

CITY OF MESA  
AN ARIZONA MUNICIPAL CORPORATION

LEASE AGREEMENT  
WITH OPTION TO PURCHASE

with

BENEDICTINE UNIVERSITY  
AN ILLINOIS NOT-FOR-PROFIT CORPORATION

for

225 East Main Street  
Mesa, Arizona

Effective Date: \_\_\_\_\_, 2012

## Table of Contents

| <u>Section<br/>No.</u> | <u>Item</u>  | <u>Page</u> |
|------------------------|--|-------------|
| 1.                     | LEASE .....  | 1           |
| 2.                     | TERM.....  | 2           |
| 3.                     | NO SALE RIGHTS; EXCLUSIVE AND NONEXCLUSIVE RIGHTS .....    | 2           |
| 4.                     | RENT, PAYMENT, AND ADDITIONAL PAYMENTS .....               | 3           |
| 5.                     | REPRESENTATIONS, WARRANTIES, AND COVENANTS OF TENANTS .... | 6           |
| 6.                     | IMPROVEMENTS .....   | 6           |
| 7.                     | MAINTENANCE AND REPAIRS .....                              | 8           |
| 8.                     | DAMAGE AND DESTRUCTION OF PREMISES.....                    | 9           |
| 9.                     | ADDITIONAL PARKING AND SECURITY .....                      | 10          |
| 10.                    | ASSIGNMENT, SUBLETTING, AND OTHER TRANSFERS.....           | 10          |
| 11.                    | IDENTIFICATION SIGNS .....                                 | 10          |
| 12.                    | TENANT DEFAULT, LANDLORD REMEDIES .....                    | 10          |
| 13.                    | TENANT'S OPTION TO TERMINATE; LIQUIDATED DAMAGES.....      | 13          |
| 14.                    | LANDLORD'S DEFAULT, TENANT REMEDIES .....                  | 13          |
| 15.                    | ENVIRONMENTAL PROTECTION .....                             | 14          |
| 16.                    | INSURANCE .....  | 16          |
| 17.                    | INDEMNITY.....   | 17          |
| 18.                    | SURRENDER OF POSSESSION.....                               | 18          |
| 19.                    | INSPECTION/ACCESS BY LANDLORD .....                        | 19          |
| 20.                    | NOTICE.....  | 19          |
| 21.                    | LIENS AND MORTGAGES .....                                  | 20          |
| 22.                    | CORPORATE AUTHORIZATION .....                              | 20          |
| 23.                    | UTILITY LINES AND SERVICES CHARGES.....                    | 20          |
| 24.                    | RESERVATIONS TO THE CITY OF MESA .....                     | 20          |
| 25.                    | BROKERS .....  | 21          |
| 26.                    | SALE OF PREMISES BY LANDLORD .....                         | 21          |
| 27.                    | ESTOPPEL CERTIFICATE .....                                 | 21          |
| 28.                    | CONDEMNATION .....   | 21          |
| 29.                    | MEMORANDUM OF UNDERSTANDING .....                          | 22          |
| 30.                    | TENANT'S OPTION TO PURCHASE THE PREMISES .....             | 23          |
| 31.                    | MISCELLANEOUS.....   | 24          |

EXHIBIT A – The Premises

EXHIBIT B – Landlord Improvements

EXHIBIT C –Tenant Improvements

EXHIBIT D – Purchase Agreement

EXHIBIT E – Intended Majors of the Educational Institutions



## LEASE

This Lease Agreement with Option to Purchase (this "Lease") is executed to be effective the 15<sup>th</sup> day of Aug, 2013 (the "Effective Date") between THE CITY OF MESA, an Arizona municipal corporation (the "Mesa" or "Landlord"), and BENEDICTINE UNIVERSITY, an Illinois not-for-profit corporation (the "Benedictine" or "Tenant"). Landlord and Tenant may be referred to jointly as "Parties," and each separately as a "Party."

## RECITALS

A. This Lease is being entered into to implement certain portions of that certain Memorandum of Understanding for a Mesa Downtown Campus Development Agreement dated January 2012 and entered into between Mesa and Benedictine.

B. Mesa desires to have a four-year, liberal arts college to locate its campus in the City of Mesa's central downtown area; and Benedictine desires to establish a four-year, liberal arts college in the City of Mesa's central downtown area.

C. Benedictine desires to lease, and Mesa is willing to lease, pursuant to the terms of this Lease, that certain real property, which includes parking lots, and any and all improvements presently existing thereon (except as otherwise provided in this Lease), located at what is commonly known as 225 E. Main Street, Mesa, Arizona, (APNs:138-65-015 and 138-65-016) and a portion of APN 138-65-006D that consists of a parking lot adjacent to 225 E. Main Street and that is subject to a pending lot split to separate out the leased portion, all of which as more specifically depicted and legally described in the attached Exhibit "A" (the "Premises").

D. Mesa will make certain improvements to portions of Premises (a partial build-out of the building on the Premises) as further described in this Lease and attached exhibits within, approximately, the first year of this Lease, and Benedictine will occupy and use the Premises beginning on August 1, 2013 (or other commencement date as provided in Section 14.4 hereof). The Parties intend this Lease to be effective and enforceable upon entering into this Lease, but the rental payments will not begin until August 1, 2013 (or other commencement date as provided herein) when Benedictine is to move into the Premises.

E. Benedictine intends to, and will use, the Premises as its initial and primary campus in Arizona for a four-year liberal arts college and for other related collegiate or college administrative uses.

## AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein, and the terms and conditions of this Lease, the Parties agree as follows:

### 1. LEASE

1.1 The Premises. Landlord hereby leases the Premises to Tenant subject to all matters that a physical inspection of the Premises would disclose and all matters of record, including but not limited to liens, encumbrances, easements, assessments, and restrictions; and further subject to all operational and use restrictions and other terms, limitations, and conditions set forth in this Lease. Additionally, the Premises are subject to: (i) all applicable present and future laws, regulations, ordinances, resolutions, building restrictions and regulations, and zoning laws of the City of Mesa, and county, state, and federal bodies having jurisdiction; (ii) the condition and state of repair of the Premises as of the Effective Date; (iii) the right of access by the City of Mesa to utility lines, telecommunication lines, cable lines, and other similar improvements when needed by the City of Mesa for repair or replacement.

1.2 Right to Use the Premises. As of the Rent Commencement Date (as defined in Section 4.1), Landlord agrees that so long as Tenant shall timely pay the Premises Rent (as defined in Section 4.1) and other charges required to be paid hereunder, and perform all of its other obligations under this Lease, Tenant shall peaceably have and enjoy the use of the Premises without hindrance from Landlord or anyone claiming by or through it.

1.3 Condition of Premises. Tenant specifically acknowledges that Tenant, as of the Effective Date, has inspected the Premises prior to entering into this Lease and agrees to accept the Premises in an "AS IS, WHERE IS" condition without any warranty or representation from Landlord, either express or implied, of any kind or nature whatsoever with respect to the Premises, including, but not limited to, any warranty of merchantability, habitability, or fitness for any particular or specific purpose, and all such warranties are hereby disclaimed. Provided, however, Landlord shall cause the Landlord Improvements (as described in Section 6.1 and Exhibit "B") to be constructed in accordance with the final documents, plans, specifications for such improvements, and in compliance with all applicable laws, rules, regulations and ordinances, including the Americans with Disabilities Act, and Landlord agrees to transfer any warranties Landlord obtains from contractors, subcontractors, or materialmen for such improvements.

1.4 Permitted Uses. Tenant shall only use the Premises as a four-year liberal arts college, including such uses as teaching college courses, or for any related college administrative uses, college recruiting, bookstore, coffee shop, or similar collegiate uses; and supporting uses to the foregoing uses with the prior written approval of the City, which approval may be given or withheld in its sole discretion.

1.5 Continuous Operation. Tenant shall continuously use the Premises during the Term (as defined below) with a use permitted under the above Section 1.4, Permitted Uses. If Tenant fails to so use the Premises for a period of 120 consecutive days, Tenant shall be deemed to have allowed the Premises to "go dark," which shall be a default under this Lease

1.6 Compliance with Laws. In its use of the Premises and while on the Property, Tenant shall comply with all applicable laws, ordinances and regulations.

## **2. TERM.**

2.1 Term. The term (the "Term") of this Lease shall commence on the Effective Date and shall continue for that period of time that is fifteen (15) years after the Rent Commencement Date (as defined in Section 4.1), unless terminated earlier as provided in this Lease. Accordingly, the Term will continue until midnight on July 31, 2028 (which is the day before the 15<sup>th</sup> anniversary of the Rent Commencement Date), unless terminated earlier as provided in this Lease.

## **3. NO SALE RIGHTS; EXCLUSIVE AND NONEXCLUSIVE RIGHTS.**

3.1 No Sale of the Premises. Tenant may not sell or convey all or any part of the Premises unless Tenant first purchases the Premises under the terms set forth in Section 30 of this Lease and the Purchase Agreement.

3.2 Exclusive and Nonexclusive Rights. Subject to the terms of this Lease, Tenant shall have the exclusive right to occupy and use the Premises while in compliance with the terms and conditions of this Lease. All other rights granted to Tenant under this Lease are nonexclusive.

3.3 Tenant's Cooperation with Other Educational Institutions. In order to create a cooperative and successful environment for multiple educational institutions to start up in the City of Mesa, Tenant agrees to work in good faith with the educational institutions listed on the attached Exhibit "E" (collectively, the "Educational Institutions") to coordinate the duplication of majors between Tenant and the Educational Institutions for a reasonable period of time while Tenant and the Educational Institutions start up (e.g., the first three years or as agreed to between the Educational Institutions). More specifically, Tenant shall use good faith and all reasonable efforts to negotiate and enter into a separate agreement with the Educational Institutions to coordinate majors (for an initial startup period) so as to not substantially duplicate majors that are intended to be offered at one of the other Educational Institutions. Tenant acknowledges that the attached Exhibit "E" lists the current majors that Tenant and the Educational Institutions intend to initially offer; and Tenant will not initially offer any other majors without first engaging in all reasonable efforts to negotiate for an agreement with the other Educational Institutions. Landlord shall have no liability to Tenant for an Educational Institution's duplication of Tenant's majors or the inability of Tenant and the other Educational Institution to enter into an agreement as contemplated by this Section of the Lease. Tenant shall have no liability to Landlord or other Educational Institution in the event Tenant and the other Educational Institutions are not able to enter into a separate agreement as contemplated by this Section 3.3. The other Educational Institutions are not intended third party beneficiaries of this Section 3.3.

3.3.1 No Violation of Tenant's Rights. Tenant agrees that the terms of Section 3.3 above (including, any limitations regarding majors that will be offered so as to not have duplication of majors between the Educational Institutions) does not constitute a "restraint of trade" or unfair competition as respects Tenant's operations, and does not otherwise violate Tenant's legal rights in any manner as a provider of educational services; and Tenant hereby waives the making of all such claims.

#### 4. RENT, PAYMENT, AND ADDITIONAL PAYMENTS.

4.1 Premises Rent. Commencing on August 1, 2013, or other commencement date as provided in Section 14.4 hereof (the "Rent Commencement Date"), and on the first of every month thereafter during the Term of this Lease, Tenant shall pay in advance, without notice or demand, to Landlord a monthly rental amount (the "Premises Rent") for use of the Premises at the following rate:

A. Years One to Five. From the Rent Commencement Date until the end of the fifth lease year thereafter, at a rate of \$44,444.44 per month, plus applicable taxes.

B. Years Six to Ten. From the beginning of the sixth (6<sup>th</sup>) year after the Rent Commencement Date and until the end of the tenth (10<sup>th</sup>) lease year thereafter, at a rate of \$55,555.56 per month, plus applicable taxes.

C. Years Eleven to Fifteen. From the beginning of the eleventh (11<sup>th</sup>) year after the Rent Commencement Date and until the end of the fifteenth (15<sup>th</sup>) lease year thereafter (i.e., the end of the Term), at a rate of \$66,666.67 per month, plus applicable taxes.

4.1.1 First Year Premises Rent Abatement. So long as Tenant is not in default under this Lease and this Lease is not terminated and Tenant is not in default of its lease of space located at 51 East Main Street that is between Landlord and Tenant, the Premises Rent for the first twelve months after the Rent Commencement Date shall be fully abated so that the Premises Rent is reduced to zero (\$0.00) for each of the first twelve months after the Rent Commencement Date. If Tenant is in default under this Lease or if this Lease is terminated for any reason other than a default by Landlord or a termination under Sections 8.3, 13, 28.2, or 31.25, in addition to all other remedies provided under this Lease and at law, Tenant shall be obligated to pay all past abated Premises Rent—which shall become immediately due and payable upon such default or termination—and the abatement of rent shall immediately cease.

4.3 Net Lease. This Lease is a net lease. Tenant acknowledges and agrees that its obligations to pay Premises Rent and all other charges due and owing under the terms of this Lease shall be absolute and

unconditional, and shall not be affected by any circumstances whatsoever, including, without limitation: (i) any set-off, counterclaim, recoupment, defense or other right which Tenant may have against Landlord or anyone else for any reason whatsoever; (ii) the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease by or through Tenant or any lack of right, power or authority of Tenant to enter into this Lease; (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Tenant, or any other person; or (iv) any other cause, whether similar or dissimilar to the foregoing, any future or present law notwithstanding, it being the intention of the Parties that the Premises Rent shall continue to be payable in all events and in the manner and at the times provided by this Lease.

4.4 Non-Subordination. Landlord's interest in the Premises and this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to: (i) any mortgage now or hereafter placed upon Tenant's interest in this Lease; or (ii) any other liens, encumbrances or other matters hereafter affecting Tenant's interest in this Lease.

4.5 Obligations Unconditional. Tenant agrees—regardless of any event, occurrence or situation, whether foreseen or unforeseen, and however extraordinary—that it: (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Lease, (ii) will perform and observe all of its other agreements contained in this Lease, and (iii) will not suspend the performance of its obligations hereunder for any cause, including, and without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction or damage to the Premises, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of Arizona or any political subdivision of either.

4.6 Payment of Premises Rent.

4.6.1 Without notice or demand, the Premises Rent payments are due and payable by Tenant to Landlord on the 1<sup>st</sup> day of each month during the Term of this Lease in lawful currency of the United States, either by check or electronic transfer; provided, however, Landlord will invoice Tenant for the Premises Rent prior to the 1<sup>st</sup> day of the month as a courtesy and reminder for payment. If Tenant fails to pay any installment of Premises Rent in full on or before the due date, following any applicable notice and cure period, Tenant shall be responsible for interest on the unpaid installment at the rate of twelve (12%) per annum from the due date until payment in full is made. In addition, in the event any installment of Premises Rent is paid more than twenty (20) days after the due date, a late penalty equal to five percent (5%) of the amount of such delinquent installment shall be due and payable in addition thereto.

4.6.2 No payment to or receipt by Landlord of a lesser amount than that which is due and payable under the provisions of this Lease at any time of such payment shall be deemed to be other than a payment on account of the earliest payment due, nor shall any endorsement or statement on any check or payment prejudice in any way Landlord's right to recover the balance of such payment or pursue any other remedy provided in this Lease or by law.

4.6.3 All Premises Rent and any other payments shall be remitted to the following address (unless otherwise specified by Landlord) by the due date required by this Lease:

The City of Mesa, Arizona  
Attn.: Real Estate Department  
20 East Main Street  
P.O. Box 1466  
Mesa, Arizona 85211-1466

4.7 Security Deposit and Pre-paid Rent Deposit. None.

4.8 Additional Payments (Taxes). Tenant shall pay as "Additional Payments," without notice, and without abatement, deduction or setoff, before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes including personal property taxes and taxes on rents, leases or occupancy, and GPLET, assessments, special assessments, enhanced municipal services district assessments (including SID 228 assessments), water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses and permit fees, and other governmental or quasi-governmental taxes or charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever which, at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on or encumbering, the Premises or any part thereof, or any appurtenances thereto, or any use or occupation of the Premises (all of which are sometimes herein referred to collectively as "Impositions," and, individually, as an "Imposition") provided, however, that:

A. if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term before any fine, penalty, further interest or cost may be added thereto; and

B. any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in the above paragraph (A) relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in the period of time after the expiration of the Term shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term) be adjusted between Landlord and Tenant as of the expiration of the Term, so that Tenant shall pay that portion of such Imposition attributable to the Term and Landlord shall pay the remainder thereof.

4.9 Payment of Additional Payments. Unless otherwise directed by Landlord, Tenant shall pay to Landlord, with and in addition to Premises Rent, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other Impositions directly to the taxing authority or authorities, unless otherwise required by any applicable law.

4.10 Contest. Tenant, if it shall so desire, may contest the validity or amount of any Imposition, in which event Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with Landlord an amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord and Tenant), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon.

4.11 Assessment Reduction. Tenant may, with the prior written consent of Landlord and without expense to Landlord, endeavor at any time to obtain a lowering of an Imposition or assessment upon the Premises for the purpose of reducing the amount thereof. In such event, Landlord will not be required to cooperate with Tenant; provided, however, that so long as the Imposition or assessment is not a City of Mesa Imposition or special improvement district assessment or county property tax; Landlord shall reasonably cooperate with Tenant at no cost to Landlord. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

4.12 Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Sections 4.8 or 4.9 (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent, which consent may be given or withheld in its sole discretion). Tenant hereby agrees to pay, protect, defend, indemnify and save and hold Landlord harmless from, all costs (including Landlord's attorneys' fees), expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

4.13 Government Property Lease Excise Tax. If and to the extent required under A.R.S. § 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of A.R.S. §§ 42-6201, *et seq.* Failure of Tenant to pay GPLET (if applicable) is an Event of Default hereunder. Tenant represents that it is an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code. Accordingly, Tenant represents that it falls within the GPLET exemption in A.R.S. § 42-6208(13).

## 5. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF TENANT.

5.1 Lawfully in Arizona. Tenant is an Illinois not-for-profit corporation duly organized, validly existing, in good standing, and authorized to operate under the laws of the State of Arizona. Tenant's organizational identification number is [REDACTED]. Tenant has full power and authority to execute, deliver and perform this Lease and the other documents to which it is a party and to enter into and carry out the transactions contemplated by those documents. The execution, delivery and performance of this Lease and the other documents related to the Premises do not, and will not, violate any provision of law applicable to Tenant or its organizational documents, and do not, and will not, conflict with or result in a default under any agreement or instrument to which Tenant is a party or by which it is bound.

5.2 Duly Executed. This Lease has been duly executed and delivered by Tenant and it constitutes a valid, binding and enforceable agreement against Tenant.

5.3 No Additional Authorizations or Consents Needed. No authorizations, consents or approvals are required in connection with the execution and delivery of this Lease or in connection with the carrying out by Tenant of its obligations hereunder.

5.4 No Defaults. To the best of Tenant's knowledge, Tenant is not in default in the payment of any of Tenant's indebtedness for borrowed money; and Tenant is not in default in any material respect under any order, writ, judgment, injunction, decree, determination, or award or any indenture, agreement, lease or instrument.

5.5 Litigation. Tenant must notify Landlord within ten (10) business days after the commencement of any action, suit, proceeding or arbitration against Tenant, or any material development in any action, suit, proceeding or arbitration pending against Tenant if such action, suit, proceeding or arbitration would materially and adversely affect the Premises, the validity of this Lease, or the performance of Tenant's obligations under this Lease.

5.6 Authorizations and Approvals. Tenant shall promptly obtain, from time to time at its own expense, and maintain all such governmental licenses, rights, authorizations, consents, permits and approvals as may be required to enable it to comply with its obligations hereunder, including but not limited to all such approvals necessary to operate a four-year, liberal arts college.

## 6. IMPROVEMENTS.

6.1 Landlord Improvements. Landlord agrees to substantially complete the improvements described in the attached Exhibit "B" on or before July 22, 2013 (the "Substantial Completion Date"). The term "substantially complete" (as used in the prior sentence) means that the Landlord Improvements are



sufficiently complete to allow that portion of the Premises being improved as part of the Landlord Improvements to be usable by Tenant for the uses contemplated by this Lease and that a temporary certificate of occupancy has been issued; provided, however, that Tenant acknowledges and agrees that the Landlord Improvements are a partial build-out of the existing building on the Premises and that Tenant will have to complete the build-out of the remainder of building for it to be utilized by Tenant.

6.1.1. Improvements Capped at Ten Million Dollars. Generally stated, the Parties intend that all of Landlord's costs to improve the Premises will be capped at ten million dollars, and that to the extent Landlord's cost to build out the first floor and all the other improvements cost less than this capped amount Landlord agrees to use such funds (up to the cap) to improve the build out the second floor. Accordingly, the Parties agree as follows:

6.1.1.1 Notwithstanding anything in this Lease to the contrary, Landlord's obligation to improve the Premises including the Landlord Improvements or any and all other improvements to the Premises is capped at ten million dollars (\$10,000,000.00)(the "Budget Cap"); Landlord agrees to expend up to the Budget Cap for such improvements on the Premises, but Landlord shall have no obligation to expend more than the Budget Cap to improve the Premises.

6.1.1.2 Landlord has provided to Tenant the current budget estimates of the Entire Project from D.L. Withers in a document entitled Budget Recap #3 (Entire Project Budget) and dated October 2, 2012 (the "Budget Recap"). The Parties acknowledge that this Budget Recap has estimated costs that will change as the project progresses. The Parties agree, however, that the types and categories of expenses that are identified in the Budget Recap as costs that make up part of the "Total Project Costs" will be costs that count against the Budget Cap. The cost related to categories identified in the Budget Recap as being "separately funded by City of Mesa" (i.e., demolition and asbestos abatement) will not count against the Budget Cap. Also, the cost related to categories identified in the Budget Recap as being "separately funded by Benedictine" (i.e., IT equipment and racks, and FF&E) will be funded by Tenant and will not be included in the Budget Cap.

6.1.1.3 To the extent that the actual Total Project Costs are less than the Budget Cap, Landlord agrees to, up to the Budget Cap, fund the build out of the second floor including such improvements as classroom spaces, offices, restrooms, second elevator, design fees, contingencies and city project management costs. After Landlord expends up to the Budget Cap, any and all cost to improve the Property shall be at Tenant's sole cost and expense.

6.1.2 Second and Third Floor Improvements. Landlord shall have no obligation to improve or build out the third floor to the building on the Premises or the second floor except for improvements that are part of the Budget Cap and any second floor improvements (if any) specifically identified in the attached Exhibit "B." Tenant may build out the third floor or complete the build out the second floor at its sole cost and expense in compliance with the terms of this Lease. If Tenant desires to seek to have Landlord build out the third floor or complete the build out of the second floor, Tenant may request such from Landlord by providing written notice 1½ years prior to Tenant's desire to have such built out completed. Landlord may, in its sole and absolute discretion, agree to build out the third floor or complete the build out the second floor; and if Landlord does so agree, the Parties will negotiate in good faith to amend this Lease to increase the Premises Rent based on such improvements and make other amendments to this Lease as appropriate.

6.2 Tenant Improvements. Tenant agrees to complete, or have completed, [or reimburse Landlord for the cost to complete (within 30 days of invoice from Landlord) improvements that Landlord has agreed to complete that are Tenant Improvements—provided, Landlord shall have no obligation to so agree] the improvements described in the attached Exhibit "C" within the timeframes described in this exhibit or if no timeframes are provided therein within a commercially reasonable period of time. Further, Tenant agrees to complete, at its own expense, all improvements necessary for the Premises to be operated as intended and allowed under this Lease, including but not limited to build-out of the remainder of the

Premises, and all furniture, equipment, trade fixtures, and other personal property needed by the Tenant to operate the Premises as intended under this Lease and so that the Premises is utilized as contemplated by this Lease. In completing the Tenant Improvements, Tenant shall have the right to enter the Premises and to perform Tenant's work prior to Landlord's notice that the Premises are substantially completed; provided, however, that Tenant shall comply with the directions of Landlord and shall not unreasonably interfere with any of Landlord's construction activities.

6.3 No Alterations. Tenant shall make no improvements, alterations, additions, enhancements or modifications to the Premises during the Term of this Lease without the prior written permission of Landlord, which permission shall not be unreasonably withheld; provided, however, that Tenant shall have the right, without Landlord consent, to make non-structural alterations, improvements, or additions to the interior of the Premises that do not diminish the fair market value of the Premises, are completed in compliance with all applicable building and zoning codes, and do not exceed \$5,000 in cost. The provisions of this Section shall not apply to the repair, replacement, or maintenance of the Premises or improvements.

6.4 Title to Alterations and Improvements. Title (ownership) to all improvements, alterations, additions, enhancements or modifications on the Premises (but not Tenant's personal property, trade fixtures or lab equipment) shall immediately, upon completion or installation thereof, become the property of the Landlord without payment therefor by Landlord, and shall be surrendered to Landlord upon expiration or other termination of this Lease. Tenant agrees to execute and deliver to the Landlord, within ten (10) business days after the Landlord's request therefor, a quitclaim deed (or an assignment of all ownership rights) confirming that title to such improvements and alterations is vested in the Landlord.

6.5 Mechanics' Liens. Tenant shall keep the Premises and all improvements thereon free of any mechanic or materialmen's liens from any third party claiming by or through Tenant. In the event that any such lien is filed, Tenant shall, at its sole cost, cause such lien to be removed by bonding over, obtaining court relief, or otherwise removing it within thirty (30) calendar days of notice thereof. If Tenant fails to so remove the lien, Tenant shall reimburse Landlord for all costs (including but not limited to costs to bond over such lien and attorney fees and costs) to remove the lien.

6.6 No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's express or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

6.7 Permits Required. Tenant's construction (including but not limited to structural, electrical, plumbing or mechanical construction or reconstruction) involving the Premises shall conform to the City Code for the City of Mesa, including the City of Mesa's construction and technical codes. Tenant shall be responsible for determining whether it is subject to any other building/construction codes or permit requirements, and for compliance with them to the extent they are applicable to Tenant's work. No such work shall be commenced without first submitting required plans and obtaining required permits from the City of Mesa. All such work shall be permitted, inspected and approved by the City of Mesa.

## **7. MAINTENANCE AND REPAIRS.**

7.1 Tenant's Maintenance, Repairs, and Replacements. Tenant shall, at its sole cost and expense, throughout the Term of this Lease, keep the Premises and all improvements therein in a neat and clean condition and in good order, condition and repair, and shall make and perform all maintenance and all necessary repairs and replacements thereto, non-structural, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description. Without limiting the foregoing, Tenant shall, at its sole cost and expense, throughout the Term of this Lease, take good care of, repair and maintain (and replace when necessary) all improvements, landscaping, HVAC improvements, plumbing and electrical improvements, fixtures, walls, ceilings, floor coverings, parking areas, landscape areas, asphalt, concrete,



driveways, and pathways in or on the Premises. All repairs made by Tenant shall be at least equal in quality and cost to the original work, shall be performed by licensed and bondable Arizona contractors, and shall be made in accordance with all laws, ordinances and regulations whether heretofore or hereafter enacted. Tenant's obligation to make repairs, and the use of the word "repairs" in this paragraph, includes all necessary replacements, renewals, alterations, additions and betterments, whether capital or non-capital in nature. The necessity for or adequacy of maintenance and repairs shall be measured by the standards which are appropriate for improvements of similar construction, age and class, provided that Tenant shall in any event make all repairs necessary to avoid any structural damage or other damage or injury to the Premises and all improvements therein. Tenant shall prepare, maintain and follow a preventative maintenance schedule for all mechanical, electrical, plumbing, drain, piping and air conditioning systems on the Premises. Upon request, Tenant shall provide a copy of such schedule to Landlord and a list of the dates on which such maintenance was actually done.

7.2 Landlord Maintenance or Repairs. Landlord shall maintain, at its sole cost and expense, the structural components of the building on the Premises, including but not limited to the foundations, structural portions of the exterior walls, the floor slab, and roof structure. Landlord shall not be obligated to make structural repairs that are necessitated by the actions or negligence of Tenant or its employees, agents, or students, ordinary wear and tear excepted; and Tenant shall be obligated to make repairs necessitated by such actions or negligence. Other than structural repairs as described in this Section above, Landlord shall have no other obligation to repair, maintain, or replace anything on or in the Premises or any improvements thereto. If Tenant fails to maintain and repair the Premises as required under this Lease, Landlord may (but has no obligation to make such repairs or maintain the Premises, and Tenant shall reimburse Landlord within ten (10) days of invoice to Tenant for such costs; and Landlord shall have reasonable access to the Premises and within the buildings and improvement therein to enable Landlord to perform maintenance and repairs.

7.3 Damage to Landlord's Property. Any improvements, or real or personal property of Landlord's damaged or destroyed by Tenant as a result of Tenant's use or occupancy of the Premises, ordinary wear and tear excepted, shall be promptly repaired or replaced by Tenant to the reasonable satisfaction of Landlord. In lieu of such repair or replacement, where required by the Landlord, Tenant shall pay to Landlord an amount sufficient to compensate for the loss.

7.4 Trash Removal. Tenant shall at all times keep the Premises in a neat, clean, safe, sanitary and orderly condition and shall keep such area free of all trash and debris. Tenant shall, at Tenant's expense, be responsible for all trash removal from the Premises.

7.5 Emergency Repairs. Within fifteen (15) days of the Effective Date, each Party shall provide to the other Party a list of names and telephone numbers for 24-hour emergency contact for the Premises.

## **8. DAMAGE AND DESTRUCTION OF PREMISES.**

8.1 Tenant's Obligations to Restore. If, at any time following the Rent Commencement Date, the Premises, or any improvement thereon, or any part thereof, shall be damaged or destroyed by casualty or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character that existed immediately prior to such damage or destruction, and Tenant shall proceed and complete such restoration with reasonable diligence; and the restoration shall be performed by licensed and bondable Arizona contractors. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage. If Tenant fails to commence such repairs and restoration within one hundred and eighty (180) days after the date of the damage or destruction, or if such work after commencement shall not proceed expeditiously, or if such work is not completed within 18 months after commencement, Landlord may terminate this Lease and may seek any remedy allowed under this Lease or in equity or law.

8.2 Payment of Insurance Proceeds. All proceeds from insurance policies obtained by Tenant to cover such damage or destruction (except proceeds to cover loss for Tenant's personal property) shall be used to repair and restore the Premises as required under this Lease.

8.3 Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of Premises Rent (or any other amount owing under this Lease) because part or all of the Premises shall be untenable due to the partial or total destruction thereof. Tenant's obligations under this Lease—including but not limited to Tenant's obligations to pay Premises Rent and any other amounts owing under this Lease—shall continue regardless of any partial, substantial, or total destruction of the Premises or any shortfall in insurance proceeds to complete the restoration; provided, however, if the Parties (each in their sole discretion) agree in writing to not use the insurance proceeds (from Tenant's property insurance) to restore the Premises, then Tenant may terminate this Lease through the following: (i) payment by Tenant to Landlord of all insurance proceeds for the Premises (except proceeds to cover loss for Tenant's personal property) plus any deductible amount and any short fall amount in the insurance amount that is less than full replacement value, and (ii) a thirty (30) day written notice to Landlord. Such a termination shall be deemed to be the end of the Term of this Lease and the final months Premises Rent shall be prorated on a daily basis. Landlord shall have no responsibility or liability for any damage or destruction by fire or other casualty and shall have no obligation to repair, restore, or rebuild the Premises in such event. Notwithstanding the foregoing to the contrary, if such destruction of the Premises shall have occurred during the last two (2) years of the Lease and the cost of repair and restoration is greater than 50% of the replacement cost of the Premises, then Tenant may elect to terminate this Lease on 30 days' notice to Landlord. After such election, Tenant shall pay to Landlord all insurance proceeds for the Premises (except proceeds to cover loss for Tenant's personal property) plus any deductible amount and any short fall amount in the insurance amount that is less than the full replacement value.

## 9. **ADDITIONAL PARKING AND SECURITY.**

9.1 Additional Parking in Pomeroy Garage. The Pomeroy Garage (as it is commonly referred to) is located adjacent to the Premises. Tenant, at its sole expense, and subject to availability, may obtain permits for parking spaces in the Pomeroy Garage so long as Tenant complies with the Downtown Mesa Association ("DMA") requirements for obtaining such permits and pays the then applicable rates as may be changed from time-to-time. Landlord does not guaranty the availability of parking spaces in the Pomeroy Garage nor at any other location off the Premises. Tenant and its employees and invitees are subject to compliance with the applicable parking provisions of the Mesa City Code and City of Mesa's parking requirements, and this Lease is not intended to modify or amend in anyway the Mesa City Code.

9.2 Security. Tenant shall be solely responsible for the security for the Premises, including but not limited to security within the buildings on the Premises and the parking lots that are part of the Premises. In addition to and without limiting any other indemnity in this Lease, Tenant shall indemnify, defend, and hold Landlord harmless from any claim relating to or arising out of security (including, but not limited to, adequacy of security, lack of security, and types of security installed) for the Premises or for any employee, invitee, or person on the Premises or within any building thereon.

## 10. **ASSIGNMENT, SUBLETTING, AND OTHER TRANSFERS.**

Tenant shall not transfer, assign, encumber, pledge or hypothecate its interest in this Lease or any right or interest hereunder, or sublet the Premises or any part thereof, nor permit any other person to occupy the Premises (each of which events is herein called a "Transfer"), without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion. Landlord may, as a condition of approval, require any potential transferee to submit historical and financial information to Landlord at least prior to the proposed Transfer. Tenant shall submit any proposed documentation relating to a proposed Transfer for Landlord's review and approval. Any Transfer entered into without the consent of Landlord shall be null and void upon notification by Landlord to Tenant. Any such Transfer shall require

the transferee to assume all of the obligations of the Tenant under this Lease from the date of the transfer and thereafter, and shall not release Tenant from any claim or liability arising prior to the date of transfer.

## **11. IDENTIFICATION SIGNS.**

Tenant may install on the exterior of the Premises a sign or signs identifying its business with the prior approval of Landlord, which shall not be unreasonably withheld; provided, however, signage is subject to compliance with the City of Mesa City Code (when applicable), including its Zoning Ordinance requirements (which involves a process and approvals that are separate from this Lease).

## **12. TENANT DEFAULT, LANDLORD REMEDIES.**

12.1 Events of Default. Each of the following shall constitute a material default of this Lease by Tenant (an "Event of Default"):

12.1.1 The failure of Tenant to pay any installment of Premises Rent due and any other amount due from Tenant under this Lease, provided that Tenant does not cure such failure within ten (10) business days after delivery by Landlord of a written notice of such failure; or

12.1.2 The failure of Tenant to perform any of its other obligations under this Lease, provided that Tenant does not cure such failure within thirty (30) calendar days after delivery by Landlord of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and Landlord agrees, then the time to cure shall be extended so long as the cure is being diligently pursued; or

12.1.3 The filing of any mechanic's, materialmen's or other lien or any kind against the Premises or Property because of any act or omission of Tenant which lien is not discharged, by bonding or otherwise, within thirty (30) calendar days of receipt of actual notice thereof by Tenant; or

12.1.4 The taking of possession for a period of thirty (30) days or more of all or substantially all of the personal property used on or at the Property belonging to Tenant by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or

12.1.5 The voluntary abandonment by Tenant of its operations or a substantial portion of its operations at the Property for a period of thirty (30) days or more; or

12.1.6 The failure of Tenant to maintain all insurance coverage required by Section 16 of this Lease and the failure to cure the same within thirty (30) days of notice from Landlord (and any cure must cover any lapsed or uncovered period of time); or

12.1.7 There shall occur the dissolution of Tenant or Tenant shall file and petition or institute any proceeding under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), either as such Bankruptcy Code now exists or under any amendment thereof which may hereafter be enacted, or under any act or acts, state or federal, dealing with, or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt, or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby Tenant asks or seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of Tenant's debts, or for any other similar relief, or any involuntary petition in bankruptcy is filed against Tenant and the same is not stayed or discharged within ninety (90) days from such filing or any other petition or any other proceedings of the foregoing or similar kind or character is filed or instituted or taken against Tenant, or a receiver of the business or of the property or assets of Tenant shall be appointed by any court except one appointed at the instance or request of Landlord, or Tenant shall make a general assignment for the benefit of Tenant's creditors.

12.2 Landlord's Remedies. Upon the occurrence of an Event of Default under this Lease, Landlord may, without prejudice to any other rights and remedies available to a Landlord at law, or in equity, exercise one or more of the following remedies, all of which shall be construed and held to be cumulative and non-exclusive:

12.2.1 Terminate this Lease and re-enter without notice and take possession of the Premises and take possession or remove any property therein; or

12.2.2 Without terminating this Lease, re-enter without notice, terminate Tenant's right to possession of the Premises and take possession of the Premises and take possession or remove any property therein; or

12.2.3 With or without such re-entry, recover possession of the Premises and demand Premises Rent in the manner prescribed by any statute; or

12.2.4 With or without terminating this Lease, Landlord may re-let the Premises or any portion thereof.

12.3 Tenant's Repayment Obligation for Landlord's Costs For Landlord Improvements. If this Lease is terminated under the terms of Sections 12.1 and 12.2 above or is terminated for any reason whatsoever other than an uncured default by Landlord or a termination under Sections 8.3, 13, 28.2, or 31.25, in order to compensate Landlord for the cost of the improvements installed by Landlord, Tenant shall pay Landlord monetary damages in an amount equal to the difference of the following: the amount of all costs and expenses Landlord incurred for the Landlord Improvements and other improvements up to the Budget Cap (including, but not limited to, costs for design and installation of such improvements) less (i.e. minus) the sum of all Premises Rent payments made to the date of such termination; or stated as an equation: Landlord Improvement Cost Up to Budget Cap – Premises Rent Payments Made = Repayment Obligation. The term "Landlord Improvements," as used in this paragraph, mean those improvements described or depicted in Exhibit "B" hereto and any Landlord improvements made up to the Budget Cap. Landlord shall invoice Tenant for the repayment obligation due hereunder and Tenant shall pay such sum within ten (10) business days of invoice. The repayment obligation paid under this Section 12.3 is in addition to (and shall not reduce or offset) damages that Tenant is obligated to pay under any other Section of this Lease or as a matter of law. Tenant acknowledges that the Landlord Improvements are anticipated to be ten million dollars (\$10,000,000).

12.4 No Implied Termination. Landlord shall not be deemed to have terminated this Lease unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant hereby waives all claims based on Landlord's reentering and taking possession of the Premises or removing and storing the property of Tenant and shall save Landlord harmless from all losses, costs or damages occasioned thereby. No such reentry shall be considered or construed to be a forcible entry by Landlord.

12.5 Landlord's Costs to Re-Lease. Landlord is authorized to make such repairs, refurbishments or improvements to the Premises and other improvements thereon, as may be necessary for the purpose of attempting to re-let the Premises, and the costs and expenses incurred for such repairs, redecorating, refurbishments and improvements shall be paid by Tenant to Landlord within ten (10) business days after receipt of Landlord's statement therefor.

12.6 Landlord's Damages Relating to Premises Rent. Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of the Event of Default, which shall include, without limitation, (i) all amounts due and owing as of the termination; and (ii) all of Landlord's expenses in connection with any repossession or re-letting including but not limited to repossession costs, repairs, redecorating, refurbishments or improvements to the Premises, brokerage commissions, attorneys' fees, and legal expenses, which shall be paid within ten (10) days of invoice to Tenant for such costs.

12.7 Landlord May Perform Tenant's Obligations, Interest on Amounts Owed. In the Event of a Default, Landlord may (but shall not be obligated to) cure such default (e.g., make payments or perform or comply with such obligations) and all amounts paid or expended by Landlord to cure such default shall become an additional obligation of Tenant to Landlord, which amounts Tenant agrees to pay within five (5) business days of invoice to Tenant. If Tenant fails to pay any amount owing under this Lease on or before the due date, Tenant shall be responsible for interest on the unpaid amount at the rate of twelve (12%) per annum from the due date until payment in full is made.

12.8 No Waiver by Landlord. There shall be no implied waivers. No express waiver by Landlord of any breach or default by Tenant in the performance of its obligations under this Lease shall be deemed to be a waiver of any subsequent default by Tenant in the performance of any of such obligations, and no express waiver shall affect an Event of Default in a manner other than as specified in the waiver. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or for any subsequent similar acts by Tenant.

12.9 Content of Default Notice. Any default notice tendered to Tenant hereunder shall be deemed to be sufficient if it is reasonably calculated to put Tenant on inquiry as to the nature and extent of such default.

### **13. TENANT'S OPTION TO TERMINATE; BREAKAGE LIQUIDATED DAMAGES.**

13.1 Option - the Grant. Landlord hereby grants to Tenant the option to terminate this Lease provided, however, that Tenant may exercise the termination option only if, at the time when Tenant exercises the option: (i) this Lease is still in effect; (ii) there is no uncured Event of Default under Section 12 of this Lease; (iii) Tenant is in full compliance with all terms and conditions of this Lease; (iv) Tenant exercises the option in compliance with this Lease (including, but not limited to, exercising the option strictly as described in Section 13.2 below).

13.2 When and How the Option May Be Exercised. Tenant may only exercise the termination option after the expiration of five (5) years after the Rent Commencement Date (i.e., the termination option may only be exercised after August 1, 2018, or other later date if the Rent Commencement Date is extended under Section 14.4). Notwithstanding anything contrary in this Lease, Tenant may not exercise (and shall have no right to exercise) the option to terminate until five years after the Rent Commencement Date. Tenant must provide written notice to Landlord of Tenant's intent to exercise its option to terminate not less than one (1) year prior to the effective date of the termination and the written notice must also include: (a) a statement of the precise date and time of day upon which this Lease and Tenant's occupancy of the Premises shall cease, which shall be not less than one (1) year from providing such notice to Landlord; (b) a statement that all personal property and trade fixtures that Tenant is permitted to remove shall be removed on or prior to the termination date and that all damage caused by such removal shall be paid for at the sole cost of Tenant; and (c) payment by Tenant to Landlord of fifty percent (50%) of the Breakage Liquidated Damages (see Section 13.4 below) in the form of immediately available funds. If Tenant fails to comply with all the requirements for the notice of termination, such notice of termination shall be void, and of no force or effect, for all purposes.

13.3 Complete Exit. This Lease shall not be deemed terminated if Tenant holds over in the Premises or occupies (with persons or property of Tenant) any other portion of the Property or fails to pay the remaining fifty percent (50%) of the Breakage Liquidated Damages stipulated in Section 13.4 below in immediately available funds or fails to pay any amounts due under this Lease including but not limited to payment of all Premises Rent through the date of termination. In any of such events, Tenant shall remain responsible for the payment of all Rent and other sums due hereunder. If Tenant complies with all the requirements for terminating the Lease as provided in this Section 13, the termination shall be deemed to be the end of the Term of this Lease and the final months Premises Rent shall be prorated on a daily basis.



13.4 Breakage Liquidated Damages. In consideration of the termination option hereby granted, Tenant agrees that it shall pay Landlord prior to the effectiveness of Tenant's termination, as liquidated damages and not as a penalty, the following amount: Five Hundred Thousand Dollars (\$500,000.00); payment shall be made 50% with the notice of termination and the remaining 50% at or prior to the date of termination. This Liquidated Damages payment is in addition to all other amounts that are or become due under the Lease through the date of termination.

#### 14. LANDLORD'S DEFAULT, TENANT REMEDIES.

14.1 Landlord Default. The following shall constitute a material default of this Lease by Landlord (a "Landlord Default"): the failure of Landlord to perform any of its obligations under this Lease, provided that Landlord does not cure such failure within thirty (30) calendar days after delivery by Tenant of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and Tenant agrees, then the time to cure shall be extended so long as the cure is being diligently pursued.

14.2 Content of Default Notice. Any default notice tendered to Landlord hereunder shall be deemed to be sufficient if it is reasonably calculated to put Landlord on inquiry as to the nature and extent of such default.

14.3 Tenant Remedies. Upon the occurrence of an Landlord Default under this Lease, Tenant may seek any right or remedy allowed at law or in equity or by statute or otherwise (except as provided below) for such breach, including but not limited to seeking specific performance, all of which shall be construed and held to be cumulative and non-exclusive; provided, however, Tenant shall not seek, and hereby waives any right to, damages from Landlord for loss profits, loss of sub-rents, loss of any other revenue, loss of business opportunity, loss of good will, or loss due to business interference.

14.4 Tenant Remedies Related to Substantial Completion Date. Notwithstanding any other provisions to the contrary, if Landlord fails to substantially complete the Landlord Improvements by the Substantial Completion Date, Tenant's sole and exclusive remedies shall be that the Rent Commencement Date shall be extended day-for-day until the Landlord Improvements are substantially completed as required by Section 6.1 and Landlord shall provide reasonably comparable space to allow classes to be taught.

#### 15. ENVIRONMENTAL PROTECTION.

15.1 Definitions. Unless the context shall clearly require otherwise, the terms defined in this Environmental Protection Section shall, for all purposes of this Lease have the meanings herein specified, with the following definitions to be equally applicable to both the single and plural forms of any of the following:

15.1.1 Environmental Laws. The term "Environmental Laws" shall mean any one or all of the following, as the same are amended from time to time: the *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 USC Section 9601 et seq.; the *Resource Conservation and Recovery Act*, 42 USC Section 6901, et seq.; the *Toxic Substances Control Act*, 15 USC Section 2601 et seq.; the *Safe Drinking Water Act*, 42 USC Section 300h et seq.; the *Clean Water Act*, 33 USC Section 1251 et seq.; the *Clean Air Act*, 42 USC Section 7401 et seq.; the *Arizona Hazardous Waste Management Act*, A.R.S. Section 49-921 et seq. the *Arizona Environmental Quality Act*, A.R.S. Title 49, as amended; and all regulations thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including substrata land, or that govern the use of hazardous materials, hazardous waste and hazardous substances and petroleum products.

15.1.2 Hazardous Material. The term "Hazardous Material" shall mean any toxic or hazardous material, hazardous substance or hazardous waste, or any pollutant or contaminant as defined or regulated pursuant to any Environmental Law and petroleum products. For purposes of this definition,

petroleum includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing (e.g., distillate fuel oils, petroleum solvents and used oils).

### 15.3 Tenant Compliance.

15.3.1 Tenant shall, at Tenant's own expense, comply with all present and hereafter enacted Environmental Law, including any amendments thereto, affecting Tenant's activities on and affecting the Premises during the period of Tenant's occupancy of the Premises under this Lease.

15.3.2 Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant's agents, employees, contractors or invitees in violation or threatened or suspected violation of any Environmental Law. The Parties recognize and agree that Tenant may bring on the Premises such materials as are used in chemistry and science classes taught by Tenant, as well as cleaners, solvents, or paint that are ordinarily and customarily used in the conduct of Tenant's permitted activities under this Lease, provided that such use shall comply fully with all applicable Environmental Laws. Landlord acknowledges that Tenant's use of the Premises shall include teaching labs for chemistry and other science classes offered by Tenant on the Premises.

15.4 Indemnification. To the fullest extent permitted by law, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless Landlord, and its employees and agents for, from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity in each case which are incurred or assessed as a result of any of Tenant's activities or operations on or discharged on or from the Premises during the Term of this Lease. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the property, land, soil and underground or surface water as required under the law. Tenant's obligations and liabilities under this Section of the Lease shall survive the termination of this Lease. The indemnification of Landlord by Tenant as described above includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the property or present in the soil or ground water on or under the Premises due to Tenant's, or its officers', directors', employees', agents', contractors' or invitees' or its sub-tenant's occupancy, activities or operations thereon. If Landlord's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's failure to abide by the provision of this Section of the Lease, Landlord shall have the right to injunctive relief in the event of any violation or threatened violation by Tenant.

15.5 Remediation. Without limiting the foregoing, if the presence of any Hazardous Material during the Term of this Lease caused or permitted by Tenant results in any Release on the Premises in violation or potential violation of any Environmental Law, Tenant shall promptly take action to remediate the affected property at its sole expense as necessary to return the property to the condition existing prior to the introduction of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval shall not, except in an emergency, be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the property and Tenant is not under administrative or court order related to such remediation action. Notwithstanding such approval by Landlord, Landlord is not responsible for directing or managing any remediation action. For purposes of this Section of the Lease, the term "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping. If Tenant fails to remediate the Premises as required herein, Landlord may (but shall not be obligated to) remediate the Premises and all Landlord's costs to remediate shall become an additional obligation of Tenant to Landlord, which amounts Tenant agrees to pay within five (5) business days of invoice to Tenant.

15.6 Governmental Submittals. Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws with respect to Tenant's, or its officers', directors',

employees', agents', contractors' or invitees' or its sub-tenants' occupancy, activities or operations on the Premises. Should the Government determine that a site characterization, site assessment and/or cleanup plan should be prepared and/or that a cleanup should be undertaken because of any spills or discharges of Hazardous Materials by reasons of Tenant's activities or actions on the Premises which occur during the term of this Lease, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and financial assurances, and carry out the approved plans.

15.7 Information Sharing. Tenant shall immediately notify Landlord of any of the following: (i) Tenant's receipt of any notification from any governmental entity either charging or informing Tenant that it will be charged with a significant (as defined below) violation of Environmental Laws, and (ii) any significant change in Tenant's activities on the Premises that is reasonably likely to adversely change Tenant's or Landlord's obligations or liabilities under the Environmental Laws. In addition, Tenant agrees to provide Landlord with copies of documents reflecting the physical condition of the Premises, including but not limited to, and environmental testing of soils and groundwater if any such documents or tests are obtained by Tenant. A "significant violation of Environmental Law" shall be any violation that requires more than thirty (30) calendar days to resolve.

15.8 Sublease. If Tenant shall receive prior written authorization from Landlord to sublease all or a portion of the Premises (or is allowed under the terms of Lease to sublease without approve of Landlord), Tenant shall insert provisions substantially identical to the provisions of this Section entitled "Environmental Protection" in any sublease agreement or contract by which it grants a right or privilege to any person, firm, corporation, or other entity under this Lease.

15.9 Actions of Tenant. The activities or actions of Tenant under this Environmental Protection Section of this Lease shall include the activities or actions of Tenant's officers, directors, employees, agents, contractors, invitees and successors.

15.10 Right to Enter Premises. Landlord's rights under this Lease specifically include the right of Landlord, the United States Government, the Environmental Protection Agency (the EPA), the Arizona Department of Environmental Quality (ADEQ) and the Arizona Department of Occupational Safety and Health (ADOSH) to enter the Premises upon reasonable notice to Tenant and at reasonable times for purposes of: (i) inspecting Tenant's compliance with environmental, occupational safety and health laws and regulations, whether or not such party is responsible for enforcing such laws; (ii) conducting environmental investigation or remediation, including, without limitation, performing tests and surveys, drillings, test-pitting, borings, compiling data and/or records, and other activities related to environmental investigation; and (iii) carrying out remedial or removal actions as required or necessary under applicable laws, including, without limitation, installing monitoring wells, pumping wells and/or treatment facilities. Landlord shall give Tenant twenty-four (24) hour's prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. Tenant shall have no claim against the United States, EPA, ADEQ, ADOSH, or Landlord, or any officer, agent, employee, or contractor thereof on account of any such entries.

## 16. INSURANCE.

16.1 Coverage Required. Upon the Rent Commencement Date, Tenant shall procure and at all times maintain the following types and amounts of insurance for its operations at, and use of, the Premises:

16.1.1 General Liability Insurance. General Liability insurance with minimum coverage of \$3,000,000. The Landlord, its agents, officials, volunteers, officers, elected officials and employees shall be named as additional insureds.

16.1.2 Automobile Liability Insurance. Automobile Liability insurance for all owned, non-owned and hired vehicles in the amount of at least \$1,000,000 per occurrence.

16.1.3 Property Insurance. Tenant shall be responsible for carrying fire and extended risk insurance coverage for the structure and all permanent fixtures for the full replacement value thereof. Such



coverage shall include business interruption coverage in an amount sufficient to pay the Premises Rent. Landlord shall be named as Loss Payee on all property insurance policies. All merchandise, furniture, floor coverings, and personal property and fixtures belonging to Tenant and all persons claiming by or through Tenant which may be on the Premises shall be at Tenant's sole risk.

16.1.4 Workers' Compensation Insurance. Tenant shall maintain workers' compensation insurance to cover obligations imposed by federal and state statute.

16.2 Evidence and Requirements of For All Insurance Coverages. Upon the Rent Commencement Date, Tenant shall provide the Landlord with a Certificate(s) of Insurance (using the appropriate ACORD certificate) signed by the Issuer with applicable endorsements. Landlord reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating to the policies.

16.2.1 Tenant's insurance shall be primary of all other sources available. No policy shall expire, be cancelled or materially changed to affect the coverage available without advance written notice to the Landlord.

16.2.2 All insurance certificates and applicable endorsements are subject to review and approval by Landlord's Risk Manager, such approval not to be unreasonably withheld or delayed.

16.2.3 All insurance policies (whether or not required by this Lease) shall contain a waiver of subrogation in favor of the Landlord, and its agents, officials, volunteers, officers, elected officials and employees. Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the partners, officers, employees, agents, and representative or the other, for loss of or damage to such waiving party or its property or the property of the other under its control to the extent that such loss or damage is insured under any insurance policy in force at the time of such loss or damage, but only to the extent of such insurance coverage afforded; provided, however, any of Landlord's property insurance deductibles, or Landlord's self-insured retentions for workers compensation or public entity liability insurance program are not subject to this waiver.

16.2.4 All policies shall be from a company or companies rated A- or better, authorized to do business in the State of Arizona.

16.3 No Limits on Indemnification. The procuring of such policies of insurance shall not be construed to be a limitation upon Tenant's liability or as a full performance on its part of the indemnification provisions of this Lease.

16.4 Landlord's Right to Adjust Insurance. Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord's Risk Manager from time-to-time.

16.5 Use of Proceeds. Proceeds (or an equivalent amount of such proceeds) of any property damage insurance shall be applied as required by this Lease.

16.6 Insurance by Landlord. In the event Tenant shall fail to procure any insurance required hereunder, or Tenant allows it to lapse, Landlord may, upon written notice to Tenant, procure and maintain any or all of the insurance required of Tenant under this Section. In such event, all costs of such insurance procured and maintained by Landlord on behalf of Tenant shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord advises Tenant of the cost thereof.

## 17. INDEMNITY.

### 17.1 Indemnity.

17.1.1 Tenant will pay, defend, protect, indemnify and save harmless individually and collectively Landlord and its officials, elected officials, employees, volunteers, and agents (collectively, the "Indemnified Persons"), for, from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and costs), causes of action (whether in contract, tort, or otherwise), suits, claims, demands, and judgments of every kind, character and nature whatsoever (collectively, the "Liabilities") directly or indirectly arising from or relating to Tenant's performance under this Lease, or due to Tenant's, or its officers', directors', employees', agents', contractors' or invitees' or its sub-lessees' occupancy of, use of, or activities or operations on, the Premises, including, but not limited to, the following: (i) any liability directly or indirectly arising out of or connected with the use, non-use, condition or occupancy of the Premises or any part thereof or any improvement thereon, or any accident, injury to or death of any person or damage to property in or upon the Premises, during the Term of this Lease; or (ii) any violation due to Tenant, or its officers, directors, employees, agents, contractors or invitees or its sublessees of any law, ordinance, or regulation affecting the Premises or any part thereof or the ownership, occupancy or use thereof during the Term of this Lease; provided, however, that nothing in this Section 17.1.1 shall be deemed to provide indemnification to an Indemnified Person, with respect to Liabilities arising from the fraud, gross negligence or willful misconduct of such Indemnified Person.

17.1.2 After service of a legal action to an Indemnified Person for which Tenant's indemnification obligations would apply, such served Indemnified Person shall notify Tenant in writing of the commencement thereof; provided that the failure to give such notice shall not result in the loss of rights to indemnity hereunder, except that the liability of Tenant shall be reduced by the amount of any loss, damage or expense incurred by Tenant as the result of such failure to give notice. Tenant may, or if so requested by the Indemnified Person shall, participate therein and assume the defenses thereof, with counsel reasonably satisfactory to such Indemnified Person and Tenant. If Tenant shall, after notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Person, the Indemnified Person shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matters on behalf of, for the account of, and at the risk of, Tenant, and Tenant shall be responsible for the reasonable fees, costs, and expenses, (including reasonable attorneys' fees and costs) of the Indemnified Person in conducting its defense.

17.1.3 The indemnification provisions in this Section shall not be exclusive or in limitation of, but shall be in addition to, the rights to indemnification of the Indemnified Persons under any other Section of this Lease or any applicable law.

17.1.4 The obligations of Tenant under this Section entitled "Indemnity" shall survive any assignment or termination of this Lease.

## **18. SURRENDER OF POSSESSION.**

18.1 Condition of Property. Upon the expiration or earlier termination of this Lease, Tenant's right to occupy the Premises and exercise the privileges and rights granted under this Lease shall cease, and Tenant shall peaceably surrender the same and leave the Premises free of trash and debris, broom clean and in good condition, except for normal wear and tear. All trade fixtures, equipment, and other personal property installed or placed by Tenant in or on the Premises which is not permanently affixed thereto shall remain the property of Tenant, and Tenant shall have the right at any time during the Term of this Lease, to remove the same from the Premise, provided that Tenant shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Tenant within thirty (30) days after the expiration or termination of this Lease shall become a part of the Premises or be deemed abandoned by Tenant, and ownership thereof shall vest in Landlord. Tenant shall, however, remain financially liable to Landlord for the costs of repairs to the Premises incurred as a result of Landlord's removal and/or relocation of property formerly belonging to Tenant and not otherwise removed from the Premises as provided herein, and shall remit to Landlord payment for such costs within ten (10) business days of Tenant's receipt of Landlord's invoice therefor.

18.2 Holding Over. Tenant shall not remain in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord. Should Tenant hold over without the express written consent of Landlord, such tenancy shall be at the sufferance of Landlord and not a renewal of the Term and in such case, the Premises Rent and all other charges due pursuant to this Lease shall be payable at 1.5 times the amount payable during the last year (or month as applicable for month-to-month rent payments) of the Term and such tenancy at sufferance shall be subject to every other term, covenant and provision of this Lease. In the event Tenant holds over, Tenant shall be liable for all of Landlord's direct and consequential damages, which shall include, without limitation, costs, fees, expenses, damages and attorneys' fees incurred by Landlord as a result of Tenant's holding over, and damages and expenses incurred by Landlord for its inability to deliver possession of the Premises to a new subtenant.

## 19. INSPECTION/ACCESS BY LANDLORD.

Landlord may enter the Premises at reasonable times during normal business hours and upon reasonable notice for any reasonable purpose including, but not limited to: inspecting the condition of the Premises, verify compliance with the terms and conditions of this Lease, perform maintenance or repairs, or the exercise of its governmental functions for such activities as fire protection or security; provided, however, that no notice will be required in any emergency situation as reasonably determined by Landlord.

## 20. NOTICE.

20.1 All notices required or permitted under this Lease shall not be effective unless personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or by reputable commercial overnight courier service, to the following addresses:

TO LANDLORD: The City of Mesa  
Attn.: Real Estate  
20 East Main Street  
Mesa, Arizona 85211

With copies to: The City of Mesa  
Attn.: Economic Development Director  
20 East Main Street  
Mesa, Arizona 85211

The City of Mesa  
Attn: City Attorney  
20 East Main Street  
Mesa, Arizona 85211

TO TENANT: Benedictine University  
Attn: Charles Gregory  
5700 College Road  
Lisle, Illinois 60532

With copy to: Jackson White, P.C.  
Attn: David Weed  
40 North Center Street, Suite 200  
Mesa, Arizona 85201

20.2 Any notice shall be deemed to have been received two-(2) business days after the date of mailing, if given by certified mail, or upon actual receipt if personally delivered or if given by reputable commercial overnight courier service. Any Party may designate in writing a different address for notice purposes by giving such notice in accordance with this subsection.

## **21. LIENS AND MORTGAGES.**

Except as may be permitted under the terms of this Lease or with Landlord's prior written consent (which may be granted or denied in its sole discretion), Tenant shall not engage in any financing or other transaction creating any mortgage or deed of trust upon the Premises or this Lease, place or suffer to be placed upon the Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Tenant's interest in the Premises or this Lease. Except as contemplated in this Lease, any such mortgage or deed of trust, encumbrance, or lien shall be deemed to be a violation of this Section, constituting a failure by Tenant to comply with the terms of the Lease, on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

## **22. CORPORATE AUTHORIZATION.**

Tenant shall provide a certified copy of a resolution of its Board of Trustees authorizing Tenant to enter into this Lease to Landlord within thirty (30) calendar days of execution of the Effective Date.

## **23. UTILITY LINES AND SERVICE CHARGES.**

23.1 Upon the Rental Commencement Date and thereafter, Tenant shall pay for all utilities, including water, electric, gas, trash collection, and sewer, and all telephone and cable and related charges used in its operations at the Premises; Tenant's payment of such charges and fees are NOT subject to the abatement provided in Section 4.1.1.

23.2 The charges and method of payment for each utility or service shall be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish. Tenant shall use the City of Mesa as the solid waste servicer for the Premises.

23.3 The City of Mesa retains the right to the continued use for any existing utility lines and utility or public improvements (including uses allowed in a Public Utility and Facility Easement under the Mesa City Code) and services as are presently on, under, over, or through the Premises and the right to use, repair, maintain, and replace such improvements under the same terms and conditions as provided under standard City of Mesa easements or under the Utility Terms and Conditions of Service.

## **24. RESERVATIONS TO THE CITY OF MESA.**

The Premises are accepted by Tenant subject to any and all existing easements or other encumbrances of record or that a physical inspection of the Premises would reveal and so long as Landlord completes the Landlord Improvements as required by this Lease. Mesa shall have the right to install, lay, construct, maintain, repair and operate such water lines, sanitary sewers, drains, storm water sewers, pipelines, manholes, connections; water, oil and gas pipelines; telephone and telegraph power lines; and such other appliances and appurtenances necessary or convenient to use in connection therewith ("Utility Improvements"), over, on, across or in proximity to the Premises or any part thereof, as will not unreasonably interfere with Tenant's operations hereunder, and to enter upon the Premises for such purposes; provided, however, that Landlord provides Tenant with written notice of such entry no less than thirty (30) calendar days prior to any construction in the Premises and Landlord restores the Premises to original condition at no cost to Tenant. Landlord also reserves the right to grant franchises, easements, rights-of-way, and permits, over, on, across or in proximity to any portions of the Premises, provided, that Landlord shall not exercise such rights so as to interfere unreasonably with Tenant's activities on the Premises. Landlord agrees that any rights granted to any parties by reason of this clause shall contain provisions that the Premises shall be restored to its original condition, at no cost to Tenant, upon the completion of any construction.

**25. BROKERS.**

Tenant and Landlord represent and warrant that they have not had any dealings with any real estate brokers, finders or agents in connection with this Lease. To the fullest extent permitted by law, each Party further agrees to indemnify, defend and hold the other Party and its successors and assigns harmless for, from and against any and all claims, costs, commissions, fees or damages by any person or firm whom Tenant or Landlord (as applicable) authorized or employed, or acted by implication to authorize or employ, to act for them in connection with this Lease.

**26. SALE OF PREMISES BY LANDLORD.**

If there is a sale or other conveyance by Landlord of its interest in the Premises, Landlord shall be automatically freed and released from all liability accruing from and after the date of such sale or conveyance as respects the performance of any covenant or obligation on the part of Landlord contained in this Lease to be performed. Any such sale shall be subject to Tenant's option rights set forth in Section 30 hereof and such option shall be binding upon any purchaser. Upon such a sale or conveyance, the covenants and obligations contained in this Lease on the part of Landlord shall be binding on its successors or assigns. Landlord and any of its successors in interest agree not to disturb or otherwise interfere with Tenant's possession of the Premises for the unexpired Term of the Lease, except as otherwise provided herein. From and after the such sale or conveyance, Tenant shall be bound to such successor or assign who becomes the new Landlord under this Lease; and Tenant shall attorn to such successor or assign as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of either party.

**27. ESTOPPEL CERTIFICATE.**

Both Parties shall, without charge, at any time and from time to time hereafter, within thirty (30) calendar days after written request from the other Party to do so, certify by written instrument duly executed and acknowledged by the Party and certified to the requesting Party and to any prospective lender or purchaser the following, to the extent such information is true and correct at the time such request is made: (i) as whether this Lease is in full force and effect along with the amount and current status of the Premises Rent and other amounts due hereunder; (ii) as to whether this Lease has been modified or amended in any respect or describing such modifications or amendments, if any; (iii) as to whether there are any existing defaults, to the knowledge of the Party executing the certificate, and specifying the nature of such defaults, if any; (iv) as to whether that Party has assigned or transferred its interests or any portion thereof in this Lease; and (v) as to any other matters as may be reasonably requested. Any such certificate may be relied upon by the requesting Party and any prospective purchaser or lender to whom the same was certified.

**28. CONDEMNATION.**

**28.1 Entire or Partial Condemnation.** If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the Term of this Lease, this Lease shall terminate with respect to the part of the Premises so taken, and Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs) without impairing any rights of Landlord for the taking of or injury to the Landlord's interests.

**28.2 Continuation of Lease.** In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken; the Premises Rent shall not be adjusted except if the taking materially affects Tenant's use of the Premises and in such event the Premises Rent shall be equitably adjusted as agreed to by the Parties. Provided, further, however, if the taking is so material that the remaining part of the Premises cannot feasibly be used or converted for use by Tenant for the uses contemplated by the Lease, Tenant may, at its option, terminate this Lease within ninety (90) days after such taking by serving upon Landlord at any time within said ninety (90) day period, a thirty (30) day

written notice of Tenant's election to so terminate accompanied by a certificate of Tenant that the remaining part of the Premises cannot feasibly be used or converted for use by Tenant.

28.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the Term shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of this Lease, in which event the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration.

28.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain, either Landlord or Tenant shall give prompt notice thereof to the other Party. Each Party shall have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking and to make full proof of its claims. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant, which shall not be unreasonably withheld.

## 29. MEMORANDUM OF UNDERSTANDING.

29.1 MOU. This Lease is being entered into in part to implement the Memorandum of Understanding for a Mesa Downtown Campus Development Agreement (the "MOU") dated January 2012 and entered into between Mesa and Benedictine. While the MOU contemplated that the Parties would enter into a development agreement, the Parties have entered into this Lease, including the terms below, to effectuate the intent of the MOU, and Parties agree that a development agreement is no longer intended or necessary. Accordingly, the Parties agree that the MOU is terminated as of the Effective Date of this Lease.

29.2 Degree Programs. The Premises will be used for classes commencing no later than the fall 2013 semester. On the Premises or on Tenant's Downtown Mesa Campus, Tenant will provide the following number of degree programs: in the first academic year, Tenant will offer a minimum of five degree programs; in the third academic year, Tenant will offer eight degree programs; in the fifth academic year and through the remainder of the Term of the Lease, Tenant will offer at least fifteen degree programs. The first academic year shall be the year students first are able to attend classes on the Premises. The first academic year, as used in this Section 29, shall mean the fall semester of 2013. "Tenant's Downtown Mesa Campus" means the Premises and other real property physically located in the City of Mesa's downtown area.

29.3 Students. On the Premises or on Tenant's Downtown Mesa Campus, Tenant will enroll the following minimum number of students: Tenant will enroll a minimum of 100 students in the first academic year; 250 students by the third academic year; and 500 students by the fifth academic year.

29.4 Employees. On the Premises or on Tenant's Downtown Mesa Campus, Tenant will employ the following minimum number of full-time employees (faculty or staff): 10 full-time employees in the first academic year; 20 full-time employees by the third academic year; and 40 full-time employees by the fifth academic year and through the remainder of the Term of the Lease. Tenant will appoint an administrator (such as a Campus Manager) with overall responsibility for the operation of Tenant's Downtown Mesa Campus. If permitted under applicable laws and in compliance with all applicable federal, state, and local laws, Tenant will establish a reasonable preference for hiring individuals residing in Mesa.

29.5 Good Faith Efforts. The Parties recognize that Tenant's ability to attract and retain students is subject, in part, to variables outside of the control of Tenant, and recognize that the number of employees and degree programs are dependent upon the number of students. Accordingly, so long as Tenant uses good faith and commercially reasonable efforts to attract and retain students, Tenant will not be in breach of the terms of Sections 29.2 through 29.4; Tenant shall provide evidence of such good faith and commercially reasonable efforts upon request by Landlord. Notwithstanding anything contained in this Lease to the



contrary, any failure on the part of Tenant to comply with the terms of Sections 29.2 through 29.6 hereof shall not be grounds for Mesa to terminate this Lease.

29.6 Scholarships. As support for the community and residents of the City of Mesa, Tenant agrees to provide to the Mesa Counts on College program, through the City of Mesa, two (2) four-year scholarships per academic year for the Term of this Lease (i.e., two scholarship will be provided for the first academic year, two additional scholarships will be provided for the second academic year and for each academic year thereafter). If Mesa Counts on College ceases to exist, Tenant shall provide these scholarships to the successor program for Mesa Counts on College or to a program or organization selected by Landlord.

29.7 Trademark/Logos. The Parties agree and acknowledge that each Party's trademarks/logos may not be used without permission from the other Party. Landlord shall obtain prior approval from Tenant's Office of Marketing and Communications (or its designated representative), and Tenant shall obtain prior permission from Landlord's Public Information Officer.

### 30. TENANT'S OPTION TO PURCHASE THE PREMISES.

30.1 Purchase Agreement. Landlord as "Seller" agrees to grant Tenant as "Buyer" an option to purchase the Premises under the terms of this Section 30 of this Lease and the Agreement to Purchase Real Property and Escrow Instructions (the "Purchase Agreement") attached hereto as Exhibit "D."

30.2 Option - the Grant. In consideration and on the condition of Tenant's full compliance with all the terms of this Lease and the delivery of the Earnest Money (as defined in the Purchase Agreement) to Seller in accordance with the Purchase Agreement, Seller hereby grants to Buyer the exclusive option to purchase the Premises (the "Purchase Option") subject to the terms and conditions set forth in this Lease and the Purchase Agreement, provided, however, that Buyer may exercise the Purchase Option only if when Buyer exercises the Purchase Option: (i) this Lease is still in effect; (ii) there is no uncured Event of Default under Section 12 of this Lease; (iii) Tenant is in full compliance with all terms and conditions of this Lease; (iv) Tenant exercises the option in compliance with this Lease and the Purchase Agreement (including, but not limited to, exercising the option within the Option Term as describe in Section 30.3 below).

30.3 The Option Term. Assuming this Lease is not terminated earlier, the term of the Purchase Option (the "Option Term") shall commence on 12:01 a.m. Arizona Time on the first day following the end of ten (10) years after the Rent Commencement Date (the "Option Beginning Date") (i.e., August 1, 2023, unless the Rent Commencement Date has been extended as provided herein) and shall terminate at 5:00 p.m. Arizona Time on the day that is fourteen (14) years and one hundred and eighty (180) days after the Rent Commencement Date (i.e., approximately, 14½ years after the Rent Commencement Date) (the "Option Termination Date"). Accordingly, the intent of the Parties is that the Option may only be exercised (i.e., the Option Term) in the last five (5) years of the Lease Term, but before the last six months of the Lease Term—this 4½ year window of time is the only period of time that the Option may be exercised.

30.4 Exercise of Option and Executing Purchase Agreement. Buyer may exercise the Purchase Option (and Seller is only obligated to enter into the Purchase Agreement) only if (i) Buyer exercises the Purchase Option during the Option Term (and not at any other time), and (ii) Buyer is in full compliance with all the terms and conditions of this Lease and there is no then existing Event of Default or breach that would be an Event of Default if notice were to be given for such breach. Buyer shall evidence its exercise of the Purchase Option by delivering written notice (the "Option Exercise Notice") of such exercise to Seller and Escrow Agent after the Option Beginning Date and prior to the Option Termination Date and depositing the Earnest Money into Escrow. No other notice of exercise shall be permitted or required. The Purchase Option may only be exercised by Tenant one time; Tenant may only deliver the Option Exercise Notice one time. Within twenty (20) calendar days after Buyer provides Seller with the Option Exercise Notice, Seller and Buyer shall execute the Purchase Agreement, and Buyer will deliver a fully executed copy of the Purchase Agreement in substantially the same form as Exhibit "D" hereto, and the Earnest Money to Escrow Agent.

30.5 Purchase Price and Premises Rent. As further described in the Purchase Agreement, the purchase price for the Premises is the fair market value of the Premises plus all amounts due and owing under the Lease through the Closing (but does not include amounts that would have become due and owing after the Closing).

30.6 Termination of Lease Terminates Option. Upon this Lease terminating for any reason as permitted under this Lease (including, but not limited to, a termination that occurs after Buyer exercises the Option but before the Closing), the Purchase Agreement, Buyer's Purchase Option, and all of Buyer's and Seller's obligations, rights, and liability under this Section 30 of this Lease and the Purchase Agreement shall immediately terminate and shall be of no further force or effect; and, without limiting the foregoing, Buyer shall have no right to purchase the Premises and shall have no claim against Seller.

30.7 Termination of Purchase Agreement Terminates Option. If the Purchase Agreement is terminated for any reason, Buyer's Purchase Option, and all of Buyer's and Seller's obligations, rights, and liability under this Section 30 of this Lease shall immediately terminate and shall be of no further force or effect; and, without limiting the foregoing, Buyer shall have no right to purchase the Premises and shall have no claim against Seller.

30.8 Continuation of Lease. If Buyer exercises the Purchase Option as allowed under this Lease, this Lease shall continue in full force and effect (including, but not limited to, Tenant's obligation to pay Premises Rent) until the Closing and sale of the Premises to Buyer; and if the Purchase Agreement is terminated, this Lease shall continue in full force and effect (including, but not limited to, Tenant's obligation to pay Premises Rent) until the end of the Term.

30.9 Memorandum of Lease. The Parties agree to record against the Premises a Memorandum of Lease disclosing the Purchase Option.

### **31. MISCELLANEOUS.**

31.1 Compliance with Laws and Governmental Capacity. Tenant shall at all times comply with all federal, State and local laws, ordinances, rules, and regulations which are applicable to its activities on the Premises (including but not limited to the Americans with Disabilities Act, and the Mesa City Code). Landlord or Tenant, as applicable, shall construct and install any improvements on the Premises in compliance with all federal, State and local laws, ordinances, rules, and regulations which are applicable to its construction or installation on the Premises (including but not limited to the Americans with Disabilities Act, and the Mesa City Code). Any approvals Tenant is required to obtain from Landlord under this Lease are in addition to and separate from approvals Tenant must obtain from the City of Mesa in its governmental capacity, including but not limited to applicable approvals required under the City of Mesa Building Code or Zoning Ordinance. Notwithstanding anything in this Lease to the contrary, this Lease does not affect the City of Mesa in its governmental capacity.

31.2 Governing Law, Venue, and Jurisdiction. The laws of the State of Arizona, including its conflicts of law provisions, shall govern the matters set forth in this Lease. Venue and jurisdiction for any action brought under this Lease shall only be brought in (and shall not be removed from) Superior Court, in Maricopa County, Arizona. In the event of any litigation or arbitration between Landlord and Tenant arising under this Lease, the successful party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration.

31.3 No Personal Liability of Officials of Landlord or Tenant. None of the covenants, stipulations, promises, agreements and obligations of Landlord or Tenant contained herein shall be deemed to be covenants, stipulations, promises, agreements or obligations of any official, officer, agent or employee of Landlord or Tenant in his or her individual capacity, and no recourse shall be had for the payment for any claim based thereon or any claim hereunder against any official, officer, agent or employee of Landlord or Tenant.



31.4 Severability. If any provision of this Lease is declared void or unenforceable (or is construed as requiring the Landlord to do any act in violation of any applicable law, including any constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect; provided that this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits to the parties as if such severance and reformation were not required. Unless prohibited by any applicable law, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

31.5 Sales and Property Taxes. Tenant shall pay any leasehold tax, sales tax, personal property tax, transaction privilege tax, license or permit fee or any other tax assessed as the result of its occupancy or use of the Premises, including any such tax assessable on Landlord. In the event that laws or judicial decisions result in the imposition of a real property tax or any other form of tax or imposition on the interest of Landlord, such tax shall also be paid by Tenant for the period this Lease is in effect to the extent such taxes are reasonably attributable to the Premises or a portion thereof or the operation of Tenant's business.

31.6 Approvals, Consents, and Notices. All approvals, consents and notices called for in this Lease shall be in writing, signed by the appropriate Party, and may not be established solely by oral testimony

31.7 Entire Agreement, Amendments. This Lease is the entire agreement between the Parties relating to the Premises, and this Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, between Landlord and Tenant relating to leasing the Premises. . Any modification of or amendment to this Lease shall only be enforceable if it is in writing signed by the Party to be bound.

31.8 Notice of ARIZ. REV. STAT. Section 38-511 – Cancellation. This Agreement may be subject to cancellation pursuant to A.R.S. § 38-511.

31.9 No Waiver. No provision of this Lease may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought.

31.10 Non-Waiver of Rights. No waiver or default by Landlord of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Tenant shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Tenant, and Landlord shall not be restricted from later enforcing any of the terms and conditions of this Lease.

31.11 Non-Discrimination. Tenant agrees that (i) it does not discriminate against any person on the grounds of race, color, national origin, or disability, age, or familial status shall be excluded from participation, denied the benefits of, or be otherwise subject to unlawful discrimination in the use of the Premises; (ii) in the construction of any improvements on the Premises and the furnishing of services thereon, it will not discriminate against any person on the grounds of race, color, national origin, or disability or otherwise exclude from participation in, deny the benefits of, or otherwise be subject to unlawful discrimination.

31.12 Drug Free Work Place. Tenant shall require a drug free workplace for all employees working at the Premises. Specifically, Tenant's employees who are working at the Premises shall be notified by the Tenant that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance on the Premises. Tenant shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties on the Premises.

31.13 E-Verify Requirements. To the extent applicable under A.R.S. § 41-4401 and 23-214, Tenant warrants compliance with all federal immigration laws and regulations that relate to their employees

and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a breach of the Agreement and may result in the termination of the Agreement by Landlord. Landlord retains the legal right to randomly inspect the papers and records of any employee who works under this Lease or on the Premises to ensure compliance with the above-mentioned laws. Tenant will not be in material breach if it establishes compliance with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements under A.R.S. § 23-214(A).

31.14 Scrutinized Business Operations. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, Tenant certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 or 35-393, as applicable. If Landlord determines that Tenant submitted a false certification, Landlord may impose remedies as provided by law including terminating this Lease.

31.15 Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

31.16 Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

31.17 Successors. The terms, conditions, and covenants of this Lease shall, subject to the provisions limiting assignments, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto.

31.18 No Third Party Beneficiaries. This Lease is intended solely for the benefit of the Parties; nothing set forth in this Lease, or in any presentation, report, or other document is intended to create, or shall create, any rights in any third parties. There shall be no third party beneficiaries to this Lease.

31.19 Construction. The terms and provisions of this Lease shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Lease that ambiguous or conflicting terms or provisions contained in this Lease shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Lease or any earlier draft of the same.

31.20 Days. If the last day of any time period stated in this Lease or the date on which any obligation to be performed under this Lease shall fall on a day the City of Mesa is closed (Friday, Saturday, Sunday, or legal holiday observed by Mesa), then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day that is not a day the City of Mesa is closed.

32.21 Mesa's Educational Initiative. Tenant acknowledges that the City of Mesa is engaged in the promotion of education within the City and the promotion of the City of Mesa as a destination for higher educational institutions, which includes the Mesa Center for Higher Education in downtown Mesa (including a location at 245 West Second Street, Mesa). Tenant acknowledges and understands that these other educational institutions may offer academic and enrichment programs that are in direct competition with Tenant's programs. Tenant agrees that it shall have no claim against the City of Mesa for its efforts in such promotion of education within the City and the promotion of the City of Mesa as a destination for higher educational institutions, including but not limited to no claims against the City of Mesa for breach of good faith and fair dealing, unfair competition, interference with business opportunity, or any similar or related claims.

31.22 Surviving Provisions. All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Lease. Additionally, all

obligations to restore the Premises shall survive the termination or expiration of this Lease as well as any other section which reasonably should survive shall survive.

31.23 Landlord's Lien Waiver. At Tenant's request, Landlord agrees to execute a form of landlord's lien waiver, reasonable acceptable to Landlord, with respect to Tenant's financing or refinancing of Tenant's personal property, fixtures, machinery, or equipment (or such other property of Tenant's) located on the Premises so long as such property will remain, under the terms of this Lease, Tenant's property after installation in or on the Premises and after the termination or expiration of this Lease.

31.24 Attorneys' Fees. In any suit, action, or proceeding (a) to enforce or defend this Lease or any modification hereof; (b) to interpret this Lease or any modification hereof; or (c) arising out of or having its root in this Lease or any modification hereof, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and expenses of such action, including reasonable attorneys' fees.

31.25 Prior Appropriation. Pursuant to A.R.S. § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of 120 calendar days' advance written notice of its intent to terminate.

31.26 Counterparts. This Lease and any addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. The Parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Lease, by transmitting a signed copy of the signature page hereof, by facsimile or email, to the other Party hereto.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written.

LANDLORD:  
THE CITY OF MESA, ARIZONA

By: \_\_\_\_\_

Name: Christopher J. Brady  
Title: City Manager

STATE OF ARIZONA )

County of Maricopa )

ss.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 6 day of November, 2012, by Christopher J. Brady, in his capacity as the City Manager of the City of Mesa, Arizona.



Notary Public

TENANT:  
BENEDICTINE UNIVERSITY, AN  
ILLINOIS NOT-FOR-PROFIT  
CORPORATION

By: \_\_\_\_\_

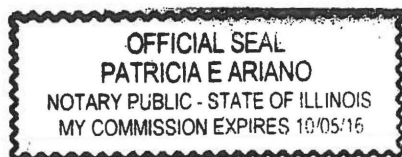
Name: William J. Carroll  
Title: President

STATE OF ARIZONA )

County of Maricopa )

ss.

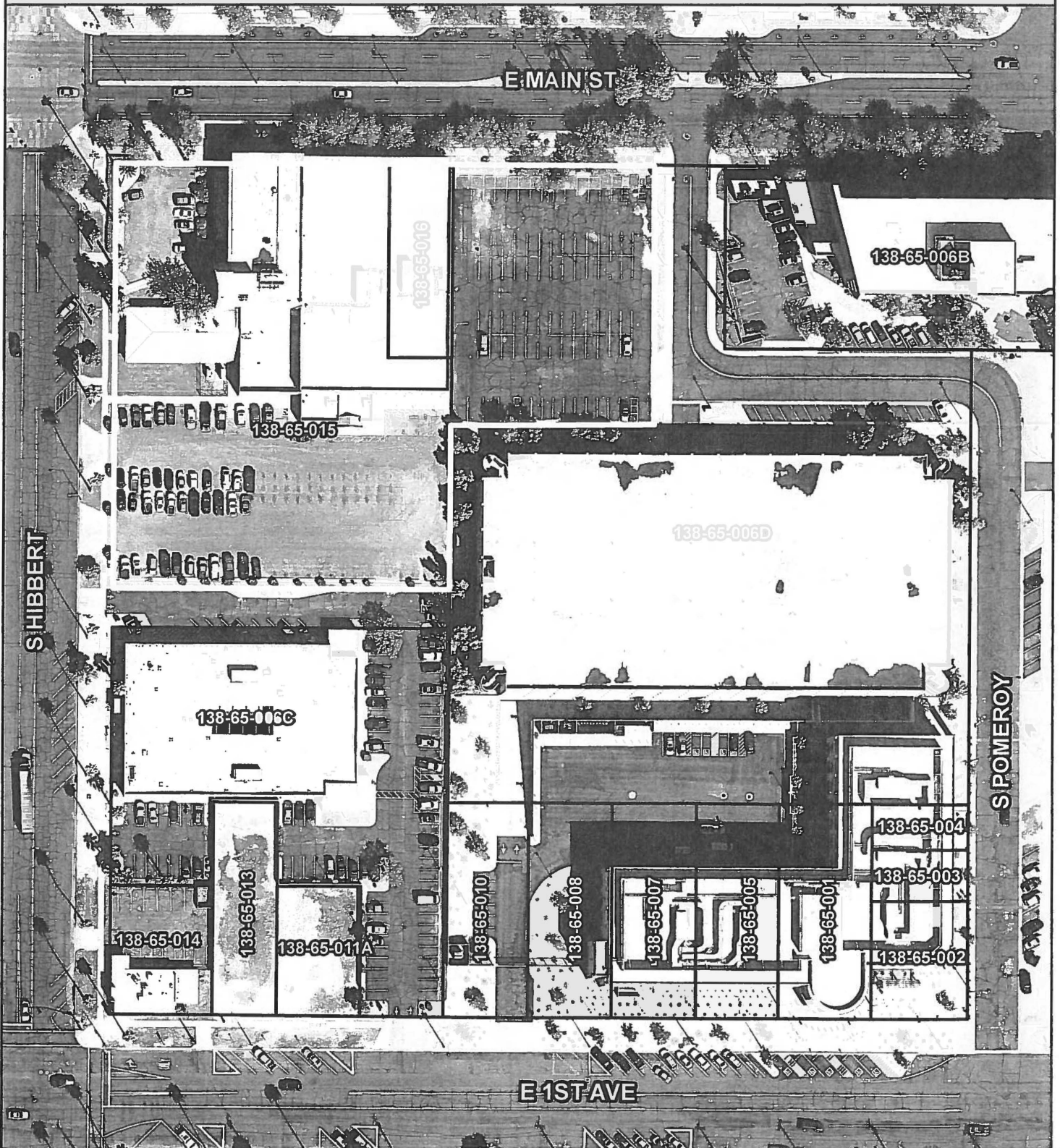
SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 24 day of October, 2012, by William Carroll, in his capacity as President of Benedictine University, an Illinois not-for-profit corporation.



Notary Public

## **EXHIBIT A**

(The Premises – see attached legal and depiction)



**Legend**

Leased Area

Parcel



0 100 200  
Feet

MAP CREATION DATE: 7/19/2012  
MAP CREATED BY: Engineering-CIS

The City of Mesa makes no claims concerning the accuracy of the data on this product nor assumes any liability from the use of the information herein.  
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