FACILITIES LEASE AGREEMENT

THIS FACILITIES LEASE AGREEMENT (the “Lease”) is made and entered into as of the ___ day of __________, 2019 (the “Effective Date”) by and between the MAYOR AND ALDERMEN of the TOWN OF JONESBOROUGH, TENNESSEE (“Landlord”), a duly incorporated municipality located within Washington County, Tennessee, and WASHINGTON COUNTY, TENNESSEE (“Tenant”), a governmental corporation of the State of Tennessee.

RECITALS:

Landlord has undertaken purchase of certain real property being approximately 48 acres of tax parcel 052-011.00 in Washington County, Tennessee, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “Premises”), upon a portion of which Landlord shall construct athletic facilities as generally described or depicted on Exhibit B and incorporated herein by this reference (the “Improvements”). The portion of the Premises upon which the Improvements are to be constructed is referred to hereinafter as the “Property”; and the Property and Improvements are hereinafter referred to, collectively, as the “Facilities”).

By separate Building Lease Agreement (“Building Lease”), Tenant intends to lease from Landlord a multi-use facility to be constructed by Landlord upon another portion of the Premises (the “Building”).

Landlord has undertaken application for financing of its purchase of the Premises and design and construction of the Building and Improvements via long term municipal indebtedness (referred to as the “Bonds” herein and in the Building Lease) and short term municipal indebtedness (referred to as “Interim Financing” herein and in the Building Lease). (The Bonds and the Interim Financing are referred to hereinafter, collectively, the “Financing”).

The costs of the acquisition of the Property and construction of the Improvements are paid from the proceeds of the Financing.

Exclusive of the Building which Tenant intends to lease under the Building Lease, Tenant desires to lease hereunder the Facilities in association with its lease of the Building for use with a school, while allowing Landlord to reserve use of portions of the Facilities for community athletic and administrative purposes.

The purchase of the Premises and construction of the Building and Improvements is contingent upon Landlord’s obtaining the Financing. In the event that the Landlord is unable to obtain the Financing, Landlord or Tenant shall have the right, upon notice to the other party, to terminate this Lease; and, in such event, the parties shall be released from their liabilities and obligations hereunder, except as explicitly stated herein.

NOW, THEREFORE, in consideration of the foregoing, the sum of $1.00 in hand paid, and the mutual promises and the terms and conditions hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. INCORPORATION AND INTENT; DESIGN AND CONSTRUCTION
1.1 Each of the recitals set forth above is incorporated herein by this reference and made a substantive part of this Lease.

1.2 Landlord and Tenant enter into this Lease with the express anticipation that existing law, as set forth in Tennessee Code Annotated section 49-3-315(a) (as interpreted by, *inter alia*, *City of Athens Bd. of Education v. McMinn County*, 467 S.W.3d 458 (Tenn. Ct. App. 2014); *Harriman v. Roane County*, 553 S.W.2d 904, 905-06 (Tenn. 1977), will govern this Lease and specifically not any law as proposed by pending HB 1352 and SB 1216 (111th General Assembly). Landlord and Tenant expressly would not enter into this Lease in the absence of existing law, which allows Landlord to purchase, design, and construct capital improvements on the property without necessity for Tenant to apportion any such costs to any municipality situated within Washington County. Landlord and Tenant expressly rely upon, *inter alia*, Article I, § 10, clause 1 of the United States Constitution and Article I, § 20 of the Tennessee Constitution.

1.3 A committee (the “Design Committee”), which shall be comprised of representatives of Landlord, Tenant and Washington County School Board (the “School Board”), as provided in the Inter-Local Agreement of even date herewith by and between Landlord, Tenant and the School Board, will, in consultation with architects, engineers, and planners and construction consultants, duly qualified and registered to practice in the State of Tennessee, formulate the design of the Improvements, which shall be reflected on the construction plans and specifications approved by Landlord (the “Construction Drawings”). The approved Construction Drawings will be provided to the School Board and Tenant for comments and suggestions. The School Board and Tenant, each, will provide written comments and suggestions to Landlord, each adopted by their respective Board or Commission, within thirty (30) days of receipt of the Construction Drawings submitted by Landlord. The Landlord and professional advisors will consider those written comments and suggestions with input from the Design Committee, and will thereafter submit the Landlord’s response and any revised Construction Drawings (the “Landlord’s Response”) to the School Board and Tenant. Within thirty (30) days of receipt of the Landlord’s Response, the School Board and Tenant, each, shall determine whether to accept and move forward with the construction process based on the design of the Improvements as submitted in the Landlord’s Response. If both the School Board and Tenant timely accept the design, Landlord will finalize and approve the Construction Drawings (“Final Construction Drawings”) and provide written notice to Tenant and the School Board of Final Construction Drawings. If either or both of the School Board and Tenant rejects or fails to timely accept the design reflected in the Landlord’s Response, Landlord or Tenant shall have the right, upon written notice to the other party delivered within sixty (60) days (unless otherwise agreed in writing by both parties) following submittal of the Landlord’s Response to the School Board and Tenant, to terminate this Lease; and in such event, the parties shall have no further obligations or liabilities hereunder and will be released from their liabilities and obligations hereunder; except that, to the extent not paid under the terms of the Building Lease, Tenant shall be liable to Landlord for payment of all of (a) Landlord’s actual invoiced expenses supported by written documentation incurred in the planning or design of the Facilities, including without limitation, architects’, engineers’, planners’, attorneys’ and other professionals’ fees, acquisition costs of the Premises, and costs incurred in efforts to obtain Interim Financing, plus (b) 20% of such invoiced amounts to reimburse for Landlord staff time (including staffing the Design Committee and coordinating work of the architects, engineers and other professionals), administrative costs and overhead, not to exceed $120,000 per year during the first year after the Effective Date, such percentage declining from 20% to 10% thereafter, ((a) and (b) collectively, the “Termination Costs”). Termination of the Facilities
Lease pursuant to this Section 1.3 shall automatically cause an immediate termination of the Building Lease.

1.4 The Improvements shall be constructed by Landlord in accordance with the Final Construction Drawings, as may be amended at Landlord’s reasonable discretion upon providing written notice to Tenant; provided however, Landlord shall not be in default under this Section 1.4 as long as the Improvements are substantially in accordance with the Final Construction Drawings. Upon receipt of certificate of occupancy for the Improvements, Landlord shall deliver same to Tenant subject to the terms of this Lease. Landlord and Tenant will acknowledge and confirm the date of such delivery (the “Occupation Date”) in writing.

1.5 In the event Landlord is unable to obtain the Financing or any part thereof in accordance with the terms of the Building Lease, and the Building Lease is terminated for that reason as provided therein, this Lease shall thereupon automatically immediately terminate; and the parties shall have no further obligations or liabilities hereunder and will be released from their liabilities and obligations hereunder, except that, to the extent not paid under the terms of the Building Lease, Tenant shall nevertheless pay in full the outstanding Interim Financing, including the principal, interest, reserve replenishment, indemnity, fees, costs and expenses required to be paid or prepaid on such date with respect to the Interim Financing, and all reasonable fees, charges and disbursements of the trustee, lender or any bond or note holder accrued and to accrue until the date of full payment, together with the Termination Costs.

2. LEASE GRANT AND RESERVATION

2.1 Subject to the terms and conditions of this Lease, Landlord hereby demises and leases to Tenant and Tenant does hereby lease, hire and take from Landlord the Facilities to be prepared or constructed by Landlord on the Property.

2.2 Notwithstanding the foregoing, Landlord reserves the right to use the parking lots, grounds, and sports fields on the Property for public purposes before and after school hours when not otherwise in use for school activities by Tenant, along with reasonable access to all of the foregoing so long as such usage does not interfere with operations of the school in the Building as reasonably determined by Tenant. It is anticipated that Tenant’s actual use of the Facilities in relation to school purposes will be approximately 20% of the total usage of the Facilities; and Landlord’s actual use for the general public will be approximately 80%. Landlord and Tenant agree to cooperate to produce annually evidence of actual usage of the Facilities.

3. TERM

3.1 The term of this Lease (“Term”) shall be a period equal to the full length of the Bond Term (as defined in the Building Lease) under the Building Lease, but in no event less than 20 years, commencing on the Occupation Date. The Term hereunder shall not be shortened by early termination of the Building Lease for reasons of default or payment of the Financing or otherwise.

4. RENT

4.1 a. Beginning on the Occupation Date and continuing during the Term, Tenant shall pay to Landlord rent in the amount of $41,700.00 per month (“Rent”), which amount is attributable to
Landlord’s costs of (i) maintenance and management of the Facilities and (ii) other parks and recreation programming of Landlord, including, but not limited to, classes and educational programs at the McKinney Center at Booker T. Washington School, Oak Hill School and programming for youth through the Heritage Alliance, Jonesborough Story Initiative – school based program, Chuckey Depot Museum programming for youth, walkway development to enhance family exercise, youth oriented special events, and (iii) other uses. Landlord will provide annually to Tenant on request a breakdown of costs of maintenance and management of the Facilities.

b. Rent shall be due and payable in full in advance on the first day of every calendar month throughout the Term of this Lease; provided that the first month’s Rent shall be due on the Occupation Date. Payment of Rent shall be made to Landlord, without notice or demand, at the address specified in Section 27.1 of this Lease, or at such other place that Landlord may from time to time designate in writing. If any payment of Rent is for a period shorter than one full calendar month, Rent for that fractional calendar month shall be pro-rated on a per diem basis (calculated on the basis of a 30-day month) but in no event shall the amount paid be less than the amount of Rent due in the same calendar month or otherwise prior to the next monthly payment of Rent.

4.2 Tenant agrees to pay as additional rent all of the following: (i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes and special lien special assessments, if any, levied upon the Facilities or upon any interest of the Landlord or Tenant therein or in the Lease; (ii) insurance premiums, if any, on all insurance required under the provisions of the Lease; and (iii) all amounts arising from or relating to any and all claims, actions, damages, suits, judgments, decrees, orders, liabilities and expenses (including without limitation, reasonable attorneys’ fees) arising from, pertaining to or in connection with any matter arising out of or resulting from any legal challenge to this Lease, payment of any amounts due pursuant to this Lease including without limitation Rent, or litigation arising out of or relating to this Lease or the payment of any amounts due pursuant to this Lease including Rent (the “Additional Rent”). Amounts constituting Additional Rent payable hereunder shall be paid by Tenant directly to the person or persons to whom such amounts shall be payable. Tenant shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 30 days after notice in writing from the Landlord to Tenant stating the amount of Additional Rent then due and payable and the purpose thereof except in the case of insurance premiums which must be paid immediately upon notice of payment. (As used in this subparagraph and hereinafter, “Rent” includes and Additional Rent.)

4.3 If any payment of Rent is not paid when due under this Lease, then, in addition to the payment then due, Tenant shall pay Landlord, as other Rent, interest thereon at the Default Rate (as hereinafter defined) commencing from the date said Rent is due. The assessment or non-assessment of the Default Rate pursuant to the terms hereof shall be in Landlord’s reasonable discretion, and is in addition to all other rights and remedies Landlord may have under this Lease. Interest as provided herein shall be due and payable on demand, and Landlord shall have the same rights and remedies for non-payment of interest as for a non-payment of Rent.

4.4 Rent due to Landlord under this Lease shall, unless and to the extent expressly otherwise provided herein, be due and payable without any notice, demand, off-set, credit, deduction or abatement. Except as may otherwise be expressly provided herein, it is the purpose and intent of Landlord and Tenant that this Lease be construed and treated to yield net to Landlord the Rent to be paid by Tenant during the Term of this Lease. . Notwithstanding any alleged defense, counterclaim or offset against
Rent, Tenant’s obligations to pay Rent hereunder is an independent covenant; and Tenant shall continue to pay Landlord all Rent faithfully when due, including during the continuance of any dispute or legal action, subject to reimbursement if directed by a court of competent jurisdiction. Tenant hereby consents to the entry in any court action of an order requiring Tenant to make Rent payments during the pendency of a lawsuit. The obligations of Tenant under this Lease will not be modified, waived or otherwise affected, by reason of: (i) any damage to or destruction of the Facilities or any portion of the Facilities except as may be otherwise expressly provided herein; (ii) any partial or temporary taking of the Facilities or any part of the Facilities by condemnation or otherwise except as may be otherwise expressly provided herein; (iii) any prohibition, limitation, interruption, cessation, restriction or prevention of Tenant’s use, occupancy or enjoyment of the Facilities or any interference with such use, occupancy or enjoyment by any person; (iv) any action of any governmental authority; (v) construction on or renovation of the Facilities; (vi) any failure of the Facilities to comply with applicable law or (vii) any other cause whether similar or dissimilar to the foregoing.

4.5 Tenant hereby covenants to use any legally available funds of Tenant as may be necessary to pay Rent, and to take such action as may be necessary to include all Rent due hereunder in its annual budget until end of the Term of this Lease. The covenants on the part of Tenant herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of Tenant to take such action and do such things as are required by law in the performance of such official duty of such officials to enable Tenant to carry out and perform the covenants and agreements on the part of Tenant contained in the Lease. The obligation of Tenant to make Rent payments constitutes a general obligation of Tenant for which the full faith and credit and unlimited taxing authority of Tenant outside the corporate limits of the City of Johnson City are pledged.

4.6 The payments of Rent under the Lease attributable to each lease year or portion thereof during the Term shall constitute the total rental for such lease year or portion thereof and shall be paid by Tenant for and in consideration of the right to the use and occupancy, and the continued quiet use and enjoyment, of the Facilities by Tenant for and during such lease year or portion thereof. The parties hereto have agreed and determined that such total rental is not in excess of the total fair rental value of the Facilities. In making such determination, consideration has been given to the costs of acquisition and financing of the Facilities, the uses and purposes served by the Facilities, and the benefits therefrom that will accrue to the parties by reason of the Lease and to the general public by reason of the Tenant’s use of the Facilities.

5. USE

5.1 Tenant shall use and occupy the Facilities in association with its lease of the Building on the Premises (for a public school) and in conjunction with general community use in coordination with Landlord (the “Permitted Use”) in accordance with all applicable Laws (hereafter defined) or as otherwise permitted by Landlord.

5.2 Tenant shall not conduct any activity in or on the Facilities that violates any Laws or that adversely affects in a material way the value of the Property and Improvements as security for the Financing, and Tenant shall not commit or suffer to be committed any waste upon the Facilities.

5.3 Tenant shall comply with all Laws now and hereafter affecting the Facilities, including without
limitation, all environmental statutes, all regulations, codes, ordinances and the Americans with Disabilities Act ("ADA"). Tenant agrees to comply with requirements of the ADA and state and local law applicable to the Facilities to accommodate its employees, students, invitees and the public and will be responsible for any accommodations or alterations which need to be made to the Facilities to accommodate the Tenant’s employees, students, invitees and the public. Tenant shall not permit the release, emission, disposal, dumping or storage of hazardous wastes (as defined in any such Laws) anywhere on, in or from the Facilities and the provisions of this sentence shall survive the expiration of the Term of this Lease. Landlord shall not be liable for the act of any other person who may cause damage to or who may interfere with Tenant’s use or occupancy of the Facilities.

5.4 Tenant, in using the Facilities for school purposes or other events, shall be responsible for the litter pickup and trash removal, security and proper management of the Facilities.

6. [INTENTIONALLY OMITTED]

7. UTILITIES

7.1 Tenant shall contract in its own name for and fully and promptly pay all gas, heat, light, power, telephone service and other public or private utilities of every kind furnished to the Facilities throughout the Term of this Lease beginning on the Occupation Date; and Landlord shall have no responsibility of any kind for any such utilities following the Occupation Date. Under no circumstances shall Landlord be responsible for any interruption of any utility service except if caused solely by the gross negligence or willful misconduct of Landlord following the Occupation Date.

7.2 Tenant shall have utilities to the Facilities transferred into its name upon the Occupation Date.

7.3 Landlord shall be responsible for cost of trash dumpster services.

8. DELIVERY OF FACILITIES

8.1 Landlord shall deliver the Facilities to Tenant on the Occupation Date (a) free and clear of all liens and encumbrances including any potential liens resulting from construction of the Facilities and (b) compliant with all laws, rules and regulations relating to the design, construction and operation of the Facilities for their intended use.

8.2 Landlord will provide upon the completion of construction of the Facilities a certificate from Landlord and the architect used for construction of the Facilities in a form acceptable to Tenant to confirm the Facilities (a) have been constructed in substantial accordance with all Final Construction Drawings and other plans and specifications related to construction of the Facilities and (b) there exists no known design or construction flaws with the Facilities. Landlord shall provide to Tenant all certificates and other written evidence from contractors, architects and any other vendor used in connection with the Facilities to confirm completion of the Facilities in accordance with Final Construction Drawings and related plans and specifications. Landlord shall also provide in such certificate a sources and uses of funds to demonstrate actual costs of construction incurred by Landlord for the project comprised of the Improvements and Building.

8.3 Landlord shall require (a) the construction contracts and architect agreement related to the Final
Construction Drawings to include standard contractual obligations to construct the Facilities in accordance with Environmental Laws and to not contain Hazardous Substances; and (b) such contractors and architects to deliver to Landlord and Tenant a certificate of compliance with such laws upon completion of construction of the Facilities.

8.4 Notwithstanding any failure, breach or dispute as to the foregoing requirements of Sections 8.1, 8.2 and 8.3, Rent shall continue to be paid as provided in Section 4 without notice, demand, off-set, credit, deduction or abatement.

8.5 Following delivery by Landlord to Tenant, Tenant is accepting the Facilities on an “AS IS” “WHERE IS” basis from Landlord and with no liabilities or obligations on the part of Landlord with respect thereto except as may otherwise be expressly set forth in this Lease.

9. LANDLORD’S REPAIRS AND MAINTENANCE

9.1 Except as otherwise specifically provided herein, Landlord shall, at its sole expense and throughout the Term of this Lease, keep the Facilities in a neat and orderly fashion so as to maintain it in first class condition and repair, and keep, maintain, and replace same, as necessary, in each and every respect, including but not limited to athletic fields and appurtenant facilities and equipment, sidewalks, landscaping and irrigation lines (if applicable), parking areas, (including surfacing, striping, paving and sealing), curbing. Landlord shall keep the area around the building leased by Tenant under the Building Lease, including the sidewalk, landscaped areas and parking lot clean and free of all trash and garbage. Within sixty (60) days after demand by Tenant to comply with the requirements of this Section 9.1, Landlord shall develop a corrective action plan setting out when repairs will be made; and if Landlord does not commence and diligently prosecute to completion the work in accordance with said plan, then Tenant shall have the right, but not the obligation, to cause such work to be accomplished at Landlord’s cost and expense which sums shall be due and payable to Tenant upon demand, and shall bear interest at the Default Rate (as hereinafter defined) until paid. Notwithstanding the foregoing, Landlord agrees to maintain, repair and replace the Facilities to same standards offered to other school recreation facilities located in Washington County.

9.2 Landlord shall not be liable for injury to persons or damage to property resulting from its maintenance and repair of the Facilities, except as a result of Landlord’s negligent act or willful misconduct.

9.3 Tenant will have the obligation to report to Landlord any damage to or safety concern related to the Facilities as soon as practicable after discovery.

10. FIXTURES, ALTERATIONS AND IMPROVEMENTS

10.1 Tenant shall not impair the structural integrity of the Facilities, interfere with the Facilities’ systems, or invalidate or jeopardize any applicable warranty with respect to the construction of the Facilities without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall not violate any Laws in connection with any installation, alteration or improvement undertaken by Tenant. All such installations, alterations and improvements shall be undertaken and completed at Tenant’s sole expense and in accordance with the plans and specifications approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or
delayed. All such work shall be undertaken using licensed and insured contractors, shall be prosecuted
diligently to completion, shall be of good workmanship and materials, and shall comply fully with all
terms of this Lease and all Laws applicable to same. Upon completion of the installation, alteration or
improvement to the Facilities, at Landlord’s request, Tenant shall promptly provide Landlord with
evidence, including an architect’s certificate, certifying the work to have been completed in conformity
with the plans and specifications, a certificate of occupancy (if the work is of such nature as would
require the issuance of a certificate of occupancy), proof of payment to any party performing the work,
and any other documents or information reasonably requested by Landlord. Landlord’s approval of the
plans and specifications shall not be deemed in any respect a representation or warranty, that the work
will be structurally sound, have a value of any particular magnitude or otherwise satisfy a particular
standard; and Landlord shall have no duty to inform Tenant of Landlord’s assessment. In all
circumstances, Tenant shall be required to close all permits for any work performed by Tenant which
requires a permit pursuant to applicable governmental requirements pertaining thereto. At the expiration
or earlier termination of this Lease, Landlord reserves the right, to cause Tenant to remove such fixtures,
alterations or improvements so made so as to return the Facilities to their original condition; and, if so
requested, Tenant shall promptly repair in a good and workmanlike manner and in compliance with all
Laws, any damage caused by removal thereof. At the time that Tenant requests approval of Landlord
for installation of a fixture or alteration or improvement to the Facilities, Tenant shall have the right to
request whether Landlord will require removal of same at the expiration of the Lease; and, if so
requested, Landlord will so advise Tenant. In the event that Tenant fails to remove such fixtures,
alterations or improvements within ninety (90) days in the manner so provided, Landlord shall be
permitted to do same at Tenant’s cost and expense. This Section 10.1 shall survive expiration or
termination of this Lease.

10.2 Unless Landlord has accepted in writing ongoing maintenance and management responsibilities,
Tenant shall, at its sole expense and throughout the Term of this Lease, keep the fixtures, alterations and
improvements installed or made by it to the Facilities in a neat and orderly fashion so as to maintain
them in first class condition and repair, and keep, maintain, and replace same as necessary. If within
thirty (30) days after demand by Landlord to comply with the requirements of this Section 10.2, Tenant
does not commence and diligently prosecute to completion such work, then Landlord shall have the
right, but not the obligation, to cause such work to be accomplished at Tenant’s cost and expense which
sums shall be due and payable to Landlord upon demand, and shall bear interest at the Default Rate (as
hereinafter defined) until paid.

11. LIENS

11.1 Tenant shall keep the Facilities free and clear of all liens and claims of liens for labor, services,
materials, supplies, or equipment performed on or furnished to the Facilities at Tenant’s request. All
repairs, installations, alterations, improvements and removals by Tenant shall be done in a good and
workmanlike manner, only after Tenant has procured all required permits. Tenant shall comply with all
Laws and with all of Tenant’s insurance requirements; and the work shall not adversely affect the
structure of the Facilities. Tenant shall pay promptly when due all charges for labor and materials in
connection with any work done by or for Tenant or anyone claiming under Tenant. Tenant shall protect,
defend, save harmless and indemnify Landlord from and against all losses, claims, liabilities, injuries,
expenses (including attorneys’ fees), lawsuits and damages arising out of any lien described herein.
NOTICE IS HEREBY GIVEN THAT LANDLORD IS NOT AND SHALL NOT BE LIABLE FOR
ANY LABOR, SERVICES, MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR
TO ANYONE HOLDING THE FACILITIES OR ANY PART THEREOF, AND THAT NO CONSTRUCTION OR OTHER LIEN FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO THE FACILITIES. ALL MATERIALMEN, CONTRACTORS, LABORERS, OR OTHER PERSONS FURNISHING ANY SERVICES OR MATERIALS TO TENANT ARE HEREBY NOTIFIED THAT THEY MUST LOOK EXCLUSIVELY TO TENANT TO OBTAIN PAYMENT FOR SAME. TENANT SHALL DELIVER WRITTEN NOTICE OF THE PROVISIONS OF THIS SECTION TO ALL PERSONS PERFORMING WORK ON THE FACILITIES.

11.2 If any such lien exists, Tenant shall, within thirty (30) days after Tenant’s receipt of notice of such lien, have such lien discharged of record or deliver to Landlord a recordable bond in form, amount, and issued by a surety satisfactory to Landlord, indemnifying Landlord against all costs and liabilities resulting from such lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such lien released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same; and Tenant shall reimburse Landlord upon demand for the amount paid by Landlord, including expenses and attorneys’ fees.

12. SUBORDINATION

12.1 This Lease shall at all times be subject and subordinate to the lien of any mortgages, deeds of trust, ground leases, or other encumbrances recorded now or subsequently against the Facilities and all renewals, modifications, re-financings and extensions thereof (each an “Encumbrance”) provided, however prior to Tenant’s obligation to subordinate Tenant must approve and accept in writing all such Encumbrances other than those encumbrances incurred in connection with the Financing. This subordination does not apply to mechanics and materialmen’s liens created by Landlord during construction of the Facilities. This clause shall be self-operative, but within twenty (20) days after the receipt of a written request from Landlord or any Encumbrance holder, Tenant shall execute a commercially reasonable subordination agreement together with any customary additional documents evidencing the priority of the Encumbrance and the subordination of this Lease with respect to such Encumbrance.

12.2 Notwithstanding Section 12.1 above, provided that Tenant’s use of the Facilities is not disturbed for so long as Tenant is not in default hereunder and that the terms and conditions of this Lease are honored by the transferee of Landlord’s interest in the Facilities, Tenant covenants and agrees to attorn to the transferee of Landlord’s interest in the Facilities by foreclosure, deed in lieu of foreclosure, exercise of any remedy provided in any Encumbrance or underlying lease, or operation of law, and to recognize such transferee as the new landlord under this Lease. In the event any Encumbrance holder notifies Tenant of such a transfer of Landlord’s interest in the Facilities, Landlord agrees that Tenant shall not be liable for making payments of Rent or any other sums due pursuant the terms of this Lease directly to the transferee. This clause shall be self-operative, but within twenty (20) days after the receipt of a written request from Landlord or any Encumbrance holder, Tenant shall execute a commercially reasonable agreement evidencing such non-disturbance and attornment.

12.3 If any lender of Landlord requests a modification of this Lease, Tenant shall endeavor in good faith to agree to that modification and to prepare and execute an amendment to this Lease so long as (i) Rent required to be paid under this Lease is not changed, (ii) the time for and manner of payments under this Lease are not changed, (iii) the Lease Term and any purchase options are not changed, (iv) Tenant’s possession of the Facilities and rights to possession and use of the Facilities are not changed, (v)
Landlord’s obligations to Tenant under this Lease are not reduced, (vi) Tenant’s obligations to Landlord under this Lease are not increased, and (vii) the proposed modification does not materially or adversely change the other rights and obligations of Tenant under this Lease or applicable any Laws.

13. LANDLORD AND TENANT ESTOPPEL

13.1 Landlord and Tenant agree, at any time, and from time to time, upon not less than twenty (20) days prior written notice, to execute, acknowledge and deliver, a statement in writing addressed certifying that this Lease is in full force and effect; stating the dates of commencement and expiration of the Lease; stating the dates to which Rent, and other charges, if any, have been paid; that Tenant has accepted possession; that the Lease Term has commenced; whether or not there exists any default by either party in performance of any covenant, agreement, term, provision or condition in this Lease, and, if so, specifying each such default of which either party may have knowledge; and any other such matter that the requesting party may reasonably request. It is intended that such statement may be relied upon by any third party interested in the Facilities.

14. COMPLIANCE WITH ENVIRONMENTAL LAWS

14.1 Tenant shall, at its sole cost and expense, comply with all of the requirements of Environmental Laws pertaining to the Facilities and Tenant’s use and occupancy of the Facilities. Tenant shall, to the extent allowed under applicable Laws, indemnify, defend (with counsel reasonably acceptable to Landlord at all tribunal levels), protect and hold Landlord, its elected officials, employees, agents, servants, representatives, contractors, successors and assigns from and against all claims, actions, suits, proceedings, judgments, losses, costs, personal injuries, damages, liabilities, deficiencies, fines, penalties, attorneys’ fees, consultants’ fees, investigations, detoxifications, remediations, removals, and expenses of every type and nature, caused by either (i) the use, storage, transportation, release, disposal, discharge or emission of Hazardous Substances (as hereinafter defined) in, on, from or about the Facilities by Tenant or its agents, contractors, employees or those persons under Tenant’s control (collectively, “Tenant’s Agents”), (ii) the failure of the Facilities, at any time, to be in compliance with Environmental Laws (as hereinafter defined) due to the act or omission of Tenant and/or any of Tenant’s Agents, or (iii) the failure of Tenant or and of Tenant’s Agents to comply with the provisions of this Section 14.1. Neither Tenant nor Tenant’s Agents shall bring any Hazardous Substances in, upon or about the Facilities or otherwise use, generate, manufacture, refine, produce, process, store or dispose of Hazardous Substances under or about the Facilities in any case in violation of any Environmental Laws. The indemnification obligations set forth in this Section 14.1 shall survive expiration or termination of this Lease.

14.2 Landlord shall, at its sole cost and expense, comply with all of the requirements of Environmental Laws pertaining to its use and occupancy of the Facilities. Landlord shall, to the extent allowed under applicable Laws, indemnify, defend (with counsel reasonably acceptable to Tenant at all tribunal levels), protect and hold Tenant, its elected officials, employees, agents, servants, representatives, contractors, successors and assigns from and against all claims, actions, suits, proceedings, judgments, losses, costs, personal injuries, damages, liabilities, deficiencies, fines, penalties, attorneys’ fees, consultants’ fees, investigations, detoxifications, remediations, removals, and expenses of every type and nature, caused by either (i) the use, storage, transportation, release, disposal, discharge or emission of Hazardous Substances (as hereinafter defined) in, on, from or about the
Facilities by Landlord or its agents, contractors, employees or those persons under Landlord’s control (collectively, “Landlord’s Agents”), (ii) the failure of the Facilities, at any time, to be in compliance with Environmental Laws (as hereinafter defined) due to the act or omission of Landlord and/or any of Landlord’s Agents, or (iii) the failure of Landlord or and of Landlord’s Agents to comply with the provisions of this Section 14.2. Neither Landlord nor Landlord’s Agents shall bring any Hazardous Substances in, upon or about the Facilities or otherwise use, generate, manufacture, refine, produce, process, store or dispose of Hazardous Substances under or about the Facilities in any case in violation of any Environmental Laws. The indemnification obligations set forth in this Section 14.2 shall survive expiration or termination of this Lease.

14.3 If at any time during the Term of this Lease, any emission, release or contamination (“Contamination”) of the Facilities by Hazardous Substances shall occur, which is caused by Tenant and/or Tenant’s Agents or by Landlord and/or Landlord’s Agents (as applicable the “Responsible Party,” and hereafter reference to the Responsible Party shall mean only Tenant or Landlord, as appropriate), then the Responsible Party shall, at the Responsible Party’s sole cost and expense, and to the reasonable satisfaction of Landlord or Tenant, as the non-Responsible Party (the “Other Party”), promptly and diligently remove such Hazardous Substances from the Facilities or the groundwater underlying the Facilities in accordance with the requirements of applicable Environmental Laws. However, the Responsible Party shall not take any required remedial action in response to any Contamination in or about the Facilities or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Contamination without first notifying the Other Party of the Responsible Party’s intention to do so and affording the Other Party the opportunity to appear, intervene or otherwise appropriately assert and protect the Other Party’s interest with respect thereto. In addition to all other rights and remedies of the Other Party hereunder, if the Responsible Party does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Contamination and thereafter commence the remediation of any Hazardous Substances released or discharged in connection with any Contamination within thirty (30) days after the Other Party has approved the Responsible Party’s remediation plan and all necessary approvals and consents have been obtained and thereafter continue to prosecute said remediation to completion in accordance with the approved remediation plan, then the Other Party, at its sole discretion, shall have the right, but not the obligation, to cause said remediation to be accomplished; and the Responsible Party shall reimburse within thirty (30) days of demand for reimbursement, all amounts paid by the Other Party together with interest on said amounts at the Default Rate until paid. The Responsible Party shall promptly deliver to the Other Party copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Substances removed from the Facilities as part of the Responsible Party’s remediation of any Contamination.

15. CONDEMNATION

15.1 If, during the term of this Lease, Landlord or Tenant receives notice from any public authority that the whole or any part of the Facilities are being considered for taking by any public authority under the power of eminent domain, Landlord or Tenant, as appropriate, shall promptly provide the other party with written notice of such action, including a copy of said notice.

15.2 If the whole or any part of the Facilities are taken by any public authority under the exercise of the power of eminent domain, or conveyed by Landlord in lieu of condemnation, (either, a “Taking”) this Lease shall terminate as to the part so taken, only, as of the date of taking.
15.3 In the event of a Taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest paid or made in connection with the Taking, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award for loss of, damage to or cost of removal of Tenant’s personal property to the extent same does not reduce Landlord’s award. Tenant shall have no claim against Landlord, including, without limitation, a claim for the value of any unexpired Term of this Lease or otherwise.

16. INSURANCE

16.1 Tenant agrees to carry during the entire Term of this Lease and to keep in full force and effect, at Tenant’s sole cost and expense, the following insurance (collectively, “Tenant’s Insurance”):

a. Liability insurance with minimum limits as required under the Tennessee Governmental Tort Liability Act and containing insuring clauses no less broad than those set forth in the standard Commercial General Liability ISO form applicable to premises liability (and without limiting the foregoing, specifically including contract liability coverage for the obligations of Tenant under the indemnity provisions of this Lease);

b. Property insurance providing standard fire and extended coverage under the Specific Form insurance policy, insuring the Facilities, including all appurtenances thereto, for 100% of their full replacement cost, with a commercially reasonable deductible as approved by Landlord;

c. During any time period in which Tenant is engaging in any construction or improvements to the Facilities, general contractor insurance, including commercial general liability insurance in an amount not less than $2,000,000.00 per occurrence with Landlord to be named as additional insured during the construction period for any alterations or improvements undertaken by Tenant;

d. Worker’s compensation insurance in the statutorily mandated limits and employer’s liability insurance with limits not less than $300,000.00 or such greater amount as Landlord may from time to time require; and

e. Such other insurance, coverages and endorsements including applicable amounts as may be necessary to comply with any applicable Laws or as Landlord may otherwise require in the exercise of its reasonable discretion.

All Tenant’s Insurance policies shall (i) be written by a company or companies reasonably satisfactory to Landlord; (ii) provide for a waiver of subrogation by the insurer as to claims against Landlord, its employees and agents; (iii) be written on an “occurrence” basis and provide that all insurance required to be carried by Tenant is primary; (iv) name Landlord as additional insured with no co-insurance requirement and contain a standard without contribution loss payee clause endorsement in favor of Landlord and its successors and assigns as their interests may appear; (v) include an agreement by the insurer that any loss will be payable in accordance with the terms of the policy notwithstanding any act or neglect of Tenant, or anyone acting for Tenant; (vi) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days prior written notice to
Landlord, and ten (10) days’ notice for non-payment of premium; and (vii) be written for a period of at least one (1) year. Tenant shall deliver to Landlord a Certificate of Insurance, in substantially the form attached hereto as Exhibit C, stating that the Tenant is in compliance with the insurance requirements set forth in this Section. Upon written demand of Landlord, Tenant shall provide proof of Tenant’s Insurance coverage required to be maintained by Tenant hereunder.

16.2 Landlord agrees to carry during the entire Term of this Lease and to keep in full force and effect liability insurance with minimum limits as required under the Tennessee Governmental Tort Liability Act and containing insuring clauses no less broad than those set forth in the standard Commercial General Liability ISO form applicable to premises liability (and without limiting the foregoing, specifically including contract liability coverage for the obligations of Tenant under the indemnity provisions of this Lease). Such policy of insurance shall (i) be written by a company or companies reasonably satisfactory to Tenant; (ii) provide for a waiver of subrogation by the insurer as to claims against Tenant, its employees and agents; (iii) be written on an “occurrence” basis; (iv) name Tenant as additional insured with no co-insurance requirement and contain a standard without contribution loss payee clause endorsement in favor of Tenant and its successors and assigns as their may appear; (v) include an agreement by the insurer that any loss will be payable in accordance with the terms of the policy notwithstanding any act or neglect of Landlord, or anyone acting for Landlord; (vi) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days prior written notice to Tenant, and ten (10) days’ notice for non-payment of premium; and (vii) be written for a period of at least one (1) year. Upon written demand of Tenant, Landlord shall provide proof of Landlord’s insurance coverage herein required.

17. CASUALTY

17.1 If the Facilities or any of its appurtenances which Tenant is required under this Lease to maintain and repair, or any part thereof, is damaged by a Casualty (as defined herein), Tenant shall have the obligation to restore the Facilities and appurtenances, as applicable, to substantially the same condition as they were in immediately before the Casualty. As used in this Lease, “Casualty” means an event, or act of God, such as fire, windstorm, flood, earthquake, or other perils which are unforeseen and unpredictable, whether insured or uninsured, which causes damage or destruction to the Facilities.

17.2 If any part of the Facilities, exclusive of those portions which Tenant is required under this Lease to maintain and repair, is damaged by a Casualty, Landlord shall have the obligation to restore such damaged portion of the Facilities to substantially the same condition as they were in immediately before the Casualty, subject to (i) receipt by Landlord of the Net Casualty Restoration Amount (as herein defined), and (ii) payment by Tenant of any sum due Landlord per Section 17.3 below. For purposes hereof, Net Casualty Restoration Amount means the amount of insurance proceeds available to Landlord after deducting all costs, fees and expenses incident to the collection thereof, including all costs and expenses incurred by Landlord in connection therewith. Landlord shall have the right, in Landlord’s sole discretion, to settle, adjust or compromise any claim for loss or damage in connection with any Casualty to the Facilities for which it is responsible, and no such actions on the part of Landlord will affect the obligations of Tenant hereunder. Landlord shall not be required to expend money is excess of the Net Casualty Restoration Amount received and the sum paid to Landlord by Tenant pursuant to Section 17.3 below in restoration of the Facilities.
17.3 Tenant shall be responsible for, and shall pay to Landlord within ten (10) days of written demand, any deductible under the casualty insurance policy maintained by Tenant pursuant to Section 16.1.b above, it being the understanding that Landlord shall have no personal liability whatsoever for any deductible in insurance proceeds available on account of damage resulting from Casualty, and Tenant bears all such risk. Tenant shall be entitled to keep any portion of the Net Casualty Restoration Amount which may be in excess of the cost of restoration.

17.4 Each party shall promptly notify the other following the occurrence of any Casualty to the Facilities, or any part thereof, of which the notifying party becomes aware, generally describing the nature and extent of such Casualty and including copies of any documents or notices received in connection therewith. During all periods of time following a Casualty, each party shall ensure that the portions of the Facilities or appurtenances thereto for which such party is responsible are secure and do not pose any risk of harm to adjoining property owners or occupants or third-parties. Each party shall provide reasonable cooperation to the other as and when requested in connection with its restoration of the Facilities.

17.5 In no event will Rent or any other obligations on the part of Tenant hereunder be abated as a consequence of any Casualty irrespective of whether the Facilities are inaccessible or unusable by Tenant, it being the understanding that Landlord shall continue to receive the full Rent due and any other sums due and payable hereunder at all times notwithstanding any such Casualty; provided, however, that Tenant shall not be required to pay said amount during the time of such restoration to the extent that the business interruption/loss of rents insurance required to be maintained by Tenant pursuant to Section 16.1.c above pays any difference to Landlord; otherwise, Tenant shall remain responsible for all Rent due Landlord.

18. WAIVER OF SUBROGATION

18.1 Each party hereto waives any and every claim which arises or may arise in its favor against the other party hereto during the Term of this Lease for any and all loss of, or damage to, any of its property within or upon, or constituting a part of, the Facilities, which loss or damage is covered or would be covered by special form coverage (all risk) and extended coverage insurance policies regardless of whether or not, or in what amounts, such insurance is now, or may hereafter be carried by the parties. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees to give immediately to each insurance company, which has issued policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of such waivers.

19. TENANT DEFAULT; LANDLORD REMEDIES

19.1 Each of the following shall constitute an “event of default” by Tenant under this Lease:

a. Tenant shall fail to pay Rent or any other amounts to be paid by Tenant hereunder when due; or
b. Tenant shall fail to maintain insurance in accordance with the requirements of Section 16 of this Lease; or

c. Intentionally omitted.

d. Tenant’s failure to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant, other than those set forth in Sections 19.1.a, 19.1.b, 19.1.f and 19.1.g, for more than thirty (30) days after written notice to Tenant thereof, provided, however, if the performance of the term, condition or covenant cannot reasonably be accomplished within said thirty (30) days, then no event of default shall be deemed to have occurred so long as Tenant shall have promptly initiated the performance and is continuing to diligently pursue same, not to exceed ninety (90) days total; or

e. The making by Tenant of any general assignment for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days); or the appointment of any trustee, receiver, custodian, liquidator or like officer to take possession of substantially all of Tenant’s assets, or of Tenant’s interest in this Lease, where possession is not restored to Tenant within ninety (90) days; or the attachment or seizure of substantially all of Tenant’s assets at the Facilities or Tenant’s interest in this Lease, where the attachment or seizure is not discharged within ninety (90) days; or

f. The taking of Tenant’s interest under this Lease under any unappealable (to the extent Tenant remains in possession and control of its interest under the Lease during the appeal process) writ of execution; or

g. The occurrence of an event of default by Tenant under the Building Lease.

19.2 If any event of default occurs, Landlord, in addition to all such other rights or remedies it may have at law or in equity, shall have the immediate right to terminate this Lease or, with or without terminating the Lease, to accelerate all Rent hereafter due in the manner hereinafter provided and to enter the Facilities and take possession thereof and of all permanent improvements thereon and may remove all persons and property from the Facilities by summary action, or otherwise, and such property may be removed and stored in a public warehouse or elsewhere and disposed of at the cost of and for the account of Tenant, all without service of notice or resort to legal process except as otherwise provided herein or as otherwise permitted or required by law. Tenant agrees to quit and deliver up the possession of the Facilities, including permanent improvements to the Facilities, when this Lease or Tenant’s right to possession terminates by limitation or in any other manner provided for herein. The parties agree (i) that the Facilities are not marketable to another party for their value because of the unique nature of the use, and (ii) that there is no market for the Facilities and Landlord has no obligation to relet, and (iii) that the foregoing are material terms to this Lease and there would be no agreement between the parties without this provision.

19.3 Should Landlord at any time terminate this Lease or terminate Tenant’s right to possession without terminating this Lease for any event of default, in addition to any other remedies it may have, Landlord may declare by notice to Tenant the entire Rent for the remainder of the Term to be
immediately due and payable. Tenant shall immediately pay to Landlord all such future Rent discounted to its Present Value (as hereinafter defined), all accrued Rent then due and unpaid, all other monetary obligations which are then due and unpaid and all monetary obligations which arise or become due by reason of such event of default. Upon receipt by Landlord of all such accelerated Rent, accrued Rent and other monetary obligations, and provided that Landlord has not elected to terminate this Lease, Tenant shall have the right to possession of the Facilities from the date of such receipt by Landlord to the end of the Term, and subject to all the provisions of this Lease, including the obligation to pay all monetary obligations that subsequently become due, except that no Rent which has been prepaid hereunder shall be due thereafter during the Term.

19.4 Any and all remedies provided to Landlord for the enforcement of the provisions of this Lease are cumulative and not exclusive; and Landlord shall be entitled to pursue either the rights enumerated in this Lease or remedies authorized by law or in equity, or both, including, but not limited to, the right to seek specific performance of any covenant or agreement contained herein. To the extent permitted by law, and without waiving any other rights and remedies provided herein, Landlord reserves the right (but shall have no obligation) to re-enter the Facilities and cure any default on the part of Tenant; and in such event, Tenant shall, upon demand, reimburse Landlord with interest at the Default Rate until paid. Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason thereof unless caused solely by Landlord’s gross negligence or willful misconduct.

20. DEFAULT BY LANDLORD

20.1 Within thirty (30) days following Landlord’s receipt of written notice from Tenant of Landlord’s failure to comply with any term, condition or covenant of this Lease, Landlord shall develop and provide to Tenant a corrective action plan setting out when such failure will be cured, and if Landlord does not commence and diligently prosecute to completion the cure in accordance with said plan, then Tenant shall have the right to declare a default under this Lease; provided, however, that if the default is capable of cure, then Landlord shall not be deemed in default provided that Landlord is diligently prosecuting the cure to completion.

20.2 Upon the occurrence of a default by Landlord, Tenant shall have the option to pursue any recourse available under this Lease or at law, subject to the following: (i) Tenant hereby waives any right to offset any damages incurred against any Rent due under this Lease or to otherwise reduce the amount of Rent due and payable by Tenant to Landlord hereunder; (ii) Tenant’s right to exercise self-help shall be limited to the specific actions required to cure Landlord’s default; and (iii) Tenant hereby expressly waives any right to terminate this Lease on account of Landlord’s default.

21. ASSIGNMENT AND SUBLETTING

21.1 Tenant shall not voluntarily assign, sublease or otherwise encumber (each a “Transfer”) any part of its interest in this Lease or in the Facilities without Landlord’s prior written consent, which shall not be unreasonably withheld or delayed. Concurrent with Tenant’s written request for Landlord’s consent to a Transfer, Tenant shall provide Landlord with (i) information regarding the proposed transferee, including their name, address, and ownership profile, (ii) the nature of the proposed transferee’s business and anticipated use of the Facilities, (iii) current audited financial statements of the proposed transferee, and (iv) all material terms of the proposed Transfer, including the rent to be paid by the proposed transferee for the term of the proposed assignment or sublease, the portion of the Facilities to
be transferred, a general description of any planned alterations or improvements to be made by the
proposed transferee to the Facilities, the effective date of the Transfer, and copies of other relevant
documentation concerning the proposed Transfer to the extent then available.

21.2 It shall not be deemed unreasonable for Landlord to withhold consent to subletting or assignment
by Tenant under this Lease if Landlord in its sole judgment determines that the proposed transferee (i) is
of a character or is engaged in a business which is not in keeping with Landlord’s standards for the
Property, as determined solely by Landlord; (ii) has a use which conflicts with the general character of
the Property or otherwise does not conform to the requirements of this Lease; (iii) does not meet the then
current commercially reasonable financial standards required by Landlord (including that the proposed
transferee has an investment grade credit rating); or (iv) is unacceptable because Tenant is in default
beyond any applicable cure period under this Lease at the time of the request for Landlord’s consent.
Consent given by Landlord to any such assignment or subletting shall not operate as a waiver of the
necessity for consent to any subsequent assignment or subletting.

21.3 In no event will any assignment of any rights or obligations under this Lease or subletting of the
Facilities by Tenant release Tenant from liability under this Lease.

21.4 If this Lease is assigned, any assignee shall be deemed to have expressly assumed all of the
liabilities, covenants and obligations of Tenant under this Lease; and said assignee, as a precondition
thereof, shall sign an assumption agreement in form reasonably required by Landlord.

21.5 In the event of any assignment, sublease, or other encumbrance, Tenant shall remain primarily
liable for payment of Rent herein provided to be paid by Tenant and for performance and observance of
the other agreements and covenants on its part herein provided to be performed and observed by Tenant.
No assignee or sublessee or anyone claiming by, through or under any such assignment or sublease shall
by virtue thereof acquire any greater rights in the Facilities than Tenant then has under the Lease. If all
or part of the Facilities are subleased and Tenant defaults, Landlord shall have the right (without
waiving any other remedies available to Landlord) to collect the rent payable by the sublessee to Tenant
directly from the sublessee provided that Landlord shall apply all amounts collected to Tenant’s
monetary obligations under this Lease.

22. INDEMNIFICATION

22.1 To the full extent permitted by applicable Laws, Tenant shall indemnify and save harmless
Landlord and its elected officials, and all employees, agents, servants, representatives, contractors,
successors and assigns of any of the foregoing, from and against any and all claims, actions, damages,
suits, judgments, decrees, orders, liabilities and expenses (including without limitation, reasonable
attorneys’ fees) arising from, pertaining to or in connection with: (i) loss of life, personal injury and/or
damage to property arising from or out of the negligent act or omission of Tenant, its elected officials,
employees, agents, servants, representatives, contractors, invitees, assignees or subtenants, (the “Tenant
Parties”) on or about the Facilities; (ii) any matter claimed to have been caused by or resulting from any
act, omission or negligence of any of the Tenant Parties in any manner growing out of or connected with
the use, non-use, condition or occupation of the Facilities, no matter where occurring; (iii) any violation
by any of the Tenant Parties of any provision, agreement or condition of this Lease; (iv) violation by any
of the Tenant Parties of any contract or agreement to which Tenant is a party or any restriction, statute,
law or regulation in each case affecting the Facilities or any part thereof; or (v) any violation of, or
failure to comply with, Environmental Laws affecting the Facilities or any part thereof by any of the Tenant Parties which occurred after the Occupation Date, or (vi) any matter arising out of or resulting from any challenge to this Lease, payment of any amounts due pursuant to this Lease, including without limitation, Rent, or litigation arising out of or relating to this Lease or challenging the Tenant’s authority to enter into this Lease or the payment of any amounts due pursuant to this Lease, including without limitation, Rent. It is understood and agreed that the obligations set forth in this Section 22.1 may not be assigned or delegated to the School Board. The indemnification obligations set forth in this Section 22.1 shall survive expiration or termination of this Lease.

22.2 To the full extent permitted by applicable Laws, Landlord shall indemnify and save harmless Tenant and its elected officials, and all employees, agents, servants, representatives, contractors, successors and assigns of any of the foregoing, from and against any and all claims, actions, damages, suits, judgments, decrees, orders, liabilities and expenses (including without limitation, reasonable attorneys’ fees) arising from, pertaining to or in connection with (i) loss of life, personal injury and/or damage to property arising from or out of the negligent act or omission of Landlord, its elected officials, employees, agents, servants, representatives, contractors, invitees, assignees or other tenants, (the “Landlord Parties”) on or about the Facilities; (iii) any violation by any of the Landlord Parties of any provision, agreement or condition of this Lease; (iv) violation by any of the Landlord Parties of any contract or agreement to which Landlord is a party or any restriction, statute, law or regulation in each case affecting the Facilities or any part thereof; or (v) any violation of, or failure to comply with, Environmental Laws affecting the Facilities or any part thereof by any of the Landlord Parties. The indemnification obligations set forth in this Section 22.2 shall survive expiration or termination of this Lease.

23. ENTRY BY LANDLORD

23.1 In furtherance of its maintenance obligations, Landlord and its authorized agents shall have the right to inspect the general condition and state of repair of the Facilities at any time without prior notice to Tenant. In addition, Landlord and its authorized agents shall have the right, during normal business hours, and upon reasonable prior notice, to enter the Facilities (i) to show the Facilities to any prospective purchaser or lender to Landlord or (ii) for any other reasonable purpose; provided, however, that no prior notice shall be required should an event of default on the part of Tenant have occurred.

23.2 During the final eighteen (18) months of the Term, Landlord and its authorized agents shall have the right to erect and maintain on or about the Facilities customary signs advertising the property for lease or sale and to show same to prospective purchasers and tenants.

23.3 Landlord shall exercise its rights under this Section 23 at such times and in such a manner as to minimize the impact of any interference with Tenant’s occupancy of the Facilities.

23.4 Landlord and Landlord’s agents may enter the Facilities without any advance notice when necessary to address emergency situations. For purposes of this Section 23.4, an emergency situation is one that poses a threat of imminent bodily harm to persons or damage to the Facilities. If Landlord makes an emergency entry into the Facilities when no authorized representative of Tenant is present, Landlord shall provide notice to Tenant as soon as reasonably possible after that entry and shall take reasonable steps to secure the Facilities until a representative of Tenant arrives at the Facilities.
24. SURRENDER OF FACILITIES; HOLDOVER

24.1 Tenant shall, at the expiration or earlier termination of this Lease, vacate the Facilities and improvements in a good condition, except for reasonable use and wear thereof, and on vacating shall remove its property as provided in this Lease and leave the Facilities free and clear of all rubbish and debris.

24.2 Any holding over after the expiration or earlier termination of this Lease shall be construed to be a tenancy at will of Landlord at 150% of the Rent herein specified and in effect at such expiration or earlier termination hereof and shall otherwise be on the terms and conditions herein specified, so far as applicable.

25. QUIET ENJOYMENT

25.1 Landlord hereby covenants and warrants that Tenant, upon payment of the Rent as herein provided and performance of the provisions hereof on its part to be performed, shall and may peacefully possess and enjoy the Facilities during the Term without any interruption or disturbance by Landlord, subject to title covenants and documents affecting title to the Facilities and the requirements of any applicable Laws.

26. INTEGRATION AND MODIFICATION

26.1 This Lease, along with any exhibits, appendices, addenda, schedules, and amendments hereto, and the Inter-Local Agreement of this date, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. (To the extent this Lease and the Inter-Local Agreement are in conflict, this Lease will control.) The parties hereby acknowledge and represent, by affixing their signatures hereto, that they have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Lease, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Lease. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party’s reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party’s right to remedies associated with the negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Lease. In addition, this Lease may not be altered, amended, or otherwise modified except by the express written agreement of the parties.

27. NOTICES

27.1 Any notice or document required or permitted to be delivered hereunder may be delivered or shall be deemed to be delivered, when actually received or delivery refused, via overnight mail, email or facsimile transmission, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may hereafter be specified by written notice delivered in accordance herewith. Notwithstanding the foregoing, any notice of default under Section 19 or Section 20 of this Lease, if delivered by email, shall also be delivered by another form of notice listed above.
28. MISCELLANEOUS

28.1 Counterparts. This Lease may be executed in counterparts, each of which shall be an original but shall together constitute one and the same instrument.

28.2 Force Majeure. Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either Landlord or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, acts of war or inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act (the foregoing referred to as “Force Majeure”), the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing in this Section shall excuse the
prompt payment of Rent by Tenant as required by this Lease or the performance of any act rendered
difficult or impossible solely because of the financial condition of the party required to perform the act.

28.3 Computation of Time. If any date for the occurrence of an event or act under this Lease falls on a
Saturday, Sunday or legal holiday in the State of Tennessee, the time for the occurrence of such event or
act shall be extended to the next succeeding business day.

28.4 Interpretation. Notwithstanding the fact that this Lease (in its original form) was prepared by
Landlord, this Lease has been reviewed by Tenant and its legal counsel; and the terms and provisions
hereof have been negotiated by both parties; and this Lease shall not be construed for or against
Landlord or Tenant.

28.5 Time. Time is of the essence of each and every provision hereof.

28.6 Commission. Landlord and Tenant agree that neither has engaged a real estate broker in this
transaction. Each party shall indemnify and hold the other harmless from and against any and all
commissions, fees and expenses and all claims there for by any other broker, salesman or other party in
connection with or arising out of such party’s actions in entering into this Lease.

28.7 Recording. A memorandum of this Lease in form and substance reasonably satisfactory to
Landlord and Tenant may, at the option of Tenant, be recorded in the Register’s Office for Washington
Country, Tennessee, prior to the Occupation Date.

28.8 Attorney Fees. Except as otherwise stated herein, if either party to this Lease commences
litigation, legal action, or claim to protect its interest, or to enforce any term or provision of this Lease,
the losing party in the dispute shall pay the prevailing party for all reasonable attorneys’ fees and court
costs incurred by the prevailing party.

28.9 Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be
considered a part hereof for all purposes with the same force and effect as if copied at full length herein.

28.10 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant
in the conduct of its business or otherwise, or joint venturer or a member of a joint enterprise with
Tenant.

28.11 Captions and Context. The captions of the Sections or paragraphs of this Lease are to assist the
parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever
required by the context of this Lease, the singular shall include the plural and the plural shall include the
singular. The masculine, feminine and neuter genders shall each include the other.

28.12 Waiver of Breach. No waiver of any breach of any provision of this Lease shall be construed to
be a waiver of any preceding or succeeding breach of such provision or of any other provision hereof.

28.13 Applicable Law, Jurisdiction and Forum. This Lease and the rights and obligations of the parties
arising hereunder shall be construed in accordance with the laws of the State of Tennessee. Except as
may otherwise be expressly provided in this Lease to the contrary, in the case of any action, suit or
proceeding arising out of this Lease, Landlord and Tenant agree that jurisdiction and venue shall be in the courts of record for Washington County, Tennessee.

28.14 Severability. A determination that any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws will not affect the remainder of this Lease.

If for any reason the Lease shall be held by a court of competent jurisdiction void, voidable, or unenforceable by the Landlord or by Tenant, or if for any reason it is held by such a court that any of the covenants and agreements of Tenant hereunder, including the covenant to pay Rent hereunder, is unenforceable for the full Term, then and in such event for and in consideration of the right of Tenant to possess, occupy and use the Facilities, which right in such event is hereby granted, the Lease shall thereupon become and shall be deemed to be a lease from year to year under which the Rent payments herein specified will be paid by Tenant.

28.15 Prohibited Persons and Transactions. Tenant and Landlord (each, a “Representing Party”) each represents and warrants to the other (i) that neither the Representing Party nor any of its representatives is a person or entity (each, a “Prohibited Person”) with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the “Executive Order”) signed on September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Person Who Commit, Threaten to Commit, or Support Terrorism”), or other governmental action, (ii) that the Representing Party’s activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “Money Laundering Act”), and (iii) that throughout the term of this Lease the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

28.16 Facsimile Signature. “Facsimile signatures,” as that term is commonly used with reference to facsimile machines used in transmitting documents, signatures, photocopies, etc., will be and hereby are declared by all parties to this Lease to be the same as an original signature to this Lease. A facsimile of this Lease, including the signature portion thereof, will be treated and relied upon by all parties hereto as an original Lease and an authentic signature with the same legal effect as though the facsimile were an original document to which a genuine signature has been affixed.

28.17 Electronic Signature. “Electronic signatures” (i.e.: pdf, tif, etc.) as that term is commonly used with reference to electronic scanning and transmission, via the Internet, of documents, signatures, photocopies, etc. will be and hereby are declared by all parties to this Lease to be the same as an original signature to this Lease. An electronic transmission of this Lease, including the signature portion thereof, will be treated and relied upon by all parties hereto as an original Lease and an authentic signature with the same legal effect as though the electronic transmission were an original document to which a genuine signature has been affixed.

28.18 Default Rate of Interest. “Default Rate” when referred to in this Lease shall mean the greater of: (i) the Prime Rate plus five percent (5%) per annum, or (ii) any rate of default to be paid under the Financing.

28.19 Laws. “Laws,” as the term is used in this Lease, refers to all applicable federal, state, county,
city, or government agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued.

28.20 Present Value. “Present Value” of any amount shall mean such amount discounted by a rate per annum which is the lower of (i) the Prime Rate at the time such present value is determined or (ii) six percent (6%) per annum.

28.21 Prime Rate. “Prime Rate” shall mean the interest rate per annum as published, from time to time, in The Wall Street Journal as the “Prime Rate” in its column entitled “Money Rate.” The Prime Rate may not be the lowest rate of interest charged by any “large U.S. money center commercial banks” and Landlord makes no representations or warranties to that effect. In the event The Wall Street Journal ceases publication or ceases to publish the “Prime Rate” as described above, the Prime Rate shall be the average per annum discount rate on ninety-one (91) day bills issued from time to time by the United States Treasury at its most recent auction, plus three hundred (300) basis points. If no such 91-day Treasury bills are then being issued, the Prime Rate shall be the discount rate on Treasury bills then being issued for the period of time closest to ninety-one (91) days, plus three hundred (300) basis points.

28.22 Environmental Laws. For purposes of this Lease, “Environmental Laws” means any present and future federal, state, city or local, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of remediation or prevention of releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment, including, but not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act; the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; and the National Environmental Policy Act.

28.23 Hazardous Substances. For purposes of this Lease, “Hazardous Substances” includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, microbial matter, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, biological or chemical agents, pesticides, petroleum or its by-products, and mold.

28.24 Advances by Landlord. In any instance in which Landlord has elected to advance monies that are otherwise the responsibility of Tenant, said advances shall bear interest at the Default Rate commencing on the date of said advance by Landlord (subject, however, to any notice or grace period that may otherwise be specifically set forth in this Lease). Any and all such advances and interest thereon shall be considered Rent hereunder.
28.25 **TRIAL BY JURY WAIVER.** LANDLORD AND TENANT MUTUALLY AGREE THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER AS TO ANY MATTER ARISING OUT OF OR CONNECTED WITH THIS LEASE, OR THEIR RELATIONSHIP AS LANDLORD AND TENANT, OR TENANT’S USE OR OCCUPANCY OF THE FACILITIES.

**29. EXCULPATION OF LANDLORD**

29.1 Tenant shall look solely to Landlord’s interest in the Facilities for the satisfaction of any judgment or decree requiring the payment of money by Landlord, based upon any default; and no other property or asset of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of such judgment or decree.

**30. BANKRUPTCY**

30.1 As a material inducement to Landlord’s executing this Lease, Tenant acknowledges and agrees that Landlord is relying upon (i) the financial condition and specific operating experience of Tenant, (ii) Tenant’s timely performance of all of its obligations under this Lease notwithstanding the entry of an order for relief under the Bankruptcy Code for Tenant, and (iii) all defaults under this Lease being cured promptly and this Lease being assumed within sixty (60) days of any order for relief entered under the Bankruptcy Code for Tenant, or this Lease being rejected within such sixty (60) day period and the Facilities surrendered to Landlord.

Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, Tenant hereby agrees that:

a. All obligations that accrue or become due under this Lease (including the obligation to pay Rent), from and after the date that any action in bankruptcy or insolvency ("Bankruptcy Action") is commenced shall be timely performed exactly as provided in this Lease and any failure to so perform shall be harmful and prejudicial to Landlord;

b. Any and all obligations under this Lease that accrue or become due from and after the date that a Bankruptcy Action is commenced and that are not paid as required by this Lease shall, in the amount of such Rent, constitute administrative expense claims allowable under the Bankruptcy Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the commencement of the Bankruptcy Action;

c. Any extension of the time period within which Tenant may assume or reject this Lease without an obligation to cause all obligations accruing or coming due under this Lease from and after the date that a Bankruptcy Action is commenced to be performed as and when required under this Lease shall be harmful and prejudicial to Landlord;

d. Any time period designated as the period within which Tenant must cure all defaults and compensate Landlord for all pecuniary losses which extends beyond the date of assumption of this Lease shall be harmful and prejudicial to Landlord;
e. Any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment, and any assignment which results in an amendment or alteration of the terms and conditions of this Lease without the express written consent of Landlord shall be harmful and prejudicial to Landlord;

f. Any proposed assignment of this Lease to an assignee: (i) that will not use the Facilities specifically for the Permitted Uses, or (ii) that does not possess financial condition, operating performance and experience characteristics equal to or better than the financial condition, operating performance and experience of Tenant as of the Effective Date, shall be harmful and prejudicial to Landlord; and

g. The rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute cause for immediate relief from the automatic stay provisions of the Bankruptcy Code, and Tenant stipulates that such automatic stay shall be lifted immediately and possession of the Facilities will be delivered to Landlord immediately without the necessity of any further Bankruptcy Action by Landlord.

h. No provision of this Lease shall be deemed a waiver of Landlord’s rights or remedies under the Bankruptcy Code or applicable law to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant’s obligations under this Lease, or to regain possession of the Facilities as a result of the failure of Tenant to comply with the terms and conditions of this Lease or the Bankruptcy Code.

31.2 Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute “rent” for the purposes of the Bankruptcy Code.

31.3 For purposes of this Section addressing the rights and obligations of Landlord and Tenant in the event that an Bankruptcy Action is commenced, the term “Tenant” shall include Tenant’s successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

[THIS SPACE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date, each party hereby representing that it has full power and authority to execute and deliver this Lease and to perform its obligations hereunder, that the persons signing this Lease on its behalf have the power and authority to do so, that this Lease is binding upon it, and that this Lease will not conflict with or result in a breach under any agreement or instrument to which it is a party or by which it is bound, and will not constitute a violation of any Laws applicable to it.

**LANDLORD:**

ATTEST:

By: ______________________________
Name: _____________________________
Title: _____________________________

By: ______________________________
Name: _____________________________
Title: _____________________________

Approved as to form only:

_______________________________
Name: _____________________________
Title: _____________________________

**TENANT:**

ATTEST:

By: ______________________________
Name: _____________________________
Title: _____________________________

By: ______________________________
Name: _____________________________
Title: _____________________________

Approved as to form only:

_______________________________
Name: _____________________________
Title: _____________________________
EXHIBIT A

The Premises
EXHIBIT B

The Improvements
EXHIBIT C

Certificate of Insurance