



NORTHERN WYOMING COMMUNITY COLLEGE  
BUILDING AUTHORITY  
as Lessor

and

NORTHERN WYOMING COMMUNITY COLLEGE DISTRICT,  
STATE OF WYOMING  
as Lessee

FACILITIES LEASE AGREEMENT

Relating to  
\$4,500,000  
Northern Wyoming Community College Building Authority  
Lease Revenue Note  
(Mars Agricultural and Science Center Project)

Dated December 11, 2014

The interest of the Northern Wyoming Community College Building Authority, in this Facilities Lease Agreement has been assigned to Wyoming Bank & Trust, as trustee, under the Indenture of Trust dated as of December 11, 2014, from the Northern Wyoming Community College Building Authority to Wyoming Bank & Trust, as trustee, and is subject to the security interest of Wyoming Bank & Trust, as trustee.



## FACILITIES LEASE AGREEMENT

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## FACILITIES LEASE AGREEMENT

THIS FACILITIES LEASE AGREEMENT (the "Lease") is entered into as of the 11th day of December, 2014, between the Northern Wyoming Community College Building Authority (the "Authority") as Lessor, and Northern Wyoming Community College District, State of Wyoming (the "District") as Lessee. This Lease is based upon the following facts and intentions of the parties.

### RECITALS:

A. The District is a duly and regularly created, organized and existing community college district and body corporate, existing as such under and by virtue under the constitution and laws of the state of Wyoming; and

B. The Authority is a non-profit corporation duly organized, existing, and in good standing under the laws of the state of Wyoming, for the purpose of acquiring by purchase, lease or otherwise, interests in real estate, and authorized under its articles and bylaws to construct or install thereon certain improvements, and thereafter to lease said interests in real estate or improvements for educational purposes to the Northern Wyoming Community College District, State of Wyoming; and

C. The District has the authority, pursuant to Wyoming Statute § 21-18-303 (a) to hold and convey property for the benefit of the District and to enter into an agreement with any public or private corporation for the furnishing of facilities for the District; and

D. The District is the owner of certain unimproved real estate located in Sheridan County, Wyoming, the legal description of which is set forth on Schedule B hereto (the "Property"); and

E. The District has entered into that certain Ground Lease of even date herewith (the "Ground Lease"), between the District and the Authority, whereby the District has leased the Property to the Authority; and

F. The Authority desires to sublease to the District the Property and the facilities located, or to be located, thereon described on Schedule A hereto (the "Facilities") and the District desires to lease the Property and the Facilities from the Authority under the terms and conditions set forth herein; and

G. Pursuant to that certain Indenture of Trust on even date herewith (the "Indenture") by and between the Authority as Grantor and Wyoming Bank & Trust in Cheyenne, Wyoming (the "Trustee"), the Authority will assign all of its right, title and interest in, to and under this Facilities Lease and the Ground Lease to the Trustee. The Authority will, concurrently with the delivery hereof, issue its Lease Revenue Note in the principal amount of \$4,500,000 (the "2014 Note" or the "Note") under and pursuant to the Indenture; and



H. The proceeds from the Note will be disbursed by the Trustee to the District for the construction and equipping of the Facilities, together with an amount sufficient to pay costs of issuance of the Note, fund a debt service or other reasonably required reserve funds, and pay capitalized interest on the Note; and

O. The execution and performance of this Facilities Lease and the Ground Lease have been authorized and approved by all necessary actions of the Authority and the District.

NOW, THEREFORE, in consideration of the warranties, representations, covenants and understandings of the parties set forth in this Lease, the parties agree as follows:



## ARTICLE I.

### DEFINITIONS

Capitalized words and terms not otherwise defined herein shall have the meanings assigned to them in the Indenture. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. The following terms will have the meanings indicated below, unless the context requires otherwise:

“Additional Rentals” means the cost of taxes, insurance premiums, attorneys fees and costs of counsel for the Lessor, expenses and fees of the Trustee, including, but not limited to, fees for extraordinary administration, utility charges, costs of maintenance, upkeep, repair and replacement, payments into the Reserve Fund and all other charges and costs which the Lessee assumes or agrees to pay under this Lease with respect to the Project other than Lease Payments (together with interest and penalties that may accrue thereon in the event that the Lessee shall fail to pay the same, as set forth in this Lease), including, but not limited to, costs and expenses charged to or incurred by the Lessor in its capacity as Lessor. The Lessor also may adjust the Additional Rentals from time to time to compensate the Lessor for its costs that it may incur under this Lease.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

“Commencement Date” means the date when the term of this Lease begins and the Lessee's obligation to pay accrues, as described in Section 3.2(a) of this Lease.

“Completion Date” means August 1, 2016, or such other date that the Lessor and the Lessee agree, in writing, delivered to the Trustee, to be the completion date of the Facilities.

“Construction Contract” means any contract entered into by the Lessee, on behalf of the Lessor, for the acquisition, renovation, construction, expansion, improvement, or equipping of the Facilities, including, but not limited to, any contract between the Lessee and the contractor, vendor or architect regarding the Facilities, including the construction contract between the Lessee and the general contractor.

“Cost of Construction” shall be deemed to include payment of or reimbursement for the following items:

(a) obligations incurred or assumed for labor, materials and equipment in connection with the acquisition, renovation, construction and equipping of the Facilities and related infrastructure;

(b) the cost of performance and payment bonds and insurance of all kinds (including, without limitation, title insurance) that may be necessary or appropriate during



the course of the acquisition, renovation, construction, expansion, improvement and equipping of the Facilities;

(c) the costs of engineering and architectural structure services, including obligations incurred or assumed for preliminary design and development work, test borings, surveys, estimates, plans and specifications;

(d) the cost of the administration of construction of the Facilities incurred prior to the Completion Date, including supervision of construction as well as the performance of all of the other duties required by or consequent upon the acquisition, construction and equipping of the Facilities, including, without limitation, costs of preparing and securing all Project Documents, architectural fees, legal fees and expenses, independent inspection fees, engineering fees, auditing fees and advertising expenses in connection with the Facilities.

(e) costs incurred in connection with the Note, including, without limitation, the initial compensation and expenses of the Trustee prior to the Completion Date, fees of the Lessor, legal fees and expenses, financial advisor fees, placement agent fees, costs incurred in obtaining ratings from rating agencies, costs of title insurance, costs of surveys, costs of publication, printing and engraving, and recording and filing fees;

(f) all costs which shall be required to be paid under the terms of any Construction Contract;

(g) all other costs which are considered to be a part of the costs of the Facilities in accordance with generally accepted accounting principles and which will not affect the excludability from federal income taxes of the designated interest component of Lease Payments payable by the Lessee under this Lease and assigned pursuant to the Indenture and the Notes; and

(h) payments of Lease Payments from any monies remaining in the Project Fund subsequent to the Completion Date.

“Environmental Regulation” means any environmental law, statute, regulation, ordinance, order, bylaw, code, requirement or directive, including, without limitation, any such law, regulation or other directive relating to the presence, generation, use, management, transport, treatment, disposal, discharge, emission, storage or release of Hazardous Substances, solid or hazardous waste, water quality, air quality, wetlands protection, sanitary waste disposal, or environmental impact review.

“Facilities” means all improvements described on Schedule A of this Lease and located on the Facilities Property which comprise public facilities which are the subject of this Lease, and any and all additions, repairs, replacements or modifications undertaken by the Lessor or the Lessee pursuant to Sections 5.1(a) and 5.3(c) and (e) of this Lease.



“Full Insurable Value” means the total amount of all Lease Payments required to be paid by the Lessee under this Lease, assuming that the Lessee renews all Renewal Terms.

“Ground Lease” means the Ground Lease dated as of December 11, 2014, from the District to the Authority as it may be amended from time to time.

“Hazardous Substances” means dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances as defined in Environmental Regulations, and also any urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos-containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material substance, pollutant or contaminant which would subject the owner or any Noteholder to any damages, penalties or liabilities under any applicable Environmental Regulation.

“Indenture” means the Indenture of Trust dated as of December 11, 2014, between the Lessor and the Trustee, as it may be amended from time to time.

“Lease” means this Facilities Lease Agreement, including the schedules attached hereto and all amendments to and renewals hereof.

“Lease Payments” means the payments payable by the Lessee pursuant to Section 3.3 of this Lease in consideration of the right of the Lessee to use the Facilities during the then current portion of the Lease Term, which are payable in the amounts and at the times set forth in such Section 3.3 and in Schedule C of this Lease which shall at all times be at least fifteen (15) days prior to an interest payment or principal payment date for the Notes.

“Lease Term” means the Original Term and all Renewal Terms provided for in Section 3.2 of this Lease.

“Lessee” or “District” means Northern Wyoming Community College District, Wyoming, a public body corporate and politic, and its successors and assigns.

“Lessor” means the Northern Wyoming Community College Building Authority, a Wyoming non-profit corporation, and its successors and assigns.

“Mortgage” means the Leasehold Mortgage on the Property dated as of December 11, 2014, given by the Lessor to the Trustee.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

“Option Price” means the amount which the Lessee may pay the Trustee in order to purchase the Facilities and terminate the Ground Lease as set forth in Section 3.4 of this Lease.



“Original Term” means the period from the Commencement Date until the end of the fiscal year of the Lessee in effect at the Commencement Date which may be less than a calendar year.

“Permitted Encumbrances” means those encumbrances on the Facilities listed in Schedule E hereto.

“Project” means the construction and equipping of the Facilities and related infrastructure.

“Project Documents” means the following: (i) plans, drawings and specifications for the Facilities, when and as they are approved by the Lessee, including change orders, if any, as provided in Section 4.1 of this Lease; (ii) a survey of the real estate described in Schedule B hereto, prepared by a registered land surveyor in accordance with standard requirements for land title surveys, showing the location of all improvements, easements, encroachments and other encumbrances on such real estate; (iii) any necessary permits for construction of the Facilities, including any building permit and certificate of occupancy; (iv) the Construction Contract for the Facilities; (v) the policies of title, casualty, public liability and workmen's compensation insurance, or certificates thereof, as required by this Lease with respect to the Facilities; (vi) performance and payment bonds with respect to the Facilities; (vii) the executed contract with the architects hired by the Lessee in connection with the preparation of plans, drawings and specifications for the Facilities; and (viii) any and all other documents executed by or furnished to the Lessee in connection with the acquisition, construction and equipping of the Facilities.

“Property” means the parcel of real property and all appurtenances thereto as of the execution of this Lease described in Schedule B attached hereto.

“Registered Owner” of a Note means the registered owner of any Note, as shown in the registration books of the Trustee.

“Renewal Term” means any fiscal year of the Lessee for which the Lessee shall renew this Lease as provided in Section 3.2(b) of this Lease, the last such fiscal year being the fiscal year in which the last Lease Payment listed in Schedule C attached hereto occurs.

“State” means the State of Wyoming.

“Vendor” means any contractor, subcontractor, architect, engineer, manufacturer, assembler, consultant or laborer who shall have planned, designed, constructed, manufactured, assembled or installed the real and personal property constituting the Facilities, and their agents, dealers and representatives, officers or directors.



## ARTICLE II.

### REPRESENTATIONS AND WARRANTIES FOR UNDERTAKINGS

2.1 Representations and Warranties of the Lessor. The Lessor represents and warrants to the Lessee as the basis for its undertaking of the transaction contemplated by this Lease as follows:

(a) Organization. The Lessor is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the State.

(b) Authority. The Lessor has full power and authority to enter into this Lease and the Ground Lease, to incur the duties and obligations set forth in this Lease and the Ground Lease, and to execute and deliver this Lease and the Ground Lease. All procedures have occurred and requirements satisfied, including, but not limited to, any public bidding requirements, in order to ensure the enforceability of this Lease and the Ground Lease.

(c) Enforceability. This Lease and the Ground Lease are valid and legally binding obligations of the Lessor enforceable in accordance with their respective terms.

(d) Consents and Approvals. No consents, approvals, or authorizations of any other person or entity are required in connection with the execution, delivery and performance of this Lease or the Ground Lease on the part of the Lessor.

(e) Ground Lease. On the Commencement Date of this Lease, the Ground Lease is in full force and effect.

2.2 Representations and Warranties of the Lessee. The Lessee represents and warrants to the Lessor as the basis for its undertaking of the transaction contemplated by this Lease as follows:

(a) Organization. The Lessee is a community college district and body corporate, duly organized and validly existing under the laws of the State.

(b) Authority. The Lessee has full power and authority to enter into this Lease and the Ground Lease, to incur the duties and obligations set forth in this Lease and the Ground Lease, and to execute and deliver this Lease and the Ground Lease under the terms of the resolution of its governing body or by other appropriate official action. All procedures have occurred and requirements satisfied, including, but not limited to, any public bidding requirements, in order to ensure the enforceability of this Lease and the Ground Lease.

(c) Enforceability. This Lease and the Ground Lease are valid and legally binding obligations of the Lessee enforceable in accordance with their respective terms.



(d) Consents and Approvals. No consents, approvals, or authorizations of any other person or entity are required in connection with the execution, delivery and performance of this Lease on the part of the Lessee.

(e) Compliance with Laws. The improvements to the Property will be designed and constructed to comply with all applicable building and zoning ordinances and regulations, if any, and any and all applicable judicial and State standards and requirements relating to the Facilities.

(f) Environmental Compliance. The design, construction, equipping and operation of the Facilities do not and will not conflict in any material respect with any applicable safety, building, health or environmental law, statute, regulation, ordinance, order, bylaw, code, requirement or directive, including, without limitation, any Environmental Regulation, and all utilities are available to adequately serve the Facilities.

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### ARTICLE III.

#### LEASE OF FACILITIES

3.1 Granting Clause. The Lessor hereby leases to the Lessee, and the Lessee hereby rents from the Lessor, the Facilities, to have and to hold for the Lease Term, upon the terms and conditions set forth in this Lease.

3.2 Lease Term. The term of this Lease shall be as follows:

(a) Original Term; Commencement Date. The Original Term of this Lease and the obligation of the Lessee to make Lease Payments under this Lease shall begin on the Commencement Date, which date shall be the date of this Lease. The Original Term shall terminate at 12:00 midnight of the last day of the Lessee's current fiscal year which is June 30, 2015.

(b) Renewal Term. The Lease Term may be continued solely at the option of the Lessee for a Renewal Term, upon delivery by the Lessee of written notice to the Lessor and the Trustee not less than fifteen (15) days prior to the end of the Original Term. The Lease Term may be continued solely at the option of the Lessee for fourteen (14) one-year Renewal Terms, by delivery of written notice to the Lessor and the Trustee not less than sixty (60) days prior to the end of the Renewal Term. Failure to provide any notice of renewal will not waive the right of the Lessee to continue this Lease provided that the Lessee has included in its budget for the applicable fiscal period the Renewal Term Lease Payment which is set forth in Schedule C. The Lessee shall send to the Trustee a copy of each budget as adopted by the Lessee during the Lease Term. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Lease Payments shall be as provided in Schedule C of this Lease.

3.3 Lease Payments. The payments by the Lessee to the Trustee as assignee of the Lessor in consideration of the Lease of the Facilities for the Lease Term shall be as follows:

(a) Payment of Lease Payments. The Lessee shall pay to the Trustee those amounts indicated in the "Payment" column of Schedule C of this Lease on the dates set forth in Schedule C of this Lease in payment for the rental of the Facilities for the Original Term and any Renewal Term. Such payments shall be made in lawful money of the United States of America payable to the order of the Trustee. Each Lease Payment shall be attributable to an interest component and a principal component. The interest component of such Lease Payment will be increased from time to time, if at all, to reflect the Taxable Rate or the Non-BQ Rate upon the Notice of Taxability or the Notice of Non-BQ Status, respectively, all as provided in the Indenture.

(b) Lease Payment to Constitute a Current Expense of Lessee. The Lessor and the Lessee understand and intend that the obligation of the Lessee to pay Lease Payments



shall constitute a current expense of the Lessee and shall not in any way be construed to be a general obligation or other indebtedness of the Lessee in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the Lessee. No provision of this Lease shall constitute a pledge of the general tax revenues, funds or monies of the Lessee.

(c) Nonappropriation. In the event the governing body of the Lessee shall not budget, appropriate or allocate sufficient funds for the Lease Payments or reasonably estimated Additional Rentals required to be paid in the next occurring Renewal Term under Schedule C of this Lease, and if the Lessee has no funds available for Lease Payments or reasonably estimated Additional Rentals from other sources, the Lessee may terminate this Lease at the end of the then current Original Term or Renewal Term upon providing sixty (60) days' prior written notice to the Lessor and the Trustee, and the Lessee shall not be obligated to make payment of the Lease Payments or Additional Rentals provided for in this Lease beyond the then current Original Term or Renewal Term.

The Trustee, upon the occurrence of an event of nonappropriation, shall be entitled to all monies then on hand and being held in all funds created under the Indenture, including the Project Fund, for the benefit of the Noteholders. After the expiration of the Original Term or Renewal Term, during which an event of nonappropriation occurs, the Trustee shall, at the request of the Requisite Registered Owners, proceed to lease the Facilities, as provided in Article VI of this Lease, or take one or any combination of the steps described in Article VI of this Lease. All property, funds and rights acquired by the Trustee by reason of any event of nonappropriation as provided herein, less any monies due and owing to the Trustee, shall be held and applied by the Trustee for the benefit of the Noteholders as set forth in the Indenture.

(d) Lease Payments to Be Unconditional. Notwithstanding any dispute between the Lessee and the Lessor, a Vendor, the Trustee or any other person, the Lessee shall make all payments of Lease Payments and Additional Rentals when due, subject to annual appropriation, and shall not withhold any Lease Payments and Additional Rentals pending final resolution of such dispute; nor shall the Lessee assert any right of setoff or counterclaim against its obligations to make such Lease Payments. The Lessee's obligations to make Lease Payments and Additional Rentals during the Original Term and the then current Renewal Term shall not be abated through accident or unforeseen circumstance.

(e) Expression of the Lessee's Need for the Facilities; Determinations as to Fair Market Value and Fair Purchase Price. The Lessee hereby declares its current need for the Facilities. It is hereby declared to be the present intention and expectation of the Lessee that this Lease will not be terminated by the Lessee until the Lessee has exercised its option to purchase the Facilities and the Ground Lease is terminated by the Lessee pursuant to the option contained in this Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the Lessee. The Lessee hereby determines that the Lease Payments and Additional Rentals hereunder during the Lease Term represent (or will represent) the fair value of the use of the Facilities; and that the Option Price will represent



the price for purchase of the Facilities and early termination of the Ground Lease at the time of exercise of the option. The Lessee hereby determines that the Lease Payments and Additional Rentals do not and will not exceed a reasonable amount so as to place the Lessee under an economic compulsion to renew this Lease or to exercise its option to purchase the Facilities and terminate the Ground Lease hereunder. In making such determinations, the Lessee has given consideration to the current appraised value of the Facilities, the uses and purposes for which the Facilities will be employed by the Lessee, the benefit to the citizens and inhabitants of the Northern Wyoming Community College District, State of Wyoming, by reason of the construction, improvement and equipping of the Facilities, and the use and occupancy of the Facilities pursuant to the terms and provisions of this Lease, the Lessee's option to purchase the Facilities and terminate the Ground Lease, and the expected eventual vesting of title to the Facilities in the Lessee. The Lessee hereby determines and declares that the period during which the Lessee has an option to terminate the Ground Lease (i.e., the maximum term of this Lease) does not exceed the useful life of the Facilities.

#### 3.4 Option to Purchase Facilities and Terminate Ground Lease.

(a) Option of Lessee. The Lessee may terminate this Lease and all title, right and interest of the Lessor in the Facilities and the Ground Lease upon notice to the Lessor and the Trustee following the full repayment of the Notes, including premium, if any, in accordance with the extraordinary redemption provisions as set forth in Section 7.04 of the Indenture.

(b) Manner of Conveyance and Closing. Upon the receipt by the Lessor and the Trustee of notice from the Lessee of its election to purchase the Facilities and terminate the Ground Lease pursuant to Section 3.4(a), the Lessor and the Trustee shall schedule a closing date for the closing of the purchase of the Facilities and termination of the Ground Lease. The notice of the Lessee's election to purchase the Facilities and terminate the Ground Lease shall contain within it a closing date which shall be no less than thirty (30) days hence and not greater than ninety (90) days hence.

3.5 Additional Rentals. The Lessee shall pay Additional Rentals during each fiscal year for which funds are appropriated to pay Lease Rentals. The Additional Rentals shall be paid by the Lessee on a timely basis, directly to the person or entity to which such Additional Rentals are owed (except that payments into the Reserve Fund or Rebate Fund are to be made to the Trustee as provided in the Indenture).

3.6 Title to the Facilities. During the Lease Term, all right, title, and interest in the Facilities and any and all additions, repairs, replacements or modifications thereto, whether made by the Lessee or the Lessor, shall be held in the name of the Lessor until conveyed to the Lessee as provided in this Lease. Provided that an event of default has not occurred and is continuing under this Lease, at such time as the principal, premium, if any, and interest on the Notes have been paid in full, together with any other payment obligations due and owing under the Indenture, the Lessor shall transfer and convey all its right, title and interest in the Facilities to the District, free and clear of all liens and encumbrances, except Permitted Encumbrances.



## ARTICLE IV.

### CONSTRUCTION OF THE FACILITIES

4.1 Agreement to Renovate, Construct, and Expand the Facilities. The Lessee shall cause the Facilities to be acquired, renovated, constructed, expanded and equipped as herein provided, on behalf of the Lessor. Title to all buildings or other property which is purchased or financed from monies deposited in the Project Fund, shall be subject to the Ground Lease, subject only to Permitted Encumbrances.

The Lessee hereby agrees that in order to effectuate the purposes of this Lease, it will make, execute, acknowledge and transmit any and all contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be necessary or proper, all for the acquisition, construction and equipping of the Facilities, on behalf of the Lessor as the ground lessor of the Property. Acquisition, construction, and equipping of the Facilities shall be in accordance with the Project Documents, subject to reasonable change orders, or any other reasonable changes approved by the Lessee. The Lessee may make changes or modifications to the Facilities and the Project Documents, so long as the Project continues to be permitted under the Act and such changes do not adversely affect the tax-exempt status of the Notes or materially increase the Project budget. Subject to any limitations as may be set forth in the Indenture, the Trustee, as assignee, is authorized to enter into an amendment modifying Schedules A and B hereto to effectuate such purposes and rerecord this Lease as necessary to provide for adequate notice of such changes. So long as this Lease is in full force and effect and no event of nonappropriation as set forth in Section 3.3(c) or event of default shall have occurred, the Lessee shall have full power to carry out the acts and agreements provided in this Section 4.1, and such power is granted and conferred under this Lease to the Lessee, and is accepted by the Lessee, and shall not be terminated or restricted by act of the Lessor, the Trustee or the Lessee, except as provided in this Section 4.1.

The Lessee agrees to acquire, renovate, construct, expand, improve, and equip the Facilities on behalf of the Lessor as ground lessor, through the application of monies to be disbursed from the Project Fund pursuant to Section 4.2 of this Lease and Section 4.06 of the Indenture by the Trustee at the direction of the Lessee. In the event that the Facilities shall not have been substantially completed by the Completion Date, the Trustee, acting as representative of the Lessor as ground lessor of the Facilities, shall, upon thirty (30) days' written notice to the Lessee, be authorized, but not required, to complete the Facilities, without any direction by the Lessee, from any monies remaining in the Project Fund. The Trustee shall also be authorized, but not required, to complete the Facilities from monies in the Project Fund without any direction by the Lessee, upon the occurrence of an event of nonappropriation as set forth in Section 3.3(c) or an event of default.

The Lessee represents that, based upon an examination of property, estimated construction and equipment costs provided by the contractor selected by the Lessee for the Facilities, and the anticipated configuration of the Facilities, the Facilities can be renovated, constructed, acquired, expanded and equipped for a total price within the total amount of funds anticipated to be deposited therefor in the Project Fund from the issuance of Notes, plus investment income from the investment



and reinvestment of amounts on deposit in the Project Fund. In the event of cost overruns, the Lessee shall select any one or a combination of the following options:

(1) The Lessee shall require the architect for the Facilities to modify the plans and specifications or redesign the Facilities as may be necessary in order to bring the Cost of Construction for the Facilities within the amount available therefor in the Project Fund; or

(2) The Lessee shall cause the proceeds of Additional Notes or other additional amounts in a special project fund to be established with the Trustee; provided, however, that amounts so deposited by the Lessee may be expended solely for the completion of the Facilities, the purchase of moveable personal property or for the purpose of paying any other expense related to the leasehold estate of the Lessee which, in the opinion of Bond Counsel shall not adversely affect the validity and enforceability of this Lease or the tax-exempt status of the Notes.

Upon the occurrence of an event of nonappropriation or an event of default, the Lessee's right to direct the acquisition, construction, improving, remodeling and equipping of the Facilities, shall be terminated, and the Trustee may, acting as representative of the Lessor as ground lessor, complete the Facilities, utilizing any monies remaining in the Project Fund.

4.2 Disbursements from the Project Fund. Pursuant to the Indenture, the Trustee shall issue its checks or drafts for each disbursement of money from the Project Fund only pursuant to a disbursement request submitted by the Lessee Representative in substantially the form attached hereto as Schedule F in payment or reimbursement of Costs of Construction provided for herein. So long as no event of nonappropriation as provided in Section 3.3(c) or event of default shall occur, and so long as the right of the Lessee to direct the acquisition, construction and equipping of the Facilities has not otherwise been terminated pursuant to the last sentence of Section 4.1 of this Lease, the Trustee, at the written direction of the Lessee, acting on behalf of the Lessor, shall disburse monies from the Project Fund in payment of Costs of Construction for the Facilities. Such disbursements shall be made upon receipt by the Trustee of a requisition signed by the Lessee Representative (i) stating with respect to each payment to be made: (a) the requisition number, (b) the name and address of the person, firm or corporation to whom payment is due or has been made, (c) the amount to be paid or reimbursed, (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the Project Fund and has not been the basis of any previous withdrawal, (e) that no event of nonappropriation as provided in Section 3.3(c) or event of default has occurred and the right of the Lessee to direct the acquisition, construction, improvement and equipping of the Facilities has not otherwise been terminated, and (f) that the disbursement requested will be used for a Cost of Construction with respect to the Facilities; (ii) specifying in reasonable detail the nature of the obligation; and (iii) accompanied by a bill, invoice or statement of account for such obligation. The Trustee shall not disburse any funds from the Project Fund, except upon receipt of such requisition. The Lessee shall submit to the Trustee releases of lien rights covering work done and/or materials furnished in connection with the acquisition, construction or equipping of the Facilities within thirty (30) days of payment to the party entitled thereto.



Upon the occurrence of an event of nonappropriation as provided in Section 3.3(c) or an event of default prior to the Completion Date, the Project Fund may be utilized by the Trustee, on behalf of the Lessor as ground lessor, to complete the Facilities as provided in Section 4.5 hereof, or, upon termination of the Lease Term, may be disbursed as provided in Section 4.04(c) of the Indenture, as the Trustee may deem appropriate in the best interests of the Noteholders.

4.3 Completion of Construction. Upon the completion of the construction of the Facilities, the Lessee shall deliver a certificate to the Trustee stating that, based upon the representations of the contractors and architect for the Facilities, and except for any amounts estimated by the Lessee Representative to be necessary for payment of any Cost of Construction for the Facilities not then due and payable, the Facilities have been completed, and all Costs of Construction for the Facilities have been paid. Notwithstanding the foregoing, such certificate shall not, and shall state that it does not, prejudice any rights against third parties which exist on the date of such certificate or which may subsequently come into being.

4.4 Construction Contracts. Each Construction Contract shall provide that upon the occurrence of an event of nonappropriation as set forth in Section 3.3(c) or upon an event of default or upon the Trustee assuming control over construction of the Facilities as provided in the last sentence of Section 4.1 of this Lease: (i) such Construction Contract shall be fully and freely assignable to the Trustee without the consent of any other person, and the Trustee may choose to assume or not assume such Construction Contract; and (ii) if the Trustee does so assume such Construction Contract, the contractor shall perform the agreements contained therein for the Trustee. Each Construction Contract shall also provide that, upon the occurrence of an event of nonappropriation as set forth in Section 3.3(c) or upon an event of default, the Trustee may terminate such Construction Contract, and the contractor or architect shall then be entitled to payment only from amounts available therefor in the Project Fund and only for work done prior to such termination. Upon the occurrence of an event of nonappropriation as set forth in Section 3.3(c) or upon an event of default, or upon the Trustee assuming control over construction of the Facilities as provided in the last sentence of Section 4.1 of this Lease, the Lessee shall assign all rights, title and interest in and deliver all Project Documents held by it to the Trustee.

4.5 Project Documents. The Lessee shall have and keep on file and available for inspection by the Lessor and the Trustee copies of the Project Documents (except Project Documents which are in the possession of the Trustee), throughout the Lease Term, or as soon after the commencement of the Lease Term as such Project Documents shall become available to the Lessee. Neither the Project Documents nor any change or amendment thereto shall (i) cause the Facilities to be used for any purpose prohibited hereby or by the Constitution, statutes and laws of the State; (ii) result in a material reduction in the value of the Facilities; (iii) adversely affect the ability of the Lessee to meet its obligations hereunder; or (iv) adversely affect the tax-exempt status of the Notes.

4.6 Defaults Under Construction Contracts. In the event of any material default by a contractor or subcontractor under any of the Construction Contracts, or otherwise in connection with the Facilities, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Lessee shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor or subcontractor and/or against



each surety of any bond securing the performance of the Construction Contracts or otherwise in connection with the Facilities. So long as no event of default shall have occurred under the Indenture, the Lessee shall have the right to determine the remedies to be exercised against any such contractor, subcontractor or surety. The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including, without limitation, attorneys' fees and costs), and after reimbursement to the Lessee of any amounts theretofore paid by the Lessee and not previously reimbursed to the Lessee for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid to the Trustee for deposit into the Project Fund if received before the Completion Date therefor, or if received thereafter, shall be applied as provided in Section 5.3 (c) of this Lease.

4.7 Contractor's Performance and Payment Bonds. The primary contractor shall be required to furnish a performance bond and a separate labor and material payment bond, copies of which shall be provided to the Lessor and the Trustee. Such bonds shall be made payable to the Lessee, subject to the provisions of the Indenture, shall be executed by a corporate surety licensed to transact business in the State and acceptable to the Lessee and shall be in an amount equal to the contract price for the construction of the Facilities. If, at any time during the construction period, the surety on such bond shall be disqualified from doing business within the State, or shall otherwise become incapable (in the judgment of the Lessee) of performing its obligations under such bond, an alternate surety shall be selected. In the event of any change order resulting in the performance of additional work in connection with the Facilities, the amounts of such bonds pertaining thereto shall be increased to include the cost of such additional work or materials or fixtures to be incorporated in the Facilities.

4.8 Contractor's General Public Liability and Property Damage Insurance. Each contractor entering into a Construction Contract shall be required to procure and maintain standard form comprehensive property damage insurance during the duration of such contractor's Construction Contract, in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate claims. The standard form comprehensive property damage insurance shall include the Trustee and the Lessor as additional named insureds and shall include a provision prohibiting cancellation or termination without thirty (30) days' prior notice by certified mail to the Lessee, the Lessor and the Trustee. A certificate of insurance, in a form acceptable to the Lessee, shall be provided by the primary contractor to the Lessee with respect to each contractor. Such insurance shall provide protection from all claims for bodily injury, including death, property damage, and contractual liability.

4.9 Contractor's Worker's Compensation Insurance. The primary contractor shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its Construction Contract, covering its employees working thereunder and shall require all subcontractors to procure and maintain worker's compensation insurance for their respective employees. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be canceled without thirty (30) days' prior written notice to the Lessee, the Lessor and the Trustee. A certificate issued by the state compensation insurance fund evidencing such coverage for the primary contractor and each subcontractor shall be provided by the primary



contractor to the Lessee or, if such insurance is provided by a private carrier, a completed certificate of insurance, in an amount not less than the statutorily required levels of coverage and in form acceptable to the Lessee, shall be provided by the primary contractor to the Lessee and for to each contractor and subcontractor entering into a Construction Contract.

4.10 Proceeds of Certain Insurance Policies and Performance Bonds. The Net Proceeds of any performance or payment bond or insurance policy required by Section 4.7 or 4.8 of this Lease, and any Net Proceeds received as a consequence of default under a Construction Contract as provided in Section 4.6 of this Lease, shall be paid into the Project Fund if received before the Completion Date for the Facilities, or, if received thereafter, shall be applied as provided in Section 5.3(c) of this Lease.

4.11 Pledge of Certain Project Documents Under the Indenture. The Lessee hereby acknowledges that the Lessor has granted, assigned, and pledged all of its rights, title, and interest in and to the Project Documents to the Trustee under the Indenture as set forth therein. In order to facilitate such grant, assignment and pledge, the Lessee does hereby grant, pledge and assign to the Lessor the Project Documents, including all extensions and renewals of the term thereof, if any, together with certain rights, titles and interests of the Lessee in and to the Project Documents, including, but not limited to, the present and continuing right to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Project Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Lessee under the Project Documents is or may become entitled to. The Lessee further consents and agrees to the grant, pledge and assignment of the Project Documents made by the Lessor under the Indenture and shall execute any further instruments of transfer to effect such assignment as requested by the Trustee.



## ARTICLE V.

### COVENANTS

5.1 Covenants of the Lessee. The Lessee covenants and agrees with the Lessor during the Lease Term as follows:

(a) Use of the Facilities. The Lessee shall use the Facilities only for the purpose of performing one or more essential governmental or proprietary functions of the Lessee consistent with the permissible scope of the Lessee's authority. The Lessee shall not use the Facilities in any way or for any purposes which would constitute or qualify the Facilities as a "private activity" as defined in the Code or which would qualify the Lessor's financing for the Facilities as a private activity bond under the Code. The Lessee will not install, use, operate, or maintain the Facilities improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. The Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Facilities. In addition, the Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of property comprising the Facilities) with all laws of the jurisdictions in which its operations involving the Facilities may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Facilities; provided, however, that the Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the estate of the Lessor in and to the Facilities or the interest or rights of the Lessor under this Lease.

(b) Taxes, Other Governmental Charges and Utility Charges. The Lessor and the Lessee contemplate that the Facilities will be used for a governmental or proprietary purpose of the Lessee and, therefore, that the Facilities will be exempt from all property-related use and sales taxes presently assessed and levied with respect thereto. In the event the use, possession or acquisition of the Facilities are found to be subject to taxation in any form, the Lessee will pay during the Lease Term, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facilities and any equipment or other property acquired by the Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Facilities as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Facilities; that with respect to any governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Lease Term. In the event of the assessment of any taxes on the Facilities, the Lessee shall promptly notify the Lessor of such assessment and provide proof of payment or a sustained protest.



(c) Financial Statements. The Lessee shall annually provide to the Lessor, the Trustee and the Noteholder, as soon as the same are reasonably available to the Lessee the following:

- (i) audited financial statements of the Lessee within 210 days from the end of each fiscal year;
- (ii) the annual budget of the Lessee approved for the following fiscal year within 30 days from the end of each fiscal year;
- (iii) internally prepared quarterly income and expense statements of the Lessee within 45 days of the end of each calendar quarter;
- (iv) proof of appropriation of the Lease Payments for the fiscal year next ensuing prior to the end of each fiscal year; and
- (v) such other financial information relating to the ability of the Lessee to continue this Lease as may be requested by the Lessor, the Trustee or the Noteholder.

The foregoing financial statements and reports, together with a compliance certificate, shall be provided by the Lessee in accordance with the detailed provisions of Section 3.06 of the Indenture.

(d) Continuation of Lease by Lessee. The Lessee intends, subject to the provisions of Section 3.3(c), to continue the Lease Term through the Original Term and all subsequent Renewal Terms and to pay the Lease Payments and Additional Rentals hereunder. The Lessee reasonably believes that legally available funds of an amount sufficient to make all Lease Payments and Additional Rentals during the Original Term and each of the Renewal Terms can be obtained, but subject to annual appropriation in all events. The Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Lease Payments and Additional Rentals may be made, including making provision for such payment to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of state law, and exhausting all available review and appeals in the event such portion of the budget is not approved. The representations herein shall not in any way obligate the Lessee to renew the Lease after the end of the Original Term or any Renewal Term.

(e) Indemnification. To the extent permitted by law, the Lessee shall indemnify, protect, hold harmless, save, and keep harmless the Lessor, the Trustee and the Noteholder, and their directors, officers and agents, from and against any and all liability, obligations, losses, claims and damages whatsoever, and any other legally imposed fines, penalties, taxes, costs or charges regardless of the cause, and from and against expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Lease and the Indenture, the ownership, ordering, acquisition, use, operation, condition, purchase, delivery, rejection,



storage or return of the Facilities, which results in damage to property or injury or death to any person. The indemnification arising under this Section 5.1(e) shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of the Lease Term. The Lessee agrees not to withhold or abate any portion of the Lease Payments required pursuant to this Lease by reason of any defects, malfunctions, breakdowns, or infirmities of the Facilities.

(f) Inspection of Facilities. The Lessee shall, whenever requested, advise the Lessor and the Trustee of the exact location and condition of any and all real or personal property comprising the Facilities. For the purpose of inspection, the Lessor, the Trustee and the Noteholders may enter at reasonable times upon any job, building or place where such property comprising the Facilities and the books and records of the Lessee with respect thereto are located.

(g) Cooperation in Refunding. The Lessee shall cooperate in any note refunding transactions in which the Lessor engages and shall execute any documents deemed necessary and sufficient by the Lessor to that end.

(h) Maintenance of the Facilities by the Lessee. The Lessee shall, at the Lessee's own cost and expense, maintain, preserve and keep the Facilities or cause the Facilities to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition. The Lessee will from time to time make or cause to be made all necessary and proper capital and noncapital repairs, replacements and renewals.

(i) Insurance. The Lessee shall, at its own cost, at all times during the term of this Lease and any extensions hereof, procure and maintain insurance for hazard, fire and extended coverage on Facilities and the contents of the Facilities in such amounts set forth below, and commercial general liability insurance, including coverage for bodily injury, property damage, personal injury, products and completed operations, contractual liability, owner's protective liability, host liquor legal liability and broad form property damage with the following limits of liability: One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage and Two Million Dollars (\$2,000,000) limits for bodily injury and property damage as the general aggregate and for the products and completed operations aggregate. All such insurance shall be procured from a responsible insurance company or companies authorized to do business in the State where the Facilities are located with general policyholder's ratings of not less than "A" and a financial rating of not less than "XI" in the most current available Best's Insurance Reports, and shall be otherwise satisfactory to Lessor and the Trustee. All such policies shall name Lessor and Trustee as additional insureds, and shall provide that the same may not be canceled or altered except upon thirty (30) days prior written notice to Lessor and Trustee. All insurance maintained by Lessee shall be primary to any insurance provided by Lessor. If Lessee obtains any commercial general liability insurance policy on a claims-made basis, Lessee shall provide continuous liability coverage for claims arising during the entire term of this Lease, regardless of when such claims are made, either by obtaining an endorsement



providing for an unlimited extended reporting period in the event such policy is canceled or not renewed for any reason whatsoever or by obtaining new coverage with a retroactive date the same as or earlier than the expiration date of the canceled or expired policy. Lessee shall provide certificate(s) of such insurance to Lessor upon commencement of the Lease term and at least thirty (30) days prior to any annual renewal date thereof and upon request from time to time and such certificates) shall disclose that such insurance names Lessor and Trustee as additional insureds, in addition to the other requirements set forth herein. The minimum coverage terms and limits of such insurance shall not, under any circumstances, limit the liability of Lessee hereunder.

Notwithstanding the foregoing, the hazard, fire, and extended coverage policy covering the Facilities shall be in an amount equal to the greater of the outstanding principal amount of the Notes or the replacement costs of the Facilities and casualty insurance covering direct damage to the Facilities and the Lessee's contents should also be endorsed to provide for loss of rental income resulting from covered direct damage losses. The Lessee shall cause casualty, public liability and property damage (hazard and extended coverage) to be issued requiring a deductible not to exceed \$50,000 per claim unless the Lessor and the Trustee have been notified in writing of an increase thereof by the carrier. For so long as any Note remains outstanding, such casualty insurance shall name the Trustee the loss payee under a standard, or New York, loss payable or mortgagee clause or endorsement. All such Net Proceeds will be deposited by the Trustee in the Revenue Fund for application in accordance herewith. For the sake of clarity, coverage provided by such policy must not be impaired by an act, omission, or default of Lessee or any other person.

Alternatively, the Lessee may insure the Facilities or the Property under a blanket insurance policy or policies, which cover not only the Facilities or the Property, but other properties of the Lessee as well; provided that such blanket insurance policy(ies) meet the principles provided above, including without limitation those addressing the policy amount, additional insureds, and loss payees. If the Lessee shall insure similar properties by self-insurance, the Lessee will insure the Facilities or the Property by means of an adequate insurance fund separately set aside and funded. To the extent that the Lessee provides self-insurance for all or any portion of its requirements under this Section 5.1(i), the Lessee shall provide, at its sole cost and expense, at least annually, to the Lessor and the Trustee a written statement from an independent unaffiliated insurance risk manager or consultant that the self-insurance is reasonable, adequate and covered by reserves measured as sufficient by standards of the industry.

The Lessee shall carry worker's compensation insurance covering all employees working on, in, near or about the Facilities or demonstrate to the satisfaction of the Lessor and the Trustee that adequate funded self-insurance is provided and shall require any other person or entity working on, in, near or about the Facilities to carry such coverage, and will furnish to the Lessor and the Trustee certificates evidencing such coverage throughout the Lease Term.



In the event the Lessee shall fail to maintain the full insurance coverage required by this Lease or shall fail to keep the Facilities in good repair and operating condition, the Lessor or the Trustee may, but shall be under no obligation to, purchase the required policies of insurance and pay the premium on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced by the Trustee shall become Additional Rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon at a rate equal to six (6) percentage points per annum above the rate of the interest component set forth in Schedule C, the Lessee agrees to pay. Any insurance policy issued pursuant to this Section 5.1(i) shall be so written or endorsed as to make losses, if any, payable to the Trustee, the Lessor and the Lessee as their interest may appear. The Net Proceeds of the insurance required in this Section 5.1(i) shall be applied as provided in Section 5.3(c) of this Lease.

5.2 Covenants of the Lessor. The Lessor covenants and agrees with the Lessee during the Lease Term as follows:

(a) Quiet Enjoyment. Subject to the rights of the Lessor and other persons to inspection of the Facilities contained in Section 5.1(f), the Lessor shall provide the Lessee with quiet use and enjoyment of the Facilities and the Lessee shall peaceably and quietly have and hold and enjoy the Facilities, without suit, trouble, or hindrance from the Lessor, except as expressly set forth in this Lease.

(b) Pledge of Lease Revenues. To secure the payment by the Lessor of each and every one of the Lessor's obligations under the Notes, the Lessor has pledged the Lease Payments and Additional Rentals, if any, subject to annual appropriation by the Lessee, together with its right, title and interest in all real and personal property constituting the Facilities to the Trustee, and the Lessor shall be obligated thereunder.

(c) Existence of Lessor. The Lessor will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a non-profit corporation for the duration of the Lease.

5.3 Miscellaneous Covenants and Agreements. The Lessor covenants and agrees with the Lessee and the Lessee covenants and agrees with the Lessor as follows:

(a) Lessor Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE FACILITIES OR ANY OTHER WARRANTY WITH RESPECT THERETO. In no event shall the 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 the Lessee's use of any time or products or services provided for in this Lease.



(b) Vendor's Warranties. The Lessor irrevocably appoints the Lessee its agent and attorney-in-fact during the Lease Term, so long as the Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the property comprising the Facilities, which the Lessor may have against the Vendors. The Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendors and not against the Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of the Lessee or the Lessor with respect to this Lease. The Lessee expressly acknowledges that the Lessor makes and has made no representation or warranties whatsoever as to the existence or availability of any such warranties of the Vendors.

(c) Damage, Destruction and Condemnation. If prior to the termination of the Lease Term (i) the Facilities or any portion thereof is destroyed in whole or in part or are damaged by fire or other casualty or (ii) title to, or the temporary use of, the Facilities or any substantial part thereof or the estate of the Lessee or the Lessor in the Facilities or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental authority, within six (6) months thereafter the Lessee shall elect to either (i) exercise its option to purchase the Facilities and terminate the Ground Lease by making payment of the Option Price as provided in Section 3.4, or (ii) the Lessee and the Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification or improvement of the Facilities. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to the Lessee. If the Net Proceeds are insufficient to pay in full the cost of such repair, restoration, modification or improvement, the Lessee shall either (i) complete the work and pay any cost in excess of the amount of the Net Proceeds, and the Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, the Lessee shall make any payments pursuant to the provisions of this Section 5.3(c), the Lessee shall not be entitled to any reimbursement from the Lessor nor shall the Lessee be entitled to any diminution of the Lease Payments, or (ii) the Lessee shall pay to the Trustee, as assignee, the amount of the then applicable Option Price, and upon such payment, the Lease Term shall terminate and title to the Property, if not previously conveyed to the Lessee, shall then be conveyed by the Lessor to the Lessee as provided in Section 3.4(c) of this Lease. The Trustee may require prior to disbursement of the Net Proceeds for repair, restoration, modification or improvement of the Facilities such performance and payment bonds and other security as the Trustee may deem appropriate to ensure the repair, restoration, modification or improvement of the Facilities. The amount of the Net Proceeds in excess of the then-applicable Option Price, if any, may be retained by the Lessee. Notwithstanding any other provision of this subsection (c) to the contrary, during the occurrence of an event of default, the Net Proceeds will be applied in accordance with the Indenture.

(d) Assignment of Lease. The Lessor may assign this Lease, and the obligations and rights of the Lessee and the Lessor hereunder, only to the Trustee. The Lessee shall not assign this Lease and the obligations and rights of the Lessor and the Lessee hereunder. The Lessee shall be permitted to sublease the Facilities from time to time provided that any



sublease shall not affect the tax-exempt status of the Notes, and no sublease shall relieve the Lessee of its obligations hereunder.

(e) Modification or Alteration of Facilities; No Liens. The Lessee shall have the privilege at its own cost and expense of making substitutions, additions, modifications and improvements to the Facilities, and the same shall be the property of the Lessor and be included under the terms of this Lease as part of the Facilities; provided, however, that (i) such remodeling, substitution, addition, modification and improvement shall not in any way damage the Facilities or cause them to be used for purposes other than those authorized under the constitutional provisions and laws applicable to the Lessee, (ii) the Facilities, as improved or altered upon completion of remodeling, substitution, addition, modification, and improvement made pursuant to this Section 5.3(e) shall be of a value not less than the value of the Facilities immediately prior to the remodeling or the making of substitutions, additions, modifications and improvements, and (iii) the tax-exempt status of the Notes will not be adversely affected. Any property for which a substitution or replacement is made pursuant to this Section may be disposed of by the Lessee in any manner and in the sole discretion of the Lessee, subject to any requirements of the Vendor. Neither the Lessor nor the Lessee will permit any mechanic's or other lien to be established or remain against or the Facilities for labor or materials furnished in connection with any remodeling, substitution, addition, modification, improvement, repair, renewal or replacement so made by the Lessee or permit any other lien or encumbrance to be made against the Facilities at any time during the Lease Term or while the Notes are outstanding, except for Permitted Encumbrances.

(f) Title Insurance. The Lessor and the Lessee agree to make the proceeds of any title insurance policy available to the Trustee as Revenues for the benefit of the Noteholders.

5.4 Tax Covenants of the Lessee. The Lessee covenants and agrees with the Lessor as follows:

(a) General. The Issuer intends that the interest on the Notes shall be excludable from gross income for federal income tax purposes pursuant to sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Income Tax Regulations (the "Regulations"). The Lessee covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Notes to be includable in gross income, as defined in section 61 of the Code, for federal income tax purposes. In particular, the Lessee covenants and agrees to comply with each requirement of this Section 5.4; provided, however, that the Lessee shall not be required to comply with any particular requirement of this Section 5.4 if the Lessee has received an opinion of nationally recognized bond counsel ("Counsel's Opinion") that such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Notes or if the Lessee has received a Counsel's Opinion to the effect that compliance with some other requirement set forth in this Section 5.4 will satisfy the applicable requirements of the Code and the Regulations, in which case compliance with such other requirement specified in such



Counsel's Opinion shall constitute compliance with the corresponding requirement specified in this Section 5.4.

(b) No Private Use or Payment and No Private Loan Financing. The Lessee covenants and agrees that it will make such use of the proceeds of the Notes including interest or other investment income derived from Note proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the Notes will not be "private activity bonds" within the meaning of section 141 of the Code and the Regulations promulgated thereunder. Moreover, the Lessee shall certify, through an authorized officer, employee or agent that based upon all facts and estimates known or reasonably expected to be in existence on the date the Notes are delivered, that the proceeds of the Notes will not be used in a manner that would cause the Notes to be "private activity bonds" within the meaning of section 141 of the Code and the Regulations promulgated thereunder.

(c) No Federal Guarantee. The Lessee covenants and agrees that it has not taken and will not take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Notes to be "federally guaranteed" within the meaning of section 149(b) of the Code and the applicable Regulations thereunder, except as permitted by section 149(b)(3) of the Code and such Regulations.

(d) No Hedge Bonds. The Lessee covenants and agrees that it has not taken and will not take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Notes to be "hedge bonds" within the meaning of section 149(g) of the Code and the applicable Regulations thereunder.



## ARTICLE VI.

### DEFAULT

6.1 Events of Default Defined. The following shall be “events of default” under this Lease, and the terms “events of default” and “default” shall mean, whenever they are used in this Lease, any one or more of the following:

(a) Lease Payments by Lessee. Failure by the Lessee to pay when due any Lease Payment required in Section 3.3 of this Lease, subject to Section 3.3(c) hereof, or any Additional Rentals.

(b) Other Covenants of Lessee. Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 5.1(a), for a period of thirty (30) days after written notice thereof by the Trustee to the Lessee, specifying such failure and requesting that it be remedied, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Default under Indenture or Ground Lease. A default by Lessee shall have occurred under the Indenture or the Ground Lease.

6.2 Remedies on Default. Whenever any event of default referred to in Sections 6.1(a), (b), or (c) shall have occurred, the Trustee, as assignee of the Lessor, shall, at the request of the Requisite Registered Owners, take one or any combination of the following remedial steps:

(a) Retake Possession. With or without terminating this Lease, the Trustee may retake possession of and the Lessee agrees to vacate the Facilities within sixty (60) days and the Trustee may, but is under no obligation to, lease or lease the Facilities for the account of the Lessee holding the Lessee liable for the difference between (i) the payment or other amounts payable by the Lessee hereunder to the end of the then current Renewal Term and (ii) the amounts paid by a lessee or sublessee, if any, of the Facilities pursuant to such lease. The Trustee may continue to lease the Facilities and apply any funds received for the account of the Noteholders as provided in the Indenture during the remainder of the term of the Ground Lease. Notwithstanding the foregoing, upon an event of nonappropriation, the Lessee agrees to vacate the Facilities within sixty (60) days of the end of the current Original Term or Renewal Term.

(b) Recovery of Rents. The Trustee, as assignee of the Lessor, may recover from the Lessee (i) that portion of the Lease Payments which would otherwise have been payable herewith, allocable to any period in which the Lessee continues to occupy the Facilities; and (ii) Lease Payments and Additional Rentals which would have otherwise been payable by the



Lessee hereunder during the remainder of the Original Term or the Renewal Term in which such event of default occurs, after the Lessee vacates the Facilities.

(c) Foreclosure on Mortgage. The Trustee, as assignee of the Lessor, and as mortgagee of the Mortgage, may foreclose on the Mortgage and apply any net proceeds received therefrom for the account of the Noteholders as provided for in the Indenture.

(d) Other Action. Take whatever action at law or in equity may appear necessary or desirable to enforce its rights on behalf of the Noteholders.

6.3 No Remedy Exclusive. No remedy conferred upon or reserved to the 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 the Lessor to exercise any remedy reserved to it in this Article VI, notice shall only be as required in this Article VI.

6.4 Interest on Default. Subject to Section 3.3(c), during an event of default under the Indenture, the Lessee shall increase the interest component of the Lease Payment in Schedule C such that it equals the Default Rate.

6.5 Waivers. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party in writing, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

In view of the assignment of the rights of the Lessor under this Lease to the Trustee pursuant to the Indenture, the Lessor shall have no right to waive any event of default hereunder without the consent of the Trustee; and the waiver of any event of default hereunder by the Trustee shall constitute a waiver of such event of default by the Lessor, without the necessity of any action of or consent by the Lessor. A waiver of an event of default under the Indenture shall constitute a waiver of the corresponding event of default or event of nonappropriation under this Lease; provided that no such waiver shall extend to or affect any subsequent or other event of default or event of nonappropriation under this Lease or impair any right consequent thereon.

6.6 Agreement to Pay Attorneys' Fees and Expenses. In the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Lease Payments, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall pay on demand therefor to the nondefaulting party the fees of such attorneys and such other expenses so incurred, by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.



## ARTICLE VII.

### TERMINATION

7.1 Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events (each a "Termination Event"):

(1) Expiration. The expiration of the Original Term or any Renewal Terms of this Lease and the nonrenewal of this Lease in the event of nonappropriation of funds pursuant to Section 3.3(c).

(2) Exercise of Option. The exercise by the Lessee of the option to purchase the Facilities and terminate the Ground Lease as set forth in Section 3.4 of this Lease.

(3) Damage, Destruction, Condemnation. The termination of this Lease by reason of damage to or the destruction or condemnation of the Facilities as provided in Section 3.4(b) and 5.3(c) of this Lease.

(4) Lessee Default. A default by the Lessee as defined in Section 6.1 of this Lease, and the Trustee's election to terminate this Lease.

(5) Full Payment. The payment by the Lessee when due of all Lease Payments and Additional Rentals authorized or required to be paid by the Lessee hereunder.



## ARTICLE VIII.

### MISCELLANEOUS

8.1 Notices. All notices, certificates or other communications provided in this Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the following addresses and the Trustee at the address set forth in the Indenture:

(a) If to the Lessor:

Northern Wyoming Community College Building Authority  
3059 Coffeen Avenue / P.O. Box 1500  
Sheridan, WY 82801-1500  
Attention: President

(b) If to the Lessee:

Northern Wyoming Community College District  
3059 Coffeen Avenue / P.O. Box 1500  
Sheridan, WY 82801-1500  
Attention: Cheryl Heath, Vice President of Administrative Services

The Lessor, the Lessee and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

8.2 Binding Effect. This Lease will inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns, subject to Section 5.3(d).

8.3 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Lease.

8.4 Amendments. This Lease may be amended in writing by the Lessor and the Lessee but only with the prior consent of the Trustee as provided in Article XII of the Indenture.

8.5 Schedules Incorporated. The Schedules referenced above and throughout the Lease are incorporated herein. They are:

- (1) Schedule A - Description of the Facilities.
- (2) Schedule B - Legal Description of the Property.
- (3) Schedule C - Original and Renewal Term Lease Payment Schedules.
- (4) Schedule E - Permitted Encumbrances.
- (5) Schedule F - Requisition Form.



8.6 Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.7 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

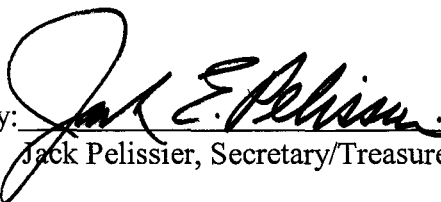
8.8 Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

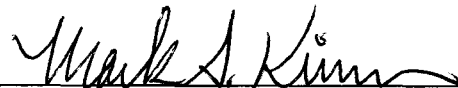
IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in its corporate name with its corporate seal affixed and attested by its duly authorized officers and the Lessee has caused this Lease to be executed in its corporate name with its corporate seal affixed and attested by its duly authorized officers. This Lease is effective as of the date first above written.

LESSOR:

NORTHERN WYOMING COMMUNITY  
COLLEGE BUILDING AUTHORITY

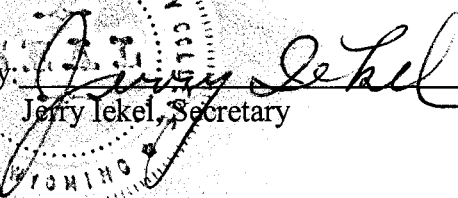
ATTEST:

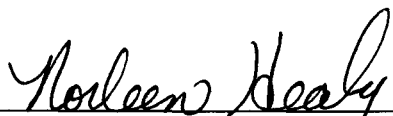
By:   
Jack Pelissier, Secretary/Treasurer

By:   
Mark Kinner, President

LESSEE:

NORTHERN WYOMING COMMUNITY  
COLLEGE DISTRICT, STATE OF  
WYOMING

By:   
Jerry Ikel, Secretary

By:   
Norleen Healy, Vice Chairman





STATE OF WYOMING )  
 ) ss:  
 COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me this 4th day of December, 2014, by Mark Kinner, as President and by Jack Pelissier, as Secretary/Treasurer, Northern Wyoming Community College Building Authority.

WITNESS my hand and official seal.

[SEAL]



Jana Clements  
 Notary Public for the State of Wyoming

My Commission Expires: October 9, 2016

STATE OF WYOMING )  
 ) ss:  
 COUNTY OF SHERIDAN )

The foregoing instrument was acknowledged before me this 4th day of December, 2014 by Norleen Healy, as Vice Chairman and by Jerry Iekel, as Secretary, Northern Wyoming Community College District.

WITNESS my hand and official seal.

[SEAL]



Jana Clements  
 Notary Public for the State of Wyoming

My Commission Expires: October 9, 2016



**SCHEDULE A**  
**To**  
**Facilities Lease Agreement**

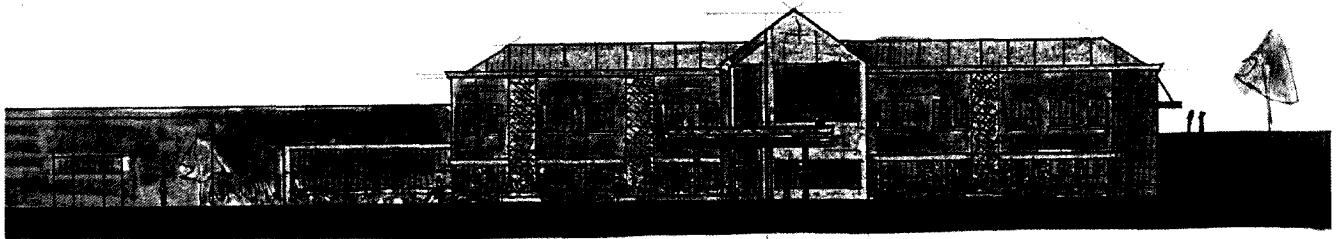
**DESCRIPTION OF THE FACILITIES**  
(page 1 of 2)

The original science building was built in 1982 consisting of approximately 23,863 square feet, containing class rooms and science labs. The building will be renovated and approximately 18,424 new square feet will be added to the building. In addition to the use as a science classroom and lab building, the newly renovated and expanded building will also house classrooms and labs for agricultural programs, including agribusiness, commodities trading, and science. The building will be renamed the "Mars Agricultural Center and Science Building."

The Facilities, as renovated and expanded, will be designed to support the growth in agricultural courses and support enrollment growth for 85 students. The building will house shared labs for agricultural and science, thereby maximizing the use of lab space at the college.



(Page 2 of 2)



## **Mars Agriculture Center and Science Building Renovation**

**18,424 square feet new + science labs renovation**

<b>Budget:</b>		<b>\$8 million</b>
<b>Funding:</b>	<b>Mr. &amp; Mrs. Mars</b>	<b>\$4.0 million</b>
	<b>Whitney Benefits</b>	<b>1.3</b>
	<b>State</b>	<b>2.7</b>

- Classroom and lab building for agriculture programs, including agri-business, commodities trading, and science
- Makes excellent use of existing space, while constructing new space that will be flexible and adaptive to changes in educational programs
- Co-locating agriculture and science programs allows for cross-discipline interaction, and shared lab space which improves efficiency and maximizes use of critical lab space
- The Science building was built in 1982 and has not had significant upgrades; classrooms and labs need significant updating
- Building is undersized for the number of students we are serving with required science courses
- Science courses support specific majors as well as our health science programs



**SCHEDULE B**  
**To**  
**Facilities Lease Agreement**

**LEGAL DESCRIPTION OF THE PROPERTY**

A tract of land situated in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, Township 55 North, Range 84 West, 6th P.M., Sheridan County, Wyoming, as shown on **EXHIBIT "C"** attached hereto and by this reference made a part hereof; said tract of land being more particularly described as follows:

Commencing at the north quarter corner of said Section 11 (Monumented with a 3/4" Aluminum Cap per PLS 2615); thence S73°14'30"E, 233.72 feet to the **POINT OF BEGINNING** of said tract; thence N89°17'13"W, 189.67 feet to a point; thence, through a curve to the right, having a central angle of 19°32'43", a radius of 178.00 feet, an arc length of 60.72 feet, a chord bearing of N79°30'52"W, and a chord length of 60.43 feet to a point; thence N69°44'30"W, 68.50 feet to a point; thence, through a curve to the left, having a central angle of 110°17'09", a radius of 30.00 feet, an arc length of 57.75 feet, a chord bearing of S55°06'55"W, and a chord length of 49.23 feet to a point; thence N00°01'39"W, 217.89 feet to a point; thence N67°17'22"E, 238.62 feet to a point; thence S22°44'44"E, 345.83 feet to the **POINT OF BEGINNING** of said tract.

Said tract contains 1.79 acres of land, more or less.

Bearings are Based on the Wyoming Coordinate System, NAD 1983, East Central Zone.



**SCHEDULE C**  
**To**  
**Facilities Lease Agreement**

ORIGINAL AND RENEWAL TERM LEASE PAYMENT SCHEDULE

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Lease Payment</u>
12/11/2014	\$ 5,000.00	-0-	\$ 5,000.00
08/15/2015	\$ 59,032.66	\$ 95,967.34	\$155,000.00
08/15/2016	\$235,268.36	\$139,731.64	\$375,000.00
08/15/2017	\$242,679.24	\$132,320.76	\$375,000.00
08/15/2018	\$250,323.57	\$124,676.43	\$375,000.00
08/15/2019	\$258,208.68	\$116,791.32	\$375,000.00
08/15/2020	\$266,342.18	\$108,657.82	\$375,000.00
08/15/2021	\$274,731.88	\$100,268.12	\$375,000.00
08/15/2022	\$283,385.85	\$ 91,614.15	\$375,000.00
08/15/2023	\$292,312.42	\$ 82,687.58	\$375,000.00
08/15/2024	\$301,520.17	\$ 73,479.83	\$375,000.00
08/15/2025	\$311,017.97	\$ 63,982.03	\$375,000.00
08/15/2026	\$320,814.94	\$ 54,185.06	\$375,000.00
08/15/2027	\$330,920.51	\$ 44,079.49	\$375,000.00
08/15/2028	\$341,344.41	\$ 33,655.59	\$375,000.00
08/15/2029	\$352,096.66	\$ 22,903.34	\$375,000.00
08/15/2029	\$375,000.00	-0-	\$375,000.00



**SCHEDULE E**  
**To**  
**Facilities Lease Agreement**

PERMITTED ENCUMBRANCES

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of this Lease; (ii) this Lease, the Indenture, and the Mortgage; (iii) utility, access and other easements and rights-of-way, restrictions and exceptions existing as of the date hereof and disclosed to the Lessor and the Trustee as part of a title commitment; (iv) any financing statements filed to perfect security interests pursuant to this Lease or the Indenture; and (v) those additional encumbrances and exceptions to title set forth in Title Insurance Commitment number 46093 issued by First American Title Insurance Company on December 2, 2014.



**SCHEDULE F**  
**To**  
**Facilities Lease Agreement**

\$4,500,000  
Northern Wyoming Community College Building Authority  
Lease Revenue Note  
(Mars Agricultural and Science Center Project)

**REQUISITION FORM**

Wyoming Bank & Trust  
5827 Yellowstone Road  
Cheyenne, WY 82009

Attn: Corporate Trust Department

RE: Direction to Make Disbursements from Project Fund

Pursuant to Section 4.2 of the Facilities Lease Agreement (the "Lease") between the Northern Wyoming Community College Building Authority, as lessor (the "Issuer"), and Northern Wyoming Community College District, as lessee (the "Lessee"), dated as of December 11, 2014, the undersigned Lessee Representative hereby requests and authorizes the Wyoming Bank & Trust, as trustee (the "Trustee"), as depository of the Project Fund created by the Indenture, as defined in the Lease (the "Indenture"), to pay to the person(s) listed below, or reimburse the Lessee, from the Project Fund the amount indicated below. All capitalized terms herein shall have the meanings assigned to such terms in the Lease and the Indenture.

1. This is requisition number \_\_\_\_\_ from the Project Fund.
2. The name and address of the person, firm or corporation to whom payment is due or to whom payment was made is as follows:

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3. The amount to be paid or reimbursed is \$ \_\_\_\_\_.
4. Each obligation mentioned herein has not been the basis of any previous withdrawal from the Project Fund.
5. The disbursement requested will be used for a Cost of Construction with respect to



the Facilities, (the "Project"). The nature of the obligations for which the disbursement is requested is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Each obligation mentioned herein is or was reasonable and necessary in connection with the Project and is a proper charge against the Project Fund.
7. Upon payment of the amount requested in this requisition, the amount remaining in the Project Fund, together with other legally available monies of the Lessee are sufficient to pay the portion of the cost of the Project not unpaid.
8. No event of nonappropriation as provided in Section 3.3(c) of the Lease has occurred, no Event of Default has occurred under the Indenture and the right of the Lessee to direct the acquisition, construction and equipping of the Facilities has not otherwise been terminated.
9. Accompanying this requisition is bill, invoice or statement of account for the obligation mentioned herein.

IN WITNESS WHEREOF, the Lessee Representative has set his hand as of the \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Lessee Representative