

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Monday, March 19, 2018
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

AGENDA

CALL TO ORDERMayor Gregory N. Thompson
ROLL CALL.....City Clerk, Brenda Peters
MINUTES OF PRECEDING MEETING.....Monday, March 05, 2018

PUBLIC HEARING

-Consider Cumbernauld Village Financing

BUSINESS FROM THE FLOOR

-Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

Bill No. 1825 - An Ordinance – Authorizing the City of Winfield, Kansas to issue its Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernauld Village, Inc.) for the purpose of refunding certain outstanding revenue bonds and paying the costs of the acquisition, construction, renovation and equipping of additions to an existing health care facility; and authorizing certain other documents and actions in connection therewith.

Bill No. 1826 - A Resolution – Adopting Retention Schedules for the City of Winfield, Kansas.

Bill No. 1827 - A Resolution – Authorizing the City Manager to execute a Transportation Service Agreement No. 1001268 between the City of Winfield, Kansas, and Enable Gas Transmission Company.

Bill No. 1828 - A Resolution – Authorizing the City Manager to execute a Transportation Service Agreement No. 1010478 for the Winfield Power Plants between the City of Winfield, Kansas, and Enable Gas Transmission Company.

Bill No. 1829 - A Resolution – Approving execution of Midwest Public Risk of Kansas Bylaws

OTHER BUSINESS

-Consider appointments to the Human Relations Commission
-Consider appointments to the Building Trades Board
-Approval of Schneider Electric as an ESCO

ADJOURNMENT

-Next regular Work Session 4:00 p.m. Thursday March 29, 2018
-Next regular meeting 5:30 p.m. Monday, April 02, 2018.

CITY COMMISSION MEETING MINUTES

Winfield, Kansas

March 5, 2018

The Board of City Commissioners met in regular session, Monday, March 05, 2018 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Gregory N. Thompson presiding. Commissioners Ronald E. Hutto and Phillip R. Jarvis were also present. Also in attendance were Jeremy Willmoth, City Manager; Brenda Peters, City Clerk; and William E. Muret, City Attorney. Other staff member present was Gary Mangus, Assistant to the City Manager.

Commissioner Hutto moved that the minutes of the February 20, 2018 meeting be approved. Commissioner Jarvis seconded the motion. With all Commissioners voting aye, motion carried.

PROCLAMATION

Mayor Thompson presented a proclamation to Assistant to the City Manager Mangus, proclaiming April 2 – April 7, 2018 as Spring Beautification Week.

NEW BUSINESS

Bill No. 1823 – An Ordinance – Establishing a code of procedure for the conduct of Commission meetings of the City of Winfield; incorporating by reference the “Code of Procedures for Kansas Cities,” Fourth Edition (2017) with certain omissions, changes, and additions. City Manager Willmoth explains that this ordinance will establish a code of procedure for City of Winfield, and includes the omissions and changes that were discussed at the previous work session. There was then some discussion about deleting Section 9. Setting Agenda. Commissioner Jarvis made a motion to adopt Bill No. 1823 with also amending Section 4 of the ordinance to reflect the omission of Section 9. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, Bill No. 1823 was adopted and numbered Ordinance No. 4086.

Bill No. 1824 – A Resolution – Amending Bill No. 1563, an agreement between the City of Winfield, Kansas, and Coca Cola Bottling Co. of Winfield, regarding Black Creek Park and the Broadway Sports Complex. City Manager Willmoth explains that this resolution concerns a contract the City has with Coca-Cola Bottling Company of Winfield regarding beverage services for Black Creek Park and the Broadway Sports Complex. Willmoth explains that the current contract has a fixed dollar amount for signage, and this amendment will take out the fixed dollar amount and replace it with verbiage that will keep the signage in a suitable condition. Upon motion by Commissioner Jarvis, seconded by Mayor Thompson, both Commissioners voting aye, Bill No. 1824 was adopted and numbered Resolution No. 1918. Commissioner Hutto abstained this vote due to a conflict of interest.

OTHER BUSINESS

-Consider motion authorizing the City Manager to execute initial documents for equipment leases with Profession Turf Products, LP. Assistant to the City Manager Mangus explains that this will be for certain equipment for Quail Ridge Golf Course. Mangus explains that there is \$33,000 in the 2018 budget that can be used for this project. Equipment to be leased are a new spray unit, a used greens mower and a used rough mower. Commissioner Hutto moved to authorize City Manager Willmoth

to execute initial documents for equipment leases with Professional Turf Products, LP. Motion was seconded by Commissioner Jarvis. With all Commissioners voting aye, motion carried.

-Consider appointment to the Cowley County Community Corrections Board. City Clerk Peters explains that the City has recently been notified by the Community Corrections Board that the current board appointment (held by Leticia Quarles) will expire on March 31, 2018, and would like for the City Commission to consider Trudy Yingling to replace Quarles on this board for the next term. Commissioner Jarvis made a motion to appoint Trudy Yingling to the Cowley County Community Corrections Board. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

City Manager Willmoth discussed some dates for the annual Board Appreciation Dinner. It was decided to hold the 2018 Board Appreciation Dinner at Baden Square Thursday, April 12, 2018 at 6:30 p.m. following the regularly scheduled work session.

ADJOURNMENT

Upon motion by Commissioner Hutto, seconded by Commissioner Jarvis, all Commissioners voting aye, the meeting adjourned at 5:44 p.m.

Signed and sealed this 14th day of March 2018.

Signed and approved this 19th day of March 2018.

Brenda Peters, City Clerk

Gregory N. Thompson, Mayor



Request for Commission Action

Date: March 15, 2018

Requestor: Brenda Peters

Action Requested: Passage of an Ordinance regarding Cumbernauld Village Financing Project

Analysis: Cumbernauld Village is seeking to issue Health Care Facilities Refunding and Improvement Revenue Bonds in an amount not to exceed \$3,600,000 to provide funds to refinance the costs of previous Bond Issue Series 2011, and to fund a new improvement at the facility. The City must authorize the issuance as Cumbernauld wishes the Bonds to be "bank qualified" which allows for a lower interest rate on the Bonds. The affect on the City is that this new amount considered for financing would count toward the City's limit of \$10 million bank qualified bonding authority for 2018. After discussion among staff, it was determined that this proposed issue would not affect the City's financing plans for 2018.

Fiscal Impact: None, City has no obligation

Attachments: Authorizing Ordinance and Certificate of Approval

BILL NO. 1825

ORDINANCE NO. 4087

AN ORDINANCE

AUTHORIZING the City of Winfield, Kansas to issue its Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernauld Village, Inc.) for the purpose of refunding certain outstanding revenue bonds and paying the costs of the acquisition, construction, renovation and equipping of additions to an existing health care facility; and authorizing certain other documents and actions in connection therewith.

THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS HAS FOUND AND DETERMINED:

A. The City of Winfield, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, to issue revenue bonds for the purpose of paying the costs of such facilities and to issue revenue bonds for the purpose of refunding such bonds.

B. Pursuant to Ordinance No. 3932 of the Issuer adopted September 6, 2011, and a Trust Indenture, dated as of February 1, 2005, as amended and supplemented by a Supplemental Trust Indenture No. 1, dated as of September 20, 2011, (the "Indenture") between the Issuer and Security Bank of Kansas City, as successor to UMB Bank, n.a. (the "Trustee"), the Issuer previously issued its Health Care Facilities Refunding Revenue, Series 2011 (Cumbernauld Village, Inc.), dated September 20, 2011, in the original principal amount of \$5,240,000, \$2,690,000 of which remains outstanding after April 1, 2018 (the "Outstanding Bonds"), for the purpose of refinancing certain costs of a retirement living complex (the "Original Project").

C. The Original Project has been leased to Cumbernauld Village, Inc., a Kansas (the "Tenant").

D. The Issuer's governing body has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernauld Village, Inc.) dated Issue Date of the Bonds in the aggregate principal amount of \$3,600,000 (the "Series 2018 Bonds"), for the purpose of paying the costs to refund the Outstanding Bonds and to acquire, construct, renovate and equip certain improvements to the Original Project (the "Project Additions"), as more fully described in the Bond Agreement and in the Lease authorized in this Ordinance, for continued lease to the Tenant.

E. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2018 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

- (i) a Bond Agreement dated as of Issue Date of the Bonds (the "Bond Agreement"), among the Issuer, the Tenant and Union State Bank, Winfield, Kansas (the "Bank") prescribing the terms and conditions of issuing and securing the Series 2018 Bonds;

(ii) a Lease dated as of Issue Date of the Bonds (the "Lease"), with the Tenant, under which the Issuer will provide for the Project Additions and continue to lease the Project Additions and the Original Project (jointly, the "Project") to the Tenant in consideration of Basic Rent and other payments; and

(iii) a Tax Compliance Agreement among the Issuer, the Tenant and the Trustee, and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS:

Section 1. Definition of Terms. All terms and phrases not otherwise defined in this Ordinance will have the meanings set forth in the Bond Agreement and the Lease.

Section 2. Authority to Cause the Project Additions to Be Purchased and Constructed. The Issuer is authorized to cause the Project Additions to be acquired, constructed and equipped in the manner described in the Bond Agreement and the Lease.

Section 3. Authority to Cause the Outstanding Bonds to be Redeemed. The Issuer is hereby authorized to cause the Outstanding Bonds to be redeemed on or about April 10, 2018, in accordance with the provisions of the Original Indenture and the Bank is authorized to give notice of such redemption in accordance with the provisions of the Original Indenture.

Section 4. Authorization of and Security for the Bonds. The Issuer is authorized and directed to issue the Series 2018 Bonds, to be designated "City of Winfield Kansas Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernault Village, Inc.)" in the aggregate principal amount of \$3,600,000, for the purpose of providing funds to refund the Outstanding Bonds and to pay the costs of the acquisition, construction, renovation and equipping of the Project Additions. The Series 2018 Bonds will be in such principal amount, will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Bond Agreement. The Series 2018 Bonds will be special limited obligations of the Issuer payable solely from the revenues derived from the Lease of the Project. The Series 2018 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 5. Authorization of Bond Agreement. The Issuer is authorized to enter into the Bond Agreement with the Bank and the Tenant in the form approved in this Ordinance. The Issuer will issue and sell the Bonds and provide for payment of the Bonds and interest thereon from the revenues derived by the Issuer under the Lease and other moneys as described in the Bond Agreement, all on the terms and conditions in the Bond Agreement.

Section 6. Lease of the Project. The Issuer will acquire, construct and equip the Project and will extend, improve and further equip the Original Project with the Project Additions, and continue to lease it to the Tenant according to the provisions of the Lease in the form approved in this Ordinance.

Section 7. Approval of the Guaranty Agreement. The form of the Guaranty Agreement dated as of Issue Date of the Bonds between the Tenant and the Bank, for the benefit of the owners of the Series 2018 Bonds is approved.

Section 8. Execution of Bonds and Bond Documents. The Mayor of the Issuer is authorized and directed to execute the Series 2018 Bonds and deliver them to the Bank for authentication on behalf of the Issuer in the manner provided by the Act and in the Bond Agreement. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is

further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2018 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 9. Pledge of the Project and Net Lease Rentals. The Issuer hereby pledges the Project, including the Project Additions, and the net rentals generated under the Lease to the payment of the Series 2018 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2018 Bonds are paid or deemed to have been paid in accordance with the terms of the Bond Agreement.

Section 10. Authority To Correct Errors, Etc. The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 11. Further Authority. The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2018 Bonds and the Bond Documents.

Section 12. Effective Date. This Ordinance shall take effect after its passage by the governing body of the Issuer, signature by the Mayor and publication once in the Issuer's official newspaper.

PASSED by the governing body of the Issuer on March 19, 2018 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

BOND AGREEMENT

between

CITY OF WINFIELD, KANSAS

and

**UNION STATE BANK
WINFIELD, KANSAS**

and

CUMBERNAULD VILLAGE, INC.

Dated as of Issue Date of the Bonds

**City of Winfield, Kansas
\$3,600,000
Health Care Facilities Refunding and Improvement Revenue Bonds
Series 2018
(Cumbernauld Village, Inc.)**

BOND AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.....	1
Section 2. Bank’s Representations	5
Section 3. Reserved.....	5
Section 4. The Bonds	5
Section 5. Project Fund, Bond Fund and Other Funds	7
Section 6. The Bank.....	8
Section 7. Events of Default and Remedies	10
Section 8. Notices.....	12
Section 9. Miscellaneous Provisions	13
Schedule I.....	S-1
Exhibit A – Form of Bond	A-1
Exhibit B – Commitment Letter	B-1

BOND AGREEMENT

THIS BOND AGREEMENT, dated as of Issue Date of the Bonds, between the City of Winfield, Kansas an incorporated city of the second class, duly organized under the laws of the State of Kansas (the “Issuer”), Union State Bank, Winfield, Kansas, a banking corporation or association organized under the laws of the United States of America or one of the states thereof (the “Bank”), having a commercial banking office in Winfield, Kansas, as depository, fiscal and paying agent, and Cumbernauld Village, Inc., a Kansas not for profit corporation (the “Tenant”).

The Issuer, the Bank and the Tenant hereby agree as follows:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this Bond Agreement and the Lease, the following words and terms as used in this Bond Agreement shall have the following meanings, unless some other meaning is plainly intended:

“**Act**” means K.S.A. 12-1740 *et seq.*, as amended.

“**Assignment**” means the Assignment of Lease and Security Agreement, dated as of the date hereof, from the Issuer to the Bank.

“**Assignment of Rents and Leases**” means the Assignment of Rents and Leases, dated as of the date hereof, from the Tenant to the Bank.

“**Authorized Tenant Representative**” means the person designated to act on behalf of the Tenant as provided in *Section 9* of this Bond Agreement.

“**Bank**” means Union State Bank, Winfield, Kansas, as fiscal and paying agent and as initial purchaser and Owner of the Bonds.

“**Bond Agreement**” means this Bond Agreement as from time to time amended and supplemented.

“**Bond Counsel**” means the firm of Gilmore & Bell, P.C. or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to Issuer and Tenant.

“**Bond Fund**” means the Bond Fund created by *Section 5* hereof.

“**Bonds**” means the Issuer's Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernauld Village, Inc.), in the aggregate principal amount of \$3,600,000 issued pursuant to this Bond Agreement.

“**Change of Circumstances**” means the occurrence of any of the following events:

(a) title to, or the temporary use of, all or any substantial part of the Project shall be condemned by any authority exercising the power of eminent domain;

(b) title to such portion of the Land is found to be deficient or nonexistent to the extent that the Project is untenable or the efficient utilization of the Project by the Tenant is substantially impaired;

(c) substantially all of the Improvements are damaged or destroyed by fire or other casualty; or

(d) as a result of: (i) changes in the constitution of the State; or (ii) any legislative or administrative action by the State or any political subdivision thereof, or by the United States; or (iii) any action instituted in any court, the Lease shall become void or unenforceable, or impossible of performance without unreasonable delay, or in any other way by reason of such changes of circumstances, unreasonable burdens or excessive liabilities are imposed upon Issuer or Tenant.

“Code” means the Internal Revenue Code of 1986, as amended, together with the regulations promulgated thereunder by the United States Department of the Treasury.

“Commitment Letter” means the loan commitment letter attached as *Exhibit B*.

“Completion Date” means the date the Project Additions is completed as certified in accordance with *Section 5.5* of the Lease, but in any event not later than 36 months after the date of initial issuance of the Bonds.

“Costs of Issuance” means any and all expenses of whatever nature incurred in connection with the issuance and sale of Bonds, including, but not limited to, underwriting fees and expenses, underwriting discount, initial fees of the Bank, appraisal fees, administrative fees or expenses of the Issuer, bond and other printing expenses and legal fees and expenses of Bond Counsel, Issuer's counsel, Bank counsel and counsel for the Tenant.

“Determination of Taxability” means any final, non-appealable determination, decision or decree by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction, or an opinion obtained by an Owner of Bonds of counsel qualified in such matters, that an Event of Taxability shall have occurred. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

(a) the date when the Tenant files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability has occurred, or advises the Issuer or the Trustee in writing that an Event of Taxability has occurred;

(b) the effective date of any federal legislation enacted after the date of this Agreement or promulgation of any income tax regulation or ruling by the Internal Revenue Service that causes an Event of Taxability after the date of this Lease; or

(c) if upon sale, lease or other deliberate action taken with respect to the Project within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of qualified bond counsel to the effect that such deliberate action will not cause the interest component of Basic Rent payable by the Tenant hereunder to become includable in the gross income of the recipient.

“Event of Default” means, with respect to this Bond Agreement, an “Event of Default” as defined in *Section 7* hereof and, with respect to the Lease, an “Event of Default” as defined in *Section 1* thereto.

“Event of Taxability” means any act, failure to act or use of the proceeds of the Bonds, a change in use of the Project or Improvements acquired or financed with the proceeds of the Bonds or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Lease or the Tax Compliance Agreement by the Issuer or the Tenant, or the enactment of any federal legislation after the date of this Lease or the promulgation of any income tax regulation or ruling by the Internal Revenue Service after the date of this Lease, that results in interest payable on the Bonds becoming includable in an Owner's gross income for federal income tax purposes.

“Government Securities” means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Guarantor” means any signatory to the Guaranty Agreement.

“Guaranty Agreement” means the Guaranty Agreement, dated as of Issue Date of the Bonds, from the Guarantor to the Bank as fiscal and paying agent for the benefit of all Owners of the Bonds, as from time to time amended and supplemented.

“Improvements” means all real property improvements and personal property financed, refinanced or purchased in whole or in part with the proceeds of the Bonds, including improvements originally refinanced by the Series 2011 Bonds, and any additional improvements as contemplated by *Article XII* of the Lease.

“Interest Payment Date” means any date on which any interest is payable on any Bonds.

“Issue Date” means the date on which the initial Bond certificates representing the Bonds are authenticated by the Bank and delivered in exchange for payment of their purchase price.

“Issuer” means the City of Winfield, Kansas, an incorporated city of the second class duly organized under the laws of the State of Kansas, and its successors and assigns.

“Lease” means the Lease, dated as of Issue Date of the Bonds, between the Issuer and the Tenant, as from time to time amended or supplemented.

“Net Proceeds” means the gross proceeds from the insurance (including without limitation title insurance) or condemnation award with respect to which that term is used remaining after the payment of all expenses (including without limitation attorneys' fees and any expenses of the Issuer, the Tenant, the Bank or any other Owner of the Bonds) incurred in the collection of such gross proceeds.

“Original Project” means all buildings and building improvements existing on the Land on the date of issuance of the Bonds.

“Outstanding” means, as of a particular date, all Bonds issued, authenticated and delivered under this Bond Agreement, except:

(a) Bonds canceled by the Bank or delivered to the Bank as fiscal and paying agent for cancellation pursuant to this Bond Agreement;

(b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust and irrevocably pledged to such payment or redemption; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Bond Agreement.

“Owner” means the Owner of any Bond as shown on the registration books of the Bank maintained as provided in this Bond Agreement.

“Permitted Encumbrances” means Permitted Encumbrances as defined in the Lease.

“Permitted Investments” means any of the following securities, which are permitted for investment of funds held by the depository pursuant to this Bond Agreement:

(a) Government Securities;

(b) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, National Bank for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Association;

(c) savings or other depository accounts or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Bank and its affiliates), provided that such deposits shall be either of a bank, trust company or national banking association continuously and fully insured by the Federal Deposit Insurance Corporation, or continuously and fully insured by a guarantee deposit bond issued by an acceptable insurance carrier which carrier would include Kansas Bankers Surety of Topeka, Kansas which shall have an insured amount (exclusive of accrued interest) at all times at least equal to the principal amount of such deposits and shall be lodged with the Bank, as custodian, by the bank, trust company or national banking association accepting such deposit or issuing such certificate of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Bank an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Bank shall be entitled to rely on each such undertaking;

(d) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Bank) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (a) or (b) above, and

(e) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in clauses (a), (b) or (c) above or repurchase agreement related thereto.

“Project” means the Land and Improvements, including Project Additions, described in *Schedule I* hereto and any additions, modifications, improvements, replacements, repairs, renewals, reconstruction or restoration thereof, therefor or thereto made pursuant to *Section 11.1 or 12.1* of the Lease.

“Project Additions” means the preschool classroom and related Improvements financed in whole or in part from the proceeds of the Series 2018 Bonds.

“Project Costs” means (a) all costs and expenses incurred in or necessary or incident to the purchase, construction and installation of the Improvements; (b) interest accruing on the Bonds prior to the Completion Date; (c) expenses incurred by the Tenant for preliminary plans, surveys, soil borings and other items necessary to the commencement of construction; (d) the cost of any insurance or construction bonds related to the Project prior to the Completion Date; (e) the cost of the title evidence required by *Section 6.4* of the Lease; and (f) Costs of Issuance.

“Project Fund” means the Project Fund created by *Section 5* hereof.

“Redemption Costs” means the principal of the Refunded Bonds, and interest accrued thereon to April 10, 2018, the redemption date thereof.

“Refunded Bonds” means the Series 2011 Bonds maturing in the years 2019 and thereafter in the aggregate principal amount of \$2,690,000.

“Series 2011 Bonds” means the City of Winfield, Kansas Health Care Facilities Refunding Revenue Bonds, Series 2011 (Cumbernauld Village, Inc.).

“Series 2018 Bonds” means the Issuer's Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernauld Village, Inc.), in the aggregate principal amount of \$3,600,000.

“Tenant” means Cumbernauld Village, Inc., a Kansas not for profit corporation, and its successors or assigns and any surviving, resulting or succeeding business entity, as provided in *Sections 9.2 and 9.4* of the Lease.

Section 2. Bank's Representations.

(a) *Bonds Purchased by Sophisticated Investor.* The Bank is purchasing the Series 2018 Bonds in the ordinary course of the commercial banking business of the Bank for the account of the Bank with the intent that the Series 2018 Bonds will be held as investments by the Bank; and such purchase is not made with a view by it toward its public distribution or for the purpose of offering, selling or otherwise participating in a public distribution of the Series 2018 Bonds. The Bank acknowledges that (i) no CUSIP numbers will be obtained for the Series 2018 Bonds, (ii) no official statement or other similar offering document has been prepared in connection with the private placement of the Series 2018 Bonds, and (iii) the Series 2018 Bonds will not close through the DTC or any similar repository and will not be in book entry form.

(b) *Adequacy of Investment Information.* To the best of the Bank's knowledge, the Tenant and the Issuer have furnished to the Bank, (1) such financial and other information as they deem necessary in order for it to make an informed decision with respect to the purchase of the Series 2018 Bonds, (2) ample opportunity to ask questions of, and to receive answers from, appropriate officers of the Tenant and the Issuer concerning the Tenant and the Issuer and the terms and conditions of the Series 2018 Bonds, and (3) all additional information that the Bank has requested.

(c) *Qualification as Private Placement.* It is the Bank's understanding and intention that its purchase of the Series 2018 Bonds will qualify as an exempt transaction as described in Section 4(2) of the Securities Act of 1933, as amended, and that the Bank's ability to sell or transfer the Series 2018 Bonds, or some of them, will be subject to the limitations set forth in the Series 2018 Bond form attached as *Exhibit A*.

Section 3. Reserved.

Section 4. The Bonds. The Bonds are described as follows:

(a) *Principal Amount; Purchase Price; Form of Bonds; Source of Repayments.* The Bonds shall be issued by the Issuer in the aggregate principal amount of \$3,600,000 and shall be purchased by the Bank at their par principal amount for the purpose of providing funds to pay, or reimburse the Tenant for payment of, Project Costs and Redemption Costs. They shall be in substantially the form attached hereto as *Exhibit A*. All Bonds must be issued, if at all, by the Completion Date.

The Bonds shall be payable as set forth in *Exhibit A* and shall be dated, bear interest, and be subject to redemption and transfer as set forth in such form. All of the terms and provisions of the Bonds as set forth in *Exhibit A* are incorporated into this Bond Agreement by reference. The Bonds and the interest and redemption premium, if any, thereon will not be a general obligation of the Issuer, but shall be payable solely

out of the revenues derived by the Issuer pursuant to the Lease (except to the extent payable from proceeds of sale or re-letting of the Project or from moneys paid pursuant to the Guaranty Agreement). Payment of principal, redemption premium, if any, and interest on the Bonds is secured by a pledge of the Project and the net rentals therefrom pursuant to the Ordinance. The Bank shall be paid an origination fee of \$5,000 by the Tenant or as a Cost of Issuance upon the issuance of the Bonds.

(b) *Execution and Authentication of Bonds.* The Bonds shall be executed as specified in *Exhibit A*. If any officer of the Issuer whose signature appears on the Bonds shall cease to be such officer before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery. The Bonds may be executed by such persons as shall be the proper officers to sign the Bonds at the actual time of execution of the Bonds although at the date of such Bonds such person may not have been such officer. The Bonds shall have endorsed thereon a Certificate of Authentication which shall be manually executed by the Bank as fiscal and paying agent for the Issuer upon the initial delivery of the certificate. No Bonds shall be entitled to any security or benefit under this Bond Agreement or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed. The Certificate of Authentication on any Bond certificate shall be deemed to have been duly executed when signed by any authorized officer or employee of the Bank.

(c) *Appointment of Fiscal and Paying Agent; Transfer of Bonds; Annual Report to Issuer.* The Bank is the initial Bond Owner and is hereby appointed by the Issuer as the Issuer's fiscal and paying agent. Ownership of the Bonds may be transferred as set forth in the form of the Bonds attached hereto as *Exhibit A*. If ownership of any Bonds is transferred, the assigned Bond certificates shall be reissued to the transferee by the Bank as fiscal and paying agent for the Issuer, and shall be authenticated as of the payment date immediately preceding the effective date of the transfer. The Bank shall annually within 90 days after the end of each calendar year report to the Issuer the principal balance outstanding on the Bonds as of the preceding December 31, and the amount of principal and interest paid on the Bonds during that year, in order to enable the Issuer to timely report such information to the State of Kansas as required by law.

(d) *Negative Covenant Regarding Issuance of Additional Bonds.* The Issuer will not issue any other obligations payable out of the revenues derived by the Issuer pursuant to the Lease or secured by an assignment, security interest in or other lien upon any of the rights of the Issuer in the Project and under the Lease without the written consent of all Owners of the Bonds.

(e) *Guaranty Agreement.* Concurrently with the initial issuance of the Bonds, the Tenant will execute and deliver to the Bank the Guaranty Agreement, pursuant to which the Tenant will unconditionally guarantee to the Bank, acting on behalf of all Owners of the Bonds from time to time, payment of all principal, redemption premium, if any, and interest on the Bonds. Performance of the obligations of the Tenant under the Guaranty Agreement will be secured by a collateral assignment to the Bank of the Tenant's leasehold interest in the Lease.

(f) *Security for Bonds.* The Issuer has by Ordinance pledged the Project and the net revenues generated by the Issuer under the Lease as security for payment of the principal of, redemption premium, if any, and interest on the Bonds.

(g) *Provision for Payment of Bonds.* Bonds shall be deemed to be paid when payment of the principal, redemption premium, if any, and interest to the due date thereof (whether by reason of maturity or earlier redemption, or otherwise), either (i) has actually been made in accordance with the terms thereof, or (ii) has been provided for by depositing with a bank or trust company, including the Bank, if eligible, in trust and irrevocably set aside exclusively for such payment (1) cash sufficient to make such payment or (2) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payments when due. At such time as a Bond shall

be deemed to be paid as provided in this paragraph, it shall no longer be secured by the pledge of the Project or the revenues generated under the Lease or entitled to benefit from this Bond Agreement or the Guaranty Agreement, except for the purpose of receiving payment from such moneys or Government Securities.

(h) *Compliance with Federal Arbitrage Rebate Requirements.* Pursuant to the Tax Compliance Agreement, the Tenant has agreed to comply with all requirements of the Code and regulations promulgated thereunder regarding calculation and payment of arbitrage rebate. Neither the Issuer, the Bank nor any Owner of the Bonds shall have any obligation to pay any arbitrage rebate amounts required to be paid pursuant to the Tax Compliance Agreement, other than from moneys provided by the Tenant. Notwithstanding any other provision of this Bond Agreement, the obligation to pay all arbitrage rebate to the United States and to comply with all other requirements of the Tax Compliance Agreement shall survive the defeasance or payment in full of the Bonds.

Section 5. Project Fund, Bond Fund and Other Funds. The following funds and accounts shall be established:

(a) *Project Fund.* There is hereby established with the Bank, as depositary, a separate special fund designated “City of Winfield, Kansas Project Fund (Cumbernault Village, Inc.)” which shall be held, invested and disbursed by the Bank, as depositary, as hereinafter provided in this Section and *Article V* of the Lease. All moneys that will remain on deposit in the Project Fund for over 10 days shall be invested in Permitted Investments as directed in writing by the Tenant (or in the absence of Tenant's written direction, in Permitted Investments described in paragraph (c) of the definition). The proceeds of the Bonds and any investment earnings accruing thereof shall be deposited in the Project Fund. The Bank shall disburse moneys in the Project Fund to pay Project Costs and Redemption Costs in accordance with the provisions of *Article V* of the Lease. If any moneys remain in the Project Fund on the Completion Date, they shall be deposited in the Bond Fund and used as provided in Section 5(b) below.

(b) *Bond Fund.* There is also hereby established with the Bank, as paying agent, a separate special fund designated “City of Winfield, Kansas Bond Fund (Cumbernault Village, Inc.)”, which shall be held, invested in Permitted Investments and disbursed by the Bank, as paying agent, as hereinafter provided in this Section and in *Section 3.1* of the Lease. All payments of Basic Rent received by the Bank, as paying agent and assignee of the Issuer's interest in the Lease, shall be deposited in the Bond Fund. On each date on which interest or principal is payable on the Bonds as provided therein, the Bank shall withdraw moneys from the Bond Fund sufficient to make such payments on the Bonds, and shall transmit such moneys by check or draft mailed to each Owner of the Bonds at the address as shown on the Bank's records. All moneys on deposit or to be deposited in the Bond Fund from time to time shall be deemed pledged exclusively to payment of principal and interest on the Bonds, and the Issuer hereby grants to all Owners of the Bonds a security interest in the Bond Fund and the moneys on deposit or to be deposited therein from time to time to secure payment of the Bonds. If after the Bonds have been fully paid and discharged moneys remain on deposit in the Bond Fund, such moneys shall be returned to the Tenant.

(c) *Additional Special Funds.* Any Net Proceeds of insurance, condemnation awards or other moneys paid to the Bank, as depositary or as paying agent, under this Agreement or the Lease shall be deposited in one or more special funds held by the Bank, as depositary or as paying agent, and applied, with accrued interest, to the purposes specified in the Lease for which such moneys were deposited. The Bank agrees to pay to the Issuer, upon receipt, any Additional Rent due to the Issuer under the Lease and paid to the Bank under this Section.

(d) *Investment Fees and Expenses.* The Bank may charge the Tenant, the Bond Fund, the Project Fund, or any other special fund from which an investment is made, for any fees and expenses incurred in

making such investment and the Bank, as depositary or as fiscal and paying agent, may make any investment pursuant to this Section through its money management or short-term investment department.

(e) *Bank as Sole Owner of the Series 2018 Bonds.* If the Bank is the sole Owner of the Series 2018 Bonds, payments of Basic Rent made by the Tenant under the Lease which coincide with payments of principal and interest on the Series 2018 Bonds may be received directly by the Bank as Owner of the Series 2018 Bonds without being deposited in the Bond Fund. Such payments shall be credited against the Tenant's obligation to make payments of Basic Rent under the Lease, against the Guarantor's obligations to make payments of principal and interest on the Series 2018 Bonds under the Guaranty Agreement, and against the Issuer's obligation to make payments of principal and interest on the Series 2018 Bonds. If the Series 2018 Bonds are at any time held by more than one Owner, then payments of Basic Rent shall be received and disbursed in accordance with the provisions of *subsection (b)* of this Section.

Section 6. The Bank. The Bank's duties as a depositary and as fiscal and paying agent shall be subject to the following provisions:

(a) *Limitations on Duty of Care.* The Bank is not under any duty to give the property held in the Bond Fund, the Project Fund or any special fund any greater degree of care than it gives its own similar property and is not liable or responsible for any action or omission to act by it under this Section except for its own negligence or willful misconduct.

(b) *Reliance.* The Bank may act in reliance upon any instrument or signature reasonably believed by it to be genuine and authorized.

(c) *No Representation.* The Bank makes no representation as to the validity, genuineness or collectibility of any security held in the Bond Fund, the Project Fund or any other special fund.

(d) *Liability Limitation.* The Bank is not bound by any agreement or contract not signed by it, other than as assignee of the Issuer under the Lease. Its only duties or responsibilities as depositary are to deal with the Bond Fund, the Project Fund and any other special fund in accordance with this Bond Agreement.

(e) *Agents; Attorneys-Reliance.* The Bank may execute or perform any of its powers or duties either directly or through agents, attorneys or receivers and is not responsible for any misconduct or negligence on the part of any agent, attorney or receiver chosen by it with due care, and the Bank is entitled to act upon and may conclusively rely upon the opinion or advice of counsel, who may be counsel to the Issuer, the Tenant or the Bank, concerning all matters and duties related hereto, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as are employed in connection herewith. The Bank is not responsible for any loss or damage resulting from any action or nonaction taken or omitted to be taken in good faith reliance upon such opinion or advice of counsel.

(f) *Recitals, Filings, Investment Losses.* The Bank shall not be responsible for any recital herein or in the Bonds (except with respect to the certificate of authentication of the Bank as fiscal and paying agent endorsed on the Bonds), or for the recording, rerecording, filing or refiling of any security agreement or instrument in connection herewith, or for insuring the Project or collecting any insurance moneys, or for the validity of execution by any party of this Bond Agreement, any supplement or amendment hereto, any other instrument related hereto, or for the sufficiency of security for the Bonds. The Bank shall not be responsible for any loss suffered in connection with any investment of funds made in accordance with *Section 5* hereof.

(g) *Bond Ownership; Use.* The Bank, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights which it would have if it were not serving as depositary, fiscal and paying agent hereunder.

(h) *Consents or Requests Binding on Future Owners.* Any action taken by the Bank upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(i) *Proof of Certain Facts.* As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper, or proceeding, or whenever in the administration of its functions hereunder or related hereto the Bank shall deem it advisable that a matter be proved or established prior to taking, suffering or omitting any action, the Bank shall be entitled to rely upon a certificate signed by the Authorized Tenant Representative or a representative of the Issuer as sufficient evidence of the facts therein contained, and prior to the occurrence of an Event of Default of which the Bank has been notified as provided in subsection (k) of this Section 6 or of which by said subsection it is deemed to have notice, the Bank shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(j) *Further Liability Limitation.* The permissive right of the Bank to do things enumerated shall not be construed as a duty, and the Bank shall not be answerable for other than its negligence or willful misconduct.

(k) *Notice.* The Bank shall not be required to take notice or be deemed to have notice of any default or Event of Default except failure by the Tenant to timely deliver Basic Rent for deposit to the Bond Fund, unless the Bank shall be specifically notified in writing of such default or Event of Default by the Issuer or by the Owners of at least 25% of the aggregate principal amount of all Bonds Outstanding.

(l) *No Bond or Surety.* The Bank shall not be required to give any bond or surety with respect to the execution of its duties and powers or otherwise in respect to the Bonds or the Project.

(m) *Required Proof of Entitlement.* The Bank shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Bond Agreement or related instruments, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof deemed desirable by the Bank to establish the right to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Bank.

(n) *Indemnity Prior to Action.* Notwithstanding anything otherwise provided in this Bond Agreement or other instrument related hereto, before taking any action (other than the application of available moneys in the Bond Fund to payments on the Bonds) the Bank may require that satisfactory indemnity be provided to it for the reimbursement of all fees, costs and expenses (including, without limitation attorney's fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, including, without limitation, liability in connection with environmental contamination and the cleanup thereof, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(o) *Bank Action Authorized.* Notwithstanding any other provision in this Bond Agreement or other instrument related hereto, the rights, privileges and immunities provided to the Bank by this Section 6 and any other provision of this Bond Agreement or any related instrument intended to provide authority to act,

right to payment of fees and expenses, protection, immunity and indemnification of the Bank shall be interpreted to include any action of the Bank whether it is deemed to be in its capacity as depository, fiscal and paying agent, assignee of Issuer pursuant to the Assignment, beneficiary of the Guaranty Agreement or other related capacity. The provisions of this *Section 6* shall be applicable to the Bank with respect to any function which it performs with respect to the Bonds.

(p) *Limitation on Directed Action.* The Bank may elect not to proceed in accordance with the directions of the Owners of the Bonds without incurring any liability to them if, in the opinion of the Bank, such direction would result in environmental or other liability to the Bank, in its individual capacity, for which the Bank has not received indemnity pursuant to this Section, and the Bank may rely conclusively upon an opinion of counsel in determining whether any action directed may result in such liability.

(q) *Environmental Hazards.* The Bank may inform the Owners of the Bonds of environmental hazards that the Bank has reason to believe exist, and the Bank has the right to take no further action with respect to the Project if the Bank, in its individual capacity, determines that any such action could materially and adversely subject the Bank to environmental or other liability for which the Bank has not received indemnity satisfactory to it.

(r) *Reasonable Fees and Expenses.* The Bank shall be entitled to payment of and/or reimbursement for reasonable fees and expenses for its ordinary services and all advances, agent and counsel fees and other ordinary expenses reasonably and necessary made or incurred by the Bank in connection with such ordinary services and, in the event that it should become necessary that the Bank perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith. Pursuant to *Section 3.2* of the Lease, the Tenant has agreed to pay the reasonable fees, charges and expenses of the Bank. Upon the occurrence of an Event of Default and during its continuance, the Bank shall have a first lien, with right of payment prior to payment of principal or interest on the Bonds, upon all moneys in its possession under any of the provisions hereof for the foregoing reasonable fees, advances, costs and expenses incurred.

(s) *Resignation; Successor.* The Bank may resign from its duties as depository, fiscal and paying agent hereunder, or under any other related instrument, upon giving 60 days' advance written notice to Issuer and Tenant. Such resignation shall become effective at the end of such 60 days or upon the earlier appointment of a successor by the Owners of a majority in principal amount of the Bonds outstanding, provided, however, that, in the case of a vacancy, the Issuer may appoint a temporary successor to serve until a permanent successor shall be appointed by the Owners of the Bonds as above provided. If no successor shall have been appointed and have accepted such appointment within said 60-day period, the Bank or any Owner of the Bonds may petition any court of competent jurisdiction for the appointment of a successor. The Bank shall deliver assets held hereunder to the successor appointed and accepting such appointment pursuant to this subsection, and thereupon the obligations and duties of the Bank hereunder shall cease and terminate.

(t) *Bank's Enforcement Obligation.* Notwithstanding anything in this Bond Agreement to the contrary, the Bank, as assignee of the Issuer's interest under the Lease, in its name or in the name of the Issuer, shall enforce all rights of the Issuer and all obligations of the Tenant under and pursuant to the Lease, whether or not the Issuer is in default under this Bond Agreement.

Section 7. Events of Default and Remedies.

(a) *Definition of Events of Default.* An "Event of Default" under this Bond Agreement shall mean any one or more of the following events:

(1) *Payment Default.* Default in the payment when due of any installment of principal of or any interest or premium on any Bond (which constitutes a default under the Guaranty Agreement) or default in any payment of any amount payable to the Bank, as depositary or as paying agent under this Bond Agreement and expiration of any applicable right to cure;

(2) *Non-Payment Default.* A breach or failure of performance by the Tenant of any of its covenants under the Guaranty Agreement, or by the Tenant or the Issuer of any provision of this Bond Agreement (other than as referred to in (1) above) that is not remedied within 30 days after the Tenant or the Issuer, as the case may be, has received written notice thereof from the Bank or any Owner of the Bonds;

(3) *Breach of Material Representation or Warranty.* Any material representation or warranty of the Issuer or the Tenant contained herein, in the Lease, the Guaranty Agreement or in any certificate or other instrument or document delivered hereunder or thereunder or in connection with the financing of the Project shall prove to have been false or incorrect or breached in any material respect on the date on which it is made;

(4) *Lease Default.* The occurrence of an “Event of Default” under the Lease.

(5) *Guaranty Default.* The occurrence of an event of default under the Guaranty Agreement.

(b) *Default Remedies.* Upon the occurrence of an Event of Default under this Bond Agreement and upon written notice to the Issuer and the Tenant, the Bank may:

(1) *Acceleration of Maturity.* Declare the unpaid principal of any Bonds to be, and the same, together with the accrued interest thereon, shall forthwith become due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived; provided that upon the occurrence of any Event of Default as mentioned in (c) or (d) of the definition of “Event of Default” in the Lease, the unpaid principal of the Bonds, together with the accrued interest thereon, shall forthwith become due and payable without any further act or action on the part of any Owner of the Bonds.

(2) *Legal Action to Enforce Bonds and Lease.* As assignee of the Issuer's interests under the Lease, commence legal action against the Tenant to obtain (A) a judgment against the Tenant for all sums owing under the Lease or the Guaranty Agreement; and/or (B) judgment against the Tenant for possession and sale of the Project, with the proceeds of any sale applied to pay the Bonds and interest and any other sums owing by the Tenant under the Lease or the Guaranty Agreement, as provided in the Lease and this Bond Agreement.

(3) *Recovery of Attorney Fees.* Recover attorney fees and related costs incurred in pursuing any remedies under the Bonds, this Bond Agreement, the Lease, the Guaranty Agreement, any document creating a pledge or security agreement securing the Tenant's obligations, or available at law, in equity or by statute.

(4) *Exercise of Remedies Under the Lease.* As assignee of the Issuer's interests under the Lease, undertake any of the remedies on default specified in *Article XX* of the Lease. Any net proceeds of any action under this Section shall be applied as provided in the Lease and this Bond Agreement.

(c) *Action by Owner(s) of the Bonds.* Any Owner(s) of the Bonds may also pursue any other remedy available to it at law or in equity or by statute or contemplated by the Bonds, this Bond Agreement, the Lease, the Guaranty Agreement, the Assignment, or the Assignment of Rents and Leases.

(d) *Remedies Cumulative.* No such remedy is intended to be exclusive of any other remedy, but each remedy shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity or by statute.

(e) *Waivers of Default.* No delay or omission to exercise any right or power accruing upon any Event of Default under this Bond Agreement shall impair any such right or power or be a waiver thereof or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient. The Owners of the Bonds may waive any Event of Default under this Bond Agreement and the breach of any requirement contained in this Bond Agreement or the Bonds, but such waiver must be in writing. Any such waiver shall be limited to such particular Event of Default or breach.

Section 8. Notices. Except as otherwise expressly provided, all notices, certificates or other communications hereunder or under the Assignment, the Guaranty or the Lease shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

- (i) If to the Issuer: City of Winfield, Kansas
200 E. 9th, P.O. Box 646
Winfield, Kansas 67156-0646
Attention: City Clerk
- (ii) If to the Bank: Union State Bank
823 Main St
Winfield, Kansas 67156
Attention: Commercial Loan Department
- (iii) If to the Tenant or Guarantor: Cumbernauld Village, Inc.
716 N. Tweed St.
Winfield, Kansas 67156

(iv) If to any Owner(s) of the Bonds other than the Bank, at its address as it appears on the records kept by the Bank as fiscal and paying agent for the Bonds.

The Bonds, this Bond Agreement, the Lease, the Guaranty Agreement (except to the extent otherwise provided in the Lease or Guaranty Agreement) and the Assignment may not be amended or terminated unless such amendment is executed or consented to in writing by the Issuer, the Bank, the Tenant and Owners of the Bonds owning at least 51% of the principal amount of all Series 2018 Bonds Outstanding. It shall not be necessary to note any such amendment on any Bond unless the amendment is to the Bond itself.

Neither this Bond Agreement, the Lease nor the Bond shall constitute, give rise to, nor impose a pecuniary liability upon, or a charge upon the general credit of, the Issuer. The Bonds shall not constitute an indebtedness of the Issuer for any constitutional or statutory purpose, and shall not be payable in any manner from taxation.

Section 9. Miscellaneous Provisions.

(a) *Severability.* The invalidity or unenforceability of any one or more of the provisions of this Bond Agreement shall not affect the validity or enforceability of the remaining provisions hereof.

(b) *Authorized Tenant Representative.* Except as otherwise specified, any action to be taken by the Tenant under this Bond Agreement or the Lease may be taken by any person designated to act on behalf of the Tenant as Authorized Tenant Representative by a written certificate furnished to the Issuer and the Bank and signed by the President or any Vice President of the Tenant.

(c) *Execution and Counterparts.* This Bond Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

(d) *Offset by Bank.* Nothing in this Bond Agreement shall be deemed a waiver of or a prohibition of the exercise by the Bank any rights it may have with respect to offset of liabilities owed to the Tenant.

(e) *Section Headings.* The table of contents and section headings in this Bond Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions hereof.

(f) *Governing Law.* This Bond Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas.

(g) *Binding Effect.* This Bond Agreement shall inure to the benefit of and shall be binding upon the parties hereto and any subsequent Owners of the Bonds and their respective successors and assigns.

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IN WITNESS WHEREOF, the parties hereto have caused this Bond Agreement to be duly executed by their duly authorized officials or officers.

CITY OF WINFIELD, KANSAS

[SEAL]

By: _____
Mayor

ATTEST:

By: _____
City Clerk

CUMBERNAULD VILLAGE, INC.

By: _____

Name:

Title:

**UNION STATE BANK,
Winfield, Kansas**

By: _____

Name:

Title:

SCHEDULE I

DESCRIPTION OF PROPERTY

SCHEDULE I TO THE BOND AGREEMENT, DATED AS OF ISSUE DATE OF THE BONDS, BETWEEN THE CITY OF WINFIELD, KANSAS, AND UNION STATE BANK, WINFIELD, KANSAS, AS FISCAL AND PAYING AGENT, AND TO THE LEASE AGREEMENT, DATED AS OF ISSUE DATE OF THE BONDS, BY AND BETWEEN CITY OF WINFIELD, KANSAS AND CUMBERNAULD VILLAGE, INC.

(a) The following described real estate in Cowley County, Kansas:

TRACT 1:

Lot 1, Block 6, Cumbernauld Village Re-Plat, City of Winfield, Cowley County, Kansas.

TRACT 2:

Reserve A, Cumbernauld Village Re-Plat, City of Winfield, Cowley County, Kansas.

TRACT 3:

Lot 1, Block 8, Cumbernauld Village Re-Plat, City of Winfield, Cowley County, Kansas.

said real property constituting the "Land" as referred to in the Lease entered into by the Issuer concurrently with the issuance of the Series 2018 Bonds (the "Lease"), subject to Permitted Encumbrances:

(b) All buildings, building additions, improvements, machinery and equipment constructed, located or installed on the Land, all or any portion of the costs of which were financed, refinanced or paid from the proceeds of the Series 2018 Bonds, and which constitute "Improvements" referred to in the Lease, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this *Schedule I* together constituting the "Project" as referred to in the Lease.

EXHIBIT A

[THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE. NO TRANSFER, SALE, ASSIGNMENT OR HYPOTHECATION OF THIS SECURITY SHALL BE MADE. THE BANK, AS FISCAL AND PAYING AGENT, SHALL BE CONSIDERED UNDER "STOP TRANSFER" ORDERS FOR ALL TRANSFERS OF BONDS UNLESS: (1) THERE SHALL HAVE BEEN DELIVERED TO THE TENANT AND THE BANK PRIOR TO THE TRANSFER, SALE ASSIGNMENT OR HYPOTHECATION AN OPINION OF NATIONALLY RECOGNIZED BOND OR SECURITIES COUNSEL, SATISFACTORY TO THE TENANT AND THE BANK, TO THE EFFECT THAT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND REGISTRATION UNDER ANY APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED; OR (2) THERE SHALL BE A REGISTRATION STATEMENT IN EFFECT UNDER THE SECURITIES ACT OF 1933 AND UNDER ANY APPLICABLE STATE SECURITIES LAWS REQUIRING A STATE-LEVEL REGISTRATION STATEMENT WITH RESPECT TO THE TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION, AND, IN THE CASE OF BOTH (1) AND (2), THERE SHALL HAVE BEEN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER. THE BANK, AS BOND REGISTRAR, SHALL NOT TRANSFER THIS BOND EXCEPT IN ACCORDANCE WITH THIS LEGEND AND THE CORRELATIVE PROVISIONS OF THE BOND AGREEMENT.]

No. R-__

\$3,600,000

UNITED STATES OF AMERICA
STATE OF KANSAS

CITY OF WINFIELD, KANSAS

HEALTH CARE FACILITIES REFUNDING AND IMPROVEMENT REVENUE BOND
SERIES 2018
(CUMBERNAULD VILLAGE, INC.)

The City of Winfield, Kansas (the "Issuer"), hereby promises to pay, solely out of the sources hereinafter specified, Union State Bank, the registered Owner hereof, or registered assigns (an "Owner"), the principal sum of

THREE MILLION SIX HUNDRED THOUSAND DOLLARS

plus interest on the unpaid balance hereof accruing from the Issue Date until paid, in lawful money of the United States of America, at the rates and payable as follows:

- a. On and after the Issue Date of this Bond, the then unpaid principal amount of this Bond, together with interest in arrears at the Fixed Rate, shall be paid in monthly installments equal to the Amortization Amount (herein defined), commencing on the Amortization Commencement Date and continuing on each Payment Date thereafter until the Final Maturity Date.
- b. One final payment in the amount of the entire unpaid balance hereunder (including all accrued and unpaid interest) on the Final Maturity Date.

The “Amortization Amount” shall mean the monthly amount sufficient to fully amortize and pay, in substantially equal monthly installments of principal and interest over a period of 120 months commencing on the Issue Date and ending on the Final Maturity Date, the entire unpaid balance of this Bond as of the Amortization Commencement Date. A schedule of the required payments of principal and interest on this Bond is attached to this Bond as *Schedule A*.

The “Amortization Commencement Date” shall mean the first day of the first calendar month after the Issue Date.

A “Business Day” shall mean a day on which the Bank is open for business at its commercial bank office in Winfield, Kansas.

The “Final Maturity Date” shall be the first day of the 120th month after the Issue Date.

The “First Payment Date” shall mean the first day of the first calendar month following the Issue Date.

The “Fixed Rate” shall mean 3.09% per annum, computed on the basis of 30 days per month for [365] days per year.

The “Issue Date” shall mean the date endorsed by the fiscal and paying agent on the Certificate of Authentication on this Bond.

The “Payment Date” shall be the first day of each calendar month following the First Payment Date.

Payments of principal of and redemption premium, if any, and interest on this Bond shall be made in immediately available funds no later than 11:00 A.M., Central time, on the Payment Date, at Union State Bank (the “Bank”) at its commercial banking office in Winfield, Kansas or such other place as the Bank may from time to time designate in writing, in lawful money of the United States of America. If the principal of or interest on this Bond falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding full Business Day. If payment is made by check, the check must be delivered to the Bank at least 3 Business Days prior to the Payment Date.

If there is a default in the payment of any item or installment when due, the item or installment so in default shall continue as an obligation hereunder until the same shall be fully paid[, and such item or installment shall be payable upon demand with interest thereon.

This Bond is issued pursuant to an Ordinance of the governing body of the Issuer and a Bond Agreement dated as of the Issue Date of this Bond (the “Bond Agreement”), between the Issuer, the Bank and Cumbernauld Village, Inc. (the “Tenant”), for the purpose of providing funds for the acquisition, construction, renovation and equipping of a health care facility located in the City of Winfield, Kansas (the “Project”), to be leased to the Tenant pursuant to a Lease, dated as of the Issue Date of this Bond (the “Lease”), between the Issuer and the Tenant by the authority of and in conformity with the constitution and statutes of the state of Kansas, including particularly K.S.A. 12-1740 *et seq.*, and K.S.A. 10-116a, all as amended, and all other laws of said state applicable thereto.

This Bond and the interest and redemption premium, if any, hereon are payable solely out of the revenues derived by the Issuer from the Project and pursuant to the Lease. This Bond and the interest and redemption premium, if any, hereon do not constitute a debt of the Issuer, or of the State of Kansas, and neither the Issuer nor said state shall be liable thereon, and this Bond shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Tenant's obligations under the Lease are secured by a Collateral Assignment of Lease (the “Collateral Assignment”) dated as of the Issue

Date of this Bond, from the Tenant to the Bank. To secure the payment of the principal of and redemption premium, if any, and interest on this Bond, the Issuer has assigned to the Bank substantially all its rights under the Lease pursuant to an Assignment of Lease and Security Agreement, dated as of the Issue Date of this Bond (the "Assignment"). In addition, the payment of the principal of and redemption premium, if any, and interest on this Bond has been unconditionally guaranteed by the Tenant pursuant to a Guaranty Agreement, dated as of the Issue Date of this Bond (the "Guaranty Agreement"). Performance of the obligations of the Tenant as a guarantor under the Guaranty Agreement is secured by the Collateral Assignment. Reference is hereby made to the Bond Agreement, the Lease, the Assignment, the Collateral Assignment and the Guaranty Agreement for a further description of the Project, the rights, duties and obligations of the Issuer, the Tenant, the Bank and any other Owners of the Bonds, the security for this Bond and such obligations hereunder.

In the event of a Determination of Taxability with respect to any Bond, all of the Bonds then Outstanding shall be called for redemption and payment on a redemption date established by the Issuer at a redemption price equal to the par value of the principal amount thereof plus accrued interest to the redemption date, without premium.

In the event of a Change of Circumstances (as defined in the Bond Agreement), this Bond shall be subject to redemption and payment prior to the stated maturity thereof at the option of the Issuer, upon instructions from the Tenant, on any date, at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

This Bond is also subject to redemption in whole or in part, in even multiples of \$100 by the Issuer, at the option of and upon instructions from the Tenant to the Issuer, on any date, at the par value of the principal amount thereof, without premium, plus interest accrued to the date of redemption.

This Bond shall be redeemed in part, in order to exhaust any money that may remain in the Project Fund after the Completion Date and after payment in full of all Project Costs (as said terms are defined in the Bond Agreement) as soon as practicable after such Completion Date at a price equal to the principal amount of this Bond to be redeemed, plus accrued interest thereon to the redemption date, without premium.

This Bond shall be redeemed in part, in order to exhaust any Net Proceeds (as defined in the Lease) of insurance or condemnation awards paid into the Bond Fund as soon as practicable after receipt at a price equal to the principal amount of this Bond to be redeemed, plus accrued interest thereon to the redemption date, without premium.

Unless waived by the applicable Owner of the Bonds, notice of any call for redemption at the option of the Tenant shall be given by the Issuer or the Tenant on behalf of the Issuer to each Owner of the Bonds at its address as it appears on the records maintained by the Bank as fiscal and paying agent by first class mail, postage prepaid, mailed not less than ten (10) days prior to the redemption date.

All portions of this Bond so called for redemption will cease to bear interest on the specified redemption date, provided funds or securities in which such funds are invested for their redemption are on deposit with the paying agent on or prior to the redemption date, and shall no longer be entitled to the benefits and protection of the Bond Agreement and shall not be deemed to be outstanding.

If this Bond is redeemed in part, notice need not be delivered to the Bank or the Issuer to note such partial redemption, but the Owner of the Bonds shall note such partial redemption by endorsing the acknowledgment provided on this Bond. Any redemption in part of this Bond shall be applied to reduce the installments of principal hereof in inverse order of their maturity.

This Bond is issuable in the form of a fully registered Bond without coupons. This Bond shall be transferable by the Owner of this Bond upon the surrender of the certificate or certificates representing this Bond for transfer or exchange at the offices of the Bank as fiscal and paying agent, accompanied, in the case of a transfer, by a written instrument of transfer executed by the Owner of this Bond or its attorney in fact duly authorized in writing. Upon such surrender, the Bank shall cause the Issuer to execute and deliver in the name of the transferee a new registered Bond certificate or certificates in an aggregate principal amount equal to the unpaid principal amount hereof. The Issuer, the Bank, the Tenant and the Guarantor may deem and treat the person in whose name this Bond certificate is registered as the absolute Owner of the principal amount of the Bonds represented by this certificate for the purpose of receiving payment of, or on account of, the principal or interest due hereon and for all other purposes. Transfer of this Bond certificate is subject to certain further conditions and restrictions as further endorsed hereon.

In certain events, on the conditions, in the manner and with the effect set forth in the Bond Agreement, the principal of this Bond may be declared due and payable before the stated maturity hereof, together with interest accrued hereon. Modifications or alterations of this Bond may be made only to the extent and in the circumstances permitted by the Bond Agreement.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the facsimile signature of the Mayor and attested by the manual signature of the City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated as of the Issue Date of this Bond.

CITY OF WINFIELD, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond certificate evidences ownership of the City of Winfield, Kansas Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernault Village, Inc.), as described herein and in the Bond Agreement described herein. The Issue Date of this Bond is April 9, 2018.

UNION STATE BANK
Winfield, Kansas,
as fiscal and paying agent

By: _____
Authorized Officer

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

Print or Type Name and Address of Transferee

the Bonds represented by this certificate and all rights thereunder, and hereby authorizes the transfer of the within Bond on the books kept by the Bank for the registration and transfer of Bonds.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

[Seal of Owner of the Bonds]

(Name of Eligible Guarantor Institution)

By: _____
Title: _____

Signature must be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240. 17-Ad-15).

ACKNOWLEDGMENT OF PARTIAL REDEMPTION RECORD OF PAYMENTS

Partial prepayments of the principal of this Bond may be made directly to the registered Owner hereof without surrender hereof to the Bank, and each registered Owner hereof may record such prepayment on the table set forth below. Accordingly, any purchaser or other transferee of this Bond should verify with the Bank the principal hereof outstanding prior to such purchase or transfer, and the records of the Bank shall be conclusive for such purposes.

Payment	Amount		Payment	Amount	
<u>Date</u>	<u>Paid</u>	<u>Signature</u>	<u>Date</u>	<u>Paid</u>	<u>Signature</u>

EXHIBIT B
COMMITMENT LETTER

CITY OF WINFIELD, KANSAS

AS ISSUER

AND

CUMBERNAULD VILLAGE, INC.

AS TENANT

LEASE

DATED AS OF ISSUE DATE OF THE BONDS

\$4,100,000

**HEALTH CARE FACILITIES REFUNDING AND IMPROVEMENT REVENUE BONDS
SERIES 2018
(CUMBERNAULD VILLAGE, INC.)**

LEASE

TABLE OF CONTENTS

Page

ARTICLE I

Section 1.1.	Definitions.....	1
Section 1.2.	Representations and Covenants by the Tenant.....	5
Section 1.3.	Representations and Covenants by the Issuer.....	6

ARTICLE II

Section 2.1.	Granting of Leasehold.....	7
---------------------	-----------------------------------	----------

ARTICLE III

Section 3.1.	Basic Rent.....	7
Section 3.2.	Additional Rent.....	7
Section 3.3.	Rent Payable Without Abatement or Setoff.....	7
Section 3.4.	Prepayment of Basic Rent.....	8
Section 3.5.	Deposit of Rent by the Bank.....	8
Section 3.6.	Acquisition of Bonds.....	8
Section 3.7.	Assignment of Rents and Leases.....	8

ARTICLE IV

Section 4.1.	Disposition of Original Proceeds; Redemption Fund; Project Fund.....	8
---------------------	---	----------

ARTICLE V

Section 5.1.	Acquisition of Land and Improvements.....	8
Section 5.2.	Project Contracts.....	9
Section 5.3.	Payment of Redemption Costs; Payment of Project Costs for Buildings and Improvements.....	9
Section 5.4.	Payment of Project Costs for Machinery and Equipment.....	9
Section 5.5.	Completion of Project Additions.....	10
Section 5.6.	Deficiency of Project Fund.....	10
Section 5.7.	Right of Entry by the Issuer and the Bank.....	11
Section 5.8.	Machinery and Equipment Purchased by the Tenant.....	11
Section 5.9.	Project Property of the Issuer.....	11
Section 5.10.	Kansas Retailers' Sales Tax.....	11

ARTICLE VI

Section 6.1.	Insurance as a Condition to Disbursement.....	11
Section 6.2.	Insurance After Completion.....	12
Section 6.3.	General Insurance Provisions.....	12
Section 6.4.	Evidence of Title.....	13

ARTICLE VII

Section 7.1.	Impositions.....	13
Section 7.2.	Receipted Statements.....	13
Section 7.3.	Contest of Impositions.	13

ARTICLE VIII

Section 8.1.	Use of Project.....	14
Section 8.2.	Environmental Provisions.	14

ARTICLE IX

Section 9.1.	Sublease by the Tenant.....	15
Section 9.2.	Assignment by the Tenant.....	16
Section 9.3.	Release of the Tenant.....	16
Section 9.4.	Mergers and Consolidations.	16
Section 9.5.	Covenant Against Other Assignments.	16
Section 9.6.	Opinion of Bond Counsel.	16

ARTICLE X

Section 10.1.	Repairs and Maintenance.....	16
Section 10.2.	Removal, Disposition and Substitution of Machinery or Equipment.....	17

ARTICLE XI

Section 11.1.	Alteration of Project.	18
----------------------	------------------------------------	-----------

ARTICLE XII

Section 12.1.	Additional Improvements.....	18
----------------------	-------------------------------------	-----------

ARTICLE XIII

Section 13.1.	Securing of Permits and Authorizations.....	18
Section 13.2.	Mechanic's Liens.....	19
Section 13.3.	Contest of Liens.....	19
Section 13.4.	Utilities.	19

ARTICLE XIV

Section 14.1.	Indemnity.....	19
----------------------	-----------------------	-----------

ARTICLE XV

Section 15.1.	Access to Project.....	20
----------------------	-------------------------------	-----------

ARTICLE XVI

Section 16.1.	Option to Extend Basic Term.....	20
----------------------	---	-----------

ARTICLE XVII

Section 17.1.	Option to Purchase Project.	20
Section 17.2.	Quality of Title and Purchase Price.	20
Section 17.3.	Closing of Purchase.	21
Section 17.4.	Effect of Failure to Complete Purchase.	21
Section 17.5.	Application of Condemnation Awards if the Tenant Purchases Project.	21
Section 17.6.	Option to Purchase Unimproved Portions of Land.	22
Section 17.7.	Quality of Title - Purchase Price.	22
Section 17.8.	Closing of Purchase.	22
Section 17.9.	Effect of Purchase on Lease.	22
Section 17.10.	Effect of Failure to Complete Purchase.	23

ARTICLE XVIII

Section 18.1.	Damage and Destruction.	23
Section 18.2.	Condemnation.	23
Section 18.3.	Effect of Tenant's Defaults.	24

ARTICLE XIX

Section 19.1.	Change of Circumstances; Determination of Taxability.	24
----------------------	--	----

ARTICLE XX

Section 20.1.	Remedies on Default.	25
Section 20.2.	Survival of Obligations.	26
Section 20.3.	No Remedy Exclusive.	26

ARTICLE XXI

Section 21.1.	Performance of the Tenant's Obligations by the Issuer.	26
----------------------	---	----

ARTICLE XXII

Section 22.1.	Surrender of Possession.	26
----------------------	---------------------------------	----

ARTICLE XXIII

Section 23.1.	Notices.	27
----------------------	-----------------	----

ARTICLE XXIV

Section 24.1.	Triple-Net Lease.	27
Section 24.2.	Funds Held by the Bank After Payment of Bonds.	27

ARTICLE XXV

Section 25.1.	Rights and Remedies.	27
Section 25.2.	Waiver of Breach.	27
Section 25.3.	The Issuer Shall Not Unreasonably Withhold Consents and Approvals.	28

ARTICLE XXVI

Section 26.1.	The Issuer May Not Sell.	28
Section 26.2.	Quiet Enjoyment and Possession.	28
Section 26.3.	Financial Report; Furnishing of Financial Information.	28
Section 26.4.	Issuer's Obligations Limited.	28

ARTICLE XXVII

Section 27.1.	Investment Tax Credit; Depreciation.	29
----------------------	---	----

ARTICLE XXVIII

Section 28.1.	Amendments.	29
Section 28.2.	Granting of Easements.	29
Section 28.3.	Security Interests.	30
Section 28.4.	Construction and Enforcement.	30
Section 28.5.	Invalidity of Provisions of Lease.	30
Section 28.6.	Covenants Binding on Successors and Assigns.	30
Section 28.7.	Section Headings.	30
Section 28.8.	Execution of Counterparts; Electronic Transactions.	30
Signatures and Acknowledgments		31
Appendix A, Form of Requisition for Payment of Project Costs		A-1
Appendix B, Form of Certificate of Completion		B-1
Appendix C, Form of Requisition for Payment of Costs of Issuance		C-1
Schedule I, Description of Property		S-1

LEASE

THIS LEASE, made and entered into as of Issue Date of the Bonds between the City of Winfield, Kansas (the “Issuer”), and Cumbernault Village, Inc., a Kansas (the “Tenant”).

WITNESSETH:

WHEREAS, the Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State, with full lawful power and authority to enter into this Lease by and through its governing body; and

WHEREAS, the Issuer, in furtherance of the purposes and pursuant to the provisions of the laws of the State, particularly K.S.A. 12-1740 et seq. (the “Act”), and in order to provide for the economic development and welfare of the Issuer and its environs and to provide employment opportunities for its citizens and to promote the economic stability of the State, has proposed and does hereby propose that it shall:

- (a) Acquire the Project Additions;
- (b) Lease the Project, including the Project Additions, to the Tenant for the rentals and upon the terms and conditions hereinafter set forth; and
- (c) Issue, for the purpose of paying Redemption Costs and Project Costs, the Series 2018 Bonds under and pursuant to and subject to the provisions of the Act and the Bond Agreement, said Bond Agreement being incorporated herein by reference and authorized by an Ordinance of the governing body of the Issuer; and

WHEREAS, the Tenant, pursuant to the foregoing proposals of the Issuer, desires to lease the Project from the Issuer for the rentals and upon the terms and conditions hereinafter set forth;

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

ARTICLE I

Section 1.1. Definitions. Capitalized terms not otherwise defined in this Lease shall have the meanings set forth in the Bond Agreement. In addition to the words, terms and phrases defined in the Bond Agreement and elsewhere in this Lease, the capitalized words, terms and phrases as used herein shall have the meanings set forth below, unless some other meaning is plainly intended:

“Additional Rent” means all fees, charges, costs and expenses of the Bank or the Issuer (including reasonable attorney's fees), all Impositions, all amounts required to be rebated to the United States pursuant to the Tax Compliance Agreement, all Default Administration Costs, all other payments of whatever nature payable or to become payable pursuant to the Bond Agreement or which the Tenant has agreed to pay or assume under the provisions of this Lease and any and all expenses (including reasonable attorney's fees) incurred by the Issuer or the Bank in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Lease or the Bond Agreement. The fees, charges, costs and expenses of the Bank shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds and the administration or enforcement of any rights or obligations under this Lease, the Bond Agreement or the Guaranty Agreement except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other

government charge imposed on the Bank in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The fees, charges, costs and expenses of the Issuer shall include, but not be limited to, any and all costs incurred by the Issuer in connection with the administration or enforcement of any rights, duties, or obligations under this Lease, the exercise or pursuit of any remedy upon an Event of Default, the amendment of this Lease, the granting of consents, easements or similar actions or any other action required of or available to the Issuer under the terms of this Lease.

“Additional Term” shall mean that term commencing on the last day of the Basic Term and terminating 5 years thereafter.

“Assignment of Rents and Leases” means the Assignment of Rents and Leases entered into between the Tenant and the Bank dated as of Issue Date of the Bonds given as additional security for performance of the Tenant's obligations under this Lease and under the Guaranty Agreement.

“Authorized Tenant Representative” means the Executive Director of the Tenant, or such other person as is designated to act on behalf of the Tenant as evidenced by written certificate furnished to the Bank, containing the specimen signature of such person and signed on behalf of the Tenant by its Executive Director or any Member of the Tenant. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Tenant Representative.

“Bankruptcy Code” means Title 11 of the United States Code, as amended.

“Basic Rent” means the monthly amount which, when added to Basic Rent Credits, will be sufficient to pay, on each Payment Date, all principal of, redemption premium, if any, and interest on all Outstanding Bonds which is due and payable on such Payment Date. If for any reason on any Payment Date the Bank does not have on deposit in the Bond Fund sufficient moneys to pay all principal and interest due on the Bonds on such Payment Date, then the Tenant shall pay, as Basic Rent, on such Payment Date, the amount of such deficiency.

“Basic Rent Credits” means all funds on deposit in the Bond Fund and available for the payment of principal of, redemption premium, if any, and interest on the Bonds on any Basic Rent Payment Date.

“Basic Rent Payment Date” means May 1, 2018 and the first day of each month thereafter until the principal of, redemption premium, if any, and interest on all Outstanding Bonds have been fully paid or provision made for their payment in accordance with the provisions of the Bond Agreement.

“Basic Term” means that term commencing as of the delivery of this Lease and ending on April 1, 2028, subject to prior termination as specified in this Lease, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Bond Agreement.

“Bond Agreement” means the Bond Agreement delivered concurrently with this Lease, as from time to time amended and supplemented by Supplemental Bond Agreements in accordance with the provisions of *Section 9* of the Bond Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.

“Certificate of Completion” means a written certificate signed by the Authorized Tenant Representative stating that (1) the Project Additions have been substantially completed in accordance with the plans and specifications prepared or approved by the Issuer or the Tenant, as the case may be; (2) the Project

Additions have been substantially completed in a good and workmanlike manner; (3) no mechanic's or materialmen's liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Project Additions constituting a part of the Project are located or installed upon the Land; and (5) if required by ordinances duly adopted by the Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Project Additions. A form of Certificate of Completion is attached as *Appendix B*.

“Completion Date” means the date on which the Project Additions are certified as substantially completed in accordance with *Section 5.5* of this Lease.

“Default” means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, may constitute an Event of Default.

“Default Administration Costs” means the reasonable fees, charges, costs, advances and expenses of the Owner(s) of Bonds incurred in anticipation of an Event of Default, or after the occurrence of an Event of Default, including, but not limited to, counsel fees, litigation costs and expenses, the expenses of maintaining and preserving the Project and the expenses of re-letting or selling the Project.

“Environmental Assessment” means an environmental assessment with respect to the Project conducted by an independent consultant satisfactory to the Issuer and the Bank which reflects the results of such inspections, records reviews, soil tests, groundwater tests and other tests requested, which assessment and results shall be satisfactory in scope, form and substance to the Issuer and the Bank.

“Environmental Law” means CERCLA, SARA, and any other federal, state or local environmental statute, regulation or ordinance presently in effect or coming into effect during the Term of this Lease.

“Event of Bankruptcy” means an event whereby the Tenant shall: (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; or (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, which order, if the Tenant has not consented thereto, shall not be vacated, denied, set aside or stayed within 60 days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

“Event of Default” means any one of the following events:

(a) Failure of the Tenant to make any payment of Basic Rent within five business days of the time and in the amounts required hereunder; or

(b) Failure of the Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder, or failure to observe or perform any other covenant, agreement, obligation or provision of this Lease on the Tenant's part to be observed or performed, and the same is not remedied within thirty (30) days after the Issuer or the Bank has given the Tenant written notice specifying such failure (or such longer period as shall be reasonably required to correct such default; provided that (i) the Tenant has commenced

such correction within said 30-day period, and (ii) the Tenant diligently prosecutes such correction to completion); or

(c) An Event of Bankruptcy; or

(d) Abandonment of the Project by the Tenant.

“Full Insurable Value” means full actual replacement cost less physical depreciation.

“Hazardous Substances” shall mean “hazardous substances” as defined in CERCLA.

“Impositions” means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or the Tenant's interest therein, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which, if not paid when due, would encumber the Issuer's title to the Project.

“Land” means the real property (or interests therein) described in *Schedule I* hereto.

“Lease” means this Lease between the Issuer and the Tenant, as from time to time supplemented and amended in accordance with the provisions hereof.

“Net Proceeds” means the gross proceeds from the insurance (including without limitation title insurance) or condemnation award with respect to which that term is used remaining after the payment of all expenses (including without limitation attorneys' fees and any expenses of the Issuer, the Tenant, the Bank or any other owner of the Bonds) incurred in the collection of such gross proceeds.

The term **“Notice Address”** shall mean:

(1) With respect to the Tenant:

Cumbernauld Village, Inc.
716 N. Tweed St.
Winfield, Kansas 67156
Attn: Executive Director

(2) With respect to the Issuer:

City of Winfield, Kansas
200 E. 9th
P.O. Box 646
Winfield, Kansas 67156-0646
Attn: City Clerk

(3) With respect to the Bank:

Union State Bank
823 Main St
Winfield, Kansas 67156
Attn: Commercial Loan Department

“Original Proceeds” means all sale proceeds, including accrued interest, from sale of the Series 2018 Bonds to the Bank and any investment earnings credited to the Project Fund prior to the Completion Date.

“Owner’s Title Policy” means that certain owner’s policy of title insurance insuring the Issuer’s fee simple title in the Project as required by *Section 6.4* of the Lease.

“Permitted Encumbrances” easements and rights-of-way of record at the time of conveyance of the Land to the Issuer, and any mortgages, liens or other encumbrances or title exceptions referenced in the Owner’s Title Policy.

“Project Contracts” means a contract or contracts with respect to the acquisition and/or construction of the Improvements entered into by the Tenant or the Issuer.

“SARA” means the Superfund Amendments and Reauthorization Act of 1986, as now in effect and as hereafter amended.

“State” means the State of Kansas.

“Tax-Exempt Organization” means an organization described in Section 501(c)(3) of the Code exempt from federal income taxation under Section 501(a) of the Code, which is not a private foundation under Section 509 of the Code.

“Term” means, collectively, the Basic Term and any Additional Term of the Lease.

Section 1.2. Representations and Covenants by the Tenant. The Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(a) The Tenant is a Kansas not for profit corporation, duly organized and existing under the laws of said state, and is duly authorized and qualified to do business in the State, with lawful power and authority to enter into this Lease, acting by and through its duly authorized officers, and is a Tax-Exempt Organization.

(b) Except as otherwise permitted herein, the Tenant shall (1) maintain and preserve its existence and organization as a corporation and its authority to do business in the State and to operate the Project; and (2) not initiate any proceedings of any kind whatsoever to dissolve or liquidate without (A) securing the prior written consent thereto of the Issuer and (B) making provision for the payment in full of the principal of and interest and redemption premium, if any, on the Bonds; and (3) maintain and preserve its status as a Tax-Exempt Organization. If, at any time during the term of this Lease or the Bond Agreement, the Tenant changes its state of incorporation, changes its form of organization, changes its name, or takes any other action which could affect the proper location for filing Uniform Commercial Code financing statements or continuation statements or which could render existing filings seriously misleading or invalid, the Tenant shall immediately provide written notice of such change to the Bank, and thereafter promptly deliver to the Bank such amendments and/or replacement financing statements, together with an Opinion of Counsel to the effect that such amendments and/or replacement financing statements have been properly filed so as to

create a perfected security interest in the collateral securing the Bond Agreement, and such additional information or documentation regarding such change as the Bank may reasonably request.

(c) Neither the execution and/or delivery of this Lease, the consummation of the transactions contemplated hereby or by the Bond Agreement, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes in any material respect any provisions of its articles of incorporation or bylaws, or conflicts in any material respect with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which the Tenant is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a material default (without regard to any required notice or the passage of any period of time) under any of the foregoing, or would result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates in any material respect any existing law, administrative regulation or court order or consent decree to which the Tenant is subject.

(d) This Lease constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) The Tenant agrees to operate and will operate the Project, or cause the Project to be operated as a "facility," as that term is contemplated in the Act, from the date of the Issuer's acquisition of the Project to the end of the Term.

(f) The Tenant has obtained or will obtain any and all permits, authorizations, licenses and franchises necessary to construct the Project Additions and to enable it to operate and utilize the Project for the purposes for which it was leased by the Tenant under this Lease.

(g) The estimated total cost of the Improvements to be financed by the proceeds of the Series 2018 Bonds, plus interest on the Series 2018 Bonds during acquisition, construction and installation of the Improvements, and Costs of Issuance of the Series 2018 Bonds, will not be less than the original aggregate principal amount of the Series 2018 Bonds.

(g) After reasonable inquiry and investigation, the Tenant is not aware of (i) any Hazardous Substances generated from or located on the Project; (ii) any prior use of the Land which might reasonably involve Hazardous Substances; or (iii) any investigations, complaints or inquiries of any kind, from any source, concerning Hazardous Substances with respect to the Project or properties adjoining the Project.

(h) The Tenant will not use or permit the Project to be used by any other person or entity in any manner which would involve the generation, storage, disposal or transportation of Hazardous Substances, except in strict compliance with applicable Environmental Laws.

(i) The proceeds of the Series 2018 Bonds are to be used (i) to acquire, construct, install, equip and furnish the Project Additions, (ii) to fund a debt service reserve fund, and (iii) to pay certain costs related to the issuance of the Series 2018 Bonds.

Section 1.3. Representations and Covenants by the Issuer. The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows:

(a) It is a municipal corporation duly incorporated and existing as a city of the second class under the constitution and laws of the State. Under the provisions of the Act and the Ordinance, the Issuer has the power to enter into and perform the transactions contemplated by this Lease and the Bond Agreement and to carry out its obligations hereunder and thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against, the Project, except for this Lease, the assignment of this Lease to the Bank as the Issuer's fiscal and paying agent, any Permitted Encumbrances, any Impositions, the pledge of the Project pursuant to the Ordinance, Bond Agreement, and the Assignment of Rents and Leases.

(c) Except as otherwise provided herein or in the Bond Agreement, it will not during the Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim or encumbrance to be placed against, the Project, except Permitted Encumbrances, this Lease, any Impositions and the pledge of the Project pursuant to the Ordinance and the Bond Agreement.

(d) It has pledged the Project and the net rentals therefrom generated under the Lease to payment of the Bonds in the manner prescribed by the Act, and has duly authorized the execution and delivery of this Lease and the Bond Agreement and the issuance, sale and delivery of the Series 2018 Bonds.

(e) It has notified or obtained the consent to and/or approval of the issuance of the Series 2018 Bonds by each municipal corporation and political subdivision the notification, consent or approval of which is required by the provisions of the Act and the Code.

ARTICLE II

Section 2.1. Granting of Leasehold. The Issuer by these presents hereby rents, leases and lets the Project unto the Tenant and the Tenant hereby rents, leases and hires the Project for the Basic Term from the Issuer, for the rentals and upon and subject to the terms and conditions hereinafter set forth.

ARTICLE III

Section 3.1. Basic Rent. The Issuer reserves and the Tenant covenants and agrees to pay Basic Rent to the Bank, as assignee of the Issuer, for the account of the Issuer, for deposit in the Bond Fund, on each Basic Rent Payment Date. Basic Rent shall be payable by check or draft of the Tenant due at the principal office of the Bank.

Section 3.2. Additional Rent. Within 30 days after receipt of written notice thereof, the Tenant shall pay any Additional Rent required to be paid pursuant to this Lease not already paid.

Section 3.3. Rent Payable Without Abatement or Setoff. The Tenant covenants and agrees with and for the express benefit of the Issuer and the Owner(s) of Bonds that all payments of Basic Rent and Additional Rent shall be made by the Tenant as the same become due, and that the Tenant shall perform all of its obligations, covenants and agreements hereunder without notice or demand and without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Improvements shall have been acquired, started or completed, or whether the Issuer's title to the Project or any part thereof is defective or non-existent, and notwithstanding any failure of consideration or commercial frustration of purpose, the eviction or constructive eviction of the Tenant or any subtenant, any Change of Circumstances, any change in the tax or other laws of the United States of America, the State, or any municipal corporation of either, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any action of the Issuer or any other event or condition whatsoever, and regardless of the invalidity of any portion of this Lease, and the Tenant hereby waives the

provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the Tenant therefrom. Nothing in this Lease shall be construed as a waiver by the Tenant of any rights or claims the Tenant may have against the Issuer under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Lease that the Tenant shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owner(s) of Bonds.

Section 3.4. Prepayment of Basic Rent. The Tenant may at any time prepay all or any part of the Basic Rent. Prepayments of Basic Rent will be applied to redemption of Bonds (other than mandatory sinking fund redemption), including payment of redemption premium, as directed in writing by the Tenant, to the extent that Bonds are subject to optional redemption at the time of prepayment. Otherwise, prepayments of Basic Rent will be deposited in the Bond Fund to be applied to purchase of Bonds, or to optional redemption of Bonds (including redemption premium and interest) at the earliest date on which Bonds are subject to optional redemption. Prepayments of Basic Rent which are not sufficient to redeem all Bonds Outstanding at the time of the prepayment will be applied to redeem the principal amounts of Bonds Outstanding in inverse order of maturity, unless otherwise directed by the Tenant.

Section 3.5. Deposit of Rent by the Bank. As assignee of the Issuer's rights hereunder, the Bank shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of this Lease and the Bond Agreement.

Section 3.6. Acquisition of Bonds. If the Tenant acquires any or all of the Outstanding Bonds, it may present the certificate(s) representing such part of the Bonds to the Bank for cancellation, and upon such cancellation, the Tenant's obligation to pay Basic Rent shall be reduced or terminated, as the case may be, in the same manner as provided for prepayments by the Tenant of Basic Rent. In no event, however, shall the Tenant's obligation to pay Basic Rent be reduced in such a manner that the Bank shall not have on deposit in the Bond Fund, on the next succeeding Payment Date, immediately available funds sufficient to pay the maturing principal of, redemption premium, if any, and interest on Outstanding Bonds as and when the same shall become due and according to the terms of the Bonds.

Section 3.7. Assignment of Rents and Leases. To secure its obligation hereunder to pay Basic Rent and Additional Rent, the Tenant has entered into a conditional assignment of all rentals, occupancy fees, license fees and other revenues generated by the Tenant from subtenants, licensees or occupants of the Project, as documented in the Assignment of Rents and Leases. The Issuer and the Bank covenant that unless and until an Event of Default as defined in the Assignment of Rents and Leases shall have occurred, the Tenant shall have the exclusive use, possession and control of all revenue generated from its occupancy of the Project.

ARTICLE IV

Section 4.1. Disposition of Original Proceeds; Redemption Fund; Project Fund. The Original Proceeds shall be paid over to the Bank for the account of the Issuer and applied as set forth in *Section 5* of the Bond Agreement.

ARTICLE V

Section 5.1. Acquisition of Land and Improvements. The Tenant has prior to the issuance of the Bonds, caused to be conveyed to the Issuer by warranty deed, subject to Permitted Encumbrances, the Land and the Original Project as described in *Schedule I*. Concurrently with or prior to the issuance of the

Bonds, the Tenant will furnish the Bank with an appraisal performed by an appraiser acceptable to the Owner(s) of Bonds, which will establish the fair market value of the Project.

Section 5.2. Project Contracts. Prior to the delivery of this Lease, the Tenant may have entered into a contract or contracts with respect to the acquisition and/or construction of the Project Additions. Those contracts, and any such contracts entered into by the Tenant or the Issuer after delivery of this Lease, are hereinafter referred to as the "Project Contracts." Prior to the delivery hereof, certain work has been or may have been performed on the Project Additions pursuant to said Project Contracts or otherwise. The Tenant hereby covenants with the Issuer to perform the Project Contracts for the benefit of the Issuer as holder of title to the Project as well as its own benefit as tenant under this Lease, and the Issuer hereby designates the Tenant as the Issuer's agent for the purpose of executing and performing the Project Contracts. After the execution hereof, the Tenant shall cause the Project Contracts to be fully performed by the contractor(s), subcontractor(s) and supplier(s) thereunder in accordance with the terms thereof, and the Tenant covenants to cause the Project Additions to be acquired, constructed, installed and/or completed in accordance with the Project Contracts. The Tenant warrants that the construction and/or acquisition of the Project Additions in accordance with said Project Contracts will result in the Project being suitable for use by the Tenant as a health care facility. Any and all amounts received by the Issuer, the Bank or the Tenant from any of the contractors or other suppliers by way of breach of contract, refunds or adjustments shall become a part of and be deposited in the Project Fund. The Bank may, at its option, appoint an agent to review the Project Contracts, and make periodic inspections of the Improvements during construction to determine the satisfactory progress and completion of the work. The reasonable fees and expenses of such agent shall be paid by the Tenant as Additional Rent.

Section 5.3. Payment of Redemption Costs; Payment of Project Costs for Buildings and Improvements. Moneys in the Project Fund shall be used for the sole purposes of: (a) paying Redemption Costs; and (b) Project Costs. On the Issue Date, an amount equal to the Redemption Costs will be paid and transferred to Security Bank of Kansas, as trustee, paying agent and bond registrar for the Refunded Bonds, for application to the redemption of the Refunded Bonds on April 10, 2018. The Issuer hereby agrees to pay for the acquisition or construction of the Project Addition Improvements or any repairs or replacements to be made pursuant to *Article XVIII* of this Lease, but solely from Original Proceeds of the Bonds (or Net Proceeds, as applicable) as deposited in the Project Fund, and hereby authorizes and directs the Bank to pay for the same, but solely from the Project Fund, from time to time, after issuance of the Bonds while the Tenant is in compliance with the requirements of *Section 6.1* hereof, upon receipt by the Bank of a requisition certificate signed by the Authorized Tenant Representative in the form set forth as *Appendix A* hereto which is incorporated herein by reference. With regard to materials and/or labor furnished to the Project Additions at the order of the Tenant without formal contract, or by subcontract with the Tenant acting as general contractor, which could form the basis of a statutory mechanic's or subcontractor's lien, the Bank may disburse payment therefor only upon receipt of releases or waivers of statutory mechanic's or subcontractor's liens by all vendors or subcontractors receiving payment or furnishing labor or materials as a subcontractor of the vendor or subcontractor receiving payment.

The sole obligation of the Issuer under this paragraph shall be to cause the Bank to make such disbursements upon receipt of such certificates and releases or waivers. The Bank may rely fully on any such certificates and shall not be required to make any investigation in connection therewith, except that the Bank shall investigate requests for reimbursements directly to the Tenant and shall require such supporting evidence as would be required by a reasonable and prudent fiduciary.

Section 5.4. Payment of Project Costs for Machinery and Equipment. The Issuer hereby agrees to pay for the purchase and acquisition of any machinery and equipment constituting a part of the Project Addition Improvements, but solely from the Project Fund, from time to time, upon receipt by the Bank of a certificate signed by the Authorized Tenant Representative in the form provided by *Appendix A* hereto which is incorporated herein by reference and accompanied by the following specific information:

- (a) Name of seller;
- (b) Name of the manufacturer;
- (c) A copy of the seller's invoice, purchase order or other like document evidencing the purchase by the Tenant of such machinery and/or equipment;
- (d) Common descriptive name of machinery or equipment;
- (e) Manufacturer's or seller's technical description of machinery or equipment;
- (f) Capacity or similar designation;
- (g) Serial number, if any;
- (h) Model number, if any; and
- (i) A written statement by the Seller that the machinery or equipment purchased is not subject to any liens or security interest, or, in the alternative, a bill of sale warranting title to be free of all liens, encumbrances or security interests.

The sole obligation of the Issuer under this Section shall be to cause the Bank to make such disbursements upon receipt of said certificates and proof of mechanic's or subcontractor's lien waiver or release, if the item is to become a fixture on the Land. The Bank may rely fully on any such certificate and supporting documentation and shall not be required to make any independent investigation in connection therewith. All machinery, equipment and/or personal property acquired, in whole or in part, from funds deposited in the Project Fund pursuant to this Section will be considered a part of the Project. With respect to items of machinery and equipment constituting a part of the Project Addition Improvements, the Tenant shall maintain a running master list of such machinery and equipment, and within 30 days after the Completion Date, the Tenant shall prepare an accurate detailed final list of machinery and equipment constituting a part of the Project Addition Improvements (but not installed as fixtures therein or thereon), which list shall be filed with the Bank, and shall constitute a part of this Lease by reference. All machinery and equipment constituting a part of the Project Addition Improvements shall be appropriately identified by separate schedule or other means acceptable to the Bank.

Section 5.5. Completion of Project Additions. The Tenant warrants that the Project Additions, when completed, will be part of the Project and occupied and used by the Tenant for its lawful business purposes. The Tenant covenants and agrees to proceed diligently to complete or acquire the Project Additions. Upon completion of the Project Additions, the Tenant shall cause the Authorized Tenant Representative to deliver a Certificate of Completion, in the form substantially as attached hereto as *Appendix B*, to the Bank. In the event funds remain on hand in the Project Fund on the date the Certificate of Completion is furnished to the Bank, such remaining funds shall be transferred by the Bank to the Bond Fund on the Completion Date and shall be applied in accordance with the provisions of the Bonds and the Bond Agreement.

Section 5.6. Deficiency of Project Fund. If Bond Proceeds in the Project Fund are insufficient to pay fully all Project Costs (including reimbursements to the Tenant for Project Costs advanced by the Tenant prior to issuance of the Bonds) and to fully complete the Project Additions, lien free (except for Permitted Encumbrances), the Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery, equipment, property and services as

the same become due, and the Tenant shall save the Issuer and the Bank whole and harmless from any obligation to pay such deficiency.

Section 5.7. Right of Entry by the Issuer and the Bank. The duly authorized agents of the Issuer and/or the Bank shall have the right (but shall not be required) at any reasonable time and upon reasonable notice to the Tenant prior to the completion of the Project Additions to have access to the Project or any part thereof for the purpose of inspecting the acquisition, installation or construction thereof.

Section 5.8. Machinery and Equipment Purchased by the Tenant. If no part of the purchase price of an item of machinery, equipment or personal property is paid from Original Proceeds deposited in the Project Fund pursuant to the terms of this Lease, then such item of machinery, equipment or personal property will not be considered a part of the Project.

Section 5.9. Project Property of the Issuer. All Improvements, all work and materials on Improvements as such work progresses, any Project Additions, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as fully completed, repaired, rebuilt, rearranged, restored or replaced by the Tenant under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the Issuer. Any Improvements which become a part of the real estate as fixtures shall remain separate from the Tenant's property unless and until purchased by the Tenant from the Issuer as provided in this Lease.

Section 5.10. Kansas Retailers' Sales Tax. The parties have entered into this Lease in contemplation that, under applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project Addition Improvements are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that the Issuer shall, upon the request of and with the Tenant's assistance, promptly obtain from the State and furnish to the contractors and suppliers a project exemption certificate for the construction of the Improvements. The Tenant covenants that said exemption certificate shall be used only in connection with the purchase of tangible personal property or services becoming a part of the Project. The Issuer shall not be responsible for any failure on the part of the State to issue such project exemption certificate.

ARTICLE VI

Section 6.1. Insurance as a Condition to Disbursement. As a condition precedent to payment of Costs of Issuance or disbursement of Redemption Costs or Project Costs (other than Costs of Issuance) from the Project Fund pursuant to *Article V* hereunder, the following policies of insurance shall be in full force and effect:

(a) General accident and public liability insurance covering the Tenant's operations in or upon the Project (including coverage for losses arising from the ownership, maintenance, use or operation of any automobile, truck or other vehicle in or upon the Project) under which the Tenant shall be insured and the Issuer and the Bank shall be additional insureds or mortgagees, as their interests in the Project appear, in an amount not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence as provided by the Kansas tort claims act or other similar future law (currently \$500,000 per occurrence); which policy shall provide that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the Issuer, the Tenant and the Bank, such insurance to be maintained throughout the Term of this Lease;

(b) Statutory workers' compensation insurance;

(c) With regard to new buildings and improvements constituting a part of the Project Addition Improvements, insurance insuring the Improvements while under construction against fire, lightning and all other risks covered by the broadest form extended coverage endorsement then and from time to time thereafter in use in the State to the Full Insurable Value of such Improvements. Such insurance coverage shall name the Tenant as insured and the Issuer and the Bank as additional insureds or mortgagees and loss payees, as their respective interests appear, and all Net Proceeds received under such policy or policies by the Issuer or the Tenant shall be paid over to the Bank and be applied as set forth in *Article XVIII* hereof; and

(d) With regard to new buildings and improvements constituting a part of the Project Addition Improvements and constructed by contractors other than the Tenant, performance and labor and material payment bonds and statutory bonds (with sureties authorized to do business in Kansas and approved by the Issuer) with respect to applicable Project Contracts and in the full amount of the Project Contracts. The performance bonds must be furnished to the Bank before any disbursements are made from the Project Fund for Project Costs incurred pursuant to the bonded contract. Said bonds shall name the Issuer, the Tenant and the Bank as obligees. All payments received by the Issuer, the Tenant and/or the Bank under said bonds shall become a part of and be deposited in the Project Fund.

Section 6.2. Insurance After Completion. The Tenant shall and covenants and agrees that it will, prior to or simultaneously with the expiration of the insurance provided for in the preceding section and throughout the Term at its sole cost and expense, keep the Improvements continuously insured against loss or damage by fire, lightning and all other risks covered by the broadest form extended coverage insurance endorsement then in use in the State in an amount equal to the Full Insurable Value thereof in such insurance company or companies as it may select and shall at all times maintain general accident and public liability insurance required pursuant to *Section 6.1(a)*, all of which policies shall name the Tenant, the Issuer, and the Bank as insureds or mortgagees, as their interests appear.

Section 6.3. General Insurance Provisions.

(a) Within 30 days of renewal dates of expiring policies, certificates of the insurance provided for in this Article shall be delivered by the Tenant to the Bank. All policies of such insurance and all renewals thereof shall name the Tenant as insured and the Issuer and the Bank as additional insureds or mortgagees and loss payees as their respective interests may appear, shall contain a provision that such insurance may not be canceled or amended by the issuer thereof without at least 30 days' written notice to the Issuer, the Tenant and the Bank and shall be payable to the Issuer, the Tenant and the Bank as their respective interests appear. The Issuer and the Tenant each hereby agree to do anything necessary, be it the endorsement of checks or otherwise, to cause any payment of insurance proceeds to be made to the Bank, as long as such payment is required by this Lease to be made to the Bank. Any charges made by the «F_BankTrustee_» for its services in connection with insurance payments shall be paid by the Tenant.

(b) Each policy of insurance hereinabove referred to shall be issued by a nationally recognized responsible insurance company authorized under the laws of the State to assume the risks covered therein, except that the Tenant may be self-insured as to any required insurance coverages under a program of self-insurance approved by the State Commissioner of Insurance or other applicable State regulatory authority.

(c) Certificates of insurance evidencing the insurance coverages herein required shall be filed with the Bank continuously during the term of this Lease.

(d) Each policy of insurance hereinabove referred to may be subject to a reasonable deductible or self-insured retention.

(e) Each policy of insurance required herein may be provided through blanket policies maintained by the Tenant.

(f) Anything in this Lease to the contrary notwithstanding, the Tenant shall be liable to the Issuer and the Bank pursuant to the provisions of this Lease or otherwise, as to any loss or damage which may have been occasioned by the negligence of the Tenant, its agents, licensees, contractors, invitees or employees.

Section 6.4. Evidence of Title. The Tenant shall furnish evidence of title in the form of a policy of owner's title insurance, insuring the Issuer's fee simple title to the Land, subject to Permitted Encumbrances, in an amount equal to \$4,100,000. Such title insurance policy shall contain no exceptions, other than the title insurance company's standard printed exceptions, Permitted Encumbrances, and the encumbrance created by this Lease. The Issuer and the Tenant agree that any and all proceeds therefrom during the Basic Term (a) if received before the completion of the building Improvements shall be paid into and become a part of the Project Fund, (b) if received thereafter but before the Bonds and interest thereon have been paid in full, shall be paid into and become a part of the Bond Fund, and (c) if received after the Bonds, redemption premium, if any, and interest thereon have been paid in full, shall belong and be paid to the Tenant.

ARTICLE VII

Section 7.1. Impositions. The Tenant shall, during the Term of this Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, the Tenant shall be required to pay only such installments thereof as become due and payable during the term of this Lease as and when the same become due and payable. If the Tenant applies to have the Project exempted from ad valorem property taxes because of its use in furtherance of the Tenant's recognized charitable purposes, the Issuer will join in the application for such exemption as requested by the Tenant. If the Tenant is unable to secure a property tax exemption for the Project, the Tenant will pay the property taxes thereon as Impositions.

Section 7.2. Receipted Statements. Unless the Tenant exercises its right to contest any Impositions in accordance with *Section 7.3* hereof, the Tenant shall, within 30 days after the last day for payment without penalty or interest of an Imposition which the Tenant is required to bear, pay and discharge pursuant to the terms hereof, deliver to the Bank a copy of the statement issued therefor duly receipted to show the payment thereof.

Section 7.3. Contest of Impositions. The Tenant shall have the right, in its own or the Issuer's name or both, to contest the validity or amount of any Imposition by appropriate legal proceedings instituted before the Imposition complained of becomes delinquent if, and provided, the Tenant (i) before instituting any such contest, shall give the Issuer and the Bank written notice of its intention to do so and, if requested in writing by the Issuer or the Bank, shall deposit with the Bank a surety bond of a surety company acceptable to the Issuer as surety, in favor of the Issuer and the Bank, as their interests may appear, or cash, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Impositions together with all interest and penalties to accrue thereon and court costs, (ii) diligently prosecutes any such contest and at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays any final judgment enforcing the Imposition so contested and thereafter promptly procures record release or satisfaction thereof. The Tenant shall indemnify and hold the Issuer whole and harmless from any costs and expenses the Issuer may incur related to any such contest.

ARTICLE VIII

Section 8.1. Use of Project. Subject to the provisions of this Lease, the Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act, as long as they are consistent with Code limitations on use of property purchased with Original Proceeds and the Tenant's recognized charitable purposes. The Tenant shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. If the Tenant receives notification of deficiencies in the condition of the Project or in its operations therein from State or federal regulatory authorities, the Tenant shall not be Default hereunder as long as the Tenant responds to the applicable regulatory authority in a timely manner and makes progress towards the cure of any such deficiency satisfactory to such regulatory authority. The Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease. The Tenant shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Tenant to comply with the provisions of this Article.

Section 8.2. Environmental Provisions.

(a) The Tenant hereby covenants that it will not cause or permit any Hazardous Substances (as defined herein) to be placed, held, located or disposed of, on, under or at the Land or the Project, other than in the ordinary course of business and in compliance with all applicable Environmental Laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided to the Issuer hereunder and in the Bond Agreement, the Tenant hereby agrees to indemnify and hold harmless the Issuer, the Bank and the Owner(s) of Bond(s) from time to time from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment, costs of investigation, consultants, testing, sampling, cleanup, or defense, and claims of any and every kind paid, incurred or suffered, with respect to, or as a direct or indirect result of, the actual or alleged presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Land or the Project of any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under any federal, state or local Environmental Law or so-called "Superfund" or "Super lien" law, or any other applicable Environmental Law, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standard of conduct concerning, any Hazardous Substance) regardless of whether or not caused by or within the control of the Tenant.

(c) If the Tenant receives any notice of (1) the happening of any event involving the use, other than in the ordinary course of business and in compliance with all applicable Environmental Laws, spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the Land or the Project or in connection with the Tenant's operations thereon or (2) any complaint, order, citation or notice with regard to air emissions, water discharges or any other environmental, health or safety matter affecting the Tenant (an "Environmental Complaint") from any person (including, without limitation, the United States Environmental Protection Agency (the "EPA"), and the Kansas Department of Health and Environment ("KDHE")) then the Tenant shall immediately notify the Issuer and the Bank in writing. With respect to any such notice that relates to a condition or conditions on the Project site, the Tenant shall promptly initiate action to remediate the conditions cited in the notice, and shall diligently pursue such remediation at its expense to the satisfaction of the city authority.

(d) If the Tenant fails to initiate action to remediate as required in subsection (c) of this section, or otherwise fails to discharge its obligations under this *Section 8.2*, the Issuer shall have the right, but not the obligation, and without limitation of the Issuer's other rights under this Lease, to enter the Project or to take such actions as it may deem necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Hazardous Substance or Environmental Complaint following receipt of any notice asserting the existence on the Project of any Hazardous Substance or an Environmental Complaint pertaining to the Project or any part thereof which, if true, could result in an order, suit or other action against the Tenant and/or which, in the reasonable judgment of the Issuer, could jeopardize its interests under this Lease. All reasonable costs and expenses incurred by the Issuer in the exercise of any such rights shall be payable by the Tenant as Additional Rent on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points.

(e) If an Event of Default shall have occurred and is continuing, at the request of the Issuer or the Bank, the Tenant shall periodically perform (at the Tenant's expense) an environmental audit and, if reasonably deemed necessary by the Issuer or the Bank, an Environmental Assessment, (each of which must be reasonably satisfactory to the Issuer and the Bank) of the Project, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Tenant with respect to the Project. Said audit and/or Environmental Assessment shall be conducted by an environmental consultant satisfactory to the Issuer and the Bank. Should the Tenant fail to perform any environmental audit or risk assessment within 30 days of the written request of the Issuer or the Bank, either shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the Issuer or the Bank in the exercise of such rights shall be payable by the Tenant as Additional Rent on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points.

(f) The Tenant shall not install nor permit to be installed in the Project friable asbestos or any substance containing asbestos and deemed hazardous by Environmental Law applicable to the Project and respecting such material, and with respect to any such material currently present in the Project, shall promptly either (1) remove any material which such applicable regulations deem hazardous and require to be removed or (2) otherwise comply with such applicable Environmental Law, at the Tenant's expense. If the Tenant shall fail to so remove or otherwise comply, the Issuer may declare an Event of Default and/or do whatever is necessary to eliminate said substances from the Project or otherwise comply with the applicable Environmental Law or order, and the costs thereof shall be payable by the Tenant on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points. The Tenant shall defend, indemnify, and save the Issuer, the Bank and the Owner(s) of Bond(s) harmless from all costs and expenses (including consequential damages) asserted or proven against the Tenant, or incurred to comply with such regulations.

(g) The provisions of this *Section 8.2* shall survive the termination of this Lease or exercise of the Tenant's option to purchase the Project, except with respect to obligations which arise solely and exclusively as a result of the use, spill, release, leak, seepage or discharge of Hazardous Substances on the Land or the Project after the Project is no longer occupied by the Tenant.

ARTICLE IX

Section 9.1. Sublease by the Tenant. The Tenant may sublease the Project to a single party or entity, with the prior written consent of the Issuer. The Tenant may sublease portions of the Project for use by others in the normal course of its business without the Issuer's prior consent or approval. In the event of any such subleasing, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between the Issuer or the Bank and any

such subtenant shall relieve the Tenant of any of its duties and obligations hereunder. Any such sublease shall be subject and subordinate in all respects to the provisions of this Lease.

Section 9.2. Assignment by the Tenant. The Tenant may assign, mortgage, sell or otherwise transfer its interest in this Lease only with the prior written consent of the Bank as assignee of the Issuer. Collateral assignment by the Tenant of its leasehold interest in this Lease to the Owner(s) of Bonds is hereby acknowledged and approved by the Issuer. In the event of any such assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the extent hereinafter provided, and no such assignment and no dealings or transactions between the Issuer or the Bank and any such assignee shall relieve the Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following Section.

Section 9.3. Release of the Tenant. If, in connection with an assignment by the Tenant of its interest in this Lease, (a) the Issuer and the Owners of at least seventy-five percent (75%) in aggregate principal amount of the Outstanding Bonds (including any Additional Bonds) shall file with the Bank their prior written consent to such assignment, and (b) the proposed assignee shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease and the Guaranty Agreement with regard to the Bonds; then the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

Section 9.4. Mergers and Consolidations. Notwithstanding the provisions of *Sections 9.2 and 9.3* above, if the Tenant shall assign or transfer, by operation of law or otherwise, its interests in this Lease in connection with a transaction involving the merger or consolidation of the Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of the Tenant as an entirety to another person, association, corporation or other entity, and (a) the Issuer shall file with the Bank its prior written consent to such assignment, transfer or merger, (b) the proposed assignee, transferee or surviving entity shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease and the Guaranty Agreement with regard to the Bonds, and (c) the Tenant shall furnish the Bank and the Issuer with evidence in the form of financial statements accompanied by a proforma balance sheet prepared by an independent certified public accountant of recognized standing showing that the net worth of such proposed assignee, transferee or surviving entity immediately following such assignment, transfer or merger will be at least equal to the net worth of the Tenant as shown by the most recent financial statements of the Tenant furnished to the Bank pursuant to this Lease; then and in such event the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment, transfer or merger.

Section 9.5. Covenant Against Other Assignments. The Tenant will not assign or in any manner transfer its interests under this Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements set forth in this *Article IX*.

Section 9.6. Opinion of Bond Counsel. Notwithstanding anything in this *Article IX* to the contrary, no assignment, sale, sublease or transfer of the Project or any part thereof shall be effective unless the Issuer and the Bank shall have received an opinion of Bond Counsel that such assignment, sale, sublease or transfer does not adversely affect the exclusion of the interest on any Bonds from gross income for federal income tax purposes.

ARTICLE X

Section 10.1. Repairs and Maintenance. The Tenant covenants and agrees that it will, during the Term of this Lease, at its own expense, keep and maintain the Project and all parts thereof in good condition and repair (ordinary wear and tear excepted), including but not limited to the furnishing of all parts,

mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order (ordinary wear and tear excepted).

Section 10.2. Removal, Disposition and Substitution of Machinery or Equipment. The Tenant shall have the right, provided the Tenant is not in Default, to remove and sell or otherwise dispose of any machinery or equipment which constitutes a part of the Project and which is no longer used by the Tenant or, in the opinion of the Tenant, is no longer useful to the Tenant in its operations (whether by reason of changed processes, changed techniques, obsolescence, depreciation or otherwise), subject, however, to the following conditions:

(a) With respect only to such items of machinery or equipment that originally cost \$50,000 or more, to the following:

(1) Prior to any such removal, the Tenant shall deliver to the Bank a certificate signed by the Authorized Tenant Representative (A) containing a complete description, including the make, model and serial numbers, if any, of any machinery and equipment constituting a part of the Project which it proposes to remove, (B) stating the reason for such removal, (C) stating what disposition, if any, of the machinery or equipment is to be made by the Tenant after such removal and the names of the party or parties to whom such disposition is to be made and any consideration to be received by the Tenant therefor, if any, and (D) setting forth the original cost and the current fair market value of such machinery and equipment.

(2) Prior to any such removal, the Tenant shall pay the current fair market value of such machinery or equipment as set forth in said certificate to the Bank, provided, however, that in no event shall the amount paid be less than the consideration to be received by the Tenant upon the disposition thereof and the Bank shall deposit such amount in the Bond Fund. Any money deposited in the Bond Fund pursuant to this Section shall be used to redeem Outstanding Bonds at their earliest optional redemption date.

(3) The Tenant may remove any machinery or equipment constituting a part of the Project without first complying with the provisions of subparagraph (2) above if the Tenant promptly replaces any such machinery or equipment so removed with machinery or equipment of the same or a different kind but which is capable of performing the same function, efficiently, as the machinery or equipment so removed. The machinery or equipment so acquired by the Tenant to replace such machinery or equipment thereafter shall be deemed a part of the Project. Within 30 days after any such replacement by the Tenant, the Tenant shall deliver to the Bank a certificate of the Authorized Tenant Representative setting forth a complete description, including make, model and serial numbers, if any, of the machinery or equipment which the Tenant has acquired to replace the machinery or equipment so removed by the Tenant, the cost thereof and that said machinery and equipment have been installed.

(b) With respect to such items of machinery or equipment that originally cost less than \$50,000, the Tenant may obtain release of any such items without any payment to the Bank upon delivery of a certificate setting forth the facts provided for in subparagraph (a)(1) above. In no event shall the Tenant pursuant to the preceding sentence remove an aggregate amount of machinery or equipment having an aggregate original cost of more than \$50,000, without making payment for it.

All machinery or equipment constituting a part of the Project and removed by the Tenant in compliance with this Section shall become the absolute property of the Tenant and may be sold or otherwise disposed of by the Tenant without otherwise accounting to the Issuer. In all cases, the Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage caused thereby.

The Tenant's rights under this Section to remove machinery or equipment constituting a part of the Project is intended only to permit the Tenant to maintain an efficient operation by the removal of such machinery and equipment no longer suitable to the Tenant's use for any of the reasons set forth in this Section and such right is not to be construed to permit a removal under any other circumstances and shall not be construed to permit the wholesale removal of such machinery or equipment by the Tenant.

ARTICLE XI

Section 11.1. Alteration of Project. The Tenant shall have and is hereby given the right, at its sole cost and expense, to make such additions, changes and alterations in and to any part of the Project as the Tenant from time to time may deem necessary or advisable, provided however, the Tenant shall not make any major addition, change or alteration which will adversely affect the intended use or structural strength or value of any part of the Improvements. All additions, changes and alterations made by the Tenant pursuant to the authority of this Article shall (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, shall be deemed a part of the Project; provided, however, that additions of machinery, equipment and/or personal property of the Tenant, not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Tenant and may be removed by the Tenant prior to or as provided in *Section 22.1* hereof.

ARTICLE XII

Section 12.1. Additional Improvements. The Tenant shall have and is hereby given the right, at its sole cost and expense, to construct on the Land or within areas occupied by the Improvements, or in airspace above the Project, such additional buildings and improvements as the Tenant from time to time may deem necessary or advisable. All additional buildings and improvements constructed by the Tenant pursuant to the authority of this Article shall, during the Term, remain the property of the Tenant and may be added to, altered or razed and removed by the Tenant at any time during the Term hereof. The Tenant covenants and agrees (a) to make all repairs and restorations, if any, required to be made to the Project because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, (c) to promptly and with due diligence either raze and remove from the Land, in a good, workmanlike manner, or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional buildings and improvements constructed by the Tenant pursuant to this Article which remain in place after the termination of this Lease for any cause other than the purchase of the Project pursuant to *Article XVII* hereof shall, upon and in the event of such termination, become the separate and absolute property of the Issuer.

ARTICLE XIII

Section 13.1. Securing of Permits and Authorizations. The Tenant shall not do or permit others under its control to do any work in or in connection with the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the

requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease.

Section 13.2. Mechanic's Liens. The Tenant shall not do or suffer anything to be done whereby the Project, or any part thereof, is encumbered by any mechanic's or other similar lien. Should any mechanic's or other similar lien ever be filed against the Project, or any part thereof, the Tenant shall discharge the same of record within 30 days after the date of filing. Notice is hereby given that the Issuer does not authorize or consent to and shall not be liable for any labor or materials furnished to the Tenant or anyone claiming by, through or under the Tenant upon credit, and that no mechanic's or similar liens for any such labor, services or materials shall attach to or affect the reversionary or other estate of the Issuer in and to the Project, or any part thereof.

Section 13.3. Contest of Liens. The Tenant, notwithstanding the above, shall have the right to contest any such mechanic's or other similar lien if within said 30-day period stated above it (a) notifies the Issuer and the Bank in writing of its intention so to do, and if requested by the Bank or the Issuer, deposits with the Bank a surety bond issued by a surety company acceptable to the Issuer as surety, in favor of the Issuer, or cash, in the amount of the lien claim so contested, indemnifying and protecting the Issuer from and against any liability, loss, damage, cost and expense of whatever kind or nature growing out of or in any way connected with said asserted lien and the contest thereof, (b) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Project or any part thereof or interest therein, under execution or otherwise, and (c) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.

Section 13.4. Utilities. All utilities and utility services used by the Tenant in, on or about the Project shall be contracted for by the Tenant in the Tenant's own name and the Tenant shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

ARTICLE XIV

Section 14.1. Indemnity. The Tenant agrees, whether or not the transactions contemplated by this Lease, the Bonds or the Bond Agreement are consummated, to indemnify and hold harmless the Issuer and its officers, directors, officials, employees and agents, including the Bank as assignee of the Issuer's rights under this Lease, and each of its officers, directors, employees and agents (any or all of the foregoing referred to hereafter as "Indemnified Persons"), from and against all claims, actions, suits, proceedings, expenses, judgments, damages, penalties, fines, assessments, liabilities, charges or other costs (including, without limitation, all attorneys' fees and expenses incurred in connection with enforcing this Lease or collecting any sums due hereunder and any claim or proceeding or any investigations undertaken hereunder) relating to, resulting from, or in connection with (a) any cause in connection with the Project, including, without limitation, the acquisition, design, construction, installation, equipping, operating, maintenance or use thereof; (b) any act or omission of the Tenant or any of its agents contractors, servants, employees or licensee in connection with the use or operation of the Project; (c) any cause in connection with the issuance and sale of the Bonds, (d) a misrepresentation or breach of warranty by the Tenant hereunder or under any of the documents executed by the Tenant in connection with this Lease, or (e) any violation by the Tenant of any of its covenants hereunder or under any of the other documents executed by the Tenant in connection with the Bonds or this Lease. This indemnity is effective only with respect to any loss incurred by any Indemnified Person not due to willful misconduct, gross negligence, or bad faith on part of such Indemnified Person. In case any action or proceeding shall be brought against one or more Indemnified Person and with respect to which such Indemnified Person may seek indemnity as provided herein, such Indemnified Person shall promptly notify the Tenant in writing and the Tenant shall promptly assume the defense thereof, including the

employment of counsel reasonable satisfactory to such Indemnified Person or Indemnified Persons, the payment of all expenses and the right to negotiate and consent to settlement; but the failure to notify the Tenant as provided shall not relieve Tenant from any liability or duty under this Section, so long as Tenant is given reasonable opportunity to defend such claim.

ARTICLE XV

Section 15.1. Access to Project. The Issuer, for itself and its duly authorized representatives and agents, including the Bank, reserves the right to enter the Project at all reasonable times during usual business hours throughout the Term, upon reasonable notice, for the purpose of (a) examining and inspecting the same, (b) performing such work made necessary by reason of the Tenant's default under any of the provisions of this Lease, and (c) after an Event of Default, for the purpose of exhibiting the Project to prospective purchasers, lessees or mortgagees. The Issuer may, during the progress of said work mentioned in (b) above, keep and store on the Project all necessary materials, supplies and equipment and shall not be liable for inconvenience, annoyances, disturbances, loss of business or other damage suffered by reason of the performance of any such work or the storage of such materials, supplies and equipment.

ARTICLE XVI

Section 16.1. Option to Extend Basic Term. The Tenant shall have and is hereby given the right and option to extend the Basic Term of this Lease for the Additional Term provided that (a) the Tenant shall give the Issuer written notice of its intention to exercise the option at least 30 days prior to the expiration of the Basic Term and (b) the Tenant is not in Default hereunder at the time it gives the Issuer such notice or at the time the Additional Term commences. In the event the Tenant exercises such option, the terms, covenants, conditions and provisions set forth in this Lease shall be in full force and effect and binding upon the Issuer and the Tenant during the Additional Term except that the Basic Rent during any extended term herein provided for shall be the sum of \$100.00 per year, payable in advance on the first Business Day of such Additional Term.

ARTICLE XVII

Section 17.1. Option to Purchase Project. Subject to the provisions of this Article, the Tenant shall have the right and option to purchase the Project at any time during the Term hereof and for 120 days thereafter. The Tenant shall exercise its option by giving the Issuer written notice of the Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Purchase Date") shall neither be earlier than 30 days nor later than 180 days after the notice is given. The Tenant may not, however, exercise such option if the Tenant is in Default hereunder on the Purchase Date unless all Defaults are cured upon payment of the purchase price specified in *Section 17.2*.

Section 17.2. Quality of Title and Purchase Price. If said notice of election to purchase is given, the Issuer shall sell and convey all of its interests in the Project to the Tenant on the Purchase Date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which title was subject on the date of conveyance to the Issuer of the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) taxes and assessments, general and special, if any, and (d) the rights of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project, for a price determined as follows (which the Tenant agrees to pay in cash at the time of delivery of

the Issuer's deed or other instrument or instruments of transfer of the Project to the Tenant as hereinafter provided):

(1) The full amount which is required to provide the Issuer and the Bank with funds sufficient, in accordance with the provisions of the Bond Agreement, to pay at maturity or to redeem and pay in full (A) the principal of all of the Outstanding Bonds, (B) all interest due thereon to date of maturity or redemption, whichever first occurs, and (C) all costs, expenses and premiums incident to the redemption and payment of said Bonds in full, plus

(2) \$100.00.

Nothing in this Article shall release or discharge the Tenant from its duty or obligation under this Lease to make any payment of Basic Rent or Additional Rent which, in accordance with the terms of this Lease, becomes due and payable prior to the Purchase Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by the Tenant prior to the Purchase Date.

Section 17.3. Closing of Purchase. On the Purchase Date the Issuer shall deliver to the Tenant its special warranty deed and/or other appropriate instrument or instruments of conveyance or assignment, properly executed and conveying the Project to the Tenant free and clear of all liens and encumbrances except as set forth in the preceding section above, or conveying such other title to the Project as may be acceptable to the Tenant, and the Tenant shall pay the full purchase price for the Project as follows: (a) the amount specified in clause (1) of *Section 17.2* shall be paid to the Bank for deposit in the Bond Fund to be used to pay or redeem Bonds and the interest thereon as provided in the Bond Agreement, and (b) the amount specified in clause (2) of said *Section 17.2* shall be paid to the Issuer; provided, however, nothing herein shall require the Issuer to deliver its appropriate instrument or instruments of assignment or conveyance to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied or adequate provision made for such performance and satisfaction. Upon the delivery to the Tenant of the Issuer's appropriate instrument or instruments of assignment or conveyance, payment of the purchase price by the Tenant and legal defeasance of the Bonds, this Lease shall *ipso facto* terminate, subject to the provisions of *Section 20.2* hereof.

Section 17.4. Effect of Failure to Complete Purchase. If, for any reason, the purchase of the Project by the Tenant pursuant to valid notice of election to purchase is not effected on the Purchase Date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given, except that if such purchase is not effected on the Purchase Date because the Issuer does not have or is unable to convey to the Tenant such title to the Project as the Tenant is required to accept, the Issuer shall use its best efforts to cure any such defect in its title to the Project. In the event the Issuer is unable to cure such defect in its title to the Project, or if the Issuer's failure to close would be a breach of its obligations hereunder, the Tenant shall have the right to cancel this Lease forthwith if, but only if, the principal of and interest on the Bonds and all costs incident to the redemption and payment of the Bonds have been paid in full. The Tenant shall also have the right to exercise any legal or equitable remedies, in its own name or in the name of the Issuer, to obtain acceptable title to the Project.

Section 17.5. Application of Condemnation Awards if the Tenant Purchases Project. The right of the Tenant to exercise its option to purchase the Project under the provisions of this Article shall remain unimpaired notwithstanding any condemnation of title to, or the use for a limited period of, all or any part of the Project. If the Tenant shall exercise its option and pay the purchase price as provided in this Article, all of the condemnation awards received by the Issuer after the payment of said purchase price, less all attorneys' fees and other expenses and costs incurred by the Issuer as the owner of the Project in connection with such condemnation, shall belong and be paid to the Tenant.

Section 17.6. Option to Purchase Unimproved Portions of Land. The Tenant shall have the option to purchase at any time and from time to time during the Term any vacant part or vacant parts of the unimproved Land constituting a part of the Project; provided, however, the Tenant shall furnish the Issuer and the Bank with a certificate of an Authorized Tenant Representative, dated not more than thirty (30) days prior to the date of the purchase and stating that, in the opinion of the Authorized Tenant Representative, (a) the portion of said Land with respect to which the option is exercised is not needed for the operation of the Project for the purposes herein stated, (b) the purchase will not impair the usefulness or operating efficiency or materially impair the value of the Project and will not destroy or materially impair the means of ingress thereto and egress therefrom, and (c) the purchase will not materially adversely affect compliance of the remaining Land and any Improvements with applicable zoning laws or regulations. The Tenant shall exercise this option by giving the Issuer and the Bank written notice of the Tenant's election to exercise its option and specifying (i) the legal description, (ii) the date, time and place of closing, which date shall neither be earlier than 45 days nor later than 60 days after the notice is given, (iii) the appraised current fair market value of the portions of the Land with respect to which the Tenant's option is exercised as determined by an independent, qualified appraiser whose report shall be furnished to the Bank together with the Tenant's notice of election to purchase, and (iv) a certificate signed by the chief executive or chief financial officer of the Tenant stating that no event has occurred and is continuing which, with notice or lapse of time or both, would constitute an Event of Default; provided, however, that the Tenant may not exercise this option if there has occurred and is continuing any event which, with notice or lapse of time or both, would constitute an Event of Default at the time said notice is given and may not purchase said real property on the specified closing date if any such event has occurred and is continuing on said date unless all defaults are cured. The option hereby given shall include the right to purchase a perpetual easement for right-of-way to and from the public roadway and the right to purchase such land as is necessary to assure that there will always be access between the real property purchased pursuant to these *Sections 17.6 through 17.10* and the public roadway.

Section 17.7. Quality of Title - Purchase Price. If said notice of election to purchase is given as provided in *Section 17.6* the Issuer shall convey the real property described in the Tenant's notice to the Tenant on the specified date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which the title was subject on the date of conveyance to the Issuer of the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) taxes and assessments, general and special, if any, and (d) the interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the real property described in the Tenant's notice. The purchase price shall be an amount equal to the then current fair market value thereof, as determined with reference to the independent appraiser's report furnished to the Bank or the original cost to the Tenant, whichever is less.

Section 17.8. Closing of Purchase. If the Issuer has title to such vacant real property free and clear of all liens and encumbrances except as stated above or has such other title to the such real property as may be acceptable to the Tenant, then on the specified date, the Issuer shall deliver to the Tenant its special warranty deed, properly executed and conveying such real property to the Tenant free and clear of all liens and encumbrances except as stated above, and the Tenant shall pay the purchase price for such real property, said purchase price to be paid to the Bank for the account of the Issuer and deposited by the Bank in the Bond Fund and shall be used to redeem Bonds on any date the Bonds are subject to optional redemption as provided in the Bond Agreement. Nothing herein shall require the Issuer to deliver its special warranty deed to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied.

Section 17.9. Effect of Purchase on Lease. The exercise by the Tenant of the option granted under these *Sections 17.6 to 17.10* and the purchase and sale and conveyance of a portion or portions of the Land constituting a part of the Project pursuant hereto shall in no way whatsoever affect this Lease, and all the terms

and provisions hereof shall remain in full force and effect the same as though no notice of election to purchase had been given, and specifically, but not in limitation of the generality of the foregoing, exercise of such option shall not affect, alter, diminish, reduce or abate the Tenant's obligations to pay all Basic Rent and Additional Rent required hereunder.

Section 17.10. Effect of Failure to Complete Purchase. If, for any reason whatsoever, the purchase by the Tenant of the real property described in said notice is not effected on the specified date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given.

ARTICLE XVIII

Section 18.1. Damage and Destruction.

(a) If, during the Term, any Improvements are damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Issuer and the Bank in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. In such case, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Improvements shall be paid to the Bank and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any amount remaining in the Project Fund after such rebuilding, repairing, restoring or replacing shall be paid to the Tenant.

(c) If the Tenant shall reasonably determine that rebuilding, repairing, restoring or replacing the Improvements is not practicable and desirable, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Project shall be paid into the Bond Fund. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any period in which the Improvements are damaged or destroyed, or are being repaired, rebuilt, restored or replaced nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent payable by the Tenant under this Lease nor of any other obligations of the Tenant under this Lease except as expressly provided in this Section.

Section 18.2. Condemnation.

(a) If, during the Term title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain (other than the Issuer), the Tenant shall, within 30 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Issuer and the Bank in writing as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire substitute land or construct substitute Improvements.

(b) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute Land or Improvements. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings shall be paid to the Bank for the account of the Tenant and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such substitution. Any amount remaining in the Project Fund after such acquisition or construction shall be paid to Tenant.

(c) If the Tenant shall reasonably determine that it is not practicable and desirable to acquire or construct substitute Improvements, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Bond Fund. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection.

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent nor of any other obligations hereunder payable by the Tenant under this Lease.

(e) The Issuer shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof so long as the Issuer is not the condemning authority. In no event will the Issuer voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the written consent of the Tenant and the Bank.

Section 18.3. Effect of Tenant's Defaults. Anything in this Article to the contrary notwithstanding, the Issuer and the Bank shall have the right at any time and from time to time to withhold payment of all or any part of the Net Proceeds from the Project Fund attributable to damage, destruction or condemnation of the Project to the Tenant or any third party if an Event of Default has occurred and is continuing, or the Issuer or the Bank has given notice to the Tenant of any Default which, with the passage of time, will become an Event of Default. In the event the Tenant shall cure any Defaults specified herein, the Bank shall make payments from the Net Proceeds to the Tenant in accordance with the provisions of this Article. However, if this Lease is terminated or the Issuer or the Bank otherwise re-enters and takes possession of the Project without terminating this Lease, the Bank shall pay all the Net Proceeds held by it into the Bond Fund and all rights of the Tenant in and to such Net Proceeds shall cease.

ARTICLE XIX

Section 19.1. Change of Circumstances; Determination of Taxability. If at any time during the Basic Term, a Change of Circumstances occurs or the Bonds are called for redemption and payment upon the occurrence of a Determination of Taxability, then the Tenant shall have the option to purchase the Project pursuant to *Article XVII* or the option to terminate this Lease by giving the Issuer notice of such termination within 90 days after the Tenant has actual knowledge of the event giving rise to such option. Such termination shall become effective when all of the Bonds Outstanding are paid or payment is provided for in the manner described in *Section 3(f)* of the Bond Agreement.

ARTICLE XX

Section 20.1. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Bank (acting on behalf of the Issuer, as assignee of the Issuer's rights hereunder) may take any legal action, including but not limited to, one or more of the following remedial actions:

(a) By written notice to the Tenant upon acceleration of maturity of the Bonds as provided in the Bond Agreement, the Bank acting on behalf of the Issuer may declare the aggregate amount of all unpaid Basic Rent or Additional Rent then or thereafter required to be paid under this Lease by the Tenant to be immediately due and payable as liquidated damages from the Tenant, whereupon the same shall become immediately due and payable by the Tenant.

(b) The Bank acting on behalf of the Issuer may give the Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given and, if all Events of Default have not then been cured on the date so specified, the Tenant's rights to possession of the Project shall cease, and this Lease shall thereupon terminate. The Bank acting on behalf of the Issuer may thereafter re-enter and take possession of the Project and pursue all its available remedies, including sale of the Project and judgment against the Tenant for possession of the Project and/or all Basic Rent and Additional Rent then owing, including costs and attorney fees.

(c) Without terminating the Term hereof, or this Lease, the Bank acting on behalf of the Issuer may conduct inspections or an Environmental Assessment of the Project. The Issuer or the Bank acting on behalf of the Issuer may refuse to re-enter or take possession of the Project if it has reasonable cause for such refusal. "Reasonable cause" shall include the presence on the Project of conditions which are in violation of any Environmental Law or the existence or threat of a remedial action against the Tenant under any Environmental Law resulting from conditions on the Project.

(d) Without terminating the Term, the Bank acting on behalf of the Issuer may relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as are deemed advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project shall be construed as an election to terminate this Lease, and no such re-entry or taking of possession shall relieve the Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or of any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession. The Tenant shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any, of reletting the Project.

(e) Having elected to reenter or take possession of the Project pursuant to subsection 20.1(c), the Bank acting on behalf of the Issuer may, by notice to the Tenant given at any time thereafter while the Tenant is in Default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Lease, elect to terminate this Lease in accordance with subsection 20.1(b) and thereafter proceed to exercise any remedies lawfully available.

(f) If, in accordance with any of the foregoing provisions of this Article, the Issuer shall have the right to elect to re-enter and take possession of the Project, the Issuer or the Bank acting on behalf of the Issuer, may enter and expel the Tenant and those claiming through or under the Tenant and remove the property and effects of both or either by all lawful means without being guilty of any manner of trespass and without prejudice to any remedies for arrears of Basic Rent or Additional Rent or preceding breach of contract by the Tenant.

(g) Net proceeds of any reletting or sale of the Project shall be deposited in the Bond Fund for application to pay the Bonds and interest thereon. "Net proceeds" shall mean the receipts obtained from reletting or sale after deducting all expenses incurred in connection with such reletting or sale, including without limitation, all repossession costs, brokerage commissions, legal fees and expenses, expenses of employees, alteration costs and expenses of preparation of the Project for reletting or sale.

(h) The Issuer or the Bank acting on behalf of the Issuer may recover from the Tenant any attorney fees or other expense incurred in exercising any of its remedies under this Lease.

Section 20.2. Survival of Obligations. The Tenant covenants and agrees with the Issuer, the Bank and any other Owner(s) of Bonds that until all Bonds and the interest thereon and redemption premium, if any, are paid in full or provision is made for the payment thereof, its obligations under this Lease shall survive the cancellation and termination of this Lease for any cause and/or sale of the Project, and that the Tenant shall be obligated to pay Basic Rent and Additional Rent (reduced by any net income the Issuer or the Bank may receive from the Project after such termination) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease. Notwithstanding any provision of this Lease or the Bond Agreement, the Tenant's obligations under *Sections 8.2 and 14.1* hereof shall survive any termination, release or assignment of this Lease, the Bond Agreement or Guaranty Agreement and payment or provision for payment of the Bonds.

Section 20.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each 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 or by statute, subject to the provisions of the Bond Agreement. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

ARTICLE XXI

Section 21.1. Performance of the Tenant's Obligations by the Issuer. If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then the Issuer may (but shall not be obligated to do so) upon the continuance of such failure on the Tenant's part for 90 days after notice of such failure is given the Tenant by the Issuer or the Bank and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and the Tenant shall reimburse the Issuer for all sums so paid by the Issuer and all necessary or incidental costs and expenses incurred by the Issuer in performing such obligations through payment of Additional Rent. If such Additional Rent is not so paid by the Tenant within 10 days of demand, the Issuer shall have the same rights and remedies provided for in *Article XX* in the case of Default by the Tenant in the payment of Basic Rent.

ARTICLE XXII

Section 22.1. Surrender of Possession. Upon accrual of the Issuer's right of reentry as the result of the Tenant's Default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project), the Tenant shall peacefully surrender possession of the Project to the Bank, as assignee of the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right, prior to or within 30 business days after

the termination of this Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which the Tenant owns under the provisions of this Lease and are not a part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Tenant. All buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures owned by the Tenant and which are not so removed from on or about the Project prior to or within 30 business days after such termination of this Lease shall become the separate and absolute property of the Issuer.

ARTICLE XXIII

Section 23.1. Notices. All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative or mailed by registered mail to the Notice Address. All notices given by registered mail as aforesaid shall be deemed duly given as of the date three days after they are so mailed. When mailed notices are given, the party giving notice will use reasonable diligence to contact the party being notified by telephone, electronic mail or facsimile on or before the date such notice is mailed.

ARTICLE XXIV

Section 24.1. Triple-Net Lease. The parties hereto agree (a) that this Lease is intended to be a triple-net lease, (b) that the payments of Basic Rent and Additional Rent are designed to provide the Issuer and the Bank with funds adequate in amount to pay all principal of and interest on all Bonds as the same become due and payable and to pay and discharge all of the other duties and requirements set forth herein, and (c) that to the extent that the payments of Basic Rent and Additional Rent are not adequate to provide the Issuer and the Bank with funds sufficient for the purposes aforesaid, the Tenant shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money as may from time to time be required for such purposes.

Section 24.2. Funds Held by the Bank After Payment of Bonds. If, after the principal of and interest on all Bonds and all costs incident to the payment of Bonds have been paid in full, the Bank holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, except as otherwise provided in this Lease and the Bond Agreement and after payment therefrom to the Issuer of any sums of money then due and owing by the Tenant under the terms of this Lease, be the absolute property of and be paid over forthwith to the Tenant.

ARTICLE XXV

Section 25.1. Rights and Remedies. The rights and remedies reserved by the Issuer and the Tenant hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Issuer and the Tenant shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 25.2. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant,

agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such Default or Defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 25.3. The Issuer Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the Issuer shall not unreasonably or arbitrarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

ARTICLE XXVI

Section 26.1. The Issuer May Not Sell. The Issuer covenants that unless an Event of Default under this Lease has occurred and is continuing, and the remaining Term of this Lease has been terminated, it will not, without the Tenant's written consent, unless required by law, sell or otherwise part with or encumber its fee title interest in the Project at any time during the Term of this Lease.

Section 26.2. Quiet Enjoyment and Possession. The Tenant shall enjoy peaceable and quiet possession of the Project as long as no Event of Default has occurred and is continuing.

Section 26.3. Financial Report; Furnishing of Financial Information. So long as any Bonds are Outstanding and unpaid and subject to the terms of the Bond Agreement, the Tenant shall furnish or cause to be furnished to the Bank the financial statements and other financial information required by *Article V* of the Guaranty Agreement and the Continuing Disclosure Agreement.

Section 26.4. Issuer's Obligations Limited. Except as otherwise expressly provided in this Lease, no recourse upon any obligation or agreement contained in this Lease or in any Bond or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise under any circumstances, under or independent of the Bond Agreement, shall be had against the Issuer and its officers, employees and agents.

Notwithstanding anything in this Lease to the contrary, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Tenant, an Owner(s) of Bonds or the Bank as to the existence of any fact or state of affairs required to be noticed by the Issuer hereunder; (b) the Issuer shall not be under any obligation to perform any record-keeping or to provide any legal services, it being understood that such services shall be performed or provided either by the Tenant, the Bank or the Owner(s) of Bonds; and (c) that none of the provisions of this Lease shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall have first been adequately indemnified to its satisfaction against the costs, expenses and liability which may be incurred by such action.

Notwithstanding anything in this Lease to the contrary, any obligation the Issuer may incur under this Lease or under any instrument or document executed by the Issuer in connection with this Lease that entails the expenditure of any money by the Issuer shall be only a limited obligation of the Issuer payable solely from the revenues derived by the Issuer under the Lease and shall not be, under any circumstances, a general obligation of the Issuer.

ARTICLE XXVII

Section 27.1. Investment Tax Credit; Depreciation. The Tenant shall be entitled to claim the full benefit of (1) any investment credit against federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax laws now or from time to time hereafter in effect, and (2) any deduction for depreciation with respect to the Project from federal or state income taxes. The Issuer agrees that it will upon the Tenant's request execute all such elections, returns or other documents which may be reasonably necessary or required to more fully assure the availability of such benefits to the Tenant.

ARTICLE XXVIII

Section 28.1. Amendments. This Lease may be amended, changed or modified in writing in the following manner:

(a) With respect to an amendment, change or modification which reduces the Basic Rent or Additional Rent, or any amendment which reduces the percentage of Owner(s) of Bonds whose consent is required for any such amendment, change or modification, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Bank and by Owner(s) of Bonds owning at least 90% of the aggregate principal amount of the Bonds then Outstanding;

(b) With respect to any other amendment, change or modification which will materially adversely affect the security or rights of the Owner(s) of Bonds, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Bank and by Owner(s) of Bonds owning at least 66-2/3% of the aggregate principal amount of the Bonds then Outstanding; and

(c) With respect to all other amendments, changes, or modifications, by an agreement in writing executed by the Issuer and the Tenant.

At least 30 days prior to the execution of any agreement pursuant to (c) above, the Issuer and the Tenant shall furnish the Bank with a copy of the amendment, change or modification proposed to be made.

Section 28.2. Granting of Easements. If no Event of Default under this Lease shall have happened and be continuing, the Tenant may, at any time or times, (a) grant easements, licenses and other rights or privileges in the nature of easements with respect to any property included in the Project, free from any rights of the Issuer or the Owner(s) of Bonds, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Tenant shall determine, and the Issuer agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer of: (1) a copy of the instrument of grant or release or of the agreement or other arrangement, (2) a written application signed by the Authorized Tenant Representative requesting such instrument, and (3) a certificate executed by the Tenant stating (A) that such grant or release is not detrimental to the proper conduct of the business of the Tenant, and (B) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Project and will not materially adversely affect the security of the Owner(s) of Bonds. Any consideration received by the Tenant for the grant or release must be paid to the Bank to be deposited in the Bond Fund and used to redeem Bonds at the earliest practicable date, at their principal amount, plus accrued interest, without premium. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the Owner(s) of Bonds and shall not be affected by any termination of this Lease or default on the part of the Tenant hereunder.

If no Event of Default shall have happened and be continuing, any payments or other consideration received by the Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Tenant, but, in the event of the termination of this Lease because of an Event of Default, all rights then existing of the Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer.

Section 28.3. Security Interests. (a) The Issuer and the Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) necessary for perfection of and continuance of the security interest of the Issuer in and to the Project. The Tenant hereby authorizes the Issuer to file or cause to be filed all such instruments required to be so filed and the Bank to continue or cause to be continued the filings or liens of such instruments for so long as the Bonds shall be Outstanding.

(b) Under the Collateral Assignment of Lease, the Issuer will, as additional security for the Bonds assign, transfer, pledge and grant a security interest in its rights under this Lease to the Bank. The Issuer hereby authorizes the Bank to file financing statements or any other instruments necessary to perfect its security interest. The Bank is hereby given the right to enforce, either jointly with the Issuer or separately, the performance of the obligations of the Tenant, and the Tenant hereby consents to the same and agrees that the Bank may enforce such rights as provided in the Collateral Assignment of Lease and the Tenant will make payments required hereunder directly to the Bank.

(c) The Tenant will, as additional security for its obligations under this Lease and the Guaranty Agreement, enter into an Assignment of Rents and Leases to the Trustee.

Section 28.4. Construction and Enforcement. This Lease shall be construed and enforced in accordance with the laws of the State. Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

Section 28.5. Invalidity of Provisions of Lease. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 28.6. Covenants Binding on Successors and Assigns. The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 28.7. Section Headings. The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof. The reference to section numbers herein or in the Bond Agreement shall be deemed to refer to the numbers preceding each section.

Section 28.8. Execution of Counterparts; Electronic Transactions. This Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Issuer has caused this Lease to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

CITY OF WINFIELD, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

“ISSUER”

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF COWLEY)

This instrument was acknowledged before me on the ____day of April, 2018, by Gregory N. Thompson, Mayor, and Brenda Peters, City Clerk, of the City of Winfield, Kansas, a municipal corporation.

[SEAL]

Notary Public

My Appointment Expires:

IN WITNESS WHEREOF, the Tenant has caused this Lease to be signed by an authorized officer,
as of the date first above written.

CUMBERNAULD VILLAGE, INC.

By: _____

Name: Bruce P. Blake

Title: President

“TENANT”

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF COWLEY)

This instrument was acknowledged before me on the ____ day of April, 2018, by Bruce P. Blake,
President of Cumbernauld Village, Inc., a Kansas corporation.

[SEAL]

Notary Public

My Appointment Expires:

APPENDIX A

FORM OF REQUISITION FOR PAYMENT OF PROJECT COSTS

CITY OF WINFIELD, KANSAS
Project Fund
(Cumbernauld Village, Inc.)
Payment Order No. _____

Union State Bank
Winfield, Kansas
Attn: Commercial Loan Department

You are hereby authorized and directed by the undersigned, the Authorized Tenant Representative, acting on behalf of Cumbernauld Village, Inc. (the "Tenant") to disburse funds held by you as fiscal and paying agent in the above mentioned Project Fund for the purposes and in the amounts set forth in the Payment Schedules attached hereto and incorporated herein by reference (the "Payment Schedules").

I hereby certify that the amounts stated in the attached Payment Schedules have either been advanced by the Tenant or are justly due to contractors, subcontractors, suppliers, vendors, materialmen, engineers, architects or other persons named in the Payment Schedules who have performed necessary and appropriate work in connection with any installation of machinery, equipment or personal property, or have furnished necessary and appropriate materials in the construction or acquisition of land, buildings and improvements constituting a part of the Project. I further certify that the fair value of such work or materials, machinery and equipment, is not exceeded by the amount requested, and such cost is one which may be capitalized for federal income tax purposes.

I further certify that, except for the amounts set forth in the Payment Schedules, there are no outstanding debts now due and payable for labor, wages, materials, supplies or services in connection with the construction of said buildings and improvements or the purchase and/or installation of machinery, equipment and personal property which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen's statutory or other similar lien upon the Land, the Project or any part thereof.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the said Project Fund.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of Issue Date of the Bonds by and between the City of Winfield, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.

I further certify that the amounts set forth in the Payment Schedules constitute Project Costs, as said term is defined in the Lease, and that all insurance policies which are required to be in force as a condition precedent to disbursement of funds from the Project Fund pursuant to the provisions of *Section 6.1* of the Lease are in full force and effect.

DATED _____, 20____.

Authorized Tenant Representative

EXHIBIT A - Payment Order No. _____

**PAYMENT SCHEDULE
FOR BUILDINGS, IMPROVEMENTS AND
MISCELLANEOUS PROJECT COSTS**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
-------------------	----------------------	-------------------------------------	---------------

Initials

EXHIBIT B - Payment Order No. _____

**PAYMENT SCHEDULE
FOR MACHINERY AND EQUIPMENT**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below. I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete. I further certify that the items described are free and clear of any liens or security interests. I have attached to this schedule a copy of the purchase order or seller's invoice for each item, and, to the extent any payment is a reimbursement to the Tenant, a copy of the check tendered in payment for such item.

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Description of Equipment</u>	<u>Amount</u>
	(include name and address of seller, manufacturer, descriptive name, technical description, capacity, serial number of model number as appropriate)	

Initials

APPENDIX B

FORM OF CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for Cumbernauld Village, Inc. (the "Tenant"), as tenant under a certain Lease dated as of Issue Date of the Bonds (the "Lease") between the City of Winfield, Kansas (the "Issuer") and the Tenant, and as beneficiary of the Issuer's Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2018 (Cumbernauld Village, Inc.) issued pursuant to a certain Bond Agreement dated as of Issue Date of the Bonds (the "Bond Agreement"), hereby certifies as follows. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bond Agreement and Lease.

1. The Project Addition Improvements have been substantially completed in accordance with the plans and specifications prepared at the Tenant's direction.

2. Such Project Addition Improvements have been substantially completed in a good and workmanlike manner.

3. There are no mechanic's, materialmen's liens or other statutory liens on file encumbering title to the Land; all bills for labor and materials furnished for the Improvements which could form the basis of a mechanic's, materialmen's or other statutory lien against the Land have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.

4. All Project Addition Improvements are located or installed upon the Land.

5. All material provisions of applicable building codes have been complied with and, if applicable, a certificate of occupancy has been issued with respect to the Project.

6. All moneys remaining in the Project Fund being held by the Bank under the Bond Agreement should be transferred to the Bond Fund being held by the Bank under the Bond Agreement, to be applied as provided therein.

IN WITNESS WHEREOF, the undersigned Authorized Tenant Representative has signed this Certificate, and states, under penalty of perjury, that the statements of fact made in this Certificate are true and correct.

STATE OF KANSAS)
) SS:
COUNTY OF COWLEY)

Subscribed and sworn to or affirmed before me, a notary public, this ____ day of _____, 20__.

[SEAL]

Notary Public

My Appointment Expires: _____

APPENDIX C

FORM OF REQUISITION FOR PAYMENT OF COSTS OF ISSUANCE

Request No. _____

Date: _____

**WRITTEN REQUEST FOR DISBURSEMENT FROM
CITY OF WINFIELD, KANSAS
(CUMBERNAULD VILLAGE, INC.)
PROJECT FUND**

To: Union State Bank
Winfield, Kansas
Attention: Commercial Loan Department,
as fiscal and paying agent under the Bond Agreement,
dated as of Issue Date of the Bonds

Capitalized terms not otherwise defined herein shall have the meanings set forth in such Bond Agreement.

The undersigned hereby requests payment to the following payees the following amounts for the following Cost of Issuance:

<u>Payee</u>	<u>Amount</u>	<u>Description of Cost of Issuance</u>
--------------	---------------	--

The amount of this requisition is justly due and owing and has not been the subject of another requisition which was paid and is a proper Cost of Issuance incurred in connection with the issuance of the Series 2018 Bonds.

Invoices, statements, vouchers or bills for the amounts requested are attached hereto.

CUMBERNAULD VILLAGE, INC.

By: _____
Authorized Tenant Representative

SCHEDULE I

SCHEDULE I TO THE BOND AGREEMENT, DATED AS OF ISSUE DATE OF THE BONDS, BETWEEN THE CITY OF WINFIELD, KANSAS, AND UNION STATE BANK, WINFIELD, KANSAS, AS FISCAL AND PAYING AGENT, AND TO THE LEASE AGREEMENT, DATED AS OF ISSUE DATE OF THE BONDS, BY AND BETWEEN CITY OF WINFIELD, KANSAS AND CUMBERNAULD VILLAGE, INC.

(A) The following described real estate in Cowley County, Kansas:

TRACT 1:

Lot 1, Block 6, Cumbernauld Village Re-Plat, City of Winfield, Cowley County, Kansas.

TRACT 2:

Reserve A, Cumbernauld Village Re-Plat, City of Winfield, Cowley County, Kansas.

TRACT 3:

Lot 1, Block 8, Cumbernauld Village Re-Plat, City of Winfield, Cowley County, Kansas.

said real property constituting the “Land” as referred to in the Lease, subject to Permitted Encumbrances.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Land and financed or refinanced with proceeds of the Series 2018 Bonds, including but not limited to the following:

The property described in paragraphs (A) and (B) of this *Schedule I*, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of *Sections 10.3* and *10.4* of the Lease, constitute the “Project” as referred to in both the Lease and the Bond Agreement.



Request for Commission Action

Date: March 1, 2018

Requestor: Brenda Peters

Action Requested: Adoption of records retention schedules for various City departments.

Analysis: The City currently has no formally adopted retention and destruction schedules for personnel to use in order to manage the ever-growing records both in paper storage and electronic storage. Adoption of uniform retention schedules that also consider state law requirements will give departments authority to manage and destroy records that are past their usefulness.

City Storage facilities including the basement at City Hall and the Police Department are overflowing with boxes of paper records that could be disposed of if authorization is given.

Fiscal Impact: There is no fiscal impact to or following the adoption.

Attachments: Proposed retention schedules for affected departments.

A RESOLUTION

ADOPTING Retention Schedules for the City of Winfield, Kansas.

WHEREAS, the City of Winfield does not currently have an officially adopted, written retention schedule; and

WHEREAS, Multiple City Departments desire an official document from which to base decisions on retention and disposition of records; and

WHEREAS, the State of Kansas recognizes electronic storage of documents as an acceptable means to retain permanent records,

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The Retention Schedules are hereby adopted and become effective immediately, copies of which are attached hereto and made a part hereof.

Section 2. This Resolution shall be in full force and effect from and after adoption.

ADOPTED this 19th day of March, 2018.

(SEAL)

Gregory N. Thompson, Mayor

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Jeremy Willmoth, City Manager

ADA Administration

ACCESS ADVISORY BOARD

Meeting minutes and actions

Disposition: Permanent

ADA COORDINATOR GRIEVANCE FILES

Documents relating to the ADA Coordinator's investigations of complaints or grievances filed by employees or other individuals regarding possible violations of the ADA requirements.

Active: 3 years after case is closed

Disposition: Destroy

ADMINISTRATIVE FILES –ADA COORDINATOR

Standard Office Procedures manuals, Correspondence, annual reports, budget materials, etc relating to the policies and activities of the ADA Coordinator program.

Active: Retain until no longer useful

Disposition: Destroy

AGENCY SELF-EVALUATION & TRANSITION PLANS

Correspondence, status reports, ADA Barrier Reports, training material, self-evaluations, etc. submitted by state agencies to the ADA Coordinator documenting access barriers and demonstrating agency accomplishments, progress and compliance with ADA requirements.

Active: 10 years

Disposition: Permanent

GRANTEE FILES/ CONTRACTS

Non-profit agencies that receive funds from the City of Winfield.

Active: 3 years after case is closed

Disposition: Destroy

SUBJECT FILES –ADA COORDINATOR

Variety of documents relating to conferences, interests and published material and maintained for convenience of reference.

Active: Retain until no longer useful

Disposition: Destroy

CASH MANAGEMENT

BANKING RECORDS

Includes bank statements, bank reconciliation, deposit books and slips, and cancelled checks in any format

Active: 5 years

Disposition: destroy

CERTIFICATES OF DEPOSIT

Active: until maturity

Disposition: return to bank

INVESTMENT RECORDS - GENERAL

Includes weekly reports generated by City Treasurer, transaction confirmations, monthly reports generated by brokers, and maturity confirmations

Active: 5 years

Disposition: destroy

PAYROLL DOCUMENTS

Includes time cards/sheets, leave requests, time away from work requests, payroll adjustment records, and payroll warrants registers. See also Central Accounting

Active: 5 years

Disposition: destroy

PROFESSIONAL ORGANIZATION FILES

Active: 5 years

Disposition: destroy

PROOF OF PUBLICATION

Active: 5 years

Disposition: destroy

RECEIPTS

Includes daily reconciliation report as well as deposit records from all departments

Active: 5 years

Disposition: destroy

YEAR-END CLOSEOUT REPORT

Active: retain copy until close of City audit

Inactive: 5 years

Disposition: destroy

CENTRAL ACCOUNTING

ACCOUNTS PAYABLE CHECK REGISTERS

Active: 5 years

Disposition: destroy

ACCOUNTS PAYABLE SUPPORTING JOURNALS

Includes Revenue Receipt Journal and Appropriations-Expenditure Journals

Active: retain while useful

Disposition: destroy

ACCOUNTS RECEIVABLE

Includes amounts owed to the City for services provided, non-utility related

Active: 1 year after paid in full

Disposition: destroy

ANNUAL BUDGET

Active: 10 years; merge to one central file

Disposition: 1 copy permanently

AUDIT REPORTS

Results of audits conducted by local, state, federal and/or non-governmental auditing agencies

Active: 3 years; move to storage

Disposition: permanent

BOND DOCUMENTS

Includes annual financial reports, capital projects, debt service fund reports, bond transcript, and all supporting documents

Active: 1 year after sale of bonds; merge to one central file until repayment complete

Disposition: destroy

COMPREHENSIVE ANNUAL FINANCIAL REPORTS

Active: 10 years; merge to one central file

Disposition: permanently – 1 copy

CHECKS AND WARRANTS; UNCLAIMED

Unclaimed checks and warrants, including payroll, vendor, and other checks/warrants

Active: 2 years from date of issuance

Disposition: Destroy

COURT-ORDERED PAYMENTS

Includes child support, garnishments, and bankruptcy orders, answers, and receipts

Active: 5 years after release of wages

Disposition: destroy

DIRECT DEPOSIT AUTHORIZATION RECORDS

Active: until superceded or no longer in effect

Inactive: 2 years

Disposition: destroy

KPERS ANNUAL REPORT

Details employee name, social security number, and annual contribution amounts

Disposition: permanent

PAYROLL DEDUCTION AUTHORIZATION FORMS

Includes health and benefit enrollments and other voluntary deductions; does not include Direct Deposit Authorizations; held in Human Resources Department

Active: retain until entered into computer

Disposition: send to Human Resources

PAYROLL DOCUMENTS

Includes year to date cumulative register, distribution register, warrant register, payroll certification form, hours-to-gross register, and accrual register; does NOT include year-end year to date cumulative register

Active: 5 fiscal years

Disposition: destroy

PAYROLL STATUS (voluntary changes)

Active: 2 years

Disposition: destroy

PAYROLL STATUS (with change of status)

Held for reference convenience only

Active: until superceded or employee terminates employment

Disposition: destroy

PROFESSIONAL ORGANIZATION FILES

Active: 3 years

Disposition: destroy

PROOF OF PUBLICATION

Active: 5 years

Disposition: destroy

PURCHASING DOCUMENTS

Includes limited purchase orders, purchase orders, direct payment requests, interfund transfers, and other related documents from all internal and external sources.

Active: 1 year

Disposition: destroy

TAX REPORTS

Includes, but is not limited to, 1099 Forms, W-2 Forms, 941 Forms, K-3 Forms, undelivered W-2 Forms, and Unemployment Insurance Quarterly Reports

Active: 5 years

Disposition: destroy

TRAVEL DOCUMENTS

Active: 1 year

Disposition: destroy

UTILITY BILLING WRITE-OFFS

Inactive: 7 years

Disposition: destroy

UNEMPLOYMENT INSURANCE MONTHLY REPORTS

Active: until two quarterly reports have been filed

Disposition: destroy

YEAR-END YEAR-TO-DATE CUMULATIVE PAYROLL REGISTER

Disposition: permanent

CITY CLERK

ABSTRACTS

Disposition: permanent

ADMINISTRATIVE ACTION FORMS

Details action taken by administration of City

Disposition: permanent

ANNEXATION CASE FILES

Includes consents, petitions, and other related documents

Disposition: permanent

ANNUAL BUDGET

Includes operating and annual budgets for City

Disposition: permanent

ANNUAL REPORTS - CITY AGENCIES

Disposition: permanent

ANNUAL REPORTS - OTHER AGENCIES

Inactive: while useful, but not to exceed 5 years

Disposition: destroy

ASSESSMENTS

Includes public improvement, code enforcement, and other assessments

Active: until all accounts paid or written off

Inactive: 3 years

Disposition: destroy

BOND DOCUMENTS

Includes coupons and other related documents. See also Bond Transcripts

Active: until all obligations are paid

Inactive: 5 years

Disposition: destroy; retain 1 bond of each series permanently

BOND TRANSCRIPTS OF PROCEEDINGS

Includes industrial revenue bonds, no-fund warrants, and general obligation bonds

Disposition: permanent

BUDGET PREPARATION FILE

Active: close of subsequent budget process

Disposition: destroy

CANDIDATE FILING DOCUMENTS

Active: until close of subsequent election process

Disposition: destroy

CAPITAL IMPROVEMENT PLAN

Plan of City for 5-year term

Disposition: permanent

CHARTER ORDINANCES

Disposition: permanent

CITY CODE BOOK

Includes supplements

Disposition: permanent - 1 copy

CITY COMMISSION ITEMS THAT WERE WITHDRAWN OR NOT ADOPTED

Active: 5 years

Disposition: destroy

CITY COMMISSION MINUTES

Record of all council and commission actions

Disposition: permanent

CITY COMMISSION PACKETS

Record of all council actions, including agendas, handouts, zoning cases, project budgets, and other related documents

Disposition: permanent

CLAIMS

Claims filed against the City

Active: 10 years

Disposition: destroy

COMMUNITY DEVELOPMENT PROPOSALS

Disposition: permanent

COMPLAINT FILES

Correspondence and documentation of action taken, if any. Retain complaints that are directly related to policy change permanently. Retain others as follows:

Active: retain while useful; but not more than 5 years

Disposition: destroy

CONDEMNATIONS

Disposition: permanent

CONTRACTORS' LIABILITY INSURANCE/ BOND RECORDS:

Active: 5 years after expiration

Disposition: destroy

CONTRACTS

All contracts, includes specifications, change orders, and addendum

Disposition: permanent

CORRESPONDENCE (Routine)

Includes mail, letters, memos, copies, telephone messages, e-mail, etc.

Active: retain while useful; but not more than 5 years

Disposition: destroy

DEEDS

Original deeds for all property owned by City

Disposition: permanent

EASEMENTS

Original easement agreements

Disposition: permanent

ELECTRONIC RECORDS

Includes imaged documents. Use the retention schedule of the record series listed herein. The hard copy of a document can be destroyed after a document has been scanned, provided the image has been verified for accuracy.

FINAL PLATS

Disposition: permanent

FIREFIGHTER'S RELIEF ASSOCIATION REPORTS

Disposition: permanent

FORMS (Blank)

Active: until superceded or obsolete

Disposition: destroy

FRANCHISE FILE

Includes ambulance, cable TV, telephone, gas, and electricity

Disposition: permanent

GOVERNING AGENCY REGULATIONS

Includes City, State, and Federal governing agencies' manuals and requirements

Active: until superceded or obsolete

Disposition: destroy

INSURANCE POLICIES

Active: until cancellation or expiration

Inactive: 5 years

Disposition: destroy

LEGAL NOTICES (Proof of Publications)

Active: 5 years

Disposition: destroy

LICENSE AND PERMIT SURETY BONDS OR INSURANCE DOCUMENTS

Active: until expired or cancelled

Inactive: 5 years

Disposition: destroy

LICENSING FILES

Includes application and other related documents

Active: until license is expired or obsolete

Inactive: 5 years

Disposition: destroy

OPEN RECORD REQUESTS

Active: 3 years

Disposition: destroy

ORDINANCES

Disposition: permanent

PETITIONS - MISCELLANEOUS

Active: 5 years; seek archival approval before destroying

Disposition: destroy

PETITIONS TO PUT ISSUE ON BALLOT

Disposition: permanent

POPULATION DATA (Obsolete Data)

Disposition: permanent

PROFESSIONAL ORGANIZATION FILES

Active: 3 years

Disposition: destroy

PROJECT FILES - MAJOR STRUCTURES

Comprehensive records, including plans, of all major structure projects. Includes buildings, bridges, parks, treatment plants, and other major structures

Active: while structure exists

Inactive: 5 years

Disposition: destroy

PURCHASING DOCUMENTS

Includes purchase orders, direct payment requests, interfund transfers, and other related documents from all internal and external sources. See also Central

Accounting schedule

Active: 1 year

Disposition: destroy

REFERENCE BOOKS/JOURNALS

Also includes newsletters and seminar notebooks

Active: until superseded or obsolete

Disposition: destroy

RESOLUTIONS

Disposition: permanent

SCRAPBOOKS AND ALBUMS OF HISTORICAL INFO

Collection of miscellaneous documents, newspaper clippings, and pictures regarding department's history

Disposition: permanent

SPECIAL EVENT PERMITS

Applications and Certificates of Insurance (where applicable) for community parades, block parties, etc.

Active: 5 year

Disposition: destroy

SPECIFICATIONS

For City projects and purchases

Active: until contract signed

Inactive: 5 years

Disposition: destroy

STATEMENT OF SUBSTANTIAL INTEREST FORMS

For Governing Body members

Active: retained until 5 years after leaving office

Disposition: destroy

SUPERVISOR'S FILES

Limited to required documents for current oversight of employee: A) work schedule; B) leave information; C) attendance record; D) overtime hours distribution; E) current payroll status report; F) current active disciplinary track items (1 year after resolution or per contract); G) last performance evaluation; H) performance observations since the last evaluation (positive and negative); I)

SURVEYS AND STUDIES - FINAL REPORT

Includes surveys and studies done by city agencies or paid for by city agencies

Disposition: permanent - 1 copy

SURVEYS AND STUDIES - RELATED DOCUMENTS

Includes surveys and studies done by city agencies or paid for by city agencies

Active: 5 years

Disposition: destroy

TEMPORARY NOTES REGISTERS

Disposition: permanent

TITLE CERTIFICATES

Includes titles for all City-owned vehicles

Active: while vehicle is owned

Disposition: pass to new owner

TRADE LICENSE CODE BOOKS

Includes mechanical, plumbing, fire, traffic, electrical, housing, and other codes

Disposition: permanent – 1 copy

WARRANTY FILES

Includes warranties, promises, and other related documents

Active: 5 years or life of warranty, whichever is longer

Disposition: destroy

CITY MANAGER

CITIZEN COMPLAINT FILE

Correspondence and notes regarding individual citizen issues. See also
Community Issues Files

Active: retain routine problem files 5 years

Disposition: destroy

COMMUNITY INVOLVEMENT FILES

Documents cooperative relationships as well as community relations

Active: retain while useful; but not more than 5 years

Disposition: destroy

COMMUNITY ISSUES FILE

Community projects, issues, complaints about major problems, or other items of interest to the community. Includes correspondence, contract copies, annual reports, surveys, studies, and other related documents

Active: 5 years

Disposition: destroy

PROFESSIONAL ORGANIZATION FILES

Active: 3 years

Disposition: destroy

PROJECT MANAGEMENT FILES

On-going correspondence on status of projects

Active: until project is completed

Inactive: 5 years

Disposition: destroy

CODE COMPLIANCE SERVICES

CASE FILES – HOUSING, NUISANCE AND WEEDS

Active: 2 years

Inactive: 1 year

Disposition: Destroy

CONTRACTOR FILES

Includes copies of contracts. See also City Clerk

Active: until superseded plus 1 year

Disposition: Destroy

DEMOLITION FILES

City-ordered demolitions of privately owned facilities, including, but not limited to, cost estimates of repair, pictures of property, publicized code compliance notices, mailings and notifications

Active: 2 years or until bill is paid

Inactive: 10 years

Disposition: permanent

CONTRACTS AND PROCUREMENT

AFFIRMATIVE ACTION PLANS

Active: 5 years

Disposition: destroy

BIDS AND REQUEST FOR PROPOSALS (successful)

Active: life of contract

Inactive: 5 years

Disposition: destroy

BIDS AND REQUEST FOR PROPOSALS (unsuccessful)

Active: 5 years

Disposition: destroy

CONTRACTS

Includes contract, specifications, request for proposal, bid board report, change orders, and tax exempt status certificates

Active: life of contract

Disposition: destroy

CONTRACT COMPLIANCE FILES

Active: 5 years after contract closeout

Disposition: destroy

ENGINEER ESTIMATES

Provides basis for purchase orders and contracts

Active: 5 years

Disposition: destroy

MAPS/PLANS

Provides the basis for purchase orders and contracts

Active: retain until contract is awarded

Disposition: destroy

SURPLUS PROPERTY LIST

Copies of forms and supporting documents used to remove capital equipment from the office inventory

Active: 3 fiscal years

Disposition: destroy

DEVELOPMENT SERVICES

BOARD OF BUILDING TRADES FILES

Includes minutes, appeals, correspondence, index, and other related documents

Active: until case closed

Disposition: permanent

BUILDING CODES

Disposition: 1 copy permanently

BUILDING PERMIT APPLICATIONS AND RESPONSES (denied)

Active: 3 years

Disposition: destroy

CERTIFICATE OF LIABILITY/ WORKERS' COMPENSATION

Active: 5 years

Disposition: destroy

CONTRACTORS' LIABILITY INSURANCE/ BOND RECORDS:

Active: 5 year after expiration

Disposition: destroy

CORRESPONDENCE (project related)

Active: 5 years

Disposition: permanent if unique to project; otherwise destroy

DRAINAGE AGREEMENTS

Disposition: permanent

DRIVEWAY PERMITS

Includes associated site development plans

Disposition: permanent

EXCAVATION PERMITS

For utility right-of-ways; includes associated site plans

Disposition: permanent

LEAD PAINT CERTIFICATION

Filed by license year.

Active: 10 years

Disposition: destroy

MONTHLY REPORTS

Includes Fee Summary Report, New Permit Report, and Department of Commerce Report

Active: 5 years
Disposition: destroy

PLANNED UNIT DEVELOPMENT PLANS

Active: until superseded
Disposition: destroy

PLATS FOR QUARTER SECTIONS, SANITARY SEWER, PAVING, AND STORM SEWER

Active: until superseded or obsolete
Disposition: destroy

PLATS OF SUBDIVISIONS

Disposition: permanent

PROFESSIONAL ORGANIZATION FILES

Active: 3 years
Disposition: destroy

SIDEWALK PERMITS

Includes associated site development plans
Disposition: permanent

STREET FILE

Includes building, demolition, electrical, elevator, fence, home occupation, gas, mobile home, moving structure, plumbing, sign, swimming pool, temporary use of street right-of-way, and underground tank permits; inspection reports; violation notices; certificate of occupancy; drainage and hold harmless agreements; BBFA/BZA minutes; and associated site plans and drawings
Disposition: permanent

TRADE LICENSE FILES

Includes electrician, plumber, mechanical, home occupations, cross-connection, gas fitting trades
Disposition: permanent

ENGINEERING DEPARTMENT

ACCIDENT DIAGRAM BOOKS

Active: 3 years

Disposition: permanent

AERIAL PHOTOGRAPHS

Disposition: permanent

AS-BUILT DRAWINGS (*FINAL*)

Active: 2 years

Disposition: permanent

BRIDGE INVENTORY

Includes records, load rating calculations, photographs, etc.

Disposition: permanent

CONTRACTS

Includes engineering firms, instructors, vendors, labor unions, Kansas Department of Transportation, contractors, developers, service, and other contracts. See also City Clerk schedule

Active: until project is completed and accepted for maintenance

Disposition: permanent

CONTRACTORS' LIABILITY INSURANCE/ BOND RECORDS FOR PROJECTS:

Active: until project is completed and accept for maintenance

Disposition: permanent

PLAT MAPS

Half-sized recorded plats obtained from County

Disposition: permanent

PROFESSIONAL ORGANIZATION FILES

Active: 3 years

Disposition: destroy

PROOF OF PUBLICATION - PROJECTS

Active: 3 years

Disposition: permanent

SANITARY SEWER PLANS

Disposition: permanent

STORM SEWER PLANS

Disposition: permanent

SUBDIVISION FILES

Disposition: permanent

SURVEY FILE

Includes horizontal and vertical control data land survey research and evaluation documents, field survey data and construction staking records, land survey plats and documents

Disposition: permanent

TRAFFIC COUNT BOOKS

Used to perform safety and warrant analysis

Disposition: permanent

TRAFFIC LOCATION FILES

Consists of all traffic activity at a given location

Disposition: permanent

TRAFFIC SIGNAL PLANS

Disposition: permanent

WATER DIVISION EASEMENTS

Includes property descriptions

Active: life of easement

Disposition: permanent

ZONING PETITION RESPONSES

Responses to new cases. See also Planning Department

Active: retain while useful; but not more than 4 years

Disposition: destroy

FIRE/EMS DEPARTMENT

BUILDING PERMIT RESPONSES

Responses to permit applications. See also Building Inspection

Active: retain while useful; but not more than 4 years

Disposition: destroy

BUILDING PLANS

Includes every building in Topeka with an alarm or fire sprinkler system

Active: while building exists

Disposition: destroy

CALL BACK LIST

Roster of volunteers for overtime

Active: until superceded

Disposition: destroy

CARBON MONOXIDE FILES

Includes Notice of Findings and Checklist for Carbon Monoxide Investigations

Active: 5 years

Disposition: destroy

DISPATCH RECORDS (obsolete record)

Active: 5 years

Disposition: destroy

EQUIPMENT TESTS

Records of pump checks, ladder tests, hose tests, aerial apparatus tests, and selfcontained breathing apparatus tests

Active: life of equipment

Disposition: destroy

EXAMS - ENTRANCE

Retain exams in employee personnel file if hired. Retain all others as follows:

Active: until vacancy is filled

Inactive: 6 years

Disposition: destroy

EXAMS - PROMOTIONAL AND PERIODIC

Examinations given to current employees

Active: while individual is employed

Inactive: 5 years

Disposition: destroy

Rationale: K.S.A. 60-511

FIRE HYDRANT MAPS

Displays locations of all hydrants
Active: until superceded
Disposition: destroy

FIRE INSPECTION STREET FILE

Documentation regarding inspections performed by fire department and any related citations. Retain underground tank records permanently. Retain other documents as follows:
Active: while structure exists
Disposition: destroy

FIRE SERVICE CONTRACT BILLING

Annual accounting for fire service contracts
Active: 5 years
Disposition: destroy

FIRE STATION LOG

Daily journal of activity at a fire station
Disposition: permanent

HAZARDOUS MATERIALS EXPOSURE REPORTS

Firefighter medical records, accident and injury reports, exposure reports.
Active: while employed
Inactive: 30 years beyond termination or retirement of employee

INVESTIGATIVE CASE FILES

Retain photographic evidence, pertinent court pleadings, investigator's notes, interviews, and other related documents permanently. Retain physical evidence and copies of documents as follows:
Active: 5 years, if appeal time has run
Disposition: destroy

KANSAS FIRE INCIDENT REPORT

Electronic reports sent to the State Fire Marshal. Includes fire, civilian casualty, and firefighter casualty reports; includes KFIRs daily checksheet
Active: 10 years
Disposition: destroy

KNOX BOX INDEX

Listing of all key boxes and the holders of the keys
Active: until superceded
Disposition: destroy

LOSS/DAMAGE REPORT

Record of tool, equipment, or gear destroyed
Active: until item replaced or decision made to not replace it

Inactive: 3 years
Disposition: destroy

MEDICAL INFORMATION FILES

Includes Exposure Form, Infectious Disease Report, workman's compensation, follow-up medical information, and other related documents; must be retained separately from supervisor's file
Active: while individual is alive
Inactive: 5 years
Disposition: destroy

MONTHLY REPORTS

Internal document to provide Chief with progress on budget goals
Active: until close of subsequent budget process
Disposition: destroy

OFFENSE REPORTS

Reports sent to Kansas Bureau of Investigations
Disposition: permanent

PATIENT REPORTS

Includes first response medical records, patient's refusal of treatment, and other related documents
Active: 5 years
Disposition: destroy

PERMITS - FLAMMABLE & COMBUSTIBLE LIQUID TANK

Includes above or below ground tanks. Retain removal documentation permanently. Retain all other documents as follows:
Active: until tank removed
Inactive: 2 years
Disposition: destroy

PERMITS - GENERAL

Includes propane/liquid propane gas, salvage yard, boxing/wrestling, fireworks, tents, and burning
Active: until expired
Inactive: 2 years
Disposition: destroy

PRE-FIRE PLANS

Fire escape routes, locations of residents, sprinkler systems, and other related documents provided for organization's use
Active: until superseded or obsolete
Disposition: destroy

PROFESSIONAL ORGANIZATION FILES

Active: 3 years

Disposition: destroy

PROPERTY DAMAGE REPORTS

Accidents involving city-owned vehicles or apparatus

Active: 5 years

Disposition: destroy

RESIDENTIAL CARE OCCUPANCY FILES

Includes certificates and licenses which are regulated by Kansas Dept. of Health and Environment

Active: until certificate is expired

Inactive: 5 years

Disposition: destroy

SENIORITY LIST

Electronic list of all active staff and their respective ranking

Disposition: permanent

COWLEY COUNTY EMERGENCY PREPAREDNESS PLAN

Active: until superceded

Disposition: destroy

TRAINING COMMITTEE FILE

Includes minutes of meetings

Disposition: permanent - 1 copy

TRAINING RECORDS (BMS and EMS)

Board of Emergency Medical Services

Active: 5 years

Disposition: Destroy

All other Emergency Medical Service

Active: 3 years

Disposition: Destroy

UNIFORM ORDER FORMS

Used by employees to request replacement uniform parts. See Supervisor's File

VOLUNTEER RECORDS

Includes application, job description, training, recruitment records, recognition, KBI background check, Liability Waiver and Emergency Medical Authorization Form, schedule, accomplishments, health screening, address, and related documents

Active: while current

Inactive: 2 years
Disposition: destroy

VOLUNTEER TIME SHEETS

Active: 5 years
Disposition: destroy

FLEET SERVICES

FLEET BILLING RECORDS

Includes charges to other departments, cost analysis, and other related documents

Active: 5 years

Disposition: destroy

FUEL RECORDS

Details amount of fuel purchased and in tanks

Active: 3 years

Disposition: destroy

INVENTORIES

Includes vehicles, equipment, parts, records and other inventories

Active: until superseded or obsolete

Disposition: destroy

MOTOR FUEL TAX REPORTS

Includes invoices, refunds, requests, spreadsheets, copies of payment and related documents.

Active: 5 years

Disposition: destroy

TANK PERMITS

Includes above or below ground tanks. Retain removal certification permanently.

Retain all other documents as follows:

Active: until tank is removed

Inactive: 2 years

Disposition: destroy

USED OIL MANIFESTS

Details amount of oil generated, date oil transferred to re-refiner, and amount received back from re-refiner

Active: 3 years

Disposition: destroy

VEHICLE AND EQUIPMENT OPERATION RECORDS

Includes documents related to the use of City-owned vehicles and equipment

Active: 3 years

Inactive: 2 years

Disposition: destroy

VEHICLE AND EQUIPMENT REPAIR RECORDS

Includes preventative and emergency repairs. Also called Work Order Report

Active: ownership of vehicle and equipment

Disposition: destroy

WARRANTY FILES

Includes warranties, promises, and other related documents

Active: 5 years or life of warranty, whichever is longer

Disposition: destroy

HUMAN RESOURCES DEPARTMENT

COMPLAINT FILES

Active: 5 years

Disposition: shred hard copy, permanent electronic files

CONFIDENTIAL FILES

Includes: physician records of examination, diagnostic records, laboratory test records, drug screening records, health plan application forms, KPERS, FMLA, accident reports, workers' compensation reports, detailed background checks, etc.

Active: tenure plus 2 years

Disposition: shred hard copy, permanent electronic files kept for 65 years

GREIVANCE FILES

Active: 5 years

Disposition: shred hard copy, permanent electronic files

KEY FILES

Includes applications, background checks (not hired), interview questions, and employment testing (excludes medical testing [not hired]).

Active: 5 years

Disposition: destroy

PERSONNEL FILES

Includes: employment application, background check, policy signatures, tax forms, payroll actions, discipline actions, awards, training, performance appraisals, exit interview form, tuition reimbursement, position description, etc.

Active: tenure plus 2 years

Disposition: shred hard copy, permanent electronic files kept for 65 years

STATE AND LOCAL GOVERNMENT INFORMATION REPORT EEO-4

Active: 3 years

Disposition: destroy

INFORMATION SYSTEMS

COMPUTER BACKUPS

(All system backups and snapshots, 3 Monthly backups and 2 weekly backups)

Active: 3 Months

Disposition: destroy

GEOGRAPHIC INFORMATION SYSTEMS (GIS) DATA

(GIS data for all City owned assets, boundaries, easements, ... etc.)

Active: Life of Feature

Disposition: Permanent

REQUEST FOR SERVICE

(E-mail or other correspondence regarding problems and solutions)

Active: 1 year

Disposition: Permanent

SOFTWARE LICENSING

(Includes licenses, keys to software, passwords, accounts to online services and applications in electronic or paper form)

Active: Retain while current

Disposition: destroy

SOURCE CODE

(In-house developed software)

Active: Retain while current

Inactive: 3 years following service termination

Disposition: Destroy

TECHNICAL-HOW TO STEPS TO PERFORM TECHNICAL ADMINISTRATION

(General knowledge base, how-to steps to perform technical administration in electronic or paper form)

Active: Retain while current

Inactive: 1 year following discontinuance of using software application

Disposition: Destroy

VIDEO SURVEILLANCE AND SECURITY CAMERA SYSTEMS

Device memory, hardware storage devices, tape and optical media (does not include traffic detection video systems, sewer camera inspection video systems, process and control camera systems, law enforcement video systems, court video systems and still frames captured from digital cameras.)

Active: 60 Days

Disposition: overwritten

WORK PLAN

Projected scheduling for department

Active: 1 year after new plan is developed

Disposition: destroy

MUNICIPAL COURT

BANKRUPTCY COURT FILES

Documentation of debtors' claims for purposes of issuing warrants

Active: until case is closed or dismissed

Disposition: destroy

BOND DOCUMENTS

Retain Cash Bond List permanently. Retain all others as follows:

Active: until expired or paid

Inactive: 5 years

Disposition: destroy

COMMUNITY SERVICE RECORDS

Retain a summary of community service performed by an individual permanently.

Retain all supporting documents as follows:

Active: until service is completed and case is closed

Inactive: 5 years

Disposition: destroy

DOCKETS

Retain any dockets that could be used to establish criminal history on all offenses equivalent to an A or B misdemeanor for 50 years. Retain all others as follows:

Active: 5 years

Disposition: destroy

PROOF OF PUBLICATION

Documentation regarding publication of trial dockets

Active: 5 years

Disposition: destroy

STANDARD TRAFFIC ORDINANCES

Disposition: permanent --1 copy

TICKETS -- DISMISSED OR VOID

Retained to show identity of individual who dismissed or voided the ticket

Active: 2 years

Disposition: destroy

TICKETS -- OFFENSE EQUIVALENT TO AN A OR B MISDEMEANOR

Active: 50 years

Disposition: destroy

TICKETS -- TRAFFIC OR PARKING

Active: 3 years

Disposition: destroy

WARRANT RECORDS

Active: until served or expired

Inactive: 5 years

Disposition: destroy

PLANNING DEPARTMENT

AERIAL PHOTOGRAPHS

Includes Topeka and Cowley County

Disposition: permanent

AMENDMENT FILES

Includes amendments to zoning and subdivision regulations, as well as the transportation, neighborhood, and comprehensive plans

Disposition: permanent

ANNEXATION CASE FILES

Disposition: permanent

BOARD OF ZONING APPEALS CASES

Appeals, variances and exceptions. File contains applications, staff reports, agendas, minutes and sometimes has back up material from the applicant w/the application. The agendas and minutes are kept electronically.

Disposition: permanent

BUILDING PERMIT RESPONSES

Responses to permit applications. See also Building Inspection

Active: retain while useful; but not more than 4 years

Disposition: destroy

COMPREHENSIVE PLAN

Disposition: permanent

CONDITIONAL USE PERMIT PETITION FILES

Previously called special use permit petition files

Disposition: permanent

HISTORIC STRUCTURE FILES

Disposition: permanent

HOME OCCUPATION FILES

Includes applications, licenses, current renewal notices, and any other unique correspondence

Active: 3 years after denial or expiration of license

Disposition: permanent

LICENSING FILES

Verifications for salvage yards, ABC establishments, and vehicle sales lots

Active: 2 years

Disposition: destroy

PLANNING COMMISSION ASSOCIATED DOCUMENTS

Includes hand-outs, and other documents not included in transcript file

Active: 5 years

Disposition: destroy

PLANNING COMMISSION TRANSCRIPT FILE

Includes minutes, agendas, annual roster, and other documents showing history

Disposition: permanent

NEIGHBORHOOD PLAN

Disposition: permanent

PLAT OF SUBDIVISION FILES

Includes drainage reports, analyses, staff reports, plats of survey, and other documents

Disposition: permanent

STREET NAME FILES

Disposition: permanent

VACATION PETITION FILES

Includes street, alley, and easement vacations

Disposition: permanent

ZONING PETITION FILES

Active: 1 copy

Disposition: permanent

RISK MANAGEMENT

BLOOD-BORNE PATHOGEN FILES

Includes claims files and program monitor files

Active: 30 years

Disposition: destroy

CLAIM FILES

Includes real and personal property for which insurance has been purchased

Active: 5 years or until all statutes of limitation have run, whichever is longer

Disposition: destroy

INSURANCE POLICIES

Policies which the City of Winfield has purchased

Active: until expired or cancelled

Inactive: 5 years

Disposition: destroy

MOTOR VEHICLE RECORDS

Includes one record for each person who drives a city-owned vehicle

Active: 5 years

Disposition: destroy

PROFESSIONAL ORGANIZATION FILES

Active: 3 years

Disposition: destroy

SAFETY COMMITTEE FILE

Includes notes, minutes, and other documents from division or department meetings which are used as a reference tool for policy making bodies

Active: 5 years

Disposition: destroy

SAFETY INSPECTION FILES -- CITY

Conducted by Safety Director. Includes all correspondence and follow-up

Active: 5 years

Disposition: destroy

SAFETY INSPECTION FILES -- STATE

Conducted by Kansas Department of Human Resources

Active: until completion of subsequent inspection

Disposition: destroy

SELF-INSURANCE CLAIM FILES

Includes automobile physical damage fund and other items self-insured by the City

Active: 5 years or until all statutes of limitation have run, whichever is longer

Disposition: destroy

STATISTICAL REPORTS

Includes monthly, quarterly, and annual city and county workers compensation reports and reports of vehicle claims. Retain annual report permanently. Retain all others as follows:

Active: until completed audit

Inactive: 1 year

Disposition: destroy

WORKERS COMPENSATION CLAIM FILES

Retain computerized history 30 years. Retain hard copy files as follows:

Active: 5 years or until all statutes of limitation have run, whichever is longer

Disposition: destroy

WORKERS COMPENSATION DIRECT PAYMENT REQUESTS

This series does NOT include all other purchasing documents

Active: 5 years

Disposition: destroy

WORKERS COMPENSATION SELF-INSURANCE PERMIT FILES

Includes application, permit, and supporting documents for permit issued by Kansas Department of Human Resources, Workers Compensation Division

Active: until expired or cancelled

Inactive: 5 years

Disposition: destroy

STORM WATER POLLUTION CONTROL

BIOSOLIDS APPLICATION SITE RECORDS

Includes Biosolids Application Rate Worksheets, Soil Samples Data, Yearly Biosolids Reports, and Bi-monthly Biosolids Analysis. Reported to Kansas Department of Health and Environment annually. Retain annual report permanently. Retain all other information as follows:

Active: 5 years

Disposition: destroy

CORPS OF ENGINEERS EXCAVATION PERMITS

Documents regarding building permits within a designated proximity to the levee

Disposition: permanent

DAILY OPERATIONS LOG

Includes readings on flow, pumpage, chemicals, and special notes as well as identity of employee doing the reading

Active: 10 years

Disposition: destroy

LABORATORY RECORDS

Includes analyst data and lab reports; also used in conjunction with reports to Kansas Department of Health and Environment which are retained permanently

Active: 10 years

Disposition: destroy

LEVEE INSPECTION REPORTS

Includes pumping station, lifting bridge, in-house, and other inspections done on an annual basis by the Corps of Engineers and reported to the Federal Emergency Management Agency

Disposition: permanent -- 1 copy

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM

Includes all documents required to sustain City of Topeka's permit

Active: 10 years

Disposition: destroy

PRESENTATION FILE

Final versions of handouts, speeches, and presentations

Disposition: permanent - 1 copy

SITE PLANS

Includes Water Pollution Control Division property as well as maps of sewer lines

Active: while structure exists

Disposition: destroy

UTILITIES

ABANDONED SERVICE INFORMATION

Includes address, index, etc., to old water services

Disposition: permanent

ANNUAL ENERGY INFORMATION REPORTS (EIA) (Electric and Gas)

Annual reports sent to Federal Regulatory Agency including power system reports and gas reports.

Disposition: Permanent

CONTRACTS & AGREEMENTS

All binding agreements

Active: 15 years after expiration of termination

Disposition: Destroy

BACKFLOW DEVICE TEST FORMS (Water)

Active: 5 years

Disposition: destroy

COMPLIANCE REPORTS

Records documenting regulatory compliance used to ensure compliance with environmental regulations.

Inactive 5 years

Disposition: Destroy

CORRESPONDENCE

All types including paper and e-mail

Active: six months, file with related records if content requires longer retention

Disposition: Destroy

DISTRIBUTION SYSTEMS REPORT

Disposition: permanent

ELECTRIC LOAD DATA – CITY ELECTRICAL CONSUMPTION

Disposition: Permanent

LABORATORY/OPERATIONS REPORT

Includes daily readings on flow, pumpage, chemicals, etc.

Disposition: permanent

LEGISLATIVE RECORDS

Includes current action in the Kansas State Legislature regarding water

Active: until close of subsequent legislative term

Disposition: destroy

METER CHANGE OUTS

Disposition: Permanent

METER TEST RECORDS

Inactive: 20 years

Disposition: Destroy

PRODUCTION EQUIPMENT FILES

Active: life of equipment

Disposition: destroy

SERVICE RECORDS

Indicates location of service and property owner.

Active: while service active

Inactive: 10 years

Disposition: destroy

SERVICE WORK ORDERS (large)

Includes accounting codes, costing, items used, selling costs, labor costs, etc.

Disposition: permanent

SERVICE WORK ORDERS (small)

Completed by field workers

Active: 5 years

Disposition: destroy

SITE PLANS

Disposition: permanent

UTILITY BILLING INFORMATION

Charges and payment histories

Active until inactive

Inactive: 3 years

Disposition: Destroy

WATER MAIN CONTRACTS

Active: life of contract

Disposition: destroy

WINFIELD POLICE DEPARTMENT

RECORDS RETENTION SCHEDULE

2/8/2018

ACCIDENT REPORTS

Retained by Records Division

Active: 5 years

Disposition: permanent

BICYCLE REGISTRATIONS

Bicycle ownership registration

Active: 3 years

Disposition: destroy

CARD FILE

Includes court, victim, and suspect cards

Disposition: permanent

CASE FILES - HOMICIDE

Retained by Records Division. Includes Offense Reports, Arrest Reports, Evidence Reports, Dispositions, and other related documents

Disposition: permanent

CASE FILES - OFFICIAL

Retained by Records Division. Includes Offense reports, Arrest Reports, Evidence Reports, Disposition Reports, DUI Reports, Mental Illness Reports, Digitized Media, and other related documents for cases with an assigned case number

Active: 5 years pending litigation

Disposition: permanent

CITATIONS - WRITTEN IN ERROR

Citations written with error on form and not issued

Disposition: destroy

CITATIONS - CLASS C AND BELOW MISDEMEANORS AND TRAFFIC VIOLATIONS

Active: 5 years

Disposition: destroy

CITATIONS - OFFENSE EQUIVALENT TO AN A OR B MISDEMEANOR

Active: 50 years

Disposition: destroy

COMPLAINT FILES - OFFICIAL

May include Citizen Complaint Form, Complainant's letter, notification of investigation, related interviews interviews and recordings, witness statements, photographs, video along with any other related materials

Active: while employed
Disposition: destroy

EMERGENCY INFORMATION FILE

List of employees' personal information and next of kin retained by Chaplain

Active: while employed
Inactive: 1 year
Disposition: destroy

EMERGENCY PREPAREDNESS PLANS

Created by businesses, agencies, or other governmental organizations

Active: until superseded
Disposition: destroy

EQUIPMENT AND UNIFORM RESEARCH

On going files regarding tests for quality of uniforms, firearms, and other equipment

Active: retain while useful
Disposition: permanent

EQUIPMENT CERTIFICATIONS AND MAINTENANCE RECORDS

Includes breath alcohol device certification, radar certification, tint meter certifications, tuning fork certifications, and other related documentation

Active: while owning equipment
Inactive: 5 years
Disposition: destroy

EXPUNGEMENT RECORDS

Active: 50 years
Disposition: destroy

FINGERPRINT FILES

Disposition: permanent

FIREARM MAINTENANCE RECORDS

Active: while owning firearm
Inactive: 2 years
Disposition: destroy

FIREARM QUALIFICATION RECORDS

Detailed records of individual employee performance

Active: while individual is employed

Inactive: 5 years

Disposition: destroy

GENERAL ORDERS/STANDARD OPERATING PROCEDURES/SPECIAL ORDERS

Issued by Chief of Police or his/her designee. Includes policies, regulations, and procedures as well as research behind them. Retain all other related documents.

Active: until superseded or obsolete

Disposition: destroy

GRANT ADMINISTRATION AND FINANCIAL FILES

Includes application, award notice, public hearing notices, RFP's, purchase orders, banking records, accounting ledgers, correspondence, reports, and other documents; maintained by project year.

Active: until project is closed and audited

Inactive: 5 years or until completion of any action,
whichever is later

Disposition: destroy

HOLD HARMLESS AGREEMENT

Includes Includes ride along agreements, release of liability agreements, and other related agreements

Active: 5 years

Disposition: destroy

JUVENILE DATA CARDS

Juvenile Criminal History stored in electronic/digital database

Disposition: permanent

LICENSE FILES - APPROVED PEDDLER APPLICATIONS

Includes application and other related documents for peddlers

Active: until license is expired or obsolete

Inactive: 1 year

Disposition: destroy

MVE-1 RECORDS

Includes blue form and NCIC return from out of state title inspections

Active: 5 years

Disposition: destroy

NCIC COMPUTERIZED RECORDS

Includes stolen articles, firearms, license plates, vehicles, boats, and missing and wanted persons

Active: per NCIC requirements

PET LICENSES

Pet licenses sold by the City of Winfield

Active: 3 years

Disposition: destroy

PRESS RELEASES

Official notices to media regarding cases and events

Active: 1 year

Disposition: destroy

RECEIPTS

Includes copy sales, vendor refunds, restitution, and contracted services

Active: 2 years

Disposition: destroy

USE OF FORCE REPORTS

Active: while individual is employed

Disposition: permanent

VOLUNTEER RECORDS

Includes application, training, recognition, KBI background check, liability waiver, and related documents

Active: while current

Inactive: 2 years

Disposition: destroy



Request for Commission Action

Date: March 9, 2018

Requestor: Gus Collins, Director of Utilities

Action Requested: Agreement renewal with EGT (Enable Gas Transmission). Consider renewal of existing agreement with Enable for transmission of natural gas to the city. The terms are the same.

Analysis: The Transmission of Natural Gas to the City Distribution system has been provided by Enable company for many years. The existing agreement terminates March 31st, 2018. This proposed contract extends the agreement, under same terms for another year.

Fiscal Impact: No fiscal impact to City.

Attachments: Map of Transmission line and the City's Gates.

A RESOLUTION

AUTHORIZING the City Manager to execute a Transportation Service Agreement No. 1001268 between the City of Winfield, Kansas, and Enable Gas Transmission Company.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The City Manager is hereby authorized and directed to execute a Transportation Service Agreement No. 1001268 between the City of Winfield, Kansas, and Enable Gas Transmission Company, regarding the transportation of natural gas; a copy of which is attached hereto and made a part hereof.

Section 2. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this 19th day of March, 2018.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Jeremy Willmoth, City Manger

**AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1001268**

THIS TRANSPORTATION SERVICE AGREEMENT ("Agreement"), between Enable Gas Transmission, LLC ("EGT"), a Delaware limited liability company ("Transporter"), and Shipper (defined below), covering the transportation of natural gas by Transporter on behalf of Shipper as more particularly described herein, is entered into in accordance with the following terms and conditions:

1) **SHIPPER INFORMATION:**

City of Winfield, Kansas
2701 E. 9th Avenue
Winfield, KS 67156-0646
Facsimile No.: (620)-221-5618
E-mail Address: wporter@winfieldks.org

Type of Entity: Kansas municipality

Transporter's wire transfer information and addresses for notices and payments shall be located on Transporter's Internet Web Site.

2) **REGULATORY AUTHORITY:** Subpart G

3) **TERM, CONTRACT DEMAND AND POINTS:**

The term, Contract Demand, Receipt Entitlements, if applicable, and Receipt and Delivery Points for this Agreement shall be as shown below. Absent designation of MRO's for any specific physical Point of Receipt, Transporter shall have no obligation to permit Shipper to utilize any such Point of Receipt or to receive any specific quantities on Shipper's behalf at such point.

Term: Effective Date: Originally September 1, 1993, as amended and restated April 1, 2018

Primary Term End Date: The end of the Day on March 31, 2019

Evergreen/Term Extension? No

Contract Demand: 10,000 Dth/D

Receipt Entitlement(s): West 1 Pooling Area 10,000 Dth/D

Primary Receipt Point(s):

Markwest Arapaho Plant (Meter No. 810010)
EGG McClure IC (Meter No. 301104)

Maximum Receipt Obligation (Dth/D)

6,000
4,000

Primary Delivery Point(s):

City Gate of Winfield (Meter No. 801669)

Maximum Delivery Obligation (Dth/D)

10,000

- 4) **RATE:** Unless provided otherwise in an Attachment A to this Agreement in effect during the term of this Agreement, in a capacity release award, or below, Shipper shall pay, or cause to be paid, to Transporter each month for all services provided hereunder the maximum applicable rate, and any other charges, fees, direct bill amounts, taxes, assessments, or surcharges provided for in Transporter's Tariff, as on file and in effect from time to time, for each service rendered hereunder.

AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1001268
(continued)

5) OTHER PROVISIONS:

- 5.1) Payments shall be received by Transporter within the time prescribed by Section 14 of the GT&C of Transporter's Tariff. Amounts past due hereunder shall bear interest as provided in Section 14 of the GT&C of the Tariff. Shipper shall pay all costs associated with the collection of such past due amounts including, but not limited to, attorneys' fees and court costs. Shipper hereby represents and warrants that the party executing this Agreement on its behalf is duly authorized and possesses all necessary corporate or other authority required to legally bind Shipper.
- 5.2) Do the parties agree that the provisions of Section 13.4 of the GT&C of Transporter's Tariff shall apply with respect to third-party transportation? Yes ☐ No ☒
- 5.3) a) Does this Agreement supersede and cancel a pre-existing Transportation Service Agreement(s) between the parties? Yes ☐ No ☒
b) Does this Agreement amend and restate in its entirety a pre-existing Transportation Service Agreement(s) between the parties? Yes ☒ No ☐
If Yes, the Transportation Service Agreement(s) are described as follows:
Effective April 1, 2018, this Agreement amends and restates Transportation Service Agreement No. 1001268, originally effective September 1, 1993, as subsequently amended, restated and/or superseded prior to or as of the effective date hereof.
- 5.4) Is this Agreement entered into pursuant to and subject to CAPACITY RELEASE, Section 19 of the GT&C of Transporter's Tariff? Yes ☐ No ☒
- 5.5) Does this Agreement include any other terms/provisions permitted by the Tariff? Yes ☒ No ☐
If Yes, those provisions (including a specific reference to the Tariff authority for each such provision) are as follows:
a) Shipper receives service under the Small Customer option as provided in Section 3.2 of Rate Schedule FT.
b) Pursuant to Section 21.10, GT&C, of the Tariff, the parties have agreed to an extension of the term with respect to all of the capacity committed under the Service Agreement being amended and extended.
- 6) All modifications, amendments or supplements to the terms and provisions hereof shall be effected only by supplementary written (or electronic, to the extent Transporter permits or requires) consent of the parties.
- 7) **SIGNATURE:** This Agreement constitutes a contract with Transporter for the transportation of natural gas, subject to the terms and conditions hereof, the General Terms and Conditions attached hereto, and any applicable attachment(s), all of which are incorporated herein by reference and made part of this Agreement.

ENABLE GAS TRANSMISSION, LLC

CITY OF WINFIELD, KANSAS

By: _____
Name: Rodney J. Sailor
Title: President and Chief Executive Officer
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

**GENERAL TERMS AND CONDITIONS
TO AMENDED AND RESTATED FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1001268**

1. This Agreement shall be subject to the provisions of Rate Schedule FT as well as the General Terms and Conditions ("GT&C") set forth in Transporter's Tariff, as on file and in effect from time to time, all of which by this reference are made a part hereof.
2. In accordance with Section 12.2 of the GT&C of Transporter's Tariff, Transporter shall have the right at any time, and from time to time, to file and place into effect unilateral changes or modifications in the rates and charges, and other terms and conditions of service hereunder, and as set forth in said Rate Schedule and in said GT&C of Transporter's Tariff, in accordance with the Natural Gas Act or other applicable law. Nothing contained in the foregoing provision shall preclude or prevent Shipper from protesting any such changes or modifications; however, Shipper agrees to pay all rates and charges, and to comply with all terms and conditions, in effect under the Tariff.
3. Upon Shipper's failure to pay when due all or any part of amounts billed in connection with services rendered or to comply with the terms of this Agreement, Transporter may terminate this Agreement and/or suspend service, as appropriate, in accordance with the provisions of Section 14 of the GT&C of Transporter's Tariff.
4. In accordance with Section 21.1 of the GT&C of Transporter's Tariff, upon termination hereof for whatever reason, Shipper agrees to stop delivering gas to Transporter for service and, unless otherwise agreed by Transporter, to seek no further service from Transporter hereunder. Shipper agrees to cooperate with and assist Transporter in obtaining such regulatory approvals and authorizations, if any, as are necessary or appropriate in view of such termination and abandonment of service hereunder.
5. In accordance with Section 5.7(e) of the GT&C of Transporter's Tariff, termination of this Agreement shall not relieve either party of any obligation that might otherwise exist to cash-out or correct any Imbalance hereunder nor relieve Shipper of its obligation to pay any monies due hereunder to Transporter and any portions of this Agreement necessary to accomplish such purposes shall be deemed to survive for the time and to the extent required.
6. In accordance with Sections 2.1 and 2.2 of Rate Schedule FT of Transporter's Tariff, subject to the provisions of the Tariff and this Agreement, Transporter shall receive, transport, and deliver, for the account of Shipper for the purposes contemplated herein, on a firm basis a quantity of Gas up to the quantity or quantities specified in the Agreement.
7. In accordance with Sections 2.1 and 3.3 of Rate Schedule FT of Transporter's Tariff, Gas shall be (i) tendered to Transporter for transportation hereunder at the Point(s) of Receipt and (ii) delivered by Transporter after transportation to Shipper, or for Shipper's account, at the Point(s) of Delivery on the terms and at the points shown in this Agreement. Subject to the provisions of the Tariff, Transporter shall tender for delivery quantities of Gas thermally-equivalent to those delivered by Shipper, less, as applicable, Fuel Use and LUFG, or Alternate Fuel Retentions, retained.
8. Except as otherwise permitted in the Tariff, and in accordance with Section 19 of the GT&C of Transporter's Tariff, this Agreement shall not be assigned by Shipper in whole or in part, nor shall Shipper agree to provide services to others by use of any capacity contracted for under the Agreement, without Transporter's prior written consent. In addition to all other rights and remedies, Transporter may terminate the Agreement immediately if it is assigned by Shipper or if Shipper subcontracts the capacity to others contrary to the provisions hereof, whether the assignment or contract be voluntary, or by operation of law or otherwise. Subject to the above, the respective rights and obligations of the parties under the Agreement shall extend to and be binding upon their heirs, successors, assigns and legal representatives. Shipper may request that Transporter consent to Shipper's assignment of this Agreement to an entity with which Shipper is affiliated subject to the assignee's satisfaction of the criteria in Section 14 of the GT&C of Transporter's Tariff, in the situation in which, after Shipper obtains the Agreement, a corporate reorganization results in a transfer to an affiliate of the function for which the capacity was obtained. Any person which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of either party hereto, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; and either party may assign or pledge this Agreement under the provisions of any mortgage, deed of trust, indenture, bank credit agreement, assignment or similar instrument which it has executed or may execute hereafter.
9. Any notice, statement, or bill provided for in this Agreement shall be in writing (or provided electronically via the Internet to the extent Transporter permits or requires) and shall be considered as having been given if hand delivered, or, if received, when mailed by United States mail, postage prepaid, to the addresses specified herein, or such other addresses as either party shall designate by written notice to the other. Additionally, notices shall be considered as having been given, if received, when sent via facsimile or through electronic data interchange.
10. In accordance with the form of credit application contained in the Tariff, Shipper agrees that any representations and agreements contained in any credit application submitted in connection with this service shall be incorporated herein by reference and made a part hereof.



Request for Commission Action

Date: March 12, 2018

Requestor: Gus Collins, Director of Utilities

Action Requested: Consider new agreement with EGT (Enable Gas Transmission) providing the transportation of natural gas to serve the City's two power plants.

Analysis: EGT has been the transporter of natural gas to Winfield for many years. Approximately 5 years ago the agreement to provide (transport) natural gas to the City was divided into two separate contracts, one to serve the City and one for the two power plants. This was requested by EGT. The City then entered into the two contracts for the transmission of natural gas. In 2015, EGT submitted a contract to the city for a take or pay, meaning that we pay on 2500 MMBTU per day whether it is used or not. The usage for generation from the two power plants has diminished significantly over the past 5 to 7 years. Even though the rate on the take or pay was a very competitive (low rate) we should have continued with the volumetric, or based on actual usage. City staff has disputed the terms of that contract for the past three years and, although not agreeing to revert to the previous terms, EGT has not pursued the balance due. City staff is now recommending to settle this disputed balance of approximately \$136,000 for .20 on the dollar. In addition, the city staff is recommending the payment of this balance be spread (over a 9-month period) to settle the disputed balance. In addition, EGT is willing to provide new terms which would reduce the cost to the city, as noted above, to approximately \$24,000 a year. Recommending approval for a one-year period. Staff will continue to review options regarding the power plants, benefits and value to the community for the next year.

Fiscal Impact: An increase in the annual transmission costs – see attached

Attachments:

A RESOLUTION

AUTHORIZING the City Manager to execute a Transportation Service Agreement No. 1010478 for the Winfield Power Plants between the City of Winfield, Kansas, and Enable Gas Transmission Company.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The City Manager is hereby authorized and directed to execute a Transportation Service Agreement No. 1010478 for the Winfield Power Plants between the City of Winfield, Kansas, and Enable Gas Transmission Company, regarding the transportation of natural gas; a copy of which is attached hereto and made a part hereof.

Section 2. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this 19th day of March, 2018.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Jeremy Willmoth, City Manger

**AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1010478**

THIS TRANSPORTATION SERVICE AGREEMENT ("Agreement"), between Enable Gas Transmission, LLC ("EGT"), a Delaware limited liability company ("Transporter"), and Shipper (defined below), covering the transportation of natural gas by Transporter on behalf of Shipper as more particularly described herein, is entered into in accordance with the following terms and conditions:

1) **SHIPPER INFORMATION:**

City of Winfield, Kansas
2701 E. 9th Avenue
Winfield, KS 67156-0646
Facsimile No.: (620)-221-5618
E-mail Address: wporter@winfieldks.org

Type of Entity: Kansas municipality

Transporter's wire transfer information and addresses for notices and payments shall be located on Transporter's Internet Web Site.

2) **REGULATORY AUTHORITY:** Subpart G

3) **TERM, CONTRACT DEMAND AND POINTS:**

The term, Contract Demand, Receipt Entitlements, if applicable, and Receipt and Delivery Points for this Agreement shall be as shown below. Absent designation of MRO's for any specific physical Point of Receipt, Transporter shall have no obligation to permit Shipper to utilize any such Point of Receipt or to receive any specific quantities on Shipper's behalf at such point.

Term: Effective Date: Originally April 1, 2015, as amended and restated April 1, 2018,
subject to FERC approval

Primary Term End Date: The end of the Day on March 31, 2019

Evergreen/Term Extension? No

Contract Demand: 1,500 Dth/D

Receipt Entitlement(s): West 1 Pooling Area 1,500 Dth/D

Primary Receipt Point(s):
Markwest Arapaho Plant (Meter No. 810010)

Maximum Receipt Obligation (Dth/D)
1,500

Primary Delivery Point(s):
City of Winfield Pwr (Meter No. 805107)

Maximum Delivery Obligation (Dth/D)
1,500

- 4) **RATE:** Unless provided otherwise in an Attachment A to this Agreement in effect during the term of this Agreement, in a capacity release award, or below, Shipper shall pay, or cause to be paid, to Transporter each month for all services provided hereunder the maximum applicable rate, and any other charges, fees, direct bill amounts, taxes, assessments, or surcharges provided for in Transporter's Tariff, as on file and in effect from time to time, for each service rendered hereunder. If Attachment A or this Agreement provides for a rate other than the maximum applicable rate, the following shall apply:

**AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1010478
(continued)**

Shipper agrees to pay the rates specified below or on Attachment A for performance of certain gas transportation service under the Agreement. These rates are applicable only in accordance with the following:

- (a) Term, Points and/or Rates: The term of the rates, and the Receipt Point(s) and the Delivery Point(s) eligible for such rates, shall be specified below.

(i) Negotiated Rate.

(ii) Description of Points:

The Receipt Point(s) eligible for the rates specified herein shall be the Primary Receipt Point listed in Section 3 of the Agreement (as such Agreement provides on the Effective Date hereof), and all generally available points and Pools in the West 1 Pooling Area.

The Delivery Point(s) eligible for the rates specified herein shall be the Primary Delivery Point listed in Section 3 of the Agreement (as such Agreement provides on the Effective Date hereof).

If scheduled maintenance or other operational circumstances adversely affect the availability of primary firm capacity under the Agreement and Transporter requests Shipper to receive and/or deliver other than at the points specified above, then such points as designated by Transporter shall be deemed eligible for the rates and the period specified. Transporter may make such request via e-mail, in writing or via Internet Web Site posting and the document in which such request appears shall be deemed to amend this Agreement for the purposes hereof.

(iii) Description of Rates:

The rates which Transporter shall bill and Shipper shall pay under the Agreement for services shall be as follows:

Shipper shall pay a Reservation Charge each Month (calculated by multiplying \$0.03 per Dth by 30.41667) based on the Dth of Contract Demand specified in the Agreement, regardless of the quantity of gas transported during the Service Month plus a fixed Commodity Rate of \$0.2799 per Dth transported. If Shipper releases capacity, it shall pay Transporter for any portion of the foregoing Commodity Rate not paid by the Replacement Shipper. The rates provided for herein shall not be subject to refund or reduction if in excess of any maximum otherwise allowed.

(iv) Term of Rate:

Begin Date(s): April 1, 2018

End Date(s): The end of the Day on March 31, 2019

- (b) Authorized Overrun: Unless Transporter agrees otherwise, the rate for any authorized overrun quantities shall be the greater of the maximum Tariff rate or \$0.3099 per Dth.

- (c) General: In consideration for Shipper's continuing compliance with the provisions of the Agreement, the transportation rates and charges as defined above or on Attachment A for the specified services provided under the Agreement only apply to receipts from, and subsequent deliveries to, the Points of Receipt and Delivery, quantities and/or time periods described above or on Attachment A and to reserved capacity necessary to effect such service. In addition to any rate or amount referred to herein (including discounted rates, Negotiated Rates, overrun rates and maximum Tariff rates), except as specifically provided otherwise herein or on Attachment A, Shipper shall provide or pay and Transporter shall retain or charge Fuel Use and LUFG allowances or charges (including the EPC surcharge) in such quantities or amounts as authorized from time to time by the Tariff and shall pay any applicable charges, penalties, surcharges, fees, taxes, assessments and/or direct billed amounts provided for in the Tariff. In any event, the rate in any Month shall never be below Transporter's applicable minimum Tariff rate for a discount rate transaction. For a Negotiated Rate transaction, the rate in any month shall never be below Transporter's applicable minimum Tariff rate, unless Transporter otherwise agrees. Transporter shall not be responsible for the payment and satisfaction of any taxes assessed or levied on the

AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1010478
(continued)

receipt, transmission (and any activities in connection therewith), delivery, use and/or consumption with respect to Gas delivered or received by Shipper, unless Transporter agrees otherwise.

(d) Rate-Related Provisions:

- (i) Consideration for Rate Granted: Transporter agrees to the rates specified herein or on Attachment A in exchange for Shipper's agreement to forego credits or other benefits to which Shipper would otherwise be entitled, but only to the extent such credits or benefits would result in a greater economic benefit over the applicable term than that represented by the agreed-upon rate. Accordingly, unless Transporter otherwise agrees, Shipper will not receive credits (with the exception of (1) penalty revenue credits provided pursuant to Section 31 of the General Terms and Conditions of Transporter's Tariff, and (2) capacity release credits) from rates, refunds or other revenues collected by Transporter or Shipper if to do so would effectively result in a lower rate or greater economic benefit to Shipper; provided, however, that for a Shipper taking service under a Negotiated Rate agreement, Transporter and Shipper can agree pursuant to Section 19.8 of the General Terms and Conditions of Transporter's Tariff that Transporter will retain some or all of the capacity release credits to the extent those credits exceed the amount of the Shipper's invoiced demand component. If the parties' agreement to the foregoing is determined invalid or if Shipper seeks to obtain credits or benefits inconsistent therewith, unless Transporter otherwise agrees, it will have the right to immediately terminate or modify any provisions herein or of Attachment A that would allow Shipper to pay amounts less than the maximum applicable Tariff rate
- (ii) Limitation on Agreed Upon Rate: Unless Transporter agrees otherwise, if at any time receipts and/or deliveries are initially sourced into the system, nominated, scheduled and/or made, by any means or by operation of any Tariff mechanisms, with respect to the capacity obtained by, through or under the Agreement at points, or under conditions, other than those specified herein or on Attachment A, then as of such date, and for the remainder of the Service Month in which such non-compliance occurred, or the remainder of the term of the Agreement, whichever is shorter, Shipper shall be obligated to pay no less than the maximum applicable Tariff rates for service under the Agreement. This limitation shall not apply to the extent that Transporter has requested Shipper to receive and/or deliver other than as specified herein or on Attachment A. Such request may be made via e-mail, in writing, or via Internet Web Site posting, and the document in which such request is made shall be deemed to amend this Agreement to the extent applicable.
- (iii) Regulatory Authority: This Agreement (including Attachment A) is subject to Section 16 of the GT&C of Transporter's Tariff. Transporter and Shipper hereby acknowledge that this Agreement is subject to all valid and applicable federal and local laws and to the orders, rules and regulations of any duly constituted federal or local regulatory body or governmental authority having jurisdiction. Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction to be invalid or unenforceable will be ineffective to the extent of such determination only, without invalidating, or otherwise affecting the validity of, the remaining provisions. Unless the parties agree otherwise, if Transporter has made a good faith determination that a federal or local law, or order, rule or regulation of any governmental authority having or asserting jurisdiction (1) requires performance by Transporter that is inconsistent with the terms specified herein or on Attachment A, or (2) conditions or prohibits the granting of selective discounts or other rates specified herein or on Attachment A, then Transporter may provide notice that it intends to renegotiate the rates under the Agreement. If the parties fail to reach agreement within forty-five (45) days of any renegotiation notice given pursuant to the terms of this paragraph, then: (1) the rate provisions herein or on Attachment A shall be terminated, and the rate for service herein or under Attachment A shall be Transporter's applicable maximum Tariff rate, or (2) if Transporter's applicable maximum Tariff rate is greater than the rate for service herein or on Attachment A, at the Shipper's option, the Agreement and any applicable Attachment A shall terminate. The effective date of this renegotiation or termination shall be the first day of the month following the end of the 45-

AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1010478
(continued)

day renegotiation period; provided, however, that the effective date will comply with the requirements of the applicable federal or local law, or order, rule or regulation of any governmental authority having or asserting jurisdiction.

- (iv) Entire Agreement: Attachment A, if applicable, shall supplement the Agreement with respect to the matters agreed to, and together shall constitute the entire understanding of the parties relating to said matters as of the effective date stated therein. Unless otherwise specified, all prior agreements, correspondence, understandings and representations are hereby superseded and replaced by Attachment A and the Agreement. Except as otherwise provided herein, all terms used herein with initial capital letters are so used with the respective meanings ascribed to them in Transporter's Tariff.
- (v) Failure to Exercise Rights: Failure to exercise any right under Attachment A, if applicable, or the Agreement shall not be considered a waiver of such right in the future. No waiver of any default in the performance of Attachment A or the Agreement shall be construed as a waiver of any other existing or future default, whether of a like or different character.
- (e) Inability to Collect Negotiated Rates: If this Agreement covers a Negotiated Rate transaction, and Transporter is unable to collect Negotiated Rates due to a change in Commission policy or rejection of the transaction by the Commission prior to or during the term of such transaction, then, unless the parties agree otherwise, Shipper shall pay the maximum Tariff rate for the services. In such event, Transporter shall notify Shipper in writing of the requirement to pay maximum Tariff rates and, if the maximum Tariff rates are greater than the Negotiated Rates under such transaction, Shipper shall have no more than thirty (30) days from the date of such notification to give notice in writing of termination of the applicable Agreement, with such termination to be effective no earlier than the end of the Month following the Month in which such termination notice is received.

5) **OTHER PROVISIONS:**

- 5.1) Payments shall be received by Transporter within the time prescribed by Section 14 of the GT&C of Transporter's Tariff. Amounts past due hereunder shall bear interest as provided in Section 14 of the GT&C of the Tariff. Shipper shall pay all costs associated with the collection of such past due amounts including, but not limited to, attorneys' fees and court costs. Shipper hereby represents and warrants that the party executing this Agreement on its behalf is duly authorized and possesses all necessary corporate or other authority required to legally bind Shipper.
- 5.2) Do the parties agree that the provisions of Section 13.4 of the GT&C of Transporter's Tariff shall apply with respect to third-party transportation? Yes _____ No X
- 5.3) a) Does this Agreement supersede and cancel a pre-existing Transportation Service Agreement(s) between the parties? Yes _____ No X
b) Does this Agreement amend and restate in its entirety a pre-existing Transportation Service Agreement(s) between the parties? Yes X No _____
If Yes, the Transportation Service Agreement(s) are described as follows:
Effective April 1, 2018, this Agreement amends and restates Transportation Service Agreement No. 1010478, originally effective April 1, 2015, as subsequently amended, restated and/or superseded prior to or as of the effective date hereof.
- 5.4) Is this Agreement entered into pursuant to and subject to CAPACITY RELEASE, Section 19 of the GT&C of Transporter's Tariff? Yes _____ No X

AMENDED AND RESTATED
FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1010478
(continued)

- 5.5) Does this Agreement include any other terms/provisions permitted by the Tariff? Yes X No _____
If Yes, those provisions (including a specific reference to the Tariff authority for each such provision) are as follows:

In accordance with Section 19.8 of the GT&C of the Tariff, the parties hereby agree that Transporter shall retain, and not credit back to Shipper, credits for capacity releases to the extent amounts paid by or invoiced to Replacement Shipper(s) as, or attributable to, demand or reservation type charges exceed the amount of Shipper's invoiced demand component.

Pursuant to Section 21.10, GT&C, of the Tariff, the parties have agreed to an extension of the term with respect to part of the capacity committed under the Service Agreement being amended and extended and conversion of the transaction from a recourse to a negotiated rate.

- 6) All modifications, amendments or supplements to the terms and provisions hereof shall be effected only by supplementary written (or electronic, to the extent Transporter permits or requires) consent of the parties.
- 7) **SIGNATURE:** This Agreement constitutes a contract with Transporter for the transportation of natural gas, subject to the terms and conditions hereof, the General Terms and Conditions attached hereto, and any applicable attachment(s), all of which are incorporated herein by reference and made part of this Agreement.

ENABLE GAS TRANSMISSION, LLC

CITY OF WINFIELD, KANSAS

By: _____
Name: Christopher T. Ditzel
Title: VP Commercial, Transportation and Storage
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

**GENERAL TERMS AND CONDITIONS
TO AMENDED AND RESTATED FIRM (RATE SCHEDULE FT)
TRANSPORTATION SERVICE AGREEMENT
TSA NO.: 1010478**

1. This Agreement shall be subject to the provisions of Rate Schedule FT as well as the General Terms and Conditions ("GT&C") set forth in Transporter's Tariff, as on file and in effect from time to time, all of which by this reference are made a part hereof.
2. In accordance with Section 12.2 of the GT&C of Transporter's Tariff, Transporter shall have the right at any time, and from time to time, to file and place into effect unilateral changes or modifications in the rates and charges, and other terms and conditions of service hereunder, and as set forth in said Rate Schedule and in said GT&C of Transporter's Tariff, in accordance with the Natural Gas Act or other applicable law. Nothing contained in the foregoing provision shall preclude or prevent Shipper from protesting any such changes or modifications; however, Shipper agrees to pay all rates and charges, and to comply with all terms and conditions, in effect under the Tariff.
3. Upon Shipper's failure to pay when due all or any part of amounts billed in connection with services rendered or to comply with the terms of this Agreement, Transporter may terminate this Agreement and/or suspend service, as appropriate, in accordance with the provisions of Section 14 of the GT&C of Transporter's Tariff.
4. In accordance with Section 21.1 of the GT&C of Transporter's Tariff, upon termination hereof for whatever reason, Shipper agrees to stop delivering gas to Transporter for service and, unless otherwise agreed by Transporter, to seek no further service from Transporter hereunder. Shipper agrees to cooperate with and assist Transporter in obtaining such regulatory approvals and authorizations, if any, as are necessary or appropriate in view of such termination and abandonment of service hereunder.
5. In accordance with Section 5.7(e) of the GT&C of Transporter's Tariff, termination of this Agreement shall not relieve either party of any obligation that might otherwise exist to cash-out or correct any Imbalance hereunder nor relieve Shipper of its obligation to pay any monies due hereunder to Transporter and any portions of this Agreement necessary to accomplish such purposes shall be deemed to survive for the time and to the extent required.
6. In accordance with Sections 2.1 and 2.2 of Rate Schedule FT of Transporter's Tariff, subject to the provisions of the Tariff and this Agreement, Transporter shall receive, transport, and deliver, for the account of Shipper for the purposes contemplated herein, on a firm basis a quantity of Gas up to the quantity or quantities specified in the Agreement.
7. In accordance with Sections 2.1 and 3.3 of Rate Schedule FT of Transporter's Tariff, Gas shall be (i) tendered to Transporter for transportation hereunder at the Point(s) of Receipt and (ii) delivered by Transporter after transportation to Shipper, or for Shipper's account, at the Point(s) of Delivery on the terms and at the points shown in this Agreement. Subject to the provisions of the Tariff, Transporter shall tender for delivery quantities of Gas thermally-equivalent to those delivered by Shipper, less, as applicable, Fuel Use and LUFG, or Alternate Fuel Retentions, retained.
8. Except as otherwise permitted in the Tariff, and in accordance with Section 19 of the GT&C of Transporter's Tariff, this Agreement shall not be assigned by Shipper in whole or in part, nor shall Shipper agree to provide services to others by use of any capacity contracted for under the Agreement, without Transporter's prior written consent. In addition to all other rights and remedies, Transporter may terminate the Agreement immediately if it is assigned by Shipper or if Shipper subcontracts the capacity to others contrary to the provisions hereof, whether the assignment or contract be voluntary, or by operation of law or otherwise. Subject to the above, the respective rights and obligations of the parties under the Agreement shall extend to and be binding upon their heirs, successors, assigns and legal representatives. Shipper may request that Transporter consent to Shipper's assignment of this Agreement to an entity with which Shipper is affiliated subject to the assignee's satisfaction of the criteria in Section 14 of the GT&C of Transporter's Tariff, in the situation in which, after Shipper obtains the Agreement, a corporate reorganization results in a transfer to an affiliate of the function for which the capacity was obtained. Any person which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of either party hereto, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; and either party may assign or pledge this Agreement under the provisions of any mortgage, deed of trust, indenture, bank credit agreement, assignment or similar instrument which it has executed or may execute hereafter.
9. Any notice, statement, or bill provided for in this Agreement shall be in writing (or provided electronically via the Internet to the extent Transporter permits or requires) and shall be considered as having been given if hand delivered, or, if received, when mailed by United States mail, postage prepaid, to the addresses specified herein, or such other addresses as either party shall designate by written notice to the other. Additionally, notices shall be considered as having been given, if received, when sent via facsimile or through electronic data interchange.
10. In accordance with the form of credit application contained in the Tariff, Shipper agrees that any representations and agreements contained in any credit application submitted in connection with this service shall be incorporated herein by reference and made a part hereof.



Request for Commission Action

Date: March 15, 2018

Requestor: Brenda Peters

Action Requested: Consideration of P&L Insurance Bids as presented to the Commission on Thursday March 15, 2018

Analysis: In the last quarter of 2017, the City engaged James Charlesworth of Charlesworth Consulting, LLC to go out for bid for the City's Property & Liability Insurance. Charlesworth addressed the Commission with the results of the process at the work session. The current policy with Travelers and Liberty Mutual expire on March 31, 2018. Staff is asking for a formal decision to be made at the March 19, 2018 meeting.

Fiscal Impact: Possible savings to the City of approximately \$134,000.

Attachments: A Resolution for approval, MPR By-laws.

A RESOLUTION

APPROVING

execution of Midwest Public Risk of Kansas Bylaws

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The City of Winfield hereby authorizes the execution of the Bylaws of Midwest Public Risk of Kansas in Substantially the form of EXHIBIT A attached hereto and incorporated herein by reference (the MPR Bylaws).

Section 2. City Manager, Jeremy Willmoth is appointed as the Member Representative, and is hereby authorized and directed to execute the MPR Bylaws on behalf of the City and to thereby bind the City of Winfield to comply with the terms and conditions of the MPR Bylaws.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 19th day of March, 2018.

(SEAL)

Gregory N. Thompson, Mayor

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Jeremy Willmoth, City Manager

TABLE OF CONTENTS
BYLAWS OF MIDWEST PUBLIC RISK OF KANSAS, INC.

	Page
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 NAME; PRINCIPAL OFFICE	2
Section 2.1 Name; Principal Office	2
ARTICLE 3 INTENT; NOT BUSINESS OF INSURANCE	3
Section 3.1 Intent	3
Section 3.2 Not Business Of Insurance.....	3
Section 3.3 Not-for-Profit Organization	3
ARTICLE 4 MPR KANSAS POWERS	3
Section 4.1 MPR Kansas Powers.....	3
ARTICLE 5 MEMBERS	5
Section 5.1 Member Eligibility and Admission.....	5
Section 5.2 Member Rights.....	5
Section 5.3 Member Obligations	5
Section 5.4 Limitations on Member Liability	6
Section 5.5 Annual Member Meeting.....	7
Section 5.6 Special Membership Meeting	7
Section 5.7 Quorum; Voting Rights.....	7
Section 5.8 Withdrawal.....	8
Section 5.9 Termination.....	8
Section 5.10 Application of Sections 17-6501 to 17-6523 of the Code	10
ARTICLE 6 BOARD OF DIRECTORS	10
Section 6.1 Powers; Election; Vacancies.....	10
Section 6.2 Director Qualifications.....	11
Section 6.3 Director Compensation and Expenses	11
Section 6.4 Board Officers.....	11
Section 6.5 Board Powers	12
Section 6.6 Committees	13
Section 6.7 MPR Kansas Policies and Procedures	13
Section 6.8 Meetings.....	13
ARTICLE 7 PRESIDENT/CEO	14

Section 7.1	President/CEO; Appointment; Authority	14
ARTICLE 8	COVERAGE DOCUMENTS; UNDERWRITING CONTRIBUTIONS	14
Section 8.1	Coverage Documents	14
Section 8.2	Modification of Coverage Documents and Conflicts	15
Section 8.3	Coverage Questions; Appeals and Other Disputes	15
Section 8.4	Acceptance and Withdrawal of Coverages	15
Section 8.5	Contributions.....	16
Section 8.6	Underwriting	16
Section 8.7	General and Separate Funds.....	16
Section 8.8	Commingling of Program Funds Prohibited.....	16
Section 8.9	Member Privilege.....	16
ARTICLE 9	MPR KANSAS ASSETS.....	17
Section 9.1	MPR Kansas Assets	17
Section 9.2	Excess or Surplus Distributions	17
Section 9.3	Special Assessments	17
ARTICLE 10	STANDARD OF CARE; BOND; INDEMNIFICATION	17
Section 10.1	Standard of Care	17
Section 10.2	Bond	18
Section 10.3	Indemnification	18
ARTICLE 11	DISSOLUTION AND DISTRIBUTION	18
Section 11.1	Dissolution	18
Section 11.2	Distribution of Assets	18
ARTICLE 12	MISCELLANEOUS	18
Section 12.1	Intergovernmental Contract	18
Section 12.2	Governing Law	19
Section 12.3	Binding Effect	19
Section 12.4	Disputes.....	19
Section 12.5	Severability	19
Section 12.6	Amendment.....	19

MIDWEST PUBLIC RISK OF KANSAS

BYLAWS

Date of Adoption: March 23, 2016

Effective Date: July 1, 2016

WHEREAS, it is in the mutual interest of the parties hereto to join together to establish and to operate a cooperative program of loss control and risk management, and to provide risk services and risk coverages and other programs which are designed to meet the unique needs of governmental entities; and

WHEREAS, The Kansas Municipal Group-Funded Pool Act, K.S.A. § 12-2616 et seq. (the "Group-Funded Pool Act"), as amended, authorizes five or more Kansas municipalities to form a not for profit business entity to provide liability and all other risk coverages for its members; and

WHEREAS, the Group-Funded Pool Act further authorizes qualifying municipalities in Kansas to join such entity; and

WHEREAS, all of the governmental entities which are party to these Bylaws desire to become members of Midwest Public Risk of Kansas, Inc. ("MPR Kansas") and intend that these Bylaws shall constitute a contract among them;

NOW THEREFORE, in consideration of the mutual advantages to be derived herefrom and by the execution of these Bylaws as a contract, all of the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Unless the context requires otherwise, the following terms shall have the following meanings:

"Code" shall mean K.S.A. Chapter 17, Articles 60 to 74, inclusive, 1972 General Corporation Code.

"Contribution(s)" shall mean any payment required by MPR Kansas to be paid for the receipt by a Member of any MPR Kansas Program or Services, or to satisfy any other Member obligations under these Bylaws.

"Coverage Document(s)" shall mean the written documents approved by MPR Kansas and which are either issued by MPR Kansas or purchased through commercial insurance companies, which set forth the terms and conditions of any Program.

"Member(s)" shall mean any governmental entity which is authorized by the statutes or other applicable law of the State of Kansas to enter into contracts or other arrangements for the

purpose of pooling resources for liability and other risk coverages and related services and which qualify as political subdivisions, public governmental bodies, or quasi-public governmental bodies as specified in the Group-Funded Pool Act. The constituent individual participants in any Member entity whose purpose or function is to administer or sponsor such participants as a collective body shall not be deemed to be Members of MPR Kansas, and only such administering or sponsoring Member entity shall be entitled to single Member status upon such terms and conditions as the Board of Directors shall determine.

“Member Representative(s)” shall mean the individual, who shall be either an elected official or a full-time employee of a Member, who has been duly appointed by a Member to represent the Member’s interest in MPR Kansas and to carry out the obligations of a Member Representative under these Bylaws.

“Nominating Committee” shall have the meaning set forth in Section 6.6 hereof.

“Policy(ies) or Procedure(s)” shall mean any rules or guidelines which may be promulgated from time to time by the MPR Kansas Board of Directors or President/CEO which are not Coverage Documents and which shall be necessary to carry out the purposes of MPR Kansas.

“Program(s)” shall mean any coverages which are authorized by the Kansas Insurance Department and provided through MPR Kansas to its Members from time to time including, but not limited to, property and liability and employee benefits.

“Resolution(s)” shall mean any ordinance, resolution or other edict or means by which the governing body of a Member takes official action on behalf of, or takes official action which is intended to be binding upon, the Member.

“Service(s)” shall mean those services which are provided through MPR Kansas to its Members from time to time which are not Programs and which include, but shall not be limited to, loss control, risk management, administration, claims adjusting, legal defense, and education.

ARTICLE 2

NAME; PRINCIPAL OFFICE

Section 2.1 Name; Principal Office

The name of the corporation shall be Midwest Public Risk of Kansas, Inc. (hereinafter “MPR Kansas”).

The Board of Directors shall establish, at a location within the State of Kansas, MPR Kansas’s principal office.

ARTICLE 3

INTENT; NOT BUSINESS OF INSURANCE

Section 3.1 Intent

It is the intent of the Members that MPR Kansas shall provide comprehensive and cooperative Programs and Services to its Members and that the Members shall pay for the costs and other obligations of MPR Kansas through Contributions and the utilization of deductibles, retentions, purchase of reinsurance, excess insurance, insurance, or other provisions for the payment of Member losses and expenses.

Section 3.2 Not Business Of Insurance

The provision of Programs and Services by MPR Kansas to its Members is not, and shall not be deemed to constitute, the transaction of an insurance business, and MPR Kansas is not, and shall not be deemed to be, an insurance company or insurer under the laws of any state.

Section 3.3 Not-for-Profit Organization

MPR Kansas shall be organized and operated as a not-for-profit corporation under Kansas law. No part of MPR Kansas's assets or net income shall inure to the benefit of any individual including any director, officer, employee, or Member, except as may be authorized in these Bylaws and allowed by law; provided, however, that MPR Kansas shall be authorized to pay all expenses incurred in furtherance of the purposes set forth in these Bylaws, including reimbursement to directors, officers, employees, Members or others acting on behalf of MPR Kansas.

ARTICLE 4

MPR KANSAS POWERS

Section 4.1 MPR Kansas Powers

MPR Kansas shall have the following powers to carry out the purposes set forth in these Bylaws:

- (a) to establish and implement educational, technical assistance and other activities relating to risk management and loss control;
- (b) to establish reasonable and necessary loss control policies, procedures and programs to be followed by Members;
- (c) to establish underwriting and claims adjusting standards and procedures; such services may be performed by MPR Kansas staff or MPR Kansas may contract with others for such services, including legal defense;
- (d) to retain staff, agents and independent contractors and to provide for an employee benefits program for MPR Kansas employees;

- (e) to acquire, lease, hold or dispose of real or personal property;
- (f) to invest funds as authorized by law;
- (g) to collect and administer funds as needed and, within prudent reserving and actuarial standards, to set aside sufficient cash reserves for the payment of claims and expenses;
- (h) to establish rules for the calculation and payment of Contributions by Members or Member employees, including penalties for late payments;
- (i) to establish such lines of coverage as permitted pursuant to K.S.A. 12-2617;
- (j) to sue and be sued;
- (k) to enter into contracts including, but not limited to, contracts with state pools located in other states which assist MPR Kansas in carrying out its powers herein;
- (l) to establish rules for the reimbursement of members of the Board of Directors, officers, committee members and others for reasonable and necessary expenses while tending to official business on behalf of MPR Kansas;
- (m) to determine deductible and retention levels of the self-funded program and the amount of risk to be retained by MPR Kansas or Members and the amount of risk to be transferred to others;
- (n) to borrow money or issue bonds or other financial obligations to fund MPR Kansas Programs and Services;
- (o) to purchase or provide fidelity bond coverage or other risk coverage for officers, Directors and employees of MPR Kansas;
- (p) to be subrogated to the rights of its Members and to seek recovery in the name of its Members from any person or entity responsible for a claim or loss;
- (q) to declare and pay dividends and refunds as allowed by law;
- (r) to determine Coverage Documents and Policies and Procedures which are necessary, desirable or expedient to provide the Services and Programs authorized by these Bylaws;
- (s) to perform such other activities which are necessary, expedient, implied or desirable to carry out the purposes of MPR Kansas; and
- (t) to perform any such other acts which are allowed by law to be performed under the Code.

ARTICLE 5 MEMBERS

Section 5.1 Member Eligibility and Admission

Subject to the payment of appropriate Contributions and under such terms and conditions as the Board of Directors may establish, new Members may be admitted with the approval of the majority of the total membership of the Board of Directors. Only those governmental entities which meet the Member definition in these Bylaws, and have submitted a copy of the minutes documenting a majority vote or Resolution from the new Member's governing body granting the authority to execute these Bylaws (or have otherwise assured MPR Kansas of their obligation to comply with these Bylaws) may be accepted for membership.

The Board of Directors of MPR Kansas may delegate authority to review and accept or reject applications for membership by written agreement to such persons or entity and in such manner as it may determine to be consistent with the best interests of MPR Kansas.

Section 5.2 Member Rights

The rights of Members, which shall be exercised by the Member Representative of each Member, shall be as follows:

- (a) to vote on all matters which shall be presented to Members for a vote at any Member meeting;
- (b) to elect, in accordance with the procedures described in these Bylaws, eligible candidates to the Board of Directors;
- (c) to apply for and receive and participate in Programs and Services for which the Member is qualified upon such terms and conditions as the Board of Directors shall determine; and
- (d) to exercise all other rights and privileges as are described in these Bylaws and as are allowed under the Code.

Section 5.3 Member Obligations

The obligations of Members shall be as follows:

- (a) to continuously maintain participation in no less than one MPR Kansas Program;
- (b) to designate in writing, by the chief administrative officer of the Member, a Member Representative. MPR Kansas shall not be required to contact any other individual except the Member Representative for any action or notification which may be required by these Bylaws or MPR Kansas rules. All notices to or agreements with the Member Representative shall be binding upon the Member. A Member may change the Member Representative by giving written notice to MPR Kansas;

(c) to promptly make all Contributions and other payments which are due to MPR Kansas at such times and in such amounts as shall be required by MPR Kansas;

(d) with reasonable notice and during normal work hours, to permit MPR Kansas and its agents, officers and employees access to all facilities and records of the Member, including but not limited to financial records, as they relate to the operations of MPR Kansas;

(e) to report immediately to MPR Kansas, as required by relevant Program Coverage Documents and Policies and Procedures, all occurrences which could reasonably be expected to result in a claim against the Member, its agents, officers or employees or for losses to Member property, within the scope of the Programs provided by MPR Kansas;

(f) to cooperate fully with MPR Kansas claims adjustors, agents, employees and attorneys in the investigation and settlement of any claim or lawsuit within the scope of Programs or Services provided by MPR Kansas, and to acknowledge that MPR Kansas has the final authority to select legal defense counsel for any lawsuit brought under the Programs provided by MPR Kansas to the Member;

(g) to implement, as finances and circumstances permit, MPR Kansas recommended risk management and loss control policies and procedures, and also to permit Member officials and employees to participate in MPR Kansas sponsored conferences and seminars;

(h) to report to MPR Kansas, as required by MPR Kansas Program Coverage Documents or Policies and Procedures, the addition of new services, programs or facilities, the reduction or expansion of existing operations and facilities, or other facts that could reasonably be expected to affect the Member's loss experiences or create potential risks;

(i) to provide MPR Kansas as promptly as possible with all requested information needed for determining Member loss exposures and Contributions;

(j) to take an active role in the business of MPR Kansas, including assignment of personnel to serve on various MPR Kansas committees; and

(k) to comply with all terms and conditions of these Bylaws, Coverage Documents and Policies and Procedures.

Except as expressly set forth to the contrary in these Bylaws or MPR Kansas's Articles of Incorporation, the rights and obligations of Members shall be identical in all respects.

Section 5.4 Limitations on Member Liability

Except as specifically required by MPR Kansas's Articles of Incorporation, Bylaws, or by law, no Member shall be responsible for any claim in tort or contract made against any other Member solely on account of a Member's participation in MPR Kansas. By executing these Bylaws, the Members have not created between or among themselves any relationship or partnership, suretyship, indemnification or responsibility for debts or claims against any other Member. These Bylaws shall not relieve any Member of any obligation or responsibility

imposed upon it by law, except to the extent that actual and timely performance by MPR Kansas satisfies such obligation or responsibility in whole or in part.

Section 5.5 Annual Member Meeting

There shall be one annual membership meeting of MPR Kansas held each year at a time and place to be designated by the Board of Directors. Notice of such meeting shall be sent by first class mail to Member Representatives at least ten (10) days in advance of the meeting. Failure of any Member Representative to receive such notice shall not nullify any action taken at an annual membership meeting. Notice of such meeting may also be given by electronic means.

The President/CEO shall prepare the agenda for the annual membership meeting and shall include on such agenda any item requested by five (5) or more Member Representatives at least twenty (20) days prior to the meeting. Any subject relating to MPR Kansas may be discussed at the annual membership meeting.

At the annual meeting, the President/CEO and chief financial officer of MPR Kansas shall report to the Members on the activities and financial condition of MPR Kansas.

Section 5.6 Special Membership Meeting

A special Membership meeting may be called by a majority of the total membership of the Board of Directors or upon the petition of one-third (1/3) of the Members acting through their Member Representatives. A special membership meeting must be held within sixty (60) calendar days after receipt of a valid petition; provided, however, that if the annual membership meeting is scheduled to occur within sixty (60) days after receipt of the request for the special membership meeting, then no separate special membership meeting shall be held. If a valid petition is received within sixty (60) calendar days prior to the annual membership meeting, the topic or topics contained in the petition shall be placed on the agenda for that meeting.

Notice of a special membership meeting shall be mailed, by first class mail, to each Member Representative at least ten (10) days in advance of the meeting date. Failure of any Member Representative to receive such notice shall not nullify any action taken at a special membership meeting.

Only those matters which are within the purpose or purposes described in the meeting notice may be considered at a special membership meeting. The Board of Directors shall establish the time and place for all special membership meetings.

Section 5.7 Quorum; Voting Rights

A quorum of Thirty-Three and One-Third percent (33 1/3 %) of Member Representatives shall be required to conduct business at a special or annual membership meeting. No absentee or proxy voting shall be allowed at any membership meeting. Each Member shall be entitled to one vote that must be cast by the Member Representative.

The Chair of the Board of Directors shall preside at all membership meetings and, if the Chair is attending the meeting in the capacity of Member Representative, shall be entitled to vote on all matters coming before the meeting.

Section 5.8 Withdrawal

A Member may withdraw from membership in MPR Kansas as of the end of MPR Kansas's fiscal year provided that such Member has given MPR Kansas at least ninety (90) days' prior written notice of its intention to withdraw and provided further that such Member ceases participation in all MPR Kansas Programs and Services as of the date of withdrawal. Members who withdraw from MPR Kansas shall remain eligible to receive any distributions, dividends or refunds for any full Program Year in which such Members participated in such proportion as provided herein; provided, however that, pursuant to K.S.A. 12-2621 any Member that withdraws before the end of a Program Year shall not be eligible for any refunds or dividends for the Program Year that such Member failed to complete.

A notice of Member withdrawal shall be accompanied by a Resolution adopted by the governing body of the Member which authorizes the withdrawal of the Member from MPR Kansas. Such notice shall be final and binding. No notice of Member withdrawal shall be effective unless it is accompanied by such governing body Resolution.

A withdrawing Member shall continue to be responsible for all obligations after the date of withdrawal that relate to the term of membership including, but not limited to, obligations for special assessments. The withdrawing Member shall be subject to all MPR Kansas Policies and Procedures pertaining to any obligation, claim or lawsuit covered by MPR Kansas.

Any Member who withdraws from MPR Kansas without complying with the foregoing obligations shall be obligated to pay to MPR Kansas liquidated damages equal to 25% of the Member's annual Contributions paid by such Member in its final full year of participation in MPR Kansas. Member agrees to pay such liquidated damages within twenty (20) calendar days following receipt of the computation of the amount due. MPR Kansas and Member agree that the failure of Member to withdraw from MPR Kansas in accordance with the foregoing procedures shall cause damage to MPR Kansas in amounts which it is not possible calculate at this time and that these liquidated damages are a good faith estimate of the damages as to which the Member shall be obligated to MPR Kansas.

Section 5.9 Termination

(a) Termination

A Member may be terminated from membership in MPR Kansas for cause upon a majority vote of the total membership of the Board of Directors. The effective date of such termination shall be as determined by the Board of Directors, except that such termination shall take effect no later than ninety (90) days following the Board's decision to terminate. For purposes of this Section, cause shall be deemed to include the following:

- (1) failure to maintain at least one Program with MPR Kansas;

(2) failure to make any Contribution due to MPR Kansas in accordance with the directives of the MPR Kansas Board of Directors;

(3) failure to undertake or to continue risk management or loss control measures recommended by MPR Kansas;

(4) failure to allow MPR Kansas and its agents reasonable access to all facilities and records of the Member which are necessary for the proper administration of MPR Kansas;

(5) failure to cooperate fully with MPR Kansas officers, employees, attorneys, claims adjusters or other agents;

(6) failure to file required reports with MPR Kansas or the filing of a false claim or report or any conduct which impairs the ability of MPR Kansas to carry out its purposes;

(7) adverse loss experience as determined by the Board of Directors;

(8) breach of any of Member's obligations under these Bylaws, MPR Kansas Coverage Documents, or MPR Kansas Policies and Procedures; or

(9) failure of a Member, the elected governing body of the Member, or of other personnel of the Member to exercise the Member's powers or fulfill the Member's duties in accordance with the constitution or statutes of the state which has enabled the creation of the Member and which has prescribed the Member's classification as a governmental entity;

(10) a Member becomes ineligible for MPR Kansas Membership pursuant to § 5.1 of these Bylaws; provided that such Member may not be terminated during the Program year if such Member's ineligibility is established after the first day of a Program year; or

(11) any other cause that is deemed good cause by a two-third (2/3) vote of the entire Board of Directors.

(b) Notification; Hearing, Obligations

A Member shall be terminated immediately and without further notice upon the failure of a Member to maintain at least one Program or receive any Services from MPR Kansas. A Member shall be terminated with not less than thirty (30) days notice upon the determination by the Board of Directors that such Member has adverse loss experience. In all other cases, a Member may be terminated only after written notice sent by certified or first class mail from the President/CEO of MPR Kansas stating the reasons for termination. Such notice shall provide the Member thirty (30) calendar days to cure the grounds for termination. The Member may request a hearing before the Board of Directors prior to the final termination of the Member's membership in MPR Kansas. The President/CEO of MPR Kansas shall present the case for

termination to the Board of Directors, and the Member shall have reasonable opportunity to present its case to the Board of Directors.

The decision by a majority of the total members of the Board of Directors to terminate a Member after notice and hearing or after the failure of the Member to cure the grounds given for termination shall be final and shall not be subject to appeal in any forum. The termination shall take effect thirty (30) calendar days after the decision to terminate is approved by the Board of Directors.

A terminated Member shall forfeit all rights to any MPR Kansas refunds, dividends, or distribution of assets upon dissolution after the effective date of termination. Any terminated Member shall continue to be bound to those same continuing obligations as to which a withdrawing Member is obligated in accordance with Section 5.8 of these Bylaws.

Section 5.10 Application of Sections 17-6501 to 17-6523 of the Code

The provisions of Sections 17-6501 to 17-6523 of the Code shall apply to MPR Kansas except to the extent the provisions of such Sections are inconsistent with the Articles of Incorporation of MPR Kansas or these Bylaws, provided, however, that no Section allowing proxy voting shall apply to MPR Kansas.

ARTICLE 6 BOARD OF DIRECTORS

Section 6.1 Powers; Election; Vacancies

The Board of Directors shall consist of seven (7) members. The Board of Directors shall adopt rules for the election of Directors by the Member Representatives and for appointment to fill Director vacancies by the Board of Directors, provided that the following conditions are fulfilled:

(a) at least two members of the Board of Directors shall be from the six largest Members as measured by total contributions paid in MPR Kansas's most recent fiscal year;

(b) each Member Representative shall be entitled to one vote for each Director position to be filled;

(c) Directors shall serve three year, staggered terms provided that no Director may serve more than two consecutive three-year terms or a total of six consecutive years. Board service by individuals appointed to fill the remainder of an unexpired term shall not be considered for purposes of these limitations;

(d) Directors shall assume office at the end of the annual membership meeting following election;

(e) by majority vote of the total number of serving Directors, the Board of Directors shall appoint qualified individuals to fill vacancies on the Board of Directors for the remainder of any unexpired term;

(f) the number of Directors may be increased or decreased by a supermajority vote of two-thirds (2/3) of the Members at the annual meeting of Members as defined by Section 5.5; and

(g) the Board of Directors shall adopt rules for the nomination of qualified candidates to run for election to the Board of Directors.

Section 6.2 Director Qualifications

All Directors shall be full time employees of a Member. Any Director who fails to meet this requirement or whose Member entity withdraws or whose membership in MPR Kansas is terminated as provided in these Bylaws shall immediately forfeit the Director's position. All directors shall meet the requirements of the Code.

Section 6.3 Director Compensation and Expenses

Directors shall serve without compensation. Directors' reasonable and necessary expenses related to service on the Board of Directors shall be paid or reimbursed by MPR Kansas.

Section 6.4 Board Officers

The first agenda item, following roll call, at the first meeting of the Board of Directors following the annual meeting shall be the election of MPR Kansas officers (the "Board Officers"). The Board of Directors shall review the nominees recommended by the Nominating Committee created for such purpose and elect, by majority vote from its membership, a Chair, Vice-Chair, Secretary and a Treasurer. The Board of Directors may elect persons nominated by the Nominating Committee or may elect persons not so nominated to one or more Board Officer positions provided that such persons meet the qualifications and requirements set forth herein. Only Directors who have previously served at least one term on the Board of Directors shall be eligible for the positions of Chair and Vice-Chair. These Board Officers shall immediately assume their offices and shall serve until the next regular meeting of the Board of Directors following the annual meeting or until their successors are duly elected and qualified. The President/CEO shall serve temporarily as presiding officer during the election of Board Officers.

The Chair shall preside at all Board of Directors meetings and shall be entitled to vote on all matters brought before the meeting. The Chair shall also, with the approval of the Board, appoint all committee members. The Board may also authorize the Chair to represent the interests of MPR Kansas before such organizations as the Board shall designate. The Vice Chair shall act in the Chair's absence.

The Secretary shall prepare, or cause to be prepared, the official minutes of all meetings of the Board of Directors and of the Members, and shall authenticate all MPR Kansas official records.

The Treasurer shall prepare or cause to be prepared an accurate accounting of all MPR Kansas assets and liabilities and all receipts and disbursements. The Treasurer shall perform the duties generally incident to the office of Treasurer.

In the case of a vacancy in any office, the Board of Directors shall, at the Board of Directors' next regular meeting, appoint a qualified Director to fill the unexpired term. No individual may serve more than three consecutive one year terms in the same office position.

One person may hold more than one of the offices described above; provided, however, that the same person may not serve as both Chair and Vice-Chair or Chair and Secretary.

Section 6.5 Board Powers

Except as otherwise required by law, MPR Kansas's Articles of Incorporation, or these Bylaws, all corporate powers of MPR Kansas shall be exercised by or under the authority of, and the affairs of MPR Kansas shall be managed under the direction of, the Board of Directors. The Board of Directors shall have the authority and power to take all steps and actions necessary, desirable or expedient to fulfill the obligations and objectives contained in these Bylaws. The enumeration of any specific duty or power is not to be construed as a limitation upon the right to exercise any other powers or duties.

Subject to any applicable laws, and upon such terms as the Board of Directors shall establish in accordance with Section 9.2 of these Bylaws, the Board of Directors may, but shall not be required to, declare refunds or dividends to Members. Except for withdrawing Members which have retained rights pursuant to agreement with the Board of Directors at the time of withdrawal, any Member who withdraws prior to the declaration of any refund or dividend from the Program as to which the refund or dividend is based shall surrender all rights to such refund or dividend. Any dividend or refund allocable to a Member shall first be used to offset and reduce the amounts, if any, which may be due and unpaid to MPR Kansas from such Member.

The Board of Directors shall approve and execute a management and administration agreement with Midwest Public Risk ("MPR") for implementation of the Risk Sharing Agreement.

The Board of Directors may enter into interlocal agreements with other types of coverage risks, and may enter into similar interlocal agreements with other appropriate entities, subject to applicable law, at the discretion of the Board of Directors.

The Board of Directors shall select a qualified public accounting firm to audit, on an annual basis, MPR Kansas's financial records in conformance with generally accepted accounting principles, relevant laws and these Bylaws. A copy of the audit shall be distributed as required by law.

The Board of Directors shall adopt an annual budget in a form and manner determined by the Board of Directors.

The Board of Directors shall adopt rules governing the conduct of Directors and Director meetings, including, but not limited to, an attendance policy. Directors may only be removed by the majority vote of a quorum of a meeting of the Members.

Section 6.6 Committees

The Board of Directors shall appoint a committee for the nomination of Board Officers (the "Nominating Committee") at each June meeting of the Board of Directors. The Nominating Committee shall develop recommendations regarding the election of Board Officers for consideration by the full Board of Directors at the first meeting of the Board of Directors following the annual meeting, and shall develop similar recommendations for appointments to fill any vacancies in Board Officer positions. Members of the Nominating Committee shall serve one (1) year terms.

The Board of Directors may create advisory and technical committees as deemed necessary or expedient. The Board of Directors shall determine committee duties, number of members, and membership qualifications and terms. The Chair shall, with the approval of the Board of Directors, appoint all committee members and committee chairs, with the exception of the Nominating Committee. At least one Member of the Board of Directors shall serve on each committee. No committee shall possess or exercise the authority or power of the Board of Directors.

Section 6.7 MPR Kansas Policies and Procedures

The Board of Directors shall adopt Policies and Procedures, not in conflict with these Bylaws, that are necessary, expedient or desirable for the operation and functioning of MPR Kansas. All Members, Directors, officers, employees and other service providers shall be subject to and adhere to such Policies and Procedures.

Section 6.8 Meetings

The Annual Meeting of the Board of Directors shall be held immediately following the annual Member meeting for the purpose of electing MPR Kansas officers and transacting such other business as may properly be brought before the meeting. In addition to such Annual Meeting, the Board of Directors shall hold regular meetings on the first Wednesday of February, April, June and December of each year at 10:00 a. m. or at such other time and place as may be designated by the Board of Directors. Special Board of Directors' meetings may be called by the Chair or by 1/3 of the Directors. Any topic may be discussed at a regular meeting; only topics on the agenda may be discussed at a special meeting. Directors and Member Representatives shall receive at least five (5) days' written notice of all Board of Directors meetings, which notice may be electronic.

A quorum consisting of a majority of the serving Directors shall be present in order to conduct business at any Board of Directors meeting. Directors may participate in any meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can simultaneously hear each other, participation in this manner shall constitute the presence of a Director at the meeting for purposes of quorum and voting. The President/CEO shall prepare the agenda for all Board of Directors meetings.

All Board of Directors meetings, except those permitted by law to be closed, shall be open to the public, and all votes shall be public except as otherwise permitted or required by law

or these Bylaws. Unless notice is provided to the contrary, all meetings of the Board of Directors shall be held at MPR Kansas's principal office.

Except as required by law or these Bylaws, a majority vote of the Directors present at a meeting at which a quorum is present shall be required to approve all motions or other actions of the Board.

ARTICLE 7 PRESIDENT/CEO

Section 7.1 President/CEO; Appointment; Authority

There is hereby created the position of President/Chief Executive Officer ("President/CEO") who shall be appointed and may be removed by a majority of the total membership of the Board of Directors. The President/CEO shall be an officer of MPR Kansas.

The President/CEO shall be MPR Kansas's chief executive officer and shall be responsible to the Board of Directors for the proper administration and conduct of all Programs and Services offered by MPR Kansas. All agents, employees and independent contractors shall report to the Board of Directors through the President/CEO and shall be supervised by the President/CEO.

Subject to any limitations adopted by the Board of Directors, the President/CEO is authorized to settle all claims or cases involving the Programs provided by MPR Kansas.

The President/CEO shall prepare and submit to the Board of Directors, for consideration prior to the start of each fiscal year, a recommended budget for the forthcoming year. The President/CEO shall attest to all official records, sign contracts, select, appoint and supervise all employees, implement the adopted annual budget, and do all other things customary to this position.

The President/CEO shall be a member of all standing and special committees and shall be entitled to attend all Board of Directors and committee meetings with a right to speak but not to vote on issues. The President/CEO may be excused from Board or committee meetings pertaining to the President/CEO's employment or job performance.

ARTICLE 8 COVERAGE DOCUMENTS; UNDERWRITING CONTRIBUTIONS

Section 8.1 Coverage Documents

MPR Kansas Programs shall be described in separate Coverage Documents. MPR Kansas may add, delete, or modify the Coverage Documents for such Programs as the Board of Directors may determine. When a Member has other valid and collectable insurance policies or other similar protection against losses covered by MPR Kansas, all MPR Kansas Programs for such lines of coverage shall be considered excess only and not primary or contributory.

Section 8.2 Modification of Coverage Documents and Conflicts

Coverage Documents may be modified by the President/CEO to meet specific Member or MPR Kansas needs and shall be provided to the Member. Such Coverage Documents shall be subject to all of the terms and conditions of these Bylaws and MPR Kansas Policies and Procedures. In case of any conflict between the Coverage Documents and these Bylaws, these Bylaws shall be controlling.

Section 8.3 Coverage Questions; Appeals and Other Disputes

The President/CEO shall decide all questions of coverage in specific cases. A Member may appeal the President/CEO's decision to the Board of Directors. Notification of such appeal must be taken no later than sixty (60) calendar days after the date of the President/CEO's decision. The Member shall have the opportunity to appear and present evidence to the Board of Directors. The Board of Directors' decision, by a majority of the total membership of the Board of Directors, shall be final and not subject to appeal in any forum.

The Board of Directors shall decide all other disputes between MPR Kansas and any Member involving these Bylaws, Coverage Documents or Policies and Procedures. The Board of Directors' decision, by a majority of the total membership of the Board of Directors, shall be final and not subject to appeal in any forum.

Section 8.4 Acceptance and Withdrawal of Coverages

No Member shall receive any Program or Services unless the Member's request for such Program or Services is accompanied by either a copy of the minutes documenting a majority vote or a Resolution adopted by its governing body expressing the governing body's intention to secure the Program or Service from MPR Kansas.

Any Member may withdraw from, and cease participation in, any MPR Kansas Program or Service at the end of any contract year by giving at least ninety (90) days' notice, in writing, of its intention to withdraw. In the case of any such withdrawal from a Program, except for withdrawing Members which have retained rights pursuant to agreement with the Board of Directors at the time of withdrawal, the withdrawing Member shall forfeit all rights to any refunds, dividends or payments in dissolution which may be declared subsequent to the date of withdrawal with respect to the Member's past participation in the Program. A Member's request for withdrawal shall specifically state which Program or Service the Member desires to withdraw from and must be accompanied by a Resolution adopted by its governing body which expresses the governing body's intention to withdraw. Such notice shall be final and binding. Failure to submit such a governing body Resolution shall have the effect of voiding the notice of withdrawal as though such notice were not given.

A withdrawing Member from any Program shall continue to be responsible for all obligations after the date of withdrawal that relate to the prior coverage under the Program, including, but not limited to, the obligation to satisfy any special assessments. The withdrawing Member shall also be subject to all MPR Kansas rules pertaining to any obligation, claim or lawsuit covered by MPR Kansas.

Any Member who withdraws from any Program or Service and fails to provide the required ninety (90) days' notice of intention to withdraw shall pay liquidated damages equal to 25% of the Program's annual premium contribution paid by the Member in the prior year. The Member agrees to pay such liquidated damages within twenty (20) calendar days after receipt of a bill. MPR Kansas and the Member agree that it is not possible to calculate the damage to MPR Kansas which may be caused by the breach of this condition and that the foregoing percentage constitutes liquidated damages which are a good faith estimate by MPR Kansas and the Member. The Board of Directors, at its discretion, may shorten the ninety (90) days' notice period as it deems appropriate, provided that it shall have previously given written notice of such change to all of the Members.

Section 8.5 Contributions

MPR Kansas Programs and Services shall be funded by Contributions from its Members and Member employees for those Programs and Services in which Members desire to participate. The Board of Directors shall determine when Contributions are due and may impose charges for late payments. Each Member's account shall be reviewed on an annual basis.

Section 8.6 Underwriting

Contributions for Programs and Services paid by Members and their employees shall be determined in accordance with underwriting guidelines approved by the Board of Directors. Underwriting guidelines may be based upon any factor or combination of factors which relate to potential losses and which will produce sufficient income to pay losses and related administrative expenses. Underwriting guidelines shall be reviewed periodically to insure that they meet the stated objectives.

Section 8.7 General and Separate Funds

Contributions from Members shall be paid into a general fund. Monies shall be paid out of the general fund to such separate Program funds as the Board of Directors shall determine. Each separate Program shall have its own separate fund.

Section 8.8 Commingling of Program Funds Prohibited

Contributions paid and any assets attributable thereto by Members for any MPR Kansas Program shall not be used or devoted to any purpose other than to pay losses and expenses related to the specific Program, including any Program Fund established pursuant to any risk sharing agreement, for which the Contributions were paid.

Section 8.9 Member Privilege

The Board of Directors shall establish rules which shall govern and determine the settlement of claims or lawsuits covered by MPR Kansas Programs, provided that the Member may reject recommended settlements. If a Member exercises this privilege to reject a recommended settlement, the Member shall thereafter be responsible for all damages, expenses and costs, of every kind and description, without limitation, that exceed the rejected settlement and accrued loss adjustment expenses through the date of rejection by the Member.

ARTICLE 9 MPR KANSAS ASSETS

Section 9.1 MPR Kansas Assets

All Contributions, monies, and other assets, including interest or other investment earnings thereon paid by Members to MPR Kansas, and any other assets obtained in any other manner by MPR Kansas, shall be the property of MPR Kansas. No Member shall have any right or claim to such MPR Kansas assets including, but not limited to, any excess or surplus funds held by MPR Kansas, except such that are authorized specifically by MPR Kansas's Articles of Incorporation, these Bylaws, or by resolution of the Board of Directors. All assets of MPR Kansas, including but not limited to, any excess or surplus funds held by MPR Kansas, may be used for MPR Kansas purposes in such manner as the Board of Directors deems appropriate.

Section 9.2 Excess or Surplus Distributions

Provided that all statutory and regulatory requirements are complied with, including but not limited to the requirements of K.S.A. 12-2621(c), the Board of Directors, in its sole discretion, may determine to make distributions of excess or surplus funds from any Program to such Program's Members. The Board may delegate the authority to determine and make distributions of excess or surplus funds from any Program to such Program's Members by written agreement to Midwest Public Risk, a Missouri nonprofit corporation. Such distributions shall be limited to Members which were active participants in good standing in such Program throughout the entire Program Year for which a distribution was declared.

Section 9.3 Special Assessments

If, at any time, in the opinion of the Board of Directors, MPR Kansas's assets are insufficient to meet anticipated obligations for any Program or Service offered by MPR Kansas, the Board of Directors shall develop a financial plan to restore MPR Kansas's financial integrity. The Board may direct Members to pay a special assessment to eliminate such insufficiency provided that the Member was a participant at any time during the MPR Kansas fiscal year in the Program or Service which incurred the insufficiency. Each Member shall be assessed its pro rata share of the insufficiency based upon its relative percentage of the total Contributions or fees paid by all Members for the Program or Service as to which the insufficiency has arisen, and shall be jointly liable for payment of claims to the extent of the assets of the pool, as required by K.S.A. 12-2618(e).

A Member shall be and remain liable for any special assessment whether or not the Member was a MPR Kansas Member at the time of the levying of the special assessment.

ARTICLE 10 STANDARD OF CARE; BOND; INDEMNIFICATION

Section 10.1 Standard of Care

Directors, officers and employees of MPR Kansas shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties on behalf of MPR

Kansas. Such Directors, officers, and employees shall not be liable for any mistake of judgment or other action made, taken or committed by them in good faith nor for any action taken or omitted by any agent, employee or independent contractor who was selected with reasonable care. No Director shall be liable for any actions taken or not taken by any other Director.

Section 10.2 Bond

MPR Kansas may provide for a bond or other security to guarantee the faithful performance of the obligations of its Directors, officers and employees.

Section 10.3 Indemnification

MPR Kansas shall hold harmless and defend and indemnify all present and past Directors, officers and employees for actions taken by any such person in good faith within the scope of his or her authority or duties for MPR Kansas. This duty shall apply to any direct or derivative action involving the Director, officer or employee. To the extent permitted by law, the Board of Directors may enter into written indemnification agreements with individual Directors, officers and employees. MPR Kansas may also purchase liability insurance providing similar coverage for Directors, officers and employees.

ARTICLE 11 DISSOLUTION AND DISTRIBUTION

Section 11.1 Dissolution

MPR Kansas may be dissolved as of the last day of any MPR Kansas fiscal year upon a vote of two-thirds (2/3) of all Member Representatives.

Upon the dissolution of MPR Kansas, the then current Board of Directors shall take all actions which shall be necessary for the orderly winding down of MPR Kansas's Programs and Services and for the completion of MPR Kansas's dissolution and liquidation subject to the Code.

Section 11.2 Distribution of Assets

All net assets shall be distributed pro rata to the current and former Members of the respective programs. Such net assets shall be distributed, separately by Program by calculating the relative percentage of the total Program premium contributions for each Program paid by each current and former Member during MPR Kansas's existence prior to the date of dissolution and multiplying the net assets by that percentage.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Intergovernmental Contract

These Bylaws shall constitute an intergovernmental contract among the Members and MPR Kansas. Nothing in these Bylaws shall be inconsistent with, or cause any Member to

violate, any constitutional or statutory provision which prohibits political subdivisions from becoming indebted in an amount exceeding in any one year the income and revenue provided for such year plus any unencumbered balances from previous years.

Section 12.2 Governing Law

These Bylaws shall be subject to, and governed by, the laws of the State of Kansas, including specifically the Code.

Section 12.3 Binding Effect

These Bylaws shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors or assigns, provided, however, that a Member may not assign its rights or delegate its duties without MPR Kansas's prior written consent.

Section 12.4 Disputes

In the event of any dispute hereunder which results in litigation, the prevailing party in such litigation shall be entitled to its reasonable attorneys' fees and expenses of such litigation. Any action against MPR Kansas by a Member shall be brought only in the county in which MPR Kansas's principal office is located.

Section 12.5 Severability

These Bylaws are expressly declared to be severable, and in the event that any article, provision, clause or other part of these Bylaws is declared invalid or unenforceable by a court of competent jurisdiction, such action or unenforceability shall not affect the validity or enforceability of any other article, provision or clause.

Section 12.6 Amendment

These Bylaws may be amended by approval of the vote of two-thirds (2/3) of the Member Representatives present at any annual membership meeting or special membership meeting called for that purpose. Only amendments recommended by the Board of Directors shall be considered for adoption.

A copy and an explanation of all recommended amendments stating the reasons and impact of each proposed amendment shall be sent to all Member Representatives, by certified mail, no later than ten (10) days prior to the meeting date.

Any amendment to these Bylaws shall take effect immediately or at the time specified in the amendment. Such amendments shall be binding upon all Members without further action by MPR Kansas or the Members.

*[END OF BYLAWS; BALANCE OF PAGE LEFT BLANK;
AGREEMENT AND EXECUTION PAGE FOLLOWS]*

AGREEMENT AND EXECUTION

The Member acknowledges that it has read and agrees to be bound by all terms and conditions of these Bylaws as a contract among MPR Kansas and its Members. By the execution of these Bylaws by the Member, the individual so executing acknowledges that these Bylaws have been duly accepted and authorized by all necessary and appropriate action of the governing body of the Member. The Member's participation as a Member of MPR Kansas shall not be effective unless and until either a copy of the minutes documenting a majority vote or Resolution of the governing body of the Member granting authority to execute these Bylaws is delivered to MPR Kansas and is attached hereto.

Accepted:

Member

Signed

Title

Date

MPR Kansas

Signed

Title

Date

[Signature]
MPR of KS, Inc. Chair
7-1-16

[AGREEMENT AND EXECUTION PAGE TO BYLAWS]



Request for Commission Action

Date: March 12, 2018

Requestor: Brenda Peters

Action Requested: Human Relations Commission Board Appointments – Beth McCann and Michele Chism

Building Trades Board: PLEASE APPOINT 2 MEMBERS: Megan Pringle, Ron Lindly, Karen Harden, Debby Eastman

Analysis: Human Relations Commission - City of Winfield HR Director Jamie Chism, as the City's liaison to the Human Relations Commission, submits the names listed above as recommendations from the HRC to be considered for Commission appointment to the HRC Committee. This item will be under Other Business on the March 19, 2018 agenda.

Building Trades Board: Director of Public Services Patrick Steward received a communication from a representative of the Board of Realtors and the Landlord Association with a list of persons that would be willing to serve on this board. There are four names for two positions.

Fiscal Impact: None

Attachments: None