substances for which Lessee is responsible under the terms of this Lease;

5. Comply with minimum levels, standards or other performance standards or requirements that may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease);

6. Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances; and

7. The Department shall have the right upon reasonable prior written notice and at reasonable times to enter upon the Property in order to inspect or monitor same if the Department has a reasonable belief that Hazardous Substances are present on the Property in violation of applicable law. If such inspection or monitoring by the Department confirms that Hazardous Substances are present and are in violation of applicable law, any and all reasonable costs incurred by the Department and associated with the Department's inspection of the Property and the Department's monitoring of Lessee's compliance with this Article, including the Department's reasonable attorney's fees and costs, shall be additional rent and shall be due and payable to the Department immediately upon demand by the Department.

**B. Cleanup Costs, Default, and Indemnification.**

During the Lease term, Lessee shall be fully and completely liable to the Department for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed upon the Department by any governmental authority with respect to any use(s) of the Property after the Effective Date of this Lease related to disposal, transportation, generation, and/or sale of Hazardous Materials by or on behalf of Lessee; provided, that liability and obligation by Lessee shall apply only to Hazardous Materials first brought upon the Property from and after the date hereof by or on behalf of Lessee. Lessee shall indemnify, defend, and save the Department harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon the Department (as well as the Department's reasonable attorney's fees and costs) as a result of Lessee's use, disposal, transportation, generation, and/or sale of Hazardous Substances at the Property as described herein. Upon Lessee's default under this Article and the expiration of the applicable notice and cure periods set forth in Article 22 above, in addition to the rights and remedies set forth elsewhere in this Lease, the Department shall be entitled to the following rights and remedies:

1. At the Department's option, to terminate this Lease immediately; and/or

2. To recover any and all damages associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and

sales by tenants of the Property, any and all damages and claims asserted by third parties and the Department's reasonable attorney's fees and costs.

### ARTICLE 35 – MISCELLANEOUS PROVISIONS

A. Complete Agreement and Conflicts. This Lease and the Exhibits hereto contain the entire agreement between the parties with respect to the transactions contemplated by this Lease, and supersede all previous oral and written and all contemporaneous oral negotiations, commitments, writings and understandings. To the extent any wording or interpretation conflicts exist between the body of the Lease and its Exhibits, the Lease shall control.

B. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument.

C. Lease Waiver. This Lease may not be amended or modified except in a writing signed by Lessee and the Department, nor may any rights hereunder be waived except by a writing signed by the party waiving such rights.

D. Article Headings. The headings contained in this Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease. When a provision, article, section or other provision of this Lease is referred to by number, the reference shall be deemed to be the correspondingly-numbered provision, article, section, or provision of this Lease unless another agreement, instrument or document is expressly identified, or unless the context otherwise clearly refers to another agreement, instrument or document.

E. Severability. Any provision of this Lease which is invalid, illegal or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Lease invalid, illegal or unenforceable in any other jurisdiction.

F. Third Party Beneficiaries. No Person, firm or corporation that is not a party to this Lease shall be entitled to rely on or be deemed to be accorded any rights under any provision of or statement in this Lease.

G. Governing Law. This Lease shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of California without regard to its principles of conflicts of law.

H. Interpretation. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Department and Lessee have negotiated this Lease, have had an opportunity to be advised by legal counsel respecting the provisions contained herein and have had the right to approve each and every provision hereof. Therefore, this Lease shall not be construed against either the Department or Lessee as a result of the preparation of this Lease by or on behalf of either party.



I. Survival. All monetary obligations (together with any late payment interest payable under the Prompt Payment Act – 31 U.S.C. § 3901, et seq.) accruing before expiration of the Lease term shall survive the expiration or other termination of this Lease.

J. No Merger. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Property by reason of the fact that the same person or entity may acquire, hold or own directly or indirectly: (a) this Lease, the leasehold interest created by this Lease or any interest therein; and (b) any such other estate or interest in the Property, or any portion thereof. No merger shall occur unless and until all persons and entities having an interest (including a security interest) in this Lease or the leasehold estate created thereby and any such other estate or interest in the Property, or any portion thereof, shall join in a written instrument expressly effecting such merger and shall duly record the same.

K. Relationship of the Parties. This Lease does not create the relationship of principal and agent, partnership, joint venture, association or any other relationship between the Department and Lessee.

L. Recording. This Lease shall not be recorded. The Department and Lessee, however, shall execute the Memorandum of Lease attached hereto as Exhibit "C", and Lessee at its sole cost and expense is hereby permitted to record such memorandum in the official land records of California.

M. VA Signage. No signage identifying or referencing VA shall be installed or constructed on or over the Property without the prior written approval of VA, and such approval may be withheld by VA in its sole discretion.

N. Lease Supersedes. This Lease supersedes any and all prior negotiations, agreements or understandings between the Department and Lessee related to the subject matter hereof (including, without limitation, the Enhanced Sharing Agreement and Term Sheet). None of the provisions of this Lease may be altered or modified except through an instrument in writing signed by both parties.

O. Force Majeure. Neither of the parties to this Lease, i.e., the Department nor Lessee, shall be required to perform any of its obligations under this Lease, nor be liable for loss or damage for failure to do so, with the exception of the obligation for payment of Rent or other sums due and owing under this Lease, where such failure arises from Force Majeure, but only to the extent and for the duration that the Department or Lessee, as the case may be, is so prevented from performing such obligations by Force Majeure. Further, and without limiting the generality of the foregoing, any period afforded to a party or within which a party is required under the terms and conditions of the Lease to perform an obligation of this Lease shall be extended by (1) the actual applicable period of Force Majeure; and (2) any period during which a party was prevented from performing any such obligation as a direct result of failure by the other party to commence or complete a specific activity or activities that the Lease requires be commenced or completed as a condition precedent to such performance of such obligation.

P. Non-Recourse. The parties agree that VA's and Lessee's respective recourse against each other under this Lease shall be limited by and to the extent of applicable Federal, State, and local law. In addition, the liability of Lessee for its obligations under this Lease and any documents

executed by VA and Lessee in connection with this Lease (collectively, the "Lease Documents") shall, except for instances of fraud or willful misconduct proven in a court of competent jurisdiction, be limited to Lessee's property and assets, such that VA shall not be permitted to look to the property or assets of any of Lessee's officers, directors, shareholders, employees or board of directors in seeking either to enforce Lessee's obligations under the Lease Documents or to satisfy a judgment for Lessee's failure to perform such obligations; and none of Lessee's officers, directors, shareholders, employees or board of directors shall be personally liable for the performance of Lessee's obligations under the Lease Documents.

Q. Anti-Deficiency Act. Consistent with the Anti-Deficiency Act (31 U.S.C. §§ 1341, 1342, 1351, and 1517, as amended), any payments of VA with respect to this Lease shall not exceed appropriations available to VA which can be lawfully expended for such purposes at the time of the claim; and nothing in this Lease may be construed as implying that Congress will at a later date appropriate funds to meet any deficiencies.

R. Confidential Data.

(1) Lessee hereby agrees that the creation, maintenance, use, disclosure, and disposal of any and all drawings, documents, records, data, and written information provided by VA to Lessee during the Term, if any, (collectively, the "VA Data"), shall be governed solely by all applicable Federal law, Executive Orders, and regulations. Lessee further agrees that the VA Data shall at all times constitute and remain the sole and absolute property of VA, and shall not be disclosed to any person (aside from the Lessee's contractors, subcontractors, architects, engineers and other consultants or agents, attorneys, accountants, lenders, purchasers and subtenants (collectively, "Lessee Representatives"), all on a need-to-know basis) without the prior written authorization of VA. Furthermore, Lessee agrees to and shall immediately contact VA telephonically and in writing should any request be made by a third party (aside from Lessee Representatives, all on a need-to-know basis) for copies of or to review or receive any VA Data in the Lessee's possession and control. Under all circumstances, VA shall be responsible for and be permitted to independently and unilaterally address any such requests as it deems appropriate. Lessee shall ensure that all Lessee Representatives are informed of and comply with this Clause (1), and shall be responsible for any breach of this Clause (1) by such Lessee Representatives. Notwithstanding any provision to the contrary contained in this Clause (1), the confidentiality restrictions set forth in this Clause (1) shall not apply to any information that: (a) is required by law or court order to be disclosed; (b) was in the public domain at the time of disclosure by VA; (c) was already in Lessee's possession at the time of disclosure by VA; (d) becomes known to Lessee through disclosure by sources (other than Lessee or any Lessee Representatives) having the legal right to disclose such information; (e) becomes generally available to the public after the time of disclosure by VA to Lessee other than as a result of a breach by Lessee or any Lessee Representatives of the confidentiality restrictions of this Clause (1); or (f) is independently developed by Lessee without use of or access to such VA Data.

(2) VA hereby agrees that any drawings, documents, records, data, and written information provided by Lessee to VA during the Term, if any (collectively, the "Lessee Data"), shall be kept, maintained, and handled by VA as such according and subject to all applicable Federal law, Executive Orders, and regulations. Furthermore, VA agrees to and shall contact Lessee telephonically and in writing should any request be made by a third party outside of VA ("Third

Party”) for copies of or to review or receive any Lessee Data in VA’s possession and control, **unless** such Third Party making the request is officially doing so on behalf of the Executive branch; the United States Congress; the General Accountability Office; the Federal Bureau of Investigations; the VA Office of Inspector General; or a Federal court.

(3) The parties hereby agree that the understandings and obligations set forth in this Section R shall control during and shall survive the Term for a period of one (1) year, notwithstanding any contrary confidential obligations, statements, or representations that may be contained in VA Data or Lessee Data submitted, as applicable, by VA to Lessee or vice versa.

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**JMIC<sup>2</sup>**

*John M. Cruikshank Consultants*  
26921 S. Western Avenue, Suite 201  
Gardena, CA 90247

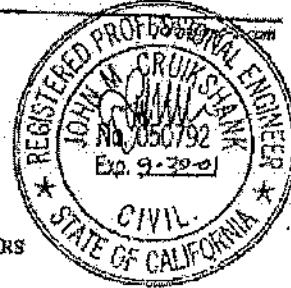
Phone: 310-329-4144

Fax: 310-329-4144

*www.jmc.com*

**EXHIBIT B**

**BOUNDARY DESCRIPTION  
SHARING AGREEMENT  
BRENTWOOD SCHOOL - DEPT. OF VETERAN'S AFFAIRS  
LOS ANGELES, CALIFORNIA**



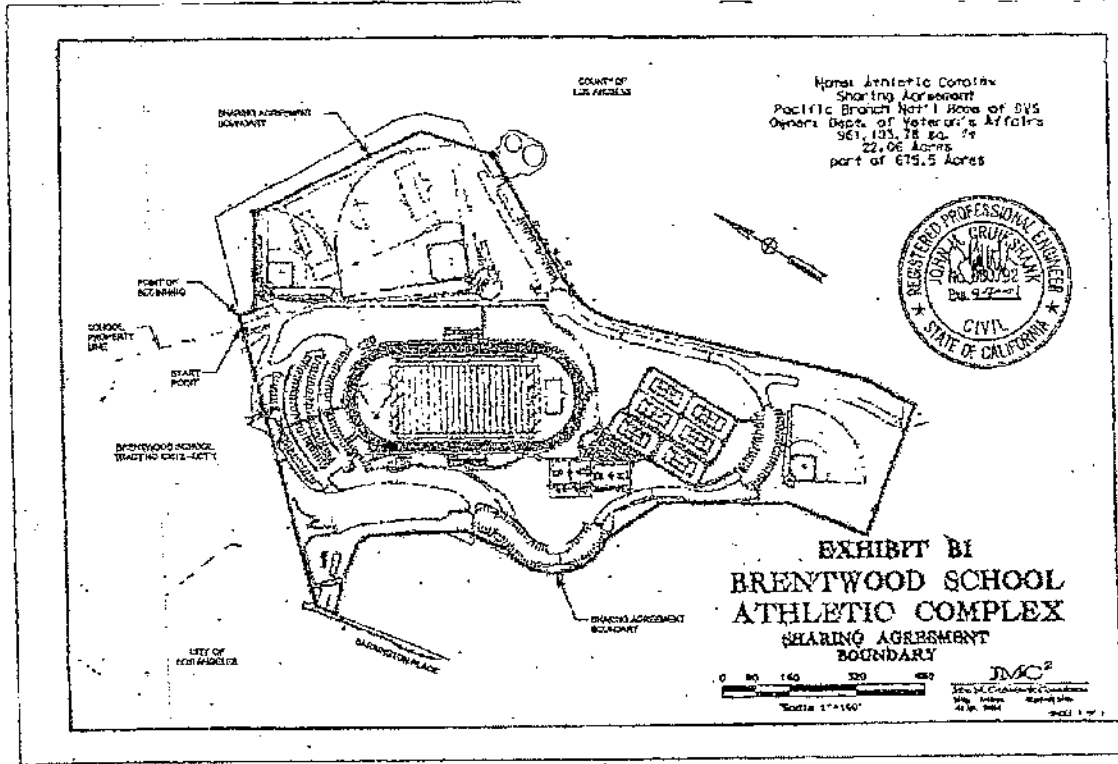
That portion of the Pacific Branch: National Military Home, established 1866 by act of Congress approved March 31, 1866, located in Los Angeles County, 4 miles east of Santa Monica, as described thusly:

Starting from a point at the East corner of Lot 1 of Tract No. 10612; thence North 44 degrees 35' 45" East 26.53 feet to the true POINT OF BEGINNING of this description; thence South 48 degrees 57' 38" East a distance of 37.08 feet to a point; thence North 59 degrees 17' 04" East a distance of 228.44 feet to a point; thence South 55 degrees 09' 58" East a distance of 444.87 feet to a point; thence South 14 degrees 02' 34" East a distance of 181.10 feet to a point; thence South 28 degrees 04' 48" West a distance of 345.01 feet to a point; thence through a curve concave Easterly having a radius of 160.00 feet 146.11 feet along said curve; thence South 18 degrees 25' 39" East a distance of 818.83 feet to a point; thence South 02 degrees 21' 07" East a distance of 133.87 feet to a point; thence South 80 degrees 16' 26" West a distance of 325.43 feet to a point; thence North 08 degrees 09' 31" West a distance of 199.05 feet to a point; thence North 31 degrees 14' 17" West a distance of 306.67 feet to a point; thence North 53 degrees 14' 32" West a distance of 163.89 feet to a point; thence along a curve concave Northerly having a radius of 145.00 feet 292.23 feet along said curve, said curve having a central angle of 115 degrees 28' 21" with the bearing of the easterly radial line North 05 degrees 14' 47" West and the bearing of the westerly radial line North 69 degrees 46' 27" West; thence North 06 degrees 53' 19" West a distance of 109.30 feet to a point; thence North 34 degrees 00' 12" West a distance of 234.56 feet to a point; thence North 68 degrees 07' 50" West a distance of 31.81 feet to a point; thence South 81 degrees 44' 31" West a distance of 104.47 feet to a point; thence South 72 degrees 13' 25" West a distance of 70.56 feet to a point; thence North 08 degrees 39' 41" West a distance of 52.61 feet to a point; thence North 44 degrees 35' 45" East a distance of 897.44 feet to the POINT OF BEGINNING.

Total Area = 861,164 square feet (22.08 acres)

**EXHIBIT "B"**

**SITE PLAN**



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**EXHIBIT "C"**

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE AGREEMENT ("Memorandum") is made as of the 4 day of November, 2016 by and between THE SECRETARY OF VETERANS AFFAIRS, AN OFFICER OF THE UNITED STATES, ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS ("Lessor") and Brentwood School ("Lessee").

WITNESSETH:

1. Agreement of Lease. Lessor has leased to Lessee a certain parcel of land described in Attachment "A" attached hereto, for an initial term of ten (10) years, commencing on [Insert date] together with the non-exclusive right to use the Access Roads as set forth in the Lease. Subject to the terms and conditions in the Lease, the Lease term may be extended for one (1) additional period of ten (10) years, subject to the terms and conditions contained in the Lease. For more information, the parties to the Lease may be contacted at the following addresses:

LESSOR: U.S. Department of Veterans Affairs  
Office of Asset Enterprise Management (004B)  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
Attn: Designated VA Representative

LESSEE: Brentwood School  
100 S. Barrington Place  
Los Angeles, CA 90049  
Attn: Head of School

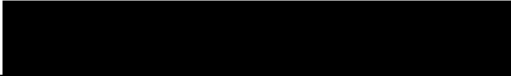

2. Provisions of Lease. The provisions set forth in the Lease, dated as of even date with this Memorandum and entered into between Lessor and Lessee, are hereby incorporated into this Memorandum by reference. In the event of any conflict between the provisions of the Lease and this Memorandum, the provisions of the Lease shall control.

3. Miscellaneous. This Memorandum shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and legal representatives. This Memorandum shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of California without regard to its principles of conflicts of law.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum on the date first set forth above.

**[Signatures Commence Below]**

**THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS  
LESSOR**

By:   
Name:   
Title: Contracting Officer

DISTRICT OF COLUMBIA )  
  )  
CITY OF WASHINGTON )

The foregoing instrument was acknowledged before me in the City of Washington, the District of Columbia, this \_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**BRENTWOOD SCHOOL**

**LESSEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Head of School

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On November 4, 2016, before me, Terrai Leigh Saler-Gruenthal, Notary Public,  
(insert name of notary)

Notary Public, personally appeared Michael R. ...,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Terrai Leigh Saler-Gruenthal

(Seal)





**ATTACHMENT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

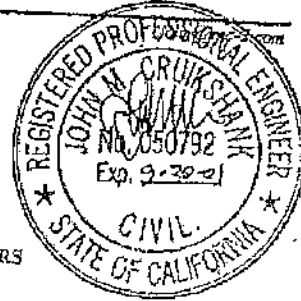


*John M. Cruikshank Consultants*  
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Phone: 310-329-4144

Fax: 310-329-4143

www.jmc-2.com



**EXHIBIT B**

**BOUNDARY DESCRIPTION  
SHARING AGREEMENT  
BRENTWOOD SCHOOL - DEPT. OF VETERAN'S AFFAIRS  
LOS ANGELES, CALIFORNIA**

That portion of the Pacific Branch National Military Home, established 1866 by act of Congress approved March 31, 1866, located in Los Angeles County, 4 miles east of Santa Monica, as described thusly:

Starting from a point at the East corner of Lot 1 of Tract No. 10512; thence North 44 degrees 35' 45" East 26.63 feet to the true POINT OF BEGINNING of this description; thence South 48 degrees 57' 34" East a distance of 37.08 feet to a point; thence North 59 degrees 17' 04" East a distance of 228.44 feet to a point; thence South 56 degrees 09' 53" East a distance of 444.87 feet to a point; thence South 14 degrees 02' 34" East a distance of 181.10 feet to a point; thence South 28 degrees 04' 48" West a distance of 345.01 feet to a point; thence through a curve concave Easterly having a radius of 160.00 feet 146.11 feet along said curve; thence South 18 degrees 25' 39" East a distance of 613.93 feet to a point; thence South 02 degrees 21' 07" East a distance of 133.87 feet to a point; thence South 80 degrees 16' 25" West a distance of 325.43 feet to a point; thence North 08 degrees 00' 31" West a distance of 199.05 feet to a point; thence North 31 degrees 14' 17" West a distance of 308.57 feet to a point; thence North 63 degrees 14' 32" West a distance of 158.89 feet to a point; thence along a curve concave Northerly having a radius of 145.00 feet 292.23 feet along said curve, said curve having a central angle of 115 degrees 28' 21" with the bearing of the easterly radial line North 05 degrees 14' 47" West and the bearing of the westerly radial line North 69 degrees 46' 27" West; thence North 06 degrees 53' 19" West a distance of 100.39 feet to a point; thence North 34 degrees 00' 12" West a distance of 234.88 feet to a point; thence North 68 degrees 07' 50" West a distance of 31.91 feet to a point; thence South 81 degrees 44' 31" West a distance of 104.47 feet to a point; thence South 72 degrees 13' 25" West a distance of 70.56 feet to a point; thence North 03 degrees 33' 41" West a distance of 62.51 feet to a point; thence North 44 degrees 35' 45" East a distance of 687.44 feet to the POINT OF BEGINNING.

Total Area = 361,104 square feet (22.06 acres)

**EXHIBIT "D"**

**VALUE OF ANNUAL IN-KIND CONSIDERATION  
TO BE PROVIDED FROM BWS TO VA**

The following table outlines the categories for "in-kind" consideration agreed upon by VA and Brentwood School. The categories are designed to be a flexible menu of options that can be adjusted based on the needs and preferences of Veterans. The aggregate value of the "in-kind" contributions allocated in any one year will be approximately \$918,000 and is based on the total appraised value of \$1.76M less \$850,000 to be paid in rent. The allocation of funding will be reviewed by VA and BWS on a quarterly basis. The in-kind offerings, programs, opportunities, and activities are all part of The Veterans Center for Recreation and Education (VCRE) at Brentwood School.

<b>In-Kind Consideration by Paragraph Number and Corresponding Category</b>	<b>Estimated Value of In-Kind Consideration, as of the Effective Date</b>	<b>Standard for Valuation and Examples of Each Component of In-Kind Consideration</b>
<b>Article 2, Section III of In-Kind Consideration</b>		
Paragraph 3 – fixed Category A – Operation, Maintenance, and Upkeep	\$ 170,587	Annual cost for routine upkeep of 22-acre complex. For example, landscaping, maintenance, custodial, irrigation, and utilities for athletic fields, track, tennis courts, etc.
Paragraph 4 – fixed Category A – Operation, Maintenance, and Upkeep	\$ 348,000	Repair and replacement costs related to facility refurbishment and minor enhancements for the property, physical structures, grounds, lighting, and equipment on the 22-acre site
<b>Article 2, Section IV of In-Kind Consideration</b>		

<b>In-Kind Consideration by Paragraph Number and Corresponding Category</b>	<b>Estimated Value of In-Kind Consideration, as of the Effective Date</b>	<b>Standard for Valuation and Examples of Each Component of In-Kind Consideration</b>
Paragraph 5 Category B – Special Programs and Events Benefitting Veterans and Families	\$ 15,000	Use of facilities on 22-acre site by VA, including qualified Veterans Service Organizations in coordination with VA, for special events (i.e. softball games, movie nights, concerts, BBQs, etc.).
Paragraph 6 Category B – Special Programs and Events Benefitting Veterans and Families	\$ 30,000	BWS initiated and hosted activities, opportunities, and events that include Veterans and their families and connect them to the local community. For example, movie screenings, special speakers, picnics or bbqs, among other options.
<b>Article 2, Section V of In-Kind Consideration</b>		
Paragraph 7 Category C – Capital Costs and Improvements	\$ TBD	Future improvements relating to activities on the 22-acre site and benefitting Veterans and their families. A possible example includes a fitness center (which may be constructed)
<b>Article 2, Section VI of In-Kind Consideration</b>		
Paragraph 8 Category D – Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	No cost to VA	BWS to conduct Veteran Donation Drives within the school community centered around Veterans Day, Memorial Day, or other occasions relevant to the BWS curriculum. Collected items may include clothes, food, furniture, wheelchairs, etc.

<b>In-Kind Consideration by Paragraph Number and Corresponding Category</b>	<b>Estimated Value of In-Kind Consideration, as of the Effective Date</b>	<b>Standard for Valuation and Examples of Each Component of In-Kind Consideration</b>
Paragraph 9 – fixed Category D – Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	\$ 223,462	Management, coordination, communication, promotion, and organization of activities related to VCRE, including staffing needs (for example, security, lifeguards, coaches, administrative support, etc.)
Paragraph 10 Category D – Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	\$ 2,500	BWS to supply athletic equipment and gear for use by Veterans and their Families during activities on the 22-acre site.
Paragraph 11 Category D - Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	\$ 39,228	BWS to offer educational services to Veterans and their families including but not limited to courses, seminars, workshops, and clinics. Examples of offerings could include college counseling, General Equivalency Diploma (GED) preparation, adult education courses, sports clinics, nutrition seminars, computer literacy, and/or access to rehearsal or learning spaces.
Paragraph 12 – fixed Category D – Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	\$ 82,458	Transportation services, including cost of vehicle(s) and driver(s), that facilitate access to opportunities offered on the 22-acre site
Paragraph 13 Category D – Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	\$ 164,000	Scholarships- Summer at BWS & academic scholarships based on merit. Includes not less than 120 scholarship spots for Summer

<b>In-Kind Consideration by Paragraph Number and Corresponding Category</b>	<b>Estimated Value of In-Kind Consideration, as of the Effective Date</b>	<b>Standard for Valuation and Examples of Each Component of In-Kind Consideration</b>
		at Brentwood, to be allocated by VA based on their developed criteria and prioritization.
Paragraphs 14 and 15 - fixed Category D – Athletic and Educational Programs and Activities to Benefit Veterans and Their Families	\$ 60,000	Website development and on-going maintenance/support to help communicate, coordinate, and facilitate access to offerings on the 22-acre site.
TBD	Invaluable and at no cost to VA	BWS student activities and service learning projects directly benefitting Veterans
	\$1,135,235*	
<i>Annual Rent</i>	\$850,000	
<i>TOTAL Annual Value</i>	\$1,985,235*	

\*Subject to reduction in order to achieve the Annual In-Kind Consideration Amount as provided in Article 2, Section II, Paragraph 2(b).

**EXHIBIT "E"**

**HOURS FOR USE REGARDING THE VA/BWS RECREATIONAL FACILITIES\***

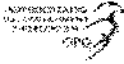
<b>Tennis Courts</b>	Tennis, Paddle Tennis	32/week
<b>Pavilion</b>	Basketball/Volleyball	32/week
<b>Football Field</b>	Track & Field	32/week
<b>Back Field</b>	Softball, Soccer, Flag Football	40/week
<b>Pool**</b>	Lap Swim, Water Polo	8/week

\*VA shall prioritize access to the Recreational Facilities based on objectives of the Master Plan.

\*\*While the pool is handicapped accessible, it can't be used as a therapeutic pool because it is 7' deep and has no shallow end.

\*\*\*Scheduling of facilities is based on daylight hours as there are not lights for night use.

**EXHIBIT "F"**  
**WEST LA LEASING ACT**  
**[ATTACHED]**



H. R. 5936

One Hundred Fourteenth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Monday,  
the fourth day of January, two thousand and sixteen*

**An Act**

To authorize the Secretary of Veterans Affairs to enter into certain leases at the Department of Veterans Affairs West Los Angeles Campus in Los Angeles, California, to make certain improvements to the enhanced-use lease authority of the Department, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "West Los Angeles Leasing Act of 2016".

**SEC. 2. AUTHORITY TO ENTER INTO CERTAIN LEASES AT THE DEPARTMENT OF VETERANS AFFAIRS WEST LOS ANGELES CAMPUS.**

(a) **IN GENERAL.**—The Secretary of Veterans Affairs may carry out leases described in subsection (b) at the Department of Veterans Affairs West Los Angeles Campus in Los Angeles, California (hereinafter in this section referred to as the "Campus").

(b) **LEASES DESCRIBED.**—Leases described in this subsection are the following:

(1) Any enhanced-use lease of real property under subchapter V of chapter 81 of title 38, United States Code, for purposes of providing supportive housing, as that term is defined in section 5161(5) of such title, that principally benefit veterans and their families.

(2) Any lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit veterans and their families and that are limited to one or more of the following purposes:

(A) The promotion of health and wellness, including nutrition and spiritual wellness.

(B) Education.

(C) Vocational training, skills building, or other training related to employment.

(D) Peer activities, socialization, or physical recreation.

(E) Assistance with legal issues and Federal benefits.

(F) Volunteerism.

(G) Family support services, including child care.

(H) Transportation.

(3) Services in support of one or more of the purposes specified in subparagraphs (A) through (H).

(3) A lease of real property for a term not to exceed 10 years to The Regents of the University of California, a corporation organized under the laws of the State of California, on



behalf of its University of California, Los Angeles (UCLA) campus (hereinafter in this section referred to as "The Regents"),

(A) the lease is consistent with the master plan described in subsection (g);

(B) the provision of services to veterans is the predominant focus of the activities of The Regents at the Campus during the term of the lease;

(C) The Regents expressly agrees to provide, during the term of the lease and to an extent and in a manner that the Secretary considers appropriate, additional services and support (for which The Regents is not compensated by the Secretary or through an existing medical affiliation agreement) that--

(i) principally benefit veterans and their families, including veterans that are severely disabled, women, aging, or homeless; and

(ii) may consist of activities relating to the medical, clinical, therapeutic, dietary, rehabilitative, legal, mental, spiritual, physical, recreational, research, and counseling needs of veterans and their families or any of the purposes specified in any of subparagraphs (A) through (D) of paragraph (2); and

(D) The Regents maintains records documenting the value of the additional services and support that The Regents provides pursuant to subparagraph (C) for the duration of the lease and makes such records available to the Secretary.

(2) **LIMITATION ON LAND-SHARING AGREEMENTS.**—The Secretary may not carry out any land-sharing agreement pursuant to section 5153 of title 38, United States Code, at the Campus unless such agreement—

(1) provides additional health-care resources to the Campus; and

(2) benefits veterans and their families other than from the generation of revenue for the Department of Veterans Affairs.

(3) **REVENUES FROM LEASES AT THE CAMPUS.**—Any funds received by the Secretary under a lease described in subsection (b) shall be credited to the applicable Department medical facilities account and shall be available, without fiscal year limitation and without further appropriation, exclusively for the renovation and maintenance of the land and facilities at the Campus.

(4) **EASEMENTS.**—

(I) **IN GENERAL.**—Notwithstanding any other provision of law (other than Federal laws relating to environmental and historic preservation), pursuant to section 5124 of title 38, United States Code, the Secretary may grant easements or rights-of-way on, above, or under lands at the Campus to--

(A) any local or regional public transportation authority to access, construct, use, operate, maintain, repair, or reconstruct public mass transit facilities, including fixed guideway facilities and transportation centers; and

(B) the State of California, County of Los Angeles, City of Los Angeles, or any agency or political subdivision

thereof, or any public utility company (including any company providing electricity, gas, water, sewage, or telecommunication services to the public) for the purpose of providing such public utilities.

(2) IMPROVEMENTS.—Any improvements proposed pursuant to an easement or right-of-way authorized under paragraph (1) shall be subject to such terms and conditions as the Secretary considers appropriate.

(3) TERMINATION.—Any easement or right-of-way authorized under paragraph (1) shall be terminated upon the abandonment or nonuse of the easement or right-of-way and all right, title, and interest in the land covered by the easement or right-of-way shall revert to the United States.

(f) PROHIBITION ON SALE OF PROPERTY.—Notwithstanding section 8164 of title 38, United States Code, the Secretary may not sell or otherwise convey to a third party fee simple title to any real property or improvements to real property made at the Campus.

(g) CONSISTENCY WITH MASTER PLAN.—The Secretary shall ensure that each lease carried out under this section is consistent with the draft master plan approved by the Secretary on January 28, 2016, or successor master plans.

(h) COMPLIANCE WITH CERTAIN LAWS.—

(1) LAWS RELATING TO LEASES AND LAND USE.—If the Inspector General of the Department of Veterans Affairs determines, as part of an audit report or evaluation conducted by the Inspector General, that the Department is not in compliance with all Federal laws relating to leases and land use at the Campus, or that significant mismanagement has occurred with respect to leases or land use at the Campus, the Secretary may not enter into any lease or land-sharing agreement at the Campus, or renew any such lease or land-sharing agreement that is not in compliance with such laws, until the Secretary certifies to the Committees on Veterans' Affairs of the Senate and House of Representatives, the Committees on Appropriations of the Senate and House of Representatives, and each Member of the Senate and the House of Representatives who represents the area in which the Campus is located that all recommendations included in the audit report or evaluation have been implemented.

(2) COMPLIANCE OF PARTICULAR LEASES.—Except as otherwise expressly provided by this section, no lease may be entered into or renewed under this section unless the lease complies with chapter 33 of title 41, United States Code, and all Federal laws relating to environmental and historic preservation.

(i) VETERANS AND COMMUNITY OVERSIGHT AND ENGAGEMENT BOARD.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish a Veterans and Community Oversight and Engagement Board (in this subsection referred to as the "Board") for the Campus to—

(A) identify the goals of the community and veteran partnership;

(B) provide advice and recommendations to the Secretary to improve services and outcomes for veterans, members of the Armed Forces, and the families of such veterans and members; and

(C) provide advice and recommendations on the implementation of the draft master plan approved by the Secretary on January 29, 2016, and on the creation and implementation of any successor master plans.

**(2) MEMBERS.**—The Board shall be comprised of a number of members that the Secretary determines appropriate, of which not less than 50 percent shall be veterans. The nonveteran members shall be family members of veterans, veteran advocates, service providers, real estate professionals familiar with housing development projects, or stakeholders.

**(3) COMMUNITY IMPACT.**—In carrying out paragraph (1), the Board shall—

(A) provide the community opportunities to collaborate and communicate with the Board, including by conducting public forums on the Campus; and

(B) focus on local issues regarding the Department that are identified by the community, including with respect to health care, implementation of the draft master plan and any subsequent plans, benefits, and memorial services at the Campus.

**(j) NOTIFICATION AND REPORTS.**—

**(1) CONGRESSIONAL NOTIFICATION.**—With respect to each lease or land-sharing agreement intended to be entered into or renewed at the Campus, the Secretary shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives, the Committees on Appropriations of the Senate and House of Representatives, and each Member of the Senate and the House of Representatives who represents the area in which the Campus is located of the intent of the Secretary to enter into or renew the lease or land-sharing agreement not later than 45 days before entering into or renewing the lease or land-sharing agreement.

**(2) ANNUAL REPORT.**—Not later than one year after the date of the enactment of this Act, and not less frequently than annually thereafter, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives, the Committees on Appropriations of the Senate and House of Representatives, and each Member of the Senate and the House of Representatives who represents the area in which the Campus is located an annual report evaluating all leases and land-sharing agreements carried out at the Campus, including—

(A) an evaluation of the management of the revenue generated by the leases; and

(B) the records described in subsection (b)(3)(D).

**(3) INSPECTOR GENERAL REPORT.**—

(A) **IN GENERAL.**—Not later than each of two years and five years after the date of the enactment of this Act, and as determined necessary by the Inspector General of the Department of Veterans Affairs thereafter, the Inspector General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives and the Committees on Appropriations of the Senate and

House of Representatives, and each Member of the Senate and the House of Representatives who represents the area in which the Campus is located a report on all leases carried out at the Campus and the management by the Department of the use of land at the Campus, including an assessment of the efforts of the Department to implement the master plan described in subsection (g) with respect to the Campus.

(E) CONSIDERATION OF ANNUAL REPORT.—In preparing each report required by subparagraph (A), the Inspector General shall take into account the most recent report submitted to Congress by the Secretary under paragraph (2).

(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of the Secretary to enter into other agreements regarding the Campus that are authorized by law and not inconsistent with this section.

(l) PRINCIPALLY BENEFIT VETERANS AND THEIR FAMILIES DEFINED.—In this section the term "principally benefit veterans and their families", with respect to services provided by a person as a party under a lease of property or land-sharing agreement--

(1) means services--

(A) provided exclusively to veterans and their families;

or

(B) that are designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families; and

(2) excludes services in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs.

(m) CONFORMING AMENDMENTS.—

(1) PROHIBITION ON DISPOSAL OF PROPERTY.—Section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2272) is amended by striking "The Secretary of Veterans Affairs" and inserting "Except as authorized under the Los Angeles Homeless Veterans Leasing Act of 2014, the Secretary of Veterans Affairs".

(2) ENHANCED-USE LEASE.—Section 5162(c) of title 38, United States Code, is amended by inserting ", other than an enhanced-use lease under the Los Angeles Homeless Veterans Leasing Act of 2014," before "shall be considered".

#### SEC. 2. IMPROVEMENTS TO ENHANCED-USE LEASE AUTHORITY OF DEPARTMENT OF VETERANS AFFAIRS.

(a) PROHIBITION ON WAIVER OF OBLIGATION OF LESSOR.—Paragraph (3) of section 5162(b) of title 38, United States Code, is amended by adding at the following new subparagraph:

"(B) The Secretary may not waive or postpone the obligation of a lessee to pay any consideration under an enhanced-use lease, including monthly rent."

(b) CLARIFICATION OF LIABILITY OF FEDERAL GOVERNMENT TO THIRD PARTIES.—Section 5162 of such title is amended by adding at the end the following new subsection:

"(4)(1) Nothing in this subchapter authorizes the Secretary to enter into an enhanced-use lease that provides for, is contingent upon, or otherwise authorizes the Federal Government to guarantee a loan made by a third party to a lessee for purposes of the enhanced-use lease.

"(2) Nothing in this subchapter shall be construed to abrogate or constitute a waiver of the sovereign immunity of the United States with respect to any loan, financing, or other financial agreement entered into by the lessee and a third party relating to an enhanced-use lease."

(c) **TRANSPARENCY.**—

(1) **NOTICE.**—Section 8163(c)(1) of such title is amended—

(A) by inserting ", the Committees on Appropriations of the House of Representatives and the Senate, and the Committees on the Budget of the House of Representatives and the Senate" after "congressional veterans' affairs committees";

(B) by striking "and shall publish" and inserting ", shall publish";

(C) by inserting before the period at the end the following: ", and shall submit to the congressional veterans' affairs committees a copy of the proposed lease"; and

(D) by adding at the end the following new sentence: "With respect to a major enhanced-use lease, upon the request of the congressional veterans' affairs committees, not later than 30 days after the date of such notice, the Secretary shall testify before the committees on the major enhanced-use lease, including with respect to the status of the lease, the cost, and the plans to carry out the activities under the lease. The Secretary may not delegate such testifying below the level of the head of the Office of Asset Enterprise Management of the Department or any successor to such office."

(2) **ANNUAL REPORTS.**—Section 8168 of such title is amended—

(A) by striking "to Congress" each place it appears and inserting "to the congressional veterans' affairs committees, the Committees on Appropriations of the House of Representatives and the Senate, and the Committees on the Budget of the House of Representatives and the Senate";

(B) in subsection (a)—

(i) by striking "Not later" and inserting "(1) Not later";

(ii) by striking "a report" and all that follows through the period at the end and inserting "a report on enhanced-use leases"; and

(iii) by adding at the end the following new paragraph:

"(2) Each report under paragraph (1) shall include the following:

"(A) Identification of the actions taken by the Secretary to implement and administer enhanced-use leases.

"(B) For the most recent fiscal year covered by the report, the amounts deposited into the Medical Care Collection Fund account that were derived from enhanced-use leases.

"(C) Identification of the actions taken by the Secretary using the amounts described in subparagraph (B).

"(D) Documents of the Department supporting the contents of the report described in subparagraphs (A) through (C); and

(C) in subsection (h)—

(i) by striking "Each year" and inserting "(1) Each year";

(ii) by striking "this subchapter," and all that follows through the period at the end and inserting "this subchapter."; and

(iii) by adding at the end the following new paragraph:

"(2) Each report under paragraph (1) shall include the following with respect to each enhanced-use lease covered by the report:

"(A) An overview of how the Secretary is using consideration received by the Secretary under the lease to support veterans.

"(B) The amount of consideration received by the Secretary under the lease.

"(C) The amount of any revenues collected by the Secretary relating to the lease not covered by subparagraph (B), including a description of any in-kind assistance or services provided by the lessee to the Secretary or to veterans under an agreement entered into by the Secretary pursuant to any provision of law.

"(D) The costs to the Secretary of carrying out the lease.

"(E) Documents of the Department supporting the contents of the report described in subparagraphs (A) through (D)."

(d) ADDITIONAL DEFINITIONS.—Section 8161 of such title is amended by adding at the end the following new paragraphs:

"(4) The term 'lessee' means the party with whom the Secretary has entered into an enhanced-use lease under this subchapter.

"(5) The term 'major enhanced-use lease' means an enhanced-use lease that includes consideration consisting of an average annual rent of more than \$10,000,000."

(e) COMPTROLLER GENERAL AUDIT.—

(1) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report containing an audit of the enhanced-use lease program of the Department of Veterans Affairs under subchapter V of chapter 81 of title 38, United States Code.

(2) MATTERS INCLUDED.—The report under paragraph (1) shall include the following:

(A) The financial impact of the enhanced-use lease authority on the Department of Veterans Affairs and whether the revenue realized from such authority and other financial benefits would have been realized without such authority.

(B) The use by the Secretary of such authority and whether the arrangements made under such authority would have been made without such authority.

(C) An identification of the controls that are in place to ensure accountability and transparency and to protect the Federal Government.

(D) An overall assessment of the activities of the Secretary under such authority to ensure procurement cost

avoidance, negotiated cost avoidance, in-contract cost avoidance, and rate reductions.

(3) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—  
In this subsection, the term “appropriate congressional committees” means—

- (A) the Committees on Veterans’ Affairs of the House of Representatives and the Senate;
- (B) the Committees on Appropriations of the House of Representatives and the Senate; and
- (C) the Committees on the Budget of the House of Representatives and the Senate.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

**Department of  
Veterans Affairs**

**Memorandum**

Date: NOV 16 2016

From: Deputy Director, Network Contracting Office 22

Subj: Request for Delegation of Authority To Negotiate and Execute Certain Lease Transactions at the West Los Angeles Campus

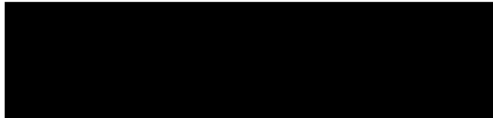
To: Secretary (00)

1. This memorandum requests that a Delegation of Authority be granted in accordance with 38 U.S.C. § 512, from the VA Secretary to the Deputy Director ("Deputy Director") of the Veteran Health Administration's Network Contracting Office 22 (NCO 22), to allow the Deputy Director to negotiate and execute certain lease transactions at the West Los Angeles (WLA) Campus.
2. Specifically, under the requested delegation, the Deputy Director would be authorized to negotiate, execute, and administer leases authorized under Sections 2.(b).2 and 2.(b).3 of the "West Los Angeles Leasing Act of 2016" (the "Act"), i.e., H.R. 5936, which the President enacted in September 2016.
3. Administration of Enhanced-Use Leases executed at the WLA Campus under Section 2.(b).1 of the Act (through VA's Office of Asset Enterprise Management (OAEM)), will remain with OAEM. However, OAEM shall as required under its policy, promptly appoint a WLA Local Site Manager ("LSM") for each Enhanced-Use Lease executed at the WLA Campus (and concurrently identify the same to the Deputy Director), to assist locally in such lease administration. The LSM shall be responsible to monitor each underlying Enhanced-Use Lease locally, and provide lease-related alerts and updates when appropriate to OAEM's Designated VA Representative, and the Deputy Director.
4. Under this delegation, the Deputy Director will be entrusted and expected to: (a) exercise this authority in a manner reflective of VA's I-CARE Core Values; (b) ensure that any such leases comply with applicable law and regulations, and receive adequate reviews and input from other pertinent VA offices prior to execution, including the Office of General Counsel; (c) protect and safeguard the interests of VA, Veterans, and taxpayers, by ensuring that any such leases executed are "Veteran focused" in accordance with the framework Draft Master Plan for the WLA Campus, which was publicly announced in January 2016.
5. Subject to compliance with the conditions described above, this Delegation of Authority may be re-delegated from the Deputy Director to warranted VA contracting officers working in NCO 22. The requested delegation will allow the underlying lease processes to function efficiently with appropriate safeguards in place, to effectively support of the WLA Campus.
6. VA Directive 0000 at Paragraph 2.(e), requires that all delegation of authority memoranda include a sunset date, i.e., a two-year duration for the requested delegation, except and to the extent that the VA Secretary waives that condition. I hereby request that that two-year limitation for this Delegation of Authority request be waived. Such waiver will enable the



contemplated and necessary efficiencies to be fully realized, relative to the aforementioned parameters and protections. Accordingly, the Delegation of Authority provided below does not contain a sunset date; and if granted, will remain in effect until it is amended or superseded.

7. Your signature below and on the enclosed Delegation of Authority will evidence your approval and delegation to NCO 22 for the aforementioned lease activities at the WLA Campus, as well as your waiver of the requirement that the Delegation contain a sunset date.



Alan Trinh  
Deputy Director of Contracts, NCO 22

Attachment

APPROVE/DISAPPROVE:



Robert A. McDonald

Date: 11/16/16

Attachment

**MEMORANDUM FOR THE DEPUTY DIRECTOR OF CONTRACTING  
NETWORK CONTRACTING OFFICE 22**

**SUBJECT:** Delegation of Authority to Negotiate and Execute Certain Real Property Leases at the West Los Angeles Campus

1. **DELEGATION.** This memorandum delegates to the Deputy Director of Contracting Network Contracting Office 22 ("Deputy Director"), the authority to negotiate and execute certain lease transactions at the West Los Angeles ("WLA") Campus.
2. Specifically, the Deputy Director is hereby authorized to negotiate, execute, and administer leases authorized under Sections 2.(b).2 and 2.(b).3 of the "West Los Angeles Leasing Act of 2016" (the "Act"), i.e., H.R. 5936, which the President enacted in September 2016.
3. Administration of Enhanced-Use Leases executed at the WLA Campus under Section 2.(b).1 of the Act (through VA's Office of Asset Enterprise Management (OAEM)), will remain with OAEM. However, OAEM shall as required under its current policy, promptly appoint a WLA Local Site Manager ("LSM") for each Enhanced-Use Lease executed at the WLA Campus (and concurrently identify the same to the Deputy Director), to assist locally in such lease administration. The LSM shall be responsible to monitor each underlying Enhanced-Use Lease locally, and provide lease-related alerts and updates when appropriate to OAEM's Designated VA Representative, and the Deputy Director.
4. Under this delegation, the Deputy Director will be entrusted and expected to: (a) exercise this authority in a manner reflective of VA's I-CARE Core Values; (b) ensure that any such leases comply with applicable law and regulations, and receive adequate reviews and input from other pertinent VA offices prior to execution, including the Office of General Counsel; (c) protect and safeguard the interests of VA, Veterans, and taxpayers, by ensuring that any such leases executed are "Veteran focused," in accordance with the framework Draft Master Plan for the WLA Campus, which was publicly announced in January 2016.
5. Subject to compliance with the conditions described above, this Delegation of Authority may be re-delegated from the Deputy Director to warranted VA contracting officers working in NCO 22. The requested delegation will allow the underlying lease processes to function efficiently with appropriate safeguards in place, to effectively support of the WLA Campus.
6. **EFFECTIVE DATE.** This Delegation of Authority is effective upon signature, and the two-year policy sunset date for it under VA Directive 0000 at Paragraph 2.(e) is hereby waived, except and to the extent that this Delegation of Authority is later amended or rescinded.

  
Robert A. McDonald

**Trinh, Alan**

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**From:** Marston, Heidi  
**Sent:** Wednesday, November 16, 2016 3:42 PM  
**To:** Gore, Cameron; Trinh, Alan  
**Subject:** FW: West LA, CA Matter - HOT: SECVA Delegation of Authority (West LA) (7754650)  
**Attachments:** West LA.PDF; Package Approvals for OSVA.docx


FYI

Sent with Good ([www.good.com](http://www.good.com))

-----Original Message-----

**From:** Jessup, Jennifer Smith  
**Sent:** Wednesday, November 16, 2016 04:11 PM Eastern Standard Time  
**To:** Wright, Vivieca (Simpson); Gore, Cameron; Jeter, Theriska; Williams, Kay (OGC); VHA 10B; Hipolit, Richard  
**Cc:** Marston, Heidi; Nicolosi, Reid; Colli, Jacqueline  
**Subject:** RE: West LA, CA Matter - HOT: SECVA Delegation of Authority (West LA) (7754650)


Signed documents attached; VAIQ number 7754650 for future reference.

Jennifer Jessup  
Deputy Executive Secretary  
Department of Veterans Affairs  
810 Vermont Avenue NW  


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**From:** Jessup, Jennifer Smith  
**Sent:** Wednesday, November 16, 2016 3:23 PM  
**To:** Wright, Vivieca (Simpson); Gore, Cameron; Jeter, Theriska; Williams, Kay (OGC); VHA 10B; Hipolit, Richard  
**Cc:** Marston, Heidi; Nicolosi, Reid  
**Subject:** RE: West LA, CA Matter - HOT: SECVA Delegation of Authority (West LA)

Great; thanks for all the quick responses! We will create a VAIQ workflow because all decisions by SECVA must be documented in VA's official system of record.

Jennifer Jessup  
Deputy Executive Secretary  
Department of Veterans Affairs  
810 Vermont Avenue NW  


**From:** Wright, Vivieca (Simpson)  
**Sent:** Wednesday, November 16, 2016 3:14 PM  
**To:** Gore, Cameron; Jessup, Jennifer Smith; Jeter, Theriska; Williams, Kay (OGC); VHA 10B; Hipolit, Richard  
**Cc:** Marston, Heidi; Nicolosi, Reid  
**Subject:** RE: West LA, CA Matter - HOT: SECVA Delegation of Authority (West LA)

VHA has no objection.

**From:** Gore, Cameron  
**Sent:** Wednesday, November 16, 2016 2:51 PM  
**To:** Jessup, Jennifer Smith; Jeter, Theriska; Williams, Kay (OGC); VHA 10B; Hipolit, Richard  
**Cc:** Marston, Heidi; Nicolosi, Reid; Gore, Cameron  
**Subject:** RE: West LA, CA Matter - HOT: SECVA Delegation of Authority (West LA)

Folks: Hi. I drafted the attached Delegation of Authority this past weekend, in coordination with Heidi Marston (Special Assistant to the SECVA), Ann Brown (West LA Director), and Alan Trinh (the SAO West Contracting Officer). The SECVA wants to sign today, so Alan can sign the Brentwood School Lease per the West LA Leasing Act of 2016. The Lease is attached. This is in support of Ann Brown on the campus revitalization. I'm here now w/Heidi and Ann. If you have any questions, please call me at [REDACTED]—Cam.

**From:** Jessup, Jennifer Smith  
**Sent:** Wednesday, November 16, 2016 2:32 PM  
**To:** Jeter, Theriska; Williams, Kay (OGC); VHA 10B; Hipolit, Richard; Gore, Cameron  
**Cc:** Marston, Heidi  
**Subject:** West LA, CA Matter - HOT: SECVA Delegation of Authority (West LA)

Hi OGC and VHA,

Just trying to be sure that this is approved from both of you since I have no documentation please let me know ASAP, thanks.

Jennifer Jessup  
Deputy Executive Secretary  
Department of Veterans Affairs  
810 Vermont Avenue NW  
[REDACTED]

**From:** Colli, Jacqueline  
**Sent:** Wednesday, November 16, 2016 2:24 PM  
**To:** Bock, Tonia Y.; Jessup, Jennifer Smith  
**Cc:** Pham, Katherine; O'Brien, Milli; Abboud, Jon  
**Subject:** FW: Needs Signature: Delegation of Authority

Tonia/Jennifer – We'll need this finalized asap. SecVA needs to sign this today.

**From:** Marston, Heidi  
**Sent:** Wednesday, November 16, 2016 2:14 PM  
**To:** McDonald, Bob; Gore, Cameron  
**Cc:** Colli, Jacqueline; O'Brien, Milli; Pham, Katherine  
**Subject:** Needs Signature: Delegation of Authority

Hi Bob,

In order to execute the lease between VA and Brentwood School, we have to extend Alan Trinh's delegation authority so he is authorized to sign the lease on behalf of VA. Will you please sign the attached memo so Alan can be our VA official for EUL's at West LA? The attached was drafted by Cam and the OGC team.

Including your team for coordination on printing, etc....

Thank you,  
Heidi

<b>Project:</b> U.S. Dept. of Veterans Affairs - LA Campus and the Brentwood School	<b>Location:</b> W. Los Angeles Campus , W. Los Angeles, CA <b>Project Num.</b>	<b>Date:</b> 11/15/2016
<b>Type of Project:</b> <input type="checkbox"/> Operation and Maintenance Activities <input type="checkbox"/> Repairs/ Renovation Project <input type="checkbox"/> New Construction Project <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other	<b>Project Description:</b> A lease between the Dept. of Veterans Affairs and the Brentwood School for the existing athletic fields and complex. The current use of the fields and complex which has taken place previously will continue. This lease covers 22.06 acres and is for 10 years with the parties right to exercise one 10 year extension.  No future construction will be permitted without additional NEPA documentation.	
<b>Level of NEPA Analysis:</b> <input checked="" type="checkbox"/> Categorical Exclusion <input type="checkbox"/> Environmental Assessment Needed <input type="checkbox"/> Environmental Impact Statement Needed	This lease is being executed per VA's authority under the West Los Angeles Leasing Act of 2016 (HR 5936).	

**DETERMINATION**

I find the proposed project qualifies as a CATEGORICAL EXCLUSION with no extraordinary circumstances. Specify which CATEX: VA Categorical Exclusion #9 Leases, licenses, permits, and easments.

I find that the proposed project MAY have a significant effect on the environment; therefore, an ENVIRONMENTAL ASSESSMENT will be prepared.

EIS

Recommended by: Ann Brown [REDACTED] Date: 11/15/16  
 Medical Center Director - West Los Angeles

Approved by: Glenn Elliott [REDACTED] Date: 11/15/16  
 Environmental Engineer

### Chart 1 - VA Categorical Exclusions List \*

1. Repair, replacement, and new installation of primary or secondary electrical distribution systems;
2. Repair, replacement, and new installation of components such as windows, doors, roofs; and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaries;
3. Routine VA grounds and facility maintenance activities;
4. Procurement activities for goods and services for routing, facility operations maintenance and support;
5. Interior construction or renovation;
6. New construction of 75,000 gross square feet or less;
7. Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less;
8. Actions which involve support or ancillary appurtenances for normal operation;
9. Leases, licenses, permits, and easements;
10. Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes;
11. VA policies, actions and studies which do not significantly affect the quality of the human environment;
12. Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency; and
13. Actions, activities, or programs that do not require expenditure of Federal funds.

\* 38 CFR Part 26.6(b)(1)

<sup>2</sup> CEQ. (2010, February 18). *Establishing and Applying Categorical Exclusions Under the National Environmental Policy Act*. Retrieved June 2010, from [http://ceq.hss.doe.gov/nepa/regs/Categorical\\_Exclusion\\_Draft\\_NEPA\\_Guidance\\_FINAL\\_02182010.pdf](http://ceq.hss.doe.gov/nepa/regs/Categorical_Exclusion_Draft_NEPA_Guidance_FINAL_02182010.pdf)