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**SITE LEASE**

by and between

**SUMMERVILLE UNION HIGH SCHOOL DISTRICT**  
as Lessor

and

**Robert E. Boyer Construction Inc.**  
as Lessee

Dated as of May 5, 2014

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## SITE LEASE

**THIS SITE LEASE** (the “Site Lease”) is dated as of **May 5, 2014**, and is made by and between the **Summerville Union High School District** (the “District”), a school district duly organized and validly existing under the Constitution and the laws of the State of California, as Lessor, and Robert E. Boyer Construction Inc. (the “Building Entity”), a California corporation as Lessee.

## RECITALS

**WHEREAS**, District currently owns a site in Tuolumne, California, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the “Site”), on which Site the District has determined to modernize certain facilities at its **Summerville High School** (the “Project”); and

**WHEREAS**, the District desires to lease the Site to the Building Entity and cause the construction of certain facilities on the Site, and to lease it back, as more particularly described in the Facilities Lease (as defined below); and

**WHEREAS**, the Board of Education of the District (the “Board”) has determined that it is in the best interest of the District, and for the common benefit of the citizens residing in the District, to develop the Project by leasing the Site to the Building Entity, and by simultaneously entering into the Facilities Lease (as defined below) under which the District will lease back the Site and improvements from the Building Entity; and

**WHEREAS**, the District is authorized under Section 17406 of the Education Code of the State of California to: (i) lease the Site to Building Entity; (ii) have the Building Entity develop and cause the construction of the Project thereon; and (iii) lease the Site back to the District by way of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing based upon a finding that it is in the best interest of the District to do so; and

**WHEREAS**, the Building Entity is authorized to lease the Site from the District as Lessee and to develop and cause the construction of the Project on the Site, and has duly authorized the execution and delivery of this Site Lease; and

**WHEREAS**, the District has performed all acts, conditions and things required by law to exist, have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease, and those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease; and

**WHEREAS**, the District has a substantial need for the construction of the Project at the Site and has entered into this Site Lease and the Facilities Lease under the authority granted to the District by Section 17406 of the Education Code of the State of California in order to fill that need; and

**WHEREAS**, the District and the Building Entity further acknowledge and agree that they have entered into this Site Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the construction of facilities at the Site, and to accommodate and educate students served by the District.

**NOW, THEREFORE**, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## **ARTICLE 1** **DEFINITIONS**

- 1.1. Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Facilities Lease dated as of **May 5, 2014**, by and between the District and the Building Entity (the “Facilities Lease”) shall have the same meanings when used in this Site Lease.

## **ARTICLE 2** **DEMISING CLAUSES**

- 2.1. Lease of the Site. The District hereby leases to the Building Entity, and the Building Entity hereby leases from the District, the Site, subject only to the Permitted Encumbrances, in accordance with the terms and provisions of this Site Lease, to have and to hold for the Term of this Site Lease. The effectiveness of this Site Lease depends upon the execution of the Facilities Lease. If the Facilities Lease is not executed by the District and the Building Entity within three (3) days after execution of this Site Lease, this Site Lease shall terminate and shall be of no further force or effect, and neither party shall have any obligation to the other hereunder, except for those obligations that expressly survive termination of this Site Lease.
- 2.2. Rental. In consideration for the leasing of the Site by the District to the Building Entity, and for other good and valuable consideration, the Building Entity shall pay the District rent of One Dollar (\$1.00) per year.
- 2.3. Merger. The leasing of the Site by the Building Entity to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Building Entity shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the Term as described hereinafter below.

## **ARTICLE 3** **QUIET ENJOYMENT**

- 3.1. Possession. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the Term thereof. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Building Entity from having quiet and peaceable possession and enjoyment of the Site

during the Term hereof, and will, at the request of the Building Entity, to the extent that it may lawfully do so, join in any legal action in which the Building Entity asserts its right to such possession and enjoyment.

- 3.2. Access to Site. Prior to the acceptance of the Project by the District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the Work on the Project, and the District shall comply with all reasonable safety precautions required by the Building Entity and the Building Entity's contractors.
- 3.3. District's Title. In the event the District's fee title to the Site is ever challenged so as to interfere with the Building Entity's rights to occupy, use and enjoy the Site under this Site Lease, the District will use all reasonable efforts at its disposal to obtain fee title to the Site and to defend the Building Entity's rights to occupy, use and enjoy the Site.

In the event the challenge to the District's fee title is successful, and thereby, interferes with the Building Entity's rights under the Facilities Lease, this Site Lease shall terminate as of the date of judgment quieting title by the challenger, and the District shall compensate the Building Entity for Lease Payments then due, and monies for Work performed by the Building Entity, subject to any rights of offset under the terms of the General Construction Provisions set forth in the Facilities Lease.

#### **ARTICLE 4**

#### **SPECIAL COVENANTS AND PROVISIONS**

- 4.1. Waste. The Building Entity agrees that at all times that it is in possession of the Site, it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.
- 4.2. Further Assurances and Corrective Instruments. The District and the Building Entity agree that they will, from time-to-time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased, or intended so to be leased, or for carrying out the expressed intention of this Site Lease and the Facilities Lease.
- 4.3. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, subject to all reasonable safety precautions required by the Building Entity.
- 4.4. Representations of the District. The District represents and warrants to the Building Entity as follows:
  - 4.4.1 Due Organization and Existence. The District is a school district, duly organized and validly existing under the Constitution and the laws of the State of California.

**ARTICLE 5**  
**ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

- 5.1. Assignment and Subleasing. This Site Lease may not be assigned nor the Site subleased as a whole, or in part, by the Building Entity.
- 5.2. Liens. The Building Entity agrees to keep the Site and every part thereof, free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and other liens for or arising out of or in connection with Work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project. The Building Entity further agrees to pay promptly and fully discharge any and all claims on which any such lien may or could be based, and to save and hold harmless the District from any and all such liens, mortgages, judgments and claims of liens and suits or other proceedings pertaining thereto.

**ARTICLE 6**  
**IMPROVEMENTS**

- 6.1. Improvements. The Building Entity's title interest under this Site Lease shall constitute a leasehold interest in the Site and all improvements made on the Site during the Term of this Site Lease until conveyance to the District at the end of the Facilities Lease's Term pursuant to Section 7.1 or 7.2 below.

**ARTICLE 7**  
**TERM AND TERMINATION**

- 7.1. Term. The Term of this Site Lease shall commence immediately prior to the commencement of the Facilities Lease, and shall terminate upon the expiration or earlier termination of the Facilities Lease, whereupon interest in the Site and to all improvements made on the Site during the Term of this Site Lease shall vest in the District. Notwithstanding the foregoing, if on the date scheduled for the expiration or termination of this Site Lease, the Lease Payments, subject to the District's right to offset, owing under the Facilities Lease have not been fully paid to the Building Entity by the District, then the Term of this Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, and the Building Entity shall continue to have the right of possession of the Site during such time period.
- 7.2. Termination Due to Default. If there is a default under the Facilities Lease, the parties may terminate the Site Lease and the Facilities Lease, including, but not limited to, the General Construction Provisions, as found in Exhibit D of the Facilities Lease, upon ten (10) days' written notice to the non-defaulting party. In the event of termination, title to the Site and any improvements built upon the Site shall vest in the District upon the date of termination. The parties shall be entitled to receive compensation and exercise remedies set forth in the Facilities Lease and the General Construction Provisions.

**ARTICLE 8**  
**MISCELLANEOUS**

- 8.1. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, the Building Entity, and their respective successors, transferees and assigns.
- 8.2. Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.
- 8.3. Amendments, Changes and Modifications. This Site Lease shall not be effectively amended, changed, modified or altered without the written agreement of both parties hereto.
- 8.4. Execution in Counterparts. This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 8.5. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in Tuolumne County, California.
- 8.6. Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.
- 8.7. Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Site Lease.
- 8.8. Time of Essence. Time is of the essence of this Site Lease and each of its provisions.
- 8.9. Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for default by the Building Entity, or any assignee of the Building Entity, separate and apart from a concurrent termination of the Facilities Lease due to a default by the Building Entity or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.
- 8.10. Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service, such as Federal Express, for next business day delivery, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District: Summerville Union High School District  
17555 Tuolumne Road  
Tuolumne, CA 95379  
Attn: **Robert N. Griffith**

With a copy to: Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814  
Attn: Constantine Baranoff

If to Building Entity: Robert E. Boyer Construction Inc.  
23059 Coffill Road  
Twain Harte, CA 95383  
Attn: Robert Boyer

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

- 8.11. Eminent Domain. In the event the whole or any part of the Site, or the improvements thereon, is taken by eminent domain, the financial interest of the Building Entity shall be recognized and is hereby determined to be the amount of all Lease Payments then due or past due. The balance of the award, if any, shall be paid to the District.
- 8.12. Indemnification by the District. The District covenants and agrees to indemnify and hold the Building Entity harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees) arising out of the condition of the Site (except for those Site conditions assumed by the Building Entity as provided in the General Construction Provisions, attached as Exhibit D to the Facilities Lease), whether or not known to the District; provided, however, that the District shall not be required to indemnify the Building Entity in the event that such liability or damage is caused by the negligent or intentional act or omission of the Building Entity.
- 8.13. Indemnification by the Building Entity. The Building Entity covenants and agrees to indemnify and hold the District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) arising out of the condition of the Site if caused by the Building Entity; provided, however, that the Building Entity shall not be required to indemnify the District in the event such liability or damage is caused by the District's sole negligence, active negligence or intentional misconduct.
- 8.14. Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as

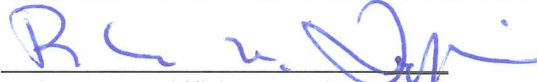
may be reasonably necessary or requested by the Building Entity to carry out assignments of this Site Lease and the Facilities Lease, including, without limitation, to perfect and continue any security interests herein intended to be created, or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.

- 8.15. Interpretation. It is agreed and acknowledged by the parties hereto, that the provisions of this Site Lease and its exhibits have been arrived through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits, and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.

**IN WITNESS WHEREOF**, the parties hereto have caused this Site Lease to be executed by their respective duly authorized officers as of the day and year first written above.


DISTRICT:

**Summerville Union High School District**,  
a school district duly organized and validly existing under  
the Constitution and the laws of the State of California

By:   
Robert N. Griffith, Superintendent

BUILDING ENTITY:

Robert E. Boyer Construction Inc.,  
a California corporation

By:   
Name: Robert Boyer  
Title: PRESIDENT



**Exhibit A**

(Description of the Site)

The location of the Project at **Summerville High School**.