

**LEASE PURCHASE AGREEMENT**

**LEASE NUMBER: 40746-10**

**LESSOR: FIRST NATIONAL BANK AND TRUST, PHILLIPSBURG, KS**  
a Kansas Banking Corporation

**LESSEE: UNIFIED SCHOOL DISTRICT NO. 212, a Kansas Public School District**

**DATE: AUGUST 14, 2023**

**THIS LEASE PURCHASE AGREEMENT**, dated as of the date set forth above, by and between the Lessor named above (together with its successors and assigns, "Lessor"), and the Lessee named above (together with its successors, "Lessee"),

**WITNESSETH:**

**WHEREAS**, Lessor proposes to take the following actions:

- (a) Lease from Lessee, the real property described in Schedule 1 (the "Land");
- (b) Provide funds in the aggregate amount of the principal portions of Rental Payments listed on Exhibit A to finance and refinance costs of acquiring, constructing and installing the facilities and related improvements, fixtures, equipment and furnishings and support facilities described on Exhibit B (the "Improvements"), all or a portion of which Improvements will be located on the Land; and
- (c) Lease its interest in the Land and the Improvements (together, the "Project") to Lessee for the rentals and upon the terms and conditions hereinafter set forth; and

**WHEREAS**, Lessee, pursuant to the foregoing proposals of Lessor, desires to lease the Project from Lessor, for the rentals and upon the terms and conditions hereinafter set forth,

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, Lessor and Lessee do hereby covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.1. Definitions of Words and Terms.** In addition to words and terms defined herein, the following words and terms as used in the Base Lease and this Lease shall have the following meanings, unless some other meaning is plainly intended:

**"Additional Rent"** means those payments required to be made by Lessee by Section 4.2.

**"Base Lease"** means the Base Lease dated as of the date hereof between Lessor and Lessee, as from time to time supplemented or amended in accordance with Section 18 of the Base Lease.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Completion Date"** means the date of completion of the Improvements as that date shall be certified as provided in Section 5.4.

**"Construction Contract"** means the construction contract for the construction of the Improvements in accordance with the Plans and Specifications.

**"Cost" or "Costs"** means all reasonable or necessary expenses incidental to the acquisition, construction, installation, repair, alteration, improvement and extension of the Improvements, including the expenses of studies, surveys, land title and title policies, architectural and engineering services, legal and other special services and all other necessary and incidental expenses.

**"Counsel"** means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either Lessee or Lessor.

**"Engineer"** means an individual engineer or firm of engineers selected by the Lessee who or which is not a full-time employee of the Lessee and is approved in writing by Lessor.

**"Escrow Agent"** means the Escrow Agent under the Escrow Agreement, or any successor Escrow Agent under the Escrow Agreement.

**"Escrow Agreement"** means the Escrow Agreement, dated as of the date hereof, among Lessor, Lessee and the Escrow Agent.

**"Event of Default" or "Default"** means any Event of Default as defined in Section 12.1.

**"Fiscal Year"** means the fiscal year of Lessee for financial and budgetary purposes as set forth on Exhibit B.

**"Impositions"** means those impositions defined as such in Article VI.

**"Improvements"** means the facilities, improvements, fixtures, equipment, furnishings and support facilities constituting a part of the Project, as further described on Exhibit B and referred to in Article V.

**"Land"** means the real property described in Schedule 1 to this Lease.

"**Lease**" means this Lease Purchase Agreement between Lessor and Lessee, as from time to time supplemented and amended in accordance with Article XIII

"**Lease Term**" means the Original Term and any Renewal Terms.

"**Lessee Representative**" means the Board Chairman, Superintendent, Asst. Superintendent, Finance Officer or other person or persons at the time designated to act on behalf of Lessee in matters relating to the Escrow Agreement, the Base Lease and this Lease as evidenced by a written certificate furnished to Lessor containing the specimen signature of such person or persons and signed on behalf of Lessee by its presiding official. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of Lessee Representative.

"**Lessor Representative**" means the person or persons at the time designated to act on behalf of Lessor in matters relating to the Escrow Agreement, the Base Lease and this Lease as evidenced by a written certificate furnished to Lessee containing the specimen signature of such person or persons and signed on behalf of Lessor by its authorized officer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Lessor Representative.

"**Maximum Lease Term**" means the Original Term and all Renewal Terms through the final Rental Payment Date listed on Exhibit A.

"**Net Proceeds**" when used with respect to any insurance proceeds or any condemnation award or amounts received from the sale of property under the threat of condemnation, means the amount remaining after deducting all expenses (including attorneys' fees and any expenses of Lessee and Lessor) incurred in the collection of such proceeds or award from the gross proceeds thereof.

"**Original Term**" means the initial term of this Lease beginning as of the date on which funds to pay the Costs of the Improvements are deposited in the Project Fund and ending on the last day of Lessee's current Fiscal Year.

"**Plans and Specifications**" means the Plans and Specifications for the Improvements referred to in Section 5.1, any amendments and additions thereto, and any change orders thereto.

"**Project**" means the project referred to in the recitals of this Lease, including Lessor's interest in the Land and the Improvements.

"**Project Documents**" means the Base Lease, the Lease, the Escrow Agreement, the Construction Contract and any other agreements, documents or certificates related to the foregoing or the Project.

"**Project Fund**" means the Project Fund established under the Escrow Agreement.

"**Purchase Price**" means the amount designated as such on Exhibit A that Lessee may, in its discretion, pay to Lessor to purchase the Project.

"**Renewal Terms**" means the renewal terms of this Lease during which the Lease Term is extended in accordance with Section 3.2, each having a duration of one year and a term coextensive with Lessee's Fiscal Year except as otherwise provided in said Section 3.2.

**"Rental Payment Dates"** means the dates during the Lease Term on which Rental Payments are due as set forth on Exhibit A.

**"Rental Payments"** means those payments required to be made by Lessee by Section 4.1.

**"State"** means the state in which Lessee is located.

**Section 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

The words "herein," "hereby," "hereunder," "hereof," "hereto," "hereinbefore," "hereinafter" and other equivalent words refer to this Lease and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

Reference herein to a particular article, a particular section, a particular exhibit or a particular schedule shall be construed to be a reference to the specified article, section, exhibit or schedule hereof or hereto unless the context or use clearly indicates another or different meaning or intent.

Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

**Section 1.3. Section and Article Headings.** The Section and Article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

**Section 1.4. Execution of Counterparts.** This Lease may be executed simultaneously in two or more counterparts, if requested by Lessee, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

**Section 1.5. Construction and Enforcement.** This Lease shall be construed and enforced in accordance with the laws of the State. Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

**Section 1.6. Severability.** In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**Section 1.7. Complete Agreement.** This written agreement is a final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the parties hereto. No unwritten oral agreement between the parties exists.

**Section 1.8. Accounting Terms.** Accounting terms used herein and not otherwise specifically defined shall have the meaning ascribed to such terms by accounting principles generally accepted in the United States of America as from time to time in effect.

## **ARTICLE II** **REPRESENTATIONS**

**Section 2.1. Representations by Lessee.** Lessee represents, warrants and covenants as follows:

(a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State of Kansas with full power and authority to enter into each of the Project Documents and the transactions contemplated hereby and to perform all of its obligations hereunder;

(b) The lease of the Project by Lessor to Lessee, as provided in this Lease, is necessary, desirable and in the public interest, and Lessee hereby declares its current need for the Project;

(c) The Improvements, when completed in accordance with the Plans and Specifications and the Construction Contract, will result in structurally sound buildings and related improvements and support facilities which will be in compliance with all applicable building and design codes and Lessee's requirements and will result in a facility suitable for the use by Lessee set forth on Exhibit B;

(d) Lessee and the Engineer have estimated, and Lessee believes, that the aggregate of the Costs of the Improvements, constructed in accordance with the Plans and Specifications and the Construction Contract, will not exceed the amount being provided by Lessor under this Lease together with other funds Lessee has available to pay such Costs;

(e) Lessee has duly authorized the execution and delivery of each of the Project Documents by proper action by its governing body at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of each of the Project Documents;

(f) Neither the execution and delivery of any Project Document, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessee is a party or by which Lessee is bound;

(g) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal challenging the validity of the authorization or the power or authority of Lessee to enter into any Project Document or the validity or enforceability of any Project Document or which, if adversely determined, would

adversely affect the transactions contemplated by any Project Document or the interest of Lessor or its assigns under any Project Document;

(h) Lessee has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby Lessee's interests in any property now or hereafter included in the Project shall be or may be impaired, changed or encumbered in any manner whatsoever, except as contemplated by the Base Lease and this Lease;

(i) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof;

(j) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current Fiscal Year to make the Rental Payments scheduled to come due during the Original Term, and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes;

(k) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic;

(l) Lessee has complied, or will comply, with such public bidding requirements as may be applicable to any of the Project Documents and the acquisition and construction by Lessee of the Improvements; and

(m) During the Lease Term, the Project will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

### **ARTICLE III** **GRANTING PROVISIONS; TERM**

**Section 3.1. Granting of Leasehold.** Lessor, by these presents, hereby rents, leases and lets the Project unto Lessee, and Lessee hereby rents, leases and hires the Project from Lessor for the Rentals and subject to the terms and conditions hereinafter set forth.

**Section 3.2. Lease Term.** The Original Term shall commence as of the date of delivery of this Lease and shall terminate on the last day of Lessee's current Fiscal Year. The Lease Term may be continued, at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional one year Renewal Term; provided that the final Renewal Term shall not extend beyond the final Rental Payment Date set forth on Exhibit A. Lessee shall be deemed to have exercised its option to continue this Lease for the next Renewal Term unless Lessee shall have terminated this Lease pursuant to Section 3.3 or 10.1. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided on Exhibit A.

Lessee currently intends, subject to the provisions of Section 3.3, to continue this Lease through the Maximum Lease Term and to pay the Rentals hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rentals during the Original Term

and each of the Renewal Terms through the Maximum Lease Term can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his power to obtain and maintain funds from which the Rentals may be made, including making provision for such Rentals to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision to budget and appropriate funds or to extend this Lease for any Renewal Term is to be made in accordance with Lessee's normal procedures for such decisions, and the then current governing body of Lessee will have the final responsibility for that decision.

**Section 3.3. Nonappropriation.** Lessee is obligated only to pay such Rental Payments under this Lease as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current Fiscal Year. Should Lessee fail to budget, appropriate or otherwise make available funds sufficient to pay Rental Payments following the then current Original Term or Renewal Term, this Lease shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Lease is terminated in accordance with this Section, Lessee agrees to transfer possession of the Project to Lessor.

**Section 3.4. Use of Premises.** Lessee shall have the right to use the Project for any essential governmental or proprietary purpose of Lessee, subject to the limitations contained in the Project Documents.

#### ARTICLE IV PROVISIONS FOR PAYMENT OF RENTALS

**Section 4.1. Rentals.** Lessee shall promptly make Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor on each Rental Payment, in such amounts as are described on Exhibit A. Lessee shall pay Lessor a charge on any Rental Payment not paid on the Rental Payment Date such Rental Payment is due at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from such date. A portion of each Rental Payment is paid as, and represents payment of, interest, as set forth on Exhibit A.

**Section 4.2. Additional Rent.** Lessee shall pay, subject to the provisions of Section 3.3, as Additional Rent (i) all Impositions (as defined in Article VI); (ii) all amounts required under Section 4.6 or 4.5 and all other payments of whatever nature which Lessee has agreed to pay or assume under this Lease; (iii) all expenses, including attorneys' fees, incurred in connection with the enforcement of any rights under this Lease by Lessor. Amounts required to be paid under this Section shall be paid directly to the person or entity owed.

**Section 4.3. Rentals and Additional Rent Constitute Current Expense.** The obligation of Lessee to pay the Rentals and the Additional Rent and other amounts payable hereunder is subject to the provisions of Section 3.3, constitutes a current expense of Lessee and does not constitute a general obligation or indebtedness of Lessee for which Lessee is obligated to levy or pledge any form of taxation or for which Lessee has levied or pledged any form of taxation; such obligation shall not be construed to be a debt of Lessee in contravention of any

applicable constitutional or statutory limitation or requirement, but in each Fiscal Year shall be payable solely from the amounts budgeted or appropriated therefore out of the income and revenue provided for such Fiscal Year, any proceeds of the Project and the Net Proceeds of any insurance or condemnation awards.

**Section 4.4. Rentals and Additional Rent Payable without Abatement or Set-Off; Lessee's Obligations.** Subject to the provisions of Section 3.3, Lessee covenants and agrees that all payments of Rentals and Additional Rent shall be made by Lessee on or before the date the same become due, and Lessee shall perform all of its other obligations, covenants and agreements hereunder (including the obligation to pay Rentals and Additional Rent) without notice or demand without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising and irrespective of whether the acquisition or construction of the Improvements shall have been started or completed.

Nothing in this Lease shall be construed as a waiver by Lessee of any rights or claims Lessee may have against Lessor under this Lease or otherwise, but any recovery upon such rights and claims shall be from Lessor separately, it being the intent of this Lease that Lessee shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease, including its obligation to pay Rentals and Additional Rent. Lessee may, however, at its own cost and expense and in its own name or in the name of Lessor, prosecute or defend any action or proceeding or take any other action involving third persons which Lessee deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event Lessor hereby agrees to cooperate fully with Lessee and to take all action necessary to effect the substitution of Lessee for Lessor in any such action or proceeding if Lessee shall so request.

**Section 4.5. Prepayment of Rentals.** Lessee may at any time prepay any amount towards the Rentals provided for hereunder.

**Section 4.6. Advances.** In the event Lessee shall fail to either maintain the insurance required by this Lease or keep the Project in good repair, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums therefore and maintain and repair the Project and pay the cost thereof. All amounts so advanced by Lessor shall constitute Additional Rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced by Lessor until paid at the rate of 10% per annum or the maximum amount permitted by law, whichever is less.

## **ARTICLE V**

### **ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF THE IMPROVEMENTS**

**Section 5.1. Construction of Improvements.** Lessee has entered, or will enter, into the Construction Contract providing for the construction of the Improvements and has provided, or will provide immediately upon entering such Construction Contract, a copy of such



Construction Contract to Lessor. Lessee shall cause the Improvements to be acquired, constructed, equipped and installed in accordance with the Plans and Specifications and the Construction Contract as promptly as practicable and with all reasonable dispatch.

Concurrently with the delivery of this Lease, Lessee shall file with Lessor the Plans and Specifications in the form in which they then exist (it being understood that the Plans and Specifications may not be complete at that time), together with a certificate from an Engineer stating (i) that such Plans and Specifications have been prepared in accordance with Lessee's requirements, (ii) that completion of the Improvements in accordance with such Plans and Specifications and the Construction Contract will result in structurally sound improvements which will be in compliance with all applicable building and design codes and Lessee's requirements and result in a facility that is suitable for use by Lessee, (iii) the Engineer's estimate of the amount necessary to pay all the Costs of Improvements in accordance with the Plans and Specifications and the Construction Contract (which shall not be more than the amount being provided by Lessor under this Lease together with other funds Lessee has available to pay such Costs of Improvements) with a breakdown of those Costs in form and detail satisfactory to Lessor, (iv) the schedule for the acquisition, construction and installation of the Improvements, and (v) the Engineer reasonably expects that such schedule will be met. Thereafter pursuant to the requirements of Section 5.3, Lessee shall promptly file the completed Plans and Specifications and such additions and supplements thereto as the same are prepared.

**Section 5.2. Payment for Acquisition, Construction, Equipping and Installation of the Improvements.** Costs and expenses of every nature incurred in the acquisition, construction, equipping and installation of the Improvements which qualify as Costs of the Improvements shall be paid from the Project Fund in accordance with and subject to the terms and conditions set forth in the Escrow Agreement.

**Section 5.3. Changes in the Plans and Specifications or Construction Contract or Modifications of the Improvements.** Lessee may make any changes in or modifications of the Plans and Specifications subsequent to the date of this Lease and prior to the Completion Date, may make any changes in or modifications of the Construction Contract and may make any deletions from or substitutions or additions to the Improvements (such completion, changes, modifications, deletions, substitutions and additions being together herein called "change orders"), subject to satisfaction of the following conditions:

- (a) Such change orders do not materially alter the size, scope or character of the Improvements or impair the structural integrity or utility of the Improvements;
- (b) Prior approval of the contractors' surety shall have been obtained;
- (c) Such change order shall not postpone the date by which the Improvements are required to be completed or the amount of liquidated damages resulting from the failure to complete the Improvements by that date without the prior written approval of Lessor; and

(d) To the extent that any change order, together with all prior change orders, will increase the estimated Costs of the Improvements by more than 5%, (i) Lessee shall have set aside in a separate account funds to be used solely to pay Costs of the Improvements and sufficient to pay such excess, (ii) payment of Costs of the Improvements equal to the amount of such excess shall be paid by Lessee directly to the contractors and to the suppliers of materials and services as the same shall become due, (iii) Lessee shall save Lessor whole and harmless from any obligation to pay such excess, and (iv) any such payment by Lessee shall not diminish Lessee's obligation to make Rental Payments or other payments under this Lease.

No change order shall be effective until delivered to Lessor in accordance with the foregoing provisions.

**Section 5.4. Completion Date; Excess Funds.** The Completion Date shall be evidenced to Lessor and the Escrow Agent upon delivery to the Lessor of a Completion Certificate complying with the requirements of the Escrow Agreement. In the event that any moneys remain in the Project Fund on the Completion Date, such moneys shall be paid to the Lessor and the following adjustments made:

(i) principal components of the last Rental Payment and such other Rental Payments as are necessary shall be reduced by an aggregate amount equal to the amount remaining in the Project Fund, such amount to be applied to the reduction of such principal components in the inverse order of their due dates,

(ii) interest components for the Rental Payments becoming due after the date of such reduction shall be reduced in a manner corresponding to the reduction in principal components using the per annum interest rate at which the interest portions of Rental Payments are calculated, as set forth on Exhibit B, and

(iii) The schedule of Purchase Prices shall be adjusted by reducing each Purchase Price shown by the same percentages as the percentage of aggregate amount of principal component reductions pursuant to clause (i) of this Section.

**Section 5.5. Design, Construction and Maintenance of the Improvements.** Lessor shall have no responsibility in connection with the selection of the Improvements, any contractor, subcontractor or supplier, the Plans and Specifications or the design of the Improvements, their suitability for the use intended by Lessee, or the performance by any contractor, subcontractor or supplier in acquiring, constructing and installing the Improvements. Lessor shall have no obligation to acquire, construct, furnish, equip, install, erect, test, inspect, service or maintain the Project or any portion thereof under any circumstances, but such actions shall be the obligation of Lessee. Lessor's sole responsibility in connection with the Improvements is to deposit the sum in the Project Fund to pay Costs of the Improvements in accordance with the terms and conditions specified in Section 4(b) of the Base Lease.

**Section 5.6. Warranties.** Lessor hereby assigns to Lessee for and during the Lease Term, all of its interest in all warranties, guarantees or other contract rights against any contractor, subcontractor or supplier, expressed or implied, issued on or applicable to the Improvements, and Lessor hereby authorizes Lessee to obtain the customary services furnished

in connection with such warranties, guarantees or other contract rights at Lessee's expense. Lessee's sole remedy for the breach of such warranties, guarantees or other contract rights shall be against any contractor, subcontractor or supplier, and not against Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Lease, including the right to receive full and timely Rental Payments, Additional Rent and other payments hereunder. Lessee expressly acknowledges that Lessor does not make nor has it made any representation or warranty whatsoever as to the existence or availability of such warranties, guarantees or other contract rights of the manufacturer or supplier of any portion of the Improvements.

**Section 5.7. DISCLAIMER OF WARRANTIES.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PART THEREOF, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF THE PROJECT OR ANY PART THEREOF.

## **ARTICLE VI** **IMPOSITIONS**

**Section 6.1. Impositions.** Lessee shall bear, pay and discharge, before the delinquency thereof, as Additional Rent, all taxes and assessments, general and special, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of Lessor or encumber the Project (all of the foregoing being herein referred to as "Impositions").

**Section 6.2. Contest of Impositions.** Lessee shall have the right, in its own name or in Lessor's name, to contest the validity or amount of any Imposition which Lessee is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the Imposition complained of becomes delinquent and may permit the Imposition so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Counsel, by nonpayment of any such items the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor. Lessor agrees to cooperate with Lessee in connection with any and all administrative or judicial proceedings related to Impositions. Lessee shall hold Lessor whole and harmless from any costs and expenses Lessor may incur with respect to any Imposition.

**ARTICLE VII**  
**INSURANCE; INDEMNITY**

**Section 7.1. Insurance Required.** Lessee shall, during the Lease Term, cause the Project to be kept continuously insured against such risks customarily insured against for facilities such as the Project and shall pay (except as otherwise provided herein), as the same become due, all premiums in respect thereof, such insurance to include the following policies of insurance:

(a) Insurance insuring the Project against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount not less than the lesser of an amount equal to the full insurable value thereof or the then applicable purchase price under Section 10.1 (subject to reasonable loss deductible clauses) issued by such insurance company or companies authorized to do business in the State as may be selected by Lessee. The full insurable value of the Project may be determined from time to time at the request of Lessee or Lessor (but not less frequently than every five years) by an architect, contractor, appraiser, appraisal company or one of the insurers, to be selected, subject to Lessor's approval, and paid by Lessee. The policy or policies of such insurance shall name Lessee and Lessor as insureds and loss payees. All proceeds from such policies of insurance shall be applied as provided in Article XI. During acquisition, construction, equipping and installation of the Improvements, Lessee shall cause to be provided, insofar as the Improvements are concerned, the insurance required by subparagraph (b) below in lieu of the insurance required by this subparagraph (a);

(b) During the acquisition, construction, equipping and installation of the Improvements and in lieu of the insurance required in subparagraph (a) of this Section, builder's risk-completed value insurance insuring the Improvements against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State to the full insurable value of the Improvements (subject to reasonable loss deductible clauses), but in no event shall such amount be less than the amount necessary to prevent the application of any co-insurance provisions, issued by such insurance company or companies authorized to do business in the State as may be selected by Lessee. Such policy or policies of insurance shall name Lessee and Lessor as insureds and loss payees, and all payments received under such policy or policies by Lessee shall be paid over to Lessor;

(c) Comprehensive general accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which Lessee and Lessor are named as insureds, in an amount not less than the amount which the Lessor shall reasonably request for a combined single limit for bodily injuries and property damage;

(d) Workers' compensation and unemployment coverages to the extent, if any, required by the laws of the State;

(e) Owner's policy of title insurance, insuring Lessor's leasehold interest under the Base Lease, in the amount set forth on Exhibit B, on the standard ALTA forms, subject only to such exceptions as shall be acceptable to Lessor, with such endorsements and affirmative coverages as may be reasonably required by Lessor, including endorsements respecting zoning and access to public roads and an endorsement deleting the coinsurance provisions of the standard owner's policy, and otherwise in form and substance satisfactory to Lessor and issued by a company acceptable to Lessor and authorized to issue such insurance in the State.

Not less than 15 days prior to the expiration dates of the expiring policies, originals or copies of the policies required by this Section or certificates evidencing such insurance shall be delivered by Lessee to Lessor. All policies of such insurance, and all renewals thereof, shall contain a provision that such insurance may not be cancelled by the issuer thereof without at least ten days written notice to Lessee and Lessor.

Nothing in this Lease shall be construed as preventing Lessee from satisfying the insurance requirements herein set forth by using blanket policies of insurance provided each and all of the requirements and specifications of this Lease respecting insurance are complied with.

**Section 7.2. Enforcement of Contract and Surety Bonds.** In the event of material default of any contractor or subcontractor under the Construction Contract or any other contract made in connection with the acquisition and construction of the Improvements, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, Lessee will promptly proceed, either separately or in conjunction with others, to pursue diligently the remedies of Lessee against the contractor or subcontractor in default and against each surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to Lessee of any amounts theretofore paid by Lessee and not previously reimbursed to Lessee for correction or remedying of the default which gave rise to the proceedings against the contractor, subcontractor or surety, shall be held by Lessee in a separate account and not commingled with other funds of Lessee and, if received before the Completion Date, shall be deposited in the Project Fund created under the Escrow Agreement or, if received after the Completion Date, shall be appropriated solely for the purpose of paying Rentals under this Lease.

**Section 7.3. Release and Indemnification.** To the extent permitted by law, Lessee shall indemnify, protect, hold harmless, save and keep Lessor harmless from and against any and all liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including counsel fees and expenses) arising out of or as the result of (a) the entering into of the Base Lease or this Lease, (b) the acquisition, construction, equipping and installation of the Improvements, (c) injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Lease Term or otherwise arising during the Lease Term because of Lessor's interest in the Project, and/or (d) the breach of any covenant by Lessee herein or any material misrepresentation by Lessee contained herein. The indemnification arising under this section

shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease for any reason.

**ARTICLE VIII**  
**ASSIGNMENT AND SUBLEASING**

**Section 8.1. Assignment by Lessor.** Lessor's right, title and interest in, to and under this Lease and the Project may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee agrees to keep a record of all such notices of assignment and to execute all documents, including notices of assignment and financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in the Project and in this Lease. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor.

**Section 8.2. Assignment and Subleasing by Lessee.** None of Lessee's right, title and interest in, to and under this Lease and in the Project may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Project if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel on the subject of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Project shall be subject to this Lease and the rights of Lessor in, to and under this Lease and the Project.

**ARTICLE IX**  
**MAINTENANCE, REPAIRS AND MODIFICATIONS**

**Section 9.1. Maintenance, Repairs and Modifications.** Lessee shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition. Lessor shall have no responsibility for any repairs, replacements or improvements. In addition, Lessee shall, at its own expense, have the right to renovate and improve any portion of the Improvements or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Lease; provided, however, that Lessee may install at its own expense any furniture, furnishings, trade fixtures and business equipment and such furniture, furnishings, trade fixtures and business equipment (specifically excluding lighting fixtures and heating, ventilating and air conditioning equipment and wiring within conduits) shall remain the property of Lessee and shall not be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage the Improvements nor cause it to be used for purposes other than those permitted by this Lease and authorized under the provisions of municipal, state and federal law. The Project, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not

substantially less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Counsel, by nonpayment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon request aid at the expense of Lessee.

**Section 9.2. Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of Lessor and Lessee as herein and in the Base Lease provided. Except as expressly provided in this Article, Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

## ARTICLE X

### **LESSEE'S OPTION TO PURCHASE THE PROJECT**

**Section 10.1. Lessee's Option to Purchase the Project.** Lessee shall have the option to purchase Lessor's interest in the Project, upon giving written notice to Lessor at least 60 days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date occurring on or after the initial purchase date set forth on Exhibit A, upon payment in full of the Rental Payments then due hereunder plus the then applicable Purchase Price to Lessor; or

(b) In the event of substantial damage to or destruction or condemnation (other than condemnation by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Project, on the Rental Payment Date Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payments then due hereunder plus all remaining principal portions of Rental Payments set forth on Exhibit A to Lessor.

**Section 10.2. Determination of Fair Purchase Price.** Lessee and Lessor hereby agree and determine that the Rental Payment hereunder during the Original Term and any Renewal Term represent the fair value of the use of the Project and that the amount required to

exercise Lessee's option to purchase Lessor's interest in the Project pursuant to Section 10.1 represents, as of the end of the applicable Rental Payment Date, the fair purchase price of the Project. Lessee hereby determines that the Rentals do not exceed a reasonable amount so as to place Lessee under an economic practical compulsion to renew this Lease or to exercise its option to purchase the Project hereunder. In making such determinations, Lessee and Lessor have given consideration to the Costs of the Improvements, the uses and purposes for which the Project will be employed by Lessee, the benefit to Lessee by reason of the acquisition, construction, equipping and installation of the Improvements and the use and occupancy of the Project pursuant to the terms and provisions of this Lease and Lessee's option to purchase the Project. Lessee hereby determines and declares that the acquisition, construction, equipping and installation of the Improvements and the leasing of the Project pursuant to this Lease will result in a Project of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition, construction, equipping and installation of the Improvements were performed by Lessee other than pursuant to this Lease. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Improvements.

## **ARTICLE XI**

### **DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**Section 11.1. Damage, Destruction and Condemnation.** Unless Lessee shall have exercised its option to purchase the Project and terminate this Lease as provided in Article X, if (i) any component of the Project is destroyed (in whole or in part) or is damaged by fire or other casualty or (ii) title to or the temporary use of such component of the Project or the interest of Lessee or Lessor in the component of the Project, shall be taken under the exercise of the power of eminent domain, or the threat of such exercise, by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee shall cause the Net Proceeds of any insurance or condemnation award or any sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Project by Lessee. Any balance of the Net Proceeds remaining after such work has been completed shall be held and appropriated by Lessee for the exclusive purpose of paying Rentals under this Lease.

If Lessee determines that the replacement, repair, restoration, modification or improvement of the Project is not economically feasible or in the best interest of Lessee, then, in lieu of making such replacement, repair, restoration, modification or improvement and if permitted by law, Lessee shall promptly purchase the Project by paying the Purchase Price to Lessor and such Net Proceeds shall be applied by Lessee to such payment to the extent required for such payment. Any balance of the Net Proceeds remaining after paying the Purchase Price to Lessor shall belong to Lessee.

**Section 11.2. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement of any component of the Project in accordance with Section 11.1, subject to appropriation of sufficient funds, Lessee shall complete the work and pay any cost in excess of the amount of the Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds Lessee shall make any payments pursuant to the provisions in this Section 11.2, Lessee shall not be entitled to any



reimbursement therefore from Lessor or to any reduction in Rental Payments then due or thereafter coming due.

**Section 11.3. Cooperation of Lessor.** Lessor shall cooperate fully with Lessee, at the expense of Lessee, in filing any proof of loss with respect to any insurance policy covering the events described in Section 11.1 and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit Lessee to litigate in any proceeding resulting therefrom in the name of and on behalf of Lessor, in no event will Lessor voluntarily settle, or consent to the settlement of, any proceedings arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of Lessee.

## **ARTICLE XII** **DEFAULT PROVISIONS**

**Section 12.1. Events of Default Defined.** The following shall be "Events of Default" under this Lease and the term "Events of Default" shall mean, whenever it is used in this Lease, any one or more of the following events:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement under any Project Document on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor shall consent to an extension of such time if Lessee certifies that corrective action has been instituted by Lessee within the applicable period and will be diligently pursued until such failure is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to any Project Document or any instrument or certificate related thereto or to the Project shall be incorrect, untrue or misleading in any material respect;

(d) Any provision of any Project Document shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under this Lease or the Base Lease; or

(e) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its essential functions, or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entity by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee

in any proceedings instituted under the provisions of any applicable federal bankruptcy law.

**Section 12.2. Remedies.** Whenever any Event of Default shall have happened and be continuing, Lessor shall have the right, at its option and without any further demand or notice, to take any one or more of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating this Lease, take possession of the Project, sell Lessor's interest in the Base Lease, or lease the Project and collect the rentals therefore for all or any portion of the remainder of its leasehold term upon such terms and conditions as it may deem satisfactory in its sole discretion, with Lessee remaining liable for the difference between the Rentals, Additional Rentals and other amounts payable by Lessee hereunder during the Original Term or then current Renewal Term, as the case may be, and the net proceeds of any purchase price, rents or other amounts paid by the purchaser, new lessee or sub-lessee of the Project, and, provided further, that, in such event, if Lessor shall receive a payment for sale of its interest or total Rentals for lease of the Project that are, after payment of Lessor's expenses in connection therewith, in excess of the then applicable Purchase Price, then such excess shall be paid to Lessee either by Lessor, its assigns, or by its sub-lessee; or

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the Rental Payments then due and thereafter to become due during the then current Original Term or Renewal Term, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

**Section 12.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient, in order to entitle Lessor or Lessee to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 12.4. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

### **ARTICLE XIII**

#### **AMENDMENTS, CHANGES AND MODIFICATIONS**

**Section 13.1. Amendments, Changes and Modifications.** This Lease may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Lease or any right or remedy hereunder must be affirmatively and expressly made in writing and shall not be implied from inaction, course of dealing or otherwise.

**ARTICLE XIV**  
**MISCELLANEOUS**

**Section 14.1. Maintenance of Tax Exemption.**

(a) Lessee shall not take any action or fail to take any action which action or failure would cause the interest components of Rental Payments under this Lease to be includable in gross income for federal income tax purposes.

(b) Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder from time to time proposed or in effect in order to maintain the exclusion from gross income for purposes of federal income taxation of the interest components of Rental Payments under this Lease.

(c) **Limit on Private Business Use.** Not more than 10% of the proceeds of the Lease will be used for any private business use. Lessee understands that use of the facilities financed with the proceeds of the Lease is treated as use of such proceeds, and use as a member of the general public ("general public use") is not private business use. The Project is intended to be available, and will be reasonably available, for use on the same basis by natural persons not engaged in a trade or business. Lessee understands further that, under the Code and the Regulations.

(1) In general, use under an arrangement that conveys priority rights or other preferential benefits is not general public use.

(2) Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable.

(d) Lessee will use the proceeds of this Lease as soon as practicable and with all reasonable dispatch for the purpose for which this Lease has been executed and delivered. No part of the proceeds of this Lease shall be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which would cause this Lease to be or become an "arbitrage bond" within the meaning of Section 148 of the Code and the applicable regulations of the Treasury Department.

(e) Lessee hereby designates this Lease as a "qualified tax-exempt obligation" as defined in Section 265(b) (3) (B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the calendar year in which the Original Term begins is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including this Lease but excluding private activity bonds other than qualified 501(c)(3) bonds) during the calendar year in which the Original Term begins without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal

obligations acceptable to Lessor that the designation of this Lease as a "qualified tax-exempt obligation" will not be adversely affected.

(f) Lessee represents and warrants that it is a governmental unit under the laws of the State with general taxing powers; this Lease is not a private activity bond as defined in Section 141 of the Code; 95% or more of the net proceeds of this Lease will be used for local governmental activities of Lessee; and the aggregate face amount of all tax-exempt obligations (other than private activity bonds) issued or to be issued by Lessee and all subordinate entities thereof during the calendar year in which the Original Term begins is not reasonably expected to exceed \$5,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$5,000,000 of tax-exempt bonds (including this Lease but excluding private activity bonds) during the Issuance Year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt obligations of state and local governments acceptable to Lessor that the excludability of the interest on this Lease from gross income for federal tax purposes will not be adversely affected.

(g) Upon the occurrence of a Determination of Taxability, (1) Lessee shall pay to Lessor an amount which, after deduction of all taxes, fees or other charges required to be paid in respect of the receipt of such amount under the laws or regulation of the United or an political subdivision or any taxing authority there or therein, is equal to any interest, penalties or addition to federal income tax , which amounts are not deductible for federal income tax purposes, and which are payable by Lessor with respect to the Lease in connection with the Determination of Taxability, (2) Lessee shall pay to Lender the amount of interest, penalties or additions to federal income tax which are deductible for federal income tax purposes and which are payable by Lender with respect to the Bond in connection with the Determination of Taxability, and (3) Borrower shall pay to Lender an amount equal to the difference between (i) interest calculated on the outstanding principal amount of the Bond at the Prime Rate and (ii) the interest otherwise previously earned on the Bond, for the period from the date on which interest on the Bond became includable in gross income for federal income tax purposes.

**Section 14.2. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Lease to be given or filed with Lessor or Lessee if the same shall be duly mailed by registered or certified mail with postage prepaid addressed as set forth on Exhibit B. Lessor and Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 14.3. Title to Personal Property.** Title to any portion of the Project that constitutes personal property shall vest in Lessee subject to Lessor's rights under this Lease and the Base Lease; provided that title thereto shall thereafter immediately and without any action by Lessee vest in Lessor and Lessee shall immediately surrender possession thereof to Lessor upon (i) any termination of this Lease without Lessee exercising its option to purchase pursuant to Section 10.1 or (ii) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any deed, bill of sale, certificate of title or other

instrument of conveyance. Nevertheless, Lessee shall execute and deliver any such instruments as Lessor may request to evidence such transfer.

**Section 14.4. Security Interest.** To secure the payment of all of Lessee's obligations under this Lease, to the extent permitted by law, Lessor retains a security interest in that portion of the Project consisting of personal property or fixtures and on all additions, attachments, accessions thereto, substitutions therefore and on any proceeds therefrom. Lessee consents to the filing of financing statements with respect to such personal property and fixtures and shall execute such additional documents, including affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest.

**Section 14.5. Net Lease.** It is the understanding and agreement of the parties hereto that, subject to Sections 3.3 and 4.3, this is a clear "net" lease obligation and that Lessee shall bear all expenses and make all payments consistent with the principle of the "net" Lease. Lessee hereby assumes and agrees to perform all duties and obligations relating to the Project, as well as the use, operation, and maintenance thereof, even though such duties and obligations may otherwise be construed to be those of Lessor.

**Section 14.6. No Pecuniary Liability.** No provision, covenant or agreement contained in this Lease or any obligation herein imposed upon Lessor, or the breach thereof, shall constitute or give rise to or impose upon Lessor a pecuniary liability.

**Section 14.7. Access to Premises.** Lessee agrees that Lessor or any agent or representative of Lessor shall have the right at all reasonable times to enter upon and to examine and inspect the Project. Lessee further agrees that Lessor and any such agent or representative shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Improvements in the event of failure by Lessee to perform its obligations hereunder.

**Section 14.8. Financial Statements.** Throughout the Lease Term, Lessee shall deliver to Lessor, as soon as available, a copy of Lessee's annual audited statement of income and expense and Lessee's annual audited balance sheet.

**Section 14.9. Title to the Land.** Lessee covenants that the title to the Land is and shall remain in Lessee, subject to the rights of Lessor hereunder and under the Base Lease.

**Section 14.10. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed these presents the day and year first above written.

**FIRST NATIONAL BANK AND TRUST,  
PHILLIPSBURG, KANSAS**

By: \_\_\_\_\_  
Name: Greg Saville  
Title: CEO  
LESSOR

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS  
COUNTY OF \_\_\_\_\_)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of August, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Greg Saville, CEO of FIRST NATIONAL BANK AND TRUST, PHILLIPSBURG, KANSAS, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said entity, and such person duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public

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

**UNIFIED SCHOOL DISTRICT NO. 212**

By: \_\_\_\_\_  
Name: Hilary Van Patten  
Title: Board President  
LESSEE

ATTEST:

\_\_\_\_\_  
Name: Amber Brown  
Title: Board Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS        )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of August, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Hilary Van Patten, Board President of UNIFIED SCHOOL DISTRICT NO. 212, a body politic and corporate duly authorized, incorporated and existing under and by virtue of the constitution and laws of the State of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said body, and such person duly acknowledged the execution of the same to be the act and deed of said body.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public

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

**SCHEDULE 1**  
**TO BASE LEASE AND TO LEASE PURCHASE AGREEMENT**

**DESCRIPTION OF THE LAND**

**Area 1:**

**Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), and Thirteen (13), Block "E", Leonard's Addition to the Town of Almaena, Norton County, Kansas.**

**The West Half of Lots Four (4), Five (5), Six (6), Block "F", Leonard's Addition to the Town of Almaena, Norton County, Kansas.**

**The East Half of Lots Four (4), Five (5), Six (6), Block "F", Leonard's Addition to the Town of Almaena, Norton County, Kansas.**

**The East Half of Lot Three (3), Block "F", Leonard's Addition to the Town of Almaena, Norton County, Kansas.**

**The West Half of Lot Three (3), Block "F", Leonard's Addition to the Town of Almaena, Norton County, Kansas.**

**A tract of land in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Eight (8), Township Two (2) South, Range Twenty-one (21), West of the 6<sup>th</sup> P.M., Norton County, Kansas; commencing Eighty (80) feet West of the Southwest Corner of Block Four (4), Original Town of Almaena, Kansas, thence West One Hundred Sixty feet (W.160'), thence North Three Hundred feet (N.300'), thence East One Hundred Sixty feet (E.160'), thence South Three Hundred feet (S.300') to the place of beginning.**

**Physical Address:     512 W. Bryant, Almaena, KS 67622**

**Area 2:**

**Parcel #1-Commencing at a point sixty feet (60') South of the Southwest Corner of Block Nineteen (19) of Long Island; thence East three hundred fifty feet (E.350'); thence South three hundred fifty feet (S.350'); thence West three hundred fifty feet (W.350') ; thence North three hundred fifty feet (N.350') to the point of beginning.**

**ALSO KNOWN AS: School Lot and Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), and Seventeen (17), Block Eight (8), First Addition to Long Island, Phillips County, Kansas.**

**Physical Address:     627 W. Washington Ave., Long Island, KS 67647**



Exhibit A  
To Lease Purchase Agreement  
Rental Payment Schedule

| Date     | Lease Balance | Payment      | Remaining Bal | Int @ 3.75% |
|----------|---------------|--------------|---------------|-------------|
| 7/1/2023 | \$ 386,388.18 | \$ 38,638.82 | \$ 347,749.36 | \$ -        |
| 1/1/2024 |               |              |               | \$ 6,520.30 |
| 7/1/2024 | \$ 347,749.36 | \$ 38,638.82 | \$ 309,110.54 | \$ 6,520.30 |
| 1/1/2025 |               |              |               | \$ 5,795.82 |
| 7/1/2025 | \$ 309,110.54 | \$ 38,638.82 | \$ 270,471.72 | \$ 5,795.82 |
| 1/1/2026 |               |              |               | \$ 5,071.34 |
| 7/1/2026 | \$ 270,471.72 | \$ 38,638.82 | \$ 231,832.90 | \$ 5,071.34 |
| 1/1/2027 |               |              |               | \$ 4,346.87 |
| 7/1/2027 | \$ 231,832.90 | \$ 38,638.82 | \$ 193,194.08 | \$ 4,346.87 |
| 1/1/2028 |               |              |               | \$ 3,622.39 |
| 7/1/2028 | \$ 193,194.08 | \$ 38,638.82 | \$ 154,555.26 | \$ 3,622.39 |
| 1/1/2029 |               |              |               | \$ 2,897.91 |
| 7/1/2029 | \$ 154,555.26 | \$ 38,638.82 | \$ 115,916.44 | \$ 2,897.91 |
| 1/1/2030 |               |              |               | \$ 2,173.43 |
| 7/1/2030 | \$ 115,916.44 | \$ 38,638.82 | \$ 77,277.62  | \$ 2,173.43 |
| 1/1/2031 |               |              |               | \$ 1,448.96 |
| 7/1/2031 | \$ 77,277.62  | \$ 38,638.82 | \$ 38,638.80  | \$ 1,448.96 |
| 1/1/2032 |               |              |               | \$ 724.48   |
| 7/1/2032 | \$ 38,638.80  | \$ 38,638.80 | \$ (0.00)     |             |
|          |               |              |               | \$ (0.00)   |

## EXHIBIT B

### TO LEASE PURCHASE AGREEMENT

Lease No. 40746-10

#### OTHER PROVISIONS

**Improvements:** The Improvements consist of the following described facilities, together with related improvements, fixtures, equipment and furnishings and support facilities:

**Type of Facilities:** Exterior Cleaning and Sealing of Mortar on the buildings at Northern Valley High School in Alma, KS, Northern Valley Elementary School, Alma, KS, and Northern Valley Middle School, Long Island, KS, and the payoff of the Lease Purchase Agreement for Energy Guard Windows at the same facilities

**Intended use of Facilities:** School Buildings of Northern Valley High School in Alma, KS, Northern Valley Elementary School, Alma, KS, and Northern Valley Middle School, Long Island, KS

**Fiscal Year:** Lessee's Fiscal Year currently begins on July 01 of each year.

**Delivery Date of Lease:** August 14, 2023

Notwithstanding any other provision of the Lease, Lessee shall only be obligated under the Lease to pay Rental Payments and other payments under the Lease from funds budgeted and appropriated for that purpose during Lessee's then current budget year or, where appropriate, Insurance proceeds (including self-insurance reserves if self-insurance is in effect).

The Lessee acknowledges as follows:

- (a) The capital cost that would be required for the Exterior Cleaning and Sealing of Mortar improvements and to payoff the Lease Purchase Agreement for the Energy Guard Windows if paid for by cash would be \$386,388.18.
- (b) The annual average effective Interest cost of the Lease is 3.75% per annum.
- (c) No amount is included in Rental Payments (assuming continuation of the Lease through the maximum term of the Lease) for service, maintenance, insurance and other charges exclusive of capital cost and Interest cost.
- (d) As required by K.S.A. 2006 Supp. 72-8201a, Lessee and the governing body of Lessee will be responsible solely for Lessee's or Lessee's governing body's actions or failure to act under the Lease.
- (e) The Lease is subject to the State of Kansas Contractual Provisions Attachment as herein **Exhibit B-1**.

The governing body of Lessee hereby certifies that it has, by the affirmative recorded vote of a majority of the members of the governing body, elected to omit the mandatory contract provisions prescribed by the Kansas Department of Administration in form DA-146a, as amended. The omission of those provisions will not result in the waiving or omission of the provisions of K.S.A. 2006 Supp. 72-8201a or 72-8201b, and the amendments thereto.

**Interest Rate:** The interest portions of Rental Payments are calculated using a per annum interest

rate of 3.75% and on the basis of a 365 day year.

**Title Insurance:** The owner's policy of title insurance required under **Article VII** shall be in the amount of \$386,388.18.

**Initial Purchase Date:** The initial purchase date for purposes of **Section 10.1(a)** is the date of the delivery of this Lease.

**Addresses:** The following addresses shall be used as described in Section 14.2, unless changed as described therein:

(a) If to Lessor: First National Bank and Trust  
225 State Street  
Phillipsburg, KS 67661

(b) If to Lessee: Unified School District No. 212  
512 W. Bryant St.  
Almena, KS 67622  
Attention: Kenneth A. Tharman, Superintendent

Dated: \_\_\_\_\_

Lessor: **FIRST NATIONAL BANK AND TRUST, PHILLIPSBURG, KS**

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

Printed Name: Greg Saville, CEO

Lessee: **UNIFIED SCHOOL DISTRICT NO. 212**

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

Printed Name: Hilary Van Patten, Board President

## Exhibit B-1

State of Kansas  
Department of Administration  
DA-148a (Rev. 08-12)

### CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-148a, Rev. 08-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 15 day of July, 2022.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 60 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 48-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**EXHIBIT C  
TO LEASE PURCHASE AGREEMENT**

**Lease No. 40746-10**

**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE**

TO: First National Bank and Trust, Phillipsburg, Kansas

Reference is made to the Lease Purchase Agreement, Base Lease and Escrow Agreement between the undersigned, Unified School District 212, Almena, KS ("Lessee"), and First National Bank and Trust, Phillipsburg, Kansas ("Lessor"), dated \_\_\_\_\_ ("Lease") and to the Project as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Project has been delivered to and received by the undersigned; all construction, installation or other work necessary prior to the use thereof has been completed; said Project has been inspected by the architect or the engineer, examined and/or tested and is and is built in accordance with the plans and specifications and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and said Project has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Project in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Project fails to perform as expected or represented in materials, workmanship or design we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the contractor, vendor, distributor or manufacturer, architect or engineer for recourse.
3. We acknowledge that Lessor is neither the contractor, vendor, architect, engineer nor manufacturer or distributor of the Project or materials and has no control, knowledge or familiarity with the design, construction, workmanship, material, condition, capacity, functioning or other characteristics of the Project.
4. The Legal Address for the Project which is set forth on Schedule 1 to the Lease is correct.

This certificate will not be considered to alter, construe, or amend the terms of the Lease.

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**LESSEE: UNIFIED SCHOOL DISTRICT NO. 212**

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**BY: Hilary Van Patten, President of the Board of Education**

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**WITNESS: Amber Brown, Clerk of the Board of Education**

**DATE:** \_\_\_\_\_

**Federal Tax ID#** \_\_\_\_\_

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**EXHIBIT D**  
**TO LEASE PURCHASE AGREEMENT**

Lease No. **40746-10**

I, Amber Brown, do hereby certify that I am the duly appointed Clerk of the Board of Education of Unified School District No. 212, an agency duly organized and existing under the laws of the State of Kansas (the "Lessee"), and that the following resolutions have been presented to and duly adopted by the Board of Education at a meeting duly and regularly held and convened in accordance with applicable law on the \_\_\_\_ day of \_\_\_\_\_, 2023.

WHEREAS, the Lessee is entering a Lease Purchase Agreement ("Lease") dated August 14, 2023, with First National Bank and Trust, Phillipsburg, Kansas;

WHEREAS, Lessee has carefully reviewed its financing requirements for the current calendar year and reasonably expects that it will not issue more than ten million dollars (\$10,000,000) of tax-exempt obligations during the calendar year;

NOW, THEREFORE, be it RESOLVED, that the Lessee be, and hereby is, authorized to enter into the Lease with First National Bank and Trust, Phillipsburg, Kansas for a period of 60 months, and be it further

RESOLVED, that the following officials of the Lessee be, and hereby are, authorized, empowered and directed to sign on its behalf the Lease and any addenda, schedules, notes, UCC financing statements or other instruments issued under the provision of the Lease and any other instrument or document which may be necessary or expedient in connection with agreement upon or fulfillment of the provisions of the Lease.

| <u>Title</u>   | <u>Printed Name</u> | <u>Signature</u> |
|--|---------------------|------------------|
| President, Board of Education<br>Unified School District No. 212 | Hilary Van Patten   | _____            |

RESOLVED, that pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, this Lease be and hereby is designated a "qualified tax-exempt obligation" includable within the ten million dollars (\$10,000,000) of the aggregate issues designated as "qualified tax-exempt obligations" for the calendar year within which this Lease is entered into.

RESOLVED, that Lessee shall not designate more than ten million dollars (\$10,000,000) of tax-exempt obligations during the current calendar year as qualified tax-exempt obligations and Lessee, together with its subordinate entities, does not reasonably expect to issue more than ten million dollars (\$10,000,000) of tax-exempt obligations during the current calendar year.

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal hereto this \_\_\_\_ day of August, 2023.

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**LESSEE: UNIFIED SCHOOL DISTRICT NO. 212**  
*Witnessed by:*

X \_\_\_\_\_  
Amber Brown, Clerk of the Board of Education                      Federal Tax ID# \_\_\_\_\_

## OPINION OF COUNSEL

Lease No. 40746-10

August \_\_, 2023

Re: Lease Purchase Agreement No. 40746-10, dated August 14, 2023 (the "Lease"), between First National Bank and Trust, Phillipsburg, Kansas ("Lessor") and Unified School District No. 212 ("Lessee")

Ladies and Gentlemen:

As legal counsel to Lessee, I have examined (a) the Lease, (b) Base Lease and (c) Escrow Agreement which, among other things, provides for the construction and financing by the Lessee of the Project, (b) an executed counterpart of the ordinance or resolution of Lessee which, among other things, authorizes Lessee to execute the Lease and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.
2. Lessee has the requisite power and authority to finance and construct the Project and to execute and deliver the Lease, Base Lease and Escrow Agreement and to perform its obligations under the Lease, Base Lease and Escrow Agreement.
3. The Lease and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Lease is a valid and binding obligation of Lessee enforceable in accordance with its terms.
4. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws.
5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Project.

Furthermore, I confirm that the name of the Lessee as stated in the Lease, as Unified School District No. 212 is the exact legal name of the Lessee for all purposes contemplated herein.

All capitalized terms herein shall have the same meanings as in the Lease. Lessor, its successors and assigns and any counsel rendering an opinion on the tax-exempt status of the interest components of Rental Payments are entitled to rely on this opinion.

Very truly yours,

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Luke Sobba, Attorney  
Kansas Association of School Boards

**ESSENTIAL USE/SOURCE OF FUNDS LETTER**

Lease No. **40746-10**

August 14, 2023

First National Bank and Trust  
225 State Street  
Phillipsburg, KS 67661

Re: State and Municipal Lease/Purchase Agreement No. 40746-10, dated August 14, 2023 (the "Lease"), between First National Bank and Trust, Phillipsburg, Kansas ("Lessor") and Unified School District No. 212 ("Lessee")

Ladies and Gentlemen:

This confirms and affirms that the Project described in the Lease is essential to the function of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all of the Project when completed, which need is not temporary or expected to diminish in the foreseeable future. The Project will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, the Project will be used by us to be used as follows:

For building exterior cleaning and sealing of mortar at Northern Valley High School in Alma, KS, Northern Valley Elementary School, Alma, KS, and Northern Valley Middle School, Long Island, KS and Lease # \_\_\_\_\_ with First National Bank and Trust, and to refinance the Lease Purchase Agreement for new Energy Guard windows at the same facilities.

Our source of funds for payments of the Rental Payments due under the Lease for the current fiscal year is capital outlay funds and grant money.

We currently expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year for the following reasons:

Sufficient resources exist and provisions in the Budget of Unified School District No. 212 have been made to accommodate the future payments.

Very truly yours,

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**LESSEE: UNIFIED SCHOOL DISTRICT NO. 212**

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*BY:* Hilary Van Patten, Board President

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*WITNESS:* Amber Brown, Clerk of the Board of Education



**Proof of Insurance**

**Insurance Agent Name:** Glenn Brands  
**Agency Name:** Equity Bank  
**Address:** 302 E. Holme St., Norton, KS 67654  
**Phone Number:** (785) 669-2486  
**E-Mail:** \_\_\_\_\_

Ladies and Gentlemen:

Please add First National Bank and Trust, Phillipsburg, Kansas, as both sole loss payee under property insurance covering the Project listed on attached Exhibit A and additional insured under the general liability insurance policy. The minimum liability coverage is \$1,000,000.00. Please mail or fax an insurance certificate to:

First National Bank and Trust  
225 State Street  
P.O. Box 627  
Phillipsburg, Kansas 67661  
Phone # (785) 543-6511  
Fax # (785) 543-6516

Please note that the Bank requires a 30 day written notice of cancellation of the policy covering leased equipment.

Lessee: **UNIFIED SCHOOL DISTRICT NO. 212**

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

Printed Name: Hilary Van Patten, President Board of Education

Date: \_\_\_\_\_, 2023